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Editor's Preface to the Fall 2007 Edition

We are pleased to present the Fall 2007 edition of *The Pi Sigma Alpha Undergraduate Journal of Politics*. This is the seventh edition of the *Journal* sponsored by Pi Sigma Alpha, the National Political Science Honor Society, and the fourteenth edition since initial publication.

Since its inception in 2001, the *Journal* has been produced by dedicated members of the Delta Omega Pi Sigma Alpha chapter at Purdue University. This Fall 2007 issue marks the first edition published by the Zeta Upsilon chapter of Pi Sigma Alpha at Union College (NY), which will be hosting the *Journal* for the next 3 years.

There are many people we wish to recognize. First, we would like to thank the Pi Sigma Alpha Executive Council and the Executive Committee, particularly President Jon Bond, Executive Director James Lengle, and Administrator Nancy McManus. The *Journal* would not be possible without these dedicated individuals. Next, the counsel and guidance provided by the Delta Omega chapter of Pi Sigma Alpha at Purdue University, led by Faculty Advisor Rosalee Clawson, has been an indispensable resource as the *Journal* transfers to its new home. Furthermore, we praise the vital work done by the Advisory Board and the Editorial Board members. Finally, we express our thanks for the endless support and dedication of our Faculty Advisor, Zoe Oxley.

The *Journal* represents a critically important outlet for disseminating the best undergraduate research in Political Science from across the nation. Please share this valuable resource with your fellow students, colleagues, and contemporaries.

Thank you.

The Editors

Submission of Manuscripts

The Pi Sigma Alpha Undergraduate Journal of Politics welcomes submissions from undergraduates of any class or major; submissions from Pi Sigma Alpha members are especially encouraged. Our goal is to publish manuscripts of the highest quality. In general, papers selected for publication have been well-written with a well-developed thesis, compelling argument, and original analysis. We typically publish papers 15-35 pages in length. Manuscripts should include an abstract of approximately 150 words. Citations and references should follow the American Political Science Association *Style Manual for Political Science*. Authors may be asked to revise their manuscript before it is accepted for publication. Submissions must be in the form of a Microsoft Word document and should be e-mailed to psajournal@union.edu. Please include name, university, and contact details (i.e., mailing address, e-mail address, and phone number).

What is Modernity? Toward a Radical Evaluation of Politics, Democracy, and Freedom

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A central dispute between political theorists is whether this day-and-age is best described as modern or postmodern. Postmodern political theorists argue that this is not a modern age because the tenets of modernity are not the defining characteristics of social and political conditions. This article broadly examines the contemporary political environment by summarizing Enlightenment political thought and comparing its principles to postmodern criticisms. I argue that the solutions to modernity's shortcomings, as expressed by postmodern political theorists, rest within modern political theory itself, through directly democratic politics. While acknowledging that postmodern theory consists of many legitimate criticisms, I contend that this age is indeed modern because of radical political events that seek transformation of the public sphere by stretching the confines of liberal democracy, thereby fostering directly democratic communities. Such political struggles took place throughout the twentieth century and continue today. Ultimately, this signifies that a truly modern world is gradually in the making.

The notion of progress is foundational to modernity and Western society. Yet, political theorist Hannah Arendt (1968, vii) writes that progress and doom are opposite sides of the same coin. Modernity refers to both modern political theory and to the modern age. As both a historical era and the philosophical foundation of Western society, modernity began around the Enlightenment era, during which capitalism took the place of tyrannical monarchism and feudalism. "'Modern' [means] something that [has] never existed before," writes John Gray. "The idea was conceived that the future would be different from the past … The future had become the sight for a better world … an irreversible condition in which knowledge, wealth, and happiness were increased together" (Gray 2003, 101-102). In modern political theory, progress means that history has reason, purpose, and direction; the notion of progress means humanity is steadily achieving a universal state of greater liberty, equality, prosperity, and peace. Other tenets of modernity include universalism, individual autonomy, state sovereignty, rationality, secularism, and freedom as rights.

Despite the progressive aspects of modernity, the modern age has suffered through institutional slavery, world wars, imperialism, and numerous genocides; all of which result in a societal disconnectedness rooted in race and class struggles. Strong contradictions between the tenets of modern political thought and major events within the modern age are evident. Despite the progressive aspects of modernity, a dark side is undeniable.

The postmodern challenge to modernity is based on many observable paradoxes that exist in an age that is said to have transcended a past marked by tyranny and inequality. The aspects of modernity that I focus on in this article are sovereignty, universality, and the notion of progress. The modern concept of sovereignty has two parts, the individual level and the state level. Individual autonomy is the belief that humans are equal, rational, and self-made. State sovereignty means that governments are rational, autonomous, and depend upon the democratic will of citizens. Universalism simply refers to the belief that all are created equal, and therefore all deserve political equality and universal economic prosperity. By progress I mean the belief that history continuously moves forward in an inevitably beneficial direction so that humanity will all be free, equal, and prosperous. If one idea captures the essence of modern political theory, it is a universal sense of progress.

The tumultuous history of the nineteenth and twentieth centuries shows that the tenets of modernity are inconsistent with many major events of the modern age. Some scholars argue that this age is really postmodern, which in terms of political theory means that progress is uncertain: Is the world really progressing? Progress toward what ends? Progress for whom? Furthermore, is modernity (through liberal democracy) as universal as intended, or does defending class interests stand in the way of fundamental equality and universal prosperity? While postmodern political theory offers highly valuable critiques of modernity and articulates the many inconsistencies that plague the modern age, I argue that the world is not postmodern. The solutions to the political problems within modernity rest in modern political theory itself, through directly democratic politics. Fulfilling the ideals of modernity, I argue, rests within directly democratic politics, which tends to stretch and surpass the paradigms of liberalism and representative democracy. By directly democratic politics I mean the individual involvement of all citizens in their community affairs, including those pertaining to economic structures and the day-to-day workplace. I argue that the world is not

postmodern because fundamental equality, membership, and participation are at the heart of modernity's very meaning; the world is modern because political struggles toward such a politics remain evident throughout the twentieth century and today.

This article is separated into three main sections. The first section is a summary of the paradox of liberal democracy and how it generates postmodern conclusions. I then turn to postmodern political theorists Michel Foucault and Gloria Anzaldúa. While Foucault contributes to an understanding of power in which individuals are constructed and shaped by modern society, Anzaldúa provides a compelling account for how individuals are fractured and divided by modern society. Both authors directly challenge modernity in terms of sovereignty, universalism, and progress.

In the second section I argue through Hannah Arendt's *The Origins of Totalitarianism* and *The Human Condition* that the solutions to the contradictions between theory and practice rest within modern political theory itself, through political arrangements that are rooted in direct democracy. Arendt's analysis of politics and society lends itself to directly democratic politics: the equal and participatory engagement of all members of a community in all public affairs. The world is modern, I insist, because clear efforts to create directly democratic communities are evident throughout the global political landscape.

In the third section I make brief reference to the Spanish Civil War of the 1930's, the present day Zapatista movement in Mexico, and the 1999 Battle in Seattle. The Zapatistas and factions of the Spanish Civil War are examples of directly democratic communities that function outside the paradigm of liberal democracy. The Battle in Seattle indicates a growing recognition of–and opposition to–the paradox of liberal democracy. The tremendous gale of protests in Seattle demonstrates a budding consensus that capitalism and laissez-faire economics are fundamentally undemocratic and contrary to the furtherance of free society. Exploring the paradox of liberal democracy and postmodern political theory supports the radical political posturing evident in all three events.

Paradox and Postmodernism

Much of postmodern theory is based on paradox. The paradox of liberal democracy is one of the most visible contradictions to modern political theory: America (and the West) is premised on citizens

possessing equal political rights, but in which wealth is held in drastically uneven proportions. It is widely acknowledged in academia and in the public that economic power and political power are too intimately related. This poses a significant contradiction to modernity because it creates rigorous tensions between social equality and political power based upon wealth. Another highly significant aspect of the paradox of liberal democracy is the premise of equality as political rights. Within the context of modern societies, many have been blatantly deprived of rights and freedom. Slaves, women, Native Americans, and property–less wage laborers have historically been excluded from American democracy. The ideals of modernity have not been a consistent practice, regardless of stated belief that all are created equal, thus are equal by law. For these reasons, the paradox of liberal democracy is a hub of incongruity and contradiction between the political ideas of modernity and their limited realization within modern society.

Before addressing Foucault and Anzaldúa's postmodern criticisms and the ways they contradict modern political theory, I will first briefly summarize enlightenment ideologies, the philosophical foundations of modernity. The belief that society is free and consists of autonomous individuals is definitive of modernity. Notions of individualism and freedom are continuously expressed throughout social contract theory, constitutional documents, and foundational texts of the Enlightenment.

In his classic essay *What is Enlightenment?*, Immanuel Kant provides a basis for modern philosophy. He says: "Enlightenment is man's emergence from his self-imposed immaturity. Immaturity is the inability to use one's understanding … this immaturity is self-imposed when its cause lies not in lack of understanding, but in lack of resolve and courage to use it without guidance from another" (Kant). Similarly, John Stuart Mill ([1869] 1921, 34) advocates similar notions by saying "He who does anything because it is the custom makes no choice." In other words, conformity is antithetical to free thinking, hence enlightened self-sovereignty or individual autonomy.

John Locke ([1690] 1980, 66) represents social contract theory and classical liberalism; he argues that governmental power is only a guardian of life, freedom, and property, not a body meant to rule. In his highly influential view, humans are born in a "state of perfect freedom" and a "state also of equality" (Locke [1690] 1980, 8). On this basis, limited governments are forged to maintain common good

so that all may be free and equal under the guarantee of the state. Such a guarantee is believed vital so that all may co-exist without any one's livelihood being taken away by others. From these examples we see that individualism is a crucial aspect of Enlightenment philosophy and modern political theory.

Karl Marx's politics are also driven by individualism. In critique of capitalism, Marx says, "For as soon as labor is distributed, each person has a particular, exclusive area of activity which is imposed on him and from which he cannot escape. He is a hunter, a fisherman, a herdsman, or a critical critic, and he must remain so if he does not want to lose his means of livelihood" (Simon 1994, 119). In contrast, communism is meant to free individuals. "In communist society, however, where nobody has an exclusive area of activity and each can train himself in any branch he wishes … making it possible for me to do one thing today and another tomorrow, to hunt in morning, fish in the afternoon, and breed cattle in the evening, criticize after dinner … without ever becoming a hunter, a fisherman, a herdsman, or a critic" (Simon 1994, 119). As modernity's two dominant political ideologies, Marxism and liberalism are both meant to maximize individuality and usher in a greater sense of progress and universalism.

The tenets of modern political thought are so deeply embedded in political ideologies that they commonly are considered foundational truths of modern societies. Yet Michel Foucault powerfully argues the contrary. In *Discipline and Punish*, Foucault develops the concept of disciplinary power: the various societal forces that constantly normalize and subject individuals into relations of docility and utility. By "docility" Foucault means compliance and pliability. A docile individual is one predominantly shaped and fashioned by their social environment and political conditions. By "utility" he means useful and efficient. As we shall see, disciplinary power is a direct contradiction of the political ideas of modernity, specifically progress, sovereignty and universality.

Foucault contends that individuals are not nearly as liberated as modernity suggests. "The 'Enlightenment,'" he writes, "discovered the liberties, [but] also created the disciplines" (Foucault [1975] 1995, 222). Although feudalism and monarchism no longer exist, societal control is powerfully evident through disciplines that establish both docility and utility; such disciplinary interactions are the fabric of civilization. Power relationships such as teacher-student, doctor-patient, and cop-criminal, establish acceptable

actions and perspectives against the unacceptable and the abnormal. On one hand, modern political theory views individuals as free, rational, rights-bearing persons who become who and what they want to be within a free society. On the other hand, various disciplines and institutions create webs of power that produce not free individuals, but *subjects* within modern society. Foucault argues that disciplinary power is located in many societal institutions such as prisons, hospitals, and schools, all of which train and normalize society on an individual basis by creating inhibitions, forming behaviors, and overall ordering society. Although laws contribute to positive and negative freedoms, disciplinary power *normalizes* and manipulates behavior on multiple levels. Tyranny has not been overcome by modernity but merely re-packaged and disguised.

Modern ideologies tend to view power as justifiably held by states or civil societies to maintain order. Furthermore, representative democracy is the standard by which power of the people is exercised through their elected officials, rather than being subject to authoritarian rule. Power is understood primarily as a system of checks and balances, which is ultimately held by a democratic majority. Foucault maintains that in reality, power is much more complex. Power is not held primarily by states or citizens; rather, power is exercised through disciplinary institutions.

> 'Discipline' may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercises, comprising a whole set of instruments, techniques, and procedures, levels of application, targets; it is a 'physics' or an 'anatomy' of power … it may be taken over either by 'specialized' institutions (penitentiaries or houses of correction of the nineteenth century), or by institutions that use it for an essential instrument for a particular end (schools, hospitals) (Foucault [1975] 1995, 215).

Power is divided into countless forms and distributed in a web-like fashion. Power is not held anywhere or by any one in particular; power is not the democratic consent of the governed, yet still shackles individuals and society-at-large by its subtle and invasive powers of normalization. As such, disciplinary power violates modern notions of both individual autonomy and state sovereignty. Foucault's theory of disciplinary power begs questioning if freedom

and individual autonomy are actually even possible. For this, Foucault's work is distinctly postmodern. In consideration of disciplinary power and its effects, the modern notion of progress must be reconsidered.

Indeed, modern society is a disciplinary society. Humanism inspires the utilization of prisons and reformatories rather than gallows and guillotines. Institutions such as healthcare and education are undoubtedly necessary and indicative of technological and social progress; however, such institutions are ultimately both productive and repressive. "It is not that the beautiful totality of the individual is amputated, repressed, altered, by our social order," Foucault writes, "it is rather that the individual is carefully fabricated within it, according to a whole technique of forces and bodies" (Foucault [1975] 1995, 217). Such forces and bodies include schools where one learns, hospitals where one heals and is determined healthy or unhealthy, prisons where one is punished and determined unsafe or sane, and any other specialized institution where matters of expertise that pervade the social body are determined. Truth, normality, and legitimacy are functions of disciplinary power. Society as we know it would cease to function without disciplinary institutions; yet on the other hand, their by-product is the subtle despotism of normalization and disciplinary domination.

Foucault's discourse leads to the revelation that modern notions of freedom and sovereignty inadequately explain the nature of power in modern society. The web-like arrangements of disciplinary power transcend state power because laws cannot completely control behavior or determine how one thinks. Normalization, on the other hand, goes beyond such limitations of law. Individuals in society are subjected because disciplinary institutions are unavoidable in daily living. An accurate understanding of individualism is not possible by the accounts of Locke, Mill, or Kant. A thorough understanding of how society functions cannot be without consideration of disciplinary power.

Because of disciplinary power, modernity is both progress and darkness: An age of freedom and prosperity not enjoyed in antiquity, but also a societal order based on normalization and various methods of subtle coercion. Disciplines mold and fashion individuals rather than free individuals creating themselves by their own rationality and individual autonomy. For this, the range of freedoms is limited to what fits within normalcy. In this way, disciplinary power is perpetually self-enforcing by creating normal versus abnormal,

acceptable versus unacceptable, and true versus false. Modern individuals are not autonomous, but docile and subjected. Power is not centralized at the state level, nor guided by democratic will, but dispersed and disguised as disciplines. In light of Foucault's understanding of power, simply possessing political rights as a citizen is not the same as being free. State sovereignty is not the focal point of power in society.

Foucault is wildly influential in postmodern scholarship. His account for disciplinary power begs questioning notions of progress and ultimately whether or not modernity has indeed brought about a free society or free individuals. Yet Foucault concludes *Discipline and Punish* by passing it off as an "anonymous text" intended to "serve as a historical background to the various studies of the power of normalization and the formation of knowledge in modern society" (Foucault [1975] 1995, 307-308). Foucault's writing in *Discipline and Punish* does not contribute to imagining ways to overcome the postmodern conclusions that his work generates. Instead, he ends the text by asking readers to "hear the distant roar of battle" (Foucault [1975] 1995, 308) and use his work as a basis for more thoroughly understanding power and how disciplinary power contradicts modernity. Foucault's lack of answers to a plethora of political questions he brings attention to reflects an overall shortness of solutions within postmodern theory. Overall, as I will argue through Arendt, this is because the solutions to modernity's contradictions lay within modern political theory itself.

While the implications of Foucault's work directly challenge modernity's core principles, Gloria Anzaldúa also delivers a powerful critique of modernity's understanding of progress, sovereignty, and a universal application thereof. In *Borderlands/La Frontera,* Anzaldúa describes an irrational, unsafe, and fragmented world. The product of this world is hybrid, dualistic individuals. This world she describes is postmodern because it is comprised of internally fractured people in un-whole social environments rather than autonomous individuals in coherent living spaces. Freedom, equality, and prosperity do not exist in what she calls "borderlands" (Anzaldúa 1987).

Borders are typically understood simply as dividing lines that reinforce the boundaries of sovereign states. Yet Anzaldúa reveals the reality of living among them. Her home is the border between the United States and Mexico. She describes existence there as living on "a thin edge of barbwire" (Anzaldúa 1987, 35). Living in the

borderlands is a place of many contradictions because in addition to states' boundaries, hatred, anger, exploitation, and abnormality are also defined by borders.

> Borders are set up to define the places that are safe and unsafe, to distinguish *us* from *them* ... A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants ... The squint-eyed, the perverse, the queer, the troublesome, the mongrel, the mulato, the half-breed, the half-dead; in short, those who cross over, pass over, or go through the confines of the 'normal' … The only 'legitimate' inhabitants are those in power, the whites and those who align themselves with the whites (Anzaldúa 1987, 25-26).

The borderlands are political and psychological. They are political in that they establish the status of citizen versus alien. Borderlands are also personal and psychological in that they negatively define and characterize individuals.

Borders define normalcy. Doing so imposes inferior status, other status. For Anzaldúa, this is all too familiar. As a lesbian who grew up between the political borders of the United States and Mexico, she knows the insecurity and alienation of both physical and psychological borderlands. As a racial minority, she experiences alienation on both sides of a physical-political border. As a sexual minority she is particularly foreign on each side of all types of borders. Because of this, no home exists for her or for those like her– those who choose to confront oppression rather than conforming to dominant culture (Anzaldúa 1987, 38-44).

Anzaldúa's concern with borderlands relates directly to Foucault's concept of disciplinary power. Borders help define normalcy by accentuating the differences between the ordinary to the other- the abnormal. Borderlands exist anywhere that two or more cultures or political categories clash. Borderlands, then, are present everywhere that different sexes, races, and classes intersect in society; they are the ambiguous spaces among the edges. Not being a member of a dominant culture is to automatically be subject to various abuses that ignore equality and individual autonomy. For Anzaldúa, all personal characteristics other than the dominant,

normal categories (e.g. white, American, and heterosexual) are abnormal. For this, those who defy normality and dominant cultural paradigms suffer effects of political inferiority. A world that lends itself to such borderlands is not one of freedom or equality, nor is it progressive at its core.

The existence of borderlands is undeniable, even in contemporary America. Equal rights for sexual minorities do not exist. Racism is no longer legally sanctioned, yet many social scientists agree that people of color still contend with prejudice and many systematic disadvantages. Vast disparities in wealth form borderlands that divide society between the rich and contented and the wretched and dispossessed. Liberal democracies promise that all are created equal and are equal by law; yet consideration of borderlands and disciplinary power demonstrates that such promises are often null and void because laws cannot dictate belief and behavior. Normality and cultural supremacy are more comprehensive explanations of how power functions in society. The persisting existence of borderlands is evidence that many parts of the modern world are broken and unsettling rather than coherent and rational. Anzaldúa demonstrates how modern principles such as equality are merely ideals, not reality. Modern notions of progress are far from universal in application because of the dynamic scope of borderlands and the insidious repressive effects of disciplinary power. In this way, Foucault and Anzaldúa's critiques of modern society complement one another in the ways they contradict the political ideas that are said to shape the modern world.

The paradox of liberal democracy relates directly to Foucault and Anzaldúa, but in dissimilar ways. As Foucault ([1975] 1995, 138) says, a chief function of disciplinary power is coercion in "economic terms of utility," and "political terms of obedience." He insists that the accumulation of capital requires the accumulation of men, as such; disciplinary power is a basis for producing and controlling docile and useful workforces that are willing to toil for wages rather than equal share in produce (Foucault [1975] 1995, 220-221). Yet by Foucault's description, modern individuals are not necessarily aware of disciplines and their conditioning. For Anzaldúa, however, the individuals she is concerned with are fully aware of their adversity. Based on her experiences, we see that race and sexuality function similar to disciplines. However, Anzaldúa speaks more specifically to particular groups of individuals rather than the whole of modern society.

While borderlands are present wherever different races, classes, and sexes collide, Anzaldúa is concerned with the erroneous premise of freedom and equality as political rights. She demonstrates the fallacy this way: "Gringos in the U.S. southwest consider the inhabitants of the borderlands transgressors, aliens–whether they possess documents or not, whether they are Chicanos, Indians, or Blacks. Do not enter, trespassers will be raped, maimed, strangled, gassed, shot" (Anzaldúa 1987, 25-26). The issues of inequality related to borderlands bear a striking resemblance to W.E.B. Du Bois's concept of "double-consciousness" of Black Americans. Du Bois ([1903] 1994, 2) describes this as "[A] peculiar sensation … of always looking at oneself through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness, –an American, a Negro; two souls, two thoughts, two unreconciled striving." This duality of consciousness is a crux of Anzaldúa's concern because dualities of consciousness are products of borderlands. She describes the social experience of those fractured by borderlands as "Being cradled in one culture, sandwiched between two cultures, straddling all three cultures and their value systems … an inner war" (Anzaldúa 1987, 100). Breaking down dualistic thinking within "individual and collective consciousness" is the heart of her struggle for freedom and equality (Anzaldúa 1987, 102).

As seen through Anzaldúa and Foucault, postmodernism denies the validity of modernity as an accurate description of today's political world. Postmodern scholarship more accurately describes living conditions of those who exist outside the sanctuaries of wealth, power, and privilege. The modern world is unquestionably more technologically advanced and highly economically prosperous for some, yet overall, does not reflect liberalism's stated commitment to equality, freedom, or universal prosperity. Foucault demonstrates that the modern age has not brought freedom because individuals are fettered by docility and utility rather than being free to act as autonomous individuals. Overall, Anzaldúa demonstrates that borderlands are a manifestation of the deep veins of inequity that have not been defeated by representative democracy, nor abandoned by liberalism.

Arendt and Politics

Hannah Arendt is a political theorist who eludes both categories of modern and postmodern, an "ambivalent modernist," by Mary Dietz's (2002, 163) description. Arendt's work stands on its own as sympathetic to modernity, yet fully attentive to its shortcomings. Unlike Marx, Locke, and other canonical political theorists, Arendt does not seek to redirect society or offer blueprints for the future. Rather, she writes to urge the public toward "reconsideration of the human condition from the vantage point of our newest experiences and our most recent fears" and accordingly, encourage each person to "think what we are doing" as a political body (Arendt 1958, 5). The most recent fears Arendt refers to include the terror of totalitarianism, the advent of nuclear weapons and other technological advancements, and the naturally widespread uncertainties in their wake. Arendt, then, is a political theorist who offers political and societal understanding to the world rather than beckoning society to change according to her own ideas.

As a Holocaust survivor, Arendt wrote *The Origins of Totalitarianism* to help make sense of the horrific political conditions that had recently taken the lives of millions of Europeans, and nearly took her own. In the midst of modernity and all its progress, humanity sank into the darkness of a political condition even more tyrannical than the most oppressive conditions in pre-modern eras. Totalitarianism was the political state of Nazi Germany: A political climate in which state power dictated all aspects of society, including social, political, economic, cultural, intellectual, spiritual, and personal values and activities in the lives of all citizens. There is absolutely no sense of freedom in totalitarianism. Modern political thought could not imagine or explain the emergence of such an all-encompassing dictatorship.

As a first-hand observer, after spending years comprehending totalitarianism in its entirety, Arendt argues that there are three major precursors to totalitarianism: isolation, loneliness, and absence of political community. Isolation she defines as "the fundamental inability to act at all," which she calls characteristic in all tyrannies (Arendt 1968, 474). Whereas isolation is a public problem, loneliness is on an individual level.

> Isolation and loneliness are not the same. I can be isolated-
> that is in a situation in which I cannot act, because there is

nobody who will act with me- without being lonely; and I can be lonely–that is a situation in which I feel myself deserted by all human companionship–without being isolated (Arendt 1968, 474).

Both isolation and loneliness are apolitical conditions. On the other hand, freedom is found in political community by maintaining connections between individuals, which holds at bay both isolation and loneliness.

Totalitarian government, like all tyrannies, certainly could not exist without destroying the public realm of life, that is without destroying isolated men, their political capacities. But totalitarian domination as a form of government is new in that it is not content with this isolation, and destroys the private life as well. It bases itself on loneliness, on the experience of not belonging to the world at all (Arendt 1968, 475).

The combination of isolation and loneliness are the roots of totalitarianism; accordingly, society's shield against totalitarianism is political community. Without a powerful and meaningful public sphere, the very nature of democracy is void; thus, direct democracy is the antithesis of totalitarianism, tyranny, and inequality. Not only is totalitarianism the polar opposite of everything modernity and the Enlightenment stand for, it is also the antithesis of democracy and political community. Direct democracy is the strongest concept of political community; it lends itself to both companionship as opposed to loneliness and camaraderie as opposed to isolation.

Outside the context of totalitarianism, Arendt's discussion of politics as a distinctly human activity further supports arguments for direct democracy as a solution to the failures of modernity. Arendt advocates face-to-face politics as an ultimate form of freedom. *The Human Condition* focuses on her appraisal of life's three dominant activities: work, labor, and action. Combined, they form what she calls the *vita activa,* the "active lives of men" (Arendt 1958, 7-11). Her analysis includes two spheres, the public and private. The convolution of these spheres leads to the crisis of modernity, which is alienation and limited freedom. As Mary Dietz (2002, 103) puts it, the root of alienation for Arendt is that "we are now witnessing an unprecedented era in which the process-driven activity of labor

dominates both earth and world … where automatically functioning jobholders have lost all sense of what constitutes true freedom, real action, and collective public life." Emphasis on freedom is particularly important. Freedom for Arendt means something different than how it is typically defined in liberal democracies: freedom as rights, free markets, and suffrage. "Freedom for Arendt does not mean free will, free choice, or liberation from oppression and want" Joel Olson explains, "Instead, freedom lies strictly in a public realm constituted 'directly out of acting together, the "sharing of words and deeds."'" Humans are not truly free until they have the option of participating in political debates and making decisions in a face-to-face manner" (Olson 1997, 467). True freedom, direct political expression, and collective life are one in the same.

To help us "think what we are doing," Arendt makes a clear distinction between work and labor. Labor is "the activity which corresponds to the biological process of the human body"; in sum, labor refers to sustaining life. In contrast, work "provides an 'artificial' world of things, distinctly different from natural surroundings" (Arendt 1958, 7). Whereas *labor* grants life by creating sustenance, *work* contributes to a good life. Emma Goldman is valuable in clarifying Arendt's distinction: "Man is … not merely the products of his labor, but the power of free initiative, of originality, and the interest in, or desire for, the things he is making. Real wealth consists in things that help create strong, beautiful bodies and surroundings inspiring to live in" (Goldman and Shulman 1996, 67). Arendt's apprehensiveness of modern society is that we work too little and labor too much, while neglecting political interactions altogether.

Arendt (1958, 134) warns us that instead of acting as political beings by utilizing the public sphere for determining community affairs, modern man fills the public sphere with "private activities displayed in the open." The act of laboring–the processes of the marketplace–has overtaken the public sphere. Thus, political interactions are not the focal point of public affairs. For this, there is consequence. "The outcome is what is euphemistically called mass culture, and its deep-rooted trouble is a universal sense of unhappiness," Arendt warns; "The universal demand for happiness and the widespread unhappiness in our society (and they are but two sides of the same coin) are the most pervasive signs that we have begun to live in a labor society that lacks enough labor to keep it contented" (Arendt 1958, 134). Instead of coming together to

determine the ways to attain the best possible livelihoods for modern communities, almost all public interaction has been replaced by laboring, buying, selling, subsisting.

We see then, modern American society does not offer Arendt's developed sense of freedom. Being a politically active American typically means little more than voting every two or four years. A step further may involve volunteering at campaign phone banks, or walking precincts to distribute candidates' literature. To heed Arendt's warnings is to see that American democracy is not one of individuals' expressions of personal or collective concerns. Most of all, it is void of a public sphere for anyone other than interest groups and elites to engage in the decisions that affect daily living. When everyday people spend their lives laboring, they do not have the ability to directly or significantly impact their social environments. Consequentially, politics is losing its significance. As a result, it is all too easy for tyranny and injustice to take place, and all too often that contradiction to the very core values of the Western world persist- unrecognized and unopposed.

Arendt's analysis may seem dim, but it is far from hopeless. When turning from discussion of work and labor to action, she says "of the three, action has the closest connection with the human condition of natality; the beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something anew, that is of acting" (Arendt 1958, 9). Natality is humanity's inherent sense of spontaneity, the ability and desire to create and innovate. Natality is the ability to create newness, to begin anew. Political action, then, is not just collective decision making, politics is also about initiating new possibilities. Political speech and action in commonplace is vital because they shape the political world and alone can potentially amend its political problems. Natality, speech, and action refer to each and every one's inherent ability to act politically and significantly impact the world around them. This is the highest form of human freedom because it embodies the ability for each individual to determine their own course in life, and it embodies the ability for each community to resolve its own affairs according to the inclinations of its members.

Speech and action are essential rights of citizens in a liberal democracy, yet are often neglected by the laboring masses. Self-made conditions could be freed from fraud, tyranny, and injustice if they are collectively abolished by political communities that are in solidarity against the spoils of inequality. Arendt (1958, 9) says that

as humans, we constantly create the world around us, our own social and political conditions. Our society has bred mediocrity because it is consumed by labor, lacks individual work and artifice, and above all lacks collective public life. New societal possibilities cannot be initiated without speech and action, and ours is a democracy that is non-conducive to public appearance, expression, or breaking from the molds of normalized, moderate living.

Borrowing from classical Greek political theory, Arendt maintains that speaking and acting politically is what makes us human. A fundamental component of humanity is that *speech and action makes humans human rather than just living beings* (Arendt 1958, 7-11). Yet we tend to dwell in the realms of laboring, and maybe working, but not of speaking, acting, and reinforcing what it means to be human and act among humans. While natality is the ability to create newness, when action declines, so does our inherent human spontaneity. Once spontaneity and natality cease, so do new possibilities. A truly free society, for Arendt, is not just one characterized by fundamental equality, individual autonomy, and the tenets of modernity; a free society is one in whose members directly and collectively determine the affairs that impact the public, and who spontaneously build upon their world. For this, a public sphere of directly democratic interaction is essential for each community to connect amongst each other, and act politically to create the surrounds in which they wish to live. The absence of directly democratic politics is a basis for allowing society's problems to continue without significantly amending them.

Direct Democracy and Modernity

Despite the many contradictions expressed by contemporary political theorists, and despite the paradox of liberal democracy, the world is not postmodern. There are many ordinary people who independently sense the incongruous political climate described by such intellectuals as Foucault, Anzaldúa, and Arendt. Those who recognize such conditions and who crave a truer sense of progress actively struggle for modernity's fruition. Highly visible examples include the Zapatista rebellion, the working class armies of the Spanish Civil War, and participants of the 1999 Battle in Seattle. All three represent widespread political struggles inspired by radical political visions. They are evidence of countless individuals acting collectively in zealous pursuit of deep seated social and political

transformations that transcend unwanted facets of society. The common thread that ties these events together is their shared commitment in opposing the paradoxes of liberal democracy and its political limitations, if not transcending liberal democracy itself. Such efforts directly relate to what Arendt calls true freedom, which liberal democracy lacks–face-to-face political interactions that determine community affairs. True freedom is direct democracy.

The Zapatista movement in Mexico is a rebellion in which working class peasant activists formed an armed revolt against the North American Free Trade Agreement (NAFTA). The dissenters are motivated by their belief that free trade policies forced upon them by NAFTA are exploitative and more detrimental than beneficial to their communities (Balaam and Veseth 2005, 71). Their collectively owned, directly democratic communities are examples of a society that has been deeply transformed against the paradigm of liberal democracy and toward their own model of an egalitarian political and economic structure. This rejection of dominant culture–refusal to accept violation of individual autonomy and state sovereignty–is a crucial aspect of Anzaldúa's (1987, 101-113) described struggle.

Another example of arduous struggle for self-determination of community affairs is the Spanish Civil War. In this conflict, the Spanish working class combated against an emerging fascist government in order to "smash capitalism and create a classless society" (Olson 1997, 465). Like the Zapatistas, such a society would be truly modern in that class tensions would not stand in the way of a fundamental sense of equality, and such equality would be exercised by the freedom of direct democracy. The end goals of such societies are consistent with Arendt's standard of freedom because they are dependent upon political community as a central aspect of daily living–the free exchange of words, deeds, and ideas.

Another recent example of drastic, direct political action in opposition to the paradox of liberal democracy is the 1999 Battle in Seattle. Thousands converged to protest what they identify as a stronghold of economic exploitation and political inequality. This protest featured over a thousand political groups from more than ninety countries. Historian Howard Zinn (2003, 672) summarizes the event:

> representatives from the most wealthy and powerful institutions on the globe were there to make plans to maintain their wealth and power, to bring the principles of

capitalism to work across national boundaries, over all the earth … The issues around 'free trade' were complex, but a simple idea seemed to unite those who showed up in Seattle to oppose the WTO: that the health and freedom of ordinary people all over the world should not be sacrificed on behalf of corporate profit.

The Battle in Seattle is remarkable evidence that revolutionary sentiments and the desire for a deeper democracy exists and is continuing to grow–even among citizens of the global north. All three examples are compelling evidence that a new societal order is in the making: one which treats democracy as a cultural way of being rather than a semi-authoritative, yet paradoxically semi-free model of governance.

These controversial events are examples of political communities struggling for a freer modern society–a society freed of the anti-democratic nature of laissez-faire economics, privatization, and the often disenfranchising or passive tendencies of representative democracy. These events validate postmodern political theory and the paradox of liberal democracy because they demonstrate that the social and political conditions described by the likes of Anzaldúa and Foucault are the reality of daily living for countless individuals. In turn, those who crave the progress that is inherent to modern political theory are acting to create directly democratic societies that transcend conflicts of race, class, and difference.

Although intensely idealistic, such a world is not impossible. Arendt's concept of natality suggests that the political world can be steadily changed and made truly modern through political action. This does not mean through the gradual process of legislation; political action means citizens acting together to directly transform their own communities as to promote direct engagement in their public affairs, and to eliminate those factors which produce inequality. Because speech and action–face-to-face political interaction–is the basis of natality, when individuals and communities sense the incongruous aspects of their societal arrangements, we see that they are pursuing necessary changes as they see fit.

Human beings are spontaneous and creative, as evident in art, technology, culture, and through political action. The Zapatistas, the anarchists of the Spanish Civil War, and the Battle in Seattle, all demonstrate new possibilities. Throughout the modern age there

have been many mass movements that seek to fulfill the political ideals of modernity despite the political limitations of liberalism. The value of natality suggests that regardless of how firmly rooted any social construction or political system is in society, and no matter how difficult it can be to imagine viable alternatives, the development of a new order that is more closely aligned with the principles of modernity is both possible and likely.

Conclusion

Modernity is a historical epoch of progress unrivaled throughout human history. However, the guiding tenets of modern political theory are not the definitive practices of the modern age, and thus have been rejected by critical scholarship. As Foucault and Anzaldúa demonstrate, notions of progress, universalism, autonomy and sovereignty are continuously in tension because of political and societal borderlands, and because of the disciplinary institutions that are the fabric of society as it is known. Foucault portrays a more extensive understanding of power that contends that modernity is not an age of liberty and progress. Modern notions of progress, individual autonomy and state sovereignty lay prostrate to the breadth and depth of disciplinary power. Anzaldúa reminds us that a rational world premised on equality is more fiction than fact not only for the wretched and dispossessed, but also for those who are divided from society because of differences such as sexual identity and the color of one's skin.

Although Arendt's relationship to modernity is ambiguous (Arendt is not considered distinctly modern or postmodern), her appraisal of politics and society offers promise for a bright and progressive future. If speech and action are indeed the heart of natality and initiating new possibilities, then this must be a politically modern age. As individuals and communities gradually recognize and confront the obstacles that contradict what it means to be modern, directly democratic–thus truly modern–societies begin to form. Radical events such as the Battle in Seattle, the Zapatista movement, and the Spanish Civil War, are evidence that the political problems described by postmodern political theorists are indeed perceived by masses and acted upon. Anzaldúa (1987, 109) says "Nothing happens in the 'real' unless it first happens in the images in our heads." And the seedlings of directly democratic societies are

apparent throughout recent political history; their momentum is clear.

To dismiss arguments for a directly democratic society ignores the fact that there have been many movements towards direct egalitarian democracy and against liberal democracy and its paradoxical outcomes. To condemn the advocacy of directly democratic movements as chasing impossible ideals is to disregard this history. The spontaneity of human disposition–such as the revolutionary pursuits of the recent past, or the radical spirit behind America declaring independence, and the ingenuity of art, technology and scientific discovery–all suggest that humanity is in fact driven by natality. With speech, action, and solidarity, little is beyond humanity's reach, especially for humanity fixated on a deeper sense of individual autonomy, freedom, and absolute equality. Enlightenment philosophers during the origins of modernity dreamt no different.

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The Psychology of the New Europe: An Examination of the Personalities of Gordon Brown and Nicolas Sarkozy

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Two of the most powerful countries in the world, France and England, recently elected new leaders: Nicolas Sarkozy and Gordon Brown. These leaders are very important because they have the power to make crucial decisions that affect not only their respective countries, but also the international community. Using leadership trait analysis and operational code analysis, I compared the new leaders with their predecessors to see how their individual psychologies differed. These differences can give us insight into how the leaders' decisions might differ. Tony Blair and Gordon Brown have very minor differences. Jacques Chirac and Nicolas Sarkozy, however, differ significantly in almost every trait and index. Sarkozy appears that he will be a more cooperative leader than his predecessor.

In May and June of 2007, two prominent countries in the world, France and England, turned over the government to new leaders, Nicolas Sarkozy and Gordon Brown, respectively. With the degree of conflict in the world and the importance of these two countries, this is a very important change for the world and for the United States as well. With the War on Terror and the War in Iraq raging on, the United States' credibility and chance of success is tied to its relationship with Western Europe. Now that President Bush's biggest ally, Tony Blair, and arguably, harshest critic, Jacques Chirac, are out of power, the question is, "How will their replacements change the course of foreign policy in their respective countries, if at all?"

The decisions leaders make are often directly tied to the individual psychology of each leader. For example leaders who view the world as conflict oriented are more prone to go to war, whereas leaders who view the world in more cooperative terms are more likely to use diplomacy to achieve their policy goals. Two systems that have been created to measure various psychological characteristics are leadership trait analysis and operational code analysis. I will use these two systems to create a psychological profile of Tony Blair, Gordon Brown, Jacques Chirac, and Nicolas Sarkozy, and then use these profiles to see how the change in leadership might affect the policy decisions of England and France.

Literature Review

Leadership Trait Analysis

Leadership trait analysis (LTA) evolved from studies performed by Margaret Hermann in the late 1960s (see Charles Hermann and Margaret Hermann 1967). Hermann (1977) became "fascinated" by the influence that personal characteristics had over a leader's decisions. This fascination drove Hermann to continue to study these effects and ultimately create the complex system which today is called leadership trait analysis.

Leadership trait analysis is a system in which one analyzes the verbal material of a political actor. From this verbal material, we can derive data on several different aspects of the political actor's psychology and make inferences based on those data. These data can give us an insight into the political actor's "leadership style." According to Hermann the leadership style of a political actor can be determined by the answers to three questions:

1) How do leaders react to political constraints in their environment?
2) How open are leaders to incoming information?
3) What are the leaders' reasons for seeking their positions?

These questions can be answered by analyzing the relationships between the seven traits that make up leadership trait analysis: belief in ability to control events, task orientation, distrust of others, conceptual complexity, in-group bias, self-confidence, and need for power (Hermann, 1999).

All leaders react to constraints in different ways. Some leaders prefer to respect constraints, while others prefer to challenge them. Hermann (1999) has found that the two most important variables in determining how a leader will react to political constraints are belief in ability to control events and need for power. The belief in one's own ability to control events measures how much control a political actor perceives he/she has over situations in which he/she is involved. When a political actor indicates he/she or his/her in-group has taken initiative to do something, it demonstrates the level of that political actor's belief in ability to control events. Political actors who have a high belief in their ability to control events are more likely to be active in the policy-making process. These actors enjoy being a part of such events and are less likely to delegate authority.

They also prefer to initiate things rather than to wait for things to happen. Political actors who are low in the belief that they can control their own events, however, are reactive rather than proactive. These leaders like to delegate authority so that they can pass the blame to others in case of a failed project. In addition, they prefer to wait until situations unfold before they make policy decisions. Also, these leaders prefer to be involved in situations that have a high chance of success over situations that are risky (Hermann 1999).

Need for power measures a leader's need or desire to have control or influence over another person or group. Political actors with a high need for power are very good at choosing which tactics to use to achieve their political goals. They are also willing to do or use almost anything to obtain these goals. These leaders are often also very charismatic. Leaders who have a low need for power enjoy sharing power and are also OK with sharing the credit from success with other people. Leaders who have a low need for power work for the group instead of just for themselves; they believe that what is best for the group is also the best for themselves (Hermann 1999).

Leaders who have a low need for power and have a low belief in their ability to control events respect the constraints that are placed upon them. These leaders prefer to work within their perceived parameters to achieve their political goals. These leaders believe that compromise and relationship building are very important. Leaders who are high in both traits, however, challenge the constraints that are placed upon them. These leaders know what they want to happen and make sure it does happen. They are also highly skilled in both direct and indirect influence. Leaders who have a low need for power, but a high belief in their ability to control events prefer to challenge constraints. These leaders know what they want to happen, but often have a hard time accomplishing these goals. Leaders who have a high need for power but a low belief in their ability to control events also prefer to challenge constraints. These leaders prefer to work behind the scenes to achieve their political goals. This way they can obtain their political goals without having to take the blame for any failed projects (Hermann 1999).

A leader's openness to incoming information is another important part of his psychology. Hermann (1999) has found that a leader's self-confidence and conceptual complexity are the two most important traits in determining a leader's openness to incoming information. A leader's self-confidence indicates his/her sense of self-importance. A high level of self-confidence indicates that a

leader is generally happy with who he/she is and is resistant to incoming information. Leaders who are low in self-confidence, however, welcome incoming information and are continuously searching for what to do and how to act in a given situation.

The conceptual complexity of a political actor indicates the "degree of differentiation" that he/she displays when discussing other people, ideas, etc. Conceptually complex leaders see many different sides of arguments and are flexible in reacting to differing ideas. These leaders welcome incoming information because they prefer to have as much information as possible before making a final decision. Conceptually simple leaders view the world in simple, concrete terms: good-bad or black-white. These leaders are closed to incoming information because they trust their instincts. These leaders value action over thinking and deliberating. This often causes them to choose the first option that presents itself (Hermann 1999).

When a leader's self-confidence is higher than his/her conceptual complexity, he/she is closed to incoming information. Leaders who are closed to incoming information are ideologues; they are driven by what they believe is right. These leaders view the world as they want to and often ignore information that contradicts that belief. They also prefer a hierarchical, structured decision-making process. When a leader's conceptual complexity is higher than his/her self-confidence, he/she is open to incoming information. Leaders who are open to incoming information are usually responsive to the wants and desires of others. They prefer a collegial/friendly, structured decision-making process and prefer to hear many differing opinions before making a final decision. Leaders who are high in both traits are open to incoming information. These leaders combine the best qualities of each trait. They know what they want to accomplish and are able to devise viable strategies based on the situation. Leaders who are low in both traits are closed to incoming information. These leaders often take a position on an issue and hold on to it regardless of what opposing information says (Hermann 1999).

A leader's reasons for seeking office also show us an important insight into his/her psychology. The task orientation of a political actor, whether relationship focused or problem focused, reveals his/her motivation for seeking office. When a leader has a high task orientation he/she is problem focused. This type of leader sees the world in terms of problems and will push the group toward solving these problems. These leaders care less about how things get done

and more about getting them done. Leaders with a low task orientation are relationship focused. These leaders work on keeping people in the group happy. This type of leader is less concerned with getting things done and more concerned with getting them done the correct way. A leader who scores moderately on task orientation displays elements of both relationship and problem focus depending on the context of the situation (Hermann 1999).

The relationship between in-group bias and distrust of other also gives us insight into a leader's problem/relationship focus as well as insight into how he/she approaches the international system. The level of in-group bias and distrust of other which a leader demonstrates can show us whether he/she views the world in terms of threats (problems) or opportunities (relationships).

The in-group bias of a leader shows how closely tied a leader is to his own in-group, whether political, social, or cultural. Leaders who have a high in-group bias are focused on the preservation of their in-group. Also, these leaders tend to view the world in terms of us-them or friends-enemies. They also tend to interpret their group as good and out-groups as bad. Leaders who have a low in-group bias are less concerned with their in-group and tend to view the world in terms of us-them or friends-enemies depending on the context of the situation (Hermann 1999).

A leader's distrust of other gives us an insight into how a leader generally feels about others. Leaders who have a high distrust of other often view others' actions as devious. These leaders prefer to accomplish tasks alone because they feel others will prevent the task from being completed. This type of leader is always on the lookout for an up-and-coming threat to his/her authority. On the other hand, leaders who have a low distrust of other base their feelings of others on prior experiences and on the context of the situation.

A leader who has a high distrust of other and a low in-group bias will view the world in terms of opportunities and building relationships, but realize that they must always watch for people who might challenge their authority. This type of leader perceives the world as conflict oriented, but realizes that there is some flexibility in individuals' responses. A leader who has a low distrust of other and a high in-group bias will view the world in terms of threats even though they realize that some opportunities do exist. This type of leader views the international system as a zero-sum game, but believes that the system is constrained by a specified set of norms. A leader who is high on both traits will view the world as full of

problems and threats. These leaders believe they have a "moral imperative" to confront others and stop them from spreading their ideologies throughout the world. A leader who is low on both traits will view the world as full of opportunities. This type of leader reacts to conflicts on an individual basis and tries to remain flexible in all situations (Hermann 1999).

When you combine the responsiveness to constraints, openness to information and motivation for seeking office of a political actor you get what Hermann (1999) calls a "leadership style." There are eight types of leadership styles: expansionistic, evangelistic, actively independent, directive, incremental, influential, opportunistic, and collegial. Expansionistic leaders tend to focus their attention on expanding their power and their state's power. Evangelistic leaders tend to focus their attention on persuading others to join in on a certain cause or mission. Leaders who are considered actively independent focus on trying to keep their own independence in a world that they feel is trying to limit their independence. A directive leader focuses on enhancing the leader's and state's reputation throughout the international community by engaging in actions within the international community. A leader who shows an incremental leadership style tries to improve his/her state using incremental steps, while trying to avoid obstacles. An influential leader will attempt to work with others and build relationships in order to increase power within the international community. An opportunistic leader will show a tendency to look at each situation in context and use whatever methods seem best to accomplish his/her political goals. Finally, a leader with a collegial style of leadership will focus attention on relationship building and consensus building, while sharing accountability and power, in an effort to accomplish political goals (Hermann 1999).

There have been many important and influential studies performed using leadership trait analysis including Hermann's (1977) study involving members of the United States' House of Representatives. In the study she showed that Representatives who voted for foreign aid and Representatives who voted against foreign aid differed in characteristics such as optimism and conceptual complexity. Also many psychological profiles have been performed including profiles of Saddam Hussein and Bill Clinton (Post 2003) as well as George H. W. Bush and Mikhail Gorbachev (Winter, Hermann, Weintraub, and Walker 1991).

Operational Code Analysis

Operational code analysis (OCA) is similar to leadership trait analysis in that one uses verbal material of a political leader to derive data about them, but its variables measure the cognitive aspect of a political actor's psychology. Operational code analysis shows us how a political actor views his/her self and the world. The operational code answers ten questions related to the psychology of a political actor. Those questions are divided into two sections: philosophical propensities (nature of other) and instrumental propensities (preferred strategies) (Walker, Schafer and Young 1998).

Stephen Walker, Mark Schafer and Michael Young (2003, 216) define operational code analysis as the "approach to the study of the political leaders that may focus narrowly on a set of political beliefs or more broadly on a set of beliefs embedded in the personality of a leader or originating from the cultural matrix of a society." The operational code was created by Nathan Leites in 1951to explain two puzzling phenomena: the Soviet Union's negotiating style and the start of the cold war. Leites' framework of the operational code used the more broad sense. His approach included such aspects as the cognition, character and culture of an individual (Walker 1990).

In 1969, Alexander George modified Leites' framework into a more explicit and workable format. George saw the operational code as two systems that worked together: philosophical propensities and instrumental propensities. The philosophical propensities refer to "assumptions and premises (a political actor) makes regarding the fundamental nature of politics, the nature of political conflict, the role of the individual in history, etc" (George 1969, 199). These philosophical propensities determine how a leader will view the context a situation is placed in (Walker, Schafer and Young 2003). The instrumental propensities, however, refer to a political actor's "beliefs about ends-means relationships in the context of political action" (George 1969, 199). Instrumental propensities determine the best course of action for a leader to take to achieve his political goals (Walker, Schafer and Young 2003). George created ten questions (see Figure 1), five philosophical and five instrumental, to describe a person's operational code.

Figure 1: George's 10 Questions about the Operational Code

Philosophical Propensities

P1. What is the "essential" nature of political life? Is the
    political universe essentially one of harmony or
    conflict? What is the fundamental character of one's
    political opponents?
P2. What are the prospects for the eventual realization of one's
    fundamental political values and aspirations? Can one be
    optimistic, or must one be pessimistic on this score; and
    in what respects the one and/or the other?
P3. Is the political future predictable? In what sense and to
    what extent?
P4. How much "control" or "mastery" can one have over
    historical development? What is one's role in "moving"
    and "shaping" history in the desired direction?
P5. What is the role of "chance" in human affairs and in
    historical development?

Instrumental Propensities

I1. What is the best approach for selecting goals or objectives
    for political action?
I2. How are the goals of action pursued most effectively?
I3. How are the risks of political action calculated, controlled,
    and accepted?
I4. What is the best "timing" of action to advance one's
    interest?
I5. What is the utility and role of different means for
    advancing one's interests?

Source: George 1969, 201-216.

     In 1977, Ole Holsti took the operational code a step further.
Both Holsti and George followed cognitive consistency theory. This
theory suggests that a political actor's beliefs are consistent with one
another as well as with that political actor's actions. The theory is the
foundation behind what they call the "master belief." The master
belief is the idea that a political actor's beliefs about the nature of the
political system (P1) and preferred strategies (I1) influences all of

the other philosophical and instrumental propensities. Holsti used these master beliefs to create an operational code typology, which Stephen Walker later revised in 1983 (Walker 1990; Walker, Schafer and Young 2003).

Until the late 1990s operational code analyses were mostly qualitative by nature. This resulted in analyses that were subjective and difficult to compare to one another (Schafer and Gassler 2000). This changed in the late 1990s when Stephen Walker, Mark Schafer, and Michael Young (1998) created a method to quantitatively measure the operational code of a political actor using the Verbs in Context System (VICS). Later, through the use of a computer program called Profiler +, Walker, Schafer and Young (1998) were able to take digital, verbal material from a political actor and have Profiler + calculate the indices for the ten philosophical and instrumental propensities that were postulated by George.

The VICS method's foundations are from the cognitive contingency theory. While it may be possible for a political actor's actions to deviate from his beliefs in the short run, over long periods of time a political actor's actions will become consistent with his belief system (Walker, Schafer and Young 2003). The VICS method uses verbs from a political actor's rhetoric. It takes each verb and attributes each with either a self or other orientation. The verb is then identified as either transitive or intransitive, positively connoted or negatively connoted, and as either a word or a deed. After that, the verb is placed into one of six categories that are ranked on a continuum. This continuum is anchored by deeds and ranks the conflictuality and cooperativeness of the verb (Schafer and Gassler 2000).

Some important studies that show not only the usefulness of the operational code, but also the validity of the method include: Walker, Schafer and Young's (1998) study of the operational code of Jimmy Carter before and after the Soviet invasion of Afghanistan and also Schafer and Gassler's (2000) study of the operational code of Anwar Sadat before and after the October War of 1973. In Walker, Schafer and Young's study of Carter's operational code, they found that that his P1 and P2 indices drop significantly after the Soviets' invasion of Afghanistan in 1980. Carter's very friendly view of the political system (P1) moved in a more conflictual direction because of the Soviets' actions. Also, Carter's highly optimistic view of realizing his political values (P2) moved in a more pessimistic fashion. This supported their original hypotheses that Carter's view of the

international system would be more conflictual than it was prior to the invasion.

In Schafer and Gassler's study of Anwar Sadat's operational code, they found that Sadat's view of the political system (P1) and his belief in realizing his political values (P2) both decreased significantly after the October War in 1973. Also Sadat's control index (P4) shifted from extremely low to extremely high, which showed that after the war Sadat felt that he was in control. Their conclusion was that the October War in 1973 did not affect Sadat's preferred strategies. What the event did change was Sadat's view of the political universe and the nature of his opponents, which allowed him to know how to proceed in the international system to accomplish his political goals.

Hypotheses

The stakes at risk in today's international system are tremendous. With the War on Terror, the War in Iraq, the growth in Iranian influence, and also the growth in opposition to the United States, the newly elected leaders in both England and France are extremely important to the United States and to the international system. England and France both had long tenured leaders, with each seeing the duration of the Bush presidency. Tony Blair was very supportive of President Bush's often controversial decisions, while Jacques Chirac was not, to say the least. Blair offered troops to help the United States with the War in Iraq, while Chirac refused to put troops on the ground and condemned the United States for the invasion. These decisions by Blair and Chirac had great influence over the international system. Now with Blair and Chirac being replaced by new faces the question is, "How will their replacements change the course of foreign policy in their respective countries, if at all?"

Using what we know about the subjects, we can come up with a few hypotheses that we can test using leadership trait analysis and operational code analysis, which also might give us insight into how the new leaders will differ from their predecessors.

Firstly, I hypothesize that Tony Blair and Gordon Brown will have very similar LTA profiles (H1). I believe this will be supported by the data because the two leaders have known and worked together for many years. And also Brown was basically handpicked by Tony Blair to be his replacement. In my opinion it would be odd for a

leader to support and advocate for a replacement who does not share his/her beliefs and tendencies.

Secondly, I hypothesize that Jacques Chirac and Nicolas Sarkozy will have differing operational code belief systems (H2). I believe the master beliefs of Chirac and Sarkozy will be significantly different. While Chirac will view the world in cooperative terms and prefer cooperative strategies, I believe Sarkozy will view the world in even more cooperative terms and more strongly prefer cooperative strategies than his predecessor Jacques Chirac. I believe this will be supported for a few reasons. First, Sarkozy has expressed an aspiration to work more closely with the United States than did Jacques Chirac. Second, Sarkozy has also urged that the world should use diplomacy when dealing with Iran and that using military force to attempt to solve the problem could prove to have disastrous effects.[1] Third, Chirac does not seem to favor conflictual strategies to solve problems. If Jacques Chirac preferred conflictual strategies to achieve his political goals, then he probably would have helped the United States in the invasion of Iraq. I feel he will not be as cooperative as Sarkozy, however, because of his consistent refusal to work with and/or cooperate with the United States on many matters.

Thirdly, I hypothesize that Tony Blair will show a tendency towards the use of conflict to accomplish his political goals (H3). I believe this because of Blair's initial and continued support for not only the War on Terror, but also the War in Iraq. England was one of only three countries who aided the United States in its initial invasion of Iraq.

Finally, I hypothesize that Nicolas Sarkozy will show a strong belief that he can control events (H4). I believe this to be true because of things Sarkozy has said over the past several months. Sarkozy has expressed his will to reform many policies within France including policies that he hopes will make French companies more competitive in the world market and also increase France's involvement in globalization. This shows that he is willing to take initiatives, which is an important factor when deriving a leader's belief in his own ability to control events.

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[1]Elaine Sciolino and Ariane Bernard, "Sarkozy Lists Foreign Priorities, With Iran First," *New York Times,* 28 August 2007.

Methods

Leadership trait analysis and operational code analysis have been used to profile the psychologies of many prominent political leaders including Bill Clinton and Saddam Hussein (Post 2003). They also have been used to show how political events can alter a leader's belief system (Schafer and Gassler 2000; Walker, Schafer, and Young 1998). So I feel these systems can be used in our attempt to answer our hypotheses. I will compare the individual psychology of Tony Blair with Gordon Brown and Jacques Chirac with Nicolas Sarkozy using seven traits from LTA and two indices from OCA. Using these comparisons I hope to not only support my hypotheses, but also to predict how these changes in leadership might affect foreign policy between England/France and the United States.

When dealing with LTA and OCA, the most important step is finding and choosing which verbal material to use. I chose to use speeches, press conferences and interviews as verbal material, and I made sure that each had a focus on international relations. I also did my best to try to make sure that each subject received similar quantities of each type of verbal material. All of the materials for each subject came from internet sources. Material for Gordon Brown and Tony Blair came from the official website of Britain's Prime Minister (www.number10.gov.uk). Material for Nicolas Sarkozy and Jacques Chirac came from the official website of the President of France (www.elysee.fr). The material for Blair and Chirac was taken from the beginning of 2007 until the day they left office. The material for Brown and Sarkozy was taken from the day each took office to July 2007. I chose these time periods for a couple of reasons. First, limiting Chirac's and Blair's verbal material to 2007 allows us to see their psychology as they were leaving office. This will allow us to compare the most recent psychology of Chirac and Blair to that of Sarkozy and Brown. Additionally, it allows us to see the beliefs of each subject while they were in the position of Prime Minister and President of their respective countries.

To conduct the LTA and OCA for each leader, I used a computer program called Profiler +. As mentioned previously, Profiler + searches documents for verbs that the subject has used. The program then codes the document and creates a raw score (data mean) for each variable. These scores give us a foundation on which we can compare various leaders to one another.

I used z scores to show the statistical importance of each measured variable. A z score takes the mean of a variable from a sample of political leaders and subtracts it from the scored mean. That value is then divided by the standard deviation from the mean of that sample. Z scores show how many standard deviations above or below a sample mean a political actor's mean is located. Each leader's z scores are based on the means and standard deviations from a sample of Western European leaders. I chose this sample because it seemed to be the sample most closely related to the political actors being examined.

Results

Brown and Blair

The change in leadership in England is very important and with a changing of the guard it will be interesting to see how the relationship between the United States and England changes. One way to see how this relationship might change is to look at the psychological differences between Tony Blair and Gordon Brown by using LTA and OCA.

The similarities between Blair and Brown are quite amazing. The two share many traits in common including in-group bias, need for power, distrust of other, conceptual complexity and task orientation. The in-group bias of both leaders is within 0.38 of one another (refer to Table 1). This shows that neither leader is more biased than the other toward the groups they identify with. Both leaders are relatively close when it comes to need for power. Blair's z score is -0.09, which puts him near the average Western European Leader, while Brown's z score is 0.58, which puts him moderately high relative to the same sample group. Both leaders show low levels of distrust, which makes them trusting leaders. Brown scores over a standard deviation below the norm, which makes him very trusting. Blair on the other hand scores moderately low, which means he's trusting, but not as trusting as Brown is. Both leaders' conceptual complexity is near the norm. Brown ranks at little below the norm at -0.37, while Blair scores a 0.30. This means that Brown sees the world in more black and white terms than Blair, but they are still very similar. Finally, the task orientation of both leaders is very similar. Both leaders score moderately high on task orientation. This

means that they are usually focused on solving problems and willing to do whatever is needed to accomplish their political goals.

Table 1: Z scores for Tony Blair and Gordon Brown

	Tony Blair	Gordon Brown	Change
Leadership Trait Analysis			
Belief in Ability Control Events	-0.23	0.76	+0.99
Need for Power	-0.09	0.58	+0.67
In-Group Bias	-0.07	0.32	+0.38
Distrust	-0.65	-1.22	-0.58
Conceptual Complexity	0.30	-0.37	-0.67
Self-Confidence	3.20	2.34	-0.86
Task Orientation	0.78	0.69	-0.09
Operational Code Indices			
P1	0.99	0.93	-0.06
I1	1.95	1.03	-0.92

The only significant differences between the two leaders are in their belief in their ability to control events, which measures whether a leader believes he can control the outcomes of events, and I1, which measures the leader's preferred strategy for obtaining political goals. Neither Brown's nor Blair's belief in his ability to control events is statistically significant relative to our sample. Brown does, however, score much higher than Blair, and thus the difference between them is significant. This shows that the newly empowered Brown is more confident in his ability to control events than the veteran Tony Blair, who after nearly ten years in power had probably

lost his confidence in his ability to do so. The other variable that stands out is I1. Both leaders' score higher than average and prefer cooperative means to obtain political goals, but Blair's I1 is almost an entire standard deviation above Brown's. This means that Gordon Brown is much less cooperative than Tony Blair.

Another variable where both leaders are above the norm is their P1 index. Both Blair's and Brown's P1 is nearly one standard deviation above the norm. This means that they view the world in more positive and cooperative terms. Compared to one another, however, they are very similar. The self-confidence of both individuals also stands out. The self-confidence of Brown and Blair are two and three standard deviations away from the norm, which puts them on the extreme end with high self-confidence.

Margaret Hermann (1999) has come up with several relationships between these variables. Some of these include relationships between belief in ability to control events and need for power, self-confidence and conceptual complexity, and distrust of others and in-group bias. The relationship between belief in ability to control events and need for power shows us how a leader will react to constraints placed upon him/her. Leaders can either respect constraints or challenge constraints. Blair scores moderately on both need for power and belief in ability to control events. This means that depending on the situation Blair can either respect or challenge constraints and really does not show a preference to either. Brown scores moderate to high on both need for power and belief in ability to control events. This means that he also can either respect or challenge constraints, but will tend to favor challenging constraints.

The relationship between conceptual complexity and self-confidence determines whether a leader is open or closed to information (Hermann 1999). Tony Blair and Gordon Brown both have incredibly high levels of self-confidence and both have moderate conceptual complexity. This means that both Blair and Brown tend to be closed to outside information. According to Hermann (1999) this also means that they are driven by their own ideas and causes without being affected by what others want or need.

A leader's level of task orientation can also give us insight into his/her motivation for seeking office. Leaders who have a high task orientation have a problem focus while in office. These leaders strive to accomplish set goals for their country, nation, etc. Leaders who have a low task orientation have a relationship focus while in office. These leaders work towards building relationships and keeping these

relationships intact (Hermann 1999). Blair and Brown both score moderate to high in task orientation. This means that they focus on solving problems and relationship building depending on the circumstances, but they tend to focus on problem solving and moving their country toward a certain goal.

The relationship between distrust of other and in-group bias shows us how a leader views the world. This relationship shows whether a leader perceives situations in the world as opportunities or problems. Leaders who perceive situations as opportunities are more likely to try and build relationships and cooperate with others, while leaders who perceive events as problems or threats are more likely to engage in confrontations with those they feel are responsible. Tony Blair scores moderate on in-group bias and moderately low on distrust of other. This makes it difficult to place Tony Blair in one category. Blair probably fluctuates between perceiving the world as a non-threatening place, where the reaction to events and conflicts are dependent upon individual circumstances of each event or conflict, and perceiving the world as a zero-sum game, where confrontation is inevitable, but leaders work within the bounds of international norms. Brown on the other hand scores similarly to Blair, but with a lower distrust of other and a higher level of in-group bias. This means that Brown, while similar to Blair, tends to view the world more as a zero-sum game where leaders work within preset norms.

When taken together these relationships make up a leader's leadership style. Because Blair and Brown are moderate on some of these measurements it is difficult to place them in one certain category. With that said, both leaders have characteristics of expansionistic and incremental style of leadership. Expansionistic leaders are closed to outside information, have a problem focus, and challenge constraints. These leaders often focus on increasing the power and influence of their countries. Incremental leaders are closed to outside information, have a problem focus, and respect constraints. These leaders often focus themselves on improving their countries in incremental steps (Hermann 1999). Blair probably tends to be more of an incremental leader since he tends to respect the constraints put on him more than does Brown. Brown, on the other hand, is probably more of an expansionistic leader.

Sarkozy and Chirac

As with the change in leadership in England, the election of a new leader in France is very important to the United States and the rest of the world. Jacques Chirac, unlike Tony Blair, was not a supporter of the War in Iraq and often publically criticized the United States and England for its involvement in Iraq. With the election of a new leader, however, it is possible for some change to occur in the United States' relationship with France. To see how some of these changes might be possible we can view the present and former leaders' psychology to see in which areas they differ.

Unlike Brown and Blair, Sarkozy and Chirac have many pronounced differences in their LTA and OCA (refer to Table 2). The biggest standout is the level of Sarkozy's belief in his ability to control events, which is off the charts at nearly five standard deviations above the norm. This shows that the newly elected Sarkozy is very confident in his ability to control the outcome of events. This means that Sarkozy prefers to initiate projects and is probably a proactive leader rather than a reactive one. He also will not likely delegate authority to others, choosing instead to take the initiative himself. Chirac's belief in his ability to control events, on the other hand, is low at nearly one standard deviation below the norm. Chirac, unlike Sarkozy, is more of a reactive leader; he prefers to wait until situations unfold before he makes policy decisions. This is a striking difference between the two leaders.

Table 2: Z scores for Jacques Chirac and Nicolas Sarkozy

	Jacques Chirac	Nicolas Sarkozy	Change
Leadership Trait Analysis			
Belief in Ability Control Events	-0.96	4.79	+5.75
Need for Power	-1.70	0.84	+2.54
In-Group Bias	0.66	-0.56	-1.23
Distrust	-0.61	-1.20	-0.60
Conceptual	-2.55	-1.58	+0.97

Complexity	-0.13	1.52	+1.65
Self-Confidence	-0.39	0.96	+1.35
Task Orientation			
Operational Code Indices			
P1	0.74	1.25	+0.51
I1	0.73	2.49	+1.76

Another variable where the two leaders differ is in need for power. The difference between the two is over two standard deviations with Chirac at -1.7 and Sarkozy at 0.85. This means that Chirac has a very low need for power, while Sarkozy's is slightly above average for power. Chirac's low need for power shows that he prefers to work for the betterment of the group rather for the improvement of his own self. Also, he is willing to delegate authority and share power with others as well as share credit for any accomplished projects. Sarkozy, on the other hand, is willing to do whatever it takes to accomplish his political goals and is probably talented at choosing which strategy to use to reach those goals. Sarkozy's high need for power is something that some have observed without the aid of scientific method. Yasmina Reza, a French playwright who followed Sarkozy around during his political campaign, has written a book in which she portrays Sarkozy as obsessively power hungry.[2]

Sarkozy's high belief in his ability to control events and moderately high need for power means that he challenges the constraints that are put on him. Hermann (1999) postulates that leaders who are high in both belief in ability to control events and need for power are very good at directly and indirectly influencing outcomes. She also claims that these leaders make sure that what they want to happen actually happens. Chirac on the other hand has a low belief in his ability to control events and a very low need for power. This means that he respects the constraints put on him.

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[2]Elaine Sciolino, "Portrait of President, Craving Power, Enthralls France," *New York Times,* 24 August 2007.

Chirac prefers to accomplish goals through relationship building, compromises and consensus.

Another variable that stands out is conceptual complexity where both Sarkozy and Chirac are approaching two standard deviations below the norm. This shows that both leaders see the world in very simple black and white terms. Sarkozy, however, is nearly a whole standard deviation above Chirac. This means that Sarkozy, while scoring very low on conceptual complexity, is still less extreme than Chirac. Both being conceptually simple, they value action over thinking and deliberating.

The self-confidence of the leaders is another area where they greatly differ. Sarkozy scores nearly two deviations above the norm, which shows a very high level of self confidence, while Chirac scores about average (-0.13). When looked at together, these measurements show that both Sarkozy and Chirac are closed to outside information because both leaders' levels of self-confidence are much higher than their levels of conceptual complexity. This shows that both Sarkozy and Chirac are driven by causes and values. Hermann (1999) also claims that they will probably prefer a hierarchical decision-making process to a collegial/friendly one.

Also, the task-orientation of both leaders differs pretty significantly. Sarkozy scores nearly a whole standard deviation above the norm, which means that Sarkozy is task-oriented and willing to do anything to accomplish his goals. Chirac, however, scores moderate to low, which means that he is not as willing to do whatever it takes to accomplish his political goals. This variable also shows that Sarkozy is problem-focused, while Chirac teeters between problem-focused and relationship focused based on the situation. This means that sometimes Chirac wants to make sure these goals get accomplished. Other times, however, Chirac is less concerned with getting goals accomplished and more concerned with keeping the group happy. Sarkozy, however, almost always sees the world in problems that he must solve, and thus cares less about how things get done; he just wants to make sure they get accomplished.

The level of distrust of other is another variable on which the two leaders differ, but not greatly. Sarkozy is a pretty trusting person with a z score of -1.2, while Chirac scores a moderate -0.61, which means that he's relatively balanced compared to other Western European leaders. This means that Sarkozy and Chirac will generally base their trust in other leaders on their prior experiences of working with them.

The in-group bias of the two leaders does, however, differ significantly. Chirac scores moderate to high on in-group bias, while Sarkozy scores moderate to low. The difference between the two scores is 1.23, which means that Sarkozy's in-group bias is much less than Chirac's. Chirac is generally concerned with the preservation of the groups he identifies with and is more likely to view the world in terms of us versus them and friends versus enemies. Sarkozy, however, still wants to preserve his in-groups, but determines his view of the world based on the context of the situations at hand.

Sarkozy is low on distrust of others and moderate to low on in-group bias. This means that he does not view the world as a threatening place and believes that cooperation is possible. He also sees the world as full of opportunities. And when it comes to threats and conflicts he tries to remain flexible in all situations. Chirac, however, is moderate to high on in-group bias and moderate to low on distrust of other, which makes him similar to Brown, who tends to view the world more as a zero-sum game where leaders work within preset norms. Since Chirac is moderate on both of these variables, he probably does not belong solely to this category as he shows characteristics that extend to other areas as well.

With Chirac being closed to outside information, respecting constraints, and being a mix of both relationship and problem focused, he shows elements of both incremental and influential leadership style. Incremental leaders often focus themselves on improving their countries in incremental steps, while influential leaders tend to focus on building relationships with others. These types of leaders believe that you can gain more by working with others than you can by working alone. Sarkozy, on the other hand, being closed to outside information, challenging constraints and being problem focused, shows elements of an expansionistic leadership style. As previously discussed an expansionistic leader often focuses on increasing the power and influence of his country.

The P1 of both Sarkozy and Chirac are higher than most Western European leaders. Chirac scores moderately high at 0.74, while Sarkozy scores over a standard deviation above the norm at 1.25. This shows that both Chirac and Sarkozy view the world in more cooperative terms. The I1 variable of Sarkozy is over two deviations above the norm, which shows that he prefers to cooperate with others to achieve his goals. Chirac, on the other hand, scores moderately high. This means that he prefers to achieve his goals

through cooperative means, but not much more than the average Western European Leader.

Discussion

The data supported three of our four hypotheses. Firstly, Tony Blair's and Gordon Brown's LTA profiles were very similar (H1). In fact only two of the seven variables differed with any statistical significance, and only their belief in their ability to control events led to any meaningful difference in traits.

Secondly, Chirac and Sarkozy did show significant differences in their operational code belief systems (H2). While Sarkozy and Chirac had relatively similar views of the political system, their preferred strategies differed as predicted. Sarkozy did strongly prefer the use of cooperative strategies to achieve his political goals. This preference is consistent with recent stances that he has taken including his stance to resist military action in Iran and willingness to work more closely with the United States.

Thirdly, Tony Blair did not prefer the use of conflictual strategies to obtain his political goals (H3). In fact the data show just the opposite. Blair ended up preferring cooperative strategies much more frequently. This was surprising considering the stance Blair took regarding the War on Terror and the War on Iraq. It does show, however, that these two issues are not the only important issues going on in the world, and that there are other events taking place where Blair was willing to cooperate with others. Or, it is also possible that Blair prefers cooperative strategies unless it involves the safety and security of England.

Finally, Nicolas Sarkozy did show a strong belief that he could control events (H4). This also was not surprising when considering that Sarkozy is newly elected. It is not uncommon for newly elected leaders to feel that they can accomplish anything they set their mind to. Also, Sarkozy has expressed willingness to reform policies within France, which also supports this hypothesis.

Also after analyzing the data and comparing Blair to Brown and Chirac to Sarkozy, a few things become noticeable. Firstly, we should expect little change in foreign policy in England. Tony Blair and Gordon Brown seem to be very similar. The only truly important difference between the two is their belief in their own ability to control events. Brown, being newly elected like Sarkozy, believes he can control events, while Blair has a tendency to doubt his ability to

control events. This might lead to Brown taking more initiatives, which might lead to more relationships being built or more problems being solved This is consistent with Brown's aspiration to reform Britain's constitution. Also, in his short tenure as Prime Minister he has expressed that he wants the environmental department to be responsible for energy policy (the Department of Trade and Industry is currently responsible for such policy decisions) and to transfer war declaring powers from the royal prerogative to Parliament.[3] Other than Brown's initial willingness to take initiatives, I do not really expect too much change in Britain's foreign policy due to the change in leadership.

Secondly, I believe we can expect a much different approach regarding foreign policy in France from Nicolas Sarkozy. Some important indicators are Sarkozy's view that the political universe is friendly (P1), preference for cooperation (I1), high belief in his ability to control events, and low distrust of other. Many of these are in direct contrast with his predecessor, Jacques Chirac. While France putting troops on the ground in Iraq is probably out of the question, I do believe that some mending in the strained relationship between France and the United States can and will occur. He has already expressed a willingness to be much more cooperative with the United States in the future. His pro-American views have even led his opponents in France to dub him "Sarkozy the American," a nickname he says he embraces.[4]

Some small threads of this mending can be seen by several events that have taken place since Sarkozy's election in May of 2007. Firstly, Sarkozy met with President Bush and his family in Maine in August of 2007. The meeting, which had little to do with foreign policy, was a chance for the two leaders to meet socially and get to know one another better.[5] This is a good sign because a friendship between the two leaders would definitely go a long way in improving the likelihood for cooperation between the United States and France. Also in November of 2007, Sarkozy spoke in front of a joint-meeting of Congress. During his speech Sarkozy received many standing ovations for his views on Iran and U.S.-France

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[3]"Gordon's manifesto for change," *New York Times,* 13 May 2007.

[4]Sheryl Stolberg, "A Quiet Weekend in Maine With Family and Presidents," *New York Times*, 12 August 2007.

[5]Sheryl Stolberg, "A Quiet Weekend in Maine With Family and Presidents," *New York Times*, 12 August 2007.

relations.[6] This could be an important step in mending the relationship between not only Nicolas Sarkozy and George Bush, but also between France and the people of the United States. In addition to these meetings, Sarkozy has also mentioned the possibility of increasing the number of French troops within Afghanistan.[7] While Afghanistan is more than just a U.S. mission, if this troop increase becomes policy, it would definitely be well-received within the White House and would go a long way in increasing the opportunities for cooperation between the United States and France.

Sarkozy is an ideologue. He is closed to incoming information, and he views the world in terms of problems that he feels he must solve. This means that Sarkozy already knows what he wants to do and that he is going to do what he wants to do. Sarkozy is driven by what he feels is right. In his short term in office, Sarkozy has shown that he is pro-American and that he has a desire to work more closely with the United States. For these reasons I believe the level of cooperation between the United States and France will increase during the remaining months of the Bush presidency and on through the rest of Sarkozy's tenure.

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[6]Elaine Sciolino, "Congress Warms to France's New President," *New York Times*, 8 November 2007.

[7]Sayed Salahuddin, "France could boost troops in Afghanistan," *The Washington Post*, 22 December 2007.

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Throwing Down the Gauntlet: The Success Rate of Congressional Veto Overrides

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This work explores factors that may influence the success of a congressional challenge to the presidential veto. There are several factors worth investigation including the partisan division of Congress, the presence of upcoming elections, the length of the president's time in office, the legislation's policy substance, and the president's past political experience. A probit regression employed to analyze the significance of these factors reveals the president's tenure in office, his past political experience as a state governor, and the policy substance of the legislation as pertaining to foreign affairs as the only significant variables. Partisan control of Congress and the electoral cycle are found to be insignificant.

> Every Bill which shall have passed the House of
> Representatives and the Senate, shall, before it becomes a
> Law, be presented to the President of the United States: If
> he approve he shall sign it, but if not he shall return it, with
> his Objections to that House in which it shall have
> originated, who shall enter the Objections at large on their
> Journal, and proceed to reconsider it. If after such
> Reconsideration two thirds of that House shall agree to
> pass the Bill, it shall be sent, together with the Objections,
> to the other House, by which it shall likewise be
> reconsidered, and if approved by two thirds of that House,
> it shall become a Law (United States Constitution).

Throughout President George W. Bush's first term in office, Article I, section 7, clause ii of the United States Constitution became rather unfamiliar to legislators and congressional scholars. Enjoying majorities in the House and Senate, as well as congressional leadership that worked lock step with the executive branch, President Bush had no occasion to wield the veto pen. However, current battles between the White House and Congress involving both foreign policy (the Iraq War) and domestic issues (embryonic stem-cell research, state children's health insurance program) have thrown veto politics back into the spotlight. Recognizing the reemerging importance of veto politics and the potential for congressional override, this paper seeks to investigate factors affecting the success of a congressional challenge to the presidential veto.

From 1789 through the conclusion of President George W. Bush's first term in office, thirty-five administrations vetoed a total of 2,550 bills passed by Congress.[9] Of these 2,550 – of which 1,484 were regular vetoes and thus subject to congressional override – 314 were challenged by at least one chamber of Congress and 104 of these bills were successfully overridden. Statistics can be marshaled to illustrate the significance of studying the politics of the veto override process. In his thorough account of the politics surrounding the veto, *Veto Bargaining*, Charles M. Cameron provides the telling

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[9]Of these vetoes, 1,484 were regular vetoes while 1,066 were pocket vetoes. Although pocket vetoes will not be discussed in this paper, as they are not subject to Congressional override, the total number of vetoes is relevant here to demonstrate the frequent use of the presidential veto throughout American history.

statistic that between 1945 and 1992, Congress attempted to override fifty percent of all bills vetoed by the president. Furthermore, according to Cameron's (2000) statistical analysis of veto challenges from 1945 through 1992, the prospect of success for Congress to overrule the veto pen is forty-five percent (Cameron 2000). Given these high percentages of override attempts and overall success in the modern period, it would seem that determining the factors influencing the success or failure of an override attempt is an important task, as the override of a presidential veto is not as statistically improbable as the empirical data of 104 out of 2,550 might suggest.

Addressing the question of which factors prove influential in deciding the success of a congressional challenge to a veto can be justified for several other reasons. It is important to note that in numerous instances throughout American history, key policy results hinged on the success or failure of a congressional challenge to a presidential veto. The failure of the Senate to override President Andrew Jackson's veto of the re-chartering of the Second Bank of the United States on July 13, 1832 led to the demise of the bank and likely contributed to the Panic of 1837. The successful override of President Andrew Johnson's veto of S. 453 by the Thirty-Ninth Congress in 1867 resulted in the creation of the Tenure of Office Act, a law Johnson eventually violated resulting in the first impeachment and trial of a President of the United States. The override of President Nixon's veto of the War Powers Act on November 7, 1973 altered the manner by which the commander-in-chief was authorized to deploy troops. Undoubtedly, the success or failure of a congressional challenge to a presidential veto has often influenced the course of American history. In addition to this historical significance, a study of this sort could reveal information regarding various theories of lawmaking. The challenge of a presidential veto presents a unique circumstance in American lawmaking, whereby the preferences of both the legislative and executive branches are pitted directly against each other in a high stakes conflict often involving considerable publicity and a potential threat to presidential reputation. Such a situation grants an opportunity to assess the significance of various factors that may contribute to the lawmaking process, including the role of political parties, upcoming elections, the power relations between chief executive and the branches of the legislature, the significance and policy area of the legislation being debated, and the prior political

experience of the president vetoing the legislation. In an analysis here of the data set of the 314 veto challenges attempted from 1789 through 2004, using both descriptive statistics and probit models, it appears that the most significant factors in determining whether an override attempt will succeed include the policy substance of the bill, the president's past political experience, and the amount of time that has elapsed in the president's term. Surprisingly, factors such as partisan division of congress or the prospect of an upcoming election seem to be insignificant.

To demonstrate this argument, I have amassed a data set of the 314 veto challenges initiated by Congress from 1789 through 2004. For each of these attempts, I have identified the bill vetoed, the session of Congress in which the challenge occurred (including whether that session was during the year of a midterm election or presidential election), the partisan control of both the House and the Senate during that Congress, the significance of the bill vetoed, the policy realm into which that bill falls, and the previous political experience of the president who vetoed the legislation.[10] Using this data set, I examined descriptive statistics and also constructed a probit regression model to illustrate the significance of each of these independent variables in predicting whether the congressional challenge was successful. The argument, however, will proceed first with the theoretical expectations affiliated with each of these variables, including ideas professed by congressional scholars. Following this discussion of theory, I will then present the descriptive statistics along with my regression equation and analyze the significance of each variable and the various coefficients obtained. My explanations are not exhaustive and my methods not infallible, yet I hope this analysis does reveal some interesting insight into the significance of various factors in the override process.

On a final clarifying note before delving into theoretical predictions, it is important to remember that in dealing with questions surrounding veto politics there are three large steps in the process. The first step involves the vetoing of a bill; the second step asks the question of whether or not Congress will attempt to challenge the veto; and the final piece assesses whether or not a

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[10]To address the issue of significance of the legislation as well as the policy area in which the bill falls, I have relied upon a data set complied by Joshua Clinton and John Lapinski. For more information regarding this data set, see Clinton and Lapinski (2006).

challenge will be successful. This analysis focuses primarily on this final question regarding the success of override attempts, should Congress choose to levy a challenge. Unquestionably, the initial two steps bear influence on this final question, and I intend to highlight situations where I, or other scholars who have written on the subject, believe actions taken during these initial two steps may be confounding the results of an analysis of this third step of the veto override process.

Theoretical Predictions of Each Factor Examined

In the realm of congressional overrides of presidential vetoes, not all administrations rank the same. In their discussion of the presidential veto and the congressional response from 1945 to 1980, David W. Rohde and Dennis M. Simon (1985) describe how the success rate of various Congresses against different chief executives exhibits significant variation. While only eighteen percent of President Eisenhower's vetoes were successfully overridden by Congress, fifty percent of both President Truman's and President Carter's vetoes were later nullified. Some, although far from many, previous studies have addressed the issue of what factors contribute to the success of a veto challenge. A survey of this scholarly work reveals conclusions that are in many ways dissimilar and in some instances contradictory. After assessing this work and compiling a data set of my own, I have identified seven factors I hope to explore to provide additional information on which factors are significant predictors of override attempt success: composition of Congress in terms of political party, whether the veto challenge is attempted in an election year (midterm or presidential), the year of the president's term in office, the significance of the legislation in question, the policy substance of the legislation in question, and the previous political experience of the president. In this next section, I posit various explanations of why these variables would be significant, drawing on my own curbstone intuition and, more importantly, on the work of previous congressional scholars.

    Before delving into justification of why these variables may be significant, it is necessary to explain how each of these variables is measured. Partisan division of Congress is measured by simply counting the number of chambers of Congress the president's party controls (zero, one, or two) with a special consideration for certain statistical purposes for any time a single party controls both branches

of Congress by more than a two-thirds margin in order to test a particular hypothesis that will be presented in the next section. The election year variable segregates those override attempts carried out in midterm and presidential election years. An additional variable measures the year of the president's term in office; the variable marks the first year of a president's term with a one, the second year with a two, etc. and this counter resets if a president is re-elected (so, for example, if it is the president's fifth year in office, this variable reads one). This variable measures exactly the year of the president's term and does not rely on the calendar year. Before the ratification of the Twentieth Amendment to the Constitution in 1933, any year of any president's term extends from March of one year to March of the following year. For example, if a president was sworn in on March 4, 1917 and he vetoed legislation on February 3, 1918, then this veto is considered to be in the first year of the president's term. Following the ratification of the Twentieth Amendment, any year of any president's term extends from January of one year to January of the following year. It is important to note that not all vetoes are cast by an elected president. Presidents who succeed to the office upon the death or resignation of the incumbent are not excluded from this dataset, and, for each of their vetoes, the year of the president's term must be calculated. To address this issue, I have elected to continue the year of term clock as if the previous president were still in office (i.e. vetoes cast by President Ford in 1975 are coded as being in the president's third year in office, even though Ford took power in August of 1974). My rationale for not restarting the year of term clock is explained later when I discuss theoretical reasons for including this variable.

The significance and policy realm variables are both obtained using Joshua Clinton and John Lapinski's 2006 work "Measuring Legislative Accomplishment, 1877-1994." To identify significance, Clinton and Lapinski aggregated a variety of measures of legislative significance to develop a single model permitting a comparison of legislative significance across history. More important statutes, such as the Civil Rights Act of 1964, enjoy higher scores while pieces of legislation that are less significant enjoy lower scores. Policy realm is also identified using Clinton and Lapinski's data set, where all laws are broken down into seven "Tier 1" categories including sovereignty, organization and scope, international relations, domestic affairs, District of Columbia, housekeeping, and quasi-private (Katznelson and Lapinski 2006). Finally, the president's previous

political experience is simply measured by researching his biography and determining whether he was once a member of Congress, a state governor, both, or neither. Using these methods of measurement, coupled with the appropriate analysis, the influence of each of these variables on the success of a veto override attempt can be discerned.

The first, and perhaps most obvious, factor warranting consideration involves the partisan division of the Congress. The intuition behind this variable is rather simple in that an initial hypothesis would suggest that if the political party in opposition to the president retains control of either or both houses of Congress, the likelihood of a veto challenge being successful would increase. Furthermore, it would make sense that as the margin of control for the opposition party increased, the chance of success in the override attempt would exhibit a corresponding increase. The opposite effect might be exhibited if the president's party were in control of Congress, with an increasing majority causing the chances of a successful override to diminish. Although this logic seems reasonable, the opinion of congressional scholars is somewhat mixed regarding the significance of Congress's partisan division in predicting the success of a veto challenge. In accordance with the initial hypothesis espoused above, Jong R. Lee (1975) has argued that party loyalty plays an integral role in predicting the success of veto challenges. Lee argues there are five factors that cause congressional overrides to increase systematically. Included in his group of five significant variables is a dummy variable measuring when Congress—either House, Senate, or both—is controlled by the opposition party.

In contrast to Lee's findings, several scholars, writing both before and after his 1975 work, have presented results illustrating congressional partisan division to be an insignificant predictor of override attempt success. Assessing presidential vetoes and override attempts from 1889 through 1937, Katherine Towle (1937, 55) concluded that, although periods of divided government had four times as many override attempts as periods of united government, "within the groups themselves the percentages of both successful and unsuccessful attempts to override the veto were almost identical." Charles M. Cameron's (2000) work, which focuses on the more modern interval of 1945 to 1992, supports Towle's previous work. In investigating only the success or failure of override attempts, Cameron's model fails to pick up the significance of divided government. At the same time, Cameron does acknowledge that

although divided government – Cameron's variable for partisan control of Congress – does not register significance in terms of the success of an override attempt, it does illustrate significance in his analysis of the decision to try to override, thus rendering the variable not insignificant to the entire process of overriding the presidential veto. While Lee, Towle, and Cameron have all presented clear arguments regarding the role of partisan division in the success of the override attempt, Charles L. Black, Jr. adopts a less definitive stance in his 1976 work. Black, musing on his conversations with Congressman Bob Eckhardt of Texas, dismisses party loyalty as the sole factor in predicting the success or failure of an override attempt, but stops short of dismissing the variable entirely.

An entirely different theory regarding partisanship and the veto challenge can be developed resting on the assumption that Congress and the White House have distinguishable preferences and that these preferences do not necessarily align when both institutions are controlled by the same political party. In addition to this assumption, this theory also relies on Gary W. Cox and Mathew McCubbins's work *Legislative Leviathan* and their description of political parties in the House of Representatives as cartels of legislators who are tightly policed by their leaders. By manipulating the legislative agenda, committee assignments, and other perquisites, congressional leaders are able to control the members of their caucus and prompt members to vote according to leadership's preferences. Thus, when considering the role of partisan politics in the veto override process, a theory can be presented contending that should one party in Congress control a two-thirds majority in both the House and Senate, Congress will be able to legislate independently of the White House. Given the assumption that Congress and the White House have distinguishable preferences, perhaps it is arguable that if either party – regardless of the president's affiliation – has a two-thirds majority in both chambers of Congress, Congress will be better able to implement its agenda and will have a greater success rate in overriding the presidential veto. Considering this lack of consensus on the issue of partisan control of Congress in predicting the success of an override attempt, it appears any study attempting to illuminate this question of factors influencing a successful challenge should include party in its analysis.

Whether the veto is cast in an election year, be it a midterm election year or a presidential election year, is also a potentially significant factor in predicting the success of an override attempt.

Largely neglected in Cameron's work, the nature of lawmaking likely adopts different characteristics when elections are involved. The tension between Congress and the chief executive may heighten, with each branch attempting to embarrass the other for electoral gain or, conversely, both branches may be more liable to work together to present a front of cooperation and productivity to incur the voters' favor. Groseclose and McCarty (2001), in their work on the veto, have described how veto politics during election years can turn into a "blame game" with Congress deliberately passing legislation popular with the electorate but antithetical to the president's values, thus forcing the president to veto popular legislation and risk alienating voters. The game can also be played in the opposite manner, as President Truman and President Ford both used the veto for electoral purposes to call attention to their differences with Congress in order to build a stronger political base (Copeland 1983). There is also the possibility that election years may cause the nature of congressional lawmaking to change as individual members alter their behavior to maximize their chance of re-election. Rohde and Simon (1985, 405) recognize this possibility: "The veto is likely to be perceived as a more severe weapon during election years in that its effect in blocking programs may be perceived … as an immediate threat … Election years are a time when members of Congress are 'united' in the sense that each is striving to satisfy constituent and interest group pressures in order to survive politically." In other words, it is likely that the prospect of upcoming elections fundamentally affects lawmaking and veto politics as it changes the relationship between Congress and the president as well as among members of Congress themselves. Accordingly, a variable including election years deserves consideration in a study addressing factors that influence the success of override attempts.

A third variable incorporates how far into the president's term of office a veto is cast. By employing this variable, it is possible to measure variations in the power relations between Congress and the executive over the course of a four-year term. Upon beginning his term in office, a president enjoys a "honeymoon period," in which his proposals are well received on Capitol Hill and items on his agenda arguably stand the greatest chance of being implemented (Copeland 1983). President Franklin Roosevelt's one-hundred days of legislative productivity as well as President Reagan's implementation of his economic agenda in 1981 serve as paradigm examples for the honeymoon period phenomenon. Accordingly, a

hypothesis would expect an override initiated in the first year of a president's term to possess a diminished chance of success. However, as the president's term in office drags on, Congress usually grows more assertive in its relations with the chief executive (Rohde and Simon 1985). This increase in assertiveness could perhaps correlate with an increased success rate for veto challenges from year one to year four. Complicating the relationship between Congress and the president are the midterm elections. While the previous paragraph addressed any effect the run-up to the midterm elections may have on veto politics, an effect may be felt after these elections as well. Excepting the midterm elections of 1934, 1998, and 2002, the president's party has always lost congressional seats in the midterm elections. This bolstering of the president's opposition party in Congress may translate into an increased override success rate for years three and four.

As mentioned previously, while the year of president's term clock is reset once an incumbent is reelected and starts a new term, the clock does not restart when a new president comes to power following the death or resignation of his predecessor. Several factors justify not restarting the clock in these situations where a president comes to power without being elected: a newly sworn in president does not enjoy the same honeymoon period a duly elected president enjoys; Congress's more assertive stance does not necessarily melt away following the death or resignation of an incumbent president; and the midterm elections are held at the same time regardless of whether the incumbent president has died or resigned. A final consideration of how time in office may affect the success of veto challenges involves Congress calculating the utility in maintaining a close relationship with the White House. Perhaps it is the case that congressional leaders seek to maintain strong relations with the president when he has more time left in his term, and thus a greater ability to approve or stymie Congress's agenda (Lee 1975). To assess these various predictions, a variable marking the year of the president's current term of office (first through fourth) is incorporated into the regression analysis.

The next two elements included in this research involve the significance of the bill being vetoed and the policy realm of that legislation. At this point, it is important to emphasize that most of the bills that are vetoed are private bills. Writing in 1988, Robert J. Spitzer observed that of the 2,503 bills that had been vetoed by a President of the United States, 1,594 were private bills while 909

were public statutes. Spitzer also notes that 19.3% of all public bill vetoes challenged by Congress were successfully overridden, yet the success rate for private bill vetoes is only 0.8%. While this analysis is based on data available in 1988, it is necessary to realize that bills of very low significance – such as the vast majority of private laws that involve only the inconsequential relief of one afflicted party – enjoy a lower success rate compared to other more important statutes. Even though many of these private bills are passed without a recorded vote and with minimal opposition, when they are brought up again on a veto override vote, they enjoy little support (Berdahl 1937). It is likely that this disparity results because Congress only wishes to invest the huge amount of time and energy to override the president's veto for bills that are legislatively significant. A variable, derived from Clinton and Lapinski's data set, has been included to measure whether a bill's significance has any discernable predictive value. It is important to note, however, that the analysis using this variable will differ from the other variables incorporated. Since Clinton and Lapinski's scoring of legislative significance relies, in part, on the use of twenty contemporary and retrospective raters of congressional enactments, the significance is known only for bills that eventually pass through Congress. Therefore, data on significance can only be provided for those pieces of legislation with which Congress was successful in its override of the presidential veto. For this reason, significance will not directly be included in the probit model, but it will be analyzed using descriptive statistics. It is also important to note that the analysis regarding significance will be limited to 77 bills rather than 106, as the data set incorporates bills from the 45th through the 102nd Congresses.

While significance is only measurable for bills that are passed, the policy realm of the legislation being reconsidered by Congress is available for all bills in question. At first glance, it might be expected that veto politics follow the well-known axiom that "politics stops at the water's edge" and that bills involving foreign policy have a lesser chance of being successfully overridden when compared to bills that pertain to domestic issues. Lee (1975, 534) echoes this sentiment: "A well-grounded proposition is that in times of foreign crisis or serious involvement in world affairs, Congress is willing to co-operate with presidential leadership. When national survival is perceived to be at stake, there is less likelihood of conflict." Charles L. Black's (1976) analysis of the presidential veto can help to shed some light on this issue. Black observes that most successful overrides involve

legislation with universal appeal: nurses' training, handicapped persons, school lunches, railroad retirees. In other instances, lopsided override votes have included bills curbing presidential authority including the War Powers Resolution and a bill concerning presidential records. While my analysis will not dig this deeply into the substance of each bill, in order to assess the ability of a bill's policy substance to predict whether an override attempt in that bill's name will succeed, policy realm variables have been included in the analysis. These variables will, as stated before, rely on the seven "Tier 1" categories of legislation provided by Ira Katznelson and John S. Lapinski. Additionally, this categorization may aid in assessing the influence of legislative significance, as one of the seven categories includes quasi-private bills, which are undoubtedly less significant than bills included under the other six major headings. While the data included in Clinton and Lapinski's article concerns those bills presented in the 45th through 102nd Congresses, I have extended their categorization scheme to the other legislation in question, thus placing all bills under the same categorization scheme.

The final variable concerns the previous political experience of the president who vetoes the bill. Unquestionably, the presidency is a very personal office with each man who has served as president bringing with him various political skills and connections as well as baggage. The forty-two men (forty-three administrations with President Cleveland serving as both the 22nd and 24th president) who have served as president represent a variety of political backgrounds: some governors, some congressmen, some generals, some local legislators, some with no prior political experience. Perhaps prior experience in government has a relation to how presidents exercise their veto authority and, accordingly, how successful Congress is in overriding these vetoes. Lee (1975) makes the argument that presidents who have formerly served in Congress may be more deferential to the institution and not use their veto power as liberally as other presidents might. Presidents who are former members of Congress may also have friends on Capitol Hill, making a less hostile atmosphere and fewer successful overrides. Presidents who are state governors, however, may have the advantage as governors are accustomed to using the veto power with their own state legislatures. Maybe this experience with the veto translates to having selective use of the power and a lower success rate for Congress upon challenging these vetoes. On the other hand, it may be the case that former governors are "trigger happy" with the veto pen and

possess a lack of respect for Congress that translates into a legislative liability. However, it must be recognized that this dummy variable measuring a president's experience as a governor is limited, in that gubernatorial veto power varies by state. Some states require the state legislature to override the governor's veto with a supermajority of three-fifths, while others require two-thirds. In Tennessee and Kentucky, the governor's veto can be overridden with a majority vote, but each of these states permits its governor a line-item veto. North Carolina did not afford its governor veto authority until a 1996 referendum. As such, a president's experience as a state governor is subject to tremendous variability. However, having some experience with the veto pen could be relevant to his discretion in exercising this authority. To acknowledge the highly personal nature of the Office of President of the United States, a set of variables assessing a president's prior political experience has been introduced.

A Basic Statistical Survey of the 314 Override Attempts

Before attempting to assess the relative significance of each of these variables by fitting the 314 override attempts into a regression model, some basic statistics may be worth examining to test the veracity of several of the predictions made above.[11] By comparing override success rates in accordance with the variables identified, some of the hypotheses advanced previously are confirmed, other predictions are not borne out, and the rest bear inconclusive results.

In discussing the variable of partisan division of the US Congress and its possible effect on the success of an override attempt, an initial analysis suggested that when the president's party was in power, override attempts would not be as successful when compared to override attempts made when the president's party was in the minority. Some scholars agreed with this logic, while others posited statistical models that suggested that partisan division in Congress had little influence on the success or failure of a veto challenge. A statistical survey of the data set can help to support or

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[11]While the preceding paragraphs have made reference to 314 veto override attempts in American history, the total number of vetoes challenged is actually 316, with the total number overridden actually 106 not 104. My statement above states that 314 vetoes have been challenged by Congress while 104 have been overridden by Congress. There were two vetoes in the Nixon Administration that were challenged and overturned by court order. These vetoes are not included in the total number of vetoes or in the total number of overrides, as Congress was not involved.

deny these claims. Additionally, the data set can also help in shedding some light on the hypothesis predicting that, regardless of the president's party affiliation, a Congress with one party commanding a two-thirds majority in both chambers will, detailing the success of override attempts, enjoy greater success in the override process. Table 1 illustrates a breakdown related to the number of branches of Congress the president's party controls. Although not entirely conclusive, the data does reveal that that Congress enjoys the highest success rate in overriding the veto when the president's party is in the minority in both congressional chambers. While worth noting, this data does not present a watertight argument. In contrast to the predicted result, the override success rate actually climbs from 30% to 31% as the president's party shifts from holding a majority in one chamber to holding a majority in both. Furthermore, the success rates all range within six percentage points of each other, perhaps – in accordance with the ideas of Cameron and Towle – revealing partisan division to have an insignificant effect on the success of an override attempt.

Table 1: Success of Override Attempts By Party Control

President's Party in Majority of:	Total in Category	Successful %	Failed %
0 Chambers	157	36%	64%
1 Chamber	71	30%	70%
2 Chambers	86	31%	69%
Total Attempts	314	104	210

Table 2 represents an alternative approach to assessing how partisan division may influence the success of a veto challenge. Table 2 displays all the override activity of each chamber of Congress from 1789 through 2004.[12] Table 2 provides information

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[12]As prescribed by the Constitution, once the president vetoes a bill, it is returned to the house where it originated for further consideration. For the vast majority of bills, that house will elect not to challenge the veto. Other times, that house may challenge the veto and fail in its attempt. Another possibility is that the originating house will challenge the veto, succeed, and then pass the measure on to the other chamber for its consideration. Upon arriving at the other chamber, this chamber can elect not to challenge the veto, or can challenge the veto and then

regarding the composition of Congress along and that composition's corresponding number of successful and failed override attempts. If the hypothesis that a pro-administration party's control of Congress decreased the likelihood of a successful attempt were correct, we would expect the number of successful override attempts to decrease as the number of seats the president's party held in the House or Senate increased. However, Table 2 illustrates that, even when the president's party is ahead in the House or Senate by a considerable margin, it is not uncommon to observe a successful override of the presidential veto. Nearly thirty percent of successful overrides in the House occur when the president's party is in control and nearly fifteen percent of all overrides occur when the president's party enjoys a margin of over one-hundred seats. In the Senate, over forty percent of successful overrides occur when the president's party is in control and over twenty percent of successful override attempts happen when the president's party is up at least seventeen seats. The presidents who were overridden despite their party holding a more than one-hundred seat advantage in the House include Harding,

Table 2: Success of Challenges By Margin of Party Control and
             Chamber

U.S. House	Successful Attempts (% of all Successful)	Failed Attempts (% of all Failed)	Total	Success Rate
Margin of Party Control				
Pres. Party Behind:				
150+ Seats	9 (6.72%)	2 (1.55%)	11	81.81%
101-150 Seats	25 (18.66%)	9 (6.98%)	34	73.53%
51-100 Seats	39 (29.10%)	24 (18.60%)	63	61.90%
1-50 Seats	23 (17.16%)	39 (30.23%)	62	37.10%
Pres. Party Even	0 (0.00%)	0 (0.00%)	0	--
Pres. Party Ahead:				
1-50 Seats	17 (12.69%)	23 (17.83%)	40	42.50%
51-100 Seats	10 (7.46%)	23 (17.83%)	33	30.30%
101-150 Seats	4 (2.99%)	8 (6.20%)	12	33.33%
150+ Seats	7 (5.22%)	1 (0.78%)	8	87.50%

succeed or fail in meeting the two-thirds requirement. Because of these different possibilities, the number of veto challenges each house has voted on varies considerably, with the House challenging the president 263 times while the Senate has initiated 189 challenges.

| Total | 134 (100%) | 129 (100%) | 263 | -- |

| U.S. Senate | Successful Attempts (% of all Successful) | Failed Attempts (% of all Failed) | | |
Margin of Party Control			Total	Success Rate
Pres.Party Behind:				
24+ Seats	18 (14.88%)	5 (7.35%)	23	78.26%
17-24 Seats	9 (7.44%)	6 (8.82%)	15	60.00%
9-16 Seats	18 (14.88%)	21 (30.88%)	39	46.15%
1-8 Seats	26 (21.49%)	9 (13.24%)	35	74.29%
Pres. Party Even	1 (0.83%)	1 (1.47%)	2	50.00%
Pres. Party Ahead:				
1-8 Seats	18 (14.88%)	11 (16.18%)	29	62.10%
9-16 Seats	5 (4.13%)	9 (13.24%)	14	35.71%
17-24 Seats	16 (13.22%)	3 (4.41%)	19	84.21%
24+ Seats	10 (8.27%)	3 (4.41%)	13	76.92%
Total	121 (100%)	68 (100%)	189	--

Hoover, Franklin Roosevelt, and Carter while the presidents who were overridden despite their party holding a more than seventeen seat advantage in the Senate include Pierce, Grant, Theodore Roosevelt (during his last year in office), Hoover, Franklin Roosevelt, and Carter. In all of these instances, the legislation involved was of minor importance. However, these occasions are still worth noting as they help to illustrate how the partisan composition of Congress by itself does not adequately explain the success or failure of override attempts.

More compelling evidence can be marshaled to support the two-thirds majority hypothesis. The two-thirds hypothesis stressed the idea that Congress and the White House enjoy distinguishable political preferences and that congressional leaders – through their manipulation of the legislative agenda, committee assignments, and other perquisites – are able to compel members of their caucus to vote in line with the leadership's wishes. The hypothesis suggests that if a party, regardless of whether that party is pro-administration or anti-administration, controls two-thirds of both chambers of Congress, Congress will be able to implement its agenda despite a presidential veto. Table 3 provides support for this prediction.

Table 3: Success of Challenge By 2/3 Party Control of Chambers

One Party has 2/3 Control in:	Total in Category	Successful %	Failed %
0 Chambers	231	29%	71%
1 Chamber	58	31%	69%
2 Chambers	25	76%	24%
Total Attempts	314	104	210

When either party does not hold a two-thirds majority in both chambers, the success rates for override attempts are relatively low, hovering around thirty-percent. However, when a political party does hold a two-thirds majority in both chambers of Congress, Congress is successfully able to override the veto 76% of the time. It is important to note that of these nineteen successful attempts when either party had two-thirds control of each chamber, over twenty-percent of the time Congress was dominated by the same political party as the president. The 76% result suggests that the two-thirds hypothesis – namely, that a single party's supermajoritarian dominance of both chambers of Congress will correspond with a dramatic increase in the success of congressional override attempts – is valid. Of course, the number of data points varies significantly among the various distributions of two-thirds party control, forcing any conclusions regarding the phenomenon observed to be made cautiously.

The second variable examined involved elections, attempting to determine if the success of an override attempt was influenced by an upcoming midterm or presidential election. Regarding the influence elections may have on veto challenges, scholars presented a variety of theories including that Congress may be more united in election years to advance an agenda designed to satiate special interests and their constituents. Another argument suggested that Congress is more inclined to override the veto during a presidential election year to embarrass the president or present itself as the more productive branch of government. Table 4 presents the breakdown of override attempts in terms of election years.

Table 4: Override Attempts By Election Year

Election Year Status	Total in Category	Successful %	Failed %
Midterm Election	86	23%	77%
Pres. Election	107	41%	59%

Non-Election	121	33%	67%
Total Attempts	314	104	210

As can be seen in the table, there is significant variation in the override success rate with midterm election years having the lowest success rate of 23% while presidential election years have the highest success rate of 41%. This low success rate during midterm election years suggests that Rohde and Simon's (1985) argument that Congress is more united during midterm election years in their efforts to satisfy special interest groups and their individual constituencies is limited to a realm of congressional action that excludes challenging the presidential veto. However, the argument presented by Groseclose and McCarty (2001) that veto politics becomes a sort of "blame game" during presidential election years may be supported by this data. While this data does not reveal anything about the character of bills being sent by Congress to the president's desk for signature, the data does show that Congress does enjoy a higher override success rate during presidential years, perhaps stemming from a congressional desire to infringe on the president's authority and cause him to project an image of impotency.[13] Conversely, in accordance with Gary Copeland's (1983) argument, these numbers may suggest that presidents deliberately veto legislation during presidential election years to highlight their differences with Congress for an electoral benefit and, given that presidents are deliberately engaging in conflict with Congress, it would be logical for the override success rate to increase during these years.

The third variable identified measured how far into the president's term Congress voted to override the president's veto. In making predictions for the effect this variable may have on the success rate of challenges to the veto, various lawmaking phenomena were identified including the honeymoon period the president enjoys after he initially takes office, as well as how Congress becomes

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[13]The fact that the character of the bills being sent by Congress to the president's desk is not revealed here is important because it renders Groseclose and McCarty's (2001) argument regarding the congressional attempt to embarrass the executive by making him veto popular legislation not falsifiable using this data. It is also important to note here that the increased percentage of override success rate during presidential terms may also be related to an increased assertiveness of Congress over the president's four-year term. The potential influence of this variable will be discussed in the next paragraph.

increasingly more assertive as the president's term drags on. There was also some speculation that in years three and four of a president's term, the frequency of veto override may increase as his party loses seats in the midterm elections or that a second term president may be particularly vulnerable to an override as Congress has little incentive to maintain cordial relations. Table 5 provides the breakdown of override success rate and the year of the president's term in which the override attempt occurs.

Table 5: Override Success Rate By Year of Presidential Term

Pres. Term Year	Total in Category	Successful %	Failed %
1st Year	25	24%	76%
2nd Year	86	23%	77%
3rd Year	73	32%	68%
4th Year	130	42%	58%
Total Attempts	314	104	210

   The trends apparent in the data support many of the predictions. Over the four-year term, the number of successful override attempts increases steadily. While the data exhibit an unpredicted drop of one percentage point in between years one and two of the presidential term, this can perhaps be explained by the fact that the total number of attempts during the president's first term in office is appreciably smaller than the other four years. This small number of attempts – in addition to supporting the argument that the president enjoys a honeymoon period during his first year in office – would cause a small number of successful overrides to increase the success rate percentage. The data also exhibit a large increase in success rate in between years two and three from 23% to 32%, supporting the idea that midterm losses for the president's party in the midterm election translate into an increased ability of Congress to override the president's veto. Additionally, the comparatively high success rate of veto challenges attempted in the fourth year of the president's term may be complicated by a president's lame duck status, with congressional leaders possessing little incentive to maintain cordial relations with the White House. Thus, a basic statistical survey of the data does seem to illustrate that Congress does grow more assertive with the president as his tenure in office increases.

Legislative significance was also included in the list of variables that may influence the success of an override attempt. As was mentioned previously, Clinton and Lapinski's (2006) method of rating legislative significance evaluates only legislation that was enacted (with either presidential signature or successful override of a veto) from 1877 through 1994. Since some of the vetoes Congress seeks to override fall outside the 1877-1994 period, and some of the vetoed bills fail to be enacted, this section of the analysis cannot consider all of the data, nor can it be divided between successful override attempts and unsuccessful override attempts. Data is available for those seventy-seven successful override attempts in this interval. This is not to say, however, that significance will not be included at all in this descriptive section or in the probit model that will be presented. In the probit model, significance will perhaps be partially assessed using the policy realm variables, which include quasi-private legislation (which bears a lesser degree of significance compared to the other six categories).

Significance can also be studied here looking at the significance level of bills that are successfully passed by Congress over the presidential veto. Table 6 provides some surprising information regarding the significance of the legislation that Congress is able to push through over a presidential veto. The significance of the legislation passed by Congress over the veto ranges from the 54th Congress's HR 1139, which granted a pension to Caroline D. Mowatt, to the 80th Congress's HR 2030, the Labor-Management Relations Act of 1947 (also known as Taft-Hartley), which dramatically curbed the rights of organized labor. Despite predictions that only significant legislation would be overridden by Congress, as the veto process includes a great amount of time, energy, and risk, Table 6 reveals that a large number of bills of mere marginal significance are passed by Congress over a president's veto. Perhaps the significance of the legislation in question is not as important a factor in determining the success of override attempts, as many insignificant pieces of legislation are able to obtain two-thirds of the votes in each chamber.

Table 6: Significance Scores of Bills Where Congress Overrides
        Veto

Significance Score of Bill	Number of Bills Overridden

Less than -2.0	1
Between -2.0 and -1.0	20
Between -1.0 and 0	22
Between 0 and 1.0	26
Between 1.0 and 2.0	8
Total	77

Another characteristic that relies on Clinton and Lapinski's (2006) data set delineates among various policy realms. I have extended this scheme to incorporate all data points, not just the ones falling in the 45th through 102nd Congresses. Although the data set extends into three tiers of policy coding, I will use only the seven Tier 1 categories of sovereignty, organization and scope, international relations, domestic affairs, District of Columbia, housekeeping, and quasi-private. Table 7 provides some descriptive statistics regarding the types of legislation being challenged by Congress and the success rate by category of these challenges.

The data displayed in Table 7 reveals some interesting patterns, serving to support several of the hypotheses previously mentioned. While the small number of data points in some of the categories necessitates caution in making bold claims, the data does show that the category with the lowest congressional success rate in overriding the veto is international relations. Perhaps the concept that "politics stops at the water's edge" is indeed true when it comes to veto politics and the federal government is more inclined to show unity in terms of foreign policy as opposed to other issues that can be more divisive. Perhaps it is telling that the category with the second highest failure rate includes quasi-private bills. Earlier an argument was advanced that private bills, despite enjoying widespread support at the time of their passage, do not fare well in a veto override vote because of their limited appeal and lack of importance. Table 7 supports the claim that private bills are not often overridden, thus perhaps showing that significance is indeed a factor influencing the success of override attempts.

Table 7: Override Success Rate By Tier One Category of Legislation

Tier 1 Category	Total	Successful %	Failed %
Sovereignty	19	42%	58%
Organization and Scope	31	48%	52%
International Relations	30	10%	90%

Domestic Affairs	196	35%	65%
District of Columbia	2	50%	50%
Housekeeping	0	--	--
Quasi-Private	36	22%	78%

The final variable considered in this analysis involves the president's prior political experience. Predictions regarding this variable considered that a president who previously served in Congress might correlate with a diminished override success rate, perhaps because of a president's greater deference and respect for the legislature. On the other hand, a chief executive who previously served as a governor might be more familiar with the veto power and use it more effectively on account of his experience with this authority at the state level. Conversely, a former governor may have little respect for Congress and be "trigger happy" with the veto pen, yet such broad hypotheses must be tempered with the recognition that a state governor's veto authority varies somewhat across the fifty states. Table 8 illustrates how vetoes signed by presidents who have previously served as congressmen, governors, or both have fared against a congressional challenge. Presidents whose political background does not include any experience on Capitol Hill or in the Governor's Mansion are the least overridden of all chief executives. Veto overrides attempted against presidents who are former members of Congress or former governors have a 30% and 34% success rate, respectively. Ironically, presidents who have served as both a member of Congress as well as a state governor are the most likely to be overridden, with over half of all congressional challenges resulting in a successful override. Upon breaking down the data based on the political experience of the contemporary president, it appears that there is little conclusive proof to support any of the hypotheses regarding presidential political experience and his success in sustaining vetoes.

Table 8: Override Success Rate By President's Previous Political Experience

President is:	Total in Category	Successful %	Failed %
Former Governor	114	34%	66%
Former MC	122	30%	70%
Both	32	53%	47%

Neither	46	26%	74%
Total Attempts	314	104	210

Probit Regression Analysis

While these descriptive statistics are valuable is assessing the validity of the various hypotheses regarding the influence each variable may have on the success of an override attempt, the probit model presented below serves to highlight the relative importance of many of these factors and can determine which of these variables are statistically significant. Two models are presented below in Table 9. The middle column of Table 9 presents coefficients from a standard probit model. However, since probit coefficients are difficult to interpret, the final column presents an easier to interpret dprobit model, whereby the coefficients represent the change in probability that a veto challenge will succeed. The models displayed in this table represent the fully specified models. Concerning the dummy variables, it is important to note that one of a set of dummy variables always needs to be omitted. In the variables discussing the Tier 1 issue area of the bill, the category of domestic affairs is the variable that has been omitted. With regard to presidential experience, the category of neither gubernatorial nor congressional experience is omitted. Out of concern for multi-collinearity, the dummy variable representing a presidential election year and the variable measuring the president's time in office were not placed together in the same model. In models where the dummy variable for presidential election year was included, the variable was consistently insignificant. All other variables represented in the model fail to correlate at high levels with each other. Year is included as a control variable to ensure the possibility that any variation in the success of veto overrides is the product of the variables being examined and not just a secular trend.

Table 9: Probit and dProbit Regression Models

Variable	Probit Coefficients	dProbit Probabilities
Year	.0017	.00061
Number of Branches	.039	.014
Midterm Election	-.12	-.041

Year of Pres. Term	.19*	.069*
Sovereignty	.22	.080
Organization/Scope	.18	.067
International	-.87**	-.24**
District of Columbia	.65	.25
Quasi-private	-.29	-.097
Pres. Former MC	.31	.11
Pres. Former Governor	.44**	.16**
Constant	-4.62	
Pseudo R-squared	.0705	.0705

Statistical significance noted as follows: *p<.10, **p<.05.

The probit regression presents some surprising results, confirming some of the hypotheses presented above while refuting many others. As presented in Table 9, only three of the variables included in the analysis prove to be significant: the year of the president's term, international affairs legislation, and when the president was a former governor. All other variables, including those concerning partisan division of Congress and the presence of an upcoming midterm election, prove to be consistently insignificant. Thus, the three hypotheses that Congress will defer to the president on foreign affairs, that Congress grows more assertive with the president as the time in his term elapses, and that a president who is a former governor is less skillful in wielding the veto all appear to be confirmed, while the other speculations made previously cannot be substantiated.

Assessing just how these variables influenced the success or failure of a veto override attempt can be better assessed using the probability changes provided in a dprobit model. Table 9 presents these coefficients, allowing a comparison amongst all variables in question. The most significant variable obtained in the study, namely that the bill in question pertains to international affairs, presents a very high coefficient. According to the dprobit analysis, any bill that pertains to international affairs has a 24% diminished likelihood of being overridden. The year of the president's term also presents a substantial effect. For each additional year the president serves in office, Congress possesses an approximate seven percent increased probability of overriding a presidential veto. Thus, in comparing Congress's ability to successfully override a veto during a president's first year in office to Congress's chances on a challenge

initiated during a president's fourth year in office, the model predicts the later Congress to have a 28% increased chance of being successful in its efforts. If a president's past political experience affords him experience as a state governor, the model suggests his vetoes will carry a 16% increased chance of being overridden by Congress. While it must again be recognized that state governor's veto authority does vary, such a statistic does seem to confirm the general hypothesis that former governors may possess a certain arrogance regarding the legislature or may possess a political sense that is too "outside the beltway" to properly safeguard a legislative agenda.

While these three variables are unquestionably significant, there is one additional variable approaching significance, namely the variable that identifies presidents who are former congressmen. The variable identifying presidents who have served as representatives or senators in the past is borderline significant, with a coefficient declaring that vetoes cast by presidents who are former congressmen possess an 11% increased likelihood of being overridden in Congress, as compared to the baseline of the left-out dummy variable of no prior gubernatorial or congressional service. In other words, when all else is held equal, presidents who are former congressmen are 11% more likely to be overridden than a chief executive without any previous gubernatorial or congressional experience. This result – especially its coefficient – is rather surprising, considering that theoretical discussion centered on the idea that presidents who were former congressmen would enjoy greater success at the veto override game on account of their first hand knowledge of the opposing side.

A final category represents those variables of little to no significance. Included in this group are variables identifying the year, the number of congressional chambers the president's party controls, the presence of an upcoming midterm election, as well as the other legislative policy realms. Perhaps it is surprising that the most politically oriented variables included in this study – those delineating the partisan division of Congress as well as the presence of an upcoming election – were illustrated by the model to be insignificant. Instead, it seems policy and personal characteristics were more important, with significant variables focusing on the substance of the bill, the president's relationship with Congress, and the past personal experience of the chief executive. Although the variables proved to be insignificant, it is interesting to note that the signs of the coefficients for the number of branches variable as well

as for the midterm election variable were contrary to theoretical predictions. The positive sign of the number of branches variable seems to suggest that as the number of congressional branches the president's party holds increases, so too does the probability that a veto will be successfully overridden. Similarly, the variable identifying the presence of an upcoming midterm election possessed a negative sign despite the fact that theoretical predictions buttressed by the arguments of Rohde and Simon (1985) argued that Congress is more united during midterm election years and would thus be more inclined to override a veto during these periods. However, given the far from significant status of each of these variables, such observations are generally irrelevant and do not necessarily lend credibility to alternative hypotheses.

Overall, the probit and dprobit models provide suggestive information in assessing the relative significance of these factors in explaining the success or failure of veto override attempts. Furthermore, this model helps to illustrate more conclusively that the three variables of year of the presidential term, presidential experience as a state governor, and, most especially, the status of the legislation as a foreign affairs bill are significant factors in predicting the success or failure of a congressional challenge to a presidential veto.

Conclusion

A close study of the legislative process reveals the significance of the veto override process in shaping American history. The field of the presidential veto and, in particular, consideration of factors that may influence the success of a congressional challenge to the veto is rather untilled and frequently work that has been done in this field is contradictory with other findings. Accordingly, a closer look at the factors affecting the success or failure of a congressional override attempt is important to the study of lawmaking in American politics.

Curbstone prediction, coupled with a survey of the existing scholarly research on the subject, suggests there are several factors worth investigating. These include the partisan division of Congress, the presence of upcoming elections, the duration of the president's tenure in office, the policy substance of the bill, and the past political experience of the president. Various theoretical hypotheses can be advanced regarding each of these variables and a basic statistical survey of the data can be employed as an initial test of these

hypotheses' veracity. A more thorough reckoning of the significance of each variable, however, can only be provided by means of a statistical regression analysis. Because the dependent variable in this instance (namely whether the bill is overridden or sustained) is a binary dummy variable, a probit regression is employed.

After completing the probit regression, three factors are significant in predicting the success or failure of an override attempt: the duration of the president's tenure in office, his past political experience as a state governor, and, most convincingly, if the policy substance of the legislation pertains to foreign affairs. Bordering on significance but not quite breaking the threshold sit variables identifying the chief executive as a former member of Congress as well as a variable identifying the policy substance of the legislation as quasi-private. All variables pertaining to the partisan division of Congress as well as the presence of upcoming elections prove to be insignificant predictors of override success. Perhaps this analysis sheds an optimistic light on the American legislative process, as it suggests policy and presidential experience are more relevant in American lawmaking than partisanship and pending elections. Yet, at the same time, the analysis is somewhat pessimistic, as it points to attrition in relations between Congress and the White House during the course of a four-year presidential term.

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Ganging Up Against the Courts: Congressional Curtailment of Judicial Review, 1988-2004

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The Constitution grants Congress the power to regulate the jurisdiction of the federal courts. Congress has sought to exercise this power throughout its history, especially when the courts have issued a decision or series of decisions that are very unpopular. The precise nature of Congress' authority in this area is controversial and scholars have proposed many criteria and theories to delineate the legislative and judicial branches' respective powers. This study, examining the number of times Congress has categorically denied the courts' jurisdiction over a defined set of cases between 1988 and 2004, finds that Congress has denied jurisdiction 166 times. This practice, while currently relatively narrow, could have major implications for the balance of powers between the three branches of the federal government and the vindication of individual rights if allowed to become more prevalent.

The United States Constitution (art. 3, sec. 2, cl. 2) provides that:
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Under this authority, Congress has denied the courts the power to hear certain kinds of cases. When the courts have issued controversial decisions, legislators often propose preventing the courts from continuing to make unpopular decisions by denying them jurisdiction over those cases. The scope of Congress' authority to curtail judicial review is subject to scholarly and political disagreement.

I will examine the history of the executive and legislative branches' efforts to curtail the jurisdiction of the federal judicial branch. I will also review the scholarly debate over the power of Congress to curtail review over cases involving constitutional rights. However, little has been written on Congress' restricting review of cases concerning statutory law. Then, I will study how often and in

what ways Congress has denied judicial review from 1988 to 2005. Finally, I will discuss how Congress' empirical practices toward judicial review have implications for separation of powers, open governance and individual rights.

Historical Attempts to Deny Jurisdiction

In the past, lawmakers have attempted to limit the jurisdiction of the courts as a response to unpopular decisions. After decrying the unpopular decisions, legislators have tended to declare the judiciary an undemocratic institution that must be brought to heel by the majoritarian legislative branch.

The concept of judicial review was first introduced to federal constitutional jurisprudence in *Marbury* v. *Madison* (1803). *Marbury* established that the courts, as interpreters of the laws and the Constitution, had the power to invalidate laws and actions that were inconsistent with the Constitution. This power has made the courts a major influence in the political process of enacting legislation. Many laws that passed muster in the more political, majoritarian institutions have been struck down by the courts. There is considerable debate concerning the proper role of the courts in America's political system and how much deference legislatively approved measures deserve from the courts. I will not attempt to address that issue directly, but I will briefly review how Congress has tried to reduce judicial review in order to increase its relative power and implement its policy preferences.

Using the authority articulated in *Marbury*, the Court began invalidating state laws in the first decades of the 1800s. Unsurprisingly, these decisions were not popular with state officials and their representatives in Congress.

> The first congressional attempts to repeal Supreme Court jurisdiction were occasioned by the Court's early decisions overturning state laws. Section 25 of the Judiciary Act of 1789 authorized the Supreme Court to review, and therefore declare invalid, decisions of the states' highest courts that upheld state laws challenged as conflicting with the federal Constitution, federal statutes, or treaties. With each successive ruling striking down a state law, opposition to Section 25 grew among proponents of states' rights (Biskupic and Witt 1997, 337).

Proposals were introduced to repeal Section 25 and thus deprive the Court of hearing any state court decisions upholding a state law challenged on federal grounds. While the proposals were never even passed by a single house of Congress, the justices and supporters of the Court were deeply concerned by the move (Biskupic and Witt 1997, 337-38). The Court later declined an opportunity to expand its jurisdiction over state court decisions, portending the future influence that attempted jurisdictional restrictions, even failed ones, could have on courts' decision-making.

While the first attempt to restrict the judiciary's jurisdiction was unsuccessful, the second major attempt utterly succeeded, stopping the Supreme Court from deciding a case over which it was deliberating. After defeating the Confederacy in the Civil War, Congress enacted the Reconstruction Acts of 1867, placing the southern states under military rule until they met certain conditions, one of which was ratifying the Fourteenth Amendment to ensure equal protection of the laws for the recently emancipated slaves. Congress had also recently granted the Court jurisdiction over habeas corpus appeals. "Seeking to protect blacks and federal officials in the South from harassment by white southerners, Congress in February 1867 enacted a statute expanding the Supreme Court's jurisdiction to review denials of writs of habeas corpus" (Biskupic and Witt 1997, 338). A case would soon arise that would make Congress reconsider the wisdom of its decision.

William H. McCardle was the editor of a Mississippi newspaper. Displeased with the military government, he frequently attacked the generals and called for whites to resist reforms to grant blacks political influence. Major General Edward O.C. Ord, the commander of the military district in which McCardle published, finally tired of McCardle's complaints and charged him with several offenses, including inciting insurrection and libel. Ord charged McCardle in a military court. McCardle argued that trying him before a military court was unconstitutional and filed a petition for habeas corpus. The trial court denied habeas corpus and McCardle used the 1867 statute to appeal to the Supreme Court.

The Court heard arguments in the case and, given the Court's disapproval of trying civilians in military courts while civilian courts were available (*Ex Parte Miligan* 1866), Republicans rightly feared that McCardle's incarceration (and the Reconstruction Acts that authorized it) would be invalidated. They managed to insert an

amendment to withdraw the Court's jurisdiction over writs of habeas corpus and any such cases before it. The bill was enacted over the veto of President Andrew Johnson. The Court then duly dismissed McCardle's case before it was able to rule on the merits. "Chief Justice Salmon P. Chase wrote that the Constitution gave Congress the authority to make exceptions to the Court's appellate jurisdiction and that Congress had expressly exercised that authority" (Biskupic and Witt 1997, 339). Thus, Congress was able to preserve the Reconstruction Acts.

The circumstances of this successful denial of jurisdiction show some of the ingredients of such restrictions: cases preceding the denial were sufficiently unpopular to garner great support for denying jurisdiction, the denial would permit the execution of policy that Congress preferred, and supporters of the courts did not persuasively advocate for maintaining a relatively strong judiciary. These ingredients will help show why some congressional denials of jurisdiction pass, while the vast majority of those proposed do not.

Lawmakers have habitually introduced bills to curb the courts' jurisdiction.

> The congressional weapon that is probably most often raised against the federal judiciary is that of curtailing its jurisdiction. Countless efforts of this kind have been recorded; casual perusal of Charles Warren's Supreme Court history for the nineteenth century alone discloses their occurrence in 1808, 1821, 1822, 1824, 1825, 1826, 1830, 1831, 1832, 1833, 1846, 1858, 1867, 1868, 1871, 1872, and 1882. Almost every occasion is clearly traceable to momentous constitutional rulings, most of them declarations of unconstitutionality (Choper 1980, 145).

The judiciary's jurisdiction has not been free from attack in the twentieth century either. The Portal-to-Portal Act eliminated the jurisdiction of the state and federal courts over rights to portal-to-portal pay under the Fair Labor Standards Act of 1938. Bills to limit judicial review were proposed in 1957 and 1958. It had only been a few years since *Brown v. Board of Education of Topeka* (1954), and the Court had also issued several decisions relating to national security that frustrated legislators' quest to root out Communists from positions of influence. The Court, then, was not very popular with some lawmakers. On July 26, 1957, Senator William E. Jenner

of Indiana introduced a bill to deny jurisdiction over the following areas: admissions to practice law in state courts, proceedings before and functions of congressional committees, employee loyalty-security programs, and state regulations against subversive activities and school board rules relating to subversive activities among teachers (Pritchett 1961, 31). Each of these denials related to a decision by the Court of which Jenner disapproved.

Unlike the circumstances in the McCardle denial, opponents to Jenner's bill were able to take action to interrupt its progress. "Because of the widespread opposition which had been expressed against the device of limiting the Court's appellate jurisdiction, four of the subjects which the original Jenner bill had forbidden the Court to touch were dropped" (Pritchett 1961, 32). Instead of denying jurisdiction to the Court, the bill was amended to reverse the controversial decisions by amending the statutes the Court had been interpreting. The jurisdictional denial relating to state bar admissions rules was left intact. However, what remained in the bill was ultimately moot because it was defeated in the Senate.

Several factors contributed to the failure of the Jenner bill. First, Pritchett suggests that respect for the Supreme Court as an institution was a primary factor. "Basically, the Court was protected by the respect which is so widely felt for the judicial institution in the United States…a great part of opinion in the United States holds that the Supreme Court should be let alone, or rather that it should be subject to influence only in the accepted manner, namely, by use of the appointing power when vacancies occur" (Pritchett 1961, 119). Pritchett wrote this in 1961, but respect for the Supreme Court has remained relatively high, even though recent controversies have somewhat tarnished its public image. "Currently, 57% of Americans have a favorable impression of the Supreme Court, with 30% expressing an unfavorable view. In the past, favorable views of the court surpassed 70%" (Pew Research Center 2005). Even though the Pew study indicated that the Court's reputation had fallen due to partisan fighting over nominations to the Court, over half of Americans polled still thought highly of the Court. This respect has been integral to warding off most proposals to strip the courts of jurisdiction over entire swaths of legal territory. However, as I will later show, it has hardly immunized the courts from smaller, less visible, piecemeal curtailment.

Pritchett also mentions as reasons the bill failed the motives of the proponents of jurisdiction-stripping and the timbre of their

rhetoric. While northern Democrats voted to preserve the Court's jurisdiction, southern Democrats voted for Jenner's bill to limit the Court that had mandated desegregation. "It is paradoxical but probably true that the segregation issue increased the bitterness of the legislative drive against the Court and at the same time guaranteed the defeat of the attack" (Pritchett 1961, 120). Some lawmakers also exaggerated the negative effect the Court's rulings would have on national security. This hyperbole decreased the credibility of advocates for denial of jurisdiction.

Another possible variable in the conflict between the Court and Congress was the Court's own behavior following the introduction of the jurisdiction-limiting bills. Terri Jennings Peretti argues that the threat posed by the Jenner bill influenced the Court's jurisprudence.

> Although the Jenner Bill restricting the Court's jurisdiction was defeated in the Senate (by only a 41 to 49 vote), the fierce congressional reaction appears to have had its desired effect. In 1959, the Court upheld HUAC authority in *Barenblatt v. U.S.* and state authority to investigate subversive activities in *Uphaus v. Wyman*. What Walter Murphy terms a "tactical withdrawal" is further substantiated by a 20 percent increase in the rate at which the Court rejected civil liberties claims from the 1956 to 1958 term (Peretti 1999, 140).

However, Pritchett argues that the Jenner bill had no effect on the Court's later decisions. "The danger of retaliatory legislation had largely passed by the time the Court handed down *Barenblatt, Uphaus*, and the other conciliatory decisions. The Court did not 'save' itself by these decisions. It had already been saved because a majority in the two houses of Congress was not disposed…to use legislative power to override judicial determinations" (Pritchett 1961, 121). Even if the rulings that were issued immediately after the threat had passed were not influenced in any way, it is entirely possible that the justices wished to avoid such threats in the future by writing less controversial decisions and letting Congress' anger subside.

Near the end of his book, Pritchett declares that "[i]t seems quite possible that the Supreme Court's victory in this controversy has had the effect of permanently neutralizing what is perhaps the most drastic congressional authority over the Court, the control of its

appellate jurisdiction" (Pritchett 1961, 121-22). Later events would render his conclusion premature, if not incorrect. Controversial, high-profile decisions have stimulated calls for jurisdictional restrictions for the past thirty years.

Burger Court rulings on abortion and school busing prompted a wave of jurisdiction-stripping bills in the 1970s. An amendment proposed by Senator Jesse Helms of North Carolina in 1979 would have deprived courts of jurisdiction over voluntary school prayer. In the 1980s bills were introduced to remove jurisdiction over abortion, school prayer and male-only military draft cases. Like their predecessors in the late 1950s, none of these bills was enacted into law. Nonetheless, jurisdiction-stripping remains a viable congressional tool to this day, albeit often in a less conspicuous form.

Within the past few years, several court decisions have again prompted calls to restrict the judiciary's jurisdiction. In 2002, the United States Court of Appeals for the Ninth Circuit ruled that requiring the recitation of the Pledge of Allegiance in public school classrooms violated the First Amendment because the words "under God" constituted an establishment of religion (*Newdow* v. *U.S. Congress* 2002). The highest courts of Vermont and Massachusetts have mandated same-sex civil unions or marriage, respectively. This led some legislators to fear that a federal court would eventually invalidate the Defense of Marriage Act, a law that allows states to refuse to recognize marriage licenses issued to same-sex couples in other states. Legislators have responded by introducing provisions to remove the courts' jurisdiction over the Defense of Marriage Act and the Pledge of Allegiance.

The House Judiciary Committee's report on the Marriage Protection Act argued that "Congress must exercise its constitutional authority to limit the jurisdiction of the Federal courts to ensure that the states, and not unelected Federal judges, have the final say on whether they must accept same-sex marriage licenses issued in other states" (U.S. House Committee on the Judiciary 2004, 4). This invocation of congressional power to limit jurisdiction demonstrates that this tool is far from neutralized. In 2004, the House passed the Marriage Protection Act and the Pledge Protection Act (Bazon, Killian and Thomas 2005, 10). At present, none of these high-profile proposals have been passed by the Senate. However, since at least 1988 (and probably much before then), Congress has been exercising its power over the courts' jurisdiction to insulate less well-publicized

decisions and rules from judicial review.

The Scope of Congress' Power to Regulate Jurisdiction

Along with efforts in Congress to limit jurisdiction have come reams of scholarly writings arguing over the exact scope of Congress's authority. The literature is voluminous to the point of unwieldiness. "[O]ne might expect that the ultimate tribunal -- that of academics (who, unlike the Justices, often claim infallibility even though they lack finality) -- would have reached a consensus after more than a century and a half of scrutiny. But I can assure you that there is no such consensus" (Gunther 1984, 897). Commenting on why limiting the jurisdiction of the courts is so controversial, Mark Tushnet and Jennifer Jaff (1984, 1328) write, "we suggest that those concerns [over judicial jurisdiction] arise from disquiet over the fundamental structure of the Constitution…the practices of politics and judging no longer meet the demands of a sound constitutional order." They hypothesize that most citizens no longer have confidence that the Constitution itself will limit the courts' discretion to decree policy by judicial fiat. Thus, the power of the judiciary is increased (at least perceptually) and the boundaries of the courts' power become more politically important.

Whatever the cause of the topic's popularity, a proper treatment of all the disparate theories regarding Congress' power to curtail the courts' jurisdiction would overwhelm the other parts of this study. In addition, most of the debate concerns Congress' power to deny a judicial forum for constitutional rights. Most commentators seem to take for granted that Congress may alter the courts' jurisdiction over statutory issues at will. Perhaps that alone helps explain why Congress frequently deprives the courts of jurisdiction over statutory issues and, despite an impressive amount of discussion, fails to enact legislation that pertains to higher-profile constitutional issues. Therefore, I will attempt to provide only a brief review of some of the most salient theories on restricting judicial review. This should supply adequate theoretical context to the historical and empirical evidence of Congress' practices in this area.

Broadly speaking, the plethora of views on Congress' power over the courts' jurisdiction can be arrayed on a spectrum. One end represents the view that Congress is plenipotentiary with respect to the courts and can grant or withhold jurisdiction at its discretion. On the other end is the opinion that the Constitution requires Congress to

grant jurisdiction to the courts and that jurisdiction itself is constitutionally protected from diminution. In the middle, then, is a large variety of permutations of these two extremes. Some types of jurisdiction can be limited by Congress while others cannot; under certain conditions Congress can limit the courts' jurisdiction, as long as some tribunal (state, specially established, or otherwise) is available, jurisdiction can be denied to all others. A few representative examples will suffice to illustrate this spectrum.

The first theory is what Edward Keynes and Randall K. Miller (1989) term the plenary view. Under this view, the language in Article III mentioning exceptions and regulations to the courts' jurisdiction authorizes Congress to confer as much or as little jurisdiction as it sees fit. "Unless Congress enacts jurisdictional legislation, the Supreme Court cannot exercise its appellate jurisdiction. Once Congress has acted, as John Marshall observed, the Court cannot exercise jurisdiction that Congress has not specifically conferred" (Keynes and Miller 1989, 4). Under this theory, the courts are wholly at the mercy of Congress.

The plenary view may seem to grant Congress an immense advantage over the judiciary. "Congress could use its authority to emasculate the federal courts' power of judicial review. By eradicating federal jurisdiction over constitutional rights, Congress could upset the delicate balance of power between the legislative and judicial branches" (Keynes and Miller 1989, 7). While there is certainly a risk that Congress could simply choose to deprive the courts of all jurisdiction except that which is specifically provided in the Constitution, it seems quite unlikely. First, while Congress has historically proposed many bills to limit the courts' jurisdiction, the vast majority have never been enacted into law. Second, in order for such an extreme move to be politically palatable, the courts would have to become so unpopular that a sizable majority of the public would support eliminating wide swaths of the courts' jurisdiction. Given that a 57% approval rating is considered unusually low for the Supreme Court, the courts would have to become incompetent or issue such unpopular decisions that most government agencies and citizens openly defy them to be seriously threatened by such sweeping proposals. Finally, "since the political branches realize that the use of federal courts is essential to administer federal law—for the purposes of both imposing government coercion and enforcing private remedies—Congress cannot, as a practical matter, withdraw all federal jurisdiction, even if it were authorized to do so

constitutionally" (Choper 1980, 54). Government simply cannot function without the courts. It would be far more trouble for Congress to strip the courts of jurisdiction and erect new enforcement mechanisms for its laws than to reverse undesirable court decisions through statutory amendment and the influencing of judicial appointments.

Further undermining the plenary view is the understanding of judicial review articulated in the *Federalist Papers*. In *Federalist No. 78*, Alexander Hamilton argues that the judiciary must be able to invalidate laws that are inconsistent with the Constitution. "If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution" (Hamilton 1788). If Congress were able to prevent the courts from fulfilling this function by eliminating judicial review, it would be able to violate the Constitution without restraint.

While proponents of the plenary view emphasize the regulations and exceptions clause, supporters of the mandatory view focus on the vesting clause: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Under this language, there must be a Supreme Court with the government's judicial power. "The only authority over the federal judiciary given to Congress in the original plan of article III was the discretion to establish and structure inferior courts, to distribute and allocate the jurisdiction of the federal courts among the Supreme Court and the inferior federal courts, and to make regulations of practice and procedure for these courts" (Clinton 1986, 1518). Proponents of this constitutional interpretation hold that the courts serve a fundamental place in the government; therefore, one branch cannot reduce another branch to insignificance. "Admittedly, the exceptions and regulations clause confers some power on Congress, but it does not permit the legislature to destroy the basic structure of government or vitiate the Framers' remedial purpose" (Keynes and Miller 1989, 8). On the other hand, without some check on the judiciary's power, there is the danger of what some scholars and commentators call the "imperial judiciary," a judiciary that supplants the legislative and executive functions of government and brazenly implements its own policy preferences.

This risk, like the risks under the plenary view, is fairly low. First, courts are staffed by judges selected by the President and confirmed by the Senate. This must have a crucial influence on the jurisprudence of the courts. Peretti (1999, 130) notes that "most justices, most of the time, satisfy the ideological and policy expectations of their appointing presidents. This is to be expected given the great care with which most presidents evaluate the ideological credentials of their Supreme Court nominees." Courts can thus be checked by selecting jurists who will not regard their role as that of an official who is empowered to unilaterally change the law without reasonable legal grounds. Second, Congress can amend laws to nullify undesirable decisions. This was the option that lawmakers preferred when they were considering how to respond to the Court's national security decisions in the late 1950s. Undoubtedly Congress has the authority to amend statutes to help clarify their interpretation. This check is not as readily available in cases of constitutional interpretation due to the formidable majorities that must be assembled to ensure passage through Congress and ratification by the states of constitutional amendments. Whether by appointments or overruling interpretations, Congress has means at its disposal to check the judiciary without limiting its jurisdiction.

The middle ground between these two poles, generally speaking, is the view that Congress can restrict the courts' jurisdiction, but only with limits on that power. A number of limits have been proposed throughout the literature. One limitation proposed by scholars is that Congress cannot limit the jurisdiction of the courts such that the essential functions of the courts cannot be executed. "If the Court was intended the curb Congressional excesses in appropriately presented 'cases or controversies,' and if an attempt to exercise that power might in turn be blocked by Congress as a judicial 'excess,' then the Convention was aimlessly going in circles" (Berger 1969, 286). Congress cannot check the courts in such a way that the courts cannot check Congress.

Since the actual text of the Constitution does not mention any limits on Congress' power to alter the judiciary's jurisdiction, producing a list of the essential functions of the courts is an exercise in discerning what role the courts uniquely fill in government. Keynes and Miller (1989, 16) suggest that "[i]n a constitutional democracy, the courts must have judicial power to protect the rule of law, fundamental constitutional rights of individuals, and the rights of insular minorities." Courts are also supposed "to promote

uniformity of decision, to assure national supremacy, to implement national law, to provide a neutral forum for out-of-state and foreign suitors, and to preserve the citizens' constitutional rights against popular oppression" (Keynes and Miller 1989, 17). Any congressional restrictions on the courts' jurisdiction that prevent them from fulfilling these essential functions are unconstitutional, according to this view.

The primary difficulty with this view is arguing that Congress' power to limit the courts' jurisdiction ends where the courts' essential functions begin is only another way of saying that Congress' powers end where the courts' powers begin. The branches of government disagree on which checks and balances apply to them and what powers are allocated to each of them. This is made clear by the argument of advocates for jurisdictional limitation that when the courts begin "legislating from the bench," they are usurping the essential functions of the legislative branch and Congress must check the courts to restore the proper balance of power.

> In many cases, the Supreme Court and other federal judicial bodies not only have exceeded their constitutional limits, but have challenged the principle of federalism that should protect the balance of power between the national government and the governments of the states….America's Founding Fathers created a democratic republic in which elected representatives were to decide the important issues of the day. In their view, the role of the judiciary, although crucial, was to interpret and clarify the law—not to make law (Meese 1998, 782-83).

So if the three branches of government could simply agree upon their proper respective roles, they would not overstep their bounds and there would be no need for the branches to check each other, eliminating the need for congressional restrictions on the courts' jurisdiction. Since none of the branches can agree, they must check each other. However, since they do not agree on their proper powers or essential functions, one branch that is being limited by another claims that the limitation itself is improper and is upsetting the proper balance of power. The essential functions theory merely redefines the debate over the separation of powers that has existed since before the Constitution was ratified.

While this review of the debate over Congress' authority to limit

the judiciary's jurisdiction is necessarily cursory, it provides a backdrop for examining what Congress has actually done to limit the courts' jurisdiction in recent years, a topic that has not been investigated extensively in the literature. I will now move from theoretical review to empirical observations on Congress' behavior toward the courts.

The Empirical Study

I studied the frequency and nature of congressional denials of jurisdiction from 1988 to 2004 to gain understanding of how the use of this authority affected the relationships between the three branches of the federal government. I conducted text searches on LexisNexis of public laws enacted between 1988 and 2004. This period was selected because it contained the earliest laws (the earliest is P.L. 100-243, enacted February 9, 1988) in LexisNexis at the time and went through the 108th Congress.

I conducted two searches for each Congress. First, I searched for "judicial review." This is the most commonly used phrase to indicate review of laws and executive actions by the courts. I accessed each public law that appeared in the search results and then used the web browser's "Find in This Page" function to find "judicial review." An example of the phrase in statutory language might read: "There shall be no judicial review of any determination under this section by the Secretary." I read the text surrounding each occurrence of "judicial review" and determined whether the provision was an express denial of jurisdiction over a defined set of cases or a defined set of laws, rules, actions or decisions by any government agent. If I determined the provision was an express denial of jurisdiction, I recorded the public law number, Statutes At Large citation, the number of the section containing the provision, and the set of cases, rules or actions over which jurisdiction was denied in an appendix that is on file with the journal and author.[14]

Second, I conducted a broader search in case jurisdiction was denied but the language did not contain the phrase "judicial review." I searched for "court*." This search yielded any law that contained the word "court" and any letters thereafter (e.g., "courts," "courthouse," "courtroom"). I then searched within these results for

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[14]If you have questions or would like to examine this appendix, please contact the author at benjamin.j.keele@gmail.com or the journal at psajournal@union.edu.

the word "review." So, while the language "No court shall have jurisdiction to review any determination under this section by the Secretary," would not have been found in the first search, it would be found in the second search, thus providing a more complete count of provisions relating to judicial review. I repeated the "Find in This Page" procedure for any public laws I had not already searched.

For the purposes of this study, an express denial of jurisdiction is a provision of a public law that categorically and explicitly deprives the courts of jurisdiction to review or hear a defined class of cases, set of governmental actions, set of rules and regulations or set of statutory provisions, or that repeals a previously effective authorization of judicial review. It will be helpful to illustrate this definition with some examples that do not meet it.

Public Law 102-385, the Cable Television Consumer Protection and Competition Act of 1992, provides that any judicial review under the Act will be heard by a three-judge district court and any appeals from the district court shall go directly to the Supreme Court. This law, and many others like it, simply regulates the manner and forum in which judicial review may be had. Since jurisdiction is not completely denied but merely directed to specific places or in specific ways, such provisions are not congressional denials of jurisdiction for the purposes of this study. Also, many laws provide time limits for filing an action after which no court will have jurisdiction over the action. Again, these provisions are purely procedural in nature and are not the topic of this study.

Section 410 of Public Law 104-1, the Congressional Accountability Act of 1995, provides that "[e]xcept as expressly authorized by sections 407, 408, and 409, the compliance or noncompliance with the provisions of this Act and any action taken pursuant to this Act shall not be subject to judicial review." Here judicial review is regulated and constrained to a set of specifically authorized circumstances and legal grounds. For instance, if an employee of Congress feels her statutory rights have been violated, she must first go through counseling and mediation. If she is still not satisfied, she may either file a complaint with a review board or file a civil action in a United States district court. If she goes to the review board and loses, she may only appeal to the United States Court of Appeals for the Federal Circuit. While judicial review is certainly being circumscribed, it is still available and thus laws that limit jurisdiction over an area of law but do not eliminate it are not counted in this study.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Public Law 104-208, limits the remedies courts are able to utilize in immigration proceedings. For example, section 304 provides that "Any petition for review under section 242 of an order entered in absentia under this paragraph shall (except in cases described in section 242(b)(5)) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable." The legal grounds on which an alien can contest her deportation are limited by the law, but her ability to obtain judicial review is not utterly abolished.

The Anti-Terrorism and Effective Death Penalty Act of 1996 also limits remedies available in habeas corpus actions. According to the conference report for the Act, the law "sets a one year limitation on an application for a habeas writ and revises the procedures for consideration of a writ in federal court. It provides for the exhaustion of state remedies and requires deference to determinations of state courts" (U.S. House Committee of Conference 1996, 111). The Act also establishes other time limits within which the courts have jurisdiction over hearing appeals concerning new evidence. While prisoners have some access to the courts, this access is limited, although not eliminated, by the Act. Provisions that only limit but do not deny jurisdiction over a defined set of actions or rules are not counted in this study.

After collecting the data, I tabulated the number of provisions each Congress enacted that were express denials of jurisdiction. Because more than one denial of jurisdiction could be contained in one law, I also counted the number of laws within which these provisions were enacted. The table displaying these results is presented in the Findings.

This study focuses on cases in which Congress enacted laws that deprived the courts of jurisdiction over a defined set of actions, rules or cases between 1988 and 2004. Therefore, bills that were proposed but not enacted are not reflected in the findings. Laws that were enacted that regulate or partially limit the courts' jurisdiction have an important influence on the powers of the judiciary, but could not be counted under the definition of express denial of jurisdiction because including them would have required developing criteria for classifying the different degrees of restrictions on jurisdiction, a task too ambitious for a study of this scope. Finally, to have a complete picture of Congress's actions toward the judiciary's jurisdiction,

cases in which Congress granted judicial review and expanded the courts' jurisdiction should be considered. Future studies should expand upon these findings by examining cases outside of this study's scope.

Findings

I found that between 1988 and 2004, Congress enacted 166 express denials of jurisdiction in 112 laws. The 104th Congress (1995-1996) had the most denials at 27, while the 103rd Congress (1993-1994) had the fewest at seven. Since the second session of the 100th Congress (1987-1988) alone had 19 denials, it is possible that the 100th Congress may have actually passed the most. Table 1 presents the total number of denials enacted and the trends of denials over the studied period.

As the table shows, there is no recognizable trend in the number of denials enacted in each Congress. The 104th Congress saw the enactment of the Prison Litigation Reform Act of 1995, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Anti-Terrorism and Effective Death Penalty Act of 1996, all laws that significantly limited the jurisdiction of the courts. It is possible that the Republican Party, which had attained majority control of both houses of Congress in 1994, was finally implementing its preferences in these policy areas. The 107th Congress was the Congress that dealt with the September 11, 2001 terrorist attacks. The 107th Congress enacted the USA PATRIOT Act and other legislation that included denials of jurisdiction to increase government secrecy and empower the executive branch to deal with reforms necessary to bolster homeland security.

Other than the significant peaks in the 101st, 104th and 107th Congresses, there is no pattern in the number of express denials of jurisdiction. It is worth noting, however, that Congress regularly enacts at least a half-dozen or more denials of jurisdiction in a two-year period. While controversial and unpopular court decisions may spark a wave of jurisdiction-stripping proposals, a stream of jurisdictional denials constantly flows out of Congress without much publicity or prominent debate.

Table 1: Enacted Denials by Congress, 1988-2004

Congress	Number of Express Denials	Number of Public Laws with Denials	Total Number of Public Laws Enacted	Percentage of Public Laws with Denials
100th (1988 only)	19	14	470	2.9%
101st (1989-90)	26	18	650	2.7%
102nd (1991-92)	13	10	590	1.6%
103rd (1993-94)	7	6	465	1.2%
104th (1995-96)	27	15	333	4.5%
105th (1997-98)	19	10	394	2.5%
106th (1999-00)	15	11	580	1.8%
107th (2001-02)	26	16	377	4.2%
108th (2003-04)	14	12	498	2.4%
Total	166	112	4357	2.5%

Most of the denials are narrow in scope. The majority of them relate to a specific decision or set of decisions by an executive branch official. Out of the 166 denials enacted in the studied period, 144, or 86.7%, shielded actions by executive branch officials. One example is P.L. 101-649. A provision in the law shields decisions by the Attorney General relating to granting or denying temporary protected status to aliens. Presumably Congress included the denial of judicial review because Congress did not want aliens whose requests for temporary protected status were denied to be able to delay their deportation by litigating the denial. Another example is P.L. 102-579. Several provisions in the law prevent judicial review of determinations regarding the safety of transporting and disposing of radioactive transuranic waste materials. Since the disposal of

radioactive materials is controversial and opposed by environmental groups and the communities near the storage sites, Congress probably wished to prevent litigation from delaying the disposal of these dangerous materials.

Six denials, or 3.6% of the total number, bar judicial review of decisions made by administration officials in order to comply with international treaties. Certainly American foreign policy could be complicated by lawsuits challenging actions that are necessary for the United States to remain in compliance with its obligations to foreign nations. P.L. 100-330 blocks judicial review of orders to enforce a fisheries treaty between the United States and several Pacific Oceans islands. P.L. 100-418, the Omnibus Trade and Competitiveness Act of 1988, contains provisions that deny the courts jurisdiction over actions by the government to enforce anti-dumping and countervailing duty laws. Traditionally the executive branch has been responsible for foreign relations and economic policy, so perhaps this was the rationale for keeping the judiciary from becoming involved in international trade disputes.

Twelve, or 7.2%, of the denials place decisions over informant award programs outside of the judiciary's purview. The federal government has many award programs to provide incentives to informants and whistle-blowers. Awards are available for informing on insider trading (P.L. 100-704), defrauding the government (P.L. 101-123), falsifying drug statements (P.L. 102-282), making fraudulent telemarketing calls (P.L. 103-322), and conspiring to commit terrorist acts or traffic narcotics (P.L. 105-323). These jurisdictional exemptions seem to be justified on the basis of secrecy and efficiency. Gathering information from informants on any of a broad range of crimes requires secrecy to protect the integrity of the investigation and the security of the informants themselves. It would be difficult to protect informants and administer the awards program effectively if an informant could sue because she is displeased with the amount of her award.

Many actions relating to employees of the Central Intelligence Agency are immune to judicial review. Denials of jurisdiction over CIA personnel decisions were enacted three times in the studied period. P.L. 102-496 denied jurisdiction to review decisions relating to the CIA's retirement and disability system. P.L. 105-272 prevented courts from reviewing actions of the CIA Director and the CIA Inspector General relating to complaints from CIA employees. Finally, decisions relating to the compensation, insurance and taxes

of undercover intelligence agents were shielded from judicial review by P.L. 108-487. Since it is difficult to maintain secrecy in civilian courts, it is likely that the CIA requested and Congress granted protection from judicial review over some of the ways the CIA deals with its agents and employees.

Five, or 3.0%, of the denials of jurisdiction were used to settle disagreements over timber sale on federal land. Perhaps environmentalist advocacy groups were litigating or threatening to impede selling timber or building roads in national parks, so Congress made the decisions relating to selling timber or building roads in those parks unreviewable. For example, P.L. 100-446 finalized the Forest Service's plan to sell timber and build roads in the Silver Complex Fire Recovery Area of the Siskiyou National Forest and sell timber from the Mapleton Ranger District of the Siuslaw National Forest. Forest Service guidelines for selling timber in Washington and Oregon were at the center of a court dispute. In P.L. 101-121, Congress denied the courts jurisdiction to review any sales permitted by an agreement between the government and the plaintiffs.

Between 1988 and 2004, Congress enacted two denials covering federal laws and two denials related to administrative regulations. So the vast majority of denials of jurisdiction do not prevent review of legislation or regulations, the type of denial most frequently mentioned in the media. Rather, most of the denials are narrowly tailored to protect specific executive actions and decisions. Instead of passing the Marriage Protection Act to shield an entire section of the United States Code from review, Congress is enacting denials of jurisdiction like one contained in P.L. 108-7 that prevents courts from reviewing the distribution of payments to tobacco farmers.

Discussion

Because most unreviewable actions are undertaken in the executive branch, congressional denials of jurisdiction relate as much to the separation of powers between the judiciary and the executive as they relate to the separation between the judiciary and legislature. Determinations on the legality of many decisions are being made between members of Congress and administration officials, who then exclude the judiciary from participating. Since many of the decisions over which judicial review is prohibited are narrow in scope, related to national security (an area the judiciary tends to tread lightly in any

case), or merely part of the implementation of a larger project that is judicially reviewable, the distortion this phenomenon has on the relationship between the three branches is probably slight.

It must be emphasized that if this study had undertaken the task of counting every grant of jurisdiction, the number of grants would far outweigh the number of denials. Denying jurisdiction, while more common than may be generally perceived, is still the exception to the rule of granting judicial review. However, the available data do not allow us to be certain that the practice has not become more common over time. While the number of jurisdictional denials over the last 16 years has been related to shifts of political power and catastrophic events, it is possible that the legislature and executive may be tending more often to exclude the judiciary from the decision-making process. If this practice becomes more prevalent, it will constitute a major shift of power from the judicial branch to the legislative and executive branches that draft and implement the laws.

Another aspect of the current practice of limiting the jurisdiction of the courts that may raise concern is the low level of public attention paid to it. While bills with sweeping and controversial denials of jurisdiction are heavily covered and debated in the news media, smaller denials of executive decisions are largely ignored. Ironically, the very characteristics of the proposals that are heavily discussed are also those that make it extremely unlikely that the bill will pass. The provisions that are likely to be enacted, however, are innocuously inserted into legislation and enacted without fanfare.

This lack of attention is due to several factors. First, the bills that contain these denials are not identified as bills to reduce the jurisdiction of the courts. Rather, they are presented as proposals to reform Medicare, to fund the Department of the Interior, or to implement an international treaty. The denial of jurisdiction is a minor detail, one sentence that surely is knowingly inserted but not carefully examined. Second, the areas over which jurisdiction is denied are generally narrow and obscure, hardly interesting material for a newspaper story or television broadcast. Third, since the set of people whose potential lawsuits are barred by the provision is relatively small (again because the scope of the denial is narrow), there are few people to complain when their ability to be heard in court is threatened.

The lack of publicity over this aspect of the relationship between the branches of government also carries the risk that American citizens, happily presuming that their interests, if necessary, can be

vindicated in court, are actually having their right to be heard in court quietly taken away from them. Provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996 and USA PATRIOT Act restrict judicial review over important individual rights (habeas corpus review and national security letters, respectively) but do not entirely eliminate it and thus were not counted in this study. Nonetheless, if the practice of denying the courts jurisdiction outright becomes more commonplace, important rights over which judicial review is currently circumscribed may be barred from the courthouse.

Certainly the executive and legislative branches are politically accountable, but the voters cannot vote for or against a candidate on the basis of information they do not possess. To mention a parallel case, no legislator need fear severe electoral repercussions for his vote on the intelligence budget, because the budget is classified. Likewise, provisions that are unclassified but so obscure as to be virtually unknown to the electorate do not have consequences at the ballot box. Many of the jurisdictional denials are buried in large and complex pieces of legislation. This makes it difficult for citizens, the press, or even most legislators to notice the denials and voice any concerns.

If this is the case, which branch is most likely to make wise policy decisions and protect individual rights? It is difficult to say. On the one hand, Congress and the administration possess information and experience that is unavailable to the courts. On the other hand, the executive's and legislature's enmeshment in the political process and the influences of interest groups that affect it may mean that some groups are unjustly harmed by decisions that are also rendered immune to judicial review. As one scholar wrote about the Founders' view of the courts, "the supporters of the Constitution believed that the *most* dangerous branch, the one with the greatest capacity to annoy or injure rights, would be the legislature, because, through it, a majority actuated by a sense of injustice could effect its designs" (Kozlowski 2003, 85-86, emphasis in original). The courts are supposed to protect rights and invalidate actions that violate legal rights. It may be true that the decisions Congress has protected from judicial review would have passed muster and the denial of jurisdiction merely made the administration of public policy more efficient. However, there is no way of knowing this because any level of judicial review has been foreclosed by the jurisdictional denial.   Congressional   denial   of   the   courts'

jurisdiction and the public's low level of awareness of the practice raise issues relating to the transparency of executive decision-making and individual rights.

Conclusion

This study has revealed what is a largely unexamined practice in congressional and executive policy-making: shielding executive determinations from judicial review. Regardless of whether Congress is appropriately exercising its constitutional authority, history demonstrates that Congress has proposed and passed legislation denying jurisdiction over certain cases and decisions. Again, it must be acknowledged that Congress grants judicial review far more often than it denies it. But it must also be recognized that the practice in which Congress and the executive branch are engaged raises concerns for the future of the constitutional separation of powers, open governance and protection of individual rights.

Further studies should be conducted to determine more accurately the nature of the denials of jurisdiction, the public perception (or lack thereof) of this governmental behavior, how the judiciary has responded to these denials, and the historical trends prior to 1988. This information will help us better assess the wisdom and propriety of Congress' use of its power to make exceptions to and regulations of the judiciary's jurisdiction.

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