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## Table of Contents

Volume XI Number I Spring 2011

Patronage and Appointee Management Performance  
Nick Gallo, *Vanderbilt University*  
1

Cultivating Citizens: The Care of the Self in Plato’s *Alcibiades*  
M. Christopher Sardo, *College of William & Mary*  
16

Preserve, Protect, and Define? President Bush’s Political Utilization of Signing Statements  
Derek Cash, *Hendrix College*  
43

Targeted Killing in International Law: How *Hostis Humani Generis* Affects the Debate  
George Ashenmacher, *St. John’s University*  
71

Political Satire and Candidate Evaluations in the 2008 Election  
David Meder, *Florida State University*  
95
Editor’s Preface to the Spring 2010 Edition

As we close the first chapter on the College of William and Mary’s first year hosting the Pi Sigma Alpha Undergraduate Journal of Politics, we have a great deal to reflect on and much to be thankful for. As this is the fourteenth issue sponsored by Pi Sigma Alpha, the National Political Science Honor Society, and the twenty-first issue since its initial publication, we are proud to carry on the high standard of quality scholarship. We are also excited to be able to spread the Journal this year to a wider audience through electronic publication and expanded outreach efforts. We were proud to represent the Journal this year at the Midwest Political Science Conference this spring in Chicago, and we are eager to continue developing new relationships with other students and scholars across the country.

Concerning this edition, there are many people we wish to recognize. First, we would like to thank the Pi Sigma Alpha Executive Council and the Executive Committee for their endless support and tireless dedication.

Additionally, we would like to recognize all of the student Editorial Board members, who joined us every week with unequaled insight and enthusiasm. Likewise, we would like to acknowledge our faculty Advisory Board members, whose expertise and assistance ensure the Journal’s prevalence in the world of political science publications.

We would also like to extend our appreciation to members of the faculty of the Government Department and staff of Information Technology at the College of William and Mary. Their guidance and skill make production of the Journal possible.
Finally, we would like to express our heartfelt gratitude to our two Faculty Advisors, Ron Rapoport and Chris Nemacheck, for always challenging us and encouraging us to be our best selves, students, scholars, and editors.

As always, we have relished the opportunity to receive so many diverse submissions from colleges and universities across the country, and we look forward to receiving many more in the coming years.

We hope you enjoy the Spring/Summer 2011 edition of the Pi Sigma Alpha Undergraduate Journal of Politics.

Warm wishes,

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 are written with a well-developed thesis, compelling argument, and original analysis. The maximum page length for submissions is 35 double-spaced pages. 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@wm.edu. Please include name, university, and contact details (i.e., mailing address, e-mail address, and phone number).
Patronage and Appointee Management Performance

Nick Gallo, Vanderbilt University

This paper uses the Federal Human Capital Survey (FHCS) to measure the management performance of appointed federal executives across a multitude of government agencies. It evaluates whether background differences among managers, such as work for the campaign or political donations (measures of patronage), influence employee evaluations of executive leadership, management, and overall agency performance. It finds that agencies run by appointees from the campaign scored lower in terms of leadership, management and work climate than agencies run by outside appointees.

As evidenced by recent natural disasters around the world, emergency rescue endeavors are an extremely important aspect of any government’s duty to protect its citizens. In the late summer of 2005, the United States faced its own natural disaster and national tragedy: Hurricane Katrina. When the 175-mile-per-hour winds and incessant rains of the Category 3 hurricane barraged the coast of Louisiana and Mississippi, citizens looked to the Federal Emergency Management Agency (FEMA) for steady, sure-handed guidance and aid in response to the tragedy. FEMA, unfortunately, fell short of the citizens’ expectations. In the days and weeks that followed, prompted by the organization’s mishandling of the rescue mission, journalists, citizens, and politicians thoroughly scrutinized FEMA. These investigations revealed that the head of the agency, Michael Brown, had no prior emergency management experience, but Rather won this position because he was the college roommate of FEMA’s prior director, Joe Allbaugh. Brown and his principal staff had little expertise in emergency management, which contributed to the poor performance of FEMA in Katrina’s aftermath. While Brown became the poster child for cronyism in government and the negative consequences that can follow, little research has systematically examined the relationship between patronage appointments and government performance during the Bush administration. This paper aims to ameliorate this lack of investigation, by thoroughly analyzing this relationship.

Political appointees turn over with high frequency (particularly after a presidential election), and the American bureaucratic state is full of them. One of the most challenging and politically salient
aspects of a president’s job is finding and selecting Americans to fill certain positions within their administration (Mackenzie 1981). The political appointments made by presidents extend the president’s control over the government and satisfy patronage demands (Weko 1995). Over time presidents have expanded the number of appointees by layering them on top of higher-level civil service employees (Light 1995; Lewis 2008). One unfortunate aspect of the politicization of the bureaucracy by presidents is that it increases opportunities for patronage.

This paper evaluates how patronage appointees influence performance in government agencies by analyzing the responses to survey questions in the Federal Human Capital Survey. The paper is organized into five different sections. The first section will cover previous work on patronage. The second section will describe the patronage-performance link. The third section describes the data, variables, and methods. The fourth section reports the results, and the final section includes the discussion and conclusion. The paper finds a link between patronage and performance among appointees managing federal agencies and argues that those appointees who come from patronage backgrounds perform poorly when evaluated by their peers.

**What Do We Know About Patronage and Performance?**

To begin evaluating the effects of patronage and performance, the term patronage must be defined. The most conventional definition of this phenomenon is the hiring or selection of candidates based not on merit and expertise, but personal allegiances, political persuasion and other ideologically based factors. As the case of Michael Brown suggests, the effects of politicization and patronage can be quite large (Fonda and Healy 2005). Generalizing from one case can be difficult, however, and little research has been done on patronage and its effects on performance (Lewis 2009).

Historically, civil service reform has been a major part of American political debates. In 1883, the Pendleton Act inaugurated a formal system of hiring federal employees based on merit rather than connections to politicians. According to Bearfield, “The civil service reform movements of the Progressive Era significantly altered the legitimacy of patronage as an acceptable form of personnel management” (2008, 67). Implicit in these reforms and the subsequent expansion of civil service was a belief that merit
appointments would improve federal management performance. Despite the importance of this topic for political science historically, work on patronage and performance became rarer as the age of patronage was believed to be over (Sorauf 1960, 116). Sorauf (1960) wrote that, “Very few studies exist of the actual operation of patronage systems across the country… In the absence of specific reports and data, one can only proceed uneasily on a mixture of political folklore, scattered scholarship, professional consensus, and personal judgment.” (28) Little has changed in the time since then, as researchers have yet to systematically evaluate the influence of patronage.

Scholars have conducted some important research on appointees and performance, but this work does not untangle the differences in performance between different types of appointees (i.e., merit-based appointees and patronage-type appointees). Collins et al. (2006), Gilmour and Lewis (2006) and Lewis (2008) all found that programs administered by appointees systematically performed worse than programs administered by careerists. Furthermore, Gallo and Lewis (2010) determined, “appointee management also has systematic harmful effects on program performance on average” (18). The research clearly finds a direct link that appointee-run agencies perform worse than careerist-run agencies, but the data doesn’t definitively conclude that patronage is the result. As a result, it is necessary to examine that relationship in order to understand how patronage plays a role in government agencies and the effectiveness of government.

Gallo and Lewis (2010) provide the only study that begins to analyze that link using Performance Assessment Rating Tool (PART) scores, which empirically demonstrate how the persistence of patronage in America influences government performance. They find that programs led by appointees from the campaign received the lowest PART scores; programs led by other appointees received the next lowest evaluation, while programs run by careerists received the highest PART score.

However, PART scores have been criticized as a measure of performance for a number of reasons. First, it is extremely difficult to compare performance across agencies because of each agency’s differing responsibilities, structure, and culture (Lewis 2007). However, Gallo and Lewis (2010) seek to avoid this issue by distinguishing programs by type, in order to control for program variation, budget size, and structural features of agencies. Second,
PART scores can be subjective because performance is hard to observe. It is difficult for government officials, researchers and politicians to agree on whether the performance of an agency was successful or not because it is difficult to observe whether programs achieve their stated goals and objectives and several different policy evaluation criteria may exist. In addition, PART scores are inconsistent in terms of their scope and span, and some research suggests that certain programs score higher because agency budget officials are more proficient at the PART process (Gilmour 2006). Therefore, in addition to the previous research using the PART scores, this paper will use data from the Federal Human Capital Survey, a survey of government employees about their organizations, to measure performance. This survey data is intriguing because it allows employees to honestly answer questions about their managers and organizations, which can lend insight about political appointees. It also avoids another central issue with PART scores: the fact that they are determined by the Office of Management and budget, which is an agency that may also be politicized as a result of patronage.

Extended research is necessary to uncover the true effect of patronage on the United States government’s performance. Because existing research has largely been anecdotal and qualitative, more systematic quantitative research can supplement and augment existing research on this topic. The aim of this study is to build on past scholarship by using FHCS data to further the literature on the subject and to determine whether there is a causal relationship between patronage political appointees and government performance.

**How Patronage Influences Performance**

Despite promises to improve government and hiring practices, all presidents nominate some political appointees based on political loyalty or personal relationships (Edwards 2001). For federal management, patronage appointees differ from the other appointees and career managers in three important ways: patronage appointees’ backgrounds are systematically different; their focus is less frequently on the agency and its programs; and their tenure is shorter.

First, patronage appointees generally display a weaker job performance than other appointees and careerists because they need not demonstrate competence but *loyalty* during the appointment
process. Gallo and Lewis (2010) indicate that there are systematic differences in the backgrounds of appointees and careerists as well as systematic differences between patronage appointees and other appointees. In general, prior expertise in the agency’s field of work is lower among patronage appointees than regular appointees; and, as such, competence among patronage appointees is often accidental rather than by design. Based on a study of appointees’ assessments of fellow appointees from 1984 to 1999, 79% of respondents said that while some appointees are highly talented, others do not have the skills or experience required for their jobs (Edwards 2001). This rating could be attributed to the fact that some appointees are brought in to “shake things up,” which is viewed with apprehension or contempt by some long-standing employees, or the fact that presidents are at times drawing from a small, incompetent pool of potential candidates for appointments.

Additionally, patronage appointees are less likely to be primarily focused on the agency, its management, and long-term health than other appointees. Oftentimes, patronage appointees are motivated by their own political goals, their individual career advancement, and the prospect of future jobs in consulting, business, and law after their tenure in government. Excluding those who come out of retirement to assume an appointed position, appointment to a government post serves as an important stepping-stone and increases the likelihood that an individual will achieve their external career goals. It is not the culmination of their life’s work as it would be for careerists or other appointees. Indeed, Brewer and Maranto (2000) demonstrate that appointees rank higher on the goals of career advancement and policy promotion than career executives, who score higher on support for the organization. They also note that patronage appointees focus on the policy agenda, with one or two main goals as opposed to long-term planning and instituting organizational maintenance. For patronage appointees, politics rather than policy is more often the central focus, which has implications for federal management performance.

Once more, patronage appointees perform worse than other appointees and careerists because they have shorter tenures. Executive tenure is an important determinant of government performance, and career executives and other appointees have much longer tenure and experience in the agency than political and patronage appointees (Gallo and Lewis 2010; Oh and Lewis 2008). As mentioned previously, because these jobs serve as stepping-
stones for patronage appointees, many leave after a short stint to pursue other opportunities. This can damage performance in several ways. The conventional wisdom suggests that it takes an entire year to learn most government jobs—to say nothing of gaining the requisite experience and skill to do them well (Gallo and Lewis 2010). By the time many of these appointees are hitting their stride as a performer in the agency, it is time for them to leave or next presidential election. Short tenures also make it is difficult for patronage appointees to cultivate expertise as well as start and follow through on new initiatives. Within the agency itself, members sometimes perceive short tenures of patronage appointees as a lack of consideration for or investment in the agency’s function which, in turn, harms morale and productivity. Thus, as the effects of short tenure accumulate over time, career professionals grow cautious and hesitate to trust patronage appointees.

**Data, Variables, Methods**

To evaluate the relationship between patronage and performance I use data from the Federal Human Capital Survey (FHCS) from 2002, 2004, 2006 and 2008. This survey includes questions that measure government employees’ beliefs about the leadership and management of their organizations. The survey includes responses from over 200,000 people in federal government with response rates of over 50%. I analyze average responses by agency, using four different questions from the Federal Human Capital Survey that gauge the performance of managers because each deals with the way the employees regard their organizations’ administration by their senior leadership:

**Question A:** I have a high level of respect for my organization’s senior leaders. [Strongly Agree, Agree, Disagree, Strongly Disagree]

**Question B:** In my organization, leaders generate high levels of motivation and commitment in the work force. [Strongly Agree, Agree, Disagree, Strongly Disagree]

---

1 While it is worth considering why some employees responded and others did not, I found no real evidence of selection bias in the data.
**Question C:** My organization’s leaders maintain high standards of honesty and integrity. [Strongly Agree, Agree, Disagree, Strongly Disagree]

**Question D:** How satisfied are you with the policies and practices of your senior leaders? [Very Satisfied, Satisfied, Neither Satisfied nor Dissatisfied, Dissatisfied, Very Dissatisfied]

The average responses to these questions by agency were matched with managers identified in Gallo and Lewis (2010). The overall percentage of respondents from each agency that answered “Strongly Agree” or “Very Satisfied” were also matched with the appointed managers who were in charge of those agencies during the time of the survey and identified in Gallo and Lewis (2010). In total, 137 appointees from Gallo and Lewis could be matched with the appropriate units and years in the FHCS.

Using the *Federal Yellow Book*, I was able to determine which managers were in charge of each agency during the administration of the FHCS, and I collected biographical information on all of the managers through official U.S. government website sources, LexisNexis searches and a variety of other sources. I then matched the survey responses to the managers in charge of their organizations and controlled for the type of manager (appointee or careerist). The key independent variables in this analysis are whether these managers worked on George W. Bush’s presidential campaign or whether they gave a donation to the campaign of over $250. These variables are included to measure how much patronage factors may have played a role in the selection of appointees.

Of the 137 appointees identified, 20 worked for the campaign or party and 64 of 137 were donors to the campaign. Figure 1 graphs the proportion of respondents in each agency that answered “Strongly Agree” or “Very Satisfied” to the each of the aforementioned questions, by whether or not that agency’s manager worked on the campaign.²

² Note: This figure shows the difference between government agencies run by managers who worked on George W. Bush’s presidential campaign. The percentage of “Strongly Agree” or “Very Strongly” responses by government employees to the four questions show differences between the opinions of employees of superiors who worked on the presidential campaign. The questions are: QA: “I have a high level of respect for my organizations’ senior leaders.” QB: “In my organization, leaders generate
Evidently, in all of the questions, appointees who did not work on Bush’s presidential campaign were evaluated more positively by federal employees. Specifically, respondents were more likely to report high levels of respect for their organizations’ senior leaders and report that their agency’s senior leaders generated high levels of motivation and commitment, maintained high standards of honesty and integrity, and implemented satisfactory policies and programs. If working on the presidential campaign is an indicator of patronage, then this evidence suggests that patronage may be having a negative impact on leadership and management performance.

The following table is includes a descriptive table of the data that will be used in subsequent analyses in this paper.

high levels of motivation and commitment in the work force.” QC: “My organization’s leaders maintain high standards of honesty and integrity.” QD: “How satisfied are you with the policies and practices of your senior leaders?” The differences in responses are statistically significant at the 0.05 level for QA and QC.
Table 1. Descriptive Statistics of Dependent and Independent Variables

<table>
<thead>
<tr>
<th>Variable (Min, Max)</th>
<th>Observations</th>
<th>Mean</th>
<th>Std. Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>QA Strongly Agree (8.8, 28.2)</td>
<td>86</td>
<td>15.16</td>
<td>4.33</td>
</tr>
<tr>
<td>QB Strongly Agree (4.2, 18.4)</td>
<td>102</td>
<td>9.20</td>
<td>2.84</td>
</tr>
<tr>
<td>QC Strongly Agree (8.6, 27.9)</td>
<td>102</td>
<td>15.53</td>
<td>5.13</td>
</tr>
<tr>
<td>QD Very Satisfied (4.8, 18.7)</td>
<td>86</td>
<td>8.94</td>
<td>2.73</td>
</tr>
<tr>
<td>Worked on Campaign (0,1)</td>
<td>137</td>
<td>0.15</td>
<td>0.35</td>
</tr>
<tr>
<td>Campaign Contribution (0,1)</td>
<td>137</td>
<td>0.47</td>
<td>0.50</td>
</tr>
<tr>
<td>Commission (0,1)</td>
<td>137</td>
<td>0.19</td>
<td>0.39</td>
</tr>
<tr>
<td>Education Level (0, 4)</td>
<td>126</td>
<td>2.17</td>
<td>0.97</td>
</tr>
<tr>
<td>Public Experience (0,1)</td>
<td>137</td>
<td>0.92</td>
<td>0.27</td>
</tr>
<tr>
<td>Bureau Experience (0,1)</td>
<td>136</td>
<td>0.34</td>
<td>0.47</td>
</tr>
<tr>
<td>Private Experience (0, 1)</td>
<td>137</td>
<td>0.75</td>
<td>0.43</td>
</tr>
<tr>
<td>Number of Programs (1, 15)</td>
<td>134</td>
<td>2.63</td>
<td>2.75</td>
</tr>
</tbody>
</table>

The first four rows denote the questions from the FHCS and describe the measures of performance. The next two rows are variables distinguishing whether the manager worked on George W. Bush’s presidential campaigns in the year 2000 or in 2004 and whether those managers donated to either of those campaigns, respectively. Those two variables are measures of patronage connection. The rest of the variables in the table are included as controls in regression models described below. They are factors that influence performance and may be correlated with the key variables listed above. Among these, the first control variable is whether the manager is working for a commission, which is very different from working for an administration. Additionally, education level is used as a control variable and coded from 1 to 4 in order of Bachelor’s degree, Master’s level degree (e.g. M.A. or J.D.), M.D., and Ph.D. For the purposes of this study, we assume that the differences in educational attainment between the four educational categories are equal and important. Other factors that are included as control variables are whether or not the manager has previous public management experience (at the state, local or national level), whether they have previous experience working in the agency they are now managing, or whether they have private sector work experience. Lastly, I added a control variable detailing the number of programs each manager had to oversee using the PART data from Gallo and Lewis (2010) to...
measure whether managers who are in charge of larger agencies receive different scores from their employees.

I produced a series of regression models using ordinary least squares, and I calculated significance levels using robust standard errors. Coefficient estimates are included in Table 2, and the models fit the data well. In all cases, I can reject the null that the models do not improve over a constant only model.

Table 2. Models of Average Survey Responses on Leadership and Management Questions by Appointee Characteristics

<table>
<thead>
<tr>
<th>Question A</th>
<th>Question B</th>
<th>Question C</th>
<th>Question D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worked on Campaign</td>
<td>-2.83*</td>
<td>-0.82</td>
<td>-2.66*</td>
</tr>
<tr>
<td>Donated to Campaign</td>
<td>0.09</td>
<td>-0.06</td>
<td>0.19</td>
</tr>
<tr>
<td>Agency Factors: Commission</td>
<td>2.62</td>
<td>1.01</td>
<td>4.03</td>
</tr>
<tr>
<td># of Programs</td>
<td>0.43</td>
<td>0.20</td>
<td>0.20</td>
</tr>
<tr>
<td>Personal Factors: Education Level</td>
<td>1.33**</td>
<td>0.93**</td>
<td>1.87**</td>
</tr>
<tr>
<td>Public Experience</td>
<td>0.41</td>
<td>-0.75</td>
<td>-0.01</td>
</tr>
<tr>
<td>Bureau Experience</td>
<td>1.65</td>
<td>1.42*</td>
<td>2.06</td>
</tr>
<tr>
<td>Private Experience</td>
<td>1.72</td>
<td>0.56</td>
<td>-0.23</td>
</tr>
<tr>
<td>N</td>
<td>82</td>
<td>95</td>
<td>95</td>
</tr>
<tr>
<td>F</td>
<td>7.28</td>
<td>6.26</td>
<td>7.16</td>
</tr>
<tr>
<td>R²</td>
<td>0.38</td>
<td>0.29</td>
<td>0.36</td>
</tr>
</tbody>
</table>

For the first question (column 1), “I have a high level of respect for my organization’s senior leaders,” the results show a strong difference between the responses of government employees if their

---

3 Note: *p< 0.05, ** p<.01 in two tailed tests. Significance determined using robust standard errors. Dependent variable is the average percentage of “Strongly Agree” or “Very Strongly” responses by government employees to the four questions show differences between the opinions of employees of superiors who worked on the presidential campaign. The questions are: QA: “I have a high level of respect for my organizations’ senior leaders.” QB: “In my organization, leaders generate high levels of motivation and commitment in the work force.” QC: “My organization’s leaders maintain high standards of honesty and integrity.” QD: “How satisfied are you with the policies and practices of your senior leaders?”
manager did or did not work on President Bush’s campaign. The coefficient is statistically significant at 0.05 (the $P>|t| = 0.038$). Substantively, the estimates indicate managers who worked on the campaign received 2.8 percentage points fewer “Strongly Agree” responses to the question than their counterparts who did not work on the campaign. This is a strong reference point for the idea that patronage has a negative effect on management and leadership performance. Those appointees who worked on the presidential campaign are systematically more likely to have been given their jobs because of that work as opposed to merit or expertise. Whether the manager contributed to the campaign, however, did not have a discernable impact on FHCS scores. Another interesting estimate in the model was that the Education Level variable was statistically significant at the 0.01 level. For each higher level of education on the 1-4 scale, the manager received nearly an entire percentage point more “Strongly Agree” responses.

For the second question (“In my organization, leaders generate high levels of motivation and commitment in the work force”), the results did not show a statistically significant difference between the responses of government employees if their manager did or did not work on Bush’s campaign nor if they donated to the campaign. While the coefficient is negative, suggesting that agencies headed by campaign staff or donors perform worse, I do not reject the possibility that working on the campaign has no effect on performance.

Nevertheless, a few other interesting conclusions could be drawn from the estimates. The education level and previous bureau experience as variables were all statistically significant at the 0.01 level. For each higher level of education on the 1-4 scale, the manager is estimated to receive almost an entire percentage point more “Strongly Agree” responses and those with previous bureau experience are estimated to receive 1.41 percentage points more “Strongly Agree” responses than their counterparts without prior experience in their bureau. Thus, higher education level and previous bureau experience were seen to improve the scores in this survey question.

The third question “My organization’s leaders maintain high standards of honesty and integrity,” showed a statistically significant difference at the 0.05 level between managers that worked on the campaign and those who did not. Substantively, agencies headed by a manager who worked on the campaign received 2.66 percentage
points fewer “Strongly Agree” responses than the managers who didn’t work on the campaign. The other important variable, whether a manager contributed to the campaign, was not statistically distinguishable from zero.

This model also reveals significant relationships between education and performance evaluation as well as work experience and performance evaluation. The Education Level and Previous Bureau Experience variables were all statistically significant at the 0.05 level, and Education Level was significant at the 0.01 level. For each higher level of education on the 1-4 scale, the manager received 1.9 percentage points more “Strongly Agree” responses and those with previous bureau experience received 2.05 percentage points more “Strongly Agree” responses than their counterparts without prior experience in their bureau. Again, a higher education level and previous bureau experience were seen to improve the scores in this survey question. For our patronage-related purposes, the work on the campaign’s impact on scores is particularly important.

The results from the fourth question, (“How satisfied are you with the policies and practices of your senior leaders?”) did not reveal a difference between the responses of government employees based on whether their manager did or did not work on Bush’s campaign nor if the manager donated money to the campaign. Furthermore, as observed in the previous data sets, Education Level and Previous Bureau Experience were all statistically significant—this time all at the 0.01 level. For each higher level of education on the 1-4 scale, the manager received 0.8 of a percentage point more “Very Satisfied” responses and those with previous bureau experience received 1.84 percentage points more “Very Satisfied” responses than their counterparts without prior experience in their bureau. Yet, unlike the past questions, whether or not the manager was leading a commission was statistically significant at the 0.05 level, with those who worked on a commission receiving 1.94 percentage points more “Very Satisfied” responses than other managers. A higher education level, previous bureau experience and working on a commission were seen to improve the scores in this survey question.

In sum, it appears that working on the campaign, a reasonable indicator of patronage, has a negative impact on the performance of managers. While previous research has focused on the relationship between appointees and performance, few previous studies have distinguished among types of appointees. This research suggests that
appointees drawn from the campaign are less likely to contribute to high institutional performance than other appointees. The results also demonstrate that managers with higher education levels and prior bureau experience received systematically more positive evaluations from government employees. Appointees from the Bush campaign often lacked these educational and experiential characteristics as opposed to those employees who worked on a commission, generally had such characteristics, and received more positive ratings (Gallo and Lewis 2010).

**Discussion and Conclusion**

The influence that patronage appointees can have on government performance is noteworthy. In the case of Hurricane Katrina and Michael Brown, the situation was obvious; however, it was difficult to generalize about the effects of a topic as broad and subjective as patronage from only one high-profile case.

Through research that examines government at the macro-level and in a more descriptive context, scholars can understand how patronage plays a role in government successes and failures. In this paper, I demonstrate that agencies drawing appointees from a winning presidential campaign tend to receive lower scores on Federal Human Capital Survey questions, which seek to assess senior leadership and management performance.

Future research in this field should probe the performance of agency managers using some of the same biographical details I have used as well as other factors that could be proof of patronage in political appointments (such as personal relationships and connections to key interests, donors, or members of Congress). Analyzing that data will help researchers to understand the breadth and depth of the effect of patronage on government performance. Researchers must understand how patronage appointees are affecting the effectiveness of government to instigate a change in government and eliminate the problems that ensue due to mismanagement by patronage appointees.

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Cultivating Citizens: The Care of the Self in Plato’s Alcibiades

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Stephen White has recently argued that the challenges facing a late-modern democracy demand that the role of citizenship be reexamined. He concludes that the development of an ethos of “presumptive generosity,” based on attunement to the contingency of identity and forbearing restraint, can help reformulate citizens’ predispositions toward one another. In this paper, I hope to contribute to this discussion by drawing upon ancient philosophy to discern ways to cultivate such an ethos. Specifically, I turn to Plato’s Alcibiades and its explicit requirement of caring for the self. In this dialogue, Socrates equates self-care with self-knowledge, arguing that to care for the self one must use a mirror to reflect back toward himself. However, this passage requires interpretation. Julia Annas and David Johnson suggest a reading of this passage in which Alcibiades must use God as a mirror to reflect back on his soul. I argue that this is an attempt to situate the Alcibiades within Plato’s middle dialogues, and that an alternative, yet consistent reading can be provided. Friendship, while an imperfect mirror, can allow the subject to reflect back upon himself. This critical self-reflection allows her to recognize the contingency in her own identity, enabling her to cultivate White’s ethos of “presumptive generosity.”

In The Ethos of a Late-Modern Citizen, Stephen White argues that democracies face “novel challenges,” ranging from increasing economic inequality and globalization to attempts to renew democracy and the shifting conceptions of identity. White contends that a reconceptualization of the role of citizens and the cultivation of a distinctive “ethos” should form a response to these challenges (White 2009, 1). He further identifies five sites in the contemporary terrain of ethical and political thought that require attentiveness and restraint (White 2009, 8). As the scope of my project is much more...
limited, I focus on the intersection of two of these sites: the need to expand our moral imagination and the prospects of democracy. While White discusses the expansion of moral imagination between and beyond borders, I would like to concentrate on moral imagination within countries. As a result of the universalization of political activity, all individuals are political actors. This increases the potential sites of political interaction between citizens: jury pools, voting booths, town hall meetings, and parent-teacher associations all become political centers. In all of these encounters, there exists the potential for citizens to succumb to prejudicial predispositions and engage in oppressive behavior towards the other. This presents an inherent danger to participatory democracy, requiring action by citizens to confront these dangers.

To address these basic questions facing late-modernity, White argues that citizens in wealthy Western democracies must cultivate an “ethos” of citizenship based on both attentiveness to what Charles Taylor calls “sources of the self” and a presumptive moral restraint involving the suspension of judgment towards others (White 2009, 4-5). This “presumptive generosity towards the other” has two interrelated facets. First, it involves a different understanding of being that flourishes under agonism and constant self-rejuvenation, rather than stable identities and categories. Here one can see the influence of William Connolly, Chantal Mouffe, and Charles Taylor, among others, on White’s thinking. Second, “presumptive generosity” restrains the impulse to view differences as something that must be controlled or destroyed (White 2009, 48). By being attentive to the contingency of one’s being and identity, this ethos helps construct citizens who can resist the temptation to demonize

to struggles in identity politics and how one should recognize certain identity claims. The fourth involves expanding our moral imagination and sensibilities such that they can cover not only vast spatial distances in a globalized world but also distances created by race, sexuality, religion, and economic disparity. Finally, the fifth site involves speculating on the future of democracy and how to transform the traditional understanding of democracy in order to address late-modern challenges.

One can also see parallels to his earlier work in Sustaining Affirmation. He argues for a weak ontological sketch of the self, which offers “figurations of human being in terms of certain existential realities, most notably language, mortality or finitude, natality, and the articulation of ‘sources of the self,’” that that “for weak ontology, human being is the negotiation of these existential realities.” See White 2000.
the differences they encounter. Similarly, by recognizing the contingency of the “other” and that, in Rorty’s words, “every human life is a working out of a sophisticated idiosyncratic fantasy, and…that no such working out gets completed,” differences are no longer viewed as deviations or failings. This is because there exists neither a universally true human nature to appeal to nor an “authentic” identity to conform to (Rorty 1989, 42). These citizens approach political questions through a predisposition toward restraint and attentiveness rather than with predetermined answers and molds to fill.

In addition to the contingency of human identity, White adds to this portrait the shared burden of finitude (White 2009, 66-67). Not only does this burden involve the recognition of mortality, but also the recognition that all articulations of the self and all human projects are inherently and finitely incomplete. White argues that the recognition of this shared burden allows the articulation of a non-theistic grounding for the dignity of the human person, which is critically necessary to expand our moral imaginations (White 2009, 79). Such an ethos of presumptive generosity, while not providing concrete answers to political questions, would help to reframe citizens’ predispositions towards others and “significantly shift the background assumptions we carry with us as we perceive and dispute matters in morals and politics” (White 2009, 91).

I find this account of a late-modern ethos persuasive as a way to reframe citizenship as a response to the challenges that democracies now face. I believe that focusing on a particular ethos or spirit of citizenship that can help citizens to rethink their assumptions toward others -- including racial and sexual prejudices as well as moral stigmas associated with certain behaviors -- and can lead them to act in less oppressive and dominating ways. However, though I find White’s account of the advantages of this ethos intriguing, he does not specify how but merely assumes the cultivation of this ethos/citizen takes place. In other words, he too easily connects citizens to this ethos without demonstrating such a link. Despite his gestures towards such a method at the end of the book, arguing for “moving our more privileged selves to the places where the less

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3Rorty’s argument is that the combination of contingency and human finitude mean that the twin project of self-knowledge and self-creation can never be completed both because death cuts short the project and that there is no correct completion of the project.
privileged have their actual tables—in clubs, homes, or churches,” it remains unclear whether this move does not already require the ethos he is describing. The act of relocation already implies that citizens change their predispositions toward another by moving out of the comfort of their homes, both literally and symbolically, and engaging themselves in direct dialogue.

To address the problem of cultivating such an ethos, I turn to ancient philosophy, a region neglected by White despite his reliance on the idea of an ethos. Specifically, I defer to Plato’s *Alcibiades* and its focus on caring for the self as a necessary prerequisite for virtuous and just political action. This gesture towards Plato may seem problematic in attempting to articulate a political strategy for late-modernity because of his explicit linkage of politics and metaphysical speculation. However, the purpose of this paper is not to employ a Platonic political theory to address late-modernity, but rather to extract and translate his concept of the care of the self in the *Alcibiades* in order to augment the White’s late-modern ethos.

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4 Despite a brief discussion of the etymology of the word, White confines his discussion of ethos to more contemporary thinkers. While this may be in the interest of avoiding the metaphysical baggage of classical philosophy, it seems paradoxical to ignore the original meaning and intent of such a central concept.

5 This is especially problematic in terms of White’s attempt to situate this ethos within what he calls a “weak ontology,” in which certain ontological figures, “as well as some basic conceptualizations of how those figures interrelate in terms of language, finitude, natality, and the articulation of our deepest ‘sources of the self.’” This is an attempt to move beyond foundationalist ontologies without denying that certain ontological commitments have particular significance. See White 2009, 4 and White 2000, 4-5.

6 One may also object to my use of the *Alcibiades* based on various charges of inauthenticity. However, questions of authenticity are beyond the scope of this paper and cannot be easily, or even definitively, resolved. For my purposes I will treat the dialogue as part of the Platonic corpus for three reasons: first, the burden of proof should be on those proving its inauthenticity; second, it has a long history of being included in the Platonic corpus and has been vouched for by modern scholars such as Annas and Klosko; and third, if the argument in this paper is seen as valid then the dialogue itself will have been shown to have value regardless of its authorship. For detailed discussions of the authenticity of the dialogue see: Johnson 1996, Denyer 2001, 14-26, Schleiermacher 1973, 328-336, Bluck 1953, Clark 1955, Young 1998, and Ledger 1989.
Thus, my project aims to revise and adapt, not relocate, Platonic political theory. The *Alcibiades*’s thesis of self-care is politically valuable for two reasons. First, it can help to rethink political action. Political actors are not immediately able to participate in politics virtuously, but require some introspection and education. In order to lead Athens — not only against its rivals, but to inculcate a sense of justice in her citizenry — Alcibiades must first cultivate justice within himself. In a late modern liberal democracy, the broadening of citizenship has made political activity and the obligations of caring for the self universal. Second, Socrates argues that in order to care for himself, Alcibiades must gain self-knowledge. This must be understood in two senses. First, Alcibiades must correctly locate the self in order to care for it because, as Socrates will argue, the self is not one’s possessions or one’s body, but one’s soul. Fundamentally, Alcibiades must care for his soul. Second, and more importantly, self-knowledge requires habits of critical reflexivity, in which the subject turns back to herself not once, but continually throughout the process of self-transformation, otherwise known as the development of the ethos. Cultivating one’s self is itself a critical form of self-knowledge, in which the subject subjects herself to scrutiny and questioning. This critical reflexivity is valuable for our discussions of late-modernity because it destabilizes traditional, static notions of identity. Furthermore, by subjecting the self to intense scrutiny, the subject is able to recognize the contingencies inherent in her being, allowing her to cultivate the ethos of presumptive generosity.

However, this critical reflexivity must be further unpacked and treated delicately. In order to achieve this level of self-knowledge, Socrates argues that Alcibiades must look at the soul through a mirror, and suggests that God is the purest and clearest mirror. Julia Annas and David Johnson interpret this passage by arguing that in order to gain knowledge of oneself, one must gain knowledge of God, or the nature of reality. While this reading is both internally and externally consistent, situating the *Alcibiades* within Plato’s middle dialogues, it myopically focuses on one passage, the mirror of God. This emphasis ignores the ways throughout the dialogue that Socrates attempts to help Alcibiades care for himself. I believe that a coherent reading of self-knowledge can be achieved without relying on this passage and by avoiding the metaphysical baggage of
Annas’s and Johnson’s readings. I argue that self-knowledge does not require a perfect mirror to cause subjects to care for themselves; an imperfect mirror will still provide an image of the self to reflect upon. As such, the subject can use a multitude of mediums to engage in this reflection; thus, I maintain that friendship is a critical mirror that can be utilized in a late-modern context. Engaging friends in a dialogue allows one to truly see oneself. However, this requires a true friendship; the friends must both be concerned in cultivating themselves. By engaging the self through this critical friendship, the subject is forced to question her preconceived notions of identity, allowing for a restrained attentiveness to difference.

This paper will consist in four main sections. The first will offer a close reading of Plato’s *Alcibiades*, with special emphasis placed on three areas: the care of the self as a necessity for virtuous political action, Plato’s concept of the self, and the relationship between self-care and self-knowledge. This section will conclude by introducing the mirror analogy. The second will examine the metaphysical readings of the mirror analogy offered by Annas and Johnson. The third will argue that these readings do not exhaust the possibilities for interpreting this dialogue, and will provide my alternative reading based on the reflexivity of the self, achieved through friendship, rather than gaining knowledge of God. The final section will conclude this paper by both articulating the value of the care of the self for late-modern, and articulating what such care would look like in such a context.

I: The Care of the Self in Plato’s *Alcibiades*

In the opening of the dialogue, Socrates confronts Alcibiades days before he plans to present himself to the Assembly (Plato 1997, 105b). He begins by first praising Alcibiades for his beauty, his family’s prestige, and his wealth (Plato 1997, 104a-c). Socrates further appeals to Alcibiades’s political ambitions, to have “your [Alcibiades’s] reputation and your influence to saturate all mankind” (Plato 1997, 105c). This invocation is an ironic ploy by Socrates. Socrates wants Alcibiades to care for himself, not his glory and power. He is using Alcibiades’s own ambition to force him to care for himself and engage in a project of self-mastery. When asked how he plans to advise the Athenians, or even on what subject he shall advise them, Alcibiades fails to provide Socrates a satisfactory answer. Socrates asks Alcibiades in what subjects has he greater
knowledge than the Athenian assembly, and then argues that Alcibiades’s education failed to cover the business that concerned the Assembly (Plato 1997, 106d-109c). After lengthy dialogue, Alcibiades agrees that knowledge of justice is required for advising the Athenians (Plato 1997, 109d).  

The dialogue has already made several important points. First, there is a special knowledge or skill that is necessary for political activity. Alcibiades must learn justice before he can practice politics virtuously and effectively, and he must have mastery of his own passions in order to use his political power virtuously and justly. This means that politics inherently requires some effort by political actors; no one is a ready-made political actor. Second, this opening passage is an indictment of Athenian pedagogy. Despite Alcibiades’s wealth and prestige, he still lacks necessary political knowledge.  

Socrates extends this criticism later in the dialogue to the entirety of Athens’s political system, arguing that Alcibiades is “not alone in this sad state—you’ve got most of our city’s politicians for company” (Plato 1997, 118b-c). From these two reasons alone, a justification for the care of the self can be found. Because politics requires knowledge of justice, and because the Athenian pedagogical system fails to impart such knowledge, it requires work on the part of the subject to gain such knowledge. Furthermore, as Pericles states, all citizens must be concerned and take part in politics, and “we are unique in considering the man who take no part in these to be not apolitical but useless” (Thucydides 1998, 93). Contemporary politics, with the universalization of suffrage, again takes this form, as all citizens are political actors.

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7 Ibid., 109d. Socrates convinces Alcibiades that in order to direct the Athenians to a ‘better’ course of action, there must be a substantive qualitative difference between the two actions. Alcibiades himself characterizes better as more just and worse as less just. Justice here becomes the principle political virtue.

8 See also Foucault 2005, 44. Foucault argues that this failure of pedagogy should be understood in two ways. The first is politically, as Athenian education is compared unfavorably to the virtuous education of Sparta and Persia. The second he terms “amorously” as “the love of boys in Athens cannot fulfill the task of instruction that would be able to justify it and give it a foundation.” Because men pursue boys in their youth but fail to continue their mentorship when they reach maturity, they fail to impart necessary skills such as political knowledge.
Socrates is also making another important point in the opening of the dialogue. Socrates states that he “was the first man to fall in love with you, son of Clinias, and now that the others have stopped pursuing you I suppose you’re wondering why I’m the only one who hasn’t given up” (Plato 1997, 103a). Foreshadowing later gestures in the dialogue, Socrates is shifting the focus towards Alcibiades’s soul. While his other suitors have left him now that he has aged and matured, Socrates remains attracted to Alcibiades; he in love with what Alcibiades is, not what he has. Furthermore, Socrates is also describing the type of relationship that Alcibiades needs in order to care for himself and gain knowledge of justice. “I hope to exert great influence over you by showing you that I’m worth the world to you and that nobody is capable of providing you with the influence you crave…except me” (Plato 1997, 105e). Alcibiades needs more than just an erotic relationship, but instead a relationship that improves him. Socrates believes that only through his friendship can Alcibiades gain knowledge of justice.

Alcibiades continues the dialogue by attempting to argue that he does, in fact, have knowledge of justice. However, he is again unable to provide a coherent explanation of it, causing Socrates to conclude that he does not possess this knowledge because he has neither learned it from a teacher nor discovered it himself (Plato 1997, 112d). Alcibiades counters by offering a false dichotomy, allowing Plato to make another criticism of Athenian politics: “the Athenians and the other Greeks rarely discuss which course is more just or unjust… they skip over it and ask which one would be advantageous to do” (Plato 1997, 113d).

By demonstrating that those who do admirable things gain advantages, and that just people conduct themselves admirably, Socrates argues that being just is advantageous (Plato 1997, 116b-116d). After Alcibiades admits to Socrates that he has never seen his opinion waver so much, Socrates concludes that Alcibiades is suffering from twofold ignorance (Plato 1997, 116e). Socrates chastises Alcibiades arguing, “it’s obvious from what we’ve said that not only are you ignorant about the most important things, but you also think you know what you don’t know” (Plato 1997, 118b). This twofold ignorance indicates that Alcibiades’s lack of political knowledge is much more pervasive than initially perceived; Alcibiades not only lacks knowledge of justice, but also lacks knowledge of himself. Here the dialogue’s focus shifts. In order to gain knowledge justice and, with it, a sense of self-mastery, one must
know oneself. Likewise, to order the soul and subdue the passions, one must know oneself.

Self-knowledge is intrinsically linked to the notion of care. First, it is the foremost requirement for caring for the self. As Socrates states, “I’m afraid we often think we’re cultivating ourselves when we’re not” (Plato 1997, 128a). In order to properly care for himself, Alcibiades must correctly identify the self. Additionally, Socrates is not focused on defining Alcibiades’s particular self, but what the self is in itself (Plato 1997, 129b). Socrates begins this investigation by distinguishing what belongs to the self and what the self is: “When you’re cultivating what belongs to you, you’re not cultivating yourself” (Plato 1997, 128d). Though this point may seem simple and unnecessary, Plato’s point is political. Caring for the self doesn’t involve gathering riches or glory, but is a focus purely of the self on the self. While acting virtuously may certainly lead to the acquisition of wealth and fame, they are byproducts and not the aim of caring for the self. As Socrates states, one would not care for the soul in the same way that one would care for one’s shoes or one’s body (Plato 1997, 128d). Nonetheless, in each case, one requires the help of a master: a cobbler for shoes, a doctor for the body, and a friend for the soul.

Socrates continues the dialogue by drawing another obvious distinction: between a craftsman and his tools (Plato 1997, 129c). He extends this analogy to the question of the self. Just as a lyre player is distinct from the lyre, Socrates argues that which uses the body is also distinct from the body (Plato 1997, 129e). Socrates also claims that the self must be distinct from the body. Thus, the self is that which uses the body, and Socrates identifies this as the soul (Plato 1997, 130e). However, the soul Socrates proposes is neither an immaterial substance nor a transcendent being; it is that which rules the body, and is therefore the agent of embodied action rather than a subsistent being. This is in sharp contrast to the immortal soul of the Phaedo or the tripartite soul of the Republic and the Phaedrus. Socrates points to something that is distinct from the

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9 The “self in itself” comes from a translation of the reflexive auto to auto. See N. 20.
10 In the Phaedo Plato argues that the soul participates in the form of life, and therefore refuses to admit death and is therefore indestructible. See Plato 1997, 106b. In the Phaedrus Plato describes the soul as a chariot with two horses of opposite nature. The Charioteer must therefore negotiate the conflicting forces within the soul in order to live a virtuous life. See Plato
body, but not to some substance. He argues that the soul should be discerned as an embodied agent of action.

Gregory Vlastos also distinguishes two different conceptions of the soul in Plato’s philosophy, writing that “For Socrates our soul is our self...It is the ‘I’ of psychological function and moral imputation—the ‘I’ in ‘I feel, I think, I know, I choose, I act’” (Vlastos 1994, 55). The self that Alcibiades must care for is the ethical subject of action, not a metaphysical substance.

This problematization of the self has its own political implications. Alcibiades must gain knowledge of himself in order to care for himself, and this knowledge must concern the ethical subject of action—not knowledge of a substance. Alcibiades must gain knowledge of his strengths and weaknesses, his virtues and vices, his passions and his relishes because all of these play into this conception of the soul. Furthermore, all of these qualities are subject to change. In caring for himself, Alcibiades must create a stable character that is able to subdue both existing and new passions and cultivate the rational and restraining instincts to dominate his desires for pleasure and domination. By forcing the subject to reflect back on herself, self-knowledge itself is beneficial for ethical actions. Only when Alcibiades knows his passions and weaknesses can he be on guard against them; if he has no knowledge of his temptations then he will be unable to resist them.

Having now determined what the self as the object of care is, Socrates begins to argue what caring for the self entails. He begins by defining care as a skill that makes something better (Plato 1997, 128b). Caring for the self is a practice that will improve the self.12

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1997, 246a-b. In the Republic Plato divides the Soul into three sections: the rational, the spirited and the appetitive, which correspond to classes in the city. Justice consists in ordering these parts of the soul. See Plato 1968 440e-441a, 443d-e.

11 By SocratesVlastos means the Socrates of the early Socratic dialogues. Vlastos also writes, “SocratesM has a complex, tripartite model of the soul. SocratesE knows nothing of this model, which would have unsettled his conception of moral virtue” (Vlastos 1994, 48).

12 By defining this as a skill that improves the self, Socrates is making an implicit claim of expert knowledge. While this may seem problematic, I will argue later in the paper that caring for the self requires a unique type of friendship in which the friends work to improve the other. In order to do so, one must approach expert friends to gain certain knowledge. One should
Therefore, caring for the self must be differentiated from practices that both focus on one’s possessions or one’s body. Gaining wealth and prestige is not caring for the self because it concerns merely one’s positions. Healthy practices similarly care for the body but not the self. Instead, caring for the self must consist in practices that improve the self.

At this point Alcibiades begins to grow frustrated with Socrates, demanding, “try to explain how exactly we should cultivate ourselves” (Plato 1997, 132b). Socrates responds that by correctly identifying the self they have already begun moving in this direction, and that “the next step is that we have to cultivate our soul and look to that” (Plato 1996, 132c).

The dialogue then shifts to a provoking and exigent passage. Socrates frustrates both Alcibiades and the reader by not clearly defining what he means when he says that Alcibiades must cultivate himself. Instead, he recites a cryptic analogy, which compares self-knowledge and, as I will argue, care for the self, to a mirror. Referring to the famous inscription at Delphi, “Know Thyself,” Socrates argues the best way to know oneself is to use something “that allows us to see both it and ourselves when we look at it” (Plato 1997, 132d). In order to truly gain self-knowledge one requires a mirror; Alcibiades needs something to “reflect” himself against in order to truly know and care for himself. Socrates argues that humans can look into the eye of another person and are able to see both the other and the reflection of themselves (Plato 1997, 133b). Socrates draws the analogy to the soul. Just as humans can look into another’s eye to see themselves, “if the soul, Alcibiades, is to know consult an economist in order to gain knowledge of economics, just as one should consult a physician to help care for one’s body.

13 A potential problem with this theory emerges here. Socrates also states that they should “let others take care of our bodies and our property” (Plato 1997, 132c). This phrase could be read as a tacit endorsement of elitism or slavery. The philosophers and elite young men should care for themselves, while inferior classes and slaves should take care of the everyday necessities. However, the argument that the Athenians endorsed slavery does not harm my argument. As has been stated, my purpose is not to adopt Platonic practices, but to reformulate certain aspects of the care of the self to help cultivate an ethos of presumptive generosity. As such, the care of the self is a practice intended for all individuals. My argument is to extend Socrates’ demand that we care for ourselves not to reinstitute the practice of slavery.
itself, it must engage with another soul, and especially at that region in which what makes a soul good, wisdom, occurs” (Plato 1997, 133b). However, Socrates leaves this analogy ambiguous. The next section examines a reading of this analogy through the lens of a Platonic, or Neo-Platonic, lens. In order to gain the truest knowledge of himself, Alcibiades must look to God; and, only by gaining such knowledge of God will Alcibiades know the true nature of himself.

II: The Mirror of God—A Metaphysical Reading of Self-Knowledge

Julia Annas provides a reading of self-knowledge that begins similarly to the reading I’ve offered above. She argues that self-knowledge is not a type of psychological reflection, but is “knowing myself in the sense of knowing my place in society, knowing who I am and where I stand in relation to others” (Annas 1985, 121). For Annas, self-knowledge is necessary for sōphrosunē, or self control; knowledge of one’s relationships with others is critical for ethical conduct. She argues that this self-knowledge is a prerequisite for justice, especially in a Platonic sense of both psychic and political harmony. One must know one’s place in the social order to perform one’s function well (Annas 1985, 123).¹⁴ In this conception of self-knowledge, Annas allows space for the reading of care as an active process of questioning one’s inherited social norms, practices, and ideas. To know the self is to know how the self is shaped through power, knowledge, language, and one’s own relationships. This knowledge is crucial to my reading of care, as knowledge of the power relationships in which the subject finds herself allows the subject to critique and problematize these associations.

However, Annas pushes self-knowledge further, basing this interpretation on the following passage:

Socrates: Just as mirrors are clearer, purer, and brighter than the reflecting surface of the eye, isn’t God both purer and brighter than the best part of our soul?
Alcibiades: I would certainly think so, Socrates.
Socrates: So the way that we can best see and know ourselves is to use the finest mirror available and look at

¹⁴ For Plato’s conception of Justice see Plato 1968, 433a-b.
God and, on the human level, at the virtue of the soul? (Plato 1997, 133c8-17)\textsuperscript{15}

This passage suggests that to truly know and care for themselves, individuals must compare their souls to that of God or reality as a whole.\textsuperscript{16} Annas writes, “[Plato] takes self-knowledge to involve not just social facts, but at the deepest level, facts about objective reality as a whole... self-knowledge is knowledge of how one stands among others, and thus involve a true conception of the world in which one lives” (Annas 1985, 129).

David Johnson makes a similar argument. According to Johnson, Socrates argues that using God as a mirror for the soul allows the rational part of the soul to avoid the distractions of the passions and thus gain a true knowledge of itself (Johnson 1999, 15). This reading equates the rational part of the soul with the divine, suggesting that Plato may be pointing toward the divided soul of the middle dialogues. A further implication of this reading is that the nature of the “true self” shifts from the agent behind action to a metaphysical entity. Johnson argues that the true self is God: “This intellect...what Alcibiades was finally to see, to love, and to identify with was the pure unadulterated mind that is God” (Johnson 1999, 17). In essence, to know oneself is to know God.

This reading of the mirror analogy has deep roots in the Neo-Platonic tradition. The Neo-Platonic philosopher Proclus’s commentary of the Alcibiades depicts care for the self as a method to transcend the physical world.\textsuperscript{17} He suggests that self-knowledge is the critical, initial step to such transcendence, as “the beginnings of

\textsuperscript{15} Most scholars believe that this passage was added by a later Neo-Platonic or Christian author. Plato 1997, n.30. John Burnet also comments that this passage is not found in either the Beta or the Tau manuscripts, but is only found in the Eusebius manuscript (Burnett 1901, 349).

\textsuperscript{16} I recognize that I am clearly not referring to the Christian God in this passage. While I use the capitalized form as it is used in the dialogue, I am not restricting its use. God could be the nature of reality, the universe as a whole, or some other truth. What is important is that the mirror be perceived as something transcendent.

\textsuperscript{17} In Platonic and Neo-Platonic thought, physical sensible world has less being because of its transience, while the insensible world of the forms has more being. As Plato argues in the Phaedo and the Republic, philosophy is a preparation for death, in which the soul is separated from the body, and freed from the corruptions of the physical world.
perfection depend on the consideration of ourselves” (Proclus 1965, 4). Similar to other Neo-Platonists, Proclus argues that the body corrupts the soul and “obstruct[s] the contemplation of the realities” (Proclus 1965, 148). Furthermore, Proclus appeals to the Platonic concept of anamnesis. He contends that the soul’s incarnation is the root cause of Alcibiades’s twofold ignorance. Following this reading, Alcibiades’s failure to recognize his lack of political knowledge is not caused by a failure of pedagogy, but is a result of the nature of human souls. “Although souls descend to birth filled essentially with knowledge, … as a result of birth, they contract forgetfulness… for this reason they acquire twofold ignorance, under the impression that through such notions they possess knowledge, but really in a state of ignorance on account of their forgetfulness” (Proclus 1965, 125-126). Caring for the self allows Alcibiades to reclaim the perfect knowledge that his soul possessed before birth.\(^\text{18}\)

While not committing themselves to such a neo-Platonic theory of anamnesis, Annas and Johnson still provide readings that are intended to square the dialogue with mature Platonic metaphysics. In both cases, caring for the self involves gaining knowledge of a transcendent reality, whether it is God or nature as a whole. To know oneself is to know where one fits in the order of nature, to know one’s place in the universe. This reading of the mirror analogy is valuable, as it shifts the focus away from an idea of the self-knowledge from a type of psychological introspection, to knowing what the self truly is. The dialogue supports this move as Socrates states, “we should first consider what ‘itself’ is, in itself. But in fact, we’ve only been considering what an individual self is, instead of what ‘itself’ is” (Plato 1997, 130d). Socrates believes that in order to care for himself, Alcibiades must know the nature of himself, not

\(^{18}\) There are several problems with Proclus’s reading, but as his reading is not the focus of my paper I will not go into further detail. Most importantly, Proclus’s reading relies too much on the metaphysical doctrines of the middle dialogues, such as the tripartite eternal soul and Plato’s anamnetic theory of knowledge. As shown by my reading in the previous section, these claims cannot be made from an analysis of the Alcibiades itself. Furthermore, this reading limits the political utility of the dialogue by considering caring for the self as a speculative rather than political activity. Finally, Proclus’s argument no longer provides any utility in a late modern context. Modernity has explicitly rejected many of these metaphysical assumptions, especially the conclusion that a soul cyclically enters human bodies.
merely his own individuality. This involves a sort of metaphysical speculation in order to discover this true nature of the self. However, I find this reading inadequate, though internally consistent. Annas and Johnson both focus almost exclusively on the mirror of God passage. This allows them to articulate a reading of the *Alcibiades* that is consistent with the metaphysical moves of Plato’s middle dialogues. While this may be justified based on the text of the dialogue, it is not the only way to read this passage.

This reading on self-knowledge also creates an understanding of caring for the self in which transformation occurs through contemplation. Alcibiades must compare his own soul to the divine perfection of God, and this act of comparison can be viewed as a transformative experience. Once Alcibiades gains true knowledge of himself, he can gain knowledge of the true form of justice. This knowledge allows him, returning from the transcendent reality of God to the *polis*, to lead and govern effectively. The knowledge of perfect justice allows Alcibiades to impart justice to his subjects, because in the Platonic conception, only those who have virtue can teach it to others. This reading clearly situates the *Alcibiades* within the thought of the middle dialogues.

There is some justification for this interpretation elsewhere in the dialogues. In the “Royal Logos,” Socrates points to the four virtues of the soul that are present in the *Republic*: wisdom, temperance, courage, and justice (Plato 1997, 121e). Furthermore, Socrates also describes a part of the soul as “that region in it resembling the divine, and someone who looked at that and grasped everything divine... [and] would have the best grasp of himself” (Plato 1997, 133c). In these passages Plato seems to be gesturing toward the more complex metaphysics that he develops in the middle period.

However, I believe that there are several aspects of the *Alcibiades* that cannot be subsumed into the philosophy of the middle dialogues, opening up space for an alternative reading.\(^1\)

\(^{19}\) This raises immediate questions concerning placement of the dialogue. Denyer argues that if the dialogue is placed within the standard corpus it would not fit, suggesting a reworking of the chronology of the dialogues (Denyer 2001, 24). Johnson, analyzing both Friedlander and Vlasto’s chronology, argues that it should be viewed as a transitionary dialogue between the Socratic and the Middle (Johnson 1996, 59, 63). I believe that these questions are best left to classicists and will treat the dialogue as a late Socratic dialogue.
first is the stark contrast between the soul of the *Alcibiades* and the soul of the middle dialogues. As argued earlier, this soul is simply the ‘I’ or subject behind an action rather than a substance. This positions the dialogue more closely with the early Socratic dialogues. Furthermore, Socrates never appeals to the doctrine of the Forms in the *Alcibiades*. While Socrates does ask Alcibiades what justice is and what the self is, he seeks to know if Alcibiades’s own thoughts are sufficient to convince him to care for himself. Socrates never appeals to transcendent entities to solve these problems, but rather focusing on Alcibiades’s own account.\(^{20}\) Finally, the political theory offered in the *Alcibiades* differs from the political theory of the middle dialogues. In these, Plato’s need for epistemological certainty extends to the ethical questions of Socrates (Klosko 2006, 56-57). Justice is no longer an act of knowing the self and the self’s relation to her world, but instead requires knowledge of the Form of justice. Similarly, while Plato maintains a focus on the self in his later philosophy, the focus shifts to the self-transcending the sensible world (Friedlander 1958, 64).

Politically, the middle and late dialogues shift towards an institutional focus. While still focusing on caring for the self, Plato shifts the subject of care from the self to the *polis*—focusing on pedagogy and structure in the *Republic* and laws and institutions in the *Laws* (Klosko 2006, 176).\(^{21}\) These shifts can be viewed as a result of Plato’s view that Socratic politics were a failure. There is a continual risk in democracies of individuals failing to care for themselves. Without every citizen having a Socrates to mentor them, forcing them to focus on and care for themselves, how can the citizenry effectively practice politics? Therefore, instead of using

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\(^{20}\) Most scholars believe that the Forms were Plato’s attempt to provide an epistemologically certain answer to the Socratic definitional question amid the Heraclitean theory of the constant flux of the sensible world. Therefore Plato had to appeal to a non-sensible Form in order to maintain objectivity. See Irwin 1999, 148-150, Schofield 2008, 52, Taylor 2008, 174-176, and Harte 2008.

\(^{21}\) Annas argues against this interpretation, arguing that the *Republic* should be treated as an ethical rather than political text. Under this interpretation the self-care survives in Plato, but takes on a substantially different form than in the *Alcibiades*. See Annas 1999, 26-27
philosophy to prepare for political activity, Plato argues that philosophers should direct political activity.\textsuperscript{22}

III: The Mirror of Friends—A Non-Metaphysical Reading of Self-Knowledge

The readings offered by both Annas and Johnson are both internally consistent and correspond to the mature Plato in the middle dialogues. However, there is space for an alternative reading for two reasons. The first, as argued above, is that there are several aspects of the dialogue that cannot easily be incorporated into Plato’s mature system, in fact resembling his earlier Socratic dialogues. The second is that the passage itself leaves such space. As Socrates states, “the way that we can best see and know ourselves is to use the finest mirror available and look at God and, on the human level, at the virtue of the soul” (Plato 1997, 133c). The most perfect way to gain self-knowledge would be to look toward God; however, if this is not possible, it is necessary to look to the human soul. Though this may be an imperfect knowledge, it still allows Alcibiades to know and care for himself. Alcibiades must look to another soul in order to see himself. Socrates plays on the double meaning of pupil, arguing “when a man looks into an eye his face appears in it, like in a mirror. We call this the ‘pupil’, for it’s a sort of miniature of the man” (Plato 1997, 133a). Looking into another’s eye, one sees a reflection of herself as a pupil; in our friends we see reflections of ourselves. In order to gain a true knowledge of oneself, one must engage in honest dialogue with true friends.

A certain type of friendship is required, however, to serve as a mirror for the self. Socrates began making this point at the outset of the dialogue in his criticism of the suitors that only pursued Alcibiades for his beauty, prestige, and wealth (Plato 1997, 104). These “friends” were only interested in Alcibiades for what he has—his wealth, fame, and body—not what Alcibiades is; they cannot possibly show a reflection of Alcibiades back to himself. This is because their friendship with Alcibiades is purely that of self-interest. They will not criticize and force Alcibiades to reflect back

\textsuperscript{22} The death of Socrates had a profound effect on Plato; he viewed the death of his teacher as an inherent flaw in his political theory. See Schofield 2008, 41. For the view of Platonic political theory as a critique of Socrates see Klosko 2006, 56-57.
on himself, but will flatter him in order to partake in his possessions. This prefigures Aristotle’s concept of perfect friendship, which he describes as “that between good men who are alike in excellence or virtue. For these friends wish alike for one another’s good because they are good men” (Aristotle 1999, 1156b5-10). Socrates truly loves Alcibiades and wants to improve him, through harsh criticism if necessary. Only in this way will the friend act as a mirror and a site of self-reflection.

The entire Socratic project can be conceived of in this way. Using this reading of the mirror analogy allows the *elenchus* to be deployed. The dialogue itself is a method to care for the self. Throughout the dialogue, Socrates engages Alcibiades in questioning and critique, forcing Alcibiades to question the knowledge that he believed he had. This form extends throughout the dialogues: “Socrates harassed his interlocutors with questions which put *themselves* into question, forcing them to pay attention to and take care of themselves” (Pierre Hadot 1995, 89). Alcibiades must deploy the Socratic *elenchus* against himself by continuing the dialogue with Socrates and with others. This internal dialogue is a crucial element of caring for oneself as it creates a critical distance with the self. Friendship creates a second self that is worked on by the self, despite being the same entity that is the subject of such action. The self as the object of care becomes something that the self can work on, which is to say cultivate, improve, and transform. Under this analysis, self-knowledge is no longer based on a relationship to some metaphysical principle or truth, but instead is understood as a certain type of relationship to the self.

Following this line of reasoning, self-knowledge must be conceived of in two ways. In the first, self-knowledge exists in a weak sense. To care for himself, Alcibiades must correctly locate the self. This is Socrates’s purpose in defining the self as the soul that controls the body. In the second, self-knowledge is an active process of caring for the self. Self-knowledge implies not a state of consciousness, but an active process of engaging the self in Socratic questioning. Moreover, this conception of self-knowledge conceives

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23 Nehamas extends this point beyond the interlocutors, arguing that the true irony of the dialogues is that we as readers take Socrates’s side against his interlocutors, but are forced to examine ourselves. The purpose of the dialogue is to have the reader is to examine his or her own belief set and make sure that it is consistent. See Nehamas 1998, 41-42.

24 Original emphasis.
of the subject as both the subject and object of care. My reading of the Socrates’s mirror analogy hinges on this point. We are to gain self-knowledge by looking reflexively to the self through the mirror of friends (Plato 1997, 132b-133c). Therefore, when Socrates says that the soul must look at another soul, one must treat these two souls as the same (Plato 1997, 133b). I believe that this move is justified because of the extensive rhetorical use of mirrors and reflection throughout the dialogue (Plato 1997, 132e-133a, 133c). When one is using a mirror, what is important is not the surface of the mirror, but the image that is reflected. Alcibiades must represent himself in some way to critique and judge himself. Friendship provides a potential site of reflection, allowing both friends to cultivate the self.

This knowledge of the self is critical for subjects to cultivate themselves, which is the purpose of self-knowledge. Socrates argues that if Alcibiades has no knowledge of himself, he has no knowledge of his belongings, or his belongings’ belongings (Plato 1997, 133d-e). I read this passage not merely to emphasize that knowledge of the self allows one to know his or her body and possessions, but also passions, vices, and virtues. It is only through this knowledge that one can cultivate virtue. This interpretation allows the self to serve as a site of activity, action, and improvement. As Charles Taylor writes, “To stand back from ourselves and our existing ‘relish’…allows us the possibility to remake ourselves …We are creatures of ultimately contingent connections: we have formed certain habits. But we can break from them and re-form them” (Taylor, 1989, 170).25

There are two reasons why I believe that this reading is preferable those offered by Annas and Johnson. First, it can stand alone without recourse to the metaphysics of the middle dialogues. Their readings myopically focus on the singular reference to the mirror of God in the dialogue in order to read the dialogue as more Platonic. However, in doing so they ignore the mirror Socrates is providing to Alcibiades throughout the entire dialogue -- that of himself. This allows the care of the self to be more smoothly extracted from its context without metaphysical baggage. The

25These lines however are problematic, as they imply that the subject can in some way free herself from her contingencies and liberate herself from all forms of power. I do not believe that this is a possible way to read the care of the self. As I will argue later, one cannot “free” oneself, but one can work to reformulate power relations such that they are less oppressive.
second reason builds precisely on the first: it is not reliant on Platonic metaphysics; it can be deployed in a late modern context. Using friends to care for oneself allows the subject to gain knowledge of her social location and of the networks of power that she finds herself in, as well as the relationship between herself and these forces. In turn, such a dialogical process of caring for oneself can disrupt these power relationships, by creating space for subjects to question these relationships.

In order to situate the disruptions of this dialogical framework into contemporary debates, I appeal to Bonnie Honig’s distinction between virtù and virtue theories. She writes, “Whereas virtue theorists assume that their favored institutions fit and express the identities or the formations of subjects, virtù theorists argue that no such fit is possible, that every politics has its remainders, that resistances are engendered by every settlement, even by those that are relatively enabling or empowering” (Honig 1993, 3). The care of the self should be understood as a virtù theory because of the aporia that plagues the Socratic dialogues as well as the function of self-knowledge. At the beginning of the dialogue, Alcibiades has firm ideas concerning politics, justice, and himself. Socrates disrupts this knowledge by commanding Alcibiades to care for himself. By utilizing the elenchus as a practice of care itself, self-knowledge contests stable political knowledge. This exposes how common conceptions of virtue and justice are inherently incomplete (Villa 2001, 2). These, and other answers to political questions, always carry unintended consequences and demonstrate that remainders always exist. For this reason, this theory is both theoretically and historically politically subversive (Vlastos 1994, 89,94). Socrates was tried for both corrupting the youth and appearing to make the weaker argument the stronger. While the political nature of the first is obvious, especially when viewed in relation to his relationship with Alcibiades, the second is also decisively political. Socrates’s methodology forced individuals to examine themselves, unsettling their previously held opinions, weakening their previous claims to knowledge.

IV: The Ethos of Care—The Care of the Self in Late-Modernity

Having provided an alternative reading of self-knowledge in the Alcibiades, it remains to translate this activity to a contemporary context to address late-modern concerns. First, it must be
demonstrated that this technique can be extracted from its Platonic context and applied to late-modernity, which I argue is possible by situating my reading in what White frames as weak ontological terms. Second, these techniques must be clearly articulated. Late modern subjectivity differs in fundamental ways from its ancient counterpart, as not all of Socrates’s methods are applicable to a contemporary historical and political context. (For example, it is hard to imagine the hard drinking of the Symposium, as democracy in action.) Finally, I must articulate what the care of the self contributes to White’s discussion of a late-modern ethos.

My reading of self-knowledge, a model of self-reflection without the metaphysical baggage of Plato, can easily be articulated within White’s weak ontological framework. Gaining critical self-knowledge through dialogue with friends problematizes stable notions of identity. Self-reflection -- putting the self itself into question -- allows the subject to recognize the contingencies inherent in her own being. What she originally took to be her identity now becomes the play of difference. She must therefore remain attuned to herself in order to continue developing this ethos of presumptive generosity. The subject is able to recognize that “identity is thus a slippery, insecure experience, dependent on its ability to define difference and vulnerable to the tendency of entities it would so define to counter, resist, overturn, or subvert definitions applied to them” (Connolly 1991, 64). As Connolly notes, this play of identities always carries implicit relations of power and the potential for oppression and domination (Connolly 1991, 66). Therefore, the recognition of the contingency of difference is critical to tempering this desire to dominate the other. This recognition of difference is critical to develop the presumptive generosity that White promotes.

The reflexive self-knowledge involved in caring for the self shifts the predispositions of the subject to the other; and, by extending the same respect for difference within her own identity to the other, she resists the slide from difference, to otherness, to evil.

Furthermore, the care of the self can be seen as an aesthetic cultivation of one’s identity. Following Foucault’s appropriation, self-cultivation (conceived as an aesthetic process), creates space within power relationships where subjects can express agency, though not autonomy (Bevir 1991). Foucault believed that these techniques could allow marginalized groups to create different
modes of being within normalizing power relations. Subjects should cultivate values and desires they find aesthetically valuable for themselves, instead of those determined by normalizing pressures. However, Foucault does not believe this to be a project of liberation. Having rejected the idea of a Teflon subject, complete autonomy is impossible for the stickier subjects of late modernity. Caring for the self does not transcend power/knowledge relationships, as there is no pre-political state of nature to which the subject can return. “Thus the freedom we attain in ethical conduct is not a liberation of a true self from all social influences, but rather an ability to modify ourselves in the context of the social influences at work on us” (Gros 2005, 545). By turning the disciplinary techniques of modernity towards the self, subjects can reformulate the power relations in which they find themselves bound. Treating the self as a work of art allows subjects to cultivate this ethos of presumptive generosity towards the other. Rorty makes similar arguments for a new sense of solidarity “thought of as the ability to see more and more traditional differences (of tribe, religion, customs, and the like)[,] as unimportant when compared with similarities with respect to pain and humiliation—the ability to think of people wildly different from ourselves as included in the range of ‘us’” (Rorty 1989, 192). Because her identity is contingent, she is not bound to react negatively towards the other, but works to emphasize the attentiveness and restraint required for this ethos.

26 Foucault specifically was concerned with the emerging LGBT movement. However, Foucault viewed appeals towards equality and identity as “falling into the great trap of the institution.” For this reason, Foucault’s focus was always on “modes of being;” in which the subject herself is transformed. See Gros 2005, 544-5.

27 White critiques Rorty’s notion of solidarity, however; “What is asked of us as ‘hosts’ in this context is a good deal more demanding than Rorty’s ‘Don’t be Cruel,’ as well as differently justified” (White 2009, 106). White argues that not only must this ethos be directed at public political activity, but that it has its root in a post-foundational, or weak ontological, rather than an anti-foundationalist theory that Rorty embraces (White 2009, 107). I also argue that caring for the self is intended to be an active political process rather than simply a restraint against demonizing the other.

28 There is a clear danger that my application of the ancient concept of care to the context of late modernity is fundamentally flawed, as Johnson and Annas have both argued that the self Socrates identifies in the Alcibiades is not the liberal individual self (Johnson 1996, 46-47). Annas also argues
What would a late modern care of the self look like? As argued in the previous section, caring for the self requires using friendship as a mirror to reflect back on one’s self. One route involves a literal appropriation, in which one uses the relationships that one already has formed in order to care for oneself. She works to improve herself and improve her friends. However, another more radical route, ironically opened up by the universalization of political action, can be found in participatory democracy. The combination of universal suffrage and globalization has opened the sites of interaction between citizens. As all citizens are political actors, they are thrown into sites where they must confront the other. These sites of interaction -- be they jury panels, public schools, city councils, or voting booths -- bring individuals into direct contact. This contact can serve as the mirror that Socrates requires. The other is the mirror that the self uses to reflect back on herself. The difference of the other problematizes any static views of identity that the subject may hold. This forces her to reflect back on herself and recognize the contingency of her own identity.

Thus friends, enemies, and strangers all serve as potential mirrors for late-modern subjects. This is similar to White’s suggestion towards the end of his book. His project aims “at cultivating a sensibility that sees individuals, families, and ways of life, not collective types” (White 2009, 110). White wants his late-modern citizens to associate the other with lives and faces rather than preconceived stereotypes and identities. Self-care works toward a similar but distinct end. In both cases, the subject is trying to cultivate a disposition of presumptive generosity. However, my focus is less on individualizing the other, but using the other to force

that Socrates is searching for a particular type of life-eudemonia or the good life, which is an alien concept to modern audiences (Annas 1999, 37). It could be argued that by characterizing care as an act of individual self construction is extracting Plato’s thought from his political context and inserting it inappropriately into a modern context. However, as I have argued throughout this paper, my focus is not to reconstruct Plato’s argument, but to test if the care of the self can be unpacked into a valuable theory for late modern citizenship. The dialogue describes the self as a subject-soul, or acting agent, rather than a substance-soul. While I concede that Greek subjectivity differs in fundamental ways from the late modern subject, the purpose of this paper is to show that the Socratic political theory suggested by the Alcibiades can help address some of the problems facing the late modern subject.
the subject back towards herself. By using the other as a mirror, the subject can engage in a dialogue with both herself and the other, allowing her to cultivate the tolerance and restraint necessary to address the problems of late-modernity.

There is, however, a paradox facing the care of the self in late-modernity. As noted, the space for interaction and dialogue required for the care of the self in liberal democracy carries the risks of apathy and indifference. While the care of the self can help address problems of discrimination and stigmatization that plague the late-modern democracy, it still requires citizens to take it upon themselves to cultivate this ethos. It requires that citizens use the spaces of interaction to reflect back on their own notions of identity rather than simply falling back on their own prejudices. Even more fundamentally, it requires citizens to seek out these sites of contestation and dialogue instead of remaining apolitical. However, our liberal sensibilities preclude us from suggesting that citizens should be forced to interact with their fellow human beings. The sphere of protection that liberalism has fashioned around the individual renders intolerable the idea of “forcing them to be free.” This should not be seen as a damming impasse to my project; my purpose isn’t to recommend policy but to demonstrate the value of the care of the self for a late-modern citizenry. One cannot force citizens to care for themselves, but only suggest new approaches to these problems.

The predicaments facing late-modern democracies are unique and thus require unique solutions. Following Stephen White, I have argued that in order to vivify and enhance both the citizenry and institutions of contemporary democracies, our concepts of citizenship must be reconceptualized. The course I have followed in this paper has been to appropriate the techniques of caring for the self as articulated in Plato’s *Alcibiades* to help find alternative routes to cultivate a disposition of presumptive generosity in democratic citizens. In order to cultivate oneself, one must engage in the critical project of reflexive self-knowledge. However, instead of looking to God or some metaphysical truth as a mirror of the soul, late-modern citizens must find other less pure mirrors. By using the sites of contact and contestation opened by liberal democracies as mirrors, by using dialogue with the other as a way to turn back toward the self, late-modern citizens can challenge their own notions of identity. Though this does not provide any definitive solutions to the challenges of late-modernity, it opens spaces and provides routes for
citizens to cultivate White’s ethos of presumptive generosity. Such an ethos significantly changes the way that we view the problems of late-modernity and could possibly open up new solutions.

References


Preserve, Protect, and Define? President Bush’s Political Utilization of Signing Statements

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During his eight years in office, President George W. Bush issued 163 signing statements challenging over 1100 provisions of various laws—a number unrivalled by any of his predecessors. Though often innocuous, many of the statements he issued purported to modify or negate provisions of laws. Much of the existing research into Bush’s utilization of the signing statement has focused on the means by which these statements reflect his concept of executive authority. In contrast, my research examines the link between Bush’s utilization of signing statements and the partisan political environment during his tenure in office. To establish this link, I performed a content analysis of signing statements issued during the 107th, 108th, 109th, and 110th Congresses, categorizing the statements as rhetorical, political, or constitutional, based on their purported effects. Though I hypothesized that Bush was more likely to utilize constitutional signing statements during the Congresses in which Democrats controlled one or both houses, my data indicated the reverse was true: Bush issued the most constitutional statements during the 108th and 109th Congresses, the two during his administration in which Republicans controlled both houses of Congress. I find that my data lends additional support to the notion that Bush’s utilization of signing statements reflects his notions of executive authority and desire to expand the powers of the President.

On December 30, 2005, President George W. Bush signed into law a military appropriations bill containing the Detainee Treatment Act, also known as the McCain Anti-Torture Amendment. Bush opposed the amendment, and on signing the bill into law he issued a two-paged signing statement indicating that, in the interest of protecting the American people from terrorist attacks, he would interpret the amendment “in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power” (Bush 2005a). The suggestively vague statement prompted a wave of media attention, congressional inquiries, and scholarly research into Bush’s use of the little-known presidential signing statement.

Signing statements, written addendum to legislation issued by the President upon signing a bill into law, are not a new phenomenon. President Monroe was the first to issue a signing
statement, and Presidents throughout the nineteenth and early twentieth centuries occasionally issued statements to explain why they approved of a law. President Reagan was the first to pursue a strategic and systematic implementation of the signing statement, maintaining that statements could form the basis of statutory interpretation (Spitzer 1994). Reagan’s conception of the signing statement was embraced, to varying degrees, by President George H. W. Bush, President Bill Clinton, and President George W. Bush.

President George W. Bush’s utilization of the signing statement was distinguished by his frequency of issuance (163 statements in 8 years) and tendency to challenge provisions of law (the statement of December 30, 2005, is perhaps the most widely known example). Scholars have been quick to cite these two factors as evidence that President Bush used the signing statement as a means to promulgate his concept of executive authority and expand the powers of the president. Yet, too often scholars ignore the potential of the signing statement to affect the implementation of legislation. The signing statement, like the veto, is a tool presidents employ to shape legislation to their agendas. Assuming that a Congress controlled by the opposition party produces more legislation that is hostile to a president’s agenda, a president employing a pragmatic use of the signing statement could be expected to issue more signing statements when the opposition party controlled Congress.

This study examines whether President Bush utilized the signing statement pragmatically to bypass partisan opposition and effect legislative change. To test this, I performed a content analysis on each of President Bush’s 163 signing statements, classifying them as rhetorical, political, or constitutional, according to their purported effect. I then compared the statements based on the Congress under which they were issued to see if Bush was more likely to employ particular statements when Democrats controlled one or both houses of Congress. I hypothesized that Bush was more likely to issue constitutional signing statements that seek to alter or challenge provisions of legislation during Congresses in which Democrats controlled one or both houses.

Legality and Effect of Signing Statements

The literature on signing statements highlighted two primary methods by which they affect legislation: signing statements may be given deference by courts when interpreting statutes or signing
Statements may attempt to nullify provisions of statutes by asserting their unconstitutionality. Though less research addressed the issue of deference, several authors maintained that it was court deference that presented the most constitutionally problematic implication of signing statements (Dellinger 1993; Waltes 1987; Bradley and Posner 2006). In a *Harvard Law Review* note, “Context Sensitive Deference to Presidential Signing Statements” it was suggested that signing statements were typically given either *Chevron* deference (where the president’s statement is given deference equal to that of an agency in the event of an ambiguous or vague statute) or the much weaker *Skidmore* deference (a deference based on persuasiveness) (2006). Waltes (1987) saw the issue of court deference to signing statements as one intrinsically connected to politics, and suggested that a president’s judicial appointments could give signing statements undue weight in court. Bradley and Posner (2006) followed a similar line of thought, arguing that if undue deference was given to a signing statement, it was the fault of the courts, and not the executive who acted within his or her power in issuing a signing statement. Closely tied to the matter of deference was the issue of signing statements as legislative history. The inclusion of signing statements in the *U.S. Code Congressional and Administrative News* is potentially problematic because including signing statements alongside debates, amendments, and congressional testimony implies that a president’s understanding of a bill was as significant as the understanding of Congress (Bradley and Posner 2006). Even scholars who argue for the legality of signing statements were generally reluctant to grant that statements should be included in the legislative history of bills (“Context-Sensitive” 2006).

Extensive literature exists on the legality of signing statements that nullify a bill’s provisions. May (1998) argued that the Founders, drawing on the English Constitution’s rejection of royal prerogative, did not intend for the executive to hold the authority to overturn a duly enacted law. Similarly, scholars cited the Constitutional Convention’s rejection of an absolute veto of the executive as evidence that the President’s legislative role should be interpreted as narrowly as possible (Waltes 1987, May 1998, PfiFFner 2009). Court precedent also endorses a limited legislative role for the executive. Waltes (1987) cited *INS v. Chadha* as a prime example, wherein the Court found the legislative veto to be unconstitutional because it potentially altered the legal obligations of persons
operating under a statute without the approval of both houses of Congress and the President. Because signing statements may similarly alter persons’ rights and duties without bicameral approval, Waltes argued they were unconstitutional. Furthermore, Pfifflner (2009) argued against the signing statement by showing its similarity to the line-item veto, citing *Clinton v. City of New York* which outlawed the line-item veto. Other scholars maintained, however, that signing statements nullifying provisions of law were legal because a President should have the discretion not to enforce laws he or she believed to be unconstitutional. These scholars cited the oath of office outlined for the President in Article II of the Constitution (Lund 2007; Bradley and Posner 2006; Dellinger 1993), arguing that a president cannot uphold the Constitution while simultaneously enforcing laws she believes to be unconstitutional. Bradley and Posner (2006) claimed that a president has a responsibility to state his opinion of a bill, his interpretations of its statutes, and whether he believes it to be constitutional. Similarly, Lund (2007) argued that it is not clear that any single branch of government has a monopoly on determining the constitutionality of a law. Though ideally presidents veto laws with statutes they believe to be unconstitutional, such a course of action is impractical, particularly with the extensive use of omnibus legislation. Dellinger (1993) maintained that even if a president believed a bill to be unconstitutional, he or she was under no obligation to veto it. Few scholars are willing to advocate that a president is bound to enforce a law he or she believes to be unconstitutional. However, May (1998), citing the English rejection of the royal prerogative, argued that the President is bound to enforce all laws duly enacted by Congress.

**Bush’s Utilization of the Signing Statement**

In April 2006, the *Boston Globe* published an article by Charlie Savage titled, “Bush Challenges Hundreds of Laws.” Drawing attention to both the quantity of signing statements issued by President George W. Bush as well as the unprecedented percentage of these statements that seemed to ignore or nullify provisions of law, the article spawned a resurgence of research into the signing statement. The resulting interest in Bush’s signing statements from members of Congress and the media prompted the American Bar Association to commission a task force to study Bush’s utilization of the signing statement and the separation of powers. The report of the
task force, released in August 2006, held that President Bush’s utilization of the signing statement illustrated a “radically expansive view” of presidential power, indicating the President thought he was “impervious to the laws that Congress enacts” (Sonnett, et. al. 2006). The report stated that Bush issued signing statements with “ritualistic” and “mechanical” frequency, and without any “citation of authority or detailed explanation” (Sonnett, et. al. 2006). The report went on to recommend legislation ensuring transparency when signing statements are issued, greater communication between the President and Congress as to constitutional issues with pending legislation, a substitution of the veto for the signing statement, and ultimately a greater respect for the separation of powers.

The report of the ABA task force quickly faced criticism from scholars that deemed their findings alarmist and unsubstantiated (Crabbe 2008; Eggspuehler 2007; Bradley and Posner 2006). Unsurprisingly, authors such as Bradley and Posner (2006), who saw little constitutional issue with signing statements in general, were unlikely to take issue with President Bush’s actions. They argued that the fears expressed by the ABA report were overblown, as the actual weight given to signing statements by courts was limited. Moreover, they maintained that attention should be redirected from the number of policies Bush challenged with signing statements to the legitimacy of Bush’s concept of executive authority.

In 2007, the Congressional Research Service issued a report on signing statements that took a stand similar to Bradley and Posner. The CRS report stated that no “constitutional or legal impediment” barred presidents from issuing signing statements, and that ultimately signing statements are of little concern because they have no legal force or effect. Though President Bush claimed authority to ignore provisions of laws or threatened non-enforcement, the report found no evidence that the President had actually failed to comply with the laws he challenged (Halstead 2007). Given that President Bush’s actions in executing the laws did not align with his signing statements, the report concluded that Bush was not using signing statements to actually oppose laws, but rather to broadly assert expanded executive authority.

Other scholars supported this assessment of President Bush’s signing statements as innocuous assertions of political ideology. Eggspuehler (2007) argued that signing statements are a form of both political speech and expression entitled to constitutional protections. There was nothing problematic with President Bush’s issuance of
signing statements *per se*, though there was a significant legal issue if he carried through threats of non-enforcement, (but, even then, the courts or Congress could have easily provided remedies) (Eggspehler 2007). Crabbe (2008) argued that President Bush’s signing statements amounted to little more than White House press releases, expressing the president’s position on legislation, yet carrying no legal force. He cited a frequent refrain of Bush’s signing statements:

>The executive branch shall construe…in a manner consistent with the constitutional authority of the President to supervise in a manner consistent with the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power. (Crabbe 2008)

He maintained that such an interpretation was beneficial, in that it protected the roles of the branches of government as defined in the Constitution.

John Dean (2006), former White House Counsel under President Nixon, forcefully rejected these contentions, arguing that signing statements are not merely pieces of rhetoric. In “construing” provisions of legislation in a manner consistent with his own executive philosophy, President Bush seemed to posit that the provisions had a non-binding legal effect. Furthermore, he asserted that it is the Justice Department’s policy, per *United States v. Morrison* (2000), to presume enactments of Congress to be constitutional. Bush’s use of signing statements conflicted with this presumption (Dean 2006). Though Dean disagreed with other scholars as to the legal ramifications of President Bush’s signing statements, he agreed that the proliferation of signing statements under Bush’s two terms represented an expression of a strong executive’s political ideology. Cooper (2005, 532) asserted that Bush’s signing statements were striking claims to expand executive authority “hiding in plain view.” Similarly, other scholars critical of President Bush’s use of signing statements attributed them to his views of executive power (Pfiffner 2009; Sonnett 2006).

The major shortcoming of the research on President George W. Bush’s utilization of the signing statement was that it tended to attribute the proliferation of signing statements to his notions of executive authority. In framing the discussion of signing statements
from a constitutional perspective, the issue of party politics was ignored. My research examining the relationship between the quantity and nature of President Bush’s signing statements and the partisan composition of Congress, seeks to shed light on whether Bush used signing statements as a device to promote his views of executive authority, or if in pursuit of a political strategy.

**Methodology**

To examine how President Bush utilized signing statements during his time in office, I performed a content analysis of each of the 163 signing statements issued by classifying them as rhetorical, political, or constitutional. These classifications were first proposed by the then-Assistant Attorney General Walter Dellinger in an internal memo in 1993. Multiple researchers have utilized Dellinger’s model (Crabbe 2008, Sonnett et. al. 2006). In order to adapt Dellinger’s memo to my content analysis, I built on his original definitions to create a list of criteria for each category. These criteria appear in the following sections.

*Rhetorical Signing Statements*

While serving as Assistant Attorney General, Dellinger described rhetorical signing statements as those which:

> Explain to the public, and more particularly to interested constituencies, what the President understands to be the likely effects of the bill, and how it coheres or fails to cohere with the Administration’s views or programs (1993).

The rhetorical signing statement does little more than allow the President to enshrine his opinion of legislation and to offer congratulations or critique as he deems necessary. Rhetorical signing statements are generally uncontroversial, as they do not purport to

---

1 I employed the classification system developed by Dellinger primarily because of the frequency with which other researchers had utilized it. Relying on Dellinger’s model was occasionally problematic, particularly because of his narrow definition of political and rhetorical signing statements. Future research into President Bush’s use of the signing statement should move away from Dellinger’s system.
have any legal effect or alter legislation in any way. For the purposes of this study, statements were classified as rhetorical if they met two criteria:

1. The statement expressed presidential satisfaction or dissatisfaction with legislation; explained the impact of the legislation as perceived by the President; commended or chastised Congress or proponents/opponents of the legislation; or offered some other message regarding the legislation; and
2. The statement did not purport to alter, challenge, interpret or enforce the legislation in a manner included under the “constitutional” classification, nor did it purport to direct agencies or officers of the Executive Branch to interpret or implement legislation in a manner included under the “political” classification.

Rhetorical signing statements were the most readily distinguishable, as they were generally short and rarely referenced the specific provisions of the bill to which they were affixed. I occasionally utilize the term “purely rhetorical” when referring to rhetorical statements in order to more clearly distinguish them from the other types of statements.

Political Signing Statements

Dellinger (1993) defined political signing statements as those which “guide and direct Executive officials within the executive branch.” Political signing statements, like rhetorical statements, are relatively uncontroversial, as instructing subordinates how to interpret and implement legislation is the “very essence” of the President’s duty to faithfully execute the law (Dellinger 1993), Political signing statements are distinguishable from rhetorical statements in that they do issue some directive and do not merely express sentiment.

For the purposes of this research, in order to be classified as a political signing statement, a statement had to meet one criterion:

1. The statement directed or guided subordinate officers, agencies, or executive branch officials on how to administer the enactment of legislation.
As the data will illustrate, none of Bush’s signing statements were strictly political signing statements. Each statement containing the criterion of political signing statements also met one or more of the criteria of constitutional signing statements. I have included in my data section a count of these constitutional/political signing statements to illustrate that President Bush did, albeit infrequently, use signing statements as a means by which to direct subordinates officers on the enactment of legislation. However, because this research is primarily concerned with Bush’s utilization of the signing statement as a means to alter or challenge legislation, I treat these constitutional/political signing statements as constitutional signing statements in my analysis.

**Constitutional Signing Statements**

The most controversial signing statements are those called “constitutional” signing statements. Unlike rhetorical signing statements, constitutional statements purport to have some effect on the interpretation or enactment of a law. Dellinger defined constitutional statements broadly as those which express the President’s view of the constitutionality of legislation in one of three ways: by stating that in certain applications a law would be unconstitutional, by stating that legislation would be construed in a manner that would “save” it from being unconstitutional, or by stating that legislation is inherently unconstitutional.

For the purposes of my study, I defined constitutional signing statements as those purporting to alter or challenge legislation in at least one of the following ways:

1. Expressing intent to interpret in manner consistent with the constitutional authority of the president or of the “unitary executive branch”
2. Stating that a provision is inherently unconstitutional
3. Stating that a provision will be interpreted as advisory, as requiring notification only, or as having a non-binding legal effect
4. Stating that a provision will be interpreted in a manner consistent with *INS v. Chadha*
5. Stating that a provision will be interpreted in a manner consistent with some other court ruling
6. Stating that a provision will be interpreted in a manner consistent with the Appointments Clause of the Constitution
7. Stating a provision will be interpreted in a manner consistent with another Constitutional clause
8. Stating that a provision will be interpreted in a manner consistent with some existing law
9. Stating that a provision will be interpreted in a manner consistent with the constitutional separation of powers

In addition to the three categories listed above, I recorded the number of provisions of law challenged in each constitutional signing statement, as it was common for a single constitutional signing statement to object to numerous provisions of a single law based on one or more of the criteria. Though not my primary unit of analysis, the number of provisions challenged in signing statements provides additional insight into how Bush utilized signing statements.

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2 Criteria (8) and (9) both illustrate the shortcomings of the Dellinger classification system. Neither criterion seems particularly controversial, yet because of Dellinger’s narrow definition of political and rhetorical signing statements, the only category with which the criteria fit is constitutional. Ultimately, only a small number of statements met these criteria, and so their inclusion under the category of constitutional had little impact on the data.


Several provisions of the Act, including sections 525(c), 546, 705, and 3152 call for executive branch officials to submit to the Congress proposals for legislation. These provisions shall be implemented in a manner consistent with the President’s constitutional authority to supervise the unitary executive branch and to recommend to the Congress such measures as the President judges necessary and expedient.

While the signing statement attached to the National Defense Authorization Act for 2002 was classified as a single constitutional signing statement, it contained constitutional challenges to at least four provisions of law (sections 525(c), 546, 705, and 3152).
Data


President Bush came to office on January 20, 2001 after one of the most contentious elections in US history. The composition of the 107th Congress reflected the close division of the electorate. At the opening of the Congress, Republicans controlled both the Senate and House by slim majorities. In the House of Representatives, Republicans held 221 seats to the Democrats’ 211. The additional support of one Independent gave the Republican caucus control of approximately 51% of House seats. The Senate was initially split 50-50, with Vice President Dick Cheney’s tie-breaking vote effectively giving Republicans control. Six months into the Congress, however, Senator Jim Jeffords left the Republican Party to caucus with the Democrats, giving them a 51-49 majority in the Senate.

In total, Bush issued 59 signing statements during the 107th Congress. Of those, 18 were purely rhetorical, 36 were constitutional, and five statements were both constitutional and political signing statements. These results are summarized in Table 1.

Table 1. Signing Statement Categorization during 107th Congress

<table>
<thead>
<tr>
<th>Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhetorical</td>
<td>18</td>
</tr>
<tr>
<td>Political</td>
<td>0</td>
</tr>
<tr>
<td>Constitutional</td>
<td>36</td>
</tr>
<tr>
<td>Political/Constitutional</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>59</td>
</tr>
</tbody>
</table>

Bush’s constitutional statements issued during the 107th Congress challenged 194 provisions of law. Bush most often cited the constitutional authority of the president/unitary executive, using this justification to challenge 129 legislative provisions. For 29 provisions, Bush stated intent to interpret as advisory, or having a non-binding legal effect. For 20 provisions, Bush stated intent to interpret in a manner consistent with some constitutional provision (excluding Appointments Clause). The full results of Bush’s use of the constitutional signing statement during the 107th Congress are summarized in Table 2.
Table 2. Constitutional Signing Statements during 107th Congress

<table>
<thead>
<tr>
<th>Interpretation</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpreted in manner consistent with constitutional authority of President or of the “unitary executive branch”</td>
<td>129</td>
</tr>
<tr>
<td>States that a provision is inherently unconstitutional</td>
<td>0</td>
</tr>
<tr>
<td>Interpreted as advisory/requiring notification only/having non-binding effect</td>
<td>24</td>
</tr>
<tr>
<td>Interpreted in manner consistent with <em>INS v. Chadha</em></td>
<td>1</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other court ruling</td>
<td>5</td>
</tr>
<tr>
<td>Interpreted in manner consistent with Appointments Clause</td>
<td>6</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other clause of Constitution</td>
<td>20</td>
</tr>
<tr>
<td>Interpreted in manner consistent with existing law</td>
<td>9</td>
</tr>
<tr>
<td>Interpreted consistent with separation of powers</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total provisions challenged</strong></td>
<td><strong>194</strong></td>
</tr>
</tbody>
</table>


The 2002 mid-term elections were one of the few in US history in which a sitting President’s party had a net-gain of seats in both houses of Congress. In the House, Republicans made a net gain of eight seats, giving them 229 seats (52.6%), and leaving the Democrats’ 205. In the Senate, Republicans held 51 seats throughout the Congress, giving them control of the chamber.

President Bush issued 53 signing statements during the 108th Congress. Of those, only four were purely rhetorical signing statements. Forty were constitutional statements, and nine were both constitutional and political signing statements. These results are summarized in Table 3.

Table 3. Signing Statements during 108th Congress

<table>
<thead>
<tr>
<th>Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhetorical</td>
<td>4</td>
</tr>
<tr>
<td>Political</td>
<td>0</td>
</tr>
<tr>
<td>Constitutional</td>
<td>40</td>
</tr>
</tbody>
</table>
The 49 constitutional and constitutional/political statements issued during the 108th Congress challenged a total of 507 provisions of law, a substantial increase over the 194 during the previous Congress. Similar to statements during the 107th Congress, Bush most frequently expressed intent to interpret provisions in a manner consistent with the constitutional authority of the President/unitary executive branch, to interpret provisions as advisory/having a non-binding effect, and to interpret in a manner consistent with a constitutional clause. The full results of Bush’s use of the constitutional signing statement during the 108th Congress are summarized in Table 4.

Table 4. Constitutional Signing Statements during 108th Congress

<table>
<thead>
<tr>
<th>Interpretation</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpreted in manner consistent with constitutional authority of President or of the “unitary executive branch”</td>
<td>247</td>
</tr>
<tr>
<td>States that a provision is inherently unconstitutional</td>
<td>2</td>
</tr>
<tr>
<td>Interpreted as advisory/requiring notification only/having non-binding effect</td>
<td>199</td>
</tr>
<tr>
<td>Interpreted in manner consistent with INS v. Chadha</td>
<td>12</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other court ruling</td>
<td>1</td>
</tr>
<tr>
<td>Interpreted in manner consistent with Appointments Clause</td>
<td>4</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other clause of Constitution</td>
<td>34</td>
</tr>
<tr>
<td>Interpreted in manner consistent with existing law</td>
<td>7</td>
</tr>
<tr>
<td>Interpreted consistent with separation of powers</td>
<td>1</td>
</tr>
<tr>
<td>Total provisions challenged</td>
<td>507</td>
</tr>
</tbody>
</table>


The 109th Congress marked the high point of Republican power during the Bush Administration. The 2004 elections allowed Republicans to strengthen their control of both houses of Congress. In the House of Representatives, Republicans began the Congress with 232 seats, or approximately 53.3% of seats, compared to the Democrats’ 202 seats. In the Senate, Republicans held 55 seats.
Bush issued a total of 38 signing statements during the 109th Congress. Three statements were purely rhetorical, 33 were constitutional, and two were both constitutional and political. These results are summarized in Table 5.

**Table 5. Signing Statements During 109th Congress**

<table>
<thead>
<tr>
<th>Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhetorical</td>
<td>3</td>
</tr>
<tr>
<td>Political</td>
<td>0</td>
</tr>
<tr>
<td>Constitutional</td>
<td>33</td>
</tr>
<tr>
<td>Political/Constitutional</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>38</strong></td>
</tr>
</tbody>
</table>

Bush’s 35 constitutional and political/constitutional statements during the 109th Congress challenged 427 provisions of law. As with the signing statements issued under the 107th and 108th Congresses, Bush most frequently expressed intent to interpret in a manner consistent with the constitutional authority of the President/unitary executive branch (cited for 199 provisions), interpret as advisory/having a non-binding legal effect (176 provisions), and to interpret in a manner consistent with some constitutional clause (35 provisions). The complete results are summarized in Table 6.

**Table 6. Constitutional Signing Statements during 109th Congress**

<table>
<thead>
<tr>
<th>Interpretation</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpreted in manner consistent with constitutional authority of President or of the “unitary executive branch”</td>
<td>199</td>
</tr>
<tr>
<td>States that a provision is inherently unconstitutional</td>
<td>5</td>
</tr>
<tr>
<td>Interpreted as advisory/requiring notification only/having non-binding effect</td>
<td>176</td>
</tr>
<tr>
<td>Interpreted in manner consistent with <em>INS v. Chadha</em></td>
<td>0</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other court ruling</td>
<td>0</td>
</tr>
<tr>
<td>Interpreted in manner consistent with Appointments Clause</td>
<td>5</td>
</tr>
<tr>
<td>Interpreted in manner consistent with other clause of Constitution</td>
<td>35</td>
</tr>
<tr>
<td>Interpreted in manner consistent with existing law</td>
<td>7</td>
</tr>
<tr>
<td>Interpreted consistent with separation of powers</td>
<td>0</td>
</tr>
</tbody>
</table>

The 110th Congress, corresponding to President Bush’s last two years in office, was the only Congress during his tenure in which Democrats controlled both the Senate and House. Bush’s unpopularity, coupled with anger over the handling of the Iraq War and the aftermath of Hurricane Katrina, resulted in substantial gains for the Democrats in the 2006 mid-term elections. In the House, Democrats held 233 seats, or approximately 53.5% of the chamber. Republicans held only 202 seats. The Senate was composed of 49 Democrats and 49 Republicans, but the support of two Independents gave Democrats an operable majority.

Bush’s utilization of the signing statement during the 110th Congress was notable for the relative infrequency with which he issued statements. During the 110th Congress, Bush issued only 13 signing statements. Of those, five statements were purely rhetorical and eight were constitutional. He issued no statements which were political or both political and constitutional. These results are summarized in Table 7.

Table 7. Signing Statements during 110th Congress

<table>
<thead>
<tr>
<th>Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhetorical</td>
<td>8</td>
</tr>
<tr>
<td>Political</td>
<td>0</td>
</tr>
<tr>
<td>Constitutional</td>
<td>5</td>
</tr>
<tr>
<td>Political/Constitutional</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
</tr>
</tbody>
</table>

Bush also challenged fewer provisions of law during the 110th Congress than during any other. The eight constitutional signing statements issued during the 110th Congress addressed only 29 provisions of law, citing the constitutional authority of the President/unitary executive theory for 25 of the provisions. The full results are summarized in Table 8.

Table 8. Constitutional Signing Statements during 110th Congress
Interpreted in manner consistent with constitutional authority of President or of the “unitary executive branch” | 25
---|---
States that a provision is inherently unconstitutional | 0
Interpreted as advisory/requiring notification only/having non-binding effect | 0
Interpreted in manner consistent with *INS v. Chadha* | 0
Interpreted in manner consistent with other court ruling | 0
Interpreted in manner consistent with Appointments Clause | 2
Interpreted in manner consistent with other clause of Constitution | 1
Interpreted in manner consistent with existing law | 1
Interpreted consistent with separation of powers | 0
Total provisions challenged | 29

**Overview**

President Bush issued the greatest number of constitutional signing statements and challenged the most provisions of law during the Republican-controlled 108th Congress. During the split 107th Congress, he issued 41 constitutional signing statements, the second highest of his presidency. He issued the fewest constitutional signing statements and challenged the fewest provisions of law during the 110th Congress, the only congress during his presidency in which Democrats controlled both houses. Table 9 shows the number of constitutional signing statements (including political/constitutional statements) issued during each Congress as well as the number of provisions challenged.

**Table 9. Constitutional Signing Statements during Bush’s Presidency**

<table>
<thead>
<tr>
<th>Congress</th>
<th>Party Controlling Congress</th>
<th>Constitutional Statements</th>
<th>Provisions Challenged</th>
</tr>
</thead>
<tbody>
<tr>
<td>107th</td>
<td>Split</td>
<td>41</td>
<td>194</td>
</tr>
<tr>
<td>108th</td>
<td>Republican</td>
<td>49</td>
<td>507</td>
</tr>
<tr>
<td>109th</td>
<td>Republican</td>
<td>35</td>
<td>427</td>
</tr>
<tr>
<td>110th</td>
<td>Democratic</td>
<td>5</td>
<td>29</td>
</tr>
</tbody>
</table>
Analysis

Hypothesis

I hypothesized that President Bush was more likely to utilize constitutional signing statements when Democrats controlled one or both houses of Congress. Contrary to my hypothesis, the Congress under which Bush issued the fewest constitutional signing statements was the 110th Congress, the only Congress during his presidency in which Democrats controlled both the Senate and the House of Representatives. An additional illustration of Bush’s utilization of the signing statement, the number of provisions challenged, was also lowest during the 110th Congress.

The distribution of President Bush’s signing statements seems counterintuitive. Under the 108th and 109th Congresses, in which Republicans controlled both houses, President Bush issued 49 and 35 constitutional signing statements, respectively. During the 110th Congress in which Democrats controlled both the House and Senate, President Bush issued only 8 constitutional signing statements. The discrepancies are even more dramatic considering the total number of provisions challenged by signing statements during each Congress. Bush used signing statements to challenge 507 provisions of law during the 108th Congress and 427 provisions of law during the 109th Congress. During the 107th Congress, when Republicans controlled only the House of Representatives, Bush’s statements challenged only 194 provisions of law. And during the 110th Congress, when Democrats held both the Senate and the House, Bush’s signing statements challenged only 29 provisions of law, a two year total that is less even than the number of challenges present in single statements during previous Congresses.

The number of constitutional signing statements issued during each Congress refutes my hypothesis that President Bush would issue more constitutional statements during Congresses controlled by the Democratic Party. The fact that Bush issued the most signing statements during periods in which he enjoyed the greatest amount of partisan support in Congress counters the notion that he primarily used signing statements as a means to bypass partisan opposition in order to impact legislation. However, the data highlights three trends in Bush’s utilization of signing statements that warrant closer
examination: 1) Bush’s repeated citation of the constitutional authority of the President to “supervise the unitary executive branch” as a basis for a challenge to law; 2) Bush’s frequent claim to interpret provisions of law as advisory, nugatory, or otherwise having a nonbinding legal effect; and 3) a dramatic reduction in the number of signing statements issued and the provisions of law challenged during the 110th Congress.

Unitary Executive Branch

References to the president’s authority to supervise the “unitary executive branch” were among the most common phrases found in Bush’s signing statements. The phrase “authority to supervise the unitary executive branch,” or a slight variation thereof, appeared 143 times in the full text of Bush’s signing statements in reference to some 360 provisions of legislation. This reflects the unitary executive theory of the presidency which, until the mid-twentieth century, denoted the general, uncontroversial theory that the President controlled the executive branch (“Unitary Executive Theory” 2008). In recent years, however, the understanding of the unitary executive has shifted. Today, it is more commonly associated with proponents of a strong presidency who hold that the executive branch is best understood as a hierarchy in which the president may exercise authority over officers at all levels with little congressional oversight (“Unitary Executive Theory” 2008). Bush generally invoked unitary executive authority when legislation did one of three things: required the President, Cabinet officers, or other officers of the executive branch to submit reports or recommendations for legislation to Congress or congressional committees; mandated that the President take some specified action in the discharge of his duties as Commander-in-Chief or in conducting the U.S.’s foreign affairs; or required the disclosure of information the President deemed vital to national security.

Since the end of the Cold War, Congress and the American public have substantially deferred to the president on matters of foreign policy and on the concealment of information relating to diplomacy or national security (“Unilateral Powers of the Presidency” 2008; “Chief Diplomat” 2008). During his presidency, however, Bush tested the limits of these traditions. His reclassification of documents from the Vietnam War broke with a trend of gradual declassification implemented by his predecessors,
President Clinton and President George H.W. Bush. Additionally, his casting of the terrorist attacks of September 11, 2001, as acts of war and his subsequent policy of pre-emptive war chartered new territory in the realm of US foreign policy (“Chief Diplomat” 2008). Bush’s signing statement on the Detainee Treatment Act is perhaps the most often cited example of his invocation of presidential authority on matters of national security. The statement, attached to the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act,” read in part:

The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks. (Bush 2005a)

The Detainee Treatment Act was meant to curb the use of “enhanced interrogation techniques” that President Bush had justified earlier based on the authority of the president in matters of national security. By citing the authority of the President as Commander in Chief, the statement implied that Bush might still utilize such tactics when he deemed it appropriate. Thus, Bush’s answer to congressional efforts to curb a perceived abuse of his authority was an assertion of even greater executive authority.

While executive authority on matters of national security and foreign affairs may represent a “gray area” of constitutional law, the role of the President in submitting legislative recommendations to Congress is largely uncontroversial. In regard to the legislative role of the President, Article II, Section 3 of the Constitution states that the President “shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.” Because the section outlines functions that a President should perform, it confers a duty on the President, rather than a power (US Congress 2002). Yet, Bush regularly justified his objections to provisions of law mandating that executive officials
submit recommendations for legislation to Congress on the grounds that they interfered with the President’s authority to recommend legislation to Congress. President Bush’s signing statement on the “Safe, Accountable, Flexible, Efficient Transportation Equity Act,” issued August 10, 2005, provides an example of the format Bush employed multiple times in regard to such legislation. The third paragraph of the statement reads in part:

Provisions of the Act—including sections 2003(f)(3)(B), 2016(d), […] purport to require executive branch officials to submit legislative recommendations to the Congress. The executive branch shall construe such provisions in a manner consistent with the Constitution’s commitment to the President of the authority to submit for the consideration of the Congress such measures as the President judges necessary and expedient and to supervise the unitary executive branch. (Bush 2005b)

Such statements are noteworthy because they assert that it is a power of the President to recommend legislation rather than a duty, and that such a power may be exercised solely by the President or by some other executive officer only with the President’s approval. The implications of such an interpretation are disconcerting. If the advice and opinions executive officers may provide to Congress in regard to legislation are contingent on presidential approval, can the President, as the head of the unitary executive branch, more generally limit the advice and opinions executive officials provide to Congress? Such an interpretation would limit Congress’s access to relevant and valuable information in the legislative process and hinder inter-branch cooperation in the drafting of law.

“Construed as Advisory”

Perhaps the most problematic constitutional signing statements issued by President Bush were those claiming to interpret provisions of law as advisory, precatory, nugatory, or as otherwise having no legally binding affect. After constitutional statements which cited the unitary executive/constitutional authority of the President, signing statements that claimed to interpret provisions in a manner that negated their legal effect were the most prevalent form of constitutional signing statement, appearing in 67 signing statements
in reference to approximately 399 provisions of law. Such statements utilized a variety of language. Most common was some variation on the phrase, “The executive branch shall construe as advisory sections...” Other terms utilized by such statements included: “as calling for but not mandating;” “to require notification only;” “as advisory in nature;” and other variations thereof. Though the language differed, the implication was clear: the provisions of the law in question would be interpreted by the President as having no legally binding effect.

These “construe as advisory” constitutional statements are the most complex of all of President Bush’s signing statements, as they generally cite one or more of the other criteria of constitutional signing statements to justify his interpretation of a provision as non-binding. For example, the sixth paragraph of Bush’s signing statement on the Intelligence Reform and Terrorism Prevention Act of 2004 reads:

The executive branch **shall construe as advisory** provisions of the Act that purport to regulate the means by which the President obtains recommendations or information from subordinates in the executive branch, **as is consistent with the constitutional commitment to the President of authority to supervise the unitary executive branch and to require the opinions of principal officers of executive departments.** Such provisions include sections 103A(a), 103B(d), 106, 119(h), and 101A of the National Security Act of 1947, as amended by sections 1011, 1014, 1021, and 1031 of the Act. (Bush 2004) [emphasis added]

In this statement, Bush cited both the unitary executive authority of the President as well as the President’s constitutional power to demand the opinions of officers of executive departments as justification for his interpretation. What distinguishes this statement from those discussed in the previous section is that this does not merely state that the President will interpret the provision of legislation in question in a manner consistent with his understanding of unitary executive authority. Rather, it cites the unitary executive theory as justification for an implementation of the provisions in a manner that denies it binding legal effect. When Bush stated that a provision would be interpreted in a manner consistent with the President’s authority to supervise the unitary executive branch, there
was a degree of ambiguity as to actual effect of such interpretations. In the case of these “construe as advisory” statements, the practical effect seemed to be that the provisions in question would not be treated as having any legal effect.

**Signing Statements and the 110th Congress**

The reduction in the number of statements issued during the 110th Congress has already been briefly discussed, but warrants further consideration. Bush issued only 13 signing statements during the 110th Congress, a fraction of the 59 statements issued during the 107th Congress, the 53 statements during the 108th Congress, and the 38 statements during the 109th Congress. The eight constitutional statements he issued during the 110th Congress challenged a combined total of 29 provisions of law, which is well below the number of provisions challenged during any other Congress considered here.

One potential explanation for the discrepancy between the number of signing statements issued during the 110th and the other Congresses could be the number of measures enacted by each Congress. If the 110th Congress enacted fewer measures than the preceding Congresses, then there would have been fewer opportunities to issue signing statements. However, the 110th Congress enacted 416 measures (Stanley & Niemi 2010), a number slightly higher than 395 enacted by the 109th. Indeed, a comparison of the number of measures enacted during each Congress to the number of constitutional signing statements issued shows that Bush issued a constitutional signing statement for approximately 10.9% of all measures enacted by the 107th Congress, 9.8% of measures enacted by the 108th Congress, 8.9% of measures enacted by the 109th Congress, but only 1.9% of measures enacted by the 110th Congress. Thus, the discrepancy cannot be attributed to the number of measures enacted by the 110th Congress.

What then explains the sudden and substantial stemming of Bush’s issuance of signing statements? The answer to this question may provide critical insight into Bush’s employment of the signing statement and the motives behind it. After the September 11th terrorist attacks, Bush came to rely heavily on a small core of lawyers for legal issues regarding the conduct of the War on Terror (Ragavan 2006). The group included then White House Counsel Alberto Gonzales, Deputy Assistant Attorney General John Yoo, and
Counsel to the Vice President David Addington. All three were strong proponents of the unitary executive theory (Ragavan 2006). Addington in particular was known to closely review pending legislation for provisions that could infringe on executive authority, and he is believed to have drafted many of Bush’s signing statements (Savage 2006).

In October 2005, Vice President Cheney’s Chief of Staff, Scooter Libby, was charged for his involvement in the Valerie Plame affair. Addington, Libby’s replacement as Chief of Staff, was mentioned in the indictment against Libby and was eventually called to testify at his trial. The indictment and subsequent conviction of Scooter Libby is believed to have affected Bush’s formerly close relationship with Vice President Cheney (Miller 2009), and it is not unreasonable to believe that Bush would have sought to distance himself from David Addington and others involved in the Libby/Plame affair.

Additionally, President Bush’s use of signing statements came under increasing scrutiny mid-way through his second term in the aftermath of his signing statement regarding the Detainee Treatment Act. In June of 2006, the Senate Judiciary Committee held hearings on President Bush’s utilization of signing statements. Less than one month into the 110th Congress, the House Judiciary Committee also held a hearing on Bush’s use of signing statements. On August 3, 2007, Senator Russ Feingold introduced a motion to censure both the President and Attorney General citing, among other reasons, the President’s issuance of signing statements as an indication that “the President does not believe he must comply with such provisions of law” (S. Res. 303. 2007). No action was taken on the motion, yet it and the congressional hearings illustrate a reassertion of congressional authority.

Signing statements also began to receive significant media attention during Bush’s second term. As mentioned previously, Charlie Savage’s April 2006 article in the Boston Globe, “Bush Challenges Hundreds of Laws,” was the first critical examination of Bush’s use of the signing statement by a major media outlet, and it prompted a wave of media attention. A search of articles in four of the US’s top-circulating newspapers, The New York Times, The Los Angeles Times, The Washington Post, and USA Today reveals that from January 2001, when Bush took office, to April 2006, a combined total of 34 articles mentioned signing statements. From April of 2006, however, until the end of Bush’s presidency, the four
papers contained a combined total of 146 articles that mentioning signing statements. Of course, media attention was not limited to newspapers alone, but was also reflected in televised news coverage and news blog coverage as well.

Early in the Bush Administration, Congress may have been ignorant of the President’s use of signing statements or simply unwilling to challenge him on the issue. The backlash resulting from Bush’s signing statement on the Detainee Treatment Act, however, provided a prime opportunity for the Democratic 110th Congress to challenge the President on a litany of signing statements purporting to expand executive authority. New congressional oversight, increased media scrutiny, and scandal within his Administration seem to have left Bush either unable or unwilling to continue the systematic employment of signing statements pursued during earlier Congresses.

Conclusion

As President, George Bush issued 163 signing statements challenging some 1157 provisions of various laws. Though many scholars attributed Bush’s embrace of the signing statement to his desire to expand executive authority, my research attempted to establish a link between Bush’s use of the signing statement and the partisan political environment of his presidency. I found, however, that Bush utilized constitutional signing statements (those which purport to alter or challenge legislation) most frequently during the 108th Congress, one of the two during his presidency in which Republicans controlled both houses of Congress. Conversely, during the 110th Congress when Democrats controlled both houses, Bush issued the fewest constitutional signing statements of his presidency.

The data collected did, however, highlight three important characteristics of Bush’s use of the signing statement: his frequent citation of the constitutional authority of the president as head of a “unitary executive branch,” his repeated claim to interpret provisions as advisory or as having a non-binding legal effect, and the sudden decrease in the number of signing statements he issued during the 110th Congress. When viewed together, these three characteristics paint the picture of a President whose reliance on a group of lawyers who embraced the unitary executive theory enabled and perhaps even promoted his systematic employment of the signing statement.
to assert greater executive authority. A more hostile Congress, increased media attention, and political scandal, however, seem to have caused President Bush to abandon his heavy reliance on signing statements. Future research into Bush’s use of the signing statement should look into the role that lawyers in the OLC, particularly David Addington, played in the Administration and in the drafting of signing statements. Additional attention should also be given to the signing statements in which Bush claimed to construe provisions as advisory. An examination of these statements, the legislation they affected, and how the legislation was ultimately implemented could shed light on whether Bush’s use of the constitutional signing statement was actually intended to affect the implementation of legislation, or whether they represented a sort of “executive branch-posturing.”

Like President Bush, President Obama has utilized signing statements to object to provisions of legislation, citing the constitutional authority of the president or stating that provisions cannot be given full legal effect. Yet two and a half years into his first term, President Obama has issued only 18 signing statements, far fewer than the number issued by any of his four immediate predecessors at the same point in their administrations. As the signing statement on the Detainee Treatment Act and the resulting furor fade from public and political memory, it will be interesting to see if the recent decline in the utilization of signing statements marks a new trend or merely an aberration.

References


Targeted Killing in International Law: How Hostis Humani Generis Affects the Debate

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With the rise of transnational terrorism, the Bush and Obama Administrations have increasingly relied upon the counterterrorism tactic of ‘targeted killing.’ Scholars have placed targeted killing under two international legal paradigms: armed conflict (governed by International Humanitarian Law) and law enforcement (governed by International Human Rights law). Yet, without a universal definition of terrorism, the rights that a ‘target’ retains in international law are highly debatable, making the determination of targeted killing’s legality difficult. In an effort to define terrorism, some scholars have invoked the legal doctrine of hostis humani generis, Latin for “enemies of mankind.” I show that this definition would place terrorists as criminals in the law enforcement paradigm, and thus international human rights law would govern targeted killings. International law as a whole would recognize the transnational character of terrorism and uniformly govern States’ actions, requiring States to apprehend terrorists and relegating targeted killing to the status of an undesired last resort of criminal pursuit. Because of the tension between these restraints and the nature of America’s targeted killing campaigns, I conclude that labeling terrorists as hostis humani generis would push the United States to defend its targeted killing campaigns as legal under the laws of armed conflict.

On November 3, 2002, a CIA Unmanned Aerial Vehicle (hereafter referred to as a UAV) fired a missile at a car cruising across a desert in Yemen. The car was struck and the six unsuspecting al Qaeda operatives inside were killed. The main target in the attack was Ali Qaeda Senyan al-Harithi, an al Qaeda leader who had been on US intelligence radar ever since his involvement in the USS Cole attacks of 2000 had been confirmed. American and international legal academia, international courts, and human rights organizations have continued to scrutinize the events that took place that day. The attack is believed to be the first use of lethal force by the United States against terrorists outside Afghanistan—outside of a theater of war and inside the territory of a country not at war with the US (Downes 2004, 2). The legality of this and other instances of targeted killings are still intensely debated.

The United States has continued UAV targeted killings, which are regarded as a vital counterterrorism tool. Since the terrorist
Targeted Killings in International Law

attacks of September 11, 2001 and the subsequent proclamation of a ‘war on terror’ by President Bush, targeted killings have become much more commonplace. When Barack Obama became president, some believed his campaign rhetoric of open governance and adherence to international laws and norms would translate into a reduction -- if not elimination -- of targeted killings (Krishnan 2009, 83). However, the opposite has been the case. The Obama administration has not only authorized targeted killings of foreign ‘enemy combatants’ but also against American citizens who are linked to terrorist cells (Shane 2010, 3). Leon Panetta, the former director of the CIA, has referred to UAV targeted killings as “the only game in town in terms of confronting or trying to disrupt the al Qaeda leadership” (CNN 2009). Section one of this paper offers a foundational understanding of targeted killing. The history of non-traditional methods of killing in war and peacetime are discussed, and the US domestic legal framework that has guided American policy is outlined. The section ends with a description of targeted killing as a current counterterrorism tactic and the conclusion that it is a counterterrorism tool upon which future Administrations will increasingly rely.

American legal scholars have noted that the practice targeted killing has prompted a wave of international ‘soft law’—recommendations, declarations, and reports issued by international legal bodies whose opinions coalesce into generally accepted norms—against targeted killing this practice. In the wake of the 2002 Yemen strike, Swedish Ambassador Anna Lindh referred to the attacks as “a summary execution that violates human rights,” while a UN special reporter concluded that the attack represented an extrajudicial killing (Machon 2; Melzer 1998, 208). Implicit in the condemnation of the attacks is the belief that pursuing terrorists should be governed by international human rights law, commonly referred to as the law enforcement paradigm. This framework emphasizes a human’s right to life and would impose extensive restraints on the tactic of targeted killing. The United States argues its right to defend itself in what, during the Bush Administration, was called the “War on Terror,” and contends its actions should be governed by international humanitarian law, which is —commonly referred to as the law of armed conflict. This paradigm is more tolerant of lethal force since it uses the context justification of a war. Section two of this paper discusses the two paradigms. I argue in this section that while targeted killing can be lawful in either
model, its legality hinges on whether the terrorist is regarded as a criminal in the law enforcement paradigm or as a combatant in the law of armed conflict. Furthermore, because terrorism has no definition in international law, widespread disagreement ensues as to which paradigm should govern targeted killing. This ambiguity erodes the valence of international law and weakens it.

Recognizing this current legal shortcoming, some scholars recommend categorizing terrorism as the same crime as piracy and labeling the terrorist as an enemy of mankind by applying the Latin term *hostis humani generis*, which translates to “enemies of the human race.” The phrase has been dusted off by scholars who recognized the resemblance between pirates of earlier times and terrorists of the twenty-first century, and who claimed that the motives, location, and mental state during the commission of both crimes are similar enough to merit the same definition. One scholar’s argument for such is reviewed in section three. However, if this current ‘soft law’ advocacy becomes actual hard international law, and if the international legal community (most notably the United Nations) defines terrorism as the same crime as piracy, in which legal paradigm—law enforcement or armed conflict—would targeted killing be placed? What would be the consequences for international law, and how might this affect US policy?

In section four, I argue that the rationale for adopting the crime of piracy as the crime of terrorism is sound, considering both international and United States courts’ slow but certain move from conceptualizing piracy as a sea-based crime committed for private ends, to an expanded view that allows for air and land-based attacks for political motives. If the international legal community and the UN were to define terrorists as pirates, terrorists would be recognized in the law enforcement paradigm as international criminals. Unlike some voices in the debate, I argue that court precedence as well as recent events demonstrate that, while terrorists would now be liable for capture anywhere in the world by any State, this new status in international law would not dissolve terrorists’ due process rights specifically enumerated in international humanitarian law.

In section five, I analyze how defining terrorists as enemies of mankind may affect United States policy and legal rationale regarding targeted killing. I argue that the United States has little incentive to adopt a definition of terrorists as criminals, much less change the legal defense strategy it has thus far maintained. Because
hostis humani generis makes targeted killing more acceptable in the law enforcement paradigm but still places an imperative on arrest before use of lethal force, it remains a highly restrictive body of law. At the same time, professionals in American statecraft and national security circles are loath to relinquish the claim that the War on Terror is a legitimate armed conflict and not a worldwide criminal manhunt. Because classifying terrorists as criminals in the law enforcement paradigm places more restraints on the use of lethal force, officials in the Obama Administration, in order to maintain a legal grounding for targeted killing campaigns, will continue to defend the belief that they are governed under the law of armed conflict.

Targeted Killing: A Background

Throughout the modern history of war, the targeted, premeditated killing of an individual for political purposes has been suspect and at odds with international law and norms. Targeted killing usually takes place outside of traditional, battlefield soldier-to-soldier combat. Since the seventeenth century, what we might view as targeted killing has been referred to as assassination. The history of assassination offers a perspective on the legal evolution of non-traditional methods of killing in wartime.

If assassination was not expressly forbidden by a nation’s domestic law or international law in the eighteenth and nineteenth centuries, it was certainly perceived as unethical. During wartime, most military and legal commentators judged the legality of assassinations by the method of the killing, such as whether it was treacherous, perfidious, or a surprise attack. The “earliest modern-day attempt to codify the law on assassination” came in 1863 with the General Order No. 100: Instructions for the Government of Armies of the United States in the Field, which is also referred to as the Lieber Code (Wachtel 2005, 685). The Code proclaimed that “offers or rewards” for the assassination of enemies signified “relapses into barbarism” (Wachtel 2005, 685). Further dictating conduct in war, The Hague convention in 1907 forbade killing or wounding an enemy “treacherously”; for example, it allowed surprise attacks but not while wearing a civilian uniform (Wachtel 2005, 686). The inclusion of the “treacherous” characterization of assassination in the Lieber Code is believed to have influenced the contemporary United States wartime definition of assassination: the
“treacherous killing of a selected individual belonging to the adversary” (Melzer 1998, 47). During wartime, what today might be viewed as targeted killing would have been legal so long as the target was killed with “honor and morality” (Wachtel 2005, 684).

Significant discussion of assassination during peacetime or outside of the theater of an active conflict did not take place until the twentieth century. Much of the debate was a reaction to covert operations of the Central Intelligence Agency in the latter half of the twentieth century. In the arena of the Cold War—a “war” never declared by Congress—the United States, through CIA clandestine operations, engaged in assassination attempts against Fidel Castro and other Latin American political leaders who were regarded by the intelligence and foreign policy apparatus as enemies of the state. With the passing of the National Security Act of 1947 and the “Fifth Function” of the CIA, Congress tacitly allowed this behavior (Anderson 2009, 21).

While assassination may have been permissible according to American law, the exposure of such attempts in the context of previously covert CIA operations made the subject of assassinations a topic of international discussion. In reaction to popular condemnation of the attacks, Gerald Ford banned political assassinations with an Executive Order in 1976. Jimmy Carter went further and banned indirect U.S. involvement in assassinations, and in 1981 President Reagan issued Executive Order 12333 (1981) which included the passage: “No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.” However, the Orders never gave a definition of assassination. As Nils Melzer (1998), author of “Targeted Killing in International Law” notes, the ambiguity of the assassination ban has left “US administration officials and military personnel without guidance as to the interpretation of the Presidential order and the resulting boundaries for their conduct of affairs” (46). Consequently, the discussion in American legal circles is “dominated by the question as to what conduct would fall under or, even more importantly, escape the scope of the ban” (Melzer 1998, 46).

The 2002 Yemen Strike is widely noted as the first instance of the United States employing targeted killing in the War on Terror, but the tactic has been used many times since then. America has engaged in methodical killings of high-level al Qaeda operatives, in Afghanistan, an official theatre of conflict, or Pakistan, Yemen, or Somalia, which are not. Most of the victims are killed by missiles
fired from UAV, while some are shot by long-range snipers. Based on publicly available information, the CIA maintains a list of individuals whom the US targets for killing, which is overseen by the National Security Council. Notifying the President before acting is not necessary since the President has authorized the list and the authority of the CIA to engage in these activities.

The United States employs the tactic with confidence that it is legally justified both domestically and internationally. Congress gave authority to the President to combat terrorism in its Authorization for Use of Military Force, signed on September 18, 2001. The President was given the go-ahead to:

…use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons (Authorization for the Use of Military Force).

In the international arena, the United States considers itself in an armed conflict with al Qaeda. Thus, its counterterrorism tactics are justified by its self-defense rights under Article 51 of the UN Charter.

Targeted Killing in International Law

Though the United States is self-assured in the legality of its actions within American law, international law is indecisive regarding targeted killing. Two paradigms place targeted killings in separate legal frameworks: the law enforcement and the armed conflict paradigms, respectively. The law enforcement paradigm is traditionally viewed as separate from armed conflict; its premise is the supreme and inherent right to life, which is defended (among other rights) by the International Convention on Civil and Political Rights, the United Nations Declaration of Human Rights, and the American Convention on Human Rights. This framework also assumes a principle of due process afforded to the individual. As a result, preventing a terrorist attack would be “achieved by apprehending those planning and preparing the violence and
subjecting them to the criminal process” (Kretzmer 2005, 178). Melzer argues that in order to be lawful under the law enforcement paradigm, a particular targeted killing must cumulatively:

... have a sufficient legal basis in domestic law, which regulates the use of lethal force in accordance with the international normative paradigm of law enforcement; not be of punitive but of exclusively preventive nature; aim exclusively at protecting human life from unlawful attack; be absolutely necessary in qualitative, quantitative and temporal terms for the achievement of this purpose; be the undesired *ultima ratio*, and not the actual aim, of an operation which is planned, prepared, and conducted so as to minimize, to the greatest extent possible, the recourse to lethal force. (1998, 239)

Because the stipulations are deduced from a law enforcement mentality, human rights law generally requires the state to apprehend the target rather than immediately seek his or her extermination as it would in an armed conflict or theater of war.

The other model that governs targeted killing is international humanitarian law (IHL), commonly referred to as the armed conflict paradigm. Generally, IHL governs the conduct of the actors in an armed conflict and requires four basic principles to be followed: military necessity, distinction, proportionality, and precaution. Military necessity provides that “the kind and degree of force resorted to must be actually necessary for the achievement of a legitimate military purpose (Melzer 1998, 239). Distinction in an armed conflict is meant to protect against attacks that kill civilians; every targeted person is either a military objective or a protected person. Proportionality requires “a value judgment as to whether the harm likely to be caused by the force used in an operation is ‘proportionate’ (i.e. justified) in view of the expected military advantage” (Melzer 1998, 357). Collateral damage must be minimized in any attack. Finally, the principle of precaution aims to avoid or minimize incidental loss of civilian life. Nations must display caution and calculation in planning and executing an attack in order to demonstrate respect for the principles of distinction and proportionality (Melzer 1998, 364). In summary, international humanitarians law’s emphasis is not on a right to life like international human rights law; rather, lethal force is an accepted
norm in war. Thus, critics suggest IHL implement certain principles to make war more humane.

In both of these paradigms, targeted killing can be legal. In the law enforcement paradigm, a state has the right and the obligation to protect its citizens and can use lethal force as an “undesired ultima ratio” when the State cannot feasibly apprehend a terrorist. In the law of armed conflict, states are free to target their enemies, provided they do so following military principles. But which of these paradigms should govern a state’s actions against the international terrorist? To date, international law has failed to provide an answer, and states that employ targeted killing—most notably the United States and Israel—maintain that the terrorists they kill are combatants in the armed conflict paradigm. These states only need to follow the four aforementioned principles when executing the attacks. In contrast, others believe that targeted killings are actually extrajudicial killings, and that the terrorist afforded certain rights under international law (most notably the right to life) is a criminal. To one state, the terrorist is a soldier; to another, he or she is a criminal.

Both the ambiguity of what category terrorists fit into—combatant, unlawful combatant, civilian, criminal—and the ambiguous definition of self-defense lessens the authority of the law. If the terrorist is a criminal, he is given the right of due process and trial. Yet many question the applicability of the ‘criminal’ label to a terrorist. One reason is that state sovereignty and jurisdiction pose a problem. Harvard Law professors Blum and Heymann (2010) note that “As a general principle of international law, a country is strictly prohibited from engaging in law enforcement operations in the territory of another country, and much more so when the law enforcement operation includes killing a person” (161). Furthermore, recourse to the legal process and the courts in a given country are dependent upon law and order being available; many would question if the remote, lawless areas of Somalia and Pakistan are the “settled, ordered society” with which international human rights law is best apt to govern (Anderson 2009, 5). Finally, if targeted killings are an increasingly commonly employed counterterrorism tactic, they can hardly be an undesired ultima ratio, or last resort. According to international human rights law bodies such as The Human Rights Committee and the Inter-American Commission on Human Rights, a state has the “right and the obligation” to protect its citizens from threats of violence, and Blum and Heymann give credence to the
notion that targeted killing can be lawful in the law enforcement paradigm as an “exceptional use of force in self defense alongside peacetime law enforcement” (2010, 161). Characterizing the United States’s increasing use of targeted killing as an exceptional use of force would seem to betray a common understanding of ‘exceptional.’

The armed conflict paradigm of international humanitarian law is normally applied to state vs. state traditional warfare, and thus fits awkwardly with the international, state vs. non-state ‘War on Terror’ that the United States argues justifies its targeted killings. David Kretzmer argues that targeting killing should be placed in the armed conflict paradigm when “an armed conflict has been created between the victim state and the terrorist group,” and that “within the context of this conflict the terrorists are legitimate targets” (2005, 188). But under International Humanitarian Law, persons are divided into simply two categories: civilians and combatants. If the Obama Administration were to argue that the Al-Qaeda terrorists are combatants in an armed conflict, then because they are not a part of the armed forces of a state that is party to the conflict they must be:

...part of another armed group belonging to such state which fulfills the four conditions laid out in Article 4(A)(2) of Geneva Convention III: a. being under responsible command; b. wearing a fixed distinctive sign; c. carrying arms openly; d. conducting their operations in accordance with the laws and customs of war. (Kretzmer 2005, 191)

Kretzmer argues that since terrorists, by the very nature of terrorism, target civilians, they can never fulfill 2(A) d, the charge of conducting their operations in accordance with the laws and customs of war. As a result, they must by definition be regarded as civilians. According to the UN, the legal analysis then turns to whether or not the target has taken a direct part in hostilities to determine whether the civilian may then be targeted (Kretzmer 2005, 194). Numerous questions arise, such as what are “hostilities,” and which activities are regarded as playing a ‘direct’ role in hostilities. Gary Solis, a professor at Georgetown University Law Center and a retired marine, argues that two considerations become apparent in determining whether a targeted killing is legal: the directness of the targets participation and the duration of his or her participation. Solis rejects the idea that if noncombatants engage in direct participation
of hostilities and then lay down their arms, they “reacquire” noncombatant immunity and can no longer be targeted. He points out that, especially in the new age of war, civilians “who lead terrorist groups seldom literally pick up arms and so, metaphorically, never lay them down” (Solis 2007, 3). To Solis, the notion that terrorists cannot be targeted except during the act of immediate violence is too restrictive and affords the terrorists legal immunity at the expense of a nation’s safety. As is common in international law, this ambiguity can serve to benefit either side of the debate.

Second, the definition of self-defense, as it appears in Article 51 of the UN Charter, is highly debatable and risks losing its credence and significance. Article 2 (4) of the UN Charter (1945) proclaims that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” There are two exceptions to this prohibition: one if force is authorized by the UN Security Council to maintain or restore international peace and security; the other if an armed attack occurs against a member, which is justified by individual or collective self-defense.

The United States has invoked a broader definition of self-defense that includes anticipatory, preemptive and even accumulative self-defense to rationalize targeted killings. These are widely regarded as the furthest derivations from the strict definition of self-defense that is legally permissible, if at all. Although it has always asserted a right to self-defense, the United States must interpret this right ever more broadly to accommodate the changing nature of threats to security. As a result, the United States “construes Article 51 to permit three types of self-defense: self-defense “against an actual use of force or hostile act,” “preemptive self-defense against an imminent use of force,” and “self defense against a continuing threat” (Wachtel 2005, 137). Under this third stipulation a State would view past instances of a terrorist group’s aggression as evidence of a recurring threat. Thus, according to the United States, al Qaeda terrorists are enemy combatants in an armed conflict—the war on terror—which was initiated when they committed the terrorist attacks of September 11, 2001 (Risen & Johnston 2002).

However, many scholars view this position as exceeding the boundaries of the traditional notion of self-defense that has been largely governed by the Caroline Doctrine. The language in this 19th century doctrine permits action as self-defense only if the "necessity of that self-defense is instant, overwhelming, and leaving no choice
of means, and no moment for deliberation” (Patel 2004). According to this definition, the United States would only be able to kill those who were in the actual process of launching the attack as a last resort. Chris Downes (2004) regards the United States’ invocation of Article 51’s defense clause in justification of targeted killings as implausible given that the strike in Yemen took place over a year after the attacks on September 11, 2001. Instead, the attacks should be viewed as punitive rather than defensive, which is forbidden by international law. Downes argues, “through a linguistic feint, the ‘necessity’ of preventing a specific and imminent attack is supplanted with the ‘need’…to counter the global phenomenon of terrorism” (2004).

The legal debate makes apparent that targeted killing does not fit neatly into either legal framework. This is because the transnational terrorist does not have a proper, singular definition in international law; the terrorist is thus whatever a particular state deems him. While this flexibility may benefit the state in question, it harms international law because states are not bound by it and widespread disagreements ensue. The legal impasse will continue until international law definitively regards terrorists as criminals or soldiers. This paper will now turn to a recent argument aimed toward recognizing terrorists as the progeny of their evolutionary ancestors: pirates.

The Latin phrase hostis humani generis, or “enemies of the human race,” has been offered to provide a definition of terrorism. The term was first used during the Roman Republic by Marcus Tullius Cicero in an argument to apply universal jurisdiction to pirates. The full wording was: “Piracy is not a crime directed against a definite number of persons, but rather aggression against the community as a whole” (Burgess 2003, 21). Cicero had recognized that piracy commonly took place outside of a nation’s own traditional legal jurisdiction on the “high seas,” and that the pirate acted out of their own private concerns and were non-state actors. Finally, and perhaps most importantly, pirates disrupted the trade, commerce, and relationships of nations without acting in the name of a particular state. It was argued that they were enemies of all states and of the human race and, thus, universal jurisdiction applied. Pirates could no longer use the high seas as a legal black hole.

It remains to be seen, however, whether the international community will conceptualize piracy as legally analogous to terrorism. The main hurdles lie in the motives of the actors as well as
the common physical settings of piracy. International law has held that pirates’ motives are always private, monetary gains, while terrorists have been traditionally viewed as acting to achieve political goals. Also, the common conception of piracy as a crime committed on the ‘high seas’ would at first seem to rule out land-based terrorism. This thesis will now examine the relatively recent effort to forge a link between piracy and terrorism in international law.

**Hostis Humani Generis**

Douglass Burgess (2003), a piracy scholar, argues that piracy is terrorism’s legal antecedent and “evolutionary descendant” (9). Through court rulings, he asserts international law has evolved to the point that maritime terrorism is regarded as piracy, and the final link between piracy and terrorism is the logical next step. Burgess (2005) writes:

A crime, under the domestic law of most nations, has three elements familiar to veterans of introductory classes in criminal law: *mens rea*, the mental state during the commission of a crime; *actus reus*, the actions that constitute a crime; and locus, the place where a crime occurs. If two crimes share the same *mens rea*, *actus reus*, and *locus*, they are, if not identical, comparable. While piracy and terrorism may not be the same crime, they share enough elements to merit joint definition under international law.

Regarding *mens rea*, Burgess cites historical accounts to show that pirates certainly used terror tactics—perhaps most notoriously, the dreaded black pirate flag—to terrorize their victims in order to induce a “bloodless capitulation” (Burgess 2003, 102). Considering *locus*, while we may instinctively assume that piracy must occur on the “high seas,” international law in the 20th century recognized the increasing prevalence of aerial hijacking. The United Nations Montreal Convention in 1970 extended the definition of piratical acts to include those committed “by the crew and passengers of a private ship or a private aircraft . . . against another ship or aircraft or against persons or property on board” (Burgess 2003, 102). Furthermore, as Burgess notes, the Harvard Draft Convention on Piracy recognized in 1932 that piracy was an evolving crime that could take place in the
air as well as at sea. The “descent from the sea” component of piracy, combined with the notion of aerial piracy, argues Burgess, can be broadly interpreted to describe any person who lands on foreign soil with the intention to commit terrorist acts as committing piratical acts, and thus as a terrorist.

Finally, the last element, the *actus reus*, or action that constitutes the crime, is perhaps the most difficult link to make. The main hurdle is the different motives between the pirate and the terrorist. Historically, the pirate has been defined as motivated by the prospect of monetary gains. This is seen in the early definitions of piracy as, simply, “sea-robbery.” Piracy as a crime committed for personal gain has a wealth of legal precedent as well. In 1820 the U.S. Supreme Court ruled in *United States v. Smith* (1820) that piracy required a “private intent” and was for the purpose to enrich oneself materially. In addition, international law has noted the pecuniary motives of piracy most notably in the 1958 UN Convention on the High Seas and the subsequent 1982 UN Convention on the Law of the Seas (UNCLOS). The UNCLOS defined piracy as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft... (1982, 60)

The UNCLOS was the last published statement of privacy law, and thus remains in force today. As with the 1958 Convention, the current definition includes the concept of universal jurisdiction, but also retains that “private ends” are the motivation in any act in order to be construed as piracy. This is important because any legal connection between pirates and terrorists must persuasively argue that their motivations are the same. Currently, they are regarded as separate: the pirate acts for monetary motives, the terrorist acts for political motives.

However, some argue that a link exists in the emergence of maritime terrorism in international law. The private versus political distinction in motives of the crime remains in international law, but earlier court precedence had already recognized that piratical acts can be committed for political motivations. For example, the 1844 U.S. Supreme Court ruling in *Harmony v. United States* allowed for a more political definition of piracy when it ruled that any act
motivated by “hatred, abuse of power, or a spirit of mischief” on the high seas could be construed as piracy (Burgess 2003, 42). More recently, the 1985 hijacking of the cruise ship Achille Lauro is widely regarded as an instance of terrorism committed on the high seas. Four Palestinian Liberation Front members hijacked the ship and held its members hostage, demanding the release of fifty Palestinians from Israeli prisons. The standoff ended with an Israeli-American being killed and the arrest of the Palestinians at a NATO base in Italy. In the wake of the hijacking, the international community realized that terrorism was not limited to land-based incidents (Simon 1986, 3). Subsequently, the language of the 1988 Rome Convention and the International Maritime Bureau’s definition of piracy, both developed after the 1982 UNCLOS and the 1985 hijacking, extended the definition of piracy to acts with political motives and acts that take place closer to land. Additionally, the 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1998) introduced the terminology of “maritime terrorism.” This seemingly closed the gap between piracy and terrorism, as certain aggressive conduct aboard a ship is regarded as an act of terrorism in the language of the convention.

How Hostis Humani Generis Affects the Debate

Interesting questions arise if this gap is closed and the soft law advocacy of Burgess and others on the adoption of the piracy definition for terrorism becomes hard international law. How would this affect the debate regarding which paradigm should govern a state’s targeted killing campaigns? How would targeted killing’s legality be altered? Some scholars argue that labeling terrorists as enemies of mankind would mean the terrorist is somehow now afforded fewer rights. Some go further, claiming that terrorists and pirates cannot count on any legal safeguards against their being targeted for killing. Frank Biggio (2002) suggests, “These terrorists should operate with the understanding that their activities may be countered with force as devastating as that which they are wrongfully inflicting on others.” It’s difficult to tell whether he is in fact claiming that, as enemies of mankind, terrorists are outside the protection of any laws at all. Others are more forthright.

Louise Rene Beres, an Israeli scholar, invokes hostis humani generis. She differs from Biggio’s posture of advocacy when she
argues that terrorists are already “known” as *hostis humani generis* (a contestable claim) and, thus, are already perceived as enemies of mankind. She argues that terrorists are susceptible to universal jurisdiction and, quoting the eighteenth century legal scholar Emmerich de Vattel, that terrorists, like pirates, are “to be hanged by the first persons into whose hands they fall” (Beres 1997, 2). The quote appeals to historical legal precedence to affirm her stance that pirates were and are viewed as universally liable, but it also seems to implicitly further the notion that pirates can—even should be—killed before captured. Indeed, the quote offers no semblance of due process.

Beres gives scant acknowledgment or consideration to a person’s right to life under any international legal paradigm. She invokes Vattell, stating, “Men who are by profession poisoners or incendiaries may be exterminated wherever they are caught; for they direct their disastrous attacks against all nations, by destroying the foundations of their common safety,” and then stops short of summarizing that terrorists should (or legally could be) “exterminated” as a first priority above arrest. She seems to imply that assassination, or targeted killing, can be legally acceptable when she cites a court ruling during the Nuremberg Tribunals where it was suggested “in certain exceptional circumstances, literal adherence to due process of law…could represent the greater injustice” (Beres 1997, 2). Beres does proceed to mention, “where known [terrorists] cannot be punished by normal judicial remedy, i.e., by extradition and prosecution, the effective choice is to leave the criminals unpunished or to punish them extrajudicially” (Beres 1997, 4). But this point is offered briefly, only once, and seems to be more a grudging concession rather than a well-articulated acknowledgment that the point seems to deserve, especially in the context of the introduction of *hostis humani generis* to an audience that is presumably unaccustomed to the term and its implications.

While Biggio and Beres employ vague wording in their discussions of terrorists as *hostis humani generis*, the tone of their language, the quotes they choose to cite, and the curious refrain from acknowledging and explicating the rights afforded to those labeled *hostis humani generis* seem to imply that enemies of mankind are somehow afforded fewer, if any, protective rights, including the due process of law. However, many court cases—including those decided in United States and international courts—have afforded pirates, even as enemies of mankind, their rights to trial before being
killed. If we broaden the law and extend the treatment of pirates to the treatment of terrorists, a simultaneous evaporation of rights does not follow. Labeling terrorists as *hostis humani generis* would simply mean terrorists’ liability would follow them everywhere. Like the pirate, the terrorist would not be able to seek legal immunity in certain jurisdictions, but the emphasis on capture above killing would remain if we look at past and recent court precedence.

The United States Supreme Court has ruled, along with British courts, that pirates could be apprehended anywhere, but their very trial before the courts signaled that they still claimed their due process rights. For example, the Vice-Admiralty Court of South Carolina in 1718 ruled that if a pirate could not be apprehended “with safety to themselves” to “bring them under some government to be tried” that they may then be executed (Burgess 2003, 43). The right of execution is granted only upon circumstances when capturing or apprehending the pirate brings danger upon the capturing forces. In the same vein, the U.S. Congress passed an act in 1819 that allowed the U.S. Navy to pursue piracy anywhere on the high seas, but it stressed that the priority was first to capture any vessel that committed “piratical aggression” (Burgess 2003, 54). Furthermore, international law -- as detailed in the Declaration of Paris in 1858 as well as the UN Declarations in 1958 and 1982 -- reaffirms the principle that all nations are to apprehend pirates, allowing for lethal force only in self-defense. As has been noted in the precedent of the 1858 Declaration of Paris, pirates (here we could include all those incurring the title of hostis humani generis) were neither people nor states because “people were subject to the laws of their own governments; states were subject to the laws made amongst themselves” (Burgess 2005). Instead, those regarded as *hostis humani generis* were a third category—international criminal.

Recent events have confirmed pirate’s unique status as *hostis humani generis* and the accompanying international human rights law, which governs actions taken against international criminals. The United State’s reaction to the 2009 hijacking of the *Maersk Alabama* illustrates how the American government reacts to and prosecutes piracy. In the rescue attempt of an American citizen, three of the four Somali perpetrators were killed by US Navy and Marine snipers. The fourth and final pirate, Abduhl Wal-i-Musi, was captured and taken to a New York federal court. He was tried for the crime of piracy “as defined by the laws of all nations,” amongst others (Weiser 2009). Wal-i-Musi was sentenced in February 2011 to thirty-three years in
prison. In this sense, the court officials who dictate U.S. military policy acknowledged not only international human rights law (by seeking to arrest the pirates before using lethal force), but also legitimized the legal concept of *hostis humani generis* and universal jurisdiction (by pursuing pirates in international waters and their ruling in such a way that invoked the crime of piracy as defined by all nations).

In addition, soft law opinion positions targeted killing as a tactic to be governed by the law enforcement paradigm. Most notably, US Army Colonel W. Hays Park stated in his influential memo:

> Historically, the United States has resorted to the use of military force in peacetime where another nation has failed to discharge its international responsibilities in protecting U.S. citizens from acts of violence originating in or launched from its sovereign territory, or has been culpable in aiding and abetting international criminal activities. (Blum & Heymann 2010, 162)

The memo evokes the law enforcement paradigm by citing US lethal force responses to “international criminal activities” and the obligation of host States to apprehend the suspected terrorist themselves. The historical court precedence regarding piracy strongly correlates to the rules of the law enforcement paradigm discussed earlier, and thus settles the debate as to which paradigm should govern targeted killing.

**Hostis Humani Generis and United States Policy**

Burgess persuasively outlines the similarities between the terrorist and the pirate in international law. Defining terrorists as *hostis humani generis* would place a state’s actions against them firmly in the law enforcement paradigm, and would thus remove the uncertainty regarding which legal framework should govern targeted killing. As a result, international courts and the UN could now hand down clear and authoritative judgments as to the lawfulness of particular instances of targeted killing.

Burgess does not address the United States’ disincentive to endorse application of *hostis humani generis* to terrorism: the prospect of a more unified and certain international chorus against America’s targeted killing campaigns. Although labeling terrorists as
Targeted Killings in International Law

*hostis humani generis* re-aligns the law enforcement paradigm to suit international apprehension and prosecution of terrorists, it does not alter the paradigm so much that the United States would abandon its legal rationale of defending itself in an armed conflict with al Qaeda combatants. Because international humanitarian law allows for the proactive, planned and repeated use of lethal force, it will remain completely tolerant of targeted killing so long as certain principles are followed and terrorists are recognized as enemy combatants. Conversely, human rights law will continue to demand that a state put its enemies on trial and resort to lethal force only in rare and unfortunate circumstances.

Labeling terrorists as *hostis humani generis* alters the law enforcement paradigm by removing two current barriers to targeted killing: jurisdiction and sovereignty. Many scholars have noted, “the problem with the law-enforcement model in the context of transnational terror is that one of its fundamental premises is invalid: that the suspected perpetrator is within the jurisdiction of the law enforcement authorities in the victim state, so that an arrest can be affected” (Solis 2007, 4). However, as an enemy of mankind, terrorists would now be liable for capture anywhere in the world. This has obvious appeal for countries such as the United States and Israel who seek to kill enemies of state outside of their own jurisdiction. Second, because of this universal jurisdiction, a state that is a victim of a terrorist attack could now demand that a host state apprehend or prosecute the terrorist in their courts, extradite for prosecution, or acquiesce as the victim state intervenes to capture or kill the terrorist. For example, the United States would now have the legal authority to enter sovereign territory of Pakistan if it could be proven that the Pakistani government was hosting known terrorists and was either unwilling or incapable of apprehending them and trying them in court. Without the application of *hostis humani generis*, this justification would exist in human rights law only if the terrorists were in the actual process of launching an attack and if a state was acting in self-defense. These changes are significant and alter international human rights law to the point that terrorists fit within the paradigm as a recognized actor.

An examination of American targeted killing campaigns reveals two reasons why the official U.S. legal defense of the campaigns is unlikely to change. First, because actions against terrorism would be firmly placed in the law enforcement paradigm, a state must still capture before killing. Court precedence affirms that those labeled as
enemies of mankind do not lose their due process rights, contrary to what some scholars suggest. It is true that the remote mountainous areas near the border of Afghanistan and Pakistan could be argued as confounding a law enforcement approach, since it is a largely lawless country and the Pakistani government has little capability to apprehend terrorists in that region (Byman 2009). Still, considering that the current American targeted killing campaign in Pakistan seems to be just that planned, purposive military-style operations rather than ‘Plan B’ alternatives after failed (or even considered) attempts at arrest, this capture-before-kill imperative would put the legality of U.S. targeted killing practices in question.

Secondly, international human rights law’s requirement that targeted killing be an exceptional use of force used as a last resort is perhaps even more incongruent with current U.S. targeted killing practices. Because of the America’s frequent and increasing use of UAV attacks and targeted killing’s valued role as a counterterrorism tactic in the War on Terror, the Obama administration would be hard pressed to defend its targeted killing practices as an exceptional use of force and an undesired last resort. These requirements run counter to unabashed American reliance on targeted killing, and would restrain the United States in its targeted killing practices to the point where its increasing usage in Somalia, Yemen, and Pakistan could be deemed illegal by international courts and the UN. Indeed, the United States would likely face tougher international scrutiny regarding its targeted killing campaigns once the debate is settled on which paradigm should govern targeted killing. Some American scholars see this as the reason why the United States should “reassert, reaffirm, and reinvigorate” the legal permissibility of targeted killing solely through domestic statutes and Congressional approval of covert CIA operations (Anderson 2009, 4).

Thus far, official United States rhetoric and action tell a mixed story. Some lower-level officials have insisted that law enforcement style precautions are taken when acting against terrorists. For instance, capture by American forces, or capture and extradition by a foreign nation, is the purported modus operandi of the United States in the War on Terror. The CIA, FBI, and military will seek to capture terrorists when possible, and the position of the U.S. remains that targeted killing is a last resort when capture is too dangerous or “logistically impossible.”

Official U.S. policy as dictated by high-ranking members of the State and Justice Departments, however, is that American targeted
killing campaigns should be judged under the laws of armed conflict. This was the legal rationale under President Bush and is being continued during under President Obama. In a speech to the American Society of International Law in March 2010, Harold Koh, a prominent State Department lawyer, said:

…some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force…In my experience, the principles of distinction and proportionality…are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law. (Koh 2010)

Official U.S. policy maintains that its involvement in an amorphous War on Terror legitimizes targeted killing so long as the military principles of distinction, proportionality, necessity, and precaution are obeyed. The right to life and the requirement that lethal force be employed only as a last resort are inherent characteristics of international human rights law. Even after considering the removal of jurisdictional and sovereignty barriers and labeling terrorists as *hostis humani generis*, the law of armed conflict remains more tolerable of targeted killings. The law of armed conflict will continue to be the paradigm with which the United States argues governs its actions.

**Conclusion**

Terrorism certainly needs a definition issued by the UN and other prominent international legal bodies—even the UN itself realizes this (Deen 2005). Because targeted killing will increase in prevalence, international law can maintain its authority by responding clearly to transnational terrorism and targeted killing. A uniform, authoritative definition of terrorists would ultimately make targeted killing more governable by bodies of international law. As legal and policy
thinking evolve, and as international events unfold, new approaches to dealing with transnational terrorism will emerge. The label of *hostis humani generis*, while an old concept, does retain its relevance in international law and could serve as a definitive label for terrorists. If it does, there would cease to be a strong legal debate as to which paradigm should govern targeted killing because a wealth of history and court precedence affirms that the terrorist would be, like the pirate, an international criminal liable for prosecution anywhere in the world.

Within international law, defining terrorists as international criminals does allow for their universal jurisdiction and a legal justification for infringing on other states’ sovereignty in their pursuit -- two issues that currently confound targeted killing as a legal tactic in the law enforcement framework. Yet, to claim that this status also means terrorists can be targeted for lethal force *before* apprehension and their due process is to ignore historical court precedence as well as real-world responses to international criminal activity—including the law-enforcement approach taken by the United States in the 2009 *Maersk Alabama* hijacking. Therefore, in order to avoid the scrutiny of international courts and popular condemnation of its targeted killing campaigns in a law enforcement paradigm of international human rights law, the United States will most likely consider it in its best interests to defend its targeted killing campaigns as legal according to the right of self-defense under the law of armed conflict.

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Political Satire and Candidate Evaluations in the 2008 Election

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In recent years, many American voters have turned to a new genre of television programs for information about presidential candidates: political satire. This study aims to isolate this particular type of media input to determine the relationship, if any, between viewership and candidate evaluations of Barack Obama and John McCain in the 2008 American presidential election. I argue that political satire operates differently, cognitively speaking, than traditional American media sources. The integration of political content and humor alters several previous assumptions about the formation of candidate evaluations. Recent literature claims that humorously presented information operates on a different cognitive channel; hence, the persuasive inputs of a political satire could reduce counterargument scrutiny and increase information recall. Based on this mechanism, and the assumption that political satires tend to have a liberal bias, I theorize that increasing viewership of political satire shows will promote more favorable evaluations for Obama and more unfavorable evaluations for McCain.

Americans today can choose among several news sources to acquire political information during a presidential campaign. Much of the literature on candidate evaluations assumes that the news input is an ordinary, standard source of news such as the Cable News Network (CNN) or a printed newspaper. However, the line between information and entertainment is becoming increasingly blurred as programs that mix these two elements are becoming more popular. A 2000 study by the Pew Research Center described the American media landscape as “highly fragmented,” with a greater share of the television audience gathering political information from different news sources. One such source is “soft news” programming, which combines entertainment with coverage of political issues and actual news events. It was reported that 16% of the population regularly and 35% sometimes obtains information from these kinds of programs (Pew Research Center 2000). Within the category of “soft news,” one type of show in particular stands out as an unprecedented force on the American political scene: the political satire. Shows that fall under this category, such as Comedy Central’s The Daily Show with Jon Stewart and The Colbert Report, while not...
mainstream, have begun to garner significant attention from scholars because of their implications for political communications, political psychology, and American politics. These shows are becoming an important source of information in presidential campaigns, and their influence will only increase in the foreseeable future. It is necessary to understand how this mix of satire and political content affects viewers on a micro-level, and how these shows, as a source of information, can affect candidate evaluations during a presidential campaign. To that end, I will first examine the general models of candidate evaluation formation, then discuss how the added element of political satire impacts these existing models, and finally, test my new model in the context of the 2008 American presidential election.

**Candidate Evaluations**

Evaluation is a cognitive process that first requires some kind of input. In political discourse, these inputs fall in two categories: *persuasive* and *cueing* (Zaller 1992). Persuasive inputs are aimed at giving reasons for accepting a certain point of view. Presidential campaigns try to persuade voters to vote for certain candidates. On the other hand, cueing inputs help clarify the context behind a persuasive input, which helps relate the actual content of the persuasive message to the voter’s own attitudes and predispositions. For instance, while a liberal Democrat may listen to an argument (a persuasive input) made by a conservative Republican, he might remain unaffected by it since he knows the argument is coming from a Republican. The recognition of the party identification of message source is a type of cueing input. It is important to note that both types of inputs do not have to be strictly rational arguments or cues. Zaller’s model is “capable of dealing with nonrational appeals…as with other kinds of political discourse” (41). Political satire, as a kind of humor, is often nonrational in the way it presents information to the voter.

A voter who takes these inputs will then process each one as a *consideration* (Zaller 1992) in the final candidate evaluation. Zaller provides four axioms that, taken together, describe a plausible simulation of how a person converts these considerations into evaluations. First, the greater an individual is involved psychologically with an issue, the more likely he is to “receive” and retain inputs on that issue from political discourse. Second, people tend to resist arguments that are inconsistent with their own
predispositions. Thus, preexisting political constructs can form filters to reject certain information based on their cueing inputs. Third, people are more likely to recall information acquired recently than information from the past. Finally, an evaluation is formed by taking an “average” of all the considerations that are cognitively accessible.

Even considerations that are not immediately accessible can play a role in final candidate evaluations (Lodge, Steenbergen and Brau 1995). Information that is recalled can still affect evaluation. Voters respond to campaign inputs by assessing each one individually and adding the assessment into a mental tally (positive and negative for each candidate), and whichever candidate has a more positive tally will receive the most favorable evaluation and therefore the vote. In this “on-line” model, each input affects the final evaluation, though voters may not remember anything about the specific inputs. This model would explain why many American voters are unable to remember specific details about candidates or their campaigns.

In order to form a candidate evaluation, the voter requires relevant information. The media is a major source of this information. The assumed input in much of the literature on candidate evaluations is either print media or standard “hard news” programming. This article, however, focuses on a new input that integrates satirical humor and political content: political satire shows.

Humor and Persuasion

For years, scholars in several disciplines have attempted to codify the persuasive effects of humor. The goal of this ever-expanding body of research is to determine if a message that is presented humorously yields a different cognitive response from its listener, and if it has a greater potential to affect attitude change. In general, the findings are somewhat inconsistent. Some of the earlier literature in the advertising and marketing field proposes a few general effects of humor. For instance, Sternthall and Samuel (1973) propose that, among other effects, humor can distract its audience, causing a reduction in counter-argumentation against the actual content of the message. Humor can also cause the audience to react more favorably to the originator of the message, which could lead to positive persuasion, at least in the context of product advertising. Schmidt (1994) found in an experimental study that humorous
sentences were better recalled than non-humorous ones. However, while Sternthall and Samuel posit that humor is a distracter that would reduce cognitive elaboration on the message itself, Schmidt suggests that humor actually requires more cognitive elaboration, which increases the chances that the information will be recalled. In other words, if the mind is more actively engaged in processing humorous inputs, these inputs will be retained much more easily.

Even in the context of politics, the debate continues regarding the micro-level processes that can result in persuasion. Nabi et al. (2007) confirmed that humor can increase source favorability, and source credibility, and can decrease counter-argumentation, but found that humor can have a discounting cue that signals to its audience that the message is not worthy of being cognitively processed because the goal is simply a humorous response rather than attitude change. In other words, the source is cognitively compartmentalized as a non-serious source of political information; therefore the content of the humorous message would not affect any sort of candidate evaluation. Nevertheless, Nabi et al. did note that even though a humorous message may not affect political attitudes in the short-run, the memorable nature of the message, combined with the increased source likability and reduced counter-argumentation, could lead to a long-term attitude change. This “sleeper effect,” as the authors call it, is echoed in Young (2008) as a possible link between humor and political messages. So while the discounting cue seems to negate the possibility that humor can lead to persuasion, it may actually have the opposite effect: by “disarming” the listener’s counterarguments, a message presented humorously could have a greater chance of affecting attitude change (in the long-term) than one that is presented without humor.

As this finding would suggest, humor can play an important role in the formation of candidate evaluations. Whether the mechanism is through distraction or increased cognitive elaboration, a political message presented humorously can affect candidate perceptions, at least in the long-term. It is important to note that when Nabi et al. and Young conducted their experiments they used political humor from such shows as *The Tonight Show* with Jay Leno and *The Late Show* with David Letterman. But not all political jokes are created equal: the jokes of Leno and Letterman are completely different than those of Jon Stewart on *The Daily Show* and those of Stephen Colbert on *The Colbert Report* in content and manner of presentation. Leno and Letterman’s shows, while they contain some
political content, do not focus as much attention on American politics as do *The Daily Show* and *The Colbert Report*, the two primary political satires on television. As such, these two programs warrant a distinct examination.

**Political Satire**

*The Daily Show with Jon Stewart* (*TDS*) is a half-hour program that airs throughout the week on Comedy Central. Like Letterman and Leno, Stewart criticizes politicians that are in power or campaigning for power. However, there is a stark difference in Stewart’s manner of presentation. *TDS* is presented as a mock newscast. Using satire and irony, Stewart pokes fun at political candidates and the existing media establishment, although his criticisms are rarely the same for Republicans and Democrats. His jokes about Republicans tend to center around character and policy flaws whereas those about Democrats focus on innocuous personal attributes. As Kurtz (2004) notes about *The Daily Show*’s coverage of the 2004 presidential election: “…Stewart relentlessly mock[s] Bush while just poking gentle fun at Kerry’s ponderous speaking style.” Stewart’s ideological leanings are not intended to be secret. As Young (2008b) notes, Stewart does not want to be objective: he has repeatedly advocated a new style of journalism in which news agencies are not required to be “objective.” For Stewart, neutrality should be abandoned in favor of critical analysis and fact-checking, so that news organizations do not have an obligation to report every viewpoint of every interest group, regardless of the viewpoint’s accuracy. As a result, Stewart regularly satirizes not only candidate opinions, but also media coverage of those candidate opinions. Baumgartner and Morris (2006) have found that viewers of *The Daily Show* are more likely to have negative opinions of political candidates and of the American political system in general.

Indeed, Jon Stewart is no David Letterman. Morris (2009) claims that it is “the clarity of [Stewart’s] political views,” and his willingness to share them openly, that distinguish him from his contemporaries in the late-night talk show world. Stewart has repeatedly belittled his own role in American political discourse, citing that his program is simply a comedy program. Nevertheless, he and his show have gained significant influence in recent years, especially since his scathing criticism of CNN’s political talk show *Crossfire* in October 2004 that led in part to the show’s cancellation.
in January 2005 (see Young 2008b). His position as a comedian and “fake newscaster” has allowed him to continue his criticisms. Still, *The Daily Show* does not reach the entire population: the majority of its viewers are young, educated and politically sophisticated (Young 2008b). *The Daily Show*, though it has its limitations, continues to play a greater and greater role in American political discourse, and deserves to be studied in its own right, rather than being grouped with other political talk shows and late night comedy to which it has little relation.

Similar to *The Daily Show* is *The Colbert Report* (TCR), hosted by comedian and former *TDS* correspondent Stephen Colbert. While Stewart presents satire from a decidedly left-wing perspective, *TCR* is a parody of popular conservative talk shows such as *The O’Reilly Factor*. During the show, Colbert takes on the character of a hard-line Republican, using a strong form of satire that criticizes the very characters he pretends to respect and imitate (see Baumgartner and Morris 2008). In this way, *TCR* still maintains a liberal bias like *TDS*, although the two shows may achieve their biases by completely different means. Still, research suggests that although Colbert may purport a liberal bias, his humor is sufficiently ambiguous to produce varied responses in his viewers. For example, LaMarre et al. (2009) have found that conservatives are more likely to believe that Colbert is only pretending to be joking when he criticizes liberals, and that he is, in fact, serious about his criticisms of the left. Meanwhile, liberals are more likely to claim that Colbert’s political statements are not to be taken seriously. This finding is confirmed in Baumgartner and Morris (2008), in which the authors found through an experimental study that exposure to *TCR* actually increased support for Republicans on U.S. policy issues and favorability towards President Bush. It appears that Colbert’s conservative character can actually produce effects similar to those of real conservative talk shows.

The fact that some viewers can actually move in the conservative direction as a result of watching *The Colbert Report* is problematic for this study; however, at the time of this study, there are limited means to resolve this issue. More research is necessary to determine the exact percentage of Colbert viewers take more conservative positions as a result of exposure to the show. Unfortunately, there is no dataset at this time that adequately distinguishes variables for *The Daily Show* and *The Colbert Report* so that the effects of each show could be measured separately. Still,
even though the particular brand of satire found on *TCR* may have different effects on viewers than the satire found in *TDS* (which may understate the level of support my hypothesis), both shows are indeed left leaning in intent and format. Therefore, this study will proceed with the combined measure of *TDS* and *TCR*, predicting that the liberal bias of both will push viewer attitudes and evaluations in that direction.

**Political Satire and Persuasion**

In the case of either show, the combination of satire and political content can have profound effects on attitude change. Concurrent with previous research on humor and persuasion, political satires’ unique brand of humor may be able to affect and persuade viewers in ways that are not encompassed by previous models. For example, we know that counter-argument strength, counter-argument scrutiny, and argument recall are essential elements in previous models in candidate evaluation because they affect how a voter uses each input in the candidate evaluation. Political satire could alter some of the assumptions of these models. Recall Zaller’s second axiom that voters have filters to resist arguments that are contrary to their own dispositions. If an argument in political discourse is presented humorously (as on *The Daily Show*), these filters could be weakened or circumvented. Although Nabi et al. (2007) and Young (2008) note the presence of a discounting cue, their results were based on weaker and less political shows. Jon Stewart and Stephen Colbert, given their influence and gradual departure from their roles as comedians, may be able to overcome a viewer’s discounting cue. In other words, viewers may not see the need to discount Stewart’s or Colbert’s political messages from their on-line tally of considerations, meaning that the on-line tally of a political satire viewer would contain more “tally marks” from political sources than a regular news viewer. In addition, Zaller’s axiom that voters create evaluations based on what is cognitively accessible is applicable. Because humor enhances information recall, voters would be more likely to remember the inputs from Jon Stewart than those of regular news. Therefore, they are more likely to create their evaluations from this source, assuming that they watch the show.

These propositions have important implications for the study of candidate evaluations. While political satire does not render previous models useless in explaining its effect, it does warrant a
significant expansion of them. These particular shows operate differently, cognitively speaking, than regular news and other soft news programming. Therefore, the assumption of *TDS* and *TCR’s* liberal/Democratic bias and its theorized effect on candidate evaluations produce two hypotheses:

**H1:** Those who considered political satire to be a significant source of information during the 2008 campaign are more likely to have favorable evaluations of the Democratic candidate than those who did not consider them a significant source.

**H2:** Those who considered political satire to be a significant source of information during the 2008 campaign are more likely to have unfavorable evaluations of the Republican candidate than those who did not consider them a significant source.

Still, if the viewers of political satire are generally young, liberal, and have a high degree of political sophistication, it is likely that they already have the same preconceptions of the candidates that Stewart has even before watching the show. Therefore, they are selecting to watch the show and will not necessarily experience any attitude change as a result. The real test of the theory, then, is the effects of *The Daily Show* on Republicans and Independents.

Taber et al. (2009) and Taber and Lodge (2006) have found that people process political arguments based on their prior political considerations, and that they are motivated to arrive at a preselected conclusion. To this end, they will affirm their prior beliefs and actively argue against those considerations that disconfirm them. By these theories of “motivated reasoning,” Republicans should resist Stewart and Colbert’s jokes that make fun of their favored Republican candidates. But, if these hosts’ humor is as persuasive as the theory would hold, we should still see a significant effect on candidate evaluations that corresponds with the previous two hypotheses.¹

¹ Although I expect to see a significant effect even for Republicans, the size of this effect will most likely not be as great for Republicans as for Democrats. That is, although political satire may be able to circumvent certain ideological filters, we do not know to what extent or how many of these filters can be circumvented.
In the case of Independents and those who are politically unaffiliated, there is less motivation to arrive at a preselected political conclusion. Thus, since there are fewer cognitive ideological filters to counteract, we should expect a greater effect on candidate evaluations in concordance with H1 and H2:

\[ H3: \] The effects stated in H1 and H2 will hold true even for those who identify as Republicans.

\[ H4: \] The effects stated in H1 and H2 will be greater for those who identify as Independents.

**Method**

Data for this study comes from the Time Magazine/America by the Numbers poll conducted by Schulman, Ronca, & Bucuvalas, Inc. from October 3-6, 2008. A total of 1,053 registered, likely voter respondents were interviewed via landlines and cellular phones. The important focus of this study, as explained earlier, is candidate evaluations. A respondent’s evaluations can take many different forms, from general feelings about the candidate to very specific assessments of leadership ability or moral character. To account for this broad variation, this study operationalizes the concept of candidate evaluation into two parts: general candidate evaluations, which measure a respondent’s general favorability towards a candidate, and specific candidate evaluations, which measure a respondent’s evaluations of selected candidate traits. Two variables measure general favorability towards the two candidates, Barack Obama and John McCain, by prompting respondents to gauge their feelings for each candidate on a scale of 0-100, where a score of 0-49 represents an unfavorable evaluation, 50 an indifferent evaluation, and 51-100 a favorable evaluation. Since these variables are at the interval level, an OLS regression will be used to test the hypotheses.

**Table 1: Descriptive Statistics for General Favorability**

<table>
<thead>
<tr>
<th></th>
<th>Median</th>
<th>Mean</th>
<th>SD</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obama rating</td>
<td>60</td>
<td>55.830</td>
<td>35.318</td>
<td>1038</td>
</tr>
<tr>
<td>McCain rating</td>
<td>55</td>
<td>54.434</td>
<td>31.288</td>
<td>1040</td>
</tr>
</tbody>
</table>

The measures for each variable are similar, with most respondents having slightly favorable evaluations of both candidates.
In addition to general favorability scores, the survey provides six measures of specific candidate evaluations:

[Candidate] has strong moral character.
[Candidate] can get angry under pressure.
[Candidate] cares about people like me.
[Candidate] is a strong leader.
[Candidate] is a unifier who works well with others.
[Candidate] is the real candidate of change.

Respondents are asked to state how well each statement describes each candidate. Responses from “not well at all,” coded as a 1, to “extremely well,” coded as a 4. The variables “angry under pressure” and “real candidate of change” were dropped in order to focus on the more standard measures of candidate evaluation. Because these variables are ordinal, to test the effect of satire as an independent variable the four remaining dimensions were combined into one valance measure for each candidate, computed by averaging across all measures. Then, the two valances measures were subtracted to create a difference measure. Since this measure was continuous, the use of OLS regression was justified. The descriptive statistics for each specific dimension of candidate evaluation are presented below:

**Table 2: How Well Does Strong Moral Character Describe:**

<table>
<thead>
<tr>
<th></th>
<th>Obama</th>
<th>McCain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Well At All</td>
<td>15.5%</td>
<td>7.4%</td>
</tr>
<tr>
<td>Not Too Well</td>
<td>18.5%</td>
<td>15.5%</td>
</tr>
<tr>
<td>Very Well</td>
<td>40.8%</td>
<td>47.4%</td>
</tr>
<tr>
<td>Extremely Well</td>
<td>25.2%</td>
<td>29.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>n</strong></td>
<td>985</td>
<td>1023</td>
</tr>
</tbody>
</table>

**Table 3: How Well Does "Cares About People Like Me" Describe:**

<table>
<thead>
<tr>
<th></th>
<th>Obama</th>
<th>McCain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Well At All</td>
<td>15.5%</td>
<td>18.5%</td>
</tr>
<tr>
<td>Not Too Well</td>
<td>18.5%</td>
<td>27.0%</td>
</tr>
<tr>
<td>Very Well</td>
<td>40.8%</td>
<td>39.5%</td>
</tr>
<tr>
<td>Extremely Well</td>
<td>25.2%</td>
<td>15.0%</td>
</tr>
</tbody>
</table>
Table 4: How Well Does "Strong Leader" Describe:

<table>
<thead>
<tr>
<th></th>
<th>Obama</th>
<th>McCain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Well At All</td>
<td>16.6%</td>
<td>10.1%</td>
</tr>
<tr>
<td>Not Too Well</td>
<td>22.9%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Very Well</td>
<td>40.7%</td>
<td>48.7%</td>
</tr>
<tr>
<td>Extremely Well</td>
<td>19.7%</td>
<td>21.2%</td>
</tr>
<tr>
<td>Total</td>
<td>99.9%</td>
<td>100.1%</td>
</tr>
<tr>
<td>n</td>
<td>999</td>
<td>1024</td>
</tr>
</tbody>
</table>

Note: Percentages do not add to 100% because of rounding error

Table 5: How Well Does "Unifier, Works Well with Others" Describe:

<table>
<thead>
<tr>
<th></th>
<th>Obama</th>
<th>McCain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Well At All</td>
<td>13.8%</td>
<td>11.5%</td>
</tr>
<tr>
<td>Not Too Well</td>
<td>20.6%</td>
<td>25.8%</td>
</tr>
<tr>
<td>Very Well</td>
<td>43.0%</td>
<td>46.6%</td>
</tr>
<tr>
<td>Extremely Well</td>
<td>22.6%</td>
<td>16.2%</td>
</tr>
<tr>
<td>Total</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>n</td>
<td>986</td>
<td>1013</td>
</tr>
</tbody>
</table>

The primary relationship being tested in this study is the effect of political satire on candidate evaluations. In the survey, the measure for political satire comes from the question, “For each of the following sources of news about politics and current events, please tell me whether it’s a major source of news for you personally, a minor source, or not a source at all for you.” The surveyor provides two examples of political satire, *The Daily Show with Jon Stewart* and *The Colbert Report*. The values are coded from 0 (not a source of news at all) to 2 (major source of news).
Table 6: How Much is Political Satire a Source of News?

<table>
<thead>
<tr>
<th>Source of News</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not a source of news</td>
<td>66.8%</td>
</tr>
<tr>
<td>Minor source of news</td>
<td>23.3%</td>
</tr>
<tr>
<td>Major source of news</td>
<td>10.0%</td>
</tr>
<tr>
<td>Total</td>
<td>100.1%</td>
</tr>
<tr>
<td>N</td>
<td>1045</td>
</tr>
</tbody>
</table>

Just over thirty percent of respondents reported watching a political satire, whether as a minor source or major source of news.

In order to assess the independent effect of political satire shows, several factors are controlled for in the design—most importantly a battery of other news sources, from standard evening news programming to explicitly partisan opinion programming to weblogs. Each of these variables is measured in the same way as the political satire variable: a coding from 0 to 2, with 0 representing “not a source of news” and 2 representing “major source of news.” These variables are used to separate political satire from the plethora of other news programs, and to ensure that any effect political satire may have on candidate evaluations is truly independent. Perhaps more importantly, partisanship and political ideology are controlled. These controls are particularly important because partisanship and ideology could affect whether or not a respondent chooses to watch a political satire show in the first place and any effect on candidate evaluations could be attributed to these two factors rather than the political satire shows. Controlling for them will help to isolate the effects of political satire. Dummy variables for Democrat, Republican, and other party are included (independent is the excluded category). The ideology variable is measured by self-identification on a 5-point scale from very conservative to very liberal. Finally, various demographic factors are controlled, notably age and education. Both of these factors have a lot to do with the primary independent variable because most Americans who watch political satire are young and educated. Controlling for these variables will further isolate the effect of satire.

Results

In terms of general candidate evaluations, the results of OLS regression support the first hypothesis: watching political satires has
a positive, significant effect on evaluations for the Democratic candidate Barack Obama (see Table 7). Shows like TDS and TCR exert a statistically significant, positive effect on a respondent’s 0-100 favorability rating. Recall that the measurement for the satire variable was coded from 0 (not a source of news) to 2 (major source of news), and that the dependent variable is on a zero to 100-point scale. Therefore, the B coefficient of 3.219 for political satire as a news sources indicates that respondents who consider satires to be a minor source of news are expected to rate Obama more than 3 points higher than respondents who do not consider satire a source of news, and respondents who consider satire to be a major source of news are expected to rate Obama more than 6 points higher than respondents who do not watch satires at all. This effect is independent of other media controls, suggesting that even if a respondent considers both a satire and another media program to be major sources of news, the satire will have a significant and independent effect on Obama evaluation. More importantly, the effect is independent of party identification and political ideology. Even if a satire viewer is already a Democrat or a liberal, he is expected to give a higher rating than a Democrat or liberal non-satire viewer.

Nevertheless, the independent effect of satire shows is small compared to the effects of other variables, mainly of partisanship and ideology. Being a Republican is expected to reduce the favorability score for Obama by about 12 points, and being a Democrat is expected to increase it by about 14 points. The size of these effects is far greater than that of satire shows. In addition, the effects of standard evening news and FOX News are greater. Interestingly, liberal news programs contribute only slightly less than satire programs. These findings suggest that, while satire does influence the average voter independent of political stance, the influence is no greater than that of standard news programming or predetermined political attitudes.

Table 7: Effects of Political Satire on Obama general favorability evaluations

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>SE</th>
<th>**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satire (i.e. The Daily Show, The Colbert Report)</td>
<td>3.219</td>
<td>1.281</td>
<td>**</td>
</tr>
<tr>
<td>Evening News (i.e. CBS Evening News, ABC World News)</td>
<td>4.756</td>
<td>1.061</td>
<td>**</td>
</tr>
<tr>
<td>Category</td>
<td>Coefficient</td>
<td>Standard Error</td>
<td>Significance</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------</td>
<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Morning News (i.e. The Today Show, Good</td>
<td>-1.245</td>
<td>1.004</td>
<td></td>
</tr>
<tr>
<td>Morning America)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CNN</td>
<td>3.340</td>
<td>1.005</td>
<td>**</td>
</tr>
<tr>
<td>Local News</td>
<td>1.359</td>
<td>1.051</td>
<td></td>
</tr>
<tr>
<td>FOX News</td>
<td>-5.905</td>
<td>1.087</td>
<td>**</td>
</tr>
<tr>
<td>MSNBC</td>
<td>1.825</td>
<td>1.087</td>
<td>*</td>
</tr>
<tr>
<td>Daily Newspaper</td>
<td>0.645</td>
<td>0.913</td>
<td></td>
</tr>
<tr>
<td>Website of Major Newspaper</td>
<td>-0.042</td>
<td>1.140</td>
<td></td>
</tr>
<tr>
<td>Other News Websites</td>
<td>-2.418</td>
<td>1.100</td>
<td>**</td>
</tr>
<tr>
<td>Weblogs</td>
<td>1.287</td>
<td>1.413</td>
<td></td>
</tr>
<tr>
<td>News Magazines (i.e. TIME, Newsweek)</td>
<td>-0.523</td>
<td>1.045</td>
<td></td>
</tr>
<tr>
<td>Conservative News (i.e. Rush Limbaugh,</td>
<td>-6.844</td>
<td>1.191</td>
<td>**</td>
</tr>
<tr>
<td>The O'Reilly Factor)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberal News (i.e. Air America Radio, Keith</td>
<td>2.446</td>
<td>1.347</td>
<td>*</td>
</tr>
<tr>
<td>Olbermann)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Radio/TV (i.e. C-SPAN, NPR)</td>
<td>2.514</td>
<td>1.029</td>
<td>**</td>
</tr>
<tr>
<td>Age</td>
<td>-0.766</td>
<td>0.447</td>
<td>*</td>
</tr>
<tr>
<td>Education</td>
<td>0.686</td>
<td>0.718</td>
<td></td>
</tr>
<tr>
<td>5 pt. Ideology (Conservative to Liberal)</td>
<td>4.963</td>
<td>0.846</td>
<td>**</td>
</tr>
<tr>
<td>Frequency of Religious Services/Week</td>
<td>1.302</td>
<td>0.485</td>
<td>**</td>
</tr>
<tr>
<td>White</td>
<td>-6.997</td>
<td>4.704</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>11.975</td>
<td>5.453</td>
<td>**</td>
</tr>
<tr>
<td>Asian</td>
<td>3.312</td>
<td>8.147</td>
<td></td>
</tr>
<tr>
<td>Other Race&lt;sup&gt;2&lt;/sup&gt;</td>
<td>-2.463</td>
<td>5.791</td>
<td></td>
</tr>
<tr>
<td>Republican (v. Independent)</td>
<td>-12.523</td>
<td>2.009</td>
<td>**</td>
</tr>
<tr>
<td>Democrat (v. Independent)</td>
<td>13.848</td>
<td>1.964</td>
<td>**</td>
</tr>
<tr>
<td>Other Party ID (v. Independent)&lt;sup&gt;3&lt;/sup&gt;</td>
<td>0.279</td>
<td>3.893</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>71.388</td>
<td>10.035</td>
<td></td>
</tr>
</tbody>
</table>

N 971

<sup>2</sup> For the dichotomous race variables, “Hispanic” was left out as a reference category.

<sup>3</sup> For the dichotomous party identification variables, “Independent” was left out as a reference category.
The OLS regression of political satire and McCain evaluations supports the second hypothesis. However, while the effect was negative and significant, it is slightly weaker than the effect in the Obama favorability model. This might be related to the inclusion of *The Daily Show* and *The Colbert Report* in the same variable, as explained earlier.

A respondent who considers political satire a minor source of news would be expected to rate McCain approximately 2.5 points lower than a respondent who does not watch satire. Therefore, a respondent who considers it a major source of news will give ratings approximately 5 points lower (see Table 8).

**Table 8:** Effects of Political Satire on McCain general favorability evaluations

<table>
<thead>
<tr>
<th>Source</th>
<th>B</th>
<th>SE</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satire (i.e. The Daily Show, The Colbert Report)</td>
<td>-2.572</td>
<td>1.276</td>
<td>**</td>
</tr>
<tr>
<td>Evening News (i.e. CBS Evening News, ABC World News)</td>
<td>-0.821</td>
<td>1.054</td>
<td></td>
</tr>
<tr>
<td>Morning News (i.e. The Today Show, Good Morning America)</td>
<td>1.272</td>
<td>0.997</td>
<td></td>
</tr>
<tr>
<td>CNN</td>
<td>-2.454</td>
<td>1.001</td>
<td>**</td>
</tr>
<tr>
<td>Local News</td>
<td>-0.285</td>
<td>1.041</td>
<td></td>
</tr>
<tr>
<td>FOX News</td>
<td>6.804</td>
<td>1.080</td>
<td>**</td>
</tr>
<tr>
<td>MSNBC</td>
<td>-0.905</td>
<td>1.082</td>
<td></td>
</tr>
<tr>
<td>Daily Newspaper</td>
<td>0.001</td>
<td>0.906</td>
<td></td>
</tr>
<tr>
<td>Website of Major Newspaper</td>
<td>-1.432</td>
<td>1.136</td>
<td></td>
</tr>
<tr>
<td>Other News Websites</td>
<td>1.622</td>
<td>1.091</td>
<td></td>
</tr>
<tr>
<td>Weblogs</td>
<td>-1.914</td>
<td>1.398</td>
<td></td>
</tr>
<tr>
<td>News Magazines (i.e. TIME, Newsweek)</td>
<td>1.974</td>
<td>1.040</td>
<td>*</td>
</tr>
<tr>
<td>Conservative News (i.e. Rush Limbaugh, The O'Reilly Factor)</td>
<td>3.899</td>
<td>1.180</td>
<td>**</td>
</tr>
<tr>
<td>Liberal News (i.e. Air America Radio, Keith Olbermann)</td>
<td>-4.497</td>
<td>1.339</td>
<td>**</td>
</tr>
<tr>
<td>Public Radio/TV (i.e. C-SPAN, NPR)</td>
<td>-0.039</td>
<td>1.024</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>-0.254</td>
<td>0.444</td>
<td></td>
</tr>
</tbody>
</table>
The effects of political satire were also tested separately by party identification categories in order to test the third and fourth hypotheses. The third hypothesis predicted that the effect on the general sample would hold for Republicans, thus demonstrating the ability of political satire to circumvent ideological filters. However, there were no significant effects of political satire on Republicans for either Obama or McCain evaluations. In the case of Obama evaluations, while the effect of satire on Republicans was greater than that of Democrats, it is not statistically significant. However, for Obama evaluations, the results did show that satire has a significant effect on independents. Independents who consider satire to be a minor source are expected to rate Obama approximately 6 points higher than those who do not watch satire at all, and those who consider it a major source will rate Obama 13 points higher than those who do not watch satire at all. So, as expected in the fourth hypothesis, the effect is greater on independents than on partisans. Still, when comparing the size of this effect to other variables within the model, it becomes clear that political satire is still not the dominant media source that affects independent candidate evaluations. FOX News and conservative opinion programs like “The O’Reilly Factor” had greater negative effects. Thus, we reach a similar conclusion as in the first Obama model: that an independent effect is present, but it is not as strong as the effects of other variables.
The split model for McCain evaluations again produced a coefficient that was insignificant. Conservative-leaning news programs and stations, like FOX News and “The O’Reilly Factor” still had a strong and significant effect.

**Table 9:** Differential Effects of Political Satire on Obama general favorability evaluations, by Party Identification

<table>
<thead>
<tr>
<th></th>
<th>Republicans</th>
<th></th>
<th>Democrats</th>
<th></th>
<th>Independents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Satire</td>
<td>2.23</td>
<td>3.02</td>
<td>0.41</td>
<td>1.66</td>
<td>6.35</td>
<td>2.57</td>
</tr>
<tr>
<td>Evening News</td>
<td>6.74</td>
<td>1.86</td>
<td>**</td>
<td>4.65</td>
<td>**</td>
<td>1.40</td>
</tr>
<tr>
<td>Morning News</td>
<td>-6.34</td>
<td>2.07</td>
<td>**</td>
<td>0.93</td>
<td>1.36</td>
<td>0.73</td>
</tr>
<tr>
<td>CNN</td>
<td>6.18</td>
<td>1.84</td>
<td>**</td>
<td>1.06</td>
<td>1.56</td>
<td>3.42</td>
</tr>
<tr>
<td>Local News</td>
<td>2.47</td>
<td>1.90</td>
<td>-1.56</td>
<td>1.60</td>
<td>2.94</td>
<td>2.16</td>
</tr>
<tr>
<td>FOX News</td>
<td>-6.11</td>
<td>1.87</td>
<td>**</td>
<td>-2.92</td>
<td>1.74</td>
<td>*</td>
</tr>
<tr>
<td>MSNBC</td>
<td>4.93</td>
<td>2.11</td>
<td>**</td>
<td>-0.11</td>
<td>1.62</td>
<td>2.24</td>
</tr>
<tr>
<td>Newspaper</td>
<td>-1.70</td>
<td>1.63</td>
<td>0.33</td>
<td>1.35</td>
<td>4.42</td>
<td>1.90</td>
</tr>
<tr>
<td>Newspaper Website</td>
<td>-0.40</td>
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<td>1.73</td>
<td>-2.64</td>
<td>2.21</td>
</tr>
<tr>
<td>Other News Sites</td>
<td>-1.54</td>
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<td>-2.02</td>
<td>1.70</td>
<td>-0.80</td>
<td>2.14</td>
</tr>
<tr>
<td>News Blog</td>
<td>3.86</td>
<td>2.79</td>
<td>2.80</td>
<td>2.09</td>
<td>-2.63</td>
<td>2.96</td>
</tr>
<tr>
<td>Magazine</td>
<td>-1.23</td>
<td>2.12</td>
<td>-0.09</td>
<td>1.45</td>
<td>-0.25</td>
<td>2.16</td>
</tr>
<tr>
<td>Conservative Show</td>
<td>-3.32</td>
<td>1.88</td>
<td>*</td>
<td>-8.17</td>
<td>2.16</td>
<td>**</td>
</tr>
<tr>
<td>Liberal Show</td>
<td>2.00</td>
<td>3.06</td>
<td>3.74</td>
<td>1.70</td>
<td>**</td>
<td>4.05</td>
</tr>
<tr>
<td>Public Radio</td>
<td>2.69</td>
<td>1.98</td>
<td>1.93</td>
<td>1.43</td>
<td>2.19</td>
<td>2.18</td>
</tr>
<tr>
<td>Age</td>
<td>0.37</td>
<td>0.85</td>
<td>-0.53</td>
<td>0.63</td>
<td>-0.18</td>
<td>1.02</td>
</tr>
<tr>
<td>Education Level</td>
<td>4.52</td>
<td>1.28</td>
<td>**</td>
<td>-2.20</td>
<td>1.06</td>
<td>**</td>
</tr>
</tbody>
</table>
| 5 pt.          | 5.21 | 1.75 | **      | 4.70 | 1.17 | ** | 7.31 | 1.88 | **
<table>
<thead>
<tr>
<th>Variable</th>
<th>Republicans</th>
<th></th>
<th>Democrats</th>
<th></th>
<th>Independents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>SE</td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Satire</td>
<td>-1.11</td>
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<td>-2.73</td>
<td>1.97</td>
<td>-3.08</td>
<td>2.50</td>
</tr>
<tr>
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<td>-2.23</td>
<td>1.96</td>
<td>-0.91</td>
<td>2.20</td>
</tr>
<tr>
<td>Morning News</td>
<td>0.69</td>
<td>1.67</td>
<td>0.86</td>
<td>1.61</td>
<td>1.15</td>
<td>2.08</td>
</tr>
<tr>
<td>CNN</td>
<td>-2.73</td>
<td>1.49</td>
<td>*</td>
<td>0.31</td>
<td>1.86</td>
<td>-4.73</td>
</tr>
<tr>
<td>Local News</td>
<td>0.27</td>
<td>1.53</td>
<td>-0.89</td>
<td>1.88</td>
<td>-0.77</td>
<td>2.10</td>
</tr>
<tr>
<td>FOX News</td>
<td>4.14</td>
<td>1.51</td>
<td>**</td>
<td>7.54</td>
<td>2.06</td>
<td>*</td>
</tr>
<tr>
<td>MSNBC</td>
<td>-0.77</td>
<td>1.71</td>
<td>-0.64</td>
<td>1.93</td>
<td>-2.07</td>
<td>2.04</td>
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<td>-1.04</td>
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<td>1.85</td>
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<tr>
<td>Newspaper</td>
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<td>1.85</td>
<td>-1.78</td>
<td>2.07</td>
<td>-0.20</td>
<td>2.15</td>
</tr>
</tbody>
</table>

** p ≤ 0.05, * p ≤ 0.10 (One-tailed tests)

Table 10: Differential Effects of Political Satire on McCain general favorability evaluations, by Party Identification

---

4 The 5-point ideology measure goes from very conservative to very liberal
5 For the dichotomous race variables, “Hispanic” was left out as reference category.
While candidate evaluations can take the form of general ratings, they can also take the form of specific assessments of character traits. As stated in the theory, I expect that political satire will result in more positive evaluations of Obama and more negative evaluations of McCain, meaning that watching satire will increase the difference between the two valance measures, either by increasing the Obama valance measure or decreasing the McCain

<table>
<thead>
<tr>
<th></th>
<th>Website</th>
<th>Other Sites</th>
<th>Other News</th>
<th>-0.32</th>
<th>1.67</th>
<th>3.66</th>
<th>2.02</th>
<th>*</th>
<th>-0.27</th>
<th>2.09</th>
</tr>
</thead>
<tbody>
<tr>
<td>News Blog</td>
<td>-1.08</td>
<td>2.25</td>
<td>-4.51</td>
<td>2.45</td>
<td>*</td>
<td>-1.22</td>
<td>2.88</td>
<td></td>
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<td></td>
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<tr>
<td>Magazine</td>
<td>-1.50</td>
<td>1.71</td>
<td>3.35</td>
<td>1.72</td>
<td>*</td>
<td>1.24</td>
<td>2.10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservative Show</td>
<td>1.15</td>
<td>1.51</td>
<td>5.48</td>
<td>2.55</td>
<td>*</td>
<td>5.70</td>
<td>2.43</td>
<td>**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberal Show</td>
<td>-2.63</td>
<td>2.48</td>
<td>-5.66</td>
<td>2.02</td>
<td>*</td>
<td>-3.48</td>
<td>2.84</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Radio</td>
<td>-0.18</td>
<td>1.60</td>
<td>-1.15</td>
<td>1.70</td>
<td>0.79</td>
<td>2.12</td>
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<td></td>
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<td></td>
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<td>Age</td>
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<td>0.06</td>
<td>0.75</td>
<td>-1.70</td>
<td>0.99</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Education Level</td>
<td>0.18</td>
<td>1.04</td>
<td>5.02</td>
<td>1.26</td>
<td>*</td>
<td>2.31</td>
<td>1.57</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 pt. Ideology</td>
<td>0.57</td>
<td>1.41</td>
<td>-5.01</td>
<td>1.37</td>
<td>*</td>
<td>-5.55</td>
<td>1.83</td>
<td>**</td>
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<td>Religious Services</td>
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<td>-1.27</td>
<td>0.85</td>
<td>-0.09</td>
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<td>5.88</td>
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<td>8.35</td>
<td>7.35</td>
<td>3.84</td>
<td>8.75</td>
<td></td>
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<td>3.78</td>
<td>12.08</td>
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<td>16.2</td>
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<td>9.08</td>
<td>8.97</td>
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<td>11.5</td>
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<td>26.04</td>
<td>11.70</td>
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</tr>
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<td>F</td>
<td>1.54</td>
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<td>5.47</td>
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<td>5.28</td>
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<td>Adj. R²</td>
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<td>0.27</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

** p ≤ 0.05, * p ≤ 0.10
measure, or both. This proved to be the case (see Table 11): satire has a statistically significant effect on the relative valence measure.

**Table 11:** Effects of Political Satire on Valance Differences

<table>
<thead>
<tr>
<th>Source of News</th>
<th>B</th>
<th>SE</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satire (i.e. The Daily Show, The Colbert Report)</td>
<td>0.146</td>
<td>0.055</td>
<td>**</td>
</tr>
<tr>
<td>Evening News (i.e. CBS Evening News, ABC World News)</td>
<td>0.134</td>
<td>0.045</td>
<td>**</td>
</tr>
<tr>
<td>Morning News (i.e. The Today Show, Good Morning America)</td>
<td>-0.017</td>
<td>0.043</td>
<td></td>
</tr>
<tr>
<td>CNN</td>
<td>0.109</td>
<td>0.043</td>
<td>**</td>
</tr>
<tr>
<td>Local News</td>
<td>-0.306</td>
<td>0.047</td>
<td>**</td>
</tr>
<tr>
<td>FOX News</td>
<td>0.027</td>
<td>0.045</td>
<td></td>
</tr>
<tr>
<td>MSNBC</td>
<td>0.127</td>
<td>0.046</td>
<td>**</td>
</tr>
<tr>
<td>Daily Newspaper</td>
<td>0.025</td>
<td>0.039</td>
<td></td>
</tr>
<tr>
<td>Website of Major Newspaper</td>
<td>0.015</td>
<td>0.049</td>
<td></td>
</tr>
<tr>
<td>Other News Websites</td>
<td>-0.097</td>
<td>0.047</td>
<td>*</td>
</tr>
<tr>
<td>Weblogs</td>
<td>0.082</td>
<td>0.060</td>
<td></td>
</tr>
<tr>
<td>News Magazines (i.e. TIME, Newsweek)</td>
<td>-0.026</td>
<td>0.045</td>
<td></td>
</tr>
<tr>
<td>Conservative News (i.e. Rush Limbaugh, The O'Reilly Factor)</td>
<td>-0.340</td>
<td>0.051</td>
<td>**</td>
</tr>
<tr>
<td>Liberal News (i.e. Air America Radio, Keith Olbermann)</td>
<td>0.218</td>
<td>0.057</td>
<td>**</td>
</tr>
<tr>
<td>Public Radio/TV (i.e. C-SPAN, NPR)</td>
<td>0.074</td>
<td>0.044</td>
<td>*</td>
</tr>
<tr>
<td>Age</td>
<td>-0.007</td>
<td>0.019</td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>-0.064</td>
<td>0.031</td>
<td>*</td>
</tr>
<tr>
<td>5 pt. Ideology (Conservative to Liberal)</td>
<td>0.188</td>
<td>0.036</td>
<td>**</td>
</tr>
<tr>
<td>Frequency of Religious Services/Week</td>
<td>0.046</td>
<td>0.021</td>
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</tr>
<tr>
<td>White</td>
<td>-0.285</td>
<td>0.201</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.585</td>
<td>0.233</td>
<td>**</td>
</tr>
<tr>
<td>Asian</td>
<td>0.103</td>
<td>0.349</td>
<td></td>
</tr>
</tbody>
</table>
The effect of satire on valance difference was also tested within party identification groups to test hypotheses three and four. Once again, there was no significant effect on Republicans, although the effect is greater than that of Democrats. For Independents, the effect of satire on valance difference is significant and about twice that as for the sample as a whole (see Table 12).

**Table 12:** Differential Effects of Political Satire on Valance Differences, by Party Identification

<table>
<thead>
<tr>
<th></th>
<th>Republicans</th>
<th></th>
<th>Democrats</th>
<th></th>
<th>Independents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Satire</td>
<td>0.13</td>
<td>0.13</td>
<td>0.03</td>
<td>0.08</td>
<td>0.275</td>
<td>0.11</td>
</tr>
<tr>
<td>Evening News</td>
<td>0.16</td>
<td>0.08</td>
<td>**</td>
<td>0.10</td>
<td>0.075</td>
<td></td>
</tr>
<tr>
<td>Morning News</td>
<td>-0.12</td>
<td>0.09</td>
<td></td>
<td>0.04</td>
<td>0.062</td>
<td></td>
</tr>
<tr>
<td>CNN</td>
<td>0.16</td>
<td>0.08</td>
<td>**</td>
<td>0.02</td>
<td>0.072</td>
<td></td>
</tr>
<tr>
<td>Local News</td>
<td>-0.21</td>
<td>0.08</td>
<td>**</td>
<td>-0.33</td>
<td>0.080</td>
<td>**</td>
</tr>
<tr>
<td>FOX News</td>
<td>0.07</td>
<td>0.08</td>
<td>-0.02</td>
<td>0.073</td>
<td>0.134</td>
<td>0.09</td>
</tr>
<tr>
<td>MSNBC</td>
<td>0.21</td>
<td>0.09</td>
<td>**</td>
<td>0.11</td>
<td>0.078</td>
<td>0.07</td>
</tr>
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<td>Newspaper</td>
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<td>-0.06</td>
<td>0.06</td>
<td>0.11</td>
<td>0.08</td>
</tr>
<tr>
<td>Newspaper Website</td>
<td>-0.11</td>
<td>0.10</td>
<td>-0.009</td>
<td>0.08</td>
<td>0.04</td>
<td>0.09</td>
</tr>
<tr>
<td>Other News Sites</td>
<td>-0.08</td>
<td>0.09</td>
<td>-0.04</td>
<td>0.08</td>
<td>-0.02</td>
<td>0.09</td>
</tr>
</tbody>
</table>
Political Satire and Candidate Evaluations

Discussion

This study tests the effect of political satire programs, specifically *The Daily Show with Jon Stewart* and *The Colbert Report*, on candidate evaluations in the 2008 American presidential election. Political satire separates itself as a distinct category under the umbrella of “soft news” because of its unique “mock newscast” style of presentation, which pokes fun at candidates and the American political system. Studies of previous American elections demonstrated that political satire affects candidate evaluations, even when controlling for partisanship and ideology (Baumgartner and Morris 2006, Morris 2008). Furthermore, empirical evidence confirms that political satire can alter the ways in which American voters process information (Nabi et al. 2007, Young 2008).
study seeks to elaborate on previous work by testing the effects of satire in the 2008 election.

The first hypothesis argues that viewers of political satire will have more favorable evaluations of the Democratic candidate, Barack Obama, than non-viewers. The concept of “candidate evaluations” was operationalized in two ways: in terms of general candidate evaluations and specific candidate evaluations. The hypothesis is supported by both measures. In terms of general candidate evaluations, viewership of satire increased favorability ratings independent of other media controls, demographic factors, and party identification and political ideology. But, when put into perspective, the size of the effect of political satire was not as large as some of the effects of other controls, namely party identification and political ideology. In terms of specific favorability, watching satire had a significant and positive effect on the valence difference measure, showing that political satire can increase favorability of response to the Democratic candidate.

The second hypothesis argues that viewers of political satire will have less favorable evaluations of the Republican candidate, John McCain, than non-viewers. In terms of general favorability, the hypothesis held. Yet, although political satire did cause a lower favorability rating, the effect was not as strong as the one for evaluations of Obama. The cause, I argue, is one of measurement: one of the political satire shows included in the survey, The Colbert Report, employs a method of humor that appears to support the Republican cause while simultaneously and subtly mocking it. It cannot be assumed that all viewers in the sample were able to understand the communicative style of the show, and therefore some may have actually given more favorable evaluations to McCain. I expect that the hypothesis will attain a higher level of significance in future studies provided that the data makes a distinction between The Daily Show and The Colbert Report.

The third hypothesis held that Republicans, isolated from the general sample, would experience a statistically significant increase in Obama favorability as a result of watching political satire. This hypothesis was necessary to demonstrate that political satire has the ability to bypass cognitive filters or motivated reasoning that would otherwise induce Republicans to give more favorable ratings to McCain. However, there was no evidence in the data to support this claim. Again, I argue that the literature on political satire and peripheral route attitude change is sound. The problem is the dataset
used in this experiment: by grouping *TCR* with *TDS* it is difficult to determine whether or not *TCR* is exerting a pro-Republican effect. It is still possible that political satire has the ability to cause Republicans to give favorable evaluations to Democratic candidates, but a different dataset would be required to test it more fully.

Finally, the fourth hypothesis was also supported: political satire has its greatest effect on independents – those without the same ideological filters as Republicans or Democrats. This confirms that cognitive filters do matter in attitude formation. If an Independent has fewer of these filters, it is expected that he or she will be more easily persuaded.

This study can be continued along a few different paths. The first, and most obvious, is to attempt to clear up the issue of cognitive filters and the possibility of circumventing them. This process, if it exists, is the primary and most relevant normative implication of research in this area. However, since the study draws from the fields of American public opinion, media/politics studies, and political psychology, it requires a great deal of elaboration on all fronts. In the first two fields, the study can be replicated and expanded to include future and past presidential elections. One could also extend this analysis to include vice presidential nominees. In addition, the effect of political satire on other types of elections, notably congressional elections, should be examined. Political satire operates in a distinct manner from standard news programming, so the literature on it must be developed further.

This research could also be expanded from a psychological and cognitive approach. As I noted earlier, one of the central problems of the analysis is the difference in the comedic approaches of *TDS* and *TCR*. To a certain degree, any analysis of this subject will depend on how the viewer perceives the different types of humor, and how those perceptions contribute to the formulation of a candidate evaluation. In this experiment, political satire was separated from the broad category of soft news. To pursue the topic further, one should separate political satire shows into categories according to their dominant types of humor, or simply use each show as its own variable. This process will allow researchers to pinpoint the exact sources of the effect on candidate evaluations, and will contribute immeasurably to the understanding of how these shows function in the American political system.
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Colophon

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