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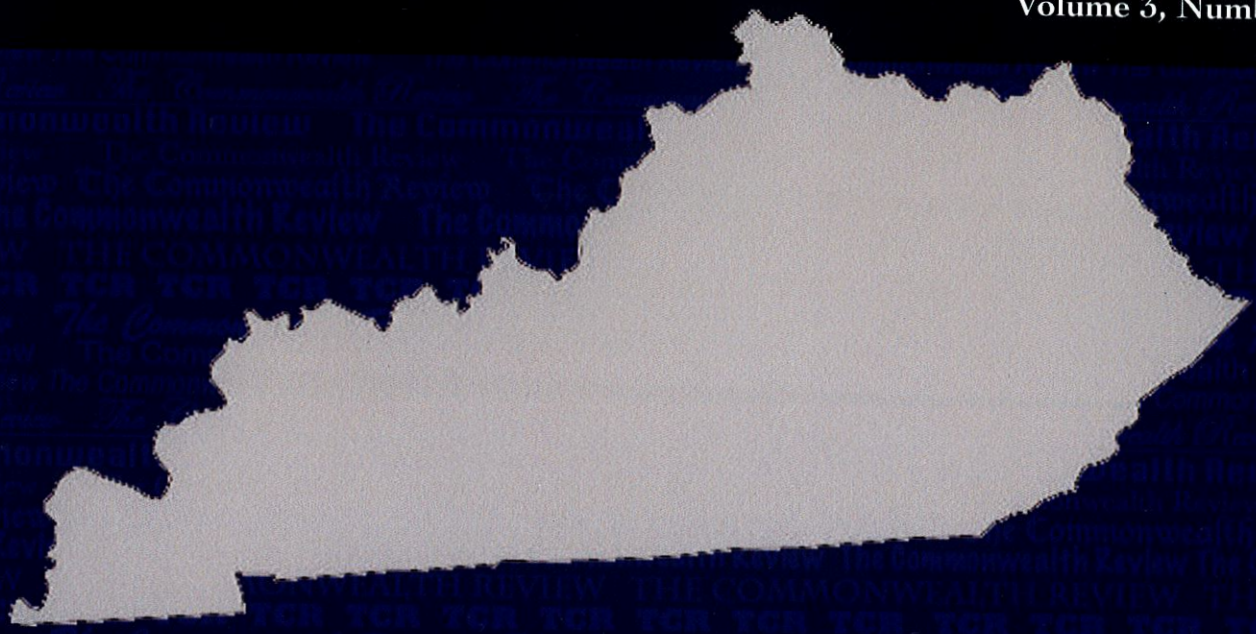

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THE COMMONWEALTH REVIEW OF POLITICAL SCIENCE

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The Theological Foundations of Religious Liberty in the Thought of John Locke and James Madison[1]

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Religious liberty is an important human right supported by both religious and secular arguments. This work explores John Locke's *Letter Concerning Toleration* and James Madison's *Memorial and Remonstrance* and identifies a common theological or religious argument supporting religious liberty as the requisite means to satisfy the duties of conscience to the Creator. Since individual duty and accountability to God is a shared premise among theistic faith traditions, this approach to advancing religious liberty and religious pluralism may have broader appeal and utility to reformers in faith traditions not especially responsive to secular arguments.

Key Words: religious liberty, liberty of conscience, religious tolerance, Locke, Madison

If there is a God . . . it can be expected a priori that He wants a voluntary response born of genuine gratitude and humility themselves rooted in reflection and morally responsible choice. Seen in this light, heresy and even apostasy are morally more acceptable than any hypocritical attachment to orthodox opinion out of the fear of public sanctions.

—Shabbir Akhtar, Muslim Philosopher

At first glance, one would expect theological or religious arguments supporting religious liberty to be advanced by theologians or religious clergy, not Enlightenment thinkers such as John Locke and James Madison. Even a superficial knowledge of religious liberty in the American tradition might prompt one to identify Roger Williams, John Leland, Isaac Backus and other religious

[1] While the author was on sabbatical leave, this work was undertaken at The London School of Economics and Political Science and submitted to reviewers at that institution. Subsequently, the work was submitted to the Kentucky Political Science Association for its annual meeting in 2015.

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figures as the contributors of theological or religious arguments on behalf of religious liberty in the United States. After all, religious thinkers in dissenting, minority religious traditions, often experiencing persecution by religious majorities or by government, would be expected to offer theologically grounded arguments to protect and advance their own interests. Nonetheless, both Locke and Madison advanced theologically based arguments for religious liberty that helped to alter the understanding of the church-state relationship in the West generally and to elevate the status of religious liberty that we see reflected in the religion clause of the First Amendment to the U.S. Constitution.

And why might it be important to more fully explicate the theological foundation of religious liberty as advanced by Locke and Madison? First, the prominent and significant influence of both Locke and Madison in the founding of the American republic provides greater credibility to theologically based arguments for religious liberty than would otherwise be the case if we simply examined the arguments of clergy or theologians advancing the same or similar arguments for religious liberty easily assumed to protect their religious interests. Second, there is the commonly held misconception that religion itself is suspect in advancing arguments for religious liberty and that this is instead a task primarily or exclusively for secular reasoning. As scholars associated with The Witherspoon Institute's Task Force on International Religious Freedom argue:

> It is commonly argued that, in the defense of religious freedom, appeals to religion itself are somehow illegitimate. Religious freedom, it is argued, must be grounded in, and defended on the basis of, "secular" reasoning about "tolerance" or about the sheer "necessity" of having to get along with others in a pluralistic environment. Religion itself cannot supply a ground for religious freedom, for its own native inclinations are toward irrational fanaticism and coercion. And so, in this line of thinking, the last place to look for strong support for religious liberty is in the convictions and traditions of religious believers themselves.[2]

Unfortunately, a strictly secular approach to the grounding of religious liberty may not only undermine religious liberty itself domestically in the United States, but may also undermine the appeal of religious liberty abroad, particularly to Muslim reformers who are sympathetic to an Islamic grounding for religious liberty, but averse to a secular foundation. Ironically, recent decades have seen the increased secularization in the understanding of religious liberty in the United States, according to scholars Michael Sandel, Chris Beneke and Thomas Farr, which may work at cross-purposes to both our own historical traditions and our current national security objectives abroad. For instance, Sandel argues that a

[2] The Witherspoon Institute Task Force on International Religious Freedom, *"Religious Freedom: Why Now? Defending an Embattled Human Right* (Princeton: The Witherspoon Institute, 2012), 32.

more secularized understanding of religious liberty has resulted in the commonly held view today that it is simply a matter of "choice" or preference rather than a freedom of "conscience."[3] Similarly, Beneke argues that it is not uncommon for many Americans to employ the "market model" to view religious liberty like economic liberty and, therefore, as a utility maximizing preference.[4] The implication of the Sandel and Beneke analyses is that a strictly secularized understanding of religious liberty makes it difficult to maintain the historically elevated status of what many have called our "first" freedom enshrined and protected by the First Amendment. If religious liberty is simply a preference or choice, it is hard to see how it maintains its status as a fundamental natural right, but instead is viewed as roughly the equivalent of a civil liberty, civil right, or even policy choice.

A neglect of the theological grounding of religious liberty also has potentially adverse consequences for U.S. national security interests. While the promotion of religious liberty abroad, particularly in repressive states, promises to introduce religious pluralism and mitigate against religious extremism, any promotion effort is seriously undermined if religious liberty is viewed strictly or even primarily as a secular value. Whether we like it or not, most of the world have been and continue to be religious rather than secular in world view. Consequently, religious arguments supporting religious liberty may have greater promise in appealing to religious and political leaders in those countries especially threatened by radical Islam. For U.S. foreign policy to be more productive, then, an effort to explore our own theological foundation to religious liberty during the American founding period may link to certain reform efforts advanced by religious and political leaders in those countries troubled by Islamist extremism today. In his book *World of Faith and Freedom*, former Director of the Office of International Religious Freedom and Georgetown University scholar Thomas Farr agrees and argues that:

> [But] in its policy of promoting international religious freedom, the world's most powerful nation can do better. It can achieve more than endless discussions of persecution with foreign ministries and the rescue of a few souls in the bargain. It can attack the very structures of persecution by promoting religious liberty as it was understood by America's own founding generation . . . Our foreign policy in general, and our approach to religion and human freedom in particular, exhibit a

[3] Michael Sandel, "Freedom of Conscience or Freedom of Choice." In *Articles of Faith, Articles of Peace.* Ed. James Davison Hunter and Os Guinness (Washington, DC: The Brookings Institution, 1990), 75.

[4] Chris Beneke, "The Free Market and the Founders' Approach to Church-State Relations." *Journal of Church and State* 52 (2), 2010: 323.

> dangerous disarray and confusion. We must do better. Our security and well-being depend upon it.[5]

Notwithstanding the constraints and limits of advancing American founding first principles of religious liberty throughout the world in the 21st century, the effort to rediscover and revitalize this earlier understanding of religious liberty is a reasonable one for discourse on the issue today. It seems rather unreasonable to a priori categorically reject the possibility of a contribution to informed discussion and debate on religious liberty issues, both domestically and abroad.

Although many thinkers have contributed to a theological foundation to religious liberty in Western civilization, a survey of the thought of all or even most of these thinkers is beyond the scope of this paper. Rather, we narrow our focus on two of the greatest liberal thinkers in the past several hundred years, John Locke and James Madison, and we examine the theological foundation to religious liberty found within Locke's *A Letter Concerning Toleration* (*Letter*) and Madison's *Memorial and Remonstrance* (*Memorial*), while recognizing that these two liberal thinkers also advanced powerful, non- or less-theological arguments for religious liberty as well. Those arguments, however, are beyond the scope of this inquiry.

Locke's Three Arguments

In commenting on Locke's *Letter* as a whole, Richard Vernon states that "the letter itself is an extraordinarily compact web of argumentation and plainly the result of supremely concentrated thought. Point after point is driven home."[6] Yet, notwithstanding scholarly debates on different aspects of the *Letter*, there are several highly respected scholars who support Mark Goldie's statement that "Locke's *Letter* offers three principal arguments for toleration."[7] Locke introduces each of the three arguments near the beginning of the *Letter* and, so, most of Locke's commentary in the *Letter* follows from this relatively brief introduction of the three core arguments. Let us, then, identify each argument found in Locke's *Letter* before proceeding to the secondary source commentary and analysis. In the *Letter*, Locke writes:

> *First*, Because the Care of Souls is not committed to the Civil Magistrate any more than to other Men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such Authority to one Man over another, as to compel any one to his Religion. Nor can any such

[5] Thomas Farr, *World of Faith and Freedom* (New York: Oxford University Press, 2008), x-xi.
[6] Richard Vernon, *The Career of Toleration* (London: McGill-Queen's University Press, 1997), 9.
[7] Mark Goldie, "Introduction." In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), xii.

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> power be vested in the Magistrate by the Consent of the People; *because no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace* (emphasis mine).[8]
>
> *In the second place.* The care of Souls cannot belong to the Civil Magistrate, because his Power consists only in outward force: But true and saving Religion consists in the inward perswasion of the Mind; without which nothing can be acceptable to God. And such is the nature of the Understanding, that it cannot be compell'd to the belief of anything by outward Force.[9]
>
> *In the third place.* The care of the Salvation of Mens Souls cannot belong to the Magistrate; because, though the rigour of Laws and the force of penalties were capable to convince and change Mens minds, yet would not that help at all to the Salvation of their Souls. For there being but one Truth, one way to heaven; what hope is there that more Men would be led into it, if they had no other Rule to follow but the Religion of the Court; and were put under a necessity to quit the Light of their own Reason; to oppose the Dictates of their own Consciences; and blindly to resign up themselves to the Will of their Governors, and to the Religion, which either Ignorance, Ambition, or Superstition had chanced to establish in the Countries where they were born? . . . Men would owe their eternal Happiness or Misery to the places of their Nativity.[10]

These three powerful arguments, deployed by Locke with his anonymous publication of the Letter in 1689, have not only greatly influenced discourse on the church—state relationship in Great Britain since the 17th century, but discourse on the church—state relationship in Western civilization more generally, and the understanding of religious toleration and liberty more specifically. Moreover, these three related, yet distinctive arguments for religious toleration have generated a substantial secondary literature assessing and analyzing each of the three arguments and, in some cases, linking Locke's arguments for religious toleration to religious liberty or liberty of conscience. This literature is quite vast and dense, but a piece of it is quite relevant to our current discussion. That is to say, one major divide in the secondary scholarship on Locke's Letter appears in the treatment of the first and second arguments. For instance, Jeremy Waldron argues that the core of Locke's case is found in the Letter's second argument on the irrationality and ineffectiveness of employing government coercion in the regulation of religious belief. In Waldron's view, Locke's second argument, although primary to Locke's case, is

[8] John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 13.
[9] Ibid.
[10] Ibid., 14-15.

quite weak.[11] On the other hand, David Wootton rejects Waldron's position and argues instead that the key to Locke's case is found within the *Letter*'s first argument. Wootton says:

> I have tried to show that Proast and Waldron miss the heart of Locke's case, which is not about the ineffectiveness of persecution, nor (as Waldron thinks it should be) about the moral evils of intolerance or the pathetic fate of the victims of persecution. *Locke's central claim is that there are certain decisions that it is irrational, and perhaps impossible, to allow others to make on our behalf* (emphasis mine).[12]

And, so, for Wootton, Locke's central claim should be understood in terms of the first argument rather than the second. Interestingly, the first [and third] arguments are directed toward subjects and are more theological or religious in nature, while the second argument is directed toward rulers and is more political. Wootton's analysis intimates at this distinction when he states that "the first argument is not about what is rational for rulers, but what is rational for subjects. It is not rational for subjects to hand over to their rulers [the] responsibility for deciding what they should believe."[13] This responsibility or duty to personal religious belief is so important and so intrinsic to the human person that both Locke and Madison will argue for its fundamental non-alienability or non-delegation. On the ultimate questions in life pertaining to one's accountability to God, it is up to each person to decide regardless of time and place; Locke's first argument in the *Letter* is advanced as a trans-historical theological principle requiring religious liberty. Madison's *Memorial* will advance the same claim.

LOCKE'S THEOLOGICAL FOUNDATION IN THE *LETTER'S* FIRST ARGUMENT

When we look to the entire *Letter*, we find that Locke advances the first argument throughout the text by both repeating the argument and emphasizing its importance. Often, Locke employs the word "care" in describing the individual's responsibility or duty to his soul before God. Naturally, the word "care" would be appropriately and logically employed by Locke, the physician, who would advise on caring for the whole person, both body and soul. For instance, Locke says "the *care* of each man's salvation belongs only to himself";[14] or, again, "the *care* of each man's soul, and of the things of heaven, which neither

[11] Jeremy Waldron, "Locke: Toleration and the Rationality of Persecution." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 100.
[12] David Wootton, "Introduction." In *Political Writings of John Locke*. Ed. David Wootton (London: Penguin Books, 1993), 104.
[13] Ibid., 99.
[14] John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings*. Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 46.

does belong to the Commonwealth, nor can be subjected to it, is left entirely to every man's self";[15] and, again, "the principal and chief *care* of every one ought to be of his own soul first, and in the next place of the public peace."[16] Perhaps Locke's strongest statement, buttressing his first argument in the *Letter*, is when he develops a more extended theological argument that:

> Every man has an immortal soul, capable of eternal happiness or misery; whose happiness depending upon his believing and doing those things in this life, which are necessary to the obtaining of God's favor, and are prescribed by God to that end; it follows from thence, first, that the observance of these things is the *highest obligation* that lies upon mankind, and that our *utmost care, application, and diligence* ought to be exercised in the search and performance of them; because there is nothing in this world that is of any consideration in comparison with eternity.[17]

These preceding quotes from Locke are not exhaustive, but illustrative of the importance he places on the first argument of the *Letter*. By implication, then, the third and subordinate argument of the *Letter* derives significant importance for the individual in ensuring that he or she assumes the care or duty for "obtaining God's favor" rather than leaving this most important endeavor to the capriciousness of civil rule.

Locke's frequent use of the word "care" is applied to "each man" or to "every man" or to "everyone." This suggests that each person has an *equal* duty or obligation to care for his or her own soul before God. And, again, as Locke says, "Every man has an immortal soul, capable of eternal happiness or misery; whose happiness [depends] upon his believing *and doing* those things in this life, which are necessary to the obtaining of God's favor, and are prescribed by God to that end."[18] According to Locke, each person has an equal duty to not only pursue God's favor with the right beliefs, but an equal duty to *do* those things in this life that bring God's favor. This, the most important of human duties according to Locke, cannot be satisfied without some measure of individual liberty. Therefore, Locke's first argument strongly implies some measure of equal liberty in order to satisfy the duty each person has to God.

Locke's *Second Treatise* may be instructive here, since we find Locke's views on equality very consistent in this work with what Locke states about equal duty to God in the *Letter*. For instance, in the second chapter of the *Second Treatise*, Locke's discussion of natural human equality and God's sustained property interest in human beings suggests each person's equal duty to God. This would be clearly consistent with Locke's first argument in the *Letter*. Locke writes in the *Second Treatise*: "For men being all the workmanship of one omnipotent, and

[15] Ibid. 48.
[16] Ibid., 49.
[17] Ibid., 45.
[18] Ibid.

infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business, *they are his property*, whose workmanship they are, made to last during his, not one another's pleasure."[19] Since God retains a property interest in each person, each person must exercise stewardship rather than complete ownership over his or her person. And a major stewardship duty, according to Locke, is to *preserve* oneself.[20] This language in the *Second Treatise* is very similar to and compatible with Locke's first argument in the *Letter*. That is, Locke's understanding in the *Second Treatise* of the natural duty to preserve oneself can be broadly understood as the preservation of both body and soul, especially since Locke understands the whole person as consisting of both body and soul. Locke's first argument in the *Letter*, then, on the individual person's unalienable duty to exercise care over his soul is clearly consistent with the injunction to preserve oneself as it is found in the *Second Treatise*. Further, the individual duty to God for the "care" or the preservation of oneself, which is a foundational argument in both the *Letter* and the *Second Treatise*, is recognized by Paul Kelly as an important component in Locke's view of human morality. Kelly writes: "the significance of abstract reasoning [in humans] is that it enables each person to understand themselves as a part of the created order and from this they can reason to their obligation to preserve that order including [*themselves and*] other moral equals as part of the basic moral obligation we have to God."[21] Similarly, in Kelly's commentary on private property and, more specifically, self-ownership found in Locke's *Second Treatise*, Kelly writes: "Locke argues that we are moral equals who enjoy rights against one another because ultimately we are part of the created order and are therefore the property of God. Because we are already the property of someone else we may not kill ourselves and we have a *duty to preserve ourselves and all others like us*, where doing so is not incompatible with our self-preservation."[22] This duty to "care" or "preserve" oneself is the foundation for the natural rights of life, liberty and property Locke specifies in the *Second Treatise*. Similarly, one can argue that out of Locke's first argument in the *Letter*, emphasizing the equal, individual duty to care for the soul, is derived some measure of equal liberty to accomplish the task. Although Locke is not explicitly arguing for a natural right to religious liberty, it clearly appears to be implied and latent within his first argument of the *Letter*.

Yet, this linkage between religious duty and religious liberty in Locke's first argument of the *Letter* has not been apparent to some scholars. For instance, in her work "Locke: Toleration, Morality and Rationality," Susan Mendus observes

[19] John Locke, *Second Treatise of Government* [1689]. Ed. Richard Cox (Arlington Heights: Harlan Davidson, 1982), 4.
[20] Ibid.
[21] Paul Kelly, *Locke's Second Treatise of Government* (London: Continuum International Publishing Group, 2007), 33.
[22] Ibid., 65.

that "Locke, of course, is no stranger to the notion of individual rights, but in the *Letter on Toleration* he concentrates exclusively on the obligations of the magistrates and says little about the rights of the tolerated. Indeed, as has been mentioned already, the *Letter* contains no general argument for a right to freedom of worship at all."[23] Further, as she concludes her argument, Mendus writes that "this, I believe, is a difficulty which lies at the heart of Locke's discussion of toleration: there is no general right to freedom of worship, but still there is something very wrong with religious persecution."[24] Perhaps it is because Mendus, like Proast and Waldron, is inclined to focus on Locke's second argument in the *Letter* that she has very little to say about the first argument. In any case, although it is true that Locke does not argue explicitly for religious liberty in the *Letter*, he does argue explicitly for the individual's duty to care for his soul—and this duty implies some measure of liberty for the duty to be satisfied.

Paul Kelly argues along similar lines in his work "John Locke: Authority, Conscience and Religious Toleration." In this work, Kelly advances the notion that for Locke "the problem of toleration arose from the problem of reconciling Christian liberty of conscience with the authority of the sovereign legislator."[25] However, this issue of reconciliation was not confined simply to the *Letter*, but rather was the foundational conceptual framework running through Locke's early and mature works on religious and civil issues, especially the *Two Tracts on Government*, the "Essay on Toleration," and the *Letter on Toleration*. Although acknowledging that the policy prescriptions varied across these works spanning about twenty-five years, the theoretical structure of the argument remained the same. Kelly writes: "This essay [Kelly's] is intended to redirect attention from the policy prescriptions of these works to the form of argument within which these policy prescriptions arose. In this way it can be shown that there is not a fundamental change of argument and philosophical purpose between the early and the later writings on the relationship between the Christian liberty of conscience and the sovereign authority of the civil magistrate."[26] This conceptual framework was obviously informed by Locke's Puritan faith tradition, particularly the tradition's elevation of "liberty of conscience" and its potential for dissent. Of course, this was even more fundamentally based upon the effects of the Protestant Reformation in which, Kelly writes, "The Protestant emphasis on *individual responsibility* for salvation created the conditions within which the

[23] Susan Mendus, "Locke: Toleration, Morality and Rationality." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 159.
[24] Ibid., 160.
[25] Paul Kelly, "John Locke: Authority, Conscience and Religious Toleration." In *John Locke—A Letter Concerning Toleration in Focus*. Ed. John Horton and Susan Mendus (London: Routledge, 1991), 128.
[26] Ibid., 127.

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individual conscience became the standard for determining the religious and ethical requirements of salvation."[27] Within the preceding statement, individual responsibility (or duty) and individual conscience (requiring liberty) are joined together with profound implications for civil authority. Kelly captures this when he writes "the magistrate's task is not the imposition of a uniformity of belief and worship, but the creation of the conditions within which individuals can seek their own salvation in peace. *This argument reappears throughout Locke's writings on the relationship between Christian liberty of conscience and the civil authority.*"[28] Of course, Locke believes that it is a duty or responsibility for the individual to seek his or her salvation and it is out of this foundational duty that a "Christian liberty of conscience" is derived and which Kelly finds throughout Locke's writings. Further, as Kelly ties the *Letter* to Locke's earlier works, Kelly writes that "as in the earlier works, Locke argued that the magistrate had no concern with the salvation of his subjects, *because the responsibility for salvation is placed on each individual and it is inalienable.*"[29] This is the first argument advanced in the *Letter*, in which an individual's inalienable duty requires a "Christian liberty of conscience" for its satisfaction. And, as I have suggested earlier, Locke strongly intimates in the *Letter* that this is an equal duty implying an equal liberty.

Consequently, where Mendus and others see a disconnect between Locke's case for toleration and modern religious rights or liberty, Kelly sees a conceptual framework based upon a theology of liberty of conscience that fits squarely with Locke's first argument.

MADISON'S THEOLOGICAL FOUNDATION IN *MEMORIAL AND REMONSTRANCE*

Two of the greatest American founders championing religious liberty were Thomas Jefferson and James Madison, both from Virginia. And where Jefferson's arguments for religious liberty can at times be understood to represent a break with Locke's *Letter*,[30] Madison's *Memorial* (1785) reflects a common theological foundation with important elements of Locke's *Letter*. When we actually compare the two documents, separated in publication dates

[27] Ibid., 129-30.
[28] Ibid., 136.
[29] Ibid., 142.
[30] See Daniel Palm's argument in *Religious Toleration and Religious Liberty at the Founding* "that Jefferson understood the American founding as having taken the decisive step away from Lockean toleration and toward religious freedom . . ." (p. 35). Since Palm's purpose in writing is to warn his reading audience not to conflate the concepts of religious toleration with religious liberty, he neglects to explore continuities such as common arguments employed in Locke's *Letter* and Madison's *Memorial*.

by almost one century, we find important theological arguments for religious liberty sharing common ground.

Let us, then, turn to Madison's *Memorial*. In response to Patrick Henry's proposal in the Virginia legislature to apply government assessments for the funding of Christian clergy, Madison opposed the Henry proposal with his fifteen point *Memorial and Remonstrance*. At a general level, Vincent Munoz has observed that the *Memorial* "consists of 15 articles. Each article is written as if to stand alone, but there is an obvious sequence. Articles 1 through 4 argue from principle [and] articles 5 through 14 offer pragmatic reasons for defeating Henry's proposed assessment. Article 15 returns to the principle articulated in article 1. Madison sets forth his doctrine of religious liberty in the first article."[31] It bears repeating, as Munoz has noted, that "there is an obvious sequence" in the *Memorial* with the special importance of article 1 in articulating Madison's core doctrine of religious liberty. Article 1 of the *Memorial* reads, in part:

> *Because we hold it for a fundamental and undeniable truth, that religion or the duty which we owe to our Creator and the Manner of discharging it*, can be directed only by reason and conviction, not by force or violence. The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. *This right is in its nature an unalienable right.* It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: *It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him.* This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe . . .[32]

Again, if we return to Locke's first argument in the *Letter*, we read, in part:

> Because the Care of Souls is not committed to the Civil Magistrate any more than to other Men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such Authority to one Man over another, as to compel any one to his Religion. Nor can any such Power be vested in the Magistrate by the consent of the people; because no man can so far abandon the care of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject, to prescribe to him what Faith or Worship he shall embrace. For no Man can, if he would, conform his Faith to the Dictates, of another. All the Life and

[31] Vincent Munoz, "James Madison's Principle of Religious Liberty." *The American Political Science Review* 97 (1), 2003: 21.
[32] James Madison, *Memorial and Remonstrance Against Religious Assessments* [1785]. In *The Mind of the Founder: Sources of the Political Thought of James Madison*. Ed. Marvin Meyers (New York: The Bobbs-Merill Company, 1973), 9.

> Power of true Religion consists in the inward and full persuasion of the mind . . .[33]

As we compare these arguments, we find several linkages. First, both arguments are fundamentally religious or theological in nature rather than political. The arguments obviously have political implications, however, and both share in being directed at the individual subject's or citizen's relationship with God, rather than directed toward rulers on the issue. Wootton made this same observation in his commentary on Locke's *Letter* noted earlier, but it also applies to Madison's *Memorial.* Second, not only in Locke's first argument, but throughout the *Letter* as I reviewed earlier, Locke speaks of the importance of "caring" for one's soul. Locke clearly sees this as a fundamentally important individual duty, arguably the most important individual duty, similarly reflected *in Madison's first sentence in the Memorial* referring to "the duty which we owe to our Creator and the Manner of discharging it . . ." So, both Locke and Madison begin their arguments with the duty owed to the Creator: Locke then advances an argument for religious toleration with implied religious liberty and Madison advances an explicit argument for religious liberty. However, both arguments are premised on the individual's duty owed to God.

Third, both arguments advance the notion that this individual duty is unalienable. Locke says "because no man can so far abandon the *care* (or duty) of his own Salvation, as blindly to leave it to the choice of any other, whether Prince or Subject . . ." while Madison says "It is unalienable also, because what is here a right towards men, is a *duty* towards the Creator." Consequently, both Locke and Madison agree in building their respective arguments that the individual duty owed God is an unalienable one. This obviously implies some modicum level of space for individual conscience and points to the broader framework of authority and conscience developed by Kelly in his commentary on Locke's works. It appears that this same framework can accommodate Madison's *Memorial.* That is, as I have suggested earlier, it is Madison's greater use and creative deployment of the liberal value of *equality* that allows him to explicitly argue for religious liberty in his *Memorial.* More specifically, we find Madison elucidating the importance of individual equality to religious liberty in his 4th article of the *Memorial.*

Madison writes: "If all men are by nature equally free and independent, all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. *Above all are they to be considered as retaining an equal title to the free*

[33] John Locke, *A Letter Concerning Toleration* [1689]. In *A Letter Concerning Toleration and Other Writings.* Ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 13.

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exercise of Religion according to the dictates of conscience."[34] Further, Madison argues in the same article that "as the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions."[35]

We clearly see with this language Madison invoking the natural, pre-political principle of equality as an important foundation to religious liberty. More specifically, Madison is clearly applying principles found in the *Second Treatise,* such as natural equality and natural rights, to derive a natural right to religious liberty based upon the individual's unalienable duty to the Creator. In essence, Madison logically extends and makes explicit the latent, background value of equality found in the *Letter.* However, Madison's introduction of natural equality and religious liberty as a natural right in his *Memorial* is built upon the premise of one's unalienable duty to God found also in the first argument of Locke's *Letter.* And this common theological foundation presents a compelling argument that the theological arguments for religious liberty found in Madison's *Memorial* and Locke's *Letter* continue to have an important place in contemporary American religious, political and legal discourse.

CONCLUSION

It may come as a surprise to many that two of the greatest liberal Enlightenment thinkers in the modern period who helped shape the values and institutions of America deployed theological arguments to advance the cause of religious liberty. After all, we might hear some say, "Don't we have separation of church and state?" And isn't that separation clearly in the Lockean and Madisonian traditions? Well…, in fact, writing nearly a century apart from one another to different audiences and for different immediate purposes, Locke and Madison nonetheless advanced a common theological argument grounded in one's personal responsibility to the Creator as the basis for religious liberty. Admittedly, this is not the only grounding to religious liberty, but it is an important one requiring our attention. There are those who, in fact, argue that the human search for transcendence and ultimate reality is natural to the human condition and reflects both religious and philosophical inquiry. If this is true, and the historical record strongly suggests that it is true, then theological arguments for religious liberty in the Western tradition may have broader relevance throughout the world.

This is particularly evident with Locke's and Madison's "theological minimalism" and their simple claim that a person's inalienable duty to God requires liberty to satisfy the duty. This individual duty suggests individual

[34] James Madison, *Memorial and Remonstrance Against Religious Assessments* [1785]. In *The Mind of the Founder: Sources of the Political Thought of James Madison.* Ed. Marvin Meyers (New York: The Bobbs-Merill Company, 1973), 10-11.
[35] Ibid., 11.

accountability—and this is the foundational link to promoting religious liberty in each of the world's theistic faith traditions. That is, in each theistic faith tradition the individual's duty and ultimate accountability to God is supremely important. Locke and Madison agree with this premise and logically extend the argument to include the individual's liberty to satisfy the duties of conscience and sense of accountability to God. And perhaps similar to Martin Luther's appeal to conscience five hundred years ago, Islamic religious and political reformers today may be able to use these concepts and arguments to advance individual religious liberty and thereby undermine and diminish religious extremism.

Of course, a reasonable and modest claim, and the one made in this paper, is that the understanding of religious liberty at the American founding should simply be part of the current discourse on domestic and international religious issues. This includes the theological arguments for religious liberty advanced by John Locke and James Madison. And, of course, no one is suggesting that the Locke and Madison arguments reviewed here offer a "silver bullet" to the very difficult problems of religious repression throughout the world today. However, it is difficult to know in advance how religious and political leaders, especially reformers, from different traditions might respond to American founding arguments. It is also difficult to know in advance how Americans might respond to a rediscovery of their own first principles. So, with hope and optimism that a positive contribution can be made to human flourishing in the world today, let the conversation begin.

REFERENCES

Beneke, Chris. 2010. "The Free Market and the Founders' Approach to Church-State Relations." *Journal of Church and State* 52 (2): 323-352.

Farr, Thomas. 2008. *World of Faith and Freedom.* New York: Oxford University Press.

Goldie, Mark. 2010. "Introduction." In *A Letter Concerning Toleration and Other Writings*, ed. Mark Goldie. Indianapolis: Liberty Fund.

Kelly, Paul. 1991. "John Locke: Authority, Conscience and Religious Toleration." In *John Locke—A Letter Concerning Toleration in Focus*, eds. John Horton and Susan Mendus. London: Routledge.

Kelly, Paul. 2007. *Locke's Second Treatise of Government.* London: Continuum International Publishing Group.

Locke, John. [1689] 2000. *A Letter Concerning Toleration.* In *A Letter Concerning Toleration and Other Writings,* ed. Mark Goldie. Indianapolis: Liberty Fund.

Locke, John. [1689] 1982. *Second Treatise of Government*, ed. Richard Cox. Arlington Heights: Harlan Davidson.

Madison, James. [1785] 1973. *Memorial and Remonstrance Against Religious Assessments.* In *The Mind of the Founder: Sources of the Political Thought of James Madison*, ed. Marvin Meyers. New York: The Bobbs-Merill Company.

Mendus, Susan. 1991. "Locke: Toleration, Morality and Rationality." In *John Locke—A Letter Concerning Toleration in Focus*, eds. John Horton and Susan Mendus. London: Routledge.

Munoz, Vincent. 2003. "James Madison's Principle of Religious Liberty." *The American Political Science Review* 97 (1): 17-32.

"*Religious Freedom: Why Now? Defending an Embattled Human Right.*" 2012. The Witherspoon Institute Task Force on International Religious Freedom. Princeton: The Witherspoon Institute.

Sandel, Michael. 1990. "Freedom of Conscience or Freedom of Choice" In *Articles of Faith, Articles of Peace*, eds. James Davison Hunter and Os Guinness. Washington, DC: The Brookings Institution.

Vernon, Richard. 1997. *The Career of Toleration.* London: McGill-Queen's University Press.

Waldron, Jeremy. 1991. "Locke: Toleration and the Rationality of Persecution." In *John Locke—A Letter Concerning Toleration in Focus,* eds. John Horton and Susan Mendus. London: Routledge.

Wootton, David. 1993. "Introduction." In *Political Writings of John Locke*, ed. David Wootton. London: Penguin Books.

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The Steward in Statesmanship: Taking Responsibility for the Most Important Things

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Even though the American Framers self-consciously designed a system of government that did not *depend* on an enlightened statesman being at the helm, this paper argues that they believed statesmanship was not only compatible with republican government, but that it could act as a kind of antidote to some of the ailments most likely to afflict it. Scholars today generally dispute this suggestion. They argue that statesmanship is, in several important respects, positively antithetical to important democratic ideals. Having surveyed those objections, this paper argues that the contemporary understanding is flawed because it rests on a misconception of democracy and the political regime more generally. A republic is more than a set of institutions and, in fact, depends on shared beliefs respecting the true and the just. Above all, statesmen preserve and perpetuate the regime's foundational opinions and ideals. A look at some of America's premier statesmen demonstrates that they were stewards of the most important things at critical junctures in the country's history: the principles and bonds of fellow feeling that give America its distinctive character and cohesion.

Key Words: Statesmanship, American Founding, Republicanism, Democratic Theory

Political leaders must attend first, and energetically, to the most important things for which they have responsibility.[1]

—William Bennett

The Framers of the American regime were acutely aware of the diseases most incident to popular government. In *Federalist 10*, Madison discussed the threat of faction, the source of which is in human nature itself. Because, Madison stated, "[E]nlightened statesman will not always be at the helm," and "the causes of faction cannot be removed," he proposed institutional

[1] William J. Bennett, The De-valuing of America: The Fight for Our Culture and Our Children (New York: Simon & Schuster, 1994), 92.

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arrangements to control the effects of faction. To reduce the reliance on statesman, however, is not to eliminate its advantage and need. In fact, in every branch of government the Framers acknowledged the need for men with statesman like qualities, such as merit, stable character, good judgment and knowledge of politics. In addition, Jefferson's *Rockfish Gap Report* of 1818 proposed an education, "To form statesman, legislators and judges on whom public prosperity and individual happiness are so much to depend." He assumed, like so many of the Framers, that statesmanship was not only compatible with republic government, but that it could act as a kind of antidote to some diseases of our constitutional government.

Today, however, statesmanship is not viewed as a remedy, but rather as a toxin to our government. Richard Ruderman observes that, "The antidemocratic nature of statesmanship is routinely assumed by writers who refer to it as 'full' or 'quasi guardianship'; or 'strong leadership'; or the work of a 'liberal commander' who threatens to become an 'imperious overlord.'"[2] It is denounced as incompatible with democratic deliberation and denigrated as undermining democratic participation. What was once viewed as a tonic for a healthy republican democracy is now a poison. How did this change happen? Is there still a place for statesmanship in our republic?

This paper argues that there is still a place for statesmanship in our democratic republic. It begins by identifying the contemporary objections to statesmanship and takes special notice of an underlying assumption about democracy that drives these objections. With the keen observation of Wilfred McClay, the paper then shows that that assumption of democracy is flawed and the promotion of a citizen-leader based on that assumption is potentially dangerous. A revised understanding of our democracy is offered which demonstrates a place for statesmanship. More specifically, it reveals the need for a distinctive feature of statesmanship, namely stewardship of the deep, animating principles of our republic. Drawing on historical examples, it then examines how statesmen act as stewards and why statesmanship, as opposed to the citizen-leader, is vital for the preservation of our republic and its most cherished principles..

Objections to Statesmanship

Several problems prevent the recovery of statesmanship as an idea and practice in our democracy. Generally speaking, it appears to conflict with certain democratic sentiments. To begin with, it is considered an antiquated and elitist term. A thoughtful defender of statesmanship admitted that to many, "'[S]tatesmanship' is almost un-American" because it possesses an "elitist and

[2] Richard S. Ruderman, "Democracy and the Problem of Statesmanship," *The Review of Politics* 59, no. 4 (1997): 759-87.

obsolete ring."[3] We today are dedicated to the belief in the fundamental equality of all human beings. Born from this idea is a sense of political equality: all men are created equal and no one can claim a natural right to rule another without their consent. Yet, statesmanship appears to flout this sense of equality, for the term statesmanship invokes a sense of superiority. The statesman is thought to be superior in his ability to govern the state. What is more, the person who strives to be a statesman strives to set himself apart and above his peers. In *The Case for Greatness*, Robert Faulkner shows how Kant, Rawls, and Arendt have influenced us to view the ambition for greatness as immoral pride and a violation of our dedication to the absolute equality of all human beings.[4]

Statesmanship is also rejected because it is perceived to threaten peace and stability. Geoffrey M. Vaughan traces this rejection of statesmanship to Hobbes.[5] According to Hobbes, the statesman's virtue is the ability and power to act in the political sphere. It is this decisive action that Hobbes believes is intrusive to the political sphere. For Hobbes, stability and security are the goals of political life. In part, stability and security come from settled and common values. The virtues of flexibility, tolerance, modesty and willingness to listen are prized for keeping peace and order. By the statesman's decisive action, Hobbes argues, he disrupts peace and order and creates instability and disorder in the political sphere. Thus, according to Hobbes, the statesman's virtue is a threat to political stability.

Statesmanship's most vigorous contemporary objections come from Benjamin Barber and other deliberative democracy theorists.[6] Barber views strong leaders, such as statesman, as a direct threat to a healthy democracy. For Barber, statesmen weaken democracy in three ways. First, statesmen narrow the political participation by citizens. According to Barber, a strong democracy should encourage active participation by citizens in the daily concerns and issues of democratic life. Barber argues, however, that statesmen contract the sphere of political activity by making decisions regarding pressing political affairs. What statesmanship, and liberal democracy in general, does to citizens

[3] Herbert Storing, "American Statesmanship: Old and New," in *Active Duty: Public Administration as Democratic Statesmanship*, edited by Peter Augustine Lawler, Robert Martin Schaefer, and David Lewis Schaefer (Lanham, MD: Rowman and Littlefield Publishers, Inc., 1998), 5.

[4] Robert Faulkner, *The Case for Greatness* (New Haven, CT: Yale University Press, 2007), see Chapter Seven.

[5] Geoffrey M. Vaughan, "Hobbes on Magnanimity and Statesmanship: Replacing Virtue with Science," in *Magnanimity and Statesmanship*, edited by Carson Holloway (Lanham, MD: Lexington Books, 2008), 67-82.

[6] This paper will consider in particular, Benjamin Barber, "Neither Leaders nor Followers: Citizenship under Strong Democracy," in *A Passion for Democracy* (Princeton, NJ: Princeton University Press, 1998), 95-111.

is limit their participation to consent alone. Civic participation is reduced to a few days a year and only for the purpose of electing others to participate through representation. Thus, democracy is defined by the participation of leaders instead of the participation of citizens.

Second, statesmen restrict political deliberation and judgment by citizens. For Barber, our democracy should create conditions for and trust the citizens to deliberate together and make political judgments as much as possible. Statesmen, argues Barber, too often characterize political matters in technical terms and questions and thus confine them to political experts, such as themselves. By defining matters in this way, Barber believes the citizen is not trusted to deliberate and judge political matters. Barber contends that most political matters and judgments, are well within the range of citizens' capacity. Ronald Reagan did not need to know the nature of nuclear power to be able to judge the proper relations with the Soviets and neither do citizens. Citizens, on Barber's view, are quite capable of deliberating and judging complex, if not technically, political issues. The constraining of citizen deliberation and judgment on political matters leaves the citizen wholly reduced to debating private matters of personal choice and excludes them from the public.

Third, statesmen impair autonomy and self-government. According to Barber, "strong leaders have on the whole made Americans weak citizens."[7] The strong leader, by acting in place of the citizen, diminishes the role of the citizen to alien spectator. In short, statesmen turn electors into followers. Rather than empowering citizens for self-government, statesmen leave gaping holes between the leader and the citizen. Further, it encourages an attitude of deference to authority. Thus, the strong leader minimizes the realm and idea of self-government.

On Barber's view, a good democratic leader is a *facilitating leader*.[8] A facilitating leader empowers people and strengthens and reinforces citizenship. Such a leader is akin to, argues Barber, a teacher, judge, group therapist and town moderator—perhaps he would now add community organizer. Like a teacher, a good leader becomes superfluous. After the leader is finished leading, citizens are able to carry on without them. Like a judge, a facilitating leader facilitates the conditions to secure deliberation and judgment by citizens. Like a group therapist, a leader's success is determined by the degree to which the citizen is self-sufficient. In contrast, argues Barber, strong leaders leave citizens perpetual hypochondriacs searching for a new leader. Finally, like the town moderator, which appears to be Barber's favorite description, a leader should provide conditions for the community to learn, interact, debate, listen, organize, deliberate together, and make an informed decision that does not exclude or alienate but allow all to live together. It is, however, not entirely

[7] Benjamin Barber, "Neither Leaders nor Followers," 97.
[8] Ibid, 103.

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accurate to suggest that Barber is calling for a leader to lead. For, according to Barber, a healthy democracy does not need leaders, much less strong leaders like statesmen, only effective citizenship. In short, a good citizen is a facilitating leader.

Notice that the objection to statesmanship is premised upon an underlying assumption regarding democracy. For Barber famously advocates for a "strong democracy" which is defined by a government where all the people some of the time in some public affairs deliberate, participate and judge political matters.[9] The statesman interferes with this nearly direct democracy. In a "strong" democracy, citizens follow their own lead. Such a democracy trusts and enables citizens to perform civic functions and use public judgment on political matters. A democracy of this kind, argues Barber, fosters institutional and practical experimentation with participatory institutions. Indeed, Barber offers several different possible experiments, such as mandatory government service, local school districts, neighborhood watch groups, as examples.

IS AMERICA AN EXPERIMENT?

The notion of "experiment" is important here. We should pause to reflect on this idea of America as an experiment. Doing so, I believe, allows us to deepen our understanding of Barber's position. What is more, it affords us an opportunity to see the limitations of his position and its potential risk to the health of our republic. We are greatly assisted in our reflection on experiment by an essay, "Is America an experiment?," by Wilfred McClay.[10] Although he does not address Barber directly, his essay contextualizes Barber's position and aids our understanding of it.

Let us consider the claim that America is an experiment. Is this not a good thing? An experiment reflects individual liberty, a questioning spirit, and progress. Yet, McClay asserts that, "such statements beg the question of what an experiment is and of what it might mean to live in a country that embodies an experimental spirit."[11] What is the spirit of experiment? Is it the spirit of unbridled criticism? Is it the spirit of ceaseless questioning? Is it the project of overturning tradition? Is it, McClay asks, "the liberty to experiment, to declare independence from everything that has come before us, to discard the tried and embrace the untried—exercising our creativity even if it means reinventing the wheel?"[12]

[9] Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984).
[10] Wilfred McClay, "Is American an Experiment?," *The Public Interest* (Fall 1998), 3-22.
[11] Ibid, 7.
[12] Ibid, 8.

If America is an experiment, then it must conform to the idea of an experiment. What is an experiment? After a review of dictionary definitions, McClay concludes that "in all three definitions, experiment is always related to some specific end, some well defined goal, some truth, hypothesis, pattern or principle to be confirmed or disconfirmed."[13] Thus, "the key to an effective scientific experiment lies in the careful definition of the problem, a definition that does not change in midstream and that always seeks to identify, understand and harness the laws of nature, not transform or obliterate those laws."[14]

According to McClay, then, in that sense of scientific experiment America *was* an experiment at the outset. McClay cites as an example *Federalist #1* where Alexander Hamilton stated, "It seemed to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force."[15] Although the term "experiment" is not used, it is clearly implied in the statement. Moreover, McClay notes that the term experiment is used twenty-four times in the *Federalist* in a way parallel to this one. In these cases, experiment is meant in a practical way implying experiments fail and succeed.

The Framers generally held this view of experiment. McClay reminds us that George Washington echoed Hamiltons' view in his First Inaugural Address, stating, "The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered, perhaps, as deeply, as finally, staked on the *experiment* instructed to the hands of the American people."[16] Consider also Jefferson's use in a letter to Governor Hall 1802, "We have no interests nor passions different from those of our fellow citizens. We have the same object: the success of representative government. Nor are we acting for ourselves alone, but for the whole human race. The event of our experiment is to show whether man can be trusted with self-government. The eyes of suffering humanity are fixed on us with anxiety as their only hope, and on such a theatre, for such a cause, we must suppress all smaller passions and local considerations."[17] In each of these cases, we can see

[13] Ibid, 10.
[14] Ibid.
[15] See *Federalist No. 1*, Avalon Project, accessed July 15, 2014, http://avalon.law.yale.edu/18th_century/fed01.asp.
[16] See George Washington's Inaugural, National Archives and Records Administration, accessed July 15, 2014, http://www.archives.gov/exhibits/american_originals/inaugtxt.html.
[17] See Jefferson's letter to Governor Hall, Online Liberty Fund, accessed July 15, 2014, http://oll.libertyfund.org/titles/757/87348

with McClay that here experiment is used as a "careful practical experiment, not an open-ended utopian experiment in human engineering or consciousness transformation."[18] Moreover, the ends are clear—"the preservation of liberty and the republican model of government." Like a good experiment, the problem is stable, the end is defined.

The Framers, though, were not the only ones to see the nation as an experiment. As many of us know, and as McClay reminds us, a young Abe Lincoln in his speech, "The Perpetuation of our Political Institutions," observed that the results of our "experiment" were in—America had been felt to be "an undecided experiment; now, it is understood to be a successful one."[19] Although successful in establishing a nation, Lincoln warned that success could provide its own obstacles. Lincoln cautions us, "This field of glory is harvested, and the crop is already appropriated. But new reapers will arise, and they, too, will seek a field. It is to deny, what the history of the world tells us is true, to suppose that men of ambition and talents will not continue to spring up amongst us. And, when they do, they will as naturally seek the gratification of their ruling passion, as others have so done before them."[20] We are successful in our experiment to this point, but Lincoln warns us that the experiment is not complete. We must, as Lincoln states, replace the "pillars of the temple of liberty…with other pillars, hewn from the solid quarry of reason."[21] McClay concludes, "In a sense, then, Lincoln saw a perpetuation of the spirit of experimentalism, and of experimental urgency, as a part of any effort to perpetuate our political institutions."[22] The Civil War, in that case, was a "testing" of this experiment.

While it may be the case, as McClay detects, that the scope and character of the experiment were slightly redefined and expanded beyond the Framers, it is the "distended language"[23] of Franklin Delano Roosevelt's First Inaugural Address, argues McClay, which begins to change the idea and use of experiment. Given the economic conditions of the day, Roosevelt stated that we needed "bold, persistent experimentation."[24] And Roosevelt was plain speaking. What did experiment mean? It meant, "take a method and try it: if it

[18] McClay, "Is American an Experiment," 11.
[19] See Lincoln's "The Perpetuation of our Political Institutions," Teaching American History. Org, accessed July 15, 2014, http://teachingamericanhistory.org/library/index.asp?document=157
[20] Ibid.
[21] Ibid.
[22] Ibid., 12.
[23] Ibid., 13.
[24] Franklin Delano Roosevelt, "Oglethorpe University Address, May 22, 1932," in *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood (Salem, MA: M & M Scrivener Press, 2010), 69-75.

fails, admit it frankly and try another. But above all, try something."[25] In this case, McClay sees that, "[W]e are a long way here from the notion that the aim of the experiment is the cultivation of a regime built around ordered liberty."[26] Here, he continues, "Roosevelt's language was pointing toward the sense of experiment that we increasingly hear expressed today, one that is more than willing to entertain the transformation of the American people and nation into something radically different from what they are and have been."[27] We are continually remaking, reinventing and recreating our republic. Anything is possible.

As McClay observes, we see this understanding of experiment in Richard Rorty's *Achieving Our Country*.[28] But it is this understanding that is also operating in Barber's view of "strong" democracy. For him, our democratic republic is best understood as a promising experiment engaged in by a particular set of human beings. All political judgments are experiments based on considerations and judgments of the past, and they are in need of testing through scrutiny and deliberation. Democracy, this position assumes, is not founded upon absolute and eternal truths, such as the nature of man or reason or reality. Rather, commitment to a set of absolute and eternal truths as the foundations of democracy impedes the process of testing and deliberation upon judgments because it fosters an unwillingness to doubt.

For the democratic experiment to work, it needs citizens who not only possess the ability to doubt their own way of life but also doubt the political judgments and consensus of our democratic republic. The ability to doubt the beliefs, practices and traditions of our democratic republic, on this view, is necessary to prevent the formation of uncritical commitments to political judgments that could suspend the procedural nature of our democracy, i.e our democratic experiment. In addition to unrelenting social criticism, though, this position believes citizens need to be able to examine critically with others the needs of democratic life. Once doubt suspends the habituation to a political judgment, then, it is necessary to create an environment for ongoing dialogue in order to develop the next useful hypothesis for our society. Accordingly, citizens must be able to participate with each other in perpetual doubt coupled with endless critical reflection and provisional judgment to continue our democratic republic. Thus, the facilitating leader (a.k.a., the citizen) facilitates this ongoing conversation, perpetual doubt and endless provisional judgment.

THE DANGEROUS EXPERIMENT

[25] Ibid.
[26] McClay, "Is America an Experiment," 13.
[27] Ibid.
[28] Ibid., 14.

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"But," McClay remarks, "the question is whether everything is therefore to be open to transformation."[29] Or, stated differently, Is there something we cannot experiment with? In addressing this question, and in considering the variety of answers to it, we are exploring a perennial problem, which is to say that we are engaged with a matter that is constitutive of and inseparable from political life. Any particular polity must have begun. But the challenge of founding is not our central focus here. Rather, we are preoccupied with the significantly, but not entirely, different problem of preservation. A healthy polity is, among other things, one that effectively addresses the problem of its own preservation.

For Barber and his ilk, there is nothing free from experimentation. Echoing John Rawls' "reflective equilibrium," Barber contends that we must begin with our existing judgments. These judgments are revised in light of mutual, ongoing deliberation and judgment.[30] All principles or judgments are experimental. Nothing enjoys the status of non-experimental or non-arbitrary. Democracy is a procedural politics and does not require shared, non-experimental beliefs. In fact, it is precisely the demand that something be indubitable that is the primary threat to democracy. For, as Barber states, "democracy enjoins constant, permanent motion;" democracy is a journey without a destination.[31]

Here is where the idea of experiment in Barber's position begins to fail to capture our democratic republic. What is more, Barber's position on democracy, and his promotion of a facilitating leader, poses substantial risk to the perpetuation and health of our republic. The problem stems from a failure to grasp the nature of our republic and the nature of political life in general. In short, our democratic republic is not exhausted by process alone. His position misconceives the nature of our regime because it assumes that right actions (in the form of skepticism, inquiry, participation and judgment) are more important than right thoughts (in the form of opinions and beliefs). In so doing, he overstates the openness of our republic to and underestimates the effect of experimentation on our republic to the potential detriment of our regime.

Our regime rests on opinions. Our regime's fundamental opinions are most notably articulated in the *Declaration of Independence*. It is the "self-evident" truths stated in the *Declaration* that justify both the dissolving of relations with Great Britain and the founding of a new, separate, independent and equal regime. Our regime is founded on the propositions that: a) all men are created equal; b) all men are endowed with unalienable rights; c) governments are

[29] Ibid., 14.
[30] John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971), pp. 20 and 46-53.
[31] Barber, "Foundationalism and Democracy," in *A Passion for Democracy*, 23.

instituted by the consent of the governed to secure those rights; and d) the people have a right to revolt if they believe the government is failing to secure those rights. Each of these propositions is important and fundamental to the character of our regime. No less a student of our democracy than Abraham Lincoln reminds us, though, that the animating principle of equality in the *Declaration* is the "leading principle—the sheet anchor of American republicanism." Deep in the crisis of the Civil War, Lincoln reminded our nation of this anchor when in the *Gettysburg Address* he stated, "Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and *dedicated to the proposition that all men are created equal.*" According to Lincoln, it was this proposition about human nature that above all justified a government of the people, by the people and for the people. This is because the equality of men makes necessary the consent between men. As Harry Jaffa states, "[I]t was *because* men are by nature equal; *because*, that is, no man is by nature the ruler of another, that government derives its just powers from consent—that is, from the opinion of the governed."[32] When Barber conceives of our nation, he appears to elevate the notion of participation and process. This position, however, ignores the fact that participation and process rests on a prior *opinion* about human nature.[33]

The same is true for the conditions of freedom generally. Freedom is not guaranteed. There must be a shared conviction amongst the citizens that freedom be honored and protected. History is replete with examples where freedom has been thwarted. Without a kind of sacred support of the conditions of freedom, these conditions cannot be made secure, and thus freedom itself may not be protected in our regime. The conditions for freedom, such as the toleration of free inquiry, must be met in order that freedom may endure.

This misconception of democracy occurs because of a more general misconception of politics. A political regime is cognizant of its peculiar character (each individual regime is particular and distinct), grasps what is required for it to endure, and is willing and able to take the steps necessary to do so. Preservation depends on effectively responding to external threats. Even more important, however—not the least because effective response to

[32] Harry V. Jaffa, "'Value Consensus' in Democracy: The Issue in the Lincoln-Douglas Debates," in *Equality and Liberty: Theory and Practice in American Politics* (Claremont, CA: The Claremont Institute, 1999), 82.

[33] It is not entirely clear that the Framer's themselves supported a robust, participatory democracy. For the Framer's, democracy has a tendency to become overly factious and passionate resulting in weakened order and stability. See *Federalist* #9, #14 and #63. See also Jennifer Roberts, "The Creation of a Legacy: A Manufactured Crisis in Eighteenth-Century Thought," in *Athenian Political Thought and the Reconstitution of American Democracy*, edited by Peter Euben, John R. Wallach, and Josiah Ober (Cornell, NY: Cornell University Press, 1994), 90.

external threats depends upon it—is the internal cohesion of the polity. In a healthy regime, individuals are bound together. This is the result of shared beliefs, especially beliefs regarding the true and just. Shared belief nurtures an identity. Together, by establishing that the ways of the polity are sanctioned and hence worthy, shared belief and the resulting sense of identity make possible the commitment and sacrifice needed to survive over time. Yet, Barber denies the need for deeply held convictions in politics in general and, specifically, in our democratic form of politics.

Ironically, then, Barber's position promotes the virtues that if practiced exclusively could destroy the conditions for the very virtues it intends to promote. Here is where Barber's position is most dangerous to our republic. If it is the case that foundations of some kind are needed for the establishment of our regime, and the conditions of freedom generally, then failure to protect these foundations could lead to our regime's demise. Yet, the systematic dissemination of doubt regarding our foundations and the conditions of freedom could place our regime in jeopardy. Incapable of taking anything seriously, our citizens would be incapable of supporting these needed foundations. Paraphrasing David Frum, it never seems to occur to those like Barber that a genuine questioning of "all beliefs" might overturn liberal-democratic idols.[34] This position naively assumes that jettisoning foundations, relying on common interest and common choice alone will necessarily lead to the upholding of our democratic tradition. The citizen who learns to abandon all commitments and traditions, though, will not necessarily uphold democratic commitments and traditions. Because our regime is an instance of politics, and politics cannot escape dependence on convention and opinions, to the degree skepticism destroys our fundamental opinions, Barber's position has limited usefulness for our regime. His position creates the potential for instability where we need a measure of stability for our regime to endure.[35]

[34] David Frum, "Book Review of *Cultivating Humanity*, by Martha Nussbaum," *The Public Interest* no. 131 (Spring 1998): 105-9.

[35] The problem identified here is more than an academic squabble over the nature of democracy and leadership. This view of democracy and leadership is spreading in institutions of learning. In the United States today, "leadership" is a popular idea. Whereas only a few books were published in the 1950s with leadership in the title, in the past several years there have been dozens of books published, several of which are bestsellers. Georgia Sorenson, Director of the Center for Advanced Study of Leadership at the James McGregor Burns Academy of Leadership, reports that "there were nearly 600 leadership development programs at American post-secondary institutions in 2000, more than double the number in 1996. The efforts range from single leadership resource centers to graduate degree programs in Leadership Studies." By and large, these leadership courses, programs and centers follow the view of democracy and leadership advocated by the likes of Barber. The perpetuation of this

A PLACE FOR STATESMANSHIP

What the foregoing remarks indicate is that while America is an experiment, it is not an "Experimental America."[36] There are vital principles that cannot be lost without the loss of our democratic republic. Given that we have overcome the difficult task of actualizing the principles asserted in the *Declaration*, what kind of leadership do we need to preserve them? Contrary to Barber, the facilitating leader is too dangerous. Here, I think, is a place for statesmanship. In place of the facilitating leader, we need to foster statesmanship, for statesmen act as stewards preserving our vital principles and, thus, the health of our republic.

In order to understand how statesmen act as stewards and why this is beneficial to our republic, it is helpful to recall the idea of steward and stewardship. From its etymological roots, a "steward" was a keeper of the ward; a kind of caretaker. What stewards care for may vary but what they care for is often something beyond their own private interest. Museum curators are stewards of historical or art objects; regents are stewards of institutions of learning; parents are stewards of children. Stewardship, then, "is a social role individuals adopt toward some other, a role sustained over time."[37] Moreover, it is the vigilant and responsible supervision of that other, be it an institution, object or person, entrusted to one's care. "To be a steward is to devote a substantial percentage of one's thoughts and efforts to maintaining or enhancing the condition of some thing(s) or person(s), not primarily for the steward's sake."[38] To expand on this point, it is helpful to recount the religious roots of stewardship. According to the Bible (*Psalm* 24:1), God has dominion over all, but he appoints humanity as the stewards of creation. In *Genesis* 2:15, it is stated that human beings are intended to serve the garden in which we have been placed. Within the religious notion of stewardship there are two dimensions. First is the dimension of protection or preservation. In *Psalm* 27:2, it suggests a need for preserving that which God has granted to us. In addition, the Old Testament contains the story of Joseph where he is depicted as a servant who oversees possessions, but does not own them, and predicts potential developments and creates ambitious proposals. Second is the dimension of progress or growth. In *Matthew* 25:14-30, there is a parable of "talents," which may refer to money or abilities. The parable suggests that people are accountable and responsible to God and that which is entrusted to

view in courses, programs and centers, then, heightens the potential danger to our republic and its cherished principles.

[36] McClay, "Is American an Experiment," 14.

[37] Jennifer Welchman, "The Virtues of Stewardship," *Environmental Ethics*, 21 (Winter 1999), 411-423.

[38] Ibid.

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us should be improved; improved not only for us the stewards but for all of God's people. At the heart of stewardship, then, lies a responsibility for *protecting* and *developing* that which is entrusted to one's care.

How does this idea relate to statesmanship? Let's recall the idea of statesmanship. What is statesmanship? It is a kind of leadership. Leadership, though, is a broad term under which there are many different kinds of leadership depending on aim and context. For example, there is educational leadership, business leadership, political leadership, etc. Statesmanship is a form of political leadership. Its unique context is the political realm or the state. The statesman, though, is not a politician. The politician aims for his own good. He says and does what the electorate wants to hear and see so that he can be re-elected. The politician is self-interested rather than interested in the public good. The statesmen, however, aims for the public good; he aims for the good of the state. As a student of human nature and politics, he possesses the ability to discern it in the midst of particular circumstances and acts with prudence to acquire it. At times, statesmanship requires rising above the private passions of citizens, persuading them to do what the public good requires by prudently subjecting them to critical examination and, when appropriate, even resisting them. The statesmen's focus on the goal, namely the public good, makes him distinct from a manager. A manager is focused on process and organization. A manager oversees the process to ensure maximum efficiency. The goal, and the wisdom of the goal, is lost to the manager. The goal is always on the mind of the statesman. The statesman may engage in the management of details, but always with a sense of the higher goal in mind, namely serving the good of the state.

So, the statesman serves the state. But what makes a state a state? The essential character of a state is the "thing that belongs to all and yet which cannot be divided up and parceled out to each citizen. That public thing, that thing which is held truly in common, is a common view of the public good."[39] This common view helps integrate members into the beliefs, practices and traditions of the city. Rituals, literature, and codes of conduct all emanate from this central view of the public good and work to integrate citizens. To not feel the magnetic pull of the ideal is to be outside of the state. Yet, while this vision integrates, it also excludes. It excludes by defining those who do not feel its pull, who do not know the right thing without thinking, who do not share the values of this way of life as outsiders. A state, then, is this complex of values unified by an image or ideal of the public good that defines its way of life, its character.

Recalling our epigraph from William Bennett, the statesman's responsibility is to attend first, and energetically, to these underlying opinions

[39] Morton J. Frisch and Richard G. Stevens, *American Political Thought: The Philosophic Dimension of American Statesmanship* (New York: Charles Scribner's Sons, 1971), 7.

and ideals, which are the most important things. Put more succinctly, the statesman's duty is to care for the state's vital principles.[40] It is in fulfilling this duty that we find the steward in statesmanship. Like a steward, the statesman serves something other than his own private gain. Rather, as caretaker of the state, he cares first and foremost for the good of the state. His service, like the steward, has two dimensions. He *protects* the vital principles to preserve the constitution of the state. In addition, he *enhances* the state by warding off both external and internal threats and working to improve the conditions for the flourishing of the state's vital principles. That is, like a steward, the statesmen's responsibility is to preserve the state's vital principles and improve the conditions for their perpetuation.

A few brief examples illustrate the steward in statesmanship. A useful illustration is Abraham Lincoln during the crisis leading up to and during the Civil War. As a young man, Lincoln had won a place both in the Illinois legislature and U.S. congress. But by 1849, at the age of 40, Lincoln left politics to study law. For fifteen years, he remained out of politics and may have for the remainder of his life, but in 1854 he re-entered politics opposing the Kansas-Nebraska Act. What prompted him to return to politics was a deep concern that a, if not *the*, vital principle of our republic, namely that all men are created equal, was violated by this act. As we know, the act allowed the repeal of the Missouri Compromise which blocked the extension of slavery. The repeal meant the extension of slavery and possibly the perpetuity of inequality which in Lincoln's mind meant the continued violation of the principles asserted in the *Declaration*. For Lincoln, our experiment could not succeed without faithfulness to our vital principles. Lincoln thus rose up to challenge the degradation of our principles and through perseverance, prudence and remaining faithful to our *Constitution*, Lincoln served to preserve our Union through an intense, prolonged domestic crisis that threatened our continuation as a Union. In addition to preserving our principles, he also enhanced the conditions for principles to flourish. As he had stated in the Lyceum Address of 1838, the old pillars of liberty had fallen and we, the descendants of the Founders, must supply the temple of liberty with other pillars, "hewn from the solid quarry of sober reason." Through Lincoln's "cold, calculating, unimpassioned reason," he set forth a "new birth of freedom" which

[40] The statesmen's devotion to the state is what separates him from, say, the activist or advocate. The activist is less interested in the preservation of the state and more interested in particular issues like civil injustices. As Joseph Fornieri stated in a personal conversation, it is the difference between Lincoln and Frederick Douglass. Whereas Lincoln's priority was saving the Union, abolitionists, like Douglass, advocated for civil and political rights and were willing to go outside of the framework of the Union to achieve their goals. See Joseph Fornieri, *Abraham Lincoln, Philosopher Statesman* (Carbondale, IL: Southern Illinois University Press, 2014).

strengthened our republic and its pillars of liberty. In these ways, Lincoln fulfilled his duty as a statesman by acting as a steward to both preserve and enhance our cherished principles.

In perhaps a less dramatic moment, Calvin Coolidge's speech on July 4, 1926 commemorating the 150th anniversary of the Founding illustrates a moment of stewardship of our vital principles.[41] During this period, a new progressive philosophy of human nature and politics, notably found in Woodrow Wilson, Oliver Wendell Holmes, John Dewey and others, was gaining in recognition and influence. In this speech, however, Coolidge reminded us all of our vital principles and cautioned us against rejecting them. He stated,

> About the Declaration there is a finality that is exceedingly restful. It is often asserted that the world has made a great deal of progress since 1776, that we have had new thoughts and new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something more modern. But that reasoning can not be applied to this great charter. If all men are created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions. If anyone wishes to deny their truth or their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people. Those who wish to proceed in that direction can not lay claim to progress. They are reactionary. Their ideas are not more modern, but more ancient, than those of the Revolutionary fathers.

To those in the roaring twenties caught up in the growing materialism of the era, he stated,

> We live in an age of science and of abounding accumulation of material things. These did not create our Declaration. Our Declaration created them. The things of the spirit come first. Unless we cling to that, all our material prosperity, overwhelming though it may appear, will turn to a barren sceptre in our grasp. If we are to maintain the great heritage which has been bequeathed to us, we must be like-minded as the fathers who created it. We must not sink into a pagan materialism. We must cultivate the reverence which they had for the things that are holy. We must follow the spiritual and moral leadership which they showed. We must keep replenished, that they may glow with a more compelling flame, the altar fires before which they worshiped.

[41] See Calvin Coolidge's "Speech on the 150th Anniversary of the Declaration of Independence," accessed July 16, 2014, http://teachingamericanhistory.org/library/index.asp?document=41.

In both of these statements, Coolidge reminds us of our vital principles and encourages us to stay true to them. In this way, he acts as a steward preserving our principles that define us as a republic and will allow us to endure as a republic.

Another example *may be* Franklin Delano Roosevelt.[42] Like Lincoln, Roosevelt needed to demonstrate the viability of our democratic republic in a period of crisis. The circumstances, however, were different. First, there was the crisis of the depression. The economic crisis was unprecedented; there were massive dislocations in the economy. Coupled with this crisis, and what made this crisis distinct from Lincoln's, was an external threat by two alternatives in Communism and Fascism. In this case, America was tested not

[42] I state it "may be" an example because there is considerable controversy over what exactly Roosevelt preserved. He did preserve liberal democracy from its two alternatives, but at what price to our republic as limited government and self-government? We see this controversy played out during the years leading up and after the 1932 election between Herbert Hoover and Franklin Delano Roosevelt. Both men intended to be stewards of "Our American System," as Hoover put it, but their interpretations of that system and what to steward proved contentious. Hoover called for a return to our American system, by which he meant "a particular conception of self-government in which decentralized local responsibility is the very base. Further than this, it is founded upon the conception that only through ordered liberty, freedom, and equal opportunity to the individual will his initiative and enterprise spur on the march of progress." *Herbert Hoover, Campaign Speech, New York, October 22, 1928.* Indeed, Hoover stated in 1932 that his "first duty" was to "preserve unfettered that dominant American spirit which has produced our enterprise and individual character." *Hoover, Presidential Nomination Address, Sent to the Republican National Convention, Washington, D. C., 1932.* Franklin Delano Roosevelt also claimed to be perpetuating our American system, but his interpretation differed dramatically from Hoover. Whereas Hoover appeared willing to let individuals and markets alone respond to the economic crisis, Roosevelt called for unprecedented government involvement. With frequent references to Jefferson, Hamilton and the Constitution, Roosevelt claimed to be using government to march along the path of "real progress, of real justice, of real equality for all our citizens, great and small." *Franklin Delano Roosevelt, Presidential Nomination Address, Democratic National Convention, July 2, 1932.* When accused of suspending private enterprise, Roosevelt claimed he would use government intervention to seek the "guarantee the survival of private enterprise by guaranteeing the conditions under which it can work." *Franklin Delano Roosevelt, Address on the Survival of Private Enterprise, October 23, 1936.* In contrast to Hoover, Roosevelt believed that "a new idea has come to dominate thought about government, the idea that the resources of the nation can be made to produce a far higher standard of living for the masses of the people if only government is intelligent and energetic in giving the right direction to economic life." *Franklin Delano Roosevelt, Address on Constitution Day, September 17, 1937.* Both men, I believe, intend to be stewards of the American system; the problem emerges over what constitutes, in this case, the "American system." The controversy here between Hoover and FDR is still playing out in our current political context.

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as a mere example of democracy in the world, but as "the very citadel of liberal democracy." The economic crisis called into question the very existence of liberal democracy as opposed to its two powerful alternatives that were growing in allegiance in the U.S. and throughout the world. Like Lincoln, Roosevelt was faced with a challenge to the perpetuation of our republic. To Roosevelt's credit, he won "allegiance of a restive democratic nation and, at the same time, moderated its extremist tendencies toward state corporatism on the one hand and the class struggle on the other."[43] Here too Roosevelt acted as a steward by preserving our republic against the threat of alternatives.

These brief illustrations demonstrate the steward in statesmanship. Each of these individuals to a greater or lesser extent is attempting to care for our republic. This task is absolutely critical for our perpetuation. If our principles and the conditions that support them are dissolved, "that bond of fellow feeling which fellow-citizens feel for each other is destroyed."[44] Citizens begin to wonder what binds them together; what makes them a public. Without this common, public good unifying the state, the state itself will evaporate.

STATESMANSHIP, STEWARDSHIP AND EDUCATION

Let us conclude reflecting on the steward in statesmanship by observing the critical role of education in perpetuating our republic. For the statesmanship to do his work, he must form and reform the character of the citizens by calling "forth from them a readiness to behave in way which is good for them and for the country as a whole."[45] The perpetuation of our republic is made difficult by a number of external and internal threats. The external threats, though serious, are not of most immediate concern. As Diana Schaub observes, we can identify our external threats by reference to only two days, September 11th and December 7th. Even after September 11th, no one really believes that our nation is threatened seriously by an external force. For example, as rapid as China is growing, they are just now obtaining their first aircraft carrier by retro-fitting an old Russian model.

As noted by Lincoln, it is the potential of internal threats that poses the most serious harm. And it is the prevention of these internal threats to our nation which is a statesmen's most immediate concern. Even before Lincoln, Tocqueville in *Democracy in America* worried about an excessive materialism that would rob us of our "most sublime faculties" and "spiritual views" that supported our republic.[46] In his *Lyceum* address, Lincoln identified "time" and

[43] Frisch and Stevens, *American Political Thought*, 16.
[44] Ibid., 7-8.
[45] Frisch and Stevens, *American Political Thought*, 8.
[46] Alexis de Tocqueville, *Democracy in America*, Volume II, Part II, Chapter 15, accessed July 16, 2014, http://etext.lib.virginia.edu/etcbin/toccer-

"usurpation" as possible threats. In the first case, time deprives us of the living memory of the Revolution and that which it stood for. The principles that had been understood in the beginning are lost to sight, covered-over, distorted, repudiated and forgotten. In the second case, "the very passions that proved a pillar of liberty at the time of the nation's framing will, it later days, become instruments for demagogic manipulation and demolition." Usurpation occurs almost imperceptibly and slowly loosens public opinion dissolving that bond of affection to the public good.

In order for the statesmen to perform his duty as a steward and preserve our vital principles and, thus, the health of our republic, he must educate Americans in the meaning of their original charters. Failing to achieve this task, we risk the dissolution of the glue that binds us together. Barber does recognize the importance of education through schools and civic associations for our republic. The problem is that he furnishes our republic with citizens possessing the manners and morals of the university classroom. His educational scheme would cultivate the talking virtues. He argues that citizens need to possess a skeptical attitude and questioning spirit to help prevent extreme conformity and obedience. Citizens, on this view, need to exercise these virtues to ward off habituated thoughtlessness and blind allegiance which are potentially detrimental to our republic. The exercise of these virtues is critical to check the creeping conformism that could endanger our sacred rights and liberties.

The *exclusive* exercise of the talking virtues, however, is not enough for our republic, or any political regime. What Barber and others fail to understand is that the talking virtues are not enough because our republic is not solely based on practices and procedures. Rather, our republic is based on opinions which underlie the practices. Therefore, these principles themselves need support. Support does not come from excessive questioning and unbridled skepticism, but rather from a measure of loyalty and affection for our republic.

A political regime, including our own democratic regime, will need to exercise *political virtues* to some measure by some degree in our population. Political virtues are those habits and dispositions needed to sustain every political regime.[47] Political virtues aim to sustain the core principles, practices

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[47] For a broad discussion of political virtues see: J. Budziszewski, "Religion and Civic Virtue," *NOMOS* 34 (1992): 49-68; Amy Gutmann, "Democracy and Democratic Education," *Studies in Philosophy of Education* 12, no. 1 (1993): 1-9; Robert Audi, "A Liberal Theory of Civic Virtue," *Social Philosophy and Policy* 15, no. 1 (Winter 1998): 149-70; Russell Bentley and David Owen, "Ethical Loyalties, Civic Virtue and the Circumstances of Politics," *Philosophical Explorations* 4, no. 3 (2001): 223-39; Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics* 104 (January 1994): 352-81; Herlinda Pauer Studer,

and traditions of a regime. For example, the political virtue of moral courage—"the willingness to fight on behalf of one's country"—will be needed to defend against the threat of an external foe.[48] By obeying the laws, citizens mold their behavior to hold up the regime's core ideals. Thus, the political virtue of law abidingness needs to be fostered in citizens. Self-restraint of passions, speech and actions is needed to ensure a degree of political stability. If passions, speech or actions are left completely unchecked, then they may attack and weaken the civic bonds that sustain the regime. If weakened, the regime is more likely to falter. There must be a kind of regulation against an internal threat to the regime and the political virtue of self-restraint may act as that regulator. In addition, "[L]oyalty—the developed capacity to understand, to accept, and to act on the core principles of one's society" is critical to motivating action on core beliefs and traditions.[49] Any consistent action, though, will require commitment. To be committed to something, such as a regime, requires a personal investment. A commitment will be forged when it becomes part of our identity. If we conceive of identity as the "way that a person organizes all the personal identifications, ideas and feelings that have continuing importance in the person's life," then, according to William Damon, it is important to foster a positive emotional attachment to a regime.[50] Only through a positive emotional attachment will consistent action occur. As Lincoln so aptly was aware, to prevent the dissolution of our experiment which we have so bravely and honorably fought for, we must "[L]et reverence for the laws be breathed by every American mother, to the lisping babe, that prattles on her lap." Let reverence for the laws "become a political religion."[51] Only if these virtues are cultivated in our citizens can we as a republic survive and flourish. In order for the statesmen to perform his duty as a steward, he must oversee the cultivation of these virtues to preserve and enhance our vital principles.

CONCLUSION

This paper began by taking notice of contemporary objections to statesmanship. These objections were largely premised upon a flawed

"Liberalism, Perfectionism, and Civic Virtue," *Philosophical Explorations* 4, no. 3 (2001): 174-92; Mark Kingwell, "Defending Political Virtue," *The Philosophical Forum* 27, no. 3 (Spring 1996): 244-68; Victoria M. Costa, "Political Liberalism and the Complexity of Civic Virtue," *The Southern Journal of Philosophy* 42, no. 2 (Summer 2004): 149-70.

[48] William Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991), 221-2.

[49] Ibid.

[50] William Damon, "Restoring Civil Identity Among the Young," in *Making Good Citizens: Education and Civil Society*, eds., Diane Ravitch and Joseph P. Viteritti (New Haven, CT: Yale University Press, 2001), 135.

[51] See Lincoln's "The Perpetuation of our Political Institutions."

understanding of our republic. As a result of this conception of democracy, a view of leadership for our republic was promoted, namely the facilitating leader, which on reflection posed a serious danger to us our continuation. With the keen assistance of Wilfred McClay, we recognized that our republic stands on underlying principles and that these principles must be preserved and enhanced for our continuation. On this view of our republic, a place for statesmanship emerged. Statesmen, acting like stewards, care for the state and its vital principles. Like Lincoln's statesmanship illustrates, they preserve and enhance our republic for the future. Especially through careful oversight of the education of citizens, and in contrast to contemporary objections, statesmen can help to maintain a healthy democratic republic.

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REFERENCES

Audi, Robert. "A Liberal Theory of Civic Virtue," *Social Philosophy and Policy* 15, no. 1 (Winter 1998): 149-70.

Barber, Benjamin. *Strong Democracy: Participatory Politics for a New Age.* Berkeley: University of California Press, 1984.

Barber, Benjamin. "Foundationalism and Democracy." In *A Passion for Democracy*, 19-30. Princeton, NJ: Princeton University Press, 1998.

Barber, Benjamin. "Neither Leaders nor Followers: Citizenship under Strong Democracy." In *A Passion for Democracy*, 95-111. Princeton, NJ: Princeton University Press, 1998.

Bentley Russell and David Owen. "Ethical Loyalties, Civic Virtue and the Circumstances of Politics," *Philosophical Explorations* 4, no. 3 (2001): 223-39.

Budziszewski, J. "Religion and Civic Virtue," *NOMOS* 34 (1992): 49-68.

Coolidge, Calvin. "Speech on the 150th Anniversary of the Declaration of Independence." Accessed July 16, 2014, Teaching American History. org, http://teachingamericanhistory.org/library/index.asp?document=41.

Costa, Victoria M. "Political Liberalism and the Complexity of Civic Virtue," *The Southern Journal of Philosophy* 42, no. 2 (Summer 2004): 149-70.

Damon,William. "Restoring Civil Identity Among the Young." In *Making Good Citizens: Education and Civil Society*, eds., Diane Ravitch and Joseph P. Viteritti, 122-141. New Haven, CT: Yale University Press, 2001.

Faulkner, Robert. *The Case for Greatness.* New Haven, CT: Yale University Press, 2007.

Fornieri, Joseph. *Abraham Lincoln, Philosopher Statesman.* Carbondale, IL: Southern Illinois University Press, 2014.

Frisch, Morton J. and Richard G. Stevens. *American Political Thought: The Philosophic Dimension of American Statesmanship.* New York: Charles Scribner's Sons, 1971.

Frum, David. "Book Review of *Cultivating Humanity*, by Martha Nussbaum." *The Public Interest* 131 (Spring 1998): 105-9.

Galston, William. *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State.* Cambridge: Cambridge University Press, 1991.

Gutmann, Amy. "Democracy and Democratic Education," *Studies in Philosophy of Education* 12, no. 1 (1993): 1-9.

Hamilton, Alexander, James Madison, and John Jay. "Federalist No. 1." Accessed on July 15, 2014, Avalon Project, http://avalon.law.yale.edu/18th_century/fed01.asp.

Hoover, Herbert. "Campaign Speech, New York, October 22, 1928." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 35-38. Salem, MA: M & M Scrivener Press, 2010.

Hoover, Herbert. "Presidential Nomination Address, Sent to the Republican National Convention Washington, D. C., 1932." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 104-113. Salem, MA: M & M Scrivener Press, 2010.

Jaffa, Harry V. "'Value Consensus' in Democracy: The Issue in the Lincoln-Douglas Debates." In *Equality and Liberty: Theory and Practice in American Politics*, 77-92. Claremont, CA: The Claremont Institute, 1999.

Jefferson, Thomas. "Letter to Governor Hall." Accessed July 15, 2014, Online Liberty Fund, http://oll.libertyfund.org/titles/757/87348.

Kingwell, Mark. "Defending Political Virtue," *The Philosophical Forum* 27, no. 3 (Spring 1996): 244-68.

Kymlicka, Will and Wayne Norman. "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics* 104 (January 1994): 352-81.

Lincoln, Abraham. "The Perpetuation of our Political Institutions." Accessed July 15, 2014, Teaching American History.org., http://teachingamericanhistory.org/library/index.asp?document=157

McClay, Wilfred. "Is America an Experiment?." *The Public Interest* (Fall 1998): 3-22.

Rawls, John. *A Theory of Justice.* Cambridge, MA: Belknap Press, 1971.

Roberts, Jennifer. "The Creation of a Legacy: A Manufactured Crisis in Eighteenth-Century Thought." In *Athenian Political Thought and the Reconstitution of American Democracy*, edited by Peter Euben, John R. Wallach, and Josiah Ober, 81-102. Cornell, NY: Cornell University Press, 1994.

Roosevelt, Franklin Delano. "Oglethorpe University Address, May 22, 1932." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 69-75. Salem, MA: M & M Scrivener Press, 2010.

Roosevelt, Franklin Delano. "Presidential Nomination Address, Democratic National Convention, July 2, 1932." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 95-103. Salem, MA: M & M Scrivener Press, 2010.

Roosevelt, Franklin Delano. "Address on the Survival of Private Enterprise, October 23, 1936." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 303-306. Salem, MA: M & M Scrivener Press, 2010.

Roosevelt, Franklin Delano. "Address on Constitution Day, September 17, 1937." In *The Two Faces of Liberalism: How* the *Hoover-Roosevelt Debate Shapes* the *21st Century*, edited by Gordon Wood, 357-364. Salem, MA: M & M Scrivener Press, 2010.

Ruderman, Richard S. "Democracy and the Problem of Statesmanship," *The Review of Politics* 59, no. 4 (1997): 759-87.

Storing, Herbert. "American Statesmanship: Old and New." In *Active Duty: Public Administration as Democratic Statesmanship*, edited by Peter Augustine Lawler, Robert Martin Schaefer, and David Lewis Schaefer, 5-32. Lanham, MD: Rowman and Littlefield Publishers, Inc., 1998.

Studer, Herlinda Pauer. "Liberalism, Perfectionism, and Civic Virtue," *Philosophical Explorations* 4, no. 3 (2001): 174-92.

Tocqueville, Alexis de. *Democracy in America*, Volume II, Part II, Chapter 15. Accessed July 16, 2014, http://etext.lib.virginia.edu/etcbin/toccer-new2?id=TocDem2.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=36&division=div2.

Vaughan, Geoffrey M. "Hobbes on Magnanimity and Statesmanship: Replacing Virtue with Science." In *Magnanimity and Statesmanship*, edited by Carson Holloway, 67-82. Lanham, MD: Lexington Books, 2008.

Washington, George. "First Inaugural Address." Accessed July 15, 2014, National Archives and Records Administration, http://www.archives.gov/exhibits/american_originals/inaugtxt.html.

Welchman, Jennifer. "The Virtues of Stewardship." *Environmental Ethics* 21 (Winter 1999): 411-423.

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Explaining State-Level Student Dropout Rates: The Impact of Exit Exams and Public School Resources

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This paper examines one key indicator of school performance, the dropout rate among the public school students at the state level from 1998 to 2002, using a pooled, cross-sectional time series research design. In this analysis the effects of high stakes testing (i.e., exit exams required for graduation), funding levels, and other school resources are examined. The results indicate that exit exams have no statistically significant effects upon dropout rates. Per pupil expenditures do not seem to reduce dropouts and may in fact have a positive effect at the state level. However, the analysis indicates that high pupil to teacher ratios and population change increase dropout rates. In addition, collective bargaining among public school teachers is found to reduce dropout rates. These findings indicate that much of the fear that exit exams will lead to massive dropout rates is misplaced.

Key Words: Kentucky, Education Policy

Many educators, parents, and scholars have been concerned with the problem of students dropping out of school without receiving a diploma for some time now. This is a matter of general policy concern because there is considerable evidence that dropping out of high school is related to many undesired consequences. For example, high school dropouts earn less, are less likely to remain in the labor force, are more likely to be unemployed, are less likely to be healthy, and are more likely to be incarcerated than individuals who graduate from high school (Laird, DeBell, and Chapman 2006).

Some scholars have argued that the amount of spending at the K-12 education level impacts the dropout and graduation rates of students. Clune (1994) and Collins (2004), among others, contend that adequate funding is often lacking to provide enough resources to enable students to reach state educational standards and more general academic goals. However, much of

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the extant literature on the financing of schools shows that figuring out how much is "enough" when it comes to resources for education is a difficult task (see, generally, West and Peterson 2007). Not "enough" funding for resources is usually argued to have an adverse impact on dropout rates. Even if there is "enough" funding, there is not an easy way to know for sure that the resources are being distributed in a way that will reduce dropout rates.

In recent years, several states have begun to require high school students to pass exit exams before graduation. This step has been adopted to ensure that graduating seniors meet at least some level of academic proficiency, and to motivate students, teachers, and parents to make sure that proficiency is achieved. However, some critics (e.g., Amrein and Berliner 2002; Berliner and Nichols 2007; McNeil, *et al.* 2008) contend that these "high stakes tests have all kinds of undesirable consequences for student learning and dropout rates. Although this research has been met with significant criticism, particularly on methodological grounds (see, e.g., Raymond and Hanushek 2003; Greene and Winters 2005; Wilkins 2008), it seems intuitively plausible to contend that students who fail or who fear failing an exit exam might become discouraged and drop out of school.

This paper will examine the effect that funding levels, other measures of school resources, and exit exams have upon dropout rates in public school systems across the United States. A number of additional factors, relating to the demographic and socioeconomic background of students and their schools will also be studied.

LITERATURE REVIEW

Approximately five percent of the high school students in the United States drop out each year and a rising number of these students are obtaining a General Educational Development (GED) certificate rather than a regular diploma. The percentage of GED passers in the United States between the ages of 16-24 has increased over the years 1996-2002 (U.S. Department of Education, National Center for Education Statistics 2006).

One possible cause of this problem might be an inadequate amount of resources devoted by schools to keeping students on track for graduation. A lack of funds (or a skewed distribution of funds among schools and school districts) has long been blamed for a number of problems facing public education. Usually these distributional issues have been attributed to the dependence of public school systems on local property-tax revenues. These differences in revenues have led to some disparities in expenditures between rich and poor school districts (see, e.g., Biddle and Berliner, 2002). These differences also lead to disparities in student access to services and programs, some of which may affect the propensity of a student to remain in school.

Initial efforts to eliminate disparities in revenues and expenditures among districts in states have been difficult, with questionable impacts upon

measurable school and student performance. Yet one of the more recent developments made in response to these funding disparities has been a shift in focus from the effort to equalize educational spending to one creating adequacy in educational funding for all districts. Adequacy, not equality, was the key consideration in court litigation determining the constitutionality of state school-finance arrangements, starting with Kentucky's Supreme Court case *Rose v. Council for Better Education* (1989) 790 S.W.2d 186, Ed. Law Rep. 1289 (Clune 1994). Instead of emphasizing equality in per-pupil spending, courts now stress provision of high minimum outputs as the primary goal in financing schools (Clune 1994).

Adequacy, however, is difficult to define as measure. There are no universally accepted methods available to determine adequate funding levels for different types of students. The relationship between educational inputs and outputs has never been fully understood and figuring out the level of resources that are needed to produce a certain level of achievement is challenging (see Hanushek 1986; 1989; 2003). Certain students and school systems may require higher levels of resources to achieve desired performance goals, therefore a crucial part of an adequate system would contain additional resources for students that have special needs. Odden (1999) notes that because of this, adequate funding will most likely vary depending on student and district characteristics. Many state constitutions require that the state education system be 'thorough and efficient,' 'uniform,' or 'equally open to all'. State courts have applied these standards in various ways in many court cases over the last three decades (see West and Peterson 2007).

As stated earlier, extant empirical research is mixed on the question of whether expenditures on school resources have a positive effect on most students' outcomes. The same is true with exit exams. Amrein and Berliner found evidence linking exit exams and dropout rates but Carnoy and Loeb (2002) and Greene and Winters (2004) found no evidence of such a relationship. Rumberger (2001) summarized extant research by saying that dropping out is a complex process and that many factors, including personality traits, the home environment, prior educational experiences, economic conditions, contribute to dropout decisions over a long period of time. Still other factors that could come into play include GED acquisition policies, retention policies, compulsory school attendance laws, labor-market opportunities and policies, graduation requirements, teenage pregnancy, family wealth and income, parental educational background, and prior student academic achievement (Rumberger 2004; Landis and Reschly, 2011). Intuitively, one would suspect that exit exams increase dropping out, but the empirical research calls that into question. Possibly students in states with exit exams are motivated to work harder to attain proficiency in the tested subject matter, or perhaps the level of performance needed to pass is set so low by

state policymakers that the impact of the exams is negligible (see Greene and Winters, 2004; cf. Borg, Plumlee, and Stranahan, 2007).

In any case, more research on these phenomena is warranted. In the analysis reported here, the effects of state-required exit exams and state-level school resources are examined. Other factors that might affect state level dropout rates are also included as control variables.

DATA AND METHODS

The method of analysis that utilized here is a pooled, cross-sectional time series analysis. Because of the structure of the data, with states by year as the unit of analysis, ordinary-least-squares regression is not appropriate. Pooled cross-sectional data often suffers from autocorrelation, which, while not biasing the coefficients, does lead to smaller standard errors. Also, analysis of such data may suffer from heteroscedasticity, which again will underestimate the standard errors (Sayrs, 1989). Tests of the data showed that both autocorrelation and heteroscedasticity were a problem, so the use of OLS would have led to an over-estimation of the statistical significance of the independent variables. To overcome these problems the analysis used regression with panel-corrected standard errors, and accounted for heteroscedasticity and autocorrelation (Beck and Katz 1995).

Initially, the analysis used data from 1998-2002 for all fifty states. The limited availability of data for some independent variables for certain states make it difficult to examine a longer time period. In any case, this time period approximates that examined by Amrein and Berliner. Ultimately, the analysis was conducted on the thirty-eight states for which adequate amounts of data were available. Dropout rate is defined here as the event dropout rates that measure the percentage of public school students in grades 9-12 who dropped out of school between one October and the next. More specifically "the event dropout rate estimates the percentage of public high school students who left high school between the beginning of one school year and the beginning of the next without earning a high school diploma or its equivalent (e.g., a General Educational Development certificate, or GED). It can be used to track annual changes in the experiences of students in the U.S. school system" (Laird, DeBell, and Chapman 2006, 1). These data were reported by the states to the U.S. Department of Education, National Center for Education Statistics.

While the dependent variable in the state-level analysis is dropout rate, the principal independent variables are pupil/teacher ratios, number of teachers, salary of teachers, per pupil expenditures, median income, and the presence of exit exams. Per pupil expenditures is defined here as the average current expenditures per pupil in a given year. Per capita expenditures is the amount of dollars spent, divided by the U.S. Census Bureau estimated resident population, as of July 1, the previous year. Estimates also reflect revisions based on the 1990 Census of Population. Data on the number of teachers and

average salary of teachers was taken from the Common Core of Data (CCD) set. The Common Core of Data (CCD) is a program within the U.S. Department of Education's National Center for Education Statistics (NCES) and was one of the two main sources for the independent and dependent variables. The other main source was the U.S. Census Bureau website census.gov. The NCES annually surveys all public schools, education agencies, and all state agencies throughout the United States. The CCD has three divisions of information: general descriptive information on schools and school districts, data on students and staff, and fiscal data. Data on collective bargaining of teachers by state was derived from the NCES *Schools and Staffing Survey* (1994).

Median income was taken from the U.S. Census Bureau site for each year and state. All dollar figures were converted to constant dollars using the price deflators posted on the Department of Labor Bureau of Labor Statistics web site (U.S. Bureau of Labor Statistics 2009). States having exit exams were assigned a score of 1 and the states that did not have exit exams with a score of 0, using the listing of eighteen "high-stakes testing states" provided by Amrein and Berliner (2002).

Additional variables are added as controls. These include the percentage of public school teachers in the state covered under collective bargaining for the state, and the percentage change in population in the state for the period from 1998 to 2002. The collective bargaining variable is included because many scholars believe that teacher unionization may have adverse (see Peltzman 1993; Peltzman 1996; Hoxby 1996) or alternatively beneficial (Steelman, Powell, and Carisis 2000; Milkman 1997) impacts on student outcomes. Other research indicates that collective bargaining has no net effect on dropout rates (Lovenheim, 2009). The population change variable is included because significant movement of households could affect recorded dropout rates in two ways. First of all, movement of students across districts could cause school officials to lose track of students, thereby causing them to be recorded as dropouts, whether they have actually quit school or not. Secondly, frequent movement of households could affect dropout rates in a causal way if transient students fail to adjust to new surroundings. Once discouraged by a new move, they may do badly in school and drop out altogether.

For this analysis we controlled for autocorrelation using the Wooldridge (2002) test, which is especially designed for panel data. After discovering significant autocorrelation, panel-corrected standard errors were used in making the estimations. We also estimated model with an AR1 autocorrelation structure, using STATA. Ironically, the results, summarized in Tables 1, are not strikingly different from results derived from using ordinary least squares regression with year dummy variables included to impose stationarity. Some observations were notable outliers, but excluding them

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from the data set did not substantially affect the findings. The next section discusses these results.

Table 1. State Level Dropout

Rate 1998-2002	Coefficients
Variables	**(Z-Ratios)**
(Constant)	-20.341*
	-2.87
States Has Exit Exam	.0191
	.957
Per Pupil Expenditures ($1000s)	.403*
	2.07
Pupil to Teacher Ratio	.39*
	3.58
Average Teacher Salary	-.0001
	-1.62
Percentage of Public School Teachers Covered under Collective Bargaining	-.0175*
	-3.92
Median Family Income ($1000)	-.00001
	-.64
Population Change	19.757*
	2.58
p	.6752597
R square	. 6675
Wald χ^2	68.52
Number of Observations	184

DISCUSSION

Table 1 reports statistical results for the primary model containing the variables discussed in the section on data and methods. This model evaluates the effect of expenditures, pupil teacher ratios, median income, and exit exams on dropout rates. The z-ratios indicate the statistical significance of the independent variables. First of all, per pupil expenditures seem to lead to slightly increased dropout rates. In other words, the more spending per pupil

means that there will be an increased dropout rate, although the effect is relatively small in a substantive sense. However, the ratio of students to teachers increases dropout. Presumably a state that wished to reduce dropout by reducing the student-to-teacher ratio would have to increase expenditures in that functional category, even though the analysis reveals that the overall effect of expenditures in general is to increase the dropout rate. As expected, population change increases dropout while, less obviously, the extent of collective bargaining reduces it.

Some of the most important results are those that are not statistically significant. For example, exit exams do not appear to have any impact whatsoever upon dropout, nor does state-level median family income. The non-effect of exit exams differs from the conclusions reached by Amrein and Berliner, although it is consistent with other research. The lack of impact for median family income may be highly aggregated nature of the variable. Virtually all education research, using individual students as the units of analysis, finds that socioeconomic status is related to student outcomes, but state-level measures of the same variable may not have a discernible effect. Teacher salaries also have no effect, which could also be a result of the level of aggregation or the failure to control for labor market characteristics (Loeb and Page 2002).

Conclusion

This study describes some fairly controversial findings (and non-findings) Exit exams at the state level do *not* appear to affect dropout rate, as some education researchers have argued. Per pupil expenditures appear to increase dropout at the state level. High pupil-teacher ratios, which should be affected by per pupil expenditure levels, appear to increase dropout rates. This suggests that how money is spent may be much more important than how much is spent. Collective bargaining of school teachers, which may affect the demand for more expenditures and more teachers, also seems to reduce dropout rates.

Obviously research on these issues should not stop here. Ideally, analysis on smaller units of analysis such as individual schools and even individual students should examine these relationships more closely. A better measure would be at the level of the individual school. Better still would be measures of dropout with the individual student as the unit of analysis. Perhaps then some of these complex relationships will be understood.

References

Amrein, Audrey L. and David C. Berliner. (2002). "High stakes testing, uncertainty, and student learning." *Education Policy Analysis Archives* 10:18, 1-25.

Beck, Nathaniel and Jonathan N. Katz. (1995). "What to do (and not to do) with Time-Series Cross-Section Data." *American Political Science Review* 89: 3, 634-647.

Berliner, David C. and Sharon L. Nichols. (2007). "High-Stakes Testing is Putting the Nation At Risk." *Education Week*. March 12.

Biddle, Bruce J., and David C. Berliner. (2002). "Unequal School Funding in the United States." *Educational Leadership* 59:8 (May): 48-59.

Borg, Mary O"Malley, J.Patrick Plumlee, and Harriet A. Stranahan. (2007). "Plenty of Children Left Behind: High-Stakes Testing and Graduation Rates in Duval County, Florida." *Educational Policy* 21:5 (November): 695-716.

Carnoy, Martin, & Susanna Loeb. (2002). "Does external accountability affect student outcomes? A cross state analysis." *Educational Evaluation and Policy Analysis*, 24:4, 305-331.

Clune, William H. (1994). "The shift from equity to adequacy in school finance." *Educational Policy*, 8:4, 376-94.

Collins, Scott F. (2004). "Equity and adequacy: A funding crisis in the Tennessee education system." (Doctoral dissertation, East Tennessee State University, 2004). 1-139.

Greene, Jay P. and Marcus A. Winters. (2005). "Pushed Out or Pulled Up? Exit Exams and Dropout Rates in Public High Schools." *Manhattan Institute. Education Working Paper* No. 5.

Hanushek, Eric A. (1986). "The economics of schooling: Production and efficiency in public schools." *Journal of Economic Literature* 24:3 (September): 1141-1177.

Hanushek, Eric A. (1989). "The impact of differential expenditures on school performance." *Educational Researcher* 18:4 (May): 45-51.

Hanushek, Eric A. (2003). "The Failure of Input-Based Schooling Policies." *Economic Journal* 113: 485 (February): F64-F98.

Hedges, Larry V., Richard D. Laine, & Rob Greenwald. (1994). "Does money matter? A meta-analysis of studies of the effects of differential school inputs on student outcomes." *Educational Researcher*, 5-14.

Hoxby, Carol Minter. (1996). "Are efficiency and equity in school finance substitutes or complements?" *The Journal of Economic Perspectives*, 10:4, 51-72.

Hoxby, Caroline Minter. (1996). "How Teachers' Unions Affect Educational Production." *Quarterly Journal of Economics*. 111: 3

Laird, Jennifer, Matthew DeBell, Chris Chapman. (2006). *Dropout Rates in the United States*: 2004. National Center for Education Statistics. November.

Landis, Rebecca N., and Amy L. Reschly. (2011). "An Examination of Compulsory School Attendance Ages and High School Dropout and Completion." Educational Policy 25:5 (September): 719-761.

Loeb, Susanna, and Marianne E. Page. (2002). "Examining the Link Between Teacher Wages and Student Outcomes: The Importance of Alternative Labor Market Opportunities and Non-Pecuniary Variation." *Review of Economics and Statistics* 82: 3 (August): 393-408.

Lovenheim, Michael F. (2009). "The Effect of Teachers' Unions on Education Production: Evidence from Union Election Certifications in Three Midwestern States." Journal of Labor Economics 27:4 (October): 525-587.

McNeil, Linda McSpadden, Eileen Coppola, Judy Radigan, and Julian Vasquez Heilig. (2008). "Avoidable Losses: High-Stakes Accountability and the Dropout Crisis." *Education Policy Analysis Archives* 16 (3). Retrieved December 22, 2009, from http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/3e/38/2b.pdf.

Milkman, Martin. (1997). Teachers' Unions, Productivity, and Minority Student Achievement," *Journal of Labor Research*. 43:1 (Winter): 137-150.

Odden, Allan. (1999). "Improving state school finance systems: New realities create need to re-engineer school finance structures." CPRE Occasional Paper. Philadelphia: University of Pennsylvania. 1-43.

Peltzman, Samuel. (1993). "The Political Economy of the Decline of American Public Education." *Journal of Law and Economics*. 36:1 (Spring): 331-370.

Peltzman, Samuel. (1996). "Political Economy of Public Education: Non-College Bound Students." Journal of Law and Education. 39:1 (Spring): 73-120.

Raymond, Margaret and Eric Hanushek. (2003). "Shopping for Evidence Against School Accountability." Unpublished paper. March.

Rumberger, Russell W. (2001). "Why students drop out of school and what can be done." Paper prepared for the Conference, "Dropouts in America: How severe is the problem? What do we know about intervention and prevention?" Harvard University, January 13, 2001, 1-52.

Sayrs, Lois W. (1989). *Pooled time series analysis*. Newbury Park: Sage Publications.

Steelman, Lala Carr, Brian Powell, and Robert M. Carinin. (2000). "Do Teacher Unions Hinder Educational Performance? Lessons Learned from State SAT and ACT Scores." *Harvard Education Review* 70 (Winter): 437-465.

U.S. Department of Commerce, *Public Education Finances: 2002*. 2002 Census of Governments, *Government Finances*. US Department of Commerce, Economics & Statistics Administration, US Census Bureau, 4, 1-124.

U.S. Department of Education, National Center for Education Statistics. (2000, 2003). "Public High School Dropouts and Completers from the Common Core of Data." Washington, DC. 2003.

U.S. Department of Education, National Center for Education Statistics. *Schools and Staffing Survey* 1994.

U.S. Department of Labor, Bureau of Labor Statistics.

West, Martin R., and Paul E. Peterson (eds.). (2007). *School Money Trials: The Legal Pursuit of Educational Adequacy*. Washington, DC: Brookings Institution Press.

Wilkins, C. (2008). A Review of *Avoidable Losses: High Stakes Accountability and the Dropout Crisis*." REL Technical Brief. No. 001. Retrieved December 22, 2009. http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/3d/9d/0b.pdf.

Wooldridge, Jeffrey M. (2002). *Econometric Analysis of Cross Section and Panel Data*. Cambridge, MA: MIT Press.

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Book Review

Thomas M. Keck, *Judicial Politics in Polarized Times*. Chicago: The University of Chicago Press Books, 2014. 352 pp. ($77.27 cloth, $23.40 paper).

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In *Judicial Politics in Polarized Times*, Thomas Keck adds to contemporary scholarly accounts of judicial politics relying on his own analysis of two decades of litigation in the salient areas of abortion, affirmative action, gay rights, and gun rights to describe the role of the courts in times of political polarization. In Keck's description of polarized America, supporters on both the left and right engage in litigation continually to achieve their goals. Judges have reacted to the constant litigation not "simply as umpires, tyrants, or servants of whoever won the last election, but also by demonstrating their distinctive judicial values and practices." Therefore, the author contends that the policies and politics of the contemporary culture wars are greatly different than they would have been if the constitutional litigation did not exist.

Judicial Politics in Polarized Times should be placed on the required readings list for political science and legal studies undergraduate students that desire to further comprehend the complex sub-field of judicial politics during a time of polarized national politics. The book is a prolific source of data that analyzes the complex interplay between court rulings and movements for and against policy change in four politically salient issue areas. The only recognizable drawback of the book is the tedious chronological descriptions of the legal wrangling between interest groups in both the federal and state court arenas.

In chapters one and two, Keck describes in great detail the evolution of the legal standards of abortion case law during the Clinton, Bush and Obama administrations. The author cogently shows how new judicial appointments to the nation's highest court changed the Court's approach to abortion bans. Keck methodically covers gay rights and affirmative action legal maneuvering to demonstrate how policy advocates on both sides of the issue constantly seek to reverse legislative defeats by convincing judges to block enforcement of recently enacted policies. Although most efforts are unsuccessful, the author emphasizes the point that such lawsuits will likely continue in the near future because of their potential benefits to the interest groups' members, political agenda and publicity.

As a result of the partisan divide across the federal judiciary, Keck casts doubt in chapter three on the notion that judges ought to be described as neutral umpires. Moreover, he finds that both voters and judges are for the most part equally polarized on partisan lines, despite the fact that the voters are expressing policy preferences and the judges are asked to apply existing legal rules. Keck's research reveals that Democratic judges' vote more similarly to their partisan counterparts in the legislative branch than do Republican judges. In contrast, Republican judges vote like Republican legislators only on the affirmative action issue. Keck believes that these patterns are likely the result of the constraining force of legal doctrine from the United States Supreme Court. The author pleads with federal judges to vote in less polarized ways. He acknowledges that despite Democrats having won the popular vote in five of the last six presidential elections, the Republican Party will remain close to majority control of the federal courts. Keck concedes that federal judges need not be perfect umpires, but they do need to endorse bipartisan interpretations of the law with some continuity.

In chapter four, Keck emphasizes that most rights-based lawsuits continue to be unsuccessful. On both sides of the ideological spectrum, partisan activists solicit judges to reverse democratically enacted policies far more often than judges actually do so. According to the author's data analysis, the federal appellate judges ruled favorably on only 33.4 percent of the rights claims that they heard. Keck is quite thorough in citing invalidated policies across the ideological spectrum to illustrate the point that the U.S. Supreme Court has adopted a bipartisan approach to thwarting the democratic will of the legislative branch of government. The author maintains that judicial politics is sometimes an avenue of democratic politics rather than an alternative to it.

In chapter five, following a discussion of Dahl's thesis that the US Supreme Court decisions are consistent with national public opinion and Rosenberg's contention that the Court's rights-protecting decisions tend to be inconsequential and counterproductive, Keck presents an opposing statement that both popular and unpopular rulings consistently have significant effects on policy, in both intended and unintended directions. The author analyzes four categorical responses to court rulings that clarify the complex set of actual reactions to controversial judicial decisions. The four overlapping categories are resistance, compliance, compromise and innovation. Therefore, when confronted with a rights-protecting judicial decision, legislators most of time have a range of policy responses available to them. Keck maintains that legislative and executive officials occasionally respond to policy change from the judicial branch with more radical policy changes. He contends that even temporary legal victories may have the effect of provoking significant policy experimentation before they are undone. For example, in the same sex marriage issue area, the judicial decisions of the Massachusetts Supreme Court

altered the status quo by prompting a slow but steady proliferation of state-recognized legal categories for heterosexual relationships. Judicial rulings are part of an ongoing policy process rather than an end to political discussion.

In the last chapter, Keck evaluates whether the interaction of judicial and legislative branches of government is producing policy outcomes that are adequately responsive to the democratic will. Then, he underscores the main point of the book that contentious rights-protecting judicial decisions are rarely final in any substantial way. The author contends that neither the court rulings of the past years nor the story of judges as umpires fully explains the role that courts have been playing. Keck rebukes the argument that courts are powerless institutions and instead maintains that their decisions have profound political effects. For further research, Keck suggests that scholars interested in the long-term policy impact of litigation, should meticulously distinguish between investigations whether litigation words as compared to whether litigation matters. In addition, the author goes on to say that lawyers and judges reshaped political development and policy outcomes in fundamental ways. He admonishes researchers to be on the lookout for a range of potential unintended consequences. Keck advocates that scholars should eschew the attempt to isolate the independent effects of separate policymaking institutions acting in the same legal sphere, and instead compare the actual policy change that emerged from the interaction of judicial, legislative, and administrative lawmaking with the counterfactual policy change that one might expect to have surfaced from a system of legislative and administrative institutions acting alone.

Keck points out that at least three of the four policy issue areas that were examined in the book would be significantly different in the absence of independent judges and rights advocates determined to appeal to those judges. The author finds that the LGBT rights litigation interesting because it has proven essential both where the public is hostile to gay rights and where the public is supportive. The lesson learned is that rights-based litigation campaigns may sometimes push policy forward even when they ignite significant counter mobilization and do not maintain consistent judicial support. Another lesson drawn by Keck is that rights-based litigation can sometimes hold policy stable in the face of considerable pressure for regression. In contrast, the gun rights litigation was not as necessary because they do not lose in the legislative arena very often. Keck claims that from the policy advocates' viewpoint, litigation does not always work but under certain conditions it may serve as a valuable tool. From the policy analysts' perspective, the outcomes are precisely unintelligible without examining the role played by lawyers and judges in several ongoing policy conflicts.

In conclusion, Keck emphasizes the point that judges do not have the last word in rights-protecting decisions because they more often trigger continual conflict. In the abortion issue area, Justice Scalia has complained that *Roe v.*

Wade rendered compromise unlikely for the future and mandated that the entire issue to be resolved uniformly at the national level. The author thinks it's misleading to characterize landmark decisions as an end to democratic deliberation and debate. He instructs scholars that the true legitimacy question is not the frequency or scope of judicial review but its bipartisan deployment. Without significant constraints, partisan judges are likely to overreach, protecting broad conceptions of the legal rights that are supported by their coalition, while ignoring legitimate rights claims advanced by their partisan and ideological opponents. Keck believes that bipartisan judicial activism would be more popular, feasible and overall preferable. He does not consider judicial restraint to be an effective restraint to judges. As long as courts are politically balanced, the entire judiciary can protect both abortion rights and gun rights. In the final analysis, Keck argues that bipartisan judicial activism is the best vision of the judicial role. The author states that popular majorities have consistently rejected the proposition that courts should stop protecting rights altogether. Although everyone will not agree with Keck's conception of bipartisan activism, a considerable majority of the public will be willing to accept it because the courts regularly protect rights that they cherish.

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Decisions Dictated By Perceptions: The Influences of Society and Education in Scalia's Originalism[1]

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Prior to this analysis of Justice Antonin Scalia's tendencies in Supreme Court (SCOTUS) adjudication, it is primarily necessary to elaborate upon the condition of the SCOTUS as an institution; secondarily, it is necessary to establish an intellectual foundation from which one may deduce objective observations regarding the quality of a decision rendered in comparison to the ideals of justice and equality. To establish this requires an existential analysis of the adjudication process, which will also take place during this phase of the discussion, and finally, the remainder of this analysis will focus on applying these objective observations to the decisions issued by Justice Scalia on a variety of cases that have come before the SCOTUS; so that we may deduce the quality of these decisions when compared to the foundations that will have been established. Without these initial considerations, the foundation from which one may declare any decision of any justice as "good" or "bad" in reference to the objective ideals of justice and equality will be removed, and the entirety of the proceeding argument unravels. Therefore, careful articulation of these foundational concepts will be necessary for a valid critique of any judicial decision-making, and thus is the relevance between what may seem to be metaphysical critiques of a physical institution; indeed they are inseparable. *What will be the overriding prognostication of this inquiry—and which is examined via an analysis of Justice Scalia specifically—is namely this: if the SCOTUS is to remain an institution which promulgates and adheres to the concepts of justice and equality, that institution* ***must*** *require its adjudicating members to examine each and every case as if they themselves were the party with the most vested and sacred conviction being questioned; viz., through the "veil of ignorance.[2]"*

When one reflects upon the evolution of the multifarious affairs relating to the United States domestically and internationally that arise within

[1] This paper, which won the Abdu Rifai Award at the 2015 KPSA, was sponsored by Dr. Paul Foote.
[2] Stanford Encyclopedia of Philosophy, "Original Position," *The Veil of Ignorance*, http://plato.stanford.edu/entries/original-position/ (accessed February 23, 2015).

the scope of the SCOTUS, one must observe the inarguable impact that this institution has had on the progression or devolution of said affairs, via its decisions. By the declaration of a decision—the mere putting of pen to paper—the SCOTUS can alleviate, create, or otherwise impose burdens or reliefs on the lives of American citizen, and consequently, those members whom constitute the decision-making component of this institution are provided with an arena in which they may interject their own personal inclinations (i.e., beliefs, values, ideologies) within the progression of any issue: "the Supreme Court helps to resolve many of the most important and controversial issues in the U.S., and…shapes government policy in areas as diverse as civil rights and environmental protection."[3] This vast scope and influence, has manifested in monumental national concerns, such as slavery in *Dred Scott v. Sandford*, when Chief Justice Taney declared, "that no person descended from an American slave had ever been a citizen for Article III purposes", and, "only Congress could confer national citizenship."[4] Contemporarily, this influence has been observed in *Lying v. Northwest Indian Cemetery Protective Association*, where the majority concluded, "though the government's [removing traditionally religious ceremonial grounds from a Native American tribe for the construction of a road] would have severe adverse effects on the Indians' practice of their religion, those effects…did not constitute…[a] violation of their beliefs."[5] Indeed, upon an examination of Chief Justice Taney prior to his decision in *Dred Scott*, one would be naïve to believe that he would have voted any differently, and thus is the aforementioned devolution of this particular social affairs by the mere putting of pen to paper by a Justice whom was incapable of viewing the facts of that case through the lenses of impartiality: "the Taney's had been slaveholding planters since the first Taney arrived in Maryland in the 1660's, and at the time of Roger's birth the family ranked among the most prestigious in the country."[6] In the latter case, Justice Antonin Scalia joined the majority in defeating the rights of Native Americans to practice their religion free from the intervention of modern American society; which on its face should be observed as antithetic to the concepts put forward by the Constitution; namely, the advancement of justice and equality for all. With the knowledge of *Dred Scott*—and other similar landmark decisions—in mind when viewing the legal issues of *Lying*, one

[3] Lawrence Baum, *The Supreme Court*, 2nd Ed. (Washington, DC: CQ Press, 1985), 1.
[4] IIT Chicago-Kent School of Law, "OYEZ," *U.S. Supreme Court Media*, http://www.oyez.org/cases/1851-1900/1856/1856_0/ (accessed February 23, 2015).
[5] IIT Chicago-Kent College of Law, "OYEZ," *U.S. Supreme Court Media*, http://www.oyez.org/cases/1980-1989/1987/1987_86_1013 (accessed February 23, 2015).
[6] American National Biography Online, "ANB," *The life of a nation is told by the lives of its people*, http://www.anb.org/articles/11/11-00834.html (accessed February 23, 2015).

cannot help but wonder whether these decisions represent a lack of understanding and compassion, on behalf of those justices, regarding those neither represented within the SCOTUS nor within mainstream America. Moreover, with the observation that these decisions are on their faces contradictory to those circumstances which we have become aware to constitute equality and since this is obviously and explicitly a cornerstone on which the Constitution itself was established, one must wonder where these justices derived their justification for delivering these opinions.

Preceding an examination of the life of Justice Scalia, it is prudent to articulate three ways in which it may accurately be the case that a justice is incorporating their personal inclinations into their decision-making, but preliminarily, it is necessary to elaborate on the phrase "personal inclinations"; as a matter of clarity. Throughout our lives we are constantly exposed to the influences of the external world, whether via our family, peers, or the mere presence of various societal constructs (like religions, etc.), and we internalize them—insofar as they become our epistemological framework—and utilize them in developing our own perceptions/interpretations of the phenomena external and internal to us. In short, it is impossible to avoid the persuasions of family, peers, societal constructs, etc., upon the reflections and perceptions that we utilize in order to establish and evolve our own attitudes, values, and beliefs: our "personal inclinations"—a concept originally articulated by philosopher John Locke: "a child's mind was a *tabula rasa* [blank slate]," and, "a child's nature would develop over childhood [with the] adults surrounding [the] child [potentially having] a very lasting effect on [their] personality."[7] This account, reinforced by modern conclusions in adolescent psychology, is an intuitive account of *how* we come to form our own inclinations, so that now we may better understand the three ways in which a justice *incorporates* their personal inclinations into decision-making: (1) a justice incorporates their personal inclinations when they are unable to view any one or all of the fact(s) of any case through the lenses of impartiality; (2) a justice utilizes their own personal inclinations in deciphering the most pragmatic outcome of the case—their decision is the result of their wanting to advance or diminish some issue that is a part of their personal beliefs of "right" and "wrong"; and, (3) a justice may incorporate their personal inclinations via both, "restraint" and "activism"—these justifications are merely masqueraded in place of the justice's personal inclination(s).

What is not the point of these foundational arguments is the articulation of a type of futility that exists in delivering a purely impartial adjudication; rather to point out what *must* take place in order for an observer

[7] University of Michigan, "The Educationalist," http://www.umich.edu/~ece/student_projects/childrens_lit/Educationalist_Theory.html (accessed February 23, 2015).

to determine the quality of a decision rendered by any Justice of the SCOTUS in the sense of whether that decision was the result of an impartial examination and application of the law, or merely an application of the justice's own personal inclinations in either of the methods aforementioned. Specifically, justices ought to view every case and subsequent legal issues through the "veil of ignorance"—a method of establishing equality articulated by philosopher John Rawls: "to insure impartiality of judgment, the parties are deprived of their personal characteristics and social and historical circumstances."[8] The necessity of mentioning this within the context here is to articulate the fact that if this tool was implemented within the adjudication of *Dred Scott* and *Lying,* it would be formidable to justify the assertion that these expected decisions would be in the slightest way similar to the decisions *actually* issued, and thus is the reason for which these decisions are so obviously antithetic, to the concepts of justice and equality, to those of us whom are not ailed by these "personal characteristics" and/or "societal and historical circumstances." Additionally as was the purpose, there is now articulated a foundation on which an observer of the SCOTUS, specifically the justices therein, may conclude that any decision is more or less compatible with the concepts of justice and equality; via an examination of the decision through the veil of ignorance. Moreover, this method of adjudication is necessitated by the capacity of the SCOTUS to interact with our own personal convictions of the most sacred standing.

The child, Antonin Scalia, was born in Trenton, New Jersey in 1936[9] to "parents of a more *openly* religious conservative sensibility."[10] Indeed, his parents and subsequently himself adhered to strict Catholic teachings, which under Pope Pius XI, "considered solution[s] to social problems [as lying] not in attention to them, but in the religious renewal implied in a return to the Gospel and the Church."[11] Moreover and undoubtedly related to the Scalia's devotion to Catholicism, is their immediate Sicilian ancestry: he was the only child of Sicilian immigrants, Salvatore Eugene Scalia and Catherine Panaro—"their household was 'small and intense.'"[12] As a professor of romance languages at

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9 The Supreme Court of the United States, "Biographies of Current Justices of the Supreme Court," *Antonin Scalia: Associate Justice*, http://www.supremecourt.gov/about/biographies.aspx (accessed February 23, 2015)

10 Jeffrey Rosen, *The Supreme Court: The Personalities and Rivalries that Defined America* (New York: Henry Holt and Company, 2006), 189.

11 Spring Hill College, "Pope Pius XI," *Critical Comments*, http://www.shc.edu/theolibrary/resources/popes_pius11.htm (accessed February 23, 2015).

12 Lauren Brophy, "The Life and Jurisprudence of Justice Scalia," *Seton Hall University Law School*, May 1, 2014,

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Brooklyn College, "Scalia's father…'taught Antonin to value the words of a text and appreciate cast-iron rules…'"[13] As a young man, Scalia attended St. Xavier Military Academy/ High School, which, "had a mandatory ROTC program [and prayer before classes] for all students," and which was a Jesuit academy; an educational trend that Scalia would continue all the way through his University education at Georgetown, where he learned, "not to separate your religious life from your intellectual life. They're not separate." [14] In summary, Scalia's education and rearing from childhood into adulthood can be described as the incorporation of ethnocentric ideologies, which by their very nature color the way in which he views the world, and while these ideologies play no inherent degradation to Scalia's character, the fact that he incorporates these personal inclinations into his adjudication *does* diminish the legal legitimacy he claims that his conclusions are founded upon; but more-so than that, the utilization of these ideologies in the decision-making process has rendered the adjudications of Justice Scalia inconsistent, biased, and contrary to the very essence of the Constitution. The failure to set aside those historical, societal, and/or personal characteristics that prohibits a justice from impartially examining the facts of a case results in decisions that are supremely contrary to these concepts—as exemplified by the decision of CJ Taney in *Dred Scott* which relied on any/all of the three aforementioned methods of incorporating personal inclinations into decision-making— and will be demonstrated as occurring throughout the decisions of Justice Scalia; primarily within three cases: *Romer v. Evans, Lying v. Northwest Indian Cemetery Protective Association*, and *Printz v. United States*; and this will be demonstrated by applying the purported legal reasoning's of Justice Scalia in his relevant opinions in comparison with his personal inclinations, and then applied to the three detailed methods in which a justice may be found to be incorporating their personal inclinations into the adjudication of a case.

Beginning then with *Romer v. Evans* and an examination of the facts of this case in comparison with the personal inclinations of Justice Scalia, one may begin to construct the hypothetical opinion that, in hindsight, would prove to be the ultimate opinion released by the justice. Homosexuality has never been accepted by any doctrine or pronouncement of the Catholic Church, and this has been the standard of considering homosexuality throughout Catholic tradition until the most recent proclamations of Pope Francis demanding tolerance and acceptance; in response to which, Justice Scalia has remarked: "[the Pope] hasn't backed off the view of the Church on [homosexual issues].

http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1444&context=student_scholarship (accessed February 23, 2015).

13 *Ibid. 5.*

14 *Ibid.*, 6.

He's just saying, 'don't spend all our time talking about that stuff.'"[15] A response that inarguably represents his personal conviction: that homosexuals ought not to be regarded by the Church (indeed, the Pope would disagree[16]). This point-of-view was again reflected in an interview with the *Huffington Post*, in which Scalia said, "We do Him [God] honor…in all our public ceremonies…there's nothing wrong with that. It is in the *best* of American traditions…" [emphasis added][17]. Before one can even begin to divulge the legal issues of *Romer v. Evans*, one can prognosticate that, so long as the facts of a case propagate homosexual rights, then Justice Scalia will be opposed to those legal issues' constitutionality. Like CJ Taney, Justice Scalia is blinded by his personal inclinations towards homosexuality, and therefore is unable and/or unwilling to view the facts of this case through the necessary veil of ignorance; which results in their putting pen to paper—a meager task for those to whom this adjudication is not germane. Dissenting in *Romer v. Evans* Justice Scalia says, "the Constitutional amendment before us here is not the manifestation of a 'bare…desire to harm homosexuals'…but is a rather modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority" [emphasis added][18]. The underlined components of this excerpt represents tangible evidence to the fact that Justice Scalia is utilizing the first method of incorporating his personal inclinations into his decision-making: "a rather modest attempt," "seemingly tolerant," and "traditional sexual mores" are each and every one an opinion statement founded nowhere within an examination of any relevant legal authorities. Indeed, these remarks reflect not an appreciation for an unbiased approach at deciphering the law within the framework of the legal issues presented, but that approach's direct opposite: namely dogmatically adhering to a peculiar ethnocentric viewpoint, which prohibits a justice from considering the legitimacy of the claims brought forward by the party with whom they personally disagree. The description of homosexuals as "a politically powerful minority" is intended to degrade their legitimacy, but in the eyes of every rational observer, the opposite is the effect: when minorities are able to impose significant changes to policy on the basis of equality, on what basis does the

[15] Elias Isquith, "Scalia: I believe in the Devil," *Salon.com*, http://www.salon.com/2013/10/07/scalia_i_believe_in_the_devil/ (accessed February 23, 2015).
[16] BBC News, "Catholic Synod: Pope Francis setback on gay policy," *BBC News Europe*, http://www.bbc.com/news/world-europe-29677779 (accessed February 24, 2015).
[17] Shadee Ashtari, "Antonin Scalia Says Constitution Permits Court to 'Favor Religion Over Non-Religion,'" *The Huffington Post* http://www.huffingtonpost.com/2014/10/02/antonin-scalia-religion-government_n_5922944.html (accessed February 23, 2015).
[18] *Romer v. Evans*, 517 U.S. 620 (1996)

majority have to fear those changes aside from within the demented notion of eventually becoming themselves unequal (an antiquated argument whose origins are found in refusing equality to African Americans). Additionally, it could be remarked that African Americans' and women's rights would not be here without the actions of a "politically powerful minority," and as a result of the fact that no one who is legitimately advancing homosexual equality has the desire to alter "traditional sexual mores"; rather, it is simply the case that they are seeking equal recognition in the eyes of the law. As is the case with recent papal proclamations, Justice Scalia interprets existing doctrines and ideologies in a way that is wholly consistent with his own epistemology, and as a result views any opinion to the contrary as an attack on *him* rather than on his dogmatic inclinations. As a result of his inability to recuse himself from the personal biases that prohibit him from viewing the facts of this case (and similar cases), one may accurately conclude that this dissent represents an instantiation of the first aforementioned method of incorporating one's personal inclinations into the adjudication process. In comparing the purported legal reasoning for his dissent with the ethnocentric framework through which Justice Scalia views homosexual affairs, one would be remarkably simple to believe the claim that, the justification for this dissent was rooted in anything aside from the Justice's own personal beliefs, and by acknowledging that this indeed falls within the criterion specified in the first method of detecting bias, one may accurately conclude that this adjudication was one that is contrary to the essence of the concepts of justice and equality as laid out in the foundational arguments.

After graduating from Harvard Law School and completing a short career in the professional legal sphere, Justice Scalia, "returned to academia to teach at the University of Chicago"[19] in 1977; where he some of his students founded the conservative legal society known as "The Federalist Society." This notion perhaps originated within his tenure as Assistant Attorney General under Presidents Nixon and Ford, but was solidified during these years as a faculty adviser to the Society.[20] These influences, while seemingly trivial *per se*, have ultimately been shown to be reflected throughout the Justice's duration on the SCOTUS—particularly in cases dealing with state versus federal authority. *Printz v. United States* allows for one to accurately isolate this general view of Scalia's regarding the functions of state and federal government. Summarizing, the practical (as opposed to purely constitutional) implications of an affirmative decision regarding this case would have resulted in the federal government's ability to impose firearm regulations—carried out by specified state officials (in this case the state's Chief Law Enforcement Officer). What can generally be classified as a conservative issue of immediate resentment

[19] Brophy, *Life and Jurisprudence of Justice Scalia*, 9.
[20] *Ibid, 10.*

when challenged is the right to bear arms, but I am not prepared to make the claim that this is what solely drove Justice Scalia's decision in *Printz*. Rather, this decision appears more likely to represent the second method in which a justice may incorporate their personal inclinations into the decision-making process: with pragmatic foresight, Justice Scalia viewed an outcome in favor of *United States* as one unfavorable to the concept of federalism that he had come to love during his study of history at Georgetown[21], and during his participation within The Federalist Society at the University of Chicago. Therefore rather than impartially viewing the facts, Justice Scalia formulated what would be the best possible outcome, and sought legal justification for that conclusion secondarily. Justice Scalia is the master legal sophist—seeking out arguments that support his conclusions and discrediting or ignoring those that do not: "even assuming that newer laws represent an assertion of the congressional power challenged here, they are of such *recent vintage* that they are not probative of a constitutional tradition"[emphasis added].[22] Consequently, Justice Scalia found that, "the Brady Act's direction of the actions of state executive officials is not constitutionally valid…the Court's jurisprudence makes clear that the Federal Government may not compel the states to enact or administer a federal regulatory program"[23]—which of course has been done regardless of this decision.

The decision of Chief Justice Taney in *Dred Scott* was accurately classified as a "restraintist" approach to adjudication—since he deferred responsibility to the Congress—but this type of restraint should be called what it is in actuality, not what it theoretically seeks to be: activism through restraint. The phrase, "activism through restraint," is denotative of the tangible impacts that, by refusing to act for whatever justification that can accurately be referred to as "restraint," has been created by the SCOTUS' majority putting pen to paper and creating real-world obstacles, inequalities, and, in most cases, insurmountable burdens on Americans. The tragedy that occurs simultaneously with this activism represents the disconnect between justices that more worried about upholding "cast-iron rules" than they are about the literal livelihood of those whom their decisions are directly impacting. This restraint is instantiated in *Lying v. Northwest Indian Cemetery Protection Association*, where the Court's majority deferred to the Secretary of Agriculture and the United States Department of the Forestry, whom, "reject[ed] the…recommendation that [a] road not be completed through the Chimney Rock area because it would irreparably damage the sacred areas, and also rejecting alternative routes outside the National Forest, the Service selected a route through the Chimney

[21] *Ibid., 6.*
[22] *Printz v. United States*, 521 U.S. 898 (1997).
[23] *Ibid.*

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Rock area…"[24] The desecration of Native American religious sites cannot logically be viewed as restraint on behalf of the SCOTUS; rather, the effects of this decision constituted the exact opposite of restraint (namely activism under the banner of restraint), and is grounds for classifying this decision within the third criterion with which a justice may incorporate their own personal inclinations into adjudication. The majority in this instance failed to adequately investigate the claims being made by both parties through the necessary veil of ignorance, and therefore this decision, although academically classified as "restraintist," constitutes an assertion of the justices' choice to remain silent; and this silence indeed has an active effect. That choice is reducible to personal inclinations, because for whatever the reason, the refusal to intervene on behalf of those whom are being viewed unequally within the eyes of the law constitutes a representation of some personal inclination as to why they made that choice to restrain in the first place. Indeed, it is an affront to the essence of the Constitution for justices to masquerade a decision under the banner of "restraint" while cowardly hiding from dealing with the real issue(s) that have tangible affects in the day-to-day lives of Americans.

The SCOTUS is the U.S.'s primary protection for the transcendent conceptions of justice and equality within our society and policies, and as such, the adjudicating members therein must maintain the highest standards; and their decisions ought to be made through the veil of ignorance as opposed to in pursuit of their own personal inclinations. When adjudication occurs outside the blindness of personal inclination, tangible and very real and active consequences occur. For SCOTUS to retain its expected impartial reputation, it must demand its members view every case and the legal issues therein as if they *were* the parties affected: it must recognize the equal right of every human to be justified under the eyes of the law —a conclusion supported by a patterned increase, since 2000, in those whom, "disapprove of the way the Supreme Court is handling its job."[25] Without accountability, the personal inclinations of justices like Antonin Scalia will continue to cascade down upon the American people like decisions rendered by a monarch or dictator; especially considering their inability to be removed through elections. The SCOTUS' unique position and scope allows for this control, more so than any of the other coordinate branches of government whom merely provide the SCOTUS with the tools necessary for its members to shape policy in a way that they best see fit. This realignment of SCOTUS' values must take place not solely for the sake of this institution, but for the integrity of the entire U.S.'s justice system.

[24] *Lying v. Northwest Indian Cemetery Protection Association*, 485 U.S. 439 (1988).
[25] Gallup, "Job Approval," *The Supreme Court,* http://www.gallup.com/poll/4732/Supreme-Court.aspx (accessed March 2, 2015).

REFERENCES

American National Biography Online. "ANB." *The Life of a Nation is Told by the Lives of its People.* http://www.anb.org/articles/11/11-00834.html (accessed February 23, 2015).

Ashtari, Shadee. "Antonin Scalia Says Constitution Permits Courts to 'Favor Religion Over Non-Relgion.'" *The Huffington Post.* http://www.huffingtonpost.com/2014/10/02/antonin-scalia-religion-government_n_5922944.html (accessed February 23, 2015).

Baum, Lawrence. *The Supreme Court.* Second Ed. Washington, DC: CQ Press (1985).

BBC News. "Catholic synod: Pope Francis setback on gay policy." BBC News Europe. http://www.bbc.com/news/world-europe-29677779 (accessed February 24, 2015).

Brophy, Lauren. "The Life and Jurisprudence of Justice Scalia." *Seton Hall University Law School.* May 1, 2014. (Accessed February 23, 2015).

Gallup. "Job Approval." *The Supreme Court.* http://www.gallup.com/poll/4732/Supreme-Court.aspx (accessed March 2, 2015).

IIT Chicago-Kent College of Law. "OYEZ." *U.S. Supreme Court Media,* http://www.oyez.org/cases/1980-1989/1987/1987_86_1013 (accessed February 23, 2015).

Isquith, Elias. "Scalia: I believe in the Devil." *Salon.* http://www.salon.com/2013/10/07/scalia_i_believe_in_the_devil/ (accessed February 23, 2015).

Lying v. Northwest Indian Cemetery Protection Association, 485 U.S. 439 (1988).

Printz v. United States, 521 U.S. 898 (1997).

Romer v. Evans, 517 U.S. 620 (1996)

Rosen, Jeffrey. *The Supreme Court: The Personalities and Rivalries that Defined America.* New York: Henry Holt and Company, 2006. 189.

Spring Hill College. "Pope Pius XI." *Critical Comments.* http://www.shc.edu/theolibrary/resources/popes_pius11.htm (accessed February 23, 2015).

Stanford Encyclopedia of Philosophy. "Original Position." *The Veil of Ignorance,* http://plato.stanford.edu/entries/original-position/ (accessed February 23, 2015).

The Supreme Court of the United States. "Biographies of Current Justices of the Supreme Court." *Antonin Scalia: Associate Justice.* http://www.supremecourt.gov/about/biographies.aspx (accessed February 23, 2015).

University of Michigan. "The Educationalist." http://www.umich.edu/~ece/student_projects/childrens_lit/Educationalist_ Theory.html (accessed February 23, 2015).

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Do Coal Unions and Racial Diversity Affect Split Ticket Voting in Kentucky?[1]

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This paper performs an in-depth historical analysis in order to attempt to discover why Kentucky voters often split ticket vote between the national and local levels. Two theories are analyzed for validity: the coal union influence school of thought and the racial diversity school of thought. Both qualitative and quantitative analyses were performed. The coal union influence theory was proved not to have significance; the coal unions have had little influence on Kentucky voting patterns throughout history and into the present day. The racial diversity school of thought was proven to have some significance; voters are influenced to a certain extent by the racial attitudes that have developed through history. Kentucky has low racial diversity and more split ticket voting than any other state in the US.

Key Words: Kentucky, Voting Behavior, Unions, Coal, Racial Diversity

It seems with every election that Kentucky contradicts itself in the polls. When it comes to state and local elections, Democrats are favored (a greater number serve in these offices). When it comes to the federal level, however, Republicans are favored. Why is this the case? Isn't partisanship the primary indicator of a person's voting habits? This paper seeks an explanation for why Kentuckians contradict themselves at the polls, or in other words, why they ticket split. By exploring the impacts of the coal industry and the level of racial diversity in the state, this paper analyzes the paradox and provides insight into why Kentuckians are split-ticket voters and if Kentucky is alone in this phenomenon.

LITERATURE REVIEW

Kentucky is known for its unusual voting patterns which continue to baffle political scientists to this day. The state finds itself consistently voting for Republicans at the national level, in Senate and Presidential campaigns, all while continuing to vote for Democrats at the state level, including gubernatorial elections and state House and Senate elections. This voting

[1] This paper, which won the Abdu Rifai Award at the 2015 KPSA, was sponsored by Dr. Benjamin Knoll.

behavior defies the common perception that almost all votes are cast along partisan lines. With no readily available paradigm to explain this phenomenon, an analysis of historical context is needed to determine what events, if any, set apart the citizens of Kentucky from the general population of the United States. This paper will be divided into two distinct sections with the discussion focused around examining both the prevalence of the coal industry and labor unions for these miners, and also historical context specific to Kentucky. Using information about Kentucky's historical voting patterns, as well as research about the influence of the coal industry and labor unions, we hope to find the reason as to why Kentucky does not follow traditional partisan voting patterns.

The first school of thought that will be examined to explain this phenomenon is the influence of the coal industry and the effects of the Miner's Labor Unions as a result of this. The Appalachian region in Eastern Kentucky relies heavily on the coal industry not just for work, but for economic sustainability as well. However, for many decades the mining companies took advantage of their workforce by paying them exceedingly small wages for dangerous work while also forcing their employees to reside in subpar housing. Ian Hartman wrote that these Kentuckians "... had fallen into a state of economic, cultural, and biological decline" (Hartman 2014, p. 653). As the miner's discontent grew, it was only natural that they would turn to elected politicians in the Democratic Party, who were champions of fighting poverty and strong labor unions, to help free them from this cycle of oppression (Hartman 2014, p.653-654).

David Jacobs and Lindsay Myers provide evidence that unions were at the peak of their strength before Reagan took office in 1981, and were vigorously supported by Democratic presidents. As the miner's unions have become stronger, the people of Eastern Kentucky have consistently rewarded the Democratic Party with their votes. They typically elect Democrats to represent them in the state legislature, while also throwing their support behind any Democratic candidate for governor. As recently as 1992 and 1996, they could also be seen voting for national Democratic candidates, as was the case with Bill Clinton. The neoliberal policies of Republicans did not sit well with the laborers who relied heavily on the strength of their unions, and thus there was often little support for the GOP in Kentucky.

However, the miner's support for national Democratic candidates has begun to wane. The official national Democratic platform is seen as threatening to the coal industry because it calls for more regulations on coal and also funding for cleaner energy sources. So, while the Democratic Party promises to keep the miner's unions strong, it also threatens to significantly reduce the output of the region's most valuable resource and job creator. Ultimately, the miner's in Eastern Kentucky have decided to continue to elect Democratic candidates at the state and gubernatorial level because these

candidates do not oppose the coal industry. This causes these voters to remain registered as Democrat on the ballot. Yet these same voters have switched to the Republican ticket on the national level because of the Republicans dedication to keep the coal industry alive (Jacobs 2014). A potential weakness of this school of thought is that the Eastern Kentucky coal miners do not constitute a majority within Kentucky. However, it may be true that they turnout in greater numbers or that other Kentuckians have a similar devotion to the cause of keeping the coal industry economically viable.

A study completed in the early-to-mid twentieth century focused on voting habits in the United States concluded that voting trends can be explained based on geographic region (Wright 1932). According to this school, a true understanding of voting habits requires a "prolonged study of local history" (Wright 1932). When this study focused on Kentucky, it found that lands originally occupied by small farmers and not the institution of slavery were more likely to vote Republican at the national level, while regions where the institution of slavery was popular and the population density of African Americans was large were more likely to vote for the Democrats at the national level—all due to resentment or support of the federal government/the Reconstruction policies of the Republicans (Wright 1932); this resentment toward the federal government may help explain why ticket-splitting occurs, for this analysis did not find such resentment (or strong sentiments regarding a particular party) at the local level. All in all, this finding shows that demographics matter and that significant historical events can have long-term consequences in terms of influencing voting behavior.

While this study focused on post-Reconstruction United States (including Kentucky as a subcategory), we plan on analyzing post-Civil Rights era (post-Civil Rights Act of 1964) Kentucky to see if and/or how voting trends changed. Also, it is important to note that the conclusions made by this school were drawn after a fifty-two year analysis of voting patterns throughout the United States (Wright 1932). In closing, later studies also support the significance of geography in determining voting habits (Sigelman, Roeder, Jewell, and Baer 1985).

These two schools of thought work to answer the question of why Kentucky has a distinct pattern of ticket splitting throughout its recent history. Both of these schools take a historical perspective on Kentucky voting trends and relate Kentucky's unique past to their unique present. The first school cites the coal industry and the miner labor unions as the source of ticket splitting. It says that Kentuckians vote Democratic at the state and local levels because of the Democrats support of the unions, while they vote nationally for Republicans in order to protect the coal industry. The second school of thought cites Kentucky's geographical position and the effects of the Reconstruction after the Civil War. However, this school also attempts to explain the change in Kentucky's voting patterns after the Civil Rights

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movement. It is unclear which school may turn out to be correct, but this paper will attempt to discover the true cause of Kentucky's ticket splitting.

MODEL AND HYPOTHESIS (COAL)

The overwhelming influence of the coal industry and labor unions give the best explanation for why Kentucky voters vote Democratic at the state and local level, but Republican at the national level. This argument can be understood as

Strength of coal industry and labor union interests → Ticket splitting in Ky between state/local and national elections

The prevalence of the coal in Kentucky and the labor unions that arose from this industry have a noticeable effect on Kentucky citizen's voting patterns. Throughout recent history, the Democratic Party has been the party that works to defend the rights of the labor unions. Since the labor unions are extremely important in protecting the rights of the Kentucky coal miners, many of these citizens have historically supported the Democratic Party. More recently, however, environmental protection has become a fundamental issue addressed on the Democratic national platform. This means that while the national Democratic Party protects labor unions in general, they no longer support the continuance of the coal industry.

This shift in policy has led to a shift in the voting patterns of Kentucky citizens, especially those involved in the coal industry in Eastern Kentucky. Kentucky voters continue to support local and state level Democrats because they continue to support the coal industry and also labor unions. However, on the national level Kentuckians have become more Republican due to the Republican Party's support of continuing the coal industry. It is this historical shift influenced by the coal industry and labor unions that causes ticket splitting in Kentucky between the state/local and national elections.

RESEARCH DESIGN (COAL)

Our model will be tested through a quantitative and qualitative analysis of historical evidence. In order to test our hypothesis, we hope to find historical evidence through primary sources, union membership data, and potential secondary source historical data to show that labor unions, and specifically coal unions, have had a strong effect on Kentucky's political climate. By observing and comparing Coal Union membership and voting patterns, hopefully a pattern will emerge.

In accordance to our hypothesis, we expect that pattern to be one of direct influence. We expect to find that in counties where the Coal Industry and labor unions are strongest, that we also find increased partisanship and a surge in Republican support on the national level, while having more

Democratic support on the local and state level. While previous literature and research have pointed out ways in which unions, in general, influence politics, we are going to go into greater detail regarding coal and mining unions, specifically. It is possible that we can also increase our sample size, and potentially reaffirm our hypothesis by looking at mining counties in other states and observing how their unions may or may not influence specific voting patterns, which could potentially lead to ticket-splitting in those counties and communities as well.

MODEL AND HYPOTHESIS (GEOGRAPHICS AND DEMOGRAPHICS)

Our second hypothesis is derived from the school of thought that claims that sentiments toward a political party, especially at the federal level, can be traced back to historical events of significance. In other words, events of historical significance (i.e. Reconstruction; New Deal; Civil Rights Acts) can have a multi-generational influence on partisan identification and voting habits. Our school's research focused on voting habits post-Reconstruction, where areas faced with Reconstruction changes were found to resent the party in control of the federal government (the Republican Party) for almost a century and, consequently, consistently voted Democrat at the national level. We plan to apply this school's thesis to the post-August 1964 Civil Rights Act era to see if it holds true. All in all, our argument can be understood as:

Level of racial diversity (percent of population that is African American) → Level of split-ticket voting (percent difference of votes cast for a Republican presidential candidate and a Republican gubernatorial candidate)

The formal hypothesis that will be tested in this paper is that the greater the level of racial diversity there is in a state (percent African Americans), the less split-ticket voting will occur. Furthermore, we hypothesize that Kentucky has less racial diversity than the Southern states, which is why Kentucky has less consistency (or more split-ticketing voting) when it comes to whom is elected for various offices. Our hypothesis assumes that voters in states with greater racial diversity started voting Republican after they became frustrated with the Democratic Party's support for the 1960s civil rights legislation; along these lines, it assumes that certain historical events can carry enough significance to influence the long-term voting habits of people.

RESEARCH DESIGN (GEOGRAPHICS AND DEMOGRAPHICS)

In order to test our hypothesized relationship, a comprehensive analysis must done in order to determine to what extent the level of racial diversity of a state impacts voting behavior. To do this, we will collect two sets of data using U.S. Census data found in various volumes of the *Statistical Abstract of the United States*. The first set of data we will collect is the level of racial diversity

statewide; since our study is focused on the potential geographical significance of civil rights, racial diversity will be defined in this paper as the percentage of African Americans in the state. The second set of data we will collect is the rate at which a state engaged in split-ticket voting during various elections; for the purposes of this paper, split ticket voting will be defined as the difference between the percent vote count for the Republican presidential candidate (in a presidential election year) and the Republican gubernatorial candidate (in the year of or nearest the presidential election year, based on state election cycles). This data will be collected for the eleven states that made up the Confederacy during the Civil War (states that were directly affected by Reconstruction and Civil Rights) and Kentucky. A comparison will occur between these eleven states and Kentucky to see if Kentuckians split-ticket vote at higher rates than these comparison states and if racial density (or percentage of African Americans in the state) is a good predictor of the level of split-ticket voting in a state.

In order to determine the potential effect the civil rights era had on voter behavior (especially in relation to federal elections/office-holders), specific time periods and elections will have to be selected. For the purpose of this research, we plan on using data from presidential elections before the civil rights era (1952, 1960), after the Civil Rights Act of 1964 (1972, 1980), and more current elections (1992, 2000, 2012). The election of 1968 was not included, because a third-party, pro-segregation candidate, Alabama Governor George Wallace, won five of our states under analysis. By looking at multiple time periods, we will be able to analyze how voting behavior has changed over time, specifically in response to the major historical event that we believe helps to explain Kentucky's ticket splitting behavior.

Coal's Effect on Voting Behavior

Kentucky had a history of voting primarily democratic at the national level until the 1956 presidential election where Republican Dwight D. Eisenhower successfully ran for reelection and won the state of Kentucky. From this point forward, Kentucky began a pattern of voting Republican at the national level much more often than they voted Democrat, while remaining consistently Democrat at the local level. In order to fully examine the effect of the coal industry and the miner unions, a qualitative analysis will also be done. The qualitative analysis will examine the voting patterns of Kentucky and the Appalachian regions as a whole over time to determine whether or not these patterns can be linked with coal union or coal industry activity.

When examining the Kentucky voting patterns in the national elections since 1956, it should be noted that there is actually a divide in party voting within the part of Kentucky that is considered Appalachia. The northern part of the region has voted solidly democratic in most elections even if the rest of the state went Republican, up until the past two elections. Conversely, the

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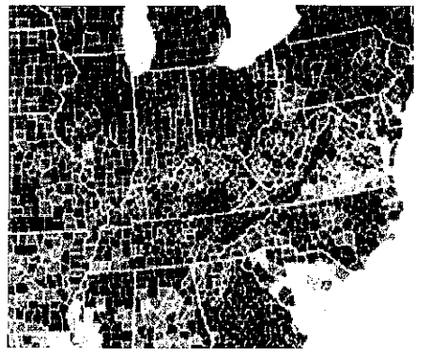
southern part of the region votes consistently Republican, even in the years where most of the state went Democrat (see maps). This evidence alone would suggest that the issue of split ticket voting in Kentucky cannot be directly related to the political decisions of the entire Appalachian region. The Appalachian region as a whole has tended to vote more Democratic in the past, until the past two elections when coal and energy have become more of a divisive issue between the two parties (see maps).

There is little to no historical evidence that suggests a correlation between the onset of Kentucky voting Republican at the national level and union and coal issues. Eisenhower did not have strong policies for or against coal, however, the US Department of Labor suggests that "prosperity led many workers to go against their union leaders and vote Republican" in the 1956 election (US Department of Labor 2014). While seemingly following union suggestion at the state level, the region of Appalachia in Kentucky has repeatedly gone against the union supported candidates throughout recent history. A good example of this is Ronald Reagan, who had tax policies that lowered government services to the poor and had "pro-oil and pro-western coal policies [that] placed Appalachia's fossil fuels at a considerable disadvantage" (Caudill 1983, 211). Despite policies that would suggest a lack of support from Eastern Kentucky, much of the Southern part of the region strongly supported him. More recently, the evidence provided earlier involving union donations suggests a similar pattern has continued to the present day. Thus, it does not seem to be the coal unions that have influence over citizen voting in elections.

However, there is some historical evidence that the coal industry, meaning the corporations in charge of the coal mining process, do have some amount of political clout in Kentucky. The environmental issues that have occurred in Appalachia over the years have highlighted "the unwillingness of most politicians to challenge the power of the coal industry or to confront the real costs of energy consumption in the United States" (Eller 2008, 251). This was the case with the 1972 Buffalo Creek flood when several government investigators were demoted after criticizing the coal industry (Eller 2008, 250-251). There is also a historical narrative that describes the coal industry's ability to prop up political candidates that support their policies; "the energy industries' community of interest seeks 'friends' who support candidates and policies they deem beneficial: low taxes and as few safety and environmental regulations as possible" (Caudill 1983, 141). These policies are most associated with the Republican Party at the national level, but within Eastern Kentucky local Democratic politicians cannot be successful without promising to help keep the coal industry alive. To summarize, coal unions seem to lack any notable political influence within the region of Eastern Kentucky, but the corporations associated with coal do have the ability to support and donate to candidates who favor their interests. However, as was the case with union

donations, it is unclear what effect the coal industry has on election outcome. Though their endorsed candidates often win, this may be a spurious relationship that has another unseen factor causing the outcome.

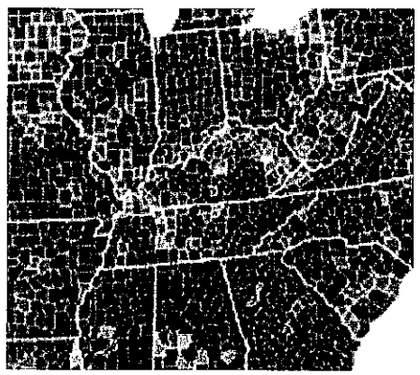
This analysis fails to definitively solve the question of why Kentucky voters often split the ticket between national Republicans and local Democrats. While it is true that support for the coal industry can cause people to vote Republican, the divide within Appalachia defies evidence of this idea. It raises the question of why one part of the Appalachian region in Kentucky has voted consistently Democratic in the past and one part has voted consistently Republican. In the last two elections the northern part of the region has become more Republican and perhaps this is due to the recent shift in the emphasis placed on environmental protection in the past few years. This issue will have to be analyzed from a different perspective because history does not yet allow a narrative to be created.



1956 election, Appalachian region

1984 election, Appalachian region

2012 election, Appalachian region



1972 election, Appalachian region

However, there are a variety of different ways to look at the influence of unions on elections. Throughout roughly the last 100 years, we have seen

union strength have both a significant and insignificant impact on various elections throughout the country. To this day, various labor unions continue to spend large sums of money in order to elect candidates that are more sympathetic to their own desires. In fact, it has been found that there is a statistically significant advantage in favor of the Democratic Party when it comes to whom labor union members are more likely to vote for. In his research paper, Harvard Ph. D. Candidate James Feigenbaum finds:

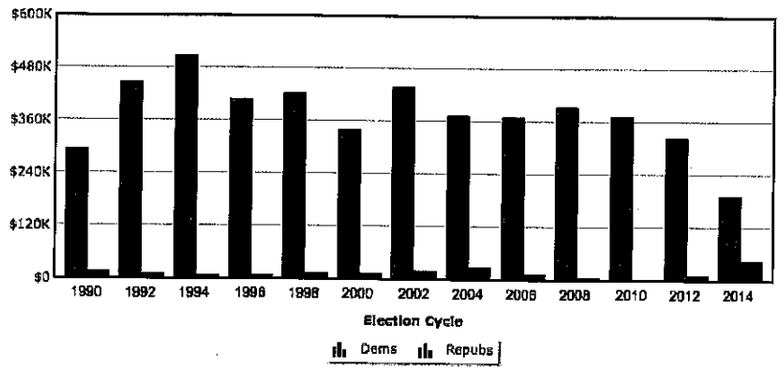
Private-sector unions have a positive effect on Democratic vote share in presidential races: an additional union increases Democratic vote share at the county level by 1.5 percentage points… [However], the effects on Congressional elections are not significant.

From this, we see that there is a definite advantage for Democrats on the presidential level, but there is no evidence of the same advantage on the Congressional level. This finding is significant, however, it may not necessarily apply to the phenomenon we see in Kentucky.

According to "Kentucky Coal Facts 2014," an annual document published by the Kentucky Energy and Environment Cabinet and the Department for Energy Development and Independence, Kentucky ranked as the third highest coal producer in the United States, and Kentucky coal mines directly employed 11,885 people in 2013. The nation's largest coal and mining union, the United Mine Workers of America (UMWA), had a total membership of 73,160. The total number of Kentuckians belonging to the UMWA was 1,735, which is roughly 14.6% of those directly employed. In order to find the influence and potential partisanship of Kentucky coal unions, it would help to take a look at the partisanship of the union that represents so many of Kentucky's coal miners.

The UMWA, while claiming to have no partisan preference or affiliation, does participate in both political contributions and endorsements. And while the union claims to have no strong partisan preference, based on their recent campaign and PAC contributions that does not seem to be the case.

In the 2012 election, after making headlines for refusing to endorse either presidential candidate despite previously endorsing Obama in 2008, the UMWA contributed $248,000 towards Democratic House candidates, and only $10,500 towards Republican House candidates. Senate campaign contributions show an even stronger contrast with Democrats receiving $75,400 and Republicans $0. In 2014 this gap remained, although with a smaller disparity. 2014 Democratic House candidates received $184,000 and Republicans received $45,000. 2014 Senate Democratic candidates received $9,000 and Republican candidates received $2000. This striking disparity in political contributions is not a recent occurrence. In fact, looking from 1990-2014, we see that the UMWA has long favored the Democratic Party.



Seeing this information makes it difficult to assume that there is any sense of non-partisanship within the UMWA. However, it is entirely possible that the national union does not reflect the same partisan interests as the local union districts.

Steve Beshear won the 2011 gubernatorial election in a landslide victory, whereas Mitch McConnell won the 2014 Senate race by a wide margin. In both instances, we see a win of more than fifteen percentage points. To observe this "Kentucky phenomenon," we can look at the three largest UMWA union districts in Kentucky and see if their voting patterns match that of the entire state. For instance, if we believe that coal union members support Democrats at the state level and Republicans on the federal level, we should see that reflected by the voting tendencies of counties with the largest coal union membership. Kentucky's three largest UMWA membership counties are Union County, Muhlenberg County, and Hopkins County (Center for Union Facts 2014).

County	Beshear 2011 Vote %	McConnell 2014 Vote %
Union	72.4	61.8
Muhlenberg	69.4	53.6
Hopkins	66.8	65.2

Interestingly, in the three counties with the highest UMWA membership, Mitch McConnell won all three despite Alison Lundergan Grimes being the candidate endorsed by the United Mine Workers union (UMWA COMPAC).

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This Kentucky phenomenon is given an element of credence by the data above; however, it is hard to argue that this is due to the strength of the UMWA and the groups political endorsements.

HISTORY OF SOUTHERN VOTING BEHAVIOR: RECONSTRUCTION ERA TO VOTING RIGHTS ACT

Following the conclusion of the Civil War, America might have been legally reunited, but states remained decisively in disagreement over the future path that the United States should take. This disagreement is evident when looked at from the perspective of voting behavior in major political elections. From the time immediately following the end of the Civil War, all the way until the 1960s, the once Confederate southern states emerged as a stronghold for the Democratic Party. This is due to the strong negative feelings toward the federal government. Due to the strict reconstruction laws that were placed upon the southern states as conditions for reinstatement into the Union, there was a general feeling of resentment toward the federal government. As former Kentucky Speaker of the House, Bobby Richardson, said, "In the 1860's, being anti-federal government meant being anti-Republican, which was the party of Abraham Lincoln and Reconstruction. Southern Democrats continued to support state's rights over centralized power in Washington" (Willis 2012).

These feelings of resentment towards the federal government were not limited simply to the southern states that succeeded from the Union to fight for the Confederate cause, but the list also includes the border state Kentucky. It was argued that during this time period, Kentucky was "conditioned to individuality, and disliked any outside interference." This mindset helps to explain that "although slavery was dying out in Kentucky by the advent of the war, the institution was defended by even non-slavers, who argued that a state should be allowed to exercise every power delegated to it" (Connelly 1966).

These strong sentiments for individual state power over large government only increased when "President Lincoln placed the state under Martial Law in 1865 and allowed for large scale Union occupation of the state." This occupation, along with interference in elections and illegitimate arrests of accused confederate sympathizers, lead to a widespread sentiment not of confederate approval, but rather massive disdain for the Union army and Abraham Lincoln. This contributed to the state of Kentucky initially rejecting the Reconstruction Amendments of the 13th, 14th, and 15th amendments that dealt with abolishing slavery and the new rights afforded freeman. Ultimately, slavery stayed in Kentucky's state constitution until 1890 (Connelly 1966).

These feelings of contempt that southerners, and specifically Kentuckians, felt towards Lincoln passed directly to his party, and Republicans were unable to run competitively in elections at any level for the state. The Democratic party became so entrenched in the state of Kentucky, that Democratic

candidates began to be known as the "Yellow Dog Democrats" meaning that constituents would rather vote for a yellow dog than a Republican candidate (Willis 2012).

In response to all of the reconstruction era amendments that southern states were forced to adopt to be readmitted to the Union, the south enacted various Jim Crow Laws. The Jim Crow Laws were noted for establishing separate but equal facilities and essentially separating the south into two distinct societies. We will focus on the Jim Crow laws that effectively prohibited African Americans from voting from 1900 to 1965.

One Jim Crow law required those who wanted to vote to pass a literacy test in order to be allowed to cast their ballot. Further, only those who owned a certain amount of land would be eligible to vote, which effectively eliminated everyone but rich white men. As we've discussed, the Democratic Party had a stranglehold on the south during this entire time period, so the only elections that effectively mattered were the Democratic primary elections, and to ensure the black voice was suppressed, only whites were allowed to vote during these elections. Finally, a poll tax was required to vote, and in terms of today's value of money, it would have cost between $25 to $50 dollars to cast a vote (Brooker 2013). All of these laws effectively eliminated African Americans from having the right to vote and allowed the Democratic Party to run unopposed and establish a political dynasty in the south for over half a century.

The end of the Jim Crow Era was marked by the passage of the Voter Rights Act of 1965. This bill effectively lifted the restrictions that the south placed upon African Americans that limited their right to vote, and further it enforced the 15th Amendment to the Constitution. The primary objective is listed in section two of the act as it says, "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by and State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color"(Voting Rights Act 1965). As a direct result of the passage of this bill, 250,000 African Americans registered to vote in that year alone. Further, 29.3% of the African American population was registered to vote in 1965, and by 1967 this number doubled to 52.1% (Tokaji 2006).

As a result of the passage of this bill, and other measures that were taken during the Civil Rights Era, many southern Democrats viewed that national party as becoming too extreme in their party platforms. The majority of Southern Democrats were against the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 that were passed into law by Democratic President Lyndon B. Johnson. As a result of the new extreme platforms adopted by the nation party, many Southern Democrats switched their allegiance to the Republican Party who sought to continue to limit African American rights and prevent the removal of segregation. It was at this point that the Democratic Party lost its stronghold on the South.

However, all was not lost for the Democrats though as African Americans with the new rights afforded to them, registered and voted largely for the Democratic Party. This switching of allegiance from Republicans to the Democrats was exemplified by one *Pittsburgh Courier* editor who said, "My friends, go and turn Lincoln's picture to the wall…that debt has been paid in full" (Trotter 2004).

RACIAL DIVERSITY'S EFFECT ON VOTING BEHAVIOR

Does Kentucky split-ticket vote at a greater rate than the former Confederate states? How does Kentucky compare to these states in terms of the level of racial diversity? Before discussing the results of our analysis, it is important to understand how to read our data tables (see Appendix A for population density and split-ticket voting data tables). For population density data (or "Census Data"), we listed the year the data was from and the total population, white-population/percent population, and African-American population/percent population of the state under review. For split-ticket voting data (or "Election Data"), we listed the presidential election year under review, the percent vote for the Republican presidential candidate, the gubernatorial election year closest to the presidential election year under review (not always the same as presidential election year because states get to choose when to hold elections for state-wide offices), the percent vote the Republican candidate for governor received, and the split-ticket voting percentage (the difference between the vote the Republican candidate for president received and the Republican candidate for governor received). If a negative sign appears next to the split-ticket voting percent under the "split ticket voting percent" column, then the Republican candidate for governor received more votes than the Republican candidate for president. It is important to note that our selection of which party's candidates to evaluate did not have bearing on the results, but rather the Republican candidate was chosen for consistency throughout our entire analysis.

Our analysis of racial density and split-ticket voting trends yielded several results (see Appendix A for population density and split-ticket voting data tables). First, we discovered that the average former Confederate state African American population density throughout the years studied was 23.37%. Meanwhile, Kentucky's average African American population density was 7.21%. When it came to split-ticket voting, the average former Confederate state average was 7.59%. Kentucky's split-ticket voting average was 15.95%. These findings tell us several things. First, Kentucky has less racial diversity than the former Confederate states. Second, Kentucky does split-ticket vote more than the former Confederate states. This supports our hypothesis that states with lower racial diversity would have greater split-ticket voting.

It is important to make a few comments about our data and results. First, in calculating state averages and the overall former Confederate

state averages, data was removed if there was a year where a race for governor was uncontested (Alabama 1960/62; Georgia 1952/54,1960/62; Louisiana 1952; Mississippi 1951/52, 1959/60, 1971/72; South Carolina 1960/62, 1952/54; Texas 1952). Additionally, we were unable to study 1968 since Governor George Wallace (D-Alabama) ran on a third party ticket and won five of our states under review. Overall, our data does not reflect a massive uptick in split-ticket voting percentages after civil rights (only significant change was in 1972, where every state with available data voted for the Republican presidential candidate (Richard Nixon) at a significantly greater rate than the Republican gubernatorial candidate. While this is partially due to many Democratic candidates in these states still being pro-segregation through the 1970s, it shows that this phenomena is not solely linked to the Civil Rights Act of 1964/the civil rights movement of the 1960s (but may still be linked to the level of racial diversity in the state); future studies should analyze more elections to see how long the general split-ticket voting trend (which remained relatively the same after the civil rights era as it was before) in each state has existed.

All in all, our findings suggest that the level of racial diversity in a state has influence on the level of split-ticket voting in a state. With this, we can conclude that Kentucky's larger rate of split-ticket voting can be explained, at least partially, by its lower level of racial diversity (and therefore decreased voter disgust for the party responsible for the civil rights acts of the 1960s-the Democrats).

Interpretation of Racial Diversity Findings

As we have shown, less racial diversity in a state leads to higher levels of split ticket voting. Intuitively though this relationship does not make sense on the surface level. How does racial diversity actually relate to split ticket voting? The answer that explains this relationship does not currently exist in the literature. However, a possible solution does exist.

The answer as to why less racial diversity leads to more split ticket voting can possibly be explained by racial resentment. By racial resentment, that the southern state, or the states that were formerly part of the Confederate States, have a higher level of racial resentment than non-southern states. A study conducted that analyzed ANES survey data determined that southern states exhibit around 10% more racial resentment than non-southern states. This increased racial resentment most certainly stems from slavery, the reconstruction era, and the civil rights era.

The question is then, how does racial resentment tie into racial diversity levels and split ticket voting? We have shown that southern states have a higher level of racial diversity along with higher levels of racial resentment. It is possible then, that those who exhibit more racial resentment associate the

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Democratic Party with racial minorities. This is a result of the national Democratic Party led by Lyndon B. Johnson signing the Civil Rights Act of 1964 into law. As a result of the racial resentment and higher diversity rates, these individuals incorporate their prejudices into their voting behavior. As a result, these individuals are less willing to split their vote, because voting for the Democratic Party is voting for minorities, who they have potentially strong feelings against. This explanation might be an oversimplification of the thought processes of these voters, but we believe it is valid in explaining the relationship we are investigating.

If southern states behave this way, where does this leave Kentucky on the matter then? Since Kentucky is more of a hybrid state and not part of the deep south, we are working under the assumption that Kentucky did not have the same experiences with the Civil Rights Era as southerners. This helps to explain why Kentucky has lower levels of racial resentment than the rest of the confederate south. Another possible explanation is that Kentucky has lower levels of racial resentment because there is less racial diversity in the state. Either approach leads us to the same conclusion. Since Kentucky has less racial resentment and less racial diversity, voters in the state do not inherently associate the Democratic party with minorities. As a result, they do not have strong resentful feelings towards the party. In the absence of these strong feelings of resentment, voters are more comfortable splitting the ticket and voting as they see fit instead of allowing prejudice to dictate voting behavior.

These claims do have support outside the example of the former confederate states. The state of Texas has also exhibited a similar pattern in recent history. Much like the Deep South, Texas was at one time a solid blue state. The first time the state flipped to the Republican side was in the 1980 Presidential Election of Ronald Reagan against Jimmy Carter, with Reagan winning the election handedly. The decade leading up to this election was marked by a large increase in illegal immigrants coming over to border into Texas. The demographic makeup of the state shifted from having around 19% of its population as Latino to around 38%(Petersen 2003). This huge jump was undoubtedly coupled with an increase in racial resentment towards Latinos. These feelings of racial resentment lead the natives of Texas to associate the Latino race with the Democratic Party. This is due to the perception that Democrats are more lenient on immigration. As a result of this racial resentment and increased racial diversity in the state, the once solid blue state flipped to red as voting behavior changed. We also see a decrease in split ticket voting from the state as Texas now ranks 10th in the nation in straight line voting, or inversely 40th in the nation in split ticket voting (UT at Austin 2014). This lends support to our hypothesis that less racial diversity leads to more split ticket voting.

Further, the Texas example provides a way to improve our future research. For our project we exclusively looked at African Americans as the

minority group, but we have seen that this pattern of behavior extends to other racial minority groups and other geographic areas. We could potentially look at other time periods if the data is available. For example we could look at European immigrants in the New York area in the 1900s, or Asian immigrants in California in the mid-1800s to see if this pattern continues, or if our political structure was too young to exhibit high levels of ticket splitting.

CONCLUSION

The data collected does not support our coal hypothesis. Instead, we found that coal unions and the UMWA support the Democratic Party on the federal level. Additionally, we discovered that coal unions have not had an effect on Kentucky voting patterns in recent history.

The data collected did support our racial diversity hypothesis. When Kentucky was compared historically (1950-present) with the former Confederate States of America, Kentucky was found to have, on average, less racial diversity and greater split-ticket voting.

This study gives us insight into a possible explanation for the Kentucky phenomena: low racial diversity. Further research should be conducted to see if racial diversity truly is a significant explanation for why Kentuckians split-ticket vote at a high rate.

REFERENCES

Brooker, Russell. "America's Black Holocaust Museum." Americas Black Museum Voting Rights for Blacks and Poor Whites in the Jim Crow South Comments. January 1, 2013. Accessed November 2, 2014.

Caudill, Harry M. 1983. *Theirs Be the Power.* University of Illinois Press: Chicago.

Connelly, Thomas. "NEO-CONFEDERATISM OR POWER VACUUM: POST-WAR KENTUCKY POLITICS REAPPRAISED." *The Register of the Kentucky Historical Society* 64, no. 4 (1966): 257-69.

Drake, Richard B. 2001. *A History of Appalachia.* The University Press of Kentucky: Lexington.

Eller, Ronald D. 2008. *Uneven Ground: Appalachia since 1945.* The University Press of Kentucky: Lexington.

Feigenbaum, James J. Working Paper. The Effects of Labor Unions on Elections. *Kentucky 2014 Endorsements.* Accessed November 15, 2014. http://www.umwa.org/files/u1/KY_2014_Endorsements_Web.pdf.

Grofman, Bernard. "CONTROVERSIES IN MINORITY VOTING THE VOTING RIGHTS ACT IN PERSPECTIVE." *The Brookings Institution,* 1992.

Tokaji, Daniel. "The New Vote Denial: Where Election Reform Meets the Voting Rights Act." *South Carolina Law Review* 57 (2006).

Trooter, Joe. "African Americans, Impact of the Great Depression On." Gale US History in Context. November 19, 2004. Accessed November 5, 2014.

Willis, Kevin. "For Many Kentucky Democrats, Federal Elections Mean Voting Republican." WKU Public Radio. October 19, 2012. Accessed November 1, 2014.

US Department of Commerce. 1957, 1964, 1970, 1980, 1985, 1991, 2001, 2011. *Statistical Abstract of the United States.* U.S. Bureau of the Census: Washington, D.C.

US Department of Labor. 2014. "Chapter 5: Eisenhower Administration, 1953-1961." *United States Department of Labor.* Published online: http://www.dol.gov/dol/aboutdol/history/dolchp05.htm

2014. "United States presidential election, 1956." *Wikimedia Foundation, Inc.* Accessed November 18. 2014. http://en.wikipedia.org/wiki/United_States_presidential_election,_1956

2014. "United States presidential election, 1972." *Wikimedia Foundation, Inc.* Accessed November 18, 2014. http://en.wikipedia.org/wiki/United_States_presidential_election,_1972

2014. "United States presidential election, 1984." *Wikimedia Foundation, Inc.* Accessed November 18, 2014. http://en.wikipedia.org/wiki/United_States_presidential_election,_1984

2014. "United States presidential election, 2012." *Wikimedia Foundation, Inc.* Accessed November 18, 2014. http://en.wikipedia.org/wiki/United_States_presidential_election,_2012

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The Evolution of Kentucky's Constitutions: A Comparison of The Original and Second Constitutions[1]

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Timing is everything, especially to a developing state. This paper highlights the changes that time required Kentucky to make in order to gain her statehood and then ensure that she would continue to prosper as time passed. Kentucky gained a lot of wisdom during her first fifty-eight years ranging from how to elect our Governor to whom this state should remain loyal to – a question that in 1792 was quite conflicted. Reviewing the two documents that began shaping Kentucky into the state she is now is just one of the ways to appreciate this beautiful and unique Commonwealth. This study is set to compare the first and second constitutions of Kentucky. This examination will place the analysis of these constitutions in the historical context of early America and the founding of Kentucky, as well as the English Common Law tradition that is foundational. This study will also evaluate the significant changes and consistencies as well as the politics of change between the two constitutions.

BACKGROUND OF KENTUCKY HISTORY

In 1792 Kentucky broke away from the state of Virginia and formed its first constitution in order to gain statehood. When approved by the U. S. Congress, Kentucky then became 15th state in the expansion of America. However, what most people do not consider is that Kentucky really had to strive to join the Union; for Kentucky had too many close ties with Virginia to make disengagement an easy task. The most rigorous challenge proved to be the people of Kentucky themselves, for they could not decide the appropriate way to leave Virginia. The populists preferred a separation through Congress – or since that was now impossible, an "unconditional" separation without the consent of Virginia – that would put them in control of the district and enable them to redistribute the land granted by Virginia. The establishments, on the other hand, wanted a "constitutional" separation through Virginia that would

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leave them in power to prevent a partisan redistribution of land.[2] So what Kentucky really struggled with was land and not the idea of joining the Union.

Kentucky's first Constitutional Convention was held in Danville, Kentucky due to the convenience of the location (for Virginians) from 1784 to 1792. The first constitution was an eighteen-page document carefully crafted and developed to become Kentucky's first constitution.[3] Isaac Shelby was elected Kentucky's first Governor and it was no surprise. On May 17, 1792 it was completed and then Kentucky became the 15th state on the first of June.[4] Electing Isaac Shelby before Kentucky was a state is just one example of the eagerness Kentuckians had for independence. In examining Kentucky's first constitution one can easily see that Virginia and Great Britain heavily influenced the document.[5] Though interestingly enough, at this time Kentucky was filled with people who were not born inside the state – there were multiple influences ranging from the other 14 states to European countries. But as for Britain's influence, there is only one person who has the sole power (the King of England), and with America the Bill of Rights is discussed in great detail.[6] This ultimately meant that she was going to have numerous ties to numerous bodies – Virginia who is the mother state, Great Britain, and America. This seems like too many ties for a new state to have, to whom does Kentucky remain completely loyal? One will observe that through each constitution Kentucky has adopted and the changes that come with time, she has always remained devoted to the United States Bill of Rights and the thought of personal freedom that America offers. This loyalty has been proven strong over the years as one will see throughout this paper, for she quickly severed the ties that were holding her back from maturing.

KENTUCKY'S FIRST CONSTITUTION, 1792

Drafted by George Nicholas and mostly adapted from the Pennsylvania constitution of 1790, and with influence from the U.S. Bill of Rights, Kentucky's first constitution proved to be very unique. In Article VIII, Section 7 Kentucky shows its adherence to Virginia for it is stated that the compact with the state of Virginia, subject to such alterations as may be made therein, agreeably to the mode prescribed by the said compact, shall be considered as

[2] Watlington, Patricia. The Partisan Spirit: Kentucky Politics, 1779-1792. New York: Atheneum, 1972.
[3] Kleber, John E. The Kentucky Encyclopedia. The University Press of Kentucky, 1992.
[4] Harrison, Lowell H. Kentucky's Governors. Lexington: University Press of Kentucky, 2004.
[5] Wood, Gordon. The Creation of the American Republic 1776-1787. New York: W.W. Norton & Co., 1969.
[6] Kleber, John E. The Kentucky Encyclopedia. The University Press of Kentucky, 1992.

part of this Constitution.[7] In continuity with the colonial powers of Governor under Great Britain, only the Governor had sole executive power – there is no one else sharing the responsibility in 1792. The supreme executive power of this Commonwealth shall be vested in a Governor.[8] The use of the word "supreme" is the key word showing loyalty to English Common Law and constitutional tradition.

It is now important to note that the ratio for Representatives to Senators is 1 to 4 is this document, and in Article XII, Section 23 the right to bear arms has been enumerated, instead of being combined with another right showing its importance to the state of Kentucky. This is another place where Kentucky proves her allegiance to the United States as well. The age limit also varies from the first to second constitution – the Governor is required to be at least thirty years of age, while in the second constitution the Governor must be at least thirty-five years of age. Residency requirements for the candidates also increased from one constitution to the next, going from two years to six years. An intriguing form of the constitution is the increase in the age limit because Isaac Shelby was forty-two when he became the first Governor, and James Garrard was forty-seven when he became our second Governor. Neither of these men were close to thirty years of age, so why was the age limit increased by five years in 1799? Shelby and Garrard were not the young and ambitious men that would require a need for age limits to be increased; nonetheless, Kentucky would need men of maturity and respectability that the age provision would ensure.

Most importantly though, is the rarity of the selection of Governor. This special constitution has stated that the Governor is to be selected by the Kentucky Electoral College – an election technique completely unique to Kentucky. The goal was to elect our Governor the same way we elected our President – another tie to the American constitution. Unfortunately, this uncommon idea proved to be an issue in 1796 when the Kentucky Electoral College failed to give any of the four candidates for Governor a majority vote, and instead of declaring the recipient of the plurality of votes the winner, conducted a second ballot between the two highest vote getters.[9] Resulting in the candidate who was originally in second place winning the Gubernatorial election the second time around. This caused such a controversy it became a political issue that a movement for a new constitution resulted. With this being said, this is the main reason why the first constitution only lasted seven years, and only two years after the 1796 Gubernatorial election. This decision caused quite a stir throughout the state and brought the Kentucky Electoral College to

[7] *The First Constitution of Kentucky*, 1792.
[8] *The First Constitution of Kentucky*, 1792.
[9] Clinger, James C. and Michael W. Hail. Kentucky Government, Politics, and Public Policy. Lexington: University Press of Kentucky, 2013.

an end with respect to Gubernatorial elections. After this election, it took Kentuckians a little over two years to gather up another constitutional convention and adopt their new constitution.

COMPARISON OF KENTUCKY CONSTITUTIONS

FIRST CONSTITUTION	SECOND CONSTITUTION
House elected by citizens to 2 year terms and Senate elected by electors to 4 year terms	House elected by citizens to 2 year terms and Senate elected by citizens to 4 year terms
Governor elected by electoral college	Governor directly elected by the citizens
Governor appoints all constitutional offices with the advice and consent of the KY Senate	Governor appoints all constitutional offices with the advice and consent of the KY Senate
No Lieutenant Governor, Speaker of the KY Senate replaces the Governor	Lieutenant Governor is elected as is Governor to 4 tear term by citizens
Governor can call of special session of the General Assembly and he can adjourn it	Governor can call of special session of the General Assembly and he can adjourn it
Governor has veto power, and a 2/3 vote of both houses is required to over-ride his veto	Governor has veto power, and a majority vote of both houses is required to over-ride his veto
House can impeach executive, trial by Senate and 2/3 for conviction	House can impeach executive, trial by Senate and 2/3 for conviction
Tax and Spending action must be initiated in the House and annual public budget and expenditure report must be published	Tax and Spending action must be initiated in the House and annual public budget and expenditure report must be published
Article XII provided a bill of rights	Article X provided a bill of rights
Amendments can be done only by convention, and then, either after annual consecutive votes of the citizens, or a 2/3 vote of both House and Senate	Amendments can be done only by convention, and then, either after annual consecutive votes of the citizens
Appointed executive branch offices of Secretary of State, State Treasurer, and Attorney General.	Appointed executive branch offices of Secretary of State, State Treasurer, and Attorney General.

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KENTUCKY'S SECOND CONSTITUTION, 1799

After the 1796 gubernatorial controversy, it was concluded that there was a need for a new constitution to resolve some of the kinks that were in the first one. The next Constitutional Convention was held in 1797 and 1798, meeting for just twenty-seven days in the summer of 1799.[10] During this period it was decided that a new position needed to be created, the Kentucky Electoral College needed to be replaced and Kentucky needed to have a more efficient and fair election system. There were to be new age limits specifically for the Governor. Interestingly enough, one will come to notice that most of the changes from the first constitution to the second constitution mainly happen in the executive branch – a unitary sovereignty in the executive like the King of England verses a divisible executive like the American model. The constitution of 1799, however, retained the major features of the original document. Its principal change, reflecting an interest in greater democratic control, was the abolition of the Kentucky Electoral College in favor of direct election, by voice vote, of the Governors and Senators. It created the office of Lieutenant Governor. More power was given to local governments, and the counties became the most significant agencies of the government, responsible for taxation, regulation of business, and patronage. Freed blacks lost the franchise they had since 1792.[11] Our second constitution is when we are introduced to the position of Lieutenant Governor. The Lieutenant Governor is to be elected for four years the same way as the Governor, and will now be the Speaker of the Senate; the Lieutenant Governor shall also act as the Governor during an impeachment, death, or when the Governor is absent from the state.[12] The creation of Lieutenant Governor is a further development reflecting republican influence and fragmenting executive power from that inherited from Great Britain. Having a Governor and a Lieutenant Governor is a mirror image of the President and Vice President, and no longer a reflection of the British constitutional system. The Bill of Rights is still included in this constitution as well as the House and Senate elections, which also remained unchanged. Impeachment of the Executive still belongs to the House with a trial by the Senate and 2/3 for conviction. The seat of government is also changed in the second constitution, moving from Danville to Frankfort where the seat has remained. This change shows a break from Virginia since Danville was chosen for the convenience of Virginians'. The need for our third constitution arose from a battle between the two major political parties, the Democrats and the Whigs. The Whigs controlled the governorship, and held the majority in

[10] Clinger, James C. and Michael W. Hail. Kentucky Government, Politics, and Public Policy. Lexington: University Press of Kentucky, 2013.
[11] Kleber, John E. The Kentucky Encyclopedia. Lexington: University Press of Kentucky, 1992.
[12] *The Second Constitution of Kentucky, 1799.*

legislature allowing them to dominant Kentucky through every aspect. The result of the Whig domination was an outcry from Democrats insisting on a new constitution to prevent this from happening again.

CONCLUSION

This study considers the history, and then looks comparatively at the first and second constitutions. Further, this study identifies the major changes and consistencies that occur. The significant finding is that the changes were mainly to the executive branch and they were to result in the weakening of the executive branch, and specifically the office of the Governor. The consistency in these constitutions is found in the separation of powers, institutional design, and the Kentucky Bill of Rights.

The comparison of these two constitutions is particularly helpful in allowing one to see just how special Kentucky is. Electing the Governor using Kentucky's Electoral College is just one of the interesting approaches taken and then changed for the future of this state. It is also not common for a constitution to make a five-year change on a gubernatorial age limit, but it is a change Kentucky made to ensure that the Governor was to remain a respectable and politically viable position. After all, it has been said, "the second most powerful man in the United States, after the President of the United States, is the Governor of Kentucky." [13] To fully understand this quote you must carefully examine Kentucky's constitutions and history; and there is no better place to begin than a comparison of Kentucky's first and second constitutions to see how gubernatorial power in Kentucky is exceptional. The executive branch underwent the most change over time, allowing for the title of the second most powerful position in the United States to add to Kentucky's uniqueness.

[13] Clinger, James C. and Michael W. Hail. Kentucky Government, Politics, and Public Policy. Lexington: University Press of Kentucky, 2013.

REFERENCES

Clinger, James C. and Michael W. Hail. Kentucky Government, Politics, and Public Policy. Lexington: University Press of Kentucky, 2013.

Coward, Joan W. The Kentucky Constitutions of 1792 and 1799: the Formation of a Political Tradition. Evanston, IL: University of Southern Illinois, 1972.

Harrison, Lowell H. Kentucky's Governors. Lexington: University Press of Kentucky, 2004.

Ireland, Robert. The Kentucky State Constitution. New York: Oxford University Press, 2012.

Jewell, Malcolm. Kentucky Politics. Lexington: University of Kentucky Press, 1968.

Kerr, Charles, William E. Connelley, E. M. Coulter. History of Kentucky. Chicago: American Historical Society, 1922.

Kleber, John E. The Kentucky Encyclopedia. Lexington: University Press of Kentucky, 1992.

Watlington, Patricia. The Partisan Spirit: Kentucky Politics, 1779-1792. New York: Atheneum, 1972.

Wood, Gordon. The Creation of the American Republic 1776-1787. New York: W.W. Norton & Co., 1969.

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Operation Nudge: How Non-Sovereign Organizations Gain Quasi-Sovereign Powers To Solve Public Choice Problems[1]

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Captain Crunch, Tony the Tiger, and Toucan Sam are watching you. Particularly, they are watching children. With their eyes gazing downward at a 9.6 degree angle, these characters make eye contact with individuals to encourage feelings of friendliness which will in turn increase the sales of the product. It is not that we are "cuckoo for Cocoa Puffs," but rather that we are being covertly nudged to buy these products (Musicus). Cereal companies are not the first to figure this out; we are nudged all day long. Our behaviors are encouraged and discouraged through choice architecture. We take the stairs over the elevator depending on its proximity, we continue to get mass emails because blocking them would require further action, and the list of daily nudges continues.

In 2005, the term "nudge" was presented by Cass Sunstein and Richard Thaler in their revolutionary book *Nudge: Improving Decisions about Health, Wealth, and Happiness*. This term called "nudging" refers to "any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a mere nudge, the intervention must be easy and cheap to avoid. Nudges are not mandates" (Sunstein, *Nudge* 6). By their nature, nudges have not been commonly used by governments who favor more traditional carrots and sticks. This is true partly because nudging is a new concept and partly because carrots and sticks are the default options for many governments. But, the method has been used at times and may prove to be more useful in the future, particularly for giving non-sovereign entities the ability to carry out actions. Using a nudge does not mean that an incentive or a deterrent cannot be used, but rather nudging can also help agendas along.

In our modern world, the issues associated with public goods have become an increasing problem. This is in part because of the inability of the international community to implement Garrett Hardin's solution of "Mutual

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Coercion, Mutually Agreed Upon" to such problems (Hardin). This paper endeavors to show that public choice problems may have a pragmatic solution. When implemented by a non-sovereign organization, nudging is capable of influencing behaviors of both people and government without passing laws to make a given behavior mandatory.

In the international community, the issue of who has the power is a prime concern from the realist perspective. To solve public good issues traditional forms of sovereignty have been desired. But, for transnational issues, it is the international community tasked with solving these issues. However, states have proven to be reluctant to delegate power to organizations such as the United Nations (UN). Nudging is a tool able to influence behaviors that is available to both non-sovereign and sovereign organizations. Furthermore, because of the nature of nudges, a non-sovereign organization can nudge without limiting or impeding on a states' sense of sovereignty.

To illustrate how it is possible for nudging to give these organizations sovereignty without limiting that of another, examples of nudges are illustrated later in the paper using the World Health Organization (WHO) and air pollution as the Intergovernmental Governmental Organizations (IGO) and the public good problem. Though the examples in this paper are specific to the WHO and the public good of air pollution, they are meant to illustrate the larger idea of how non-sovereign entities can accomplish tasks through nudging, which were previously believed to need hard power.[2] This is because it is in the nature of public good problems to not be completely solved, but rather controlled to a point when they are not as harmful to humans or the environment. It is through liberal paternalism that non-sovereign organizations can gain quasi-sovereignty to solve the public choice issues challenging the modern world.

The Rising Public Goods Problem

The problems associated with public goods are not new problems, but the severity at which these problems are occurring today present challenging issues. Public goods are goods that are readily available to all members of the society (Shively 55). Public goods include oceans, pasture, and air. These are the goods that one person's use of it does not restrict another's use of the

[2] This paper is based upon the research I performed for PSC 480: Senior Research Seminar at Berea College. In the larger paper, the case studies were more inclusive and dealt with the ideas of political feasibility, details about why the particular solutions were suggested for those places, and why the WHO was the organization with the capabilities to manage such an operation. This paper is meant to illustrate the core concept which is nudging gives quasi-sovereignty to non-sovereign organization to allow them to aid in solving public goods without impeding on the sovereignty of another sovereignty entity.

good. Problems with the availability of the good will soon arise because what is economically rational for the individual is not what is economically rational for the group as an entirety. This problem was identified by Garrett Hardin as the "Tragedy of the Commons."[3] His solution to the problem was "Mutual Coercion, Mutually Agreed Upon." Therefore, a government may impose regulations to a given community so that it behaves in an agreeable way to the majority of the citizens. This has proven to be a successful solution to the problem so long as the public good lies within a given area of a state.

However, it is crucial to understand that not all public goods lie within the confinements of a given country's border. These problems are known as transnational problems because they occur in multiple states. This is a public choice issue because now the states are the individual actors and what is economically rational for the individual is not what is rational for the world. The problem then becomes how to resolve the issue because Hardin's solution does not work when there is no one larger government with the authority and power to ensure that the states act. Finding a pragmatic solution to these global problems is the focus of this paper. Globalization has led to an increase in the destruction of public goods, but collective action is needed to reduce the pollutants back to their critical mass points. This is where non-sovereign organizations are needed.

The Role of the United Nations

The role of the United Nations (UN) has been to define global problems, find pragmatic solutions, and encourage interstate cooperation through communication. However, the body is largely one without formal power. It is lacking the typical carrots and stick of traditional forms of government and cannot gain a significant amount of power without impeding upon state sovereignty. Moreover, states are reluctant to give the body any power for fear of diminishing their own. Though this has caused critics to question the use of this organization (Freedman 210), it does not mean that the world can do without the organization. In the UN Charter there is no section which mentions that states need to be concerned about international issues. Instead, the charter implies that this is the role of the UN's General Assembly. This has led to the creation of specialized agencies. This means that the UN needs to be able to use methods beyond hard power to enact change.

In general, the solutions to problems are most effective when they come from the level at which they occur (Dietz 1909). Instead of the impractical solution of a state expanding its duties to deal with transnational issues, it is time for the rise of the IGO. It needs its own form of sovereignty. While

[3] In his paper, he outlined a situation where shepherds added too many sheep to a pasture to expand their own capital and instead rendered the field useless due to overgrazing.

organizations within the UN may provide guidelines for governments to use as a part of their legislation,[4] they do not have the power to legislatively carry out their findings. This creates a problem because states recognize that the regulations are needed, but will not implement them for fear of being economically disadvantaged by not having other states implement the same measures. Like the individual who needed correction from the state, the states of the world need the authority of a larger unit. This authority needs enough power to aid the problems that arise from public goods.

QUASI-SOVEREIGN POWER

Sovereignty[5] and the international community has been a sore subject in discussion for states because states do not want to give organizations such as the UN and other bodies more power. However, the states also agree that a neutral coherent body, such as the UN, is a good thing. The term "quasi-sovereignty" in this setting is used to describe organizations that have legitimacy and can change policy through the implicit power of influence and not force. It means that non-sovereign organizations may achieve results by changing behaviors through means that are not reserved to the sovereign power of the state. For example, the WHO has declared that it has supreme authority in the international community over health concerns, yet, it does not have power. Quasi-sovereign powers resemble sovereign powers enough to be effective, but are not sovereign powers in their nature. To be quasi-sovereign means that the organization would need to be able to carry out its authority. Carrying out its proposed ideals means that a quasi-sovereign organization would need to have the power to influence governments and individuals to produce results. It is "quasi" because these organizations are not gaining law making power. But, it is "sovereign" because it is able to create a system to encourage a change in behavior. However, they are obtaining the power necessary to carry out their goals. To encourage behavior, non-sovereign organizations will need to give a nudge.

[4] The World Health Organization is an example of a unit that has legitimacy, but no tangible power. Within the UN, it is the responsibility of the WHO to direct and coordinate public health efforts particularly those concerning children's health and environmental problems. With its six regional offices and 147 country offices, it has the capabilities of penetrating a country and it is an organization that has an interest in the problem. The WHO is controlled by delegates from each of the 194 member states. This means that at the World Health Assembly (WHA), each country is able to express its concerns about managing the details of the solutions to the problems. Its knowledge in the field of health care has given this organization some soft power because it can influence decisions.

[5] The word "sovereign" comes from the Latin word, *superanus*, meaning supreme authority. This is still what the word means today to refer to the state's exclusive ability to carry out the laws within a state at all stages of the legal process.

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NUDGING

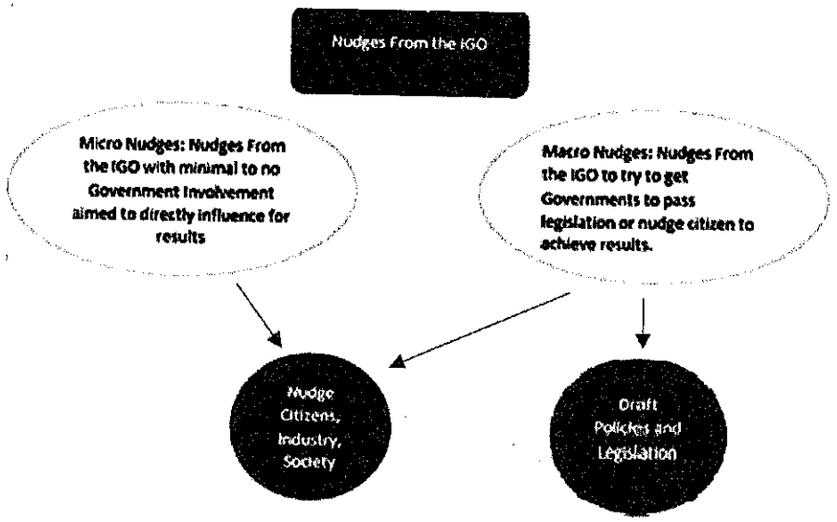
Due to the recent creation of the concept, it has yet to be determined by scholars who can and cannot be nudged.[6] Nudging appears to work in nearly every situation because it is versatile in nature. But, it is necessary to understand that nudges cannot solve a problem in its entirety. It only can encourages certain behaviors to a certain extent. However, organizations with some power over a group of people will find it particularly useful to aid in carrying out the goals of the organization because nudging is more politically feasible. Nudging is a form of implicit power that is permissible for a states as well as non-sovereign units to exercise. However, in this paper, I will explain how non-sovereign organizations, and not the state, enact change through nudging. My research found that there are three distinct ways that a non-sovereign organization can nudge.

THREE TYPES OF NUDGES

The nudges that I am suggesting for IGOs are aimed at two distinct levels. These will be referred to as the micro and macro levels. The structure of these two types of nudges are designed for any IGO or NGO wishing to nudge a country to solve a collective good problem. These nudges take advantage of the legitimacy that the organization already possesses and allows solutions to be found without impeding upon a given state's sovereignty. However, by having a structure that is designed to influence, IGOs are gaining immense power that was previously thought to be unavailable to such organizations.

The micro level nudges refer to choice architecture designed to influence the citizen. There is minimal government interaction for the nudges to take place. The nudges are designed for the IGO to be able to bypass the government. Thus, these will give the IGO more power through influence and it will help to solve public choice problems more quickly. Micro level nudges can be aimed at three levels: individual citizens; industries; or, the society as a whole. The key feature to this level of nudging is that the government is not involved.

[6] There exist several arguments against nudging, but I encourage one to think about the number of times each day that we are nudged. It then seems that it is only natural that governments use this method as well. Because nudges are easily avoidable, it is unlikely that governments could abuse the power as some critics fear.



This type of nudge is easier to implement by organizations that already have regional offices in place, but it is still possible without this direct presence. Choice architecture should be used to not encroach upon a state's sovereignty, but still influence behavior like a law. By choice architecture, it means that the design of an object influences decisions. Therefore, it is less important that the non-sovereign organization has a presence in the society, but rather that it has the monetary funds to implement nudges and build a system with choice architecture.

Nudges at this level are much broader in nature and require creativity to create. Most visual cues operate as a nudge, thus this greatly expands the range of nudges available. Nudges can be as complex as buildings designed to encourage individuals to take the stairs and as simplistic as a plate being divided into sections to encourage healthier choices. This level of nudging can also be either overt or covert because it is the most flexible of the nudging categories. The elasticity of this level is not only on the nudging end, but also who is doing the nudging. Governments, industries, and non-sovereign entities may all nudge individuals more easily than they themselves can be nudged.

The other category is macro level nudges. In contrast, these nudges are designed to nudge the government system instead of directly nudging the individuals. From these nudges the outcome can go one of two ways. Either the government is nudged into passing legislation that may produce carrots and sticks or the government is nudged into nudging its individual citizens, industries, and citizens. While government being nudged to pass legislation is not a direct nudge, on the macro level it can be seen as such because the scope being looked at is removed a layer back. However, it is a much purer nudge to nudge governments to nudge the nudgeable parts of society.

There are two principal ways to nudge a government. The first is to create an elite group of those who pass the legislation that the IGO is suggesting. The nudge rests in the idea that states are nudged into creating a system that improves air quality because they want to join the non-sovereign organization's group. The virtue of the membership is what is desired; there cannot be an economic gain or voting power gain for the members, nor a loss in power for those who are not members. In this way, the nudge does not change the choice matrix. For those who are able to join, the name should carry enough prestige that it is desired to joined.[7] Membership into such a group should be fairly difficult to obtain, but, not to the extent that governments can be nudged out of it.

For a non-sovereign organization to be able to use this nudge, they need to be able to locate the countries that have prestige and are essentially the "cool kids" of the international community. For example, by having the United States and Russia join an organization, other states will most likely follow because these countries are leaders in the international community. While there may have to be an initial incentive for these states to join, these states nudge other states into joining because of the power of attraction. The non-sovereign organization does not have to be what is attractive, but rather its members.

Choice architecture can be designed in a way that can both encourage and discourage behaviors. The nudges that are suggested in the following sections are discouraging behavior by encouraging another. Instead of passing a law stating that only cars with a certain fuel economy can be on the road and posing a fine for those who drive higher mpg cars, nudging might make public transportation or car pool lanes more available. In this way, it is not discouraging, but encouraging. Thus far, I have suggested who should solve public good problems and how the non-sovereign organizations can gain the power to carry out the solutions. In the following section, an actual public good problem will be identified, solutions will be presented, and specific cases will be looked at. This will show that even some of the direst of problems can be remedied through nudging because it is the critical mass point that needs to be achieved.

NUDGING IN ACTION: AIR POLLUTION AND THE WHO

In the course of this year, 7 million people will die from air pollution (WHO, *Ambient*) and an estimated 3.3 million of these deaths will be children

[7] This is a nudge that has been used on a lower level by the National Wildlife Federation in the United States. This organization has a club called Certified Wildlife Habitats®. This club's membership is available to anyone who meets the requirements to make their backyard into a wildlife habitat. There are no sizeable benefits beyond a certificate, yet nearly 200,000 individuals have joined for the prestige of the organization.

under the age of five. In 2013, the WHO released a public statement declaring that air pollution is carcinogenic to humans (IARC). As elucidated in the study, there is a direct link between air pollution and lung and bladder cancer (Straif). While air pollution effects can be acutely fatal, it can also induce chronic problems causing people to struggle with respiratory problems for the duration of their lives. Air pollution affects the quality of life for many people (*Air Quality Deteriorating*) and causes preventable deaths across the globe. We must act now to encourage better means of production to thwart the increasingly harmful effects of air pollution.

One of the barriers to reducing air pollution is those who reap the benefits differ from those who bear the cost. In other words, the hierarchy structure of industry creates a system that allows for the owners of production to remain unaffected by the pollution they are causing. The majority of air pollution casualties are located in poor urban areas (Hutton). The poor suffer from this problem both locally and globally because these are the places where people cannot afford to make changes to their air quality and are lacking in education and, thus, awareness of this problem. By having those who produce the pollutants only reap the benefit and not bear the cost there is little incentive beyond moral character to amend the situation. The solutions to these problems must therefore be economical and easy to implement. This is why nudging is the optimal solution to deal with this public choice issue. The solutions for the WHO to implement through nudging are suggested in the following paragraphs.

Micro Level Nudging for Air Pollution

An example of this level of nudging is to use larger recycling receptacles to encourage recycling. A study of this occurred in the United Kingdom. The simple program implemented set out recycling containers that were nearly twice the size of the trash cans and larger than the compost bins. This helps provide a visual cue to citizens about what they should do with their waste and how much are they wasting. Before the onset of the program the recycling rate was at 29%. When this program was implemented the rate immediately raised to 60% and sometimes reaches 70%. This shift was caused by the size of the containers and nothing more (Laker). This plan shows how simplistic the choice architecture can be to make a difference.

However, beyond the mere size of the recycle receptacle, the proximity matters as well. A recent study found that the distance a person must travel to the nearest bin also influences the frequency of how much an individual recycles. A Spanish study showed that an environmentally concerned person normally does not expect to spend more than five minutes travelling with his or her bags to the selective collection bins. The study found that the majority of people who separate three or four items spend less than five minutes in travelling from their home to the point where the bins are located; i.e., the

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efforts (measured as the number of fractions separated at home) of the people with the recycling habit, are encouraged by the proximity of the bins to their homes (González-Torre).

By having an IGO implement these nudges, the sovereignty of the state is still maintained, though an outside force is influencing behaviors. This solution would be particularly successful in Mongolia where there is a large problem of plastic burning. The air quality levels in Mongolia are some of the worst in the world and one of the key sources is from the ger region burning plastic. While the government has attempted to solve the problem, there has not been much success. This program would encourage plastic disposal and if done properly, encourage the burning of healthier substances. However, it remains a nudge because it remains cheap and easy to avoid.

Macro Level Nudging for Air Pollution

In this case, the WHO should pass qualifications for states to enter this elite group such as meeting their air quality standards or passing effective legislation.[8] This would not mean that a government has to pass legislation, but to reach strict requirements, it most likely would. Then by having other states take note of the actions performed by a state to improve their own air quality, it would likely create a system that would encourage cleaner air because there would become a different hierarchy of states. It is this attraction that creates the nudge. The WHO's main office would be the organization charged with creating this system.

This type of nudge would be suited for an area where non-anthropogenic sources is the main source of pollution. For example, in Qatar there is a large problem of particular matter from sand storms mixing with anthropogenic particles mixing and forming a toxic mixture. Qatar is a state interested in improving its air quality and, thus would want to join an elite group. By having the roofs of buildings gabled, the air would flow easier and the pollutants could travel out of the heavily populated areas. The nudge is to join the group, but the group could make it mandatory for governments to pass legislation encouraging green architecture.

Related to the idea of an exclusive membership is the second idea of critical mass. This is to say that there is a certain point when all states will want to have a group membership because it is easier to conform (Schelling 96). A practical example of this idea is the concept of Daylight Savings. By switching the time, people are nudged into going to bed and waking up "earlier." What is really happening is that natural light is more efficient during the new hours, so

[8] The European Union (EU) is an example of such a group. States gain some power from joining, but that is not necessarily the purpose of why they want to join. The EU is more about creating a community with the same goals. This is the same intention of the nudge being proposed.

there is less of a need for traditional lighting that produces greenhouse gases and uses resources. However, with other countries changing their time, it is easier for all countries to change their time so that the time changes are not further skewed (Sunstein, 47). There is no cost to do this or not to do this, but it is easier to change the time as a default because so many other countries are observing this difference.

If countries were to become not only aware of how they rank in the world, but how well they were nudging, it may have an impact on policies. . This would be seen on multiple levels from industries to regions to states to countries. Using this method and comparing regions that are already at odds with each other should nudge a response. For example, both India and Pakistan rank top among the worst polluters in the world. If the two were competing to clean the air for the prestige of their country that would be a nudge to accomplish this task.

This is a macro nudge because it is designed at the governmental level and the nudge is used to expose the weakness of the political culture as seen on the world stage. There is no economic incentive or deterrent. These nudges recognize competition and states desiring to increase their power. From the realist perspective, states act in their own best interest. The actions of a state show they are trying to increase their own power. Therefore, the macro level nudges are designed to increase power by creating competition and a desire to be an exclusive country that is ahead of the world's standards.

Conclusion

This paper demonstrated that non-sovereign organizations are the rising form of government in today's globalized society and that these organizations are the most qualified to respond and solve public choice problems. However, the focus was upon the idea that these organizations currently do not have the sovereign powers to make changes, but can gain quasi-sovereign power through nudging at three different levels. While three selected examples were described with one organization managing one public good problem, the application of the idea is much larger. This paper is meant to illustrate for other scholars that there are various sources of power that need considering before non-sovereign organizations are thought incapable of enacting change.

Nudging is a useful, but also unique tool available to non-sovereign entities to implement and enact change for public choice issues. Though it is versatile, the most astonishing finding of the research is that it can be performed without impeding a given state's or states' sovereignty. Quasi-sovereignty is not complete sovereignty because nudging is not as powerful as a law, but a change in behavior still occurs. This type of a solution could work as a solution to other problems, but it is best for public goods because these problems do not need to be solved in their entirety. Instead, these issues only

need to be resolved to the critical mass point where they are no longer harmful to the citizens of the states or the environment.

This paper demonstrated that, though there are problems larger than the world has known, they are not unsolvable. Every level of human interaction can make a difference for the greater good due to the nature of these problems. Change does not have to come through incentives or deterrents, but instead through a gentle nudge that can be tailored to suit all political cultures. Furthermore, while nudging gives power to transnational organizations, it does not give such bodies the power to infringe upon anyone's rights. There is no need to fear such organizations or the changes they implement. Individuals maintain their sense of autonomy even when these nudges are present. This is a new frontier for non-sovereign organizations and a new hope for the problems that do not observe borders.

REFERENCES

Dietz, Thomas, Elinor Ostrom, and Paul C. Stern. "The Struggle to Govern the Commons." *Science* 302.5652 (2003): 1907-1912. *Academic Search Complete.* Web. 13 Nov. 2014.

Freedman, Rosa. "The United Nations Human Rights Council: More of the Same?" *Wisconsin International Law Journal* 31.2 (2013): 208-251. *Academic Search Complete.* Web. 23 Nov. 2014.

González-Torre, Pilar L., and B. Adenso-Díaz. "Influence of Distance on the Motivation and Frequency of Household Recycling. *'Waste Management* 25.1 (2005): 15-23. *Academic Search Complete.* Web. 23 Nov. 2014.

Hardin, Garrett. "The Tragedy of the Commons." *Annals of Internal Medicine* 72.3 (1970): 374. *Academic Search Complete.* Web. 23 Nov. 2014.

Hutton, Guy. "Air Pollution: Global Damage Costs of Air Pollution from 1900 to 2050." *Copenhagen Consensus.* (2011) Web. 7 Sept. 2014.

IARC. "IARC: Outdoor Air Pollution a Leading Environmental Cause of Cancer Deaths" *World Health Organization.* 17 Oct. 2013. Web. 13 June. 2014.

Laker, Laura. "How Councils Are Using Clever Ideas to Increase Recycling Rates." *The Guardian.* 27 Oct. 2014. Web. 1 Nov. 2014.

Musicus, Aviva, Aner Tal, and Brian Wansink. Eyes in the Aisles: Why is Cap'n Crunch Looking Down at My Child? *Environment & Behavior.* Cornell University Food and Brand Lab. (2014) Web. 1 Oct. 2014.

National Wildlife Federation. "Create a Certified Wildlife Habitat." NWF.org. Garden for Wildlife. 2014. Web. 11 Nov. 2014.

"The Responsibility to Protect." *UN.org.* Office of the Special Adviser on the Prevention of Genocide. 16 April. 2014. Web. 30 Sept. 2014.

Schelling, Tomas C. *MicroMotives and MacroBehavior.* New York: W. W. Norton & Company, Inc. 2006. Print.

Shively, W. Phillips. *Power and Choice: An Introduction to Political Science.* New York: McGraw-Hill, 2012. Print.

Sunstein, Cass R. and Richard H. Thaler, *Nudge : Improving Decisions about Health, Wealth, and Happiness.* Print. New York: Penguin Books, 2009.

WHO. "Air Quality Deteriorating in Many of The World's Cities." *WHO.org.* World Health Organization. 7 May 2014. Web. 18 Aug. 2014.

---. "Ambient (Outdoor) Air Quality and Health. WHO.org." World Health Organization, March 2014. Web. 18 Aug. 2014.

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