

JA
1
P57x
vol-2

PI SIGMA ALPHA REVIEW

Vol. 2, 1984

BYU LIBRARY
NOV 12 1993

BETA-MU CHAPTER
Brigham Young University

PI SIGMA ALPHA REVIEW

Vol. 2, 1984

BETA-MU CHAPTER
Brigham Young University

BOARD OF EDITORS

Lou J. Royer, Editor

Suzanne Clayson
Boyd Hill

Paul Hoffman
Brett W. Smith

Chris Wilson

Scott Dunaway, Pi Sigma Alpha Advisor

PI SIGMA ALPHA REVIEW

The Pi Sigma Alpha Review, edited and published by students at Brigham Young University, features the winning student papers submitted in the annual Beta-Mu chapter writing contest. The purpose of The Review is to provide the deserved exposure to noteworthy student research. By providing this exposure, it is hoped that The Review will encourage high quality student political science research and writing.

Students from any discipline may submit papers for consideration in the writing contest and publication in The Review. Students may submit papers in the following categories: American Government, International Relations, Comparative Politics, Political Philosophy, and Public Policy. Writing contest information, rules, and application forms are available in the Political Science Department, 745 SWKT.

The Editorial Board of The Review express their appreciation to the BYU Department of Political Science and the National Pi Sigma Alpha Committee on Chapter Activities for their financial assistance. The Board also thanks Gail Cozzens of the College of Family, Home, and Social Sciences Faculty Support Center for typing the manuscripts and formatting the journal.

PI SIGMA ALPHA REVIEW

Vol. 2, 1984

| | |
|---|---|
| ELECTORAL REVISION IN JAPAN--1982 . . . | 1 |
| Ray Christensen | |

| | |
|---|----|
| WHERE AND WHY ARE MISREPORTERS MISREPORTING? | 31 |
| Rick Malmgren | |

| | |
|---|----|
| INFITAH AND THE MODERNIZATION OF EGYPT | 57 |
| Chris Monson | |

| | |
|---|----|
| THE EXTENDED REPUBLIC AND THE CONTROL OF MAJORITY FACTION: A CONTRAST AND COMPARISON OF DE TOCQUEVILLE AND THE AMERICAN LAWGIVERS | 83 |
| Anne Rowley | |

| | |
|---|----|
| THE CHADHA DECISION: A NEW LIGHT IN THE CONSTITUTIONAL BALANCE | 99 |
| Murray Snow | |

| | |
|--|-----|
| EARLY ELECTION PROJECTIONS: DO THEY AFFECT VOTER TURNOUT? | 133 |
| Shelley Snow | |

PI SIGMA ALPHA ACTIVITIES

FACULTY NOTES

ELECTORAL REVISION IN JAPAN--1982

Ray Christensen*

Introduction and Theoretical Framework

The revision of an election system is one of the touchiest issues in a western-style democracy. Every politician knows that a proposed reapportionment scheme might affect his chances for reelection. Thus, many accuse politicians of not considering the merits of a revision proposal, but only the personal consequences. This phenomenon is seen at regular 10-year intervals in the United States. With each new census, some states are required to redraw their congressional district boundaries, and, invariably, some of the disputes that ensue have to be settled by the courts or a nonpartisan panel. This kind of action is by no means limited to state governments. In many foreign countries which have a democratic form of government, attempts to revise the election system have sparked fierce debates. One of the most recent of these debates, concerning a 1982 revision of the Public Offices Election Law in Japan, will be the subject of this research.

A theory by Maurice Duverger will be used to explain politicians' behavior regarding this bill. He says:

The notion that politics is both a conflict between individuals and groups for the acquisition of power, which the victors use to their advantage at the expense of

*Ray is a senior majoring in International Relations and in Japanese. He will be attending Harvard Law School this fall.

the vanquished and an attempt to establish a social order beneficial to all constitutes the basis of our theory of political sociology.¹

He continues:

The primary objective of parties is to acquire power or a share in the exercise of power; they seek to win seats at elections, to name deputies and ministers,² and to take control of government.

As Duverger suggests, people often think that politicians are motivated solely by a desire for power. It will be shown that the positions Japanese politicians took regarding the 1982 revision bill were determined by whether or not the politician and his party would benefit from the proposed changes.

Duverger's ideas have been expressed and examined in other situations by many other political scientists. Lorimer says that because election boundaries help determine who gets elected, discussions about redrawing boundaries become an item of utmost concern to politicians.³ In Lightbody's analysis of revision in the municipal election system of Winnipeg, Canada in the 1920s, he describes the proposal worked out between the conservative Citizens' League and the opposition Labor party as a compromise where each party lobbied for the adoption of proposals that would benefit them.⁴

More recently, Choi claims that the adoption of multi-member districts in South Korean elections was merely an attempt by the government party to give their urban candidates a chance to be elected. Under the former system of single-member districts, the government party often came in second to the opposition party. However, with

two candidates being chosen from each district, the government party now holds⁵ roughly half of the urban seats in the legislature.

Another example of this phenomenon can be seen in the initial adoption of proportional representation (PR) in Switzerland, an appropriate example because the change debated in Japan in 1982 was whether or not to adopt a PR system of election in the National Constituency of the House of Councillors. In the Swiss canton of Techino, an unfair election system allowed the conservative party to get 75 percent of the seats in the legislature with only 50 percent of the vote. The opposition Freedom party, who also got 50 percent of the vote, demanded adoption of a PR system where 50 percent of the vote would translate into 50 percent of the seats. The conservative party refused to negotiate on their demands. After a rebellion in which the opposition took all government leaders hostage and took control of government buildings, the conservatives gave in and set up a PR system of election. Clearly, the conservatives were unwilling to change an obviously unfair system that benefited them until riots demonstrated that continued intransigence would be more harmful to their⁶ self-interest than the adoption of the PR system.

To see how Duverger's theory, as illustrated in these case studies, works in the context of Japanese politics, it is first necessary to understand cultural differences that affect decision-making in Japan. Japanese society places a much greater value on the preservation of group harmony and consensus than do traditional western democracies. Nakane finds this emphasis on consensus throughout Japanese society, beginning with decisions made in the local village council.

Ward contrasts the U.S. system based on open competition in which the majority wins with the Japanese system where a simple majority is

not sufficient; a consensus is achieved where "face" and harmony (i.e., no open contention) are preserved at all costs. He further explains that even with the adoption of western democratic institutions, traditional Japanese decision-making has only been masked. Compromises are worked out beforehand and the Diet unanimously approves the decision.

Existing System Needed Change

Japan's basic election system was set up in 1947 as a part of the new postwar constitution. However, that system was modeled after the pre-war system that first came into being as a part of the Meiji Constitution promulgated in 1890. Both constitutions gave Japan a bicameral legislature. The Lower House was called the House of Representatives, currently consisting of 511 members whose term of office is four years or less if the Prime Minister calls for an election or is toppled by a no-confidence vote. The members of the Lower House are each elected from medium-sized local districts (three to five elected from each district). By contrast, the Upper House or House of Councillors is a 252-member body where each councillor is elected for six years with half of the members up for election every third year. The members of the Upper House come from two types of constituencies. One hundred of the 252 members are elected at large (National Constituency), and the remaining 152 members are elected in local two- to eight-member districts--similar to the Lower House election districts.

There are three aspects of this election system that are important when considering election revision. First is the National Constituency of the Upper House which was meant to be "a council of cool reason to exercise restraint on the Lower House."⁹ The framers of Japan's postwar constitution thought that the National Constituency

would attract talented people who were above party politics.¹⁰ Second, the postwar politicians also placed very stringent restrictions on campaign expenditures, the length of the campaign period and what types of election activities would be permitted. Third, they assigned to each district the number of representatives proportional to that district's population, but they failed to include any provision for revising their distribution in response to population shifts.

These three specifics of the 1950 Public Offices Election Law were the roots of problems that have since developed in the Japanese electoral system. First, the National Constituency has attracted so-called "talent" candidates (movie stars, TV personalities and famous athletes) as opposed to the high quality elites that the law was meant to attract. These "talent" candidates are elected because they have enough popularity nationwide to garner the votes sufficient for election. Though the political parties would rather have party regulars in those seats, they make use of the political reality by recruiting these "talent" candidates to run on their slate.¹¹

The second problem inherent in this system is that even though campaign spending is severely limited, campaign costs have skyrocketed. Oikawa estimates that in National Constituency elections, a candidate can be expected to spend two million dollars, and in the general election of 1974, called the "plutocratic election," the majority party spent a total of 120 million dollars.¹²

Though campaign expenditure laws are on the books, they are, as a matter of course, ignored by almost all candidates. Why this is done can be understood by looking at the National Constituency races. A candidate is allowed to spend approximately 110,000 dollars (27 million yen), but this limit would be exceeded if he only put up the 100,000 posters allowed by the same law.¹³

The third problem is that population has shifted, causing a serious imbalance in the apportionment of seats across the nation. An example of this shift is the election of Nishimura Shoji to an Upper House seat from rural Tottori prefecture. In Nishimura's sparsely populated district, he was elected with only 163,450 votes; however, in other more populous districts 41 candidates failed to be elected, even though they had more votes than Nishimura. The extreme case was a candidate from metropolitan Osaka who received 632,622 votes and came in fourth in a three-man race.¹⁴ This problem of malapportionment is not as bad as in Great Britain where the ratio of difference between the largest and the smallest districts is 10 to 1 or in the U.S. where the ratio between the largest and smallest Senate districts is 62 to 1.¹⁵

Although the malapportionment ratio among the election districts in Japan is less than that in the U.S. Senate districts, malapportionment is a problem because, unlike the U.S. Senate, the seats in Japan are supposed to be evenly distributed. The opposition parties continually bring up this issue, and the Supreme Court (as recently as April 27, 1983) continues to rule that the districts should be reapportioned. However, the court also rules that reapportionment is a legislative matter and not in their area of jurisdiction.¹⁶ This ruling has produced the curious phenomenon in which all parties agree that reapportionment is necessary but no action is taken because the two largest parties would lose seats in any reapportionment¹⁷ scheme that would rectify the current imbalance.

With a knowledge of the major problems in the Japanese electoral system, it becomes necessary to understand the situation of each political party in

order to see how each party's position affected that party's stand on election revision proposals.

Currently there are five major parties in Japan. Two are national parties which receive most of their support from rural areas, and the other three are largely phenomena of the metropolitan areas. The largest party is the conservative Liberal Democratic party (LDP), which has ruled Japan under one name or another since WW II.¹⁸ In the 1983 elections, the LDP's share of the vote varied from 60 to 70 percent in 10 largely rural prefectures¹⁹ to 20 percent in Tokyo, Osaka and Yokohama,²⁰ the three largest metropolitan areas. The LDP maintains its parliamentary majority by sweeping most of the rural districts. However, they also have considerable voting strength in metropolitan and semiurban areas, which makes the LDP a national party.

The second largest party, with about half the votes the LDP receives, is the Japan Socialist party (JSP), the only other national party. In the same 1983 election, the JSP's share of the vote was similar to the LDP's in that the JSP did best in rural prefectures²¹ and did worst in Tokyo and Osaka.

As mentioned earlier, one can see why these two parties would oppose any reapportionment plan that would dilute the unrealistic electoral strength of the rural prefectures. Both the LDP and the JSP gain much of their support from these areas as opposed to the other political parties which are based in the metropolitan areas.

The other parties are the Democratic Socialist party (DSP), Japan Communist party (JCP) and Komeito. These three parties take a combined vote of 35 to 45 percent; however, because of the election system and malapportionment, they only receive²² about 25 percent of the seats in the Diet. In addition to these five parties, there are other minor parties, such as the New Liberal Club (NLC), which are trying to gain status as major parties.

Electoral Revision Attempts
That Have Failed

Just as it is necessary to understand the pre-revision electoral system and situation in Japan, so also is it necessary to see what other election revisions have been attempted and why they were not passed.

Although proposals to revise some part of the election system are discussed in nearly every Diet session, the first major postwar revision attempt was made by Prime Minister Hatoyama (LDP) in 1956. His proposal was basically to change Japan from multi-member electoral districts to single-member districts as have the United States and Great Britain. Hrebenar estimates that under such a system the LDP would have taken 89 percent of the seats in the Diet.²³ It appears that Hatoyama was using the guise of election revision to further strengthen the LDP. Although the LDP had ample votes to pass such a revision (they had 63 percent of the seats in the Diet in 1956),²⁴ they tabled the measure in the face of a united opposition which threatened²⁵ to block passage of other important legislation.

This decision is a good example of the Japanese desire for consensus. Because the opposition parties refused to negotiate on any revision that would weaken their position in the Diet, the LDP preserved consensus by tabling its proposition. If the LDP had insisted on passing the bill, the opposition would most likely have boycotted Diet sessions and resorted to various parliamentary measures to slow down legislation. In such a situation the LDP would have been painted as dictators and would probably have lost much of their support among the Japanese people. Above all else, harmony must be maintained.

This same revision proposal showed up with slight variations throughout the 1960s and 1970s.

The most significant variation was the inclusion of a PR system of election in the proposal put forth by Prime Minister Kakuei Tanaka. Though a PR system had been proposed in the 1966 and 1976 LDP Election Research Council reports, Tanaka was the first to include it in a formal revision proposal. Tanaka suggested the following: first, change all districts to one-member districts (same as the Hatoyama plan); second, implement a PR system to elect some of the Lower House members; third, change the National Constituency of the Upper House to a PR method of election.

The significance of this proposal was that a few concessions were made to the opposition parties. The inclusion of a PR system of election in part of the Upper and Lower House elections meant that if Komeito took 10 percent of the vote, they would get 10 percent of the seats in the PR constituencies. However, the change to single-member districts for the other seats would virtually wipe out opposition representation in those seats.

The strategy behind this new proposal is easy to see. Thayer says the LDP included PR only as a means to attract opposition party support for the proposal.²⁶ The LDP politicians were not dumb; they knew that even though they conceded some advantage by including a PR system, they would still improve their overall position. Hrebenar estimates that under the Tanaka proposal the LDP would have²⁷ gained 78.9 percent of the Lower House seats. In addition to gaining Lower House seats, the LDP would improve its position in the Upper House by changing the National Constituency to a PR system. Why the LDP thought it necessary to revise the National Constituency can be seen in Hrebenar's statement that the National Constituency was one of the few parts²⁸ of the election system that did not help the LDP.

The reaction to such a thinly disguised partisan proposal is easy to imagine. The opposition called the plan a "Kakumander," a play on words combining²⁹ gerrymander with Tanaka's first name (Kakuei). Since the plan would only weaken their positions,³⁰ the opposition parties obstructed Diet operations³¹ which forced Tanaka to abandon his proposal. Stockwin calls Tanaka's abandonment of his proposal "an unusual and stunning reversal."³¹ He calls it this because the LDP, with its parliamentary majority, can usually negotiate and gain the necessary consensus for passage of its proposals. But since this revision threatened the life of many of the other parties, there was no room for negotiation. Clearly, each Diet member based his decision on Tanaka's proposal on whether or not it would help his party or himself.

Even within the LDP there was opposition to Tanaka's proposal. Many established Diet members had built up extensive support organizations in their districts, and the prospect of their election districts being cut up into smaller districts meant that a candidate would be cut off from many former areas of support. As the newspaper Asahi Shimbun commented, the stand a Diet member would take on this proposal could be easily determined by³² looking at conditions in his electoral district.

Both revision attempts failed because in a system that puts so much priority on consensus, the opposition would never accept the heavy-handed attempts by the LDP to improve its own position. The LDP could have forced the bill through with parliamentary majority. Such action, however, would have hurt the LDP's public image.

Successful Revision Attempts

In contrast to the proposals that failed, there are three election revisions that were passed during this same period. By looking briefly at these three revisions, one can see that in order to secure the necessary consensus for passage, a bill must clearly benefit the parties from which support is needed.

Twice the LDP has skirted the reapportionment issue by increasing the size of the Diet and adding seats to urban constituencies (1976 and 1967). These two bills were successful for three reasons. First, there was no attempt to decrease rural seats. Such an attempt would have been met with immediate opposition from the LDP and JSP who rely on rural support. Second, the metropolitan-based opposition parties supported this measure because it gave them a chance to elect more Diet members. Third, the LDP also benefited.

How was this revision beneficial to the LDP? Since the law requires that Lower House districts have from three to five seats and most urban districts already had four or five seats, the addition of one or two new seats resulted in the splitting of each district into two new three-member districts.³³ Also, since the LDP takes 20 percent of the vote in metropolitan areas, the LDP almost always takes one seat in each metropolitan district. One seat in a four-member district is only 25 percent of the seats, but one seat in each of two new three-member districts adds up to 33 percent of the seats. At the same time the opposition parties increase their strength with four in place of three possible seats.

It is clear that the LDP drew up a proposal that appealed to its selfish interests as well as those of the opposition, and by so doing consensus was achieved and the bills were passed.

The third example of a bill passed with the necessary consensus is the 1975 revision of the Public Offices Election Law. This revision of laws governing campaign financing activities came on the heels of the 1974 "plutocratic election." The election was called this because of the high level of spending that occurred. Public opinion demanded that something be done, so the LDP, with the cooperation of the DSP and JSP, drew up a law that Hrebenar describes as accomplishing nothing "except to legitimize the traditional sources of funds and give the incorrect impression that the entire process had been reformed."³⁴ One interesting point of the bill was that it prohibited the distribution of party literature at train stations and department stores. Hrebenar sees this as an LDP-JSP alliance to restrict the campaign activities of the JCP and Komeito, both of which are based on large volunteer organizations (the Communist party and a lay Buddhist organization respectively); on the other hand, the LDP and JSP do not have similar organizations to rely on. As could be predicted from Duverger's theory, the only major parties that opposed the 1975 revision were the JCP and Komeito.

By comparing these successful revision attempts it can be seen that certain qualities are necessary for an election revision bill to become law in Japan. First, the supporters of a bill must have more than just a simple majority; a certain level of consensus is needed before a bill can be passed. Nakane, in her discussion of village decision-making, draws the bottom line at 70 percent. She says that when 70 percent of a group agrees, the other 30 percent will give in to preserve harmony, though they may maintain their opposition to the proposal.³⁵ This behavior can be found in the passage of the 1975 revision bill where the LDP-DSP-JSP coalition provided enough consensus to override the JCP-Komeito opposition.

Second, in order to gain that consensus, the bill must appeal to the selfish interests of each party whose support is needed. Partial concessions which hurt the opposition parties' overall standing will not attract those parties' support.

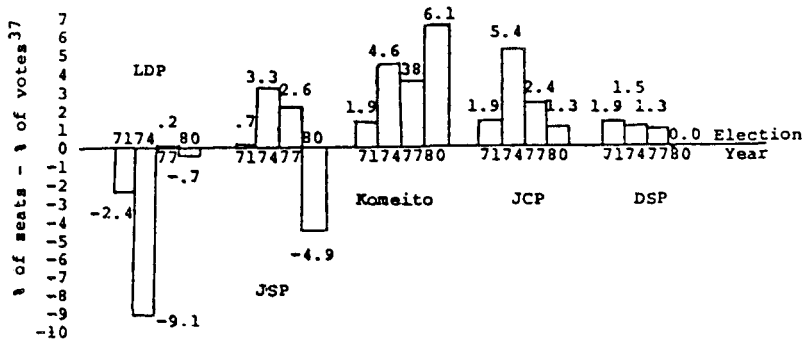
Revision of the Public Office
Election Law

With the lessons of Japanese election history in mind, it becomes easier to understand the behavior of politicians with regard to the 1982 revision of the Public Offices Election Law. The revision, which was introduced into the Diet in May 1981, consisted of the following basic provisions: (1) The 100 National Constituency councillors would be elected nationwide as before, but instead of voting for individual candidates, the voters would vote for a party name. If the LDP received 40 percent of the vote in this new PR system, then 40 percent of the 50 seats would be awarded to the LDP. The LDP would award these 20 seats to the top 20 candidates on their list of candidates submitted at registration time. (2) In order for a party to enter into the PR election, it must have met at least one of three criteria. The party must (one) have five current Diet members, (two) have polled over 4 percent of the vote in the last Diet election, or (three) have a total of at least 10 candidates registered in either the PR or local districts of the Upper House election. (3) The registration deposit must be doubled to 16,000 dollars (4 million yen) for a candidate in the PR election. This fee would be forfeited if the candidate loses and returned if he wins.

This new law would help all the major parties by allowing them to cut down on campaign expenditures. Instead of 30 candidates having to run 30 nationwide campaigns, the 30 candidates could now concentrate on one nationwide campaign to push the party name. On the other hand, minor

parties and independents who ran only one candidate in the past would now be forced to put up 10 candidates at a cost of 160,000 dollars. Even if the top candidate got elected, the party would still forfeit 144,000 dollars. Thus, until the party could get 4 percent of the vote or elect five members to the Diet, the party would have to pay 144,000 dollars plus the costs of nationwide campaign each election year. Clearly, the 1982 revision financially benefits the major parties and appears to prohibit small parties and independents from entering the election.

In addition to concern over finances, parties are concerned with how the bill would affect their strength in the Upper House. Hrebenar claims that the old National Constituency system puts the LDP "at a serious disadvantage," since they "captured only 35.2 percent of these [National Constituency] seats despite gaining 44.3 percent of the vote."³⁶ However, more recent elections (1977 and 1980) have shown the LDP doing much better in the National Constituency. The chart below illustrates the percentage point difference between the



percent of seats a party won and the percent of votes a party received in each election. By considering only the change in the seat distribution system that a PR system would bring, it is obvious that the JCP, DSP and Komeito would lose, the LDP would gain, and the JSP could gain or lose seats. A PR system would virtually eliminate these differences between the percent of vote received and the percent of seats received.

The introduction of a PR system would also have another side benefit for the LDP. In past elections, the opposition parties had often united and backed one candidate in districts where there was only one seat up for election. However, with the new PR system, each party would try to run candidates in as many districts as it could in hopes of raising the percentage of votes the party receives. The Japan Times notes that in the 1983 election each party was increasing the number of candidates in the local constituency races. Because each voter casts two ballots (one in his local constituency and one in the National Constituency), the parties were hoping that if a person voted for a party's candidate in a local district, then he would tend to vote for the same party in the National Constituency.³⁸ The end result would be that cooperation among the opposition parties would *vi tu* disappear, and the LDP would face a more splintered opposition in the local districts.

With a knowledge of the advantages and disadvantages of the bill for each party, it is now possible to look at its actual passage. The revision bill was introduced in May 1981 to the 94th Ordinary session of the Diet, shelved during that session, reintroduced in October 1981 in the 95th Extraordinary session, and finally carried over into the 96th Ordinary session. Since Prime Minister Suzuki had made a promise to secure passage of the revision bill in the 96th Ordinary session, he extended the session which was to

end in³⁹ May 1982 until August 21, a maximum of 94 days.

By July the bill was still backed up in committee, so in order to meet the August 21 deadline, the LDP, using their numerical majority, rammed the bill out of committee. The Asahi Shimbun says that the last bill passed through an Upper House committee without a consensus vote was the previous year's budget bill. The newspaper continues that the last bill forced through the entire Upper House by the LDP was the Alcohol and Tobacco Bill in 1975.⁴⁰ Once again the LDP, unable to gain a consensus, was forced to take such drastic measures (by Japanese standards) in order to secure passage of the revision bill.

It is strange that the JSP, which would benefit from the bill, withheld support. This would seem to conflict with Duverger's theory, but actually the JSP supported the bill through its inaction.

After the LDP forced the bill out of committee, all the opposition parties with the exception of the JSP issued strong statements condemning the LDP action. But a JSP official conducted an interview in which he said that his party resented the fact that the LDP did everything by themselves, and thus it would be hard to call the committee decision valid. This was a much milder reaction than that of the other parties.⁴¹

When the bill was up before the full body of the Upper House, the LDP made a minor concession. Masatoshi Tokunaga, the LDP leader in the Upper House, promised to review the proposed PR system after two elections and make any necessary changes at that time.⁴² With this minor concession, the JSP said they would attend the Upper House session when the bill would be passed if one

other party besides the LDP and JSP would also agree to attend.

Again it is necessary to remember the Japanese desire for consensus decisions. If all the parties except the LDP were to have boycotted the Diet session, then the LDP would have withdrawn the revision bill in the face of public opposition to the LDP's tactics. The JSP requirement that one other party be present was a ploy by the JSP to keep their agreement to attend the session from being viewed as collusion with the LDP.⁴³ Nevertheless, the Japan Times and Asahi Shimbun called the bill an LDP-JSP bill.⁴⁴

It would have been politically infeasible for the JSP to have done otherwise. To have come out in open support of the bill would have caused the JSP to lose their position of leadership among the opposition parties; yet to have opposed the bill with boycotts, etc., would have killed the bill. The JSP took the middle road of protesting the bill but also attending Diet sessions. In addition, it got the conservative DSP to also attend, which helped the JSP's position.

When the bill passed the Upper House, only the LDP voted for it. The JSP and DSP voted against it, and the JCP, Komeito, most minor parties, and independents boycotted the session.⁴⁵ Though it could be argued that the LDP was passing the bill without a consensus, the actual situation was that the JSP and DSP were showing their tacit support of the bill by their attendance.

The bill passed the Lower House and became law on August 18 with all major political parties in attendance.⁴⁶ The LDP voted for the bill with only the support of a minor party (NLC), and the JSP, JCP, DSP and Komeito all voted against the bill. Once again this vote can be viewed as a break in consensus, but the behavior of the

parties shows that a consensus did exist. The lack of obstructive action on the part of the JSP and DSP signalled to the other parties that the JSP and DSP actually did support the bill despite their public statements to the contrary.

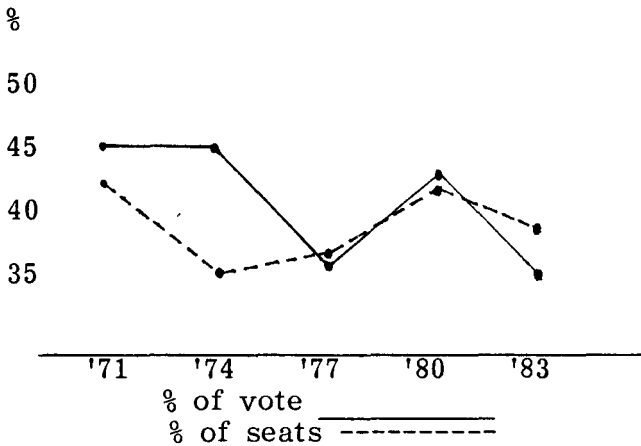
In conclusion, it can be seen that for an election proposal to be successful, a consensus must be achieved by appealing to the selfish interests of those parties involved. The 1982 revision bill clearly helped the LDP and JSP in financial and electoral concerns. The DSP, JSP and Komeito all benefited financially but lost some of the advantages the old National Constituency system gave them. The DSP weighed the advantages and disadvantages and opted for tacit support. The JCP, Komeito and the independents all viewed the bill as detrimental to their interests and at first tried to obstruct passage by boycotting the Upper House. However, when the LDP-JSP-DSP coalition became evident by the JSP-DSP decision to attend Diet sessions, the JCP, Komeito and the independents all gave in to the consensus and attended the Lower House deliberations. Each party followed its own self-interest, and because the bill contained benefits for enough of the parties, a consensus, albeit a tacit consensus, was reached.

Of interest in this study is whether or not the predicted benefits of the revision actually occurred. Most political analysts predicted the following: (1) the LDP would do better in both the local districts and National (PR) Constituency; (2) the number of invalid ballots would go down; (3) the number of "talent" candidates would decrease; (4) election expenditures in the National (PR) Constituency would go down; and (5) the independents and minor parties would be shut out of the National (PR) Constituency.

The actual results were quite surprising. As expected, the LDP did better in the local districts. The LDP polled 43.2 percent of the vote and picked up four additional seats.⁴⁷ This good showing by the LDP may be attributed to the change in the electoral system or to an increase in LDP support or to both.

In the National (PR) Constituency, the LDP had its worst showing in postwar election history. The party only polled 35.33 percent of the vote, lower⁴⁸ than the previous low of 35.8 percent in 1977. Nevertheless, the PR method of seat allocation seems to have helped the LDP somewhat, as can be seen on the following graph.

LDP PERFORMANCE IN NATIONAL
CONSTITUENCY ELECTIONS



Election analysts blame the poor showing of the LDP on a number of factors. First, in April, city, town and prefectural elections were held, which traditionally hurt the LDP. Second, many voters supported one of the many mini-parties⁴⁹ that sprang up in the National (PR) Constituency.

It was also forecast that the number of invalid votes would increase. Mainichi Shimbun says this increase was one of the ⁵⁰biggest worries in adopting the new PR system. However, when the votes were counted, the new election system set a record for the lowest number of invalid ballots since WW II. ⁵¹

The third prediction was that the number of "talent" candidates would go down. Actually the number of "talent" candidates increased from eight to 13 when compared to the 1980 election. ⁵²

The fourth prediction was that the cost of campaigning would go down for most candidates. Indeed, this was touted as the major reason for implementing the PR system in the National Constituency. Mainichi Shimbun conducted a survey of the finances of the National (PR) Constituency candidates during the election. Fifty-one percent of those responding replied that the election campaign wasn't costing them anything, 40 percent said that it was costing less than before, 6 percent said that it was costing about the same, and 3 percent ⁵³said that it was costing more than before.

The fifth prediction was that minor parties and independents would be shut out from the election process because of the strict entrance requirements for all parties. The opposite occurred. Various interest groups and independents formed their own mini-parties, some of which were successful. There were a total of 18 political parties which met the requirements to enter the National Constituency election. In addition to the regular major and minor parties, new parties sprang up such as the Salaryman's party--Japan's version of the tax revolt, the Welfare party--campaigning for the rights of the handicapped, the Plebian party--headed by a self-proclaimed "gay boy" advocating sexual liberation, and the Liberal Party to Expel Kakuei Tanaka from Political Cir-

cles.⁵⁴ In the election, the Salaryman's party picked up two seats and the Welfare party picked up one seat. Two other previously established minor parties also won one seat each.

However, it is impossible to see the long range effects of the new PR system by looking at only one election. Brynildsen says, "a search for a normal Japanese election is likely to be as unrewarding as a search for Utopia, Eldorado, or the perfect Martini."⁵⁵ Nevertheless, the trends seen in this election show that some predictions were right and some were wrong. The LDP appears to have benefited from the new system, and almost all of the candidates feel that campaign expenses have gone down. However, the number of "talent" candidates has risen rather than fallen. Also, though small parties and independents were thought to have been excluded from the system, the number of mini-parties increased dramatically and their electoral performance was consistent with past elections.

Conclusions

The revision bill of 1982 provides an excellent example of how parties view election reform proposals from a purely selfish point of view. Asahi Shimbun summed up the decision-making process in retrospect when it said that the debate in the Diet consisted only of a discussion of party advantages and disadvantages.⁵⁶ The newspaper continued that it would be very hard to separate a political party's position on an election system from the advantages or disadvantages the party perceives it will receive.⁵⁷

The newspaper shows how the events surrounding the many electoral revision attempts in Japan all seem to concur with Duverger's theory that a party will pursue its self-interest in trying to preserve or gain power. The question remains,

how will this attitude affect future attempts at election revision in Japan? Further election revision is unlikely given the positions of the parties today. The LDP still desires single-member districts, and unless this proposal is modified in some way to assure current LDP members that their seats are safe and to serve the interests of some of the other opposition parties, the proposal will end up like its predecessors, the Hatoyama and Tanaka proposals.

ENDNOTES

¹Maurice Duverger, The Study of Politics, trans. Robert Wagoner (New York: Thomas Y. Crowell Co., 1972), p. 19.

²Ibid., p. 189.

³James Lorimer, The Real World of City Politics (Toronto: James, Lewis and Samuel, 1970), p. 37.

⁴James Lightbody, "Electoral Reform in Local Government: The Case of Winnipeg," Canadian Journal of Political Science 11 (June 1978):317-19.

⁵Sung-Il Choi, "Election Reform in South Korea," Asian Survey 18 (December 1973):1094-95.

⁶Asahi Shimbun, Hirei Daihyo Sei [Proportional Representation System] (Pamphlet 3 in a Series of Asahi Booklets, 1983), p. 4.

⁷Chie Nakane, Japanese Society (Berkeley, CA: University of California Press, 1970) pp. 144-45.

⁸Robert E. Ward, Japan's Political System, 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1978), pp. 71-72.

⁹Japan Times, 24 July 1982.

¹⁰J. A. A. Stockwin, Japan: Divided Politics in a Growth Economy, 2nd ed. (London: Weidenfeld & Nicolson, 1982), p. 103.

¹¹Hirohisa Kato, "Financing Politics," in A Season of Voting: The Japanese Elections of 1976 and 1977, ed. Herbert Passin (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979), p. 157.

¹²Shoichi Oikawa and Yoshinori Yasuhiro, "Japan's Crucial Upper House Election," Asia Pacific Community 8 (Spring 1980):64.

¹³Ronald J. Hrebenar, "The Politics of Electoral Reform in Japan," Asian Survey 17 (October 1977):989.

¹⁴Hokkaido Shimbun, 28 June 1983.

¹⁵Herbert Passin, "The House of Councillors," in A Season of Voting: The Japanese Elections of 1976 and 1977, ed. Herbert Passin (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979), p. 157.

¹⁶Japan Times, 30 April 1983.

¹⁷Hrebenar, p. 989.

¹⁸There was one exception, a socialist Prime Minister who did not even last a year.

¹⁹Ehime, Fukushima, Gumma, Ibaragi, Ishikawa, Kagawa, Kagoshima, Kumamoto, Saga, and Wakayama.

²⁰Asahi Shimbun, 28 June 1983.

²¹Akita, Mie, Okayama, Oita, Shimane, and Tottori.

²²Hokkaido Shimbun, 28 June 1983.

²³Hrebenar, p. 989.

²⁴Ward, p. 123.

²⁵Hrebenar, p. 989.

²⁶Nathaniel B. Thayer, How the Conservatives Rule Japan (Princeton, NJ: Princeton University Press, 1969), p. 140.

²⁷Hrebenar, p. 989.

²⁸Ibid., p. 988.

²⁹Ibid., p. 989.

³⁰Stockwin, p. 99.

³¹Ibid., p. 93.

³²Asahi Shimbun, 14 February 1966.

³³Sigeki Nishihira, "Historical Statistics," in A Season of Voting: The Japanese Elections of 1976 and 1977, ed. Herbert Passin (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979), p. 103.

³⁴Hrebenar, p. 995.

³⁵Nakane, p. 145.

³⁶Hrebenar, pp. 983-84.

³⁷Hokkaido Shimbun, 28 June 1983.

³⁸Japan Times, 21 May 1983.

³⁹Ibid., 10 July 1982.

⁴⁰Asahi Shimbun, 9 July 1982.

⁴¹Ibid.

⁴²Ibid., 16 July 1982.

⁴³Ibid.

⁴⁴Japan Times, 18 June 1983, and Asahi Shimbun, 28 June 1983.

⁴⁵Asahi Shimbun, 16 July 1982.

⁴⁶Yomiuri Shimbun, 19 August 1982.

⁴⁷Hokkaido Shimbun, 28 June 1983.

⁴⁸Ibid.

⁴⁹Asahi Shimbun, 28 June 1983.

⁵⁰Mainichi Shimbun, 3 June 1983.

⁵¹Hokkaido Shimbun, 28 June 1983.

⁵²Asahi Shimbun, 28 June 1983.

⁵³Mainichi Shimbun, 21 June 1983.

⁵⁴Mainichi Shimbun, 26 June 1983, and Japan Times, 11 June 1983.

⁵⁵Richard J. Brynildsen, "A Decade of Japanese Diet Elections," Asian Survey 17 (October 1977):967.

⁵⁶Asahi Shimbun, Hirei Daihyo Sei, p. 38.

⁵⁷Ibid., p. 55.

BIBLIOGRAPHY

Books

- Asahi Shimbun, Hirei Daihyo Sei [Proportional Representation System] (Pamphlet 3 in a Series of Asahi Booklets), 1983.
- Duverger, Maurice. The Study of Politics. Translated by Robert Wagoner. New York: Thomas Y. Crowell Co., 1972.
- Kato, Hirohisa. "Financing Politics." In A Season of Voting: The Japanese Elections of 1976 and 1977, pp. 152-59. Edited by Herbert Passin. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979.
- Lorimer, James. The Real World of City Politics. Toronto: James, Lewis & Samuel, 1970.
- Nakane, Chie. Japanese Society. Berkeley, CA: University of California Press, 1970.
- Nishihira, Sigeki. "Historical Statistics." In A Season of Voting: The Japanese Elections of 1976 and 1977, pp. 81-112. Edited by Herbert Passin. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979.
- Passin, Herbert. "The House of Councillors." In A Season of Voting: The Japanese Elections of 1976 and 1977, pp. 115-38. Edited by Herbert Passin. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1979.
- Stockwin, J. A. A. Japan: Divided Politics in a Growth Economy, 2nd ed. London: Weidenfeld & Nicolson, 1982.

Thayer, Nathaniel B. How the Conservatives Rule Japan. Princeton, NJ: Princeton University Press, 1969.

Ward, Robert E. Japan's Political System. 2nd ed. Englewood Cliffs, NJ: Prentice-Hall, 1978.

Journals

Brynildsen, Richard J. "A Decade of Japanese Diet Elections." Asian Survey 17 (October 1977):967-77.

Choi, Sung-II. "Electoral Reform in South Korea." Asian Survey 18 (December 1973):1092-1101.

Hrebenar, Ronald J. "The Politics of Electoral Reform in Japan." Asian Survey 17 (October 1977):978-96.

Lightbody, James. "Electoral Reform in Local Government: The Case of Winnipeg." Canadian Journal of Political Science 11 (June 1978):307-32.

Oikawa, Shoichi, and Yasuhiro, Yoshinori. "Japan's Crucial Upper House Election." Asia Pacific Community 8 (Spring 1980):58-66.

Newspapers

Asahi Shimbun. 14 February; 28 June; 9, 16 July 1982.

Hokkaido Shimbun. 28 June 1983.

Japan Times. 24 July 1982; 30 April; 21 May; 11, 18 June 1983.

Mainichi Shimbun. 3, 21, 26 June 1983.

Yomiuri Shimbun. 19 August 1982.

WHERE AND WHY ARE MISREPORTERS MISREPORTING?

Rick Malmgren*

Survey researchers are, of necessity, perennially concerned about the validity of survey questions. It is often difficult, if not impossible, to establish conclusively the validity of many attitudinal and behavioral questions, but sometimes invalidity is blatant. For example, in every National Election Study conducted by the University of Michigan Survey Research Center (SRC) there has been a consistent over-report of voting behavior. When the SRC's turnout rate is compared with the official election returns, the survey derived data continually exceeds the actual results, usually by more than 10 percent. In 1968 Aage Clausen said "the consistency, as well as the magnitude" of the discrepancy makes it difficult to explain away by sampling or response error.

Before the mid-1960s the question "did you vote in the last general election?" was used to divide voters from nonvoters, but because of over-reporting in national surveys, many researchers doubted the validity of self-reporting. In 1964 for the first time, self-reported voting behavior was validated. After the post-election survey, the SRC field staff checked the accuracy of self-reported voting behavior by examining the official voting records in voting districts where respondents lived. The skeptics' suspicions were confirmed. Out of the 1,450 persons who re-

*Rick is a senior majoring in Political Science. During the past year he served as president of Pi Sigma Alpha, Beta-Mu chapter, and this summer he will be interning in the Washington, D.C. 10th Circuit Court.

ported to have voted, 112 could not be validated. There were also 95 respondents who claimed to have voted, but who would not give their names, and another 73 for whom official voting records were unavailable. For these respondents validation was impossible, but there was probably a portion of misreporters among them as well.²

It is important to exercise caution with this misreporter figure for at least one major reason. When validators checked voting records, they assumed respondents were registered and voting in the districts where the interviews took place. It is quite possible that some of the misreporters could have been registered at other addresses and could have cast ballots there. Nevertheless, it is clear that a significant number of respondents who claimed to have voted really did not vote at all.

Since the 1964 voter validation, many other election studies have also been validated. In the Center for Political Studies (CPS) 1976 election survey, Michael W. Traugott and John P. Katosh claim the incidence of misreporting was quite high. It was found that 72 percent of those interviewed reported voting, but only 61 percent could be verified as having actually cast ballots. Of all those who reported voting, 14 percent misreported.³ In 1978 the CPS Election Study included a question to determine where respondents were registered to vote. For those who reported not being registered at their home addresses, correct registration addresses were solicited. With this additional data, more accurate validation was carried out by the CPS field staff, and Lee Sigelman reports that misreporting was once again over 10 percent. He reports that 12.8 percent of the total sample misreported, 23.4 percent of those who claimed to have voted. Sigelman explains that in light of the prevalence of misreporting, researchers "can no longer afford to ignore this issue" because of the po-

tential bias misreporters may introduce into other substantive findings in election studies.⁴

According to several election studies, then, the number of misreporters is not insignificant. Of the many questions raised about misreporters, the three most common and relevant questions are these. First, what distinctive demographic characteristics, if any, do misreporters possess as a group? Second, do misreporters hold any common attitudes such as political efficacy, trust, or citizen duty? Third, are there any plausible reasons to explain why misreporters misreport? Or stated another way, what is the relationship between demographic and attitudinal variables and misreporting? Although other timely questions could be asked, I will limit my research to describing misreporters and developing a theory about misreporting.

Using the University of Michigan Survey Research Center 1980 National Election Study, I will attempt to answer these three questions. I will define misreporters as those who claimed to have voted in the 1980 general election, but for whom no voting record was found. If respondents' registration records could not be found, they will be left out of my study. Unfortunately the SRC did not include a question in 1980 to determine the addresses where respondents were registered. Therefore, when validating voting behavior the field staff assumed respondents were registered in the districts where interviews took place. For respondents for whom no registration records could be found, it is impossible to tell who misreported and who was registered in some other district. Therefore, the entire group will be excluded from my analysis. I will study only those who were registered but did not vote although they claimed to have voted. I will treat the three questions in the order they are presented above, reporting first the results of past election studies and then the findings from the

1980 study. But before I proceed to a discussion about demographic characteristics of misreporters, I will present the extent of misreporting in 1980, parallel data to those given above for past studies.

TABLE 1
RELATIONSHIP BETWEEN SELF-REPORTED AND
VALIDATED VOTING BEHAVIOR

| | | <u>Official Records</u> | |
|-------------|----------|-------------------------|----------|
| | | Voter | Nonvoter |
| Self-report | Voter | 778 (63) | 61 (5) |
| | Nonvoter | 5 (.4) | 398 (32) |

SRC 1980 National Election Study, n=1242, figures in parentheses are percentages.

Table 1 presents the validation data from the 1980 Election Study. Perhaps the most interesting figure on the table is the five people who said they did not vote, but when the records were checked, they had cast ballots. Their responses in the post-election survey are hard to explain, but because their number is very small, I will not study them. It is also interesting that the percentage of misreporters in 1980 is less than half that reported earlier by Clausen, Traugott and Katosh, and Sigelman. The reason for this low misreport rate is the exclusion of respondents whose registration records could not be found. There were 444 such cases. If this entire group were classified as misreporters, it would yield a 27 percent misreport rate, which

seems a bit high. The 1978 study (in which CPS interviews asked where respondents were registered so the field staff could validate without address guesswork) suggests that many, but not all, of the no-registration-found cases were misreporters. I am confident that if it were possible to divide this group, the misreport rate in 1980 would be comparable to rates in previous studies. But the extent of misreporting is of secondary importance in this project. I am more concerned about common characteristics of misreporters and a theory of misreporting. It is important to acknowledge that this small number of misreporters is a limitation to my conclusions.

Although scholars agree on the magnitude of misreporting, there is certainly not unanimity about the demographic characteristics of misreporters, but when several studies are examined together it is possible to see a consensus. Traugott and Katosh report that in 1976 neither education nor sex was very strongly related to whether or not a respondent was a misreporter. Age, race, and income were related, however, with the younger, nonwhite, and low-income groups more likely to misreport their registration and voting.⁵ In a later study they reported that race was the strongest of these three variables, while age and income were quite weak. Furthermore, they show that the age and income relationship virtually disappeared in the 1978 "off year" election.⁶ Traugott and Katosh seem to conclude that the only strongly related demographic variable is race.

But at least two other scholars dispute Traugott and Katosh's findings. Kim Q. Hill and Patricia A. Hurley point out that one reason Traugott and Katosh found such weak relationships is because they did "not discriminate liars from truthful nonvoters." Traugott's study simply presents the percentage of various demographic groups among misreporters, but the

misreporters are not compared with truthful nonvoters.⁷

In Hill and Hurley's analysis of the 1976 SRC-CPS Election study they found that when all three groups--valid voters, misreporters and valid nonvoters--are compared, several interesting characteristics show up among misreporters. Misreporters appear to be closer to valid voters than valid nonvoters in terms of race, sex, education and occupational prestige. The pattern that seems to emerge is that misreporters are demographically between truthful voters⁸ and truthful nonvoters but closer to the voters.⁹ Lee Sigelman comes to a similar but weaker conclusion in his analysis of the 1978 election. Using discriminant analysis he decides that "misreporters are a cross between actual voters and admitted nonvoters, though they bear a slightly greater resemblance to the former than the latter."⁹

Another researcher, Herbert Weisberg, offers another reason why Traugott did not find education to be related to misreporting. Traugott presents the percentage of all respondents in three education levels that misreported. But if college-level education has a low nonvoter rate, then it will erroneously appear that college-educated voters have a low misreport rate. It is more revealing to show the percentage of nonvoters who misreport at the three education levels. With this analysis Weisberg finds a 24 percent difference between misreporters with high-school versus college education. While 48 percent of college educated nonvoters misreported, only 24 percent of the high-school educated falsified their votes.¹⁰ Weisberg also found several other relationships. He suggests that misreporters are most likely to be college-educated, high-income, middle-aged, Democrat males. To make sure that these later relationships are not just "artifacts" of education, Weisberg controlled for education and found all

the significant differences to remain except income.¹¹

Most scholars agree that misreporters seem to possess some distinct demographic characteristics, and my analysis of the 1980 Election Study reveals many of the same relationships. Table 2 presents a comparison of truthful voters, truthful nonvoters, and misreporters in terms of several demographic variables. Contrary to the results of some earlier studies, neither sex nor race appear to be related to misreporting. These data show almost equal proportions of each sex and racial category among the three types of voters. One of the most interesting demographic variables is education.

TABLE 2
DEMOGRAPHIC COMPARISON

| Attribute | <u>Percentage of</u> | | |
|------------|---------------------------|------------------------------|-----------------------|
| | Valid Voter (n=778) | Valid Nonvoter (n=398) | Misreporter (n=61) |
| Sex | | | |
| Male | 45 | 41 | 42 |
| Female | 55 | 59 | 57 |
| Race | | | |
| White | 90 | 84 | 85 |
| Nonwhite | 10 | 16 | 15 |
| Education | | | |
| College | 45 | 23 | 34 |
| Noncollege | 55 | 77 | 66 |

TABLE 2 (con't)

| Attribute | Percentage of | | |
|----------------------|---------------------------|------------------------------|-----------------------|
| | Valid Voter (n=778) | Valid Nonvoter (n=398) | Misreporter (n=61) |
| Age | | | |
| 18-25 | 10 | 24 | 15 |
| 26-35 | 22 | 28 | 15 |
| 36-45 | 19 | 13 | 16 |
| 46- | 49 | 35 | 54 |
| Income | | | |
| \$0 - 9,999 | 19 | 37 | 34 |
| 10,000 - 14,999 | 15 | 16 | 15 |
| 15,000 - 19,999 | 12 | 13 | 9 |
| 20,000 - 24,999 | 17 | 14 | 9 |
| 25,000 - 49,999 | 20 | 12 | 11 |
| 50,000 - | 17 | 8 | 21 |
| Party Identification | | | |
| Democrat | 42 | 47 | 44 |
| Republican | 30 | 20 | 31 |
| Independent | 28 | 33 | 25 |
| Social Status | | | |
| Lower | 0.2 | 0.2 | 0 |
| Working | 44 | 62 | 62 |
| Middle | 56 | 38 | 38 |

SRC 1980 National Election Study

The 1980 results mirror those found by Hill and Hurley in 1976 and Sigelman in 1978 in that misreporters are between voters and nonvoters in education level.¹² Approaching half of all validated voters attended at least one year of college while less than 25 percent of validated nonvoters had gone past high school. Misreporters are

almost midway between these, but a little closer to voters.

Age is another variable that is clearly related to misreporting. Misreporters resemble actual voters more closely in age than in education. While 32 and 30 percent of validated voters and misreporters are 35 years of age or younger, over half of nonvoters fit this category. This suggests that misreporters are not as young as Traugott suggests.¹⁸ Over half of all misreporters are over 45 years of age. This is about the same as the percentage of voters over 45, but it is much higher than nonvoters who are older than 45.

While party identification is not related to misreporting, income and social status appear to be related in the opposite way that education and age are. The average income level of misreporters is between voters and nonvoters, but this time misreporters are closer to nonvoters than voters. Among validated voters only 46 percent are below the 20 thousand dollar income level, yet 20 percent more nonvoters are in this category; misreporters are only 8 percentage points below nonvoters. In social class, nonvoters and misreporters literally come together though. Virtually identical proportions of these two groups are in each social class.

Summarizing the demographic characteristics of misreporters, it appears they are close to actual voters in terms of age and education, yet they are close to nonvoters in terms of income and social status. This information will be useful later when I present a theory about misreporting behavior. Sex, race, and party identification appear to have no relationship to misreporting.

While it is interesting to study the demographic characteristics of misreporters, equally or more interesting are the relationships between

various attitudinal variables and misreporting. Reviewing the results of post-election studies, the 1976 Traugott and Katosh report is once again an anomaly in that it is the only report that finds virtually no difference between misreporters and other respondents.¹⁴ However, in their 1978 study they report relationships between misreporting and efficacy and party identification although the partisan relationship was found to be insignificant.¹⁵ They report that those scoring high on the efficacy scale were less likely to misreport and Democrats were slightly more likely to misreport than Republicans. As was the case with demographic variables, other researchers have detected stronger relationships. Hill and Hurley found "a consistent pattern which show[ed] liars to have relatively high levels of interest in politics" as well as high levels of efficacy. Misreporters were also much more likely than valid nonvoters to express intentions to vote, concern about which party wins the presidency, and strong party identification.¹⁶ In order to show that misreporters were not simply giving socially desirable answers to these questions--after all, they did on voting behavior questions--Hill and Hurley also compared the three types of voters on knowledge of politics. Misreporters were much more likely to know which party had control of Congress and which party had elected the most congressmen.¹⁷ This tends to substantiate the idea that misreporters are well-informed, efficacious, partisan individuals. Sigelman also reports that in 1978 discriminant analysis on important attitudinal variables--political interest and emotional involvement for example--places misreporters between actual voters and truthful nonvoters, a little closer to voters.¹⁸

Turning to the 1980 Election Study we find results similar to those reported by Hill and Hurley and Sigelman. Table 3 shows that in many of the important attitudinal variables, voters

TABLE 3
ATTITUDE CHARACTERISTICS COMPARED

| Question | Percentage of | | |
|--|---------------------|------------------------|--------------|
| | Validated Voters | Validated Nonvoters | Misreporters |
| How much interest in campaign? | | | |
| Very Much | 40 | 11 | 35 |
| Somewhat | 46 | 40 | 45 |
| Not Much | 14 | 49 | 20 |
| Did respondent view any television pro- grams about campaign | | | |
| Yes | 90 | 75 | 90 |
| No | 10 | 24 | 10 |
| Does respondent intend to vote? | | | |
| Yes | 99 | 38 | 97 |
| No | 1 | 62 | 3 |
| People like me have no say in government. | | | |
| Agree | 33 | 56 | 37 |
| Disagree | 67 | 44 | 63 |
| Does respondent trust government? | | | |
| Always | 2 | 3 | 0 |
| Most times | 22 | 23 | 25 |
| Sometimes | 73 | 70 | 72 |
| Never | 3 | 5 | 3 |

Table 3 (con't)

| Question | <u>Percentage of</u> | | |
|---|----------------------|------------------------|--------------|
| | Validated Voters | Validated Nonvoters | Misreporters |
| Will respondent vote even if does not care about outcome? | | | |
| Yes | 66 | 42 | 70 |
| No | 34 | 58 | 30 |
| Has respondent atten- ded a political meeting during the campaign? | | | |
| Yes | 11 | 01 | 13 |
| No | 89 | 99 | 87 |
| Has respondent contri- buted to a political candidate? | | | |
| Yes | 8 | 2 | 8 |
| No | 92 | 98 | 92 |
| Strength of pary identification. | | | |
| Strong Democrat | 20 | 9 | 21 |
| Weak Democrat | 20 | 27 | 18 |
| Independent | 32 | 42 | 33 |
| Weak Republican | 17 | 12 | 15 |
| Strong Republican | 11 | 4 | 13 |
| Apolitical | 0.5 | 6 | 0 |

SRC 1980 National Election Study

and misreporters are closely related while verified nonvoters are significantly different.

It is not surprising that over 85 percent of validated voters expressed at least somewhat of an interest in the campaign, but it is very interesting that a full 80 percent of misreporters did as well. Only 51 percent of validated nonvoters were at least somewhat interested. Identical proportions of voters and misreporters were attentive to campaign programs on television while nonvoters lagged a full 15 percentage points behind. And when asked whether respondents intended to vote, the gap between nonvoters and the other two groups opened further. Almost every voter, and misreporter expressed an intention to vote, while only 30 percent of validated nonvoters planned to vote.

Table 3 includes three questions that indicate feelings of internal efficacy, political trust, and citizen duty of respondents. The similarity between validated voters and misreporters shows up in their feelings of efficacy and citizen duty with only 4 percentage points between them in each category. Nonvoters are about 20 percentage points behind. But the distinction between the three groups disappears with trust for government. Almost three-fourths of all three groups trust government only sometimes, and the differences between any of the groups is not more than 3 percent in any trust category.

Two questions that show the political activity of respondents--one dealing with attending political meetings and the other with campaign contributions--were included with attitudinal variables. It appears that these indicators present a high activity threshold for most people questioned, for almost 90 percent in every category are inactive. But, even given the low activity rate, misreporters appear to be at least as active as nonvoters. In strength of party identification the only pattern that emerges is the concentration of nonvoters toward the center of the scale. Nonvoters are disproportionately independent and apolitical.

Misreporters and voters, on the other hand, are more evenly distributed across the partisan spectrum with virtually no apolitical feelings.

For most of the attitudes listed in Table 3, misreporters appear to be remarkably close to actual voters. It could be argued, however, that these questions present socially desirable alternatives much like the original question on voting behavior. Perhaps a person who would lie about voting would also lie about intending to vote and interest in the campaign. It is interesting that the question that differentiates least between the three types of voters--political trust--is the question with the least temptation to choose an attractive alternative because there really is no attractive alternative. If this is the case, the attitude variables tell us virtually nothing about misreporters. As mentioned earlier, Hill and Hurley were also concerned about this in their 1976 study, but in two ways this theory seems to break down. First, the last question in Table 5 is one that measures external efficacy. This question should draw the same socially desirable responses, yet here misreporters expressed very low efficacy. Surely those who would claim their votes count for socially desirable reasons would also claim the political system is not too complicated to understand for the same reasons. Second, Table 4 shows the response rate to a question about knowledge of politics.

TABLE 4
COMPARISON OF KNOWLEDGE OF POLITICS

| Question | Percentage of | | |
|---|------------------|---------------------|--------------|
| | Validated Voters | Validated Nonvoters | Misreporters |
| Does respondent know which party controls Congress? | | | |
| Yes | 98 | 93 | 98 |
| No | 2 | 7 | 2 |

SRC 1980 National Election Study

This question shows misreporters to be as informed about politics as actual voters, with nonvoters less informed. While there are only 5 percentage points difference between nonvoters and the other two groups, this margin is probably quite wide for a question whose answer is almost universally known. This is indicated by the high "yes" response. Even if this relationship is not statistically significant, I believe it has substantive significance.

It is probably safe, then, to give credibility to the data presented in Table 3 and conclude that there is a relationship between misreporting and many attitudinal variables. In particular, misreporters tend to be like voters and different from nonvoters in campaign interest, intentions to vote, efficacy, citizen duty, political activity, strength of partisanship and knowledge of politics. Some of these characteristics may be helpful in trying to explain why people misreport.

So far the findings I have presented from various studies have been descriptive, a sort of demographic-attitudinal portrait of misreporters. But one of the most important questions about misreporting is "why do people misreport?" Researchers have known for years that voting behavior questions present socially desirable temptations;¹⁹ respondents want to be able to say they voted whether they actually did or not. But this explanation falls short because it does not explain why some people respond to the social pressure and others do not. Hill and Hurley tested the hypothesis that misreporters are simply those who forget their behavior. They observed the frequency of misreporting as post-election surveys were conducted further from the time of the election, but no increase in misreporting was found as more time elapsed.²⁰ Weisberg claims the key to understanding why people misreport voting behavior "hinges on the question of which types of people"²¹ misreport. With the descriptive statistics on 1980 misreporters, I can now attempt to answer this question.

Various theories have been developed about misreporting, most of which are variations of the social pressure theory.²² Hill and Hurley also present a theory based on social pressure, what might be called a social-mobility theory. According to their 1981 study, people misreport in response to pressure placed on them by incongruous social settings. Misreporters are much like voters in the variables that indicate a high probability of voting such as high education, high political knowledge, and high efficacy. But misreporters also appear to be unlike voters in age, income and occupational status. This suggests a life cycle effect of misreporting. Misreporting, the theory goes, is more common among those who are on their way up the income-occupational ladder. They are subject to the same social pressures as well-educated voters, but they are younger and poorer, and these are

variables that tend to inhibit voting.²³ This theory explains the phenomenon of misreporting in a plausible way except for one troublesome variable: age. Although Hill and Hurley found misreporters to be young, the 1980 study shows them to be disproportionately middle-aged and Weisberg's study confirms this finding.²⁴ The fact that middle-aged people misreport more than the young limits Hill and Hurley's theory but does not dispose of it. The most plausible explanation of misreporting captures the essence of their theory--that misreporting is caused by pressure from an incongruous social setting--but denies the "life cycle effect." I will call this the cross-pressure theory of misreporting.

Raymond Wolfinger and Steven Rosenstone reject the usefulness of a similar cross-pressure theory that has been used to try to explain who votes. They claim there is no evidence that conflicting social pressures are responsible for determining who goes to the polls on election day.²⁵ But explaining who votes is wholly different from explaining who misreports. The 1980 National Election Study provides evidence to support the cross-pressure theory of misreporting. Much of this evidence was presented in Tables 2 and 3.

Earlier we found that misreporters tend to be educated closer to the level of voters than to that of nonvoters and Wolfinger and Rosenstone found education to be the single most useful predictor of voting.²⁶ One reason for this may be that education tends to increase a person's feelings of political efficacy and citizen duty. Accordingly, we also found that misreporters have high feelings of efficacy and duty. Similarities between voters and misreporters in these and other ways (see Tables 2 and 3) probably subject misreporters to the same social pressures to vote that draw actual voters to the polls. In support of this idea, Weisberg points out that

the groups with a high degree of misreporting are also the groups with the highest turnout rate.²⁷

But in other areas misreporters are not like voters at all. We found that in income level misreporters are much closer to nonvoters than to voters. This suggests that misreporters' income levels do not match their education levels. On one hand they are well educated and feel political efficacy, but on the other, they are in low-income brackets, which likely affects their social standing. This is supported by the fact that misreporters identified with the working class in the exact same proportions as nonvoters. This is a clear example of cross-pressure faced by misreporters.

According to this analysis then, most misreporters are probably of two types: first, people who feeling strongly that they should vote, but who do not receive the voting cues and support from a large part of their social environment. These may be people in the working class who associate with other nonvoting workers. They probably don't get long lunch hours on election days nor reminders to vote in pay packets before elections. The second type are people who truly intended to vote, but were legitimately prevented from attending the polls. These people probably feel justified in saying they voted because they would have voted if at all possible. Other variables in Table 3 also seem to support the cross-pressure theory. As pointed out earlier, voters and misreporters were both 15 percent more attentive to television programs dealing with the campaign than nonvoters, and misreporters also expressed much more of an interest in the campaign. These two characteristics are probably functions of the higher education level of misreporters, but they will most likely constitute additional pressures to vote. Table 5 presents variables that further support the crosspressure theory.

TABLE 5
COMPARISON OF SELECT ATTITUDINAL
AND DEMOGRAPHIC VARIABLES

| Attribute or Question | Percentage of | | |
|---|---------------------|------------------------|--------------|
| | Validated Voters | Validated Nonvoters | Misreporters |
| Did anyone attempt to influence respon- dent's vote during campaign? | | | |
| Yes | 47 | 35 | 52 |
| No | 53 | 65 | 48 |
| Did respondent attempt to influence anyone's vote during the campaign? | | | |
| Yes | 43 | 22 | 36 |
| No | 57 | 78 | 64 |
| Is politics too complicated to understand? | | | |
| Yes | 68 | 79 | 79 |
| No | 32 | 21 | 21 |

After explaining that many misreporters are part of the working class and that they receive far less encouragement to vote from a large part of their social environment, it may seem like a contradiction to show that misreporters are much more likely than nonvoters to engage in political dialogue. This tendency is indicated in the first two questions in Table 5. The important point is

that while many misreporters deal with an apolitical environment they are not apolitical. As shown in Table 3 they are interested and active in the campaign, they are relatively strong partisans, and they usually intend to vote. It is consistent then that they engage in a high degree of political dialogue. This dialogue is probably another force that gives them a feeling of the importance of voting and leads them to misreport when they fail to cast a ballot. The last variable in Table 5 shows an interesting barrier to misreporter voting. Earlier I explained that misreporters, like voters, possess a high degree of internal political efficacy. The variable presented in Table 5 is a measure of external efficacy and the results are quite different. While misreporters are closer to voters in internal efficacy, they are identical to nonvoters in external efficacy. Misreporters feel their votes count, but they also feel politics is too complicated to understand clearly. This is another characteristic that places misreporters in the group they belong and not in the group they claim to be part of. External efficacy, income, and social status are characteristics that tend to inhibit misreporters from voting. Education, internal efficacy, and citizen duty are characteristics that tend to give misreporters a sense of the importance of their votes. When people in this situation respond to their pro-vote tendencies and participate on election day, we call them validated voters. But when they fail to vote for any number of reasons, their pro-vote tendencies compel them to deny their failure.

One of the questions I have tried to answer is one proposed by Lee Sigelman: "Are misreporters more like what they claim to be--voters--or what they actually are--nonvoters?"²⁸ In addition to this I have developed a theory to explain why misreporters misreport. I have found that in demographic and attitudinal characteristics, misreporters are "more like what they claim to be--voters." These characteristics give the

voting process and politics in general a sense of importance to misreporters. But misreporters also possess some characteristics that tend to inhibit their voting behavior. This mixture of characteristics gives rise to the cross-pressure theory of misreporting. Misreporters seem to live in environments that give conflicting messages about voting. When people who live in these conditions make it to the polls, we classify them with the voters and take no further notice of them. When they fail to make it to vote on election day, their strong feelings of efficacy and citizen duty lead them to misreport their behavior. This theory is supported by findings from several other election studies as well as the SRC 1980 National Election Study. But the two questions I've addressed are not the only questions that should be asked about misreporting. Although it is a topic beyond the scope of this project, the subject of further research should be other possible biases introduced into election studies as a result of misreporting.

ENDNOTES

¹Aage R. Clausen, "Response Validity: Vote Report," Public Opinion Quarterly 32 (Winter 1968-69):589.

²Ibid., p. 599.

³Michael W. Traugott and John P. Katosh, "Response Validity in Survey of Voting Behavior," Public Opinion Quarterly 43 (Fall 1979):364.

⁴Lee Sigelman, "The Nonvoting Voter in Voting Research," American Journal of Political Science 26 (February 1982):47-48.

⁵Traugott and Katosh, "Response Validity," p. 336.

⁶John P. Katosh and Michael W. Traugott, "The Consequences of Validated and Self-Reported Voting Measures in Studies of Electoral Participation," paper presented at the annual meeting of the Midwestern Political Science Association, Chicago, 24-26 April 1980, p. 8.

⁷Kim Quaile Hill and Patricia Ann Hurley, "Voters, Nonvoters, and Liars," paper presented at the annual meeting of the Midwestern Political Science Association, Cincinnati, Ohio, 15-18 April 1981, p. 2.

⁸Ibid., p. 6.

⁹Sigelman, "The Nonvoting Voter," p. 52.

¹⁰Herbert F. Weisberg, "The Validity of Voter Registration and Turnout Reports in Surveys," paper presented at the Conference on Voter Turnout, San Diego, California, 17-19 May 1979, p. 9.

¹¹Ibid., pp. 10-11.

¹²Hill and Hurley, "Voters, Nonvoters," p. 21; Sigelman, "The Nonvoting Voter," p. 52.

¹³Traugott and Katosh, "Response Validity," p. 336.

¹⁴Katosh and Traugott, "The Consequences," p. 8.

¹⁵Traugott and Katosh, "Response Validity," p. 336.

¹⁶Hill and Hurley, "Voters, Nonvoters," pp. 7-8.

¹⁷Ibid., p. 8.

¹⁸Sigelman, "The Nonvoting Voter," p. 52.

¹⁹Weisberg, "The Validity of Voter Registration," p. 19.

²⁰Ibid., p. 9.

²¹Hill and Hurley, "Voter, Nonvoters," p. 4.

²²See note 19.

²³Hill and Hurley, "Voters, Nonvoters," p. 15.

²⁴Weisberg, "The Validity of Voter Registration," p. 10.

²⁵Raymond E. Wolfinger and Steven J. Rosenstone, Who Votes? (New Haven: Yale University Press, 1980), p. 35.

²⁶Ibid., p. 17.

²⁷Weisberg, "The Validity of Voter Registration," p. 11.

²⁸Sigelman, "The Nonvoting Voter," p. 50.

BIBLIOGRAPHY

- Clausen, Aage R. "Response Validity: Vote Report." Public Opinion Quarterly 32 (Winter 1968-1969):588-606.
- Hill, Kim Quaile, and Hurley, Patricia Ann. "Voters, Nonvoters, and Liars." Paper presented at the annual meeting of the Midwestern Political Science Association, Cincinnati, Ohio, 15-18 April 1981.
- Katosh, John P., and Traugott, Michael W. "The Consequences of Validated and Self-Reported Voting Measures in Studies of Electoral Participation." Paper presented at the annual meeting of the Midwestern Political Science Association, Chicago, 24-26 April 1980.
- Sigelman, Lee. "The Nonvoting Voter in Voting Research." American Journal of Political Science 26 (February 1982):47-56.
- Traugott, Michael W., and Katosh, John P. "Response Validity and Voting Behavior." Public Opinion Quarterly 43 (Fall 1979):359-77.
- Weisberg, Herbert F. "The Validity of Voter Registration and Turnout Reports in Surveys." Paper presented at the Conference on Voter Turnout, San Diego, California, 17-19 May 1979.
- Wolfinger, Raymond E., and Rosenstone, Steven R. Who Votes. New Haven: Yale University Press, 1980.

INFITAH AND THE MODERNIZATION OF EGYPT

CHRIS MONSON*

Introduction

At the secondary school, I came to realize for the first time what city dwellers were and what class officers meant. . . . My classmates were naturally better dressed than I was but I never suffered because of this. Many of my friends came from wealthy families and lived in luxurious houses, yet I cannot recall ever wishing to possess what they had.

--Anwar el-Sadat

This early memory, in contrast later with Sadat's aggressive wish for foreign investment, is characteristic of the change that not only influenced the career of the late President Sadat, but also the change of a country. This change became known as infitah. The term infitah (Arabic) means reaching upward and outward. It became the term commonly used for the "1974 October paper" in which Sadat offered an economic cure for the ills of Egypt. Infitah--the Open Door Policy--described a post-socialist policy, an opening up of the Egyptian economy to direct private investment. This paper does not try to reconstruct the policy in detail, but rather

*Chris is a senior majoring in Political Science, and has studied in Israel and Egypt for six months. Last fall he worked as the administrative assistant for the United Palestinian Appeal in Washington, D.C.

it focuses on the effects of such a policy--more specifically, the impact of infitah on the modernization and economic development of Egypt during Sadat's Open Door Policy era of 1974-1981.

Development can be very difficult to define precisely. However, in focusing this discussion, the following definitions are offered as a guide to the reader: Development is defined as the capacity to stimulate demands and to solve problems based on the effective use of new technology, skill, and functionality. Modernization, a subset of development, is the actual formation of new adaptive roles in a system to prevent a population--that has tasted the fruits of development (technology, skill, and functionality)--from slipping backwards.²

Once modernization has begun, it tends to become a pervasive, disruptive, and painful process. As a result, those who lead out and push for modernization often lose the ability to control and regulate this process. The intent of this paper is to illustrate the inability of the Egyptian government to change to new adaptive roles to assimilate and properly absorb the great influx of technology and industrialization resulting from infitah.

Because of the broad nature of this topic, discussion has been limited to three general sectors: effects upon (1) agricultural development, (2) industrial/manufacturing development, and (3) trade and financial development. A basic assumption is made that most of the economic influence during the period of 1974-1981 has come from the West, although other influences certainly have been present from Arab and Eastern Bloc countries. It is not the purpose of this paper to discuss the political nature of leadership, the Camp David Peace Treaty, or the sale of military arms.

Background

The formal adoption of the Open Door Policy (infatih) was not forced upon Egypt by capitalistic investors nor by international Western creditors. The Policy was chosen in light of internal economic and external political factors. Sadat's own words best describe the seriousness of some of these factors:

So that I can give you an idea of what the opening is all about, I must go back to the fourth of Ramadan of last year [October 1, 1973], six days before the battle. I invited to this same house in which we are now seated the members of the National Security Council . . . and I laid before them the situation and asked them to advance their own opinions. . . . We debated for a long time. There were some who advocated fighting, and others who said we were not ready. . . . At the end I said that I wanted to tell them one thing only, that as of that day we had reached the "zero stage" economically in every sense of the term. What this meant in concrete terms was that I could not have paid a penny toward our debt installments falling due on January 1 [1974]; nor could I have bought a grain of wheat in 1974. There wouldn't have been bread for the people, that's the least one can say. . . .

In addition to these problems, Egypt was at that time, and still is, plagued by a serious population explosion. Every 20 seconds an Egyptian baby is born; 180 every hour; 4,320 every day. There are currently over 46 million people in Egypt. Current fertility rates continue to grow at 3 percent per year, and it is estimated

that by the year 2000 there will be over 76 million. Sadat undoubtedly understood the magnitude of such a problem and realized that foreign investment and aid were the best alternatives. The announcement of the Open Door Policy in 1974 provided relief from the country's failure to achieve a truly socialist economy.

External political factors also added pressure to change and to open up to outside investment. Egypt could not afford another war and Western aid remained tied to promoting a peaceful dialogue with Israel. Thus we see the Camp David accords emerging as a partial result of the need for (the Open Door Policy). Western aid and investment.

Now that a brief setting has been established for infitah, an outline of what the policy actually is will be helpful.

Infitah--The Open Door Policy

a. Law No. 43 of 1974

- provision for opening the Egyptian economy to foreign and Arab direct investment in almost every field.
- provision against nationalization and confiscation.
- tax exemption that lasts for five years, and which may extend to eight years "if warranted by public interest"; and a 10-year tax exemption, which may extend to 15 years, for reconstruction projects.
- companies established under this law are considered private companies.

- provision for tariff-free and duty-free imports on machinery, equipment and raw materials.
- b. The new import-export law of 1975
- provides for the importation of certain goods to be open to the private sector as well as to the public sector.
 - machinery, equipment and raw materials--the basic items of any investment program or development plan--are now imported by the private sector.
- c. Foreign Exchange Law No. 97 of 1976
- provides for the liberalization of foreign exchange transactions outside of Egypt.
 - freedom to keep the foreign exchange acquired from any source whatever.
- d. The own-import system
- provides for anyone who has foreign exchange resources to use them to import directly, without having to go through the Egyptian banking system.
- e. Phasing out of bilateral trade agreements to allow market forces to dominate in shaping the foreign trade picture.
- f. Restructuring the public sector so that public organizations are abolished to make way for private enterprise capitalism.

Agriculture

The Open Door Policy has caused some drastic changes in the Egyptian agricultural sector. When investment regulations relaxed for many of the sectors of the Egyptian economy, both foreign and domestic investors shifted to those areas that would bring them the highest return. This caused both public and private investment in agriculture to fall from about 25 percent in the mid-1960s to an estimated 7 percent in 1977.⁶ Agricultural investment did not actually decrease in dollar amount; it just did not get a very large share of the millions as compared to other sectors. This was far from the mid-point projected goal of 13 percent to be invested in agriculture (according to Egypt's 10-year plan, 1973-1982).⁷ World Bank average annual growth rate indicators reveal the effects of this change in another way: From 1960-1969 the growth rate for agricultural production was 2.9 percent, contrasting a drop to 2.7 percent for the period of 1970-1979.⁸ The slide in Egyptian agriculture became apparent in 1974, when the government was forced to embark on a major food importation program.

Although the total amount of agricultural investment as a percentage had dropped, as just mentioned, the total dollar amount still increased significantly. But the Western-invested increase yielded lower production. Chiefly to blame was the low agricultural investment level. The Open Door Policy lured investors away from agriculture and into the more profitable sectors of tourism and industry.

To meet the demands of over 45 million people, Egypt has had to increase both food imports and food subsidy aid from Western countries. The pressure on farmers for results is very real: Self-sufficient less than 10 years ago, Egypt now has to import half of its food, at an

estimated cost in 1983 of almost \$4 billion. As well as injecting more funds, the government has recently raised producer prices for corn, rice, and wheat, thus reversing a years-old policy of forcing farmers to sell their crops at less than market prices to provide city dwellers with cheap food.

However, such innovations have come a little too late to provide incentive for the struggling farmer. For example, government subsidies provide a price monopoly controlled by the government that forces farmers to keep their prices competitive. In a recent 10-year period (1971-1980), profits decreased substantially for farmers raising crops that were heavily subsidized to the public. The net effect has been that some farmers have turned to more profitable crops like fruits, vegetables, and animal fodder (clover), while other farmers have given up and migrated to the urban centers for different employment. Over a period of 10 years (1971-1980), animal fodder alone replaced wheat in crop area as much as 32 percent.

The mechanization of farms has also had both good and bad effects. Since 1973, the Open Door Policy has caused tractor imports to quadruple. Some areas have almost completely done away with old methods. In the Sharqiyya province, land preparation and threshing are almost entirely mechanized; plowing is over 85 percent mechanized and irrigation pumping nearly 75 percent.¹⁰ There is no question that such technical change brings about important benefits; yet, statistics show that land yield has not increased.

The impressive mechanization statistics do not account for the lack of spare parts, mechanics, and repair shops in rural areas. There is a general shortage of spare parts, and local manufacturers do not maintain an inventory of parts, but manufacture them on demand. As a result,

farmers often wait three to six months for repairs. Farm animals continue to provide a kind of insurance for equipment. In addition, the working of dairy animals reduces the yield on dairy products that mechanization had hoped to increase.¹¹

Yield gains as much as 15 percent were expected from deeper and better ground tillage from mechanization. However, at the present, farmers plough no deeper with tractor ploughs than they do with animal ploughs. Furthermore, mechanization was to intensify the timing of crop planting to obtain the ultimate yield, but low price policies currently push 25 percent of crop production later than its optimal planting time in order for farmers to get the best price return for their crops.¹²

The severity of these facts is intensified by the fact that Egypt's population has more than tripled in this century alone, yet the area of cultivated land has remained by and large the same. In many areas prime farmland continues to lose out to urban and village sprawl. Still to be resolved is the argument of whether to concentrate on traditional farming lands along the Nile and in the Delta, or to broaden into costly land reclamation. A report submitted by the Ministry of Agriculture and Food Security in 1982 concluded that agricultural output could be tripled by the year 2000 through better use of traditional lands; many senior planners, however, seem reluctant to relinquish the Sadat Administration's dream of massive desert conversion. In the 1960s more than 900,000 feddan (934,200 acres) were reclaimed--at an average cost of \$4,000 per feddan--but much of this has reverted to barren desert. What remains constitutes 13 percent of cultivated land,¹³ but accounts for only 2 percent of total output.

The Egyptian Ministry of Planning estimated that more than a million extra tons of wheat and

over half a million extra tons of rice and maize would be needed per year by the mid-1980s. This is expected to increase demand for imports from the West. It has been estimated that grain production alone fell about 4 percent per capita during the 1970s, while grain consumption rose per capita almost 9 percent.¹⁴ Unless this trend can be contained, mechanization will be plagued by the increased pressure of the one million new mouths to feed every eight months. Whatever the answer--and it is not likely to be self-sufficiency--time is not on the Egyptian farmer's side.

Industry/Manufacturing

Western influence on industry and manufacturing grew to new heights when Open Door Policy Law 43 was passed in 1974. This new policy allows foreign firms to bring in equipment without having to pay a tariff. Other incentives under Law 43 include customs yields and 10-year tax holiday concessions to foreign firms that link up with Egyptian partners. By 1980, new foreign private investment (majority Western) reached about \$400 million a year, compared with \$100 million just three years earlier. In addition to private investment, economic assistance by governments and international organizations have played a significant role. For example, in 1980 the United States contributed \$1.2 billion, the World Bank fund donated \$450 million, West Germany contributed \$150 million, and Japan funded \$170 million.¹⁵ This aid, totalling nearly \$2 billion per year, has given rise to a rapid industrial-manufacturing boom overlapping into all the economic sectors of the country. The soaring investment and aid have produced impressive production indicators. The average annual growth rate for industry has risen from 5.4 percent in 1960-1969 to 6.8 percent in 1970-1979. Manufacturing has even greater results: 4.8 percent in 1960-1969 to an average annual growth

rate of 8 percent in 1970-1979.¹⁶ The growth in industry also has a considerable effect on labor statistics. By 1980, industry and manufacturing were employing over 30 percent of the Egyptian working population.¹⁷ That amounts to over eight million jobs.

In addition to this, over 1,000 new projects are scheduled to go into operation by 1984, employing an additional 160,000 Egyptians. More than 200 American companies have a corporate presence in Egypt, with an addition of 50 firms per year.¹⁸

Despite all this, however, the payoff from the Open Door Policy hasn't been as large as Sadat would have liked. Although the midpoint goal for private investment under Egypt's 10-year plan (\$400 million) has been realized, many companies are beginning to be frightened off by bureaucratic bottlenecks. Realizing this potential bureaucratic paralysis, Sadat created the Investment Authority to encourage foreign investment by coordinating intra-government efforts. But the task has often become insurmountable. The government has over 20 ministries whose functions overlap. This creates occasional inability of government organizations to honor commitments because of unclear lines of authority and competing inter-agency interests and policy claims.

Such power struggles are extremely damaging to the government's credibility in foreign eyes. For example, one large U.S. company considering a tomato processing joint venture was told by Agriculture Ministry officials that the public sector was the only avenue open to the company. Government policy, it was later discovered, favored private sector joint ventures. The Agricultural Ministry had taken the initiative to promote a public joint venture that was to its advantage,¹⁹ leaving the investor with misplaced directives.

Another critical area of bureaucratic paralysis in which the battle is not yet won--or even properly engaged--is with the customs authority. Approximately 90 percent of the country's imports arrive through the port city of Alexandria. There are three competing bureaucracies governing the import and export of goods: the Finance Ministry, which formulates tariffs and is responsible for classification; the Investment Authority, which negotiates Law 43 exemptions; and the Customs Service, which often ignores both the Finance Ministry and the Investment Authority, and interprets the regulations as it sees fit. Although Law 43 specifically states that foreign firms may bring in plant equipment without paying any tariff whatsoever, customs officers have been known to routinely say: "I do not recognize that interpretation; those who do not pay the required fee will see their equipment collect dust on the pier."²⁰

The greatest problem the potential investor meets is finding a clear authority with which to deal. The General Authority for Investment and Free Zones, under the supervision of the Ministry of Economy, is supposed to have the last word on conditions under which foreign companies operate in Egypt. However, the foreign company must also have its project approved by the ministry directly involved in its activity. For example, the Ministry of Industry competes constantly with the Ministry of Economy for decision-making power. Although there continues to be more coordination at the cabinet level, these two ministries and others continue to pull in different directions when it comes to deciding how, and with whom a foreign company should operate.²¹

The Egyptian ministries have to deal not only with pure industrial assembly line companies--such as Ford, Xerox, and Coca-Cola--but also with the even more imposing growth in the closely related tourism and construction indus-

tries. Statistics reveal that although pure industry and manufacturing annual growth levels are impressive, growth in the service sector (tourism) is the highest of all. Service sector production for 1960-1969 was 4.7 percent, while in 1970-1979 it rose to 11 percent--the largest growth rate of all sectors.²² It came as no surprise that Western investment sought out the most financially attractive projects. By 1977, over 25 percent of foreign investment was in housing, tourism, and construction--well above any percentage for industry. It was argued that luxury housing was an essential means of attracting foreign currency (tourism). However, the surge by the West in luxury construction has had some far-reaching side effects.

First, powerful developers have obtained priority on building materials and have absorbed the already-low supply of materials for their luxury projects. Regular housing project developers, who were assured by the government that luxury construction would not be importing most of their supplies, are continually cut out of business because of the shortage. Thus, luxury construction for the few is built at the expense of regular or economic housing projects for the many. Second, large-scale building projects have caused substantial price increases for middle-income housing, creating a greater shift toward a demand on rent-controlled housing for the poor.²³ Both these factors compound a serious housing shortage for Egypt's urban population explosion. A walk through the streets and hotel lobbies of Cairo reveal the seriousness of the housing shortage. For example, an early-morning departure from a Cairo hotel will discover the sleeping bodies of homeless porters, busboys,²⁴ clerks, and cooks strewn across the lobby floor.

Lack of skill and the inability to adapt to modern manufacturing methods is another problem resulting from rapid modernization. A look at the

Egyptian textile industry provides a clear example of this dilemma. Egypt's long-time staple, cotton, is of very high quality and is exported for its use in high-quality fabric at an extremely favorable rate for the economy. The main input for Egypt's textile factories is the same high-quality cotton. Domestic textile plants as of yet have not been able to manufacture more than a course-grade product. Western technology has been hampered by the low training capacity of laborers. Textile manufacturers also suffer from excess waste during the production of combed yarn: as much as 20 percent per year is lost because of incompetent laborers, though inadequate supervision and negligence²⁵ on the part of management have also been blamed.

An additional problem the newly developing Egyptian economy has to battle is inappropriate technology. Relaxed import rules from the Open Door Policy have brought thousands of goods into Egypt that are too sophisticated for the average consumer. This problem has brought about the creation of Egypt's Engineering and Industrial Design Development Centre (EIDDC). EIDDC redesigns products to find a balance between sophisticated, imported Western technology, Egyptian industry, and local demand. The head of Egypt's EIDDC, Yusef Mazhar, gives the following useful example:

. . . take the fully automatic washing machine found in most Western homes. In Egypt, this machine is impractical. It costs \$1,000, a sum probably equivalent to the annual salary of a typical middle-class worker. Coupled with the drawback of high initial cost, are the inevitable problems of improper maintenance and scarcity of spare parts generally found in developing countries. These mean that the

washing machine is likely to remain idle for long periods of time.

More significant, however, is the fact that the fully automatic washing machine is too sophisticated for the Egyptian market. The Egyptian housewife does not have the problem of trying to save time and effort like her Western counterpart. Very few need a washing machine that they can turn on when they leave home in the morning and empty out when they return home.

Instead, with time to spare and different life-styles . . . the washing machine designed by EIDDC . . . carries out the same cleaning functions as its Western equivalent. But nothing on it, including the water supply, is automated. It doesn't matter that a maid has to pour water into our washing machine with a bucket. It achieves the same result . . . ²⁶ at less than one-fifth the initial cost.

Another example illustrates this point in yet another way. A large Egyptian firm assembling buses under license from a West German company wanted to subcontract seats locally rather than have the seats imported. The design called for more than 350 individual parts. However, the bus firm could not find anyone in Cairo capable of the task. EIDDC took the plans and came back with specifications reduced to 60 parts. The seat was then ²⁷able to be produced locally as were other parts. Although these examples shine light on the problem of inappropriate technology, they are but a small dent in the vast amount of potential products that could be manufactured in Egypt.

Just before his death, President Sadat expressed the dream that he would live to see the day when every product sold locally bore the

label "Made in Egypt."²⁸ The late President's dream still remains, on a large scale, highly unreachable in the near future. Ironically, President Sadat's Open Door Policy fuelled consumption and encouraged imports to the point of discouraging the possibilities of large-scale local production. Goods and products manufactured in highly-skilled foreign markets were more profitable for investors.

Trade and Finance

This section will highlight some of the dilemmas not previously discussed and then bring together the two main arguments against liberalization of trade.

The implementors of the Open Door Policy have realized by now that they are involved in a far more difficult and sophisticated process than originally anticipated. For example, the exchange rate policy, designed earlier to shelter industrial development and to protect consumer prices, had to be changed to clarify price signalling. Interest rate policies, which had been tailored to direct resources toward favored economic sectors, needed reconstructing to promote domestic savings and to distribute capital more competitively. Tax policies had to be revamped to provide necessary equity protection during changing economic incentives. The interrelationships of public and private sector investments became more complex as the private sector was stimulated toward direct competition with the already-defensive public sector.²⁹

The ability of Egyptian economic leaders to manage this transition has also been inhibited by inflation, lack of training and background, and pressure from the lack of infrastructure development in the past. The government has sought to protect the public from inflation to the greatest

possible extent using price controls. However, the steep rise in the costs of goods, and the increased demand for them, has placed a great burden on the Egyptian budget. For example, subsidies for basic commodities--less than \$300 million in 1973--reached over \$1,500 million in the 1980-1981 budget. (This exceptional rise in budgetary outlays for subsidies was also affected by a 56 percent devaluation of the exchange rate in 1979.)³⁰

While this huge subsidy outlay has partially helped the public, it has created large budget deficits and important increases in the money supply. This in turn has led to inflation in prices of non-subsidized goods. Official price indexes show inflation at about 15 percent, but most observers estimate that prices of non-subsidized goods have increased by about 30 percent annually.³¹

However, one factor has given Egypt more flexibility in managing the economy: an improvement in foreign exchange. Debt servicing costs were eased by Arab nations and at the same time disbursement from the West provided more of a cushion. Earnings from foreign workers, Suez Canal revenues, and tourism have provided a surplus in the balance of trade for the first time in two decades. Egypt's trade balance went from a deficit³² of \$1.5 billion in 1976 to a slight surplus in 1980.

Although the trade statistics offer hope to Egypt's economy, the two basic problems of trade liberalization resulting from the Open Door Policy have taken their toll. First, Open Door trade has had an impact on national industry and massive consumption. Second, Egypt has been reduced to a country with debts and deficits subordinate to the dictates of others, such as the International Monetary Fund (IMF).

In reference to the first problem, the new laws resulting from the Open Door Policy have had drastic effects on the consumption of local products. The intervention of the government in the national tire industry is a perfect illustration of this problem with trade liberalization. Local tire industries in Egypt had previously met the requirements of domestic consumption and had a decent volume of exports when surpluses materialized from new import laws in the mid-1970s. The public sector became overstocked with tires. The new capitalist doctrine of the Open Door Policy further tempted government ministries, looking out for their self interests, to use foreign loans to buy imported tires (in this case from Japan). Thus, in 1978, only ³³one-half of the local tire production was sold.

Consumption has been tampered with to the detriment of Egypt's economy as well. Products imported under the new trade concessions were largely of the type motivated by high profits. These products would include more of the luxury type than the necessary. To state this another way, a highly developed country may indeed agree to a trade relationship with a poor country, whereby the poor country buys a much-needed commodity (such as wheat), or may even be offered such a commodity as a free gift. But this would be attractive for the developed country only if the poor country proves to be a "good customer" and is ready to buy large quantities of a commodity the seller finds advantageous (beer, automobiles, cigarettes, tires, etc.).³⁴ This situation is like a store that offers free a useful but cheap item if customers would buy a certain quantity of a much less useful but expensive item. It would be foolish in such a situation to expect to get the free gift without accepting the other part of the transaction.

The impact of the second problem, a country with deficits being subjected to the power of its

creditors, has had its far-reaching effects. Indebtedness has reached a disturbing level in Egypt. In 1982 alone, the external debt grew by 18.6 percent. This figure is dangerously high for a country³⁵ that has a debt/export ratio above 200 percent.

To manage their debt problems, Egypt has had to trim unnecessary imports and expenditures. The following example provides a good illustration of how pressure from creditors (like the IMF) to cut expenses can be very hard on a country: By 1980, one of Egypt's major expenses was the food subsidy program. The program cost \$1.7 billion--an amount equal to Egypt's 1979 budget deficit, or over 10 percent of the GNP. To make any small change was extremely difficult. Even with the food subsidies, most Egyptian families spend between 70 and 80 percent of their income on food.³⁶ In January, 1977, the government attempted to reduce subsidies (raise prices) on flour and some other foods because of pressure from the International Monetary Fund (IMF), the U.S. government, and private American banks to demonstrate financial responsibility. Immediately the streets erupted in violent riots, killing 80 people and wounding over 1,000.

Conclusions

In contrast to his early days as a poor village schoolboy, Sadat rose upward and outward from his submissive attitudes toward wealth. Infitah--upward and outward--became the symbol for a national struggle: the economic development and modernization of Egypt.

Egypt is in the process of important and dynamic change. It has set out on a course of fundamental restructuring of its economic future. While important steps are being taken with some positive results, much remains to be done. Egypt

has discovered that this change is often painful and disruptive. It is always easier to generate change than to absorb it.

The most serious problems are internal: inefficient bureaucracy, inappropriate technology, lack of incentives for agricultural production, population explosion, etc. It can be assumed that there will always be a gap between the demands that accompany modernization and the political system's ability to satisfy those demands. Egypt certainly has this gap and must resolve many critical issues if progress is to be maintained and intensified. By allowing or encouraging the society to wholeheartedly take on capitalistic values and consumption habits without adjusting them socially and economically will likely lead to cultural impoverishment.

By defining development in terms of a capacity to stimulate demands and solve problems, Egypt's Open Door Policy has not been effective. Egypt needs to change to new adaptive roles to assimilate and properly absorb the great influx of technology and industrialization resulting from infitah.

ENDNOTES

¹Anwar el-Sadat, In Search of Identity (New York: Harper & Row, 1978), pp. 8-9.

²David E. Apter, The Politics of Modernization (Chicago: The University of Chicago Press, 1965), pp. 60-63.

³Anwar el-Sadat, al-Usbu' al-'Arabi (October 9, 1974) cited by John Waterbury, The Egypt of Nasser and Sadat (Princeton: Princeton University Press, 1983), pp. 127-28.

⁴John Waterbury, Egypt (Bloomington: Indiana University Press, 1978), p. 70.

⁵Gouda Abdel-Khalek, "The Open Door Economic Policy in Egypt," in Rich and Poor States in the Middle East, ed. Malcom H. Kerr and El Sayed Yassin (Cairo: The American University in Cairo Press, 1982), pp. 265-70.

⁶Khalid Ikram, Egypt: Economic Management in a Period of Transition (Baltimore: The John Hopkins University Press, 1980), p. 217.

⁷R. D. McLaurin, Mohammed Mughisuddin, and Abraham R. Wagner, Foreign Policy Making in the Middle East (New York: Praeger Publishers, 1977), p. 92.

⁸The World Bank: World Development Report 1982 (New York: Oxford University Press, 1982), p. 112.

⁹Ikram, p. 208.

¹⁰Alan Richards, "Agricultural Mechanization in Egypt: Hopes and Fears," International Journal of Middle East Studies (November 1981):414.

¹¹Ibid., p. 416.

¹²ERA 2000, Inc., Further Mechanization of Egyptian Agriculture (Gaithersburg, Md.: ERA 2000, Inc., 1979), cited by Richards, p. 417.

¹³Liz Thurgood, "Agriculture: No Place for Push Button Solutions," Middle East Economic Digest, Special Report: Egypt (July 1983):28.

¹⁴Khalid Ikram, "Meeting the Social Contract in Egypt," Finance and Development (September 1981):31.

¹⁵James F. Bednar, "Egypt: In Pursuit of Progress," Agenda (March 1982):8.

¹⁶World Bank, p. 112.

¹⁷Ibid., p. 146.

¹⁸David Tinnin, "Egypt's Touch-and-Go War on Poverty," Fortune, 28 January 1980, p. 73.

¹⁹Alan Mackie, "Bureaucracy: Customs' Authority Reigns Supreme," Middle East Economic Digest, Special Report: Egypt (July 1983):19-20.

²⁰Ibid., p. 74.

²¹Alan Mackie, "All Change, but Only Very Slowly, on the Nile," Euromoney (July 1981): 95-96.

²²World Bank, p. 112.

²³Mark N. Cooper, The Transformation of Egypt (London: Croom Helm, 1982), pp. 104-105.

²⁴Observations from a personal trip by the author, Chris Monson, to Cairo in February 1982.

²⁵Ikram, Egypt: Transition, pp. 257-58.

²⁶Jules Arbose, "Making Appropriate Technology Work," International Management (July 1979):35-37.

²⁷*Ibid.*, p. 37.

²⁸Carl Richards, "Industry: Made in Egypt--A President's Dream," Middle East Economic Digest, Special Report: Egypt (July 1983):20-21.

²⁹Donald S. Brown, "Egypt and the United States: Collaborators in Economic Development," The Middle East Journal (Winter 1981):4.

³⁰*Ibid.*

³¹Ikram, Social Contract, p. 32.

³²Tinnin, p. 74.

³³Gouda Abdel-Khalek and Robert Tignor, eds., The Political Economy of Income Distribution in Egypt (New York: Holmes & Meier Publishers, Inc, 1982), p. 504.

³⁴Galal A. Amin, "Some Economic and Cultural Aspects of Economic Liberalization in Egypt," Social Problems (April 1981):435-36.

³⁵Thurgood, p. 28.

³⁶Bednar, p. 9.

BIBLIOGRAPHY

Abdel-Khalek, Gouda. "Looking Outside, or Turning Northwest? On the Meaning and Dimension of Egypt's Infitah 1971-1980." Social Problems (April 1981):394-409.

_____. "The Open Door Economic Policy in Egypt." In Rich and Poor States in the Middle East, pp. 259-83. Edited by Malcolm H. Kerr and El Sayed Yassin. Cairo: The American University in Cairo Press, 1982.

Abdel-Khalek, Gouda, and Tignor, Robert, eds. The Political Economy of Income Distribution in Egypt. New York: Holmes & Meier Publishers, Inc., 1982.

Ajami, F. "Struggle for Egypt's Soul." Foreign Policy (Summer 1979):3-30.

Amin, Galal A. "Some Economic and Cultural Aspects of Economics Liberation in Egypt." Social Problems (April 1981):430-41.

Apter, David E. The Politics of Modernization. Chicago: The University of Chicago Press, 1965.

Arbose, Jules. "Making Appropriate Technology Work." International Management (July 1979):34-37.

Ayubi, Nazih N. M. "Implementation Capability and Political Feasibility of the Open Door Policy in Egypt." In Rich and Poor States in the Middle East, pp. 349-413. Edited by Malcolm H. Kerr and El Sayed Yassin. Cairo: The American University in Cairo Press, 1982.

- _____. "The Political Revival of Islam: The Case of Egypt." International Journal of Middle East Studies (November 1980):481-99.
- Baker, Raymond William. "Sadat's Open Door: Opposition from Within." Social Problems (April 1981):378-84.
- Bednar, James F. "Egypt: In Pursuit of Progress." Agenda (March 1982):1-32.
- _____. "Every 20 Seconds . . ." Agenda (March 1982):31-32.
- Bornschier, Volker, and Hoby, Jean-Pierre. "Economic Policy and Multinational Corporations in Development: The Measurable Impacts Cross-National Perspective." Social Problems (April 1981):361-77.
- Brown, Donald S. "Egypt and the United States: Collaborators in Economic Development." The Middle East Journal (Winter 1981):3-14.
- Cooper, Mark N. The Transformation of Egypt. London: Croom Helm, 1982.
- el-Sadat, Anwar. In Search of Identity. New York: Harper & Row, 1978.
- "Enter the West." The Economist, 26 July 1980, pp. 68-69.
- ERA 2000, Inc. Further Mechanization of Egyptian Agriculture. Gaithersburg, Md.: ERA 2000, Inc., 1979. Cited by Alan Richards, "Agricultural Mechanization in Egypt: Hopes and Fears," International Journal of Middle East Studies (November 1981):417.

Hamed, Osama. "Egypt's Open Door Economic Policy: An Attempt at Economic Integration in the Middle East." International Journal of Middle East Studies (February 1981):1-9.

Ibrahim, Saad Eddin. "Superpowers in the Arab World." The Washington Quarterly (Summer 1981):81-96.

Ikram, Khalid. Egypt: Economic Management in a Period of Transition. Baltimore: Johns Hopkins University Press, 1980.

_____. "Meeting the Social Contract in Egypt." Finance and Development (September 1981):30-33.

Jackson, Henry F. "Sadat's Perils." Foreign Policy (Spring 1981):58-73.

Kelly, Allen C.; Khalifa, Atef M.; and El-Khorazaty, M. Nabil. Population and Development in Rural Egypt. Durham, N.C.: Duke Press Policy Studies, 1982.

Kenedy, Mark C., ed. "Development Processes and Problems: General Trends and the Egyptian Case." Social Problems (April 1981):339-485.

Mackie, Alan. "Bureaucracy: Customs' Authority Reigns Supreme." Middle East Economic Digest, Special Report: Egypt (July 1983):14-19.

_____. "All Change, but Only Very Slowly, on the Nile." Euromoney (July 1981): 93-99.

McLaurin, R. D.; Mughisuddin, Mohammed; and Wagner, Abraham R. Foreign Policy Making

in the Middle East. New York: Praeger Publishers, 1977.

Monson, Chris. Observations from a personal trip to Cairo. February 1982.

Richards, Alan. "Agricultural Mechanization in Egypt: Hopes and Fears." International Journal of Middle East Studies (November 1981):409-25.

Richards, Carl. "Industry: Made in Egypt--A President's Dream." Middle East Economic Digest, Special Report: Egypt (July 1983): 20-22.

Thurgood, Liz. "Agriculture: No Place for Push Button Solutions." Middle East Economic Digest, Special Report: Egypt (July 1983): 27-28.

Tinnin, David. "Egypt's Touch-and-Go War on Poverty." Fortune, 28 January 1980, pp. 67-75.

Waterbury, John. Egypt. Bloomington: Indiana University Press, 1978.

_____. The Egypt of Nasser and Sadat: The Political Economy of Two Regimes. Princeton: Princeton University Press, 1983.

The World Bank: World Development Report 1982. New York: Oxford University Press, 1982.

THE EXTENDED REPUBLIC AND THE CONTROL
OF MAJORITY FACTION: A CONTRAST
AND COMPARISON OF DE TOCQUEVILLE
AND THE AMERICAN LAWGIVERS

Anne Rowley*

Introduction

The French political philosopher, Alexis de Tocqueville, saw the endurance of American democracy as a possible model that would enable his countrymen to temper the ill effects of their own democratic system. Although he did not advocate that every aspect of the American model should be strictly adhered to, he wrote about the goodness of American laws and the wisdom of the American Founding Fathers. Furthermore, as he described the practical application of their ideology, de Tocqueville appeared to align himself with most of their beliefs.

He disagreed, however, with one of the most basic tenets of the American method of democracy. In contrast to the view advocated by the Founders, de Tocqueville did not support the concept of the geographical extension of republics serving as the control for violence of factions and tyranny of the majority.

Factions, especially majority factions, are natural to human behavior and increase rapidly in democracies where the will of man is relatively unrestrained. Factions also serve as the violent vehicle for democracy's self-destructive tenden-

*Anne is a junior in Political Science. She is a Truman Scholar and one of the Vice-Presidents of Pi Sigma Alpha, Beta-Mu chapter.

cies.¹ This propensity of factions to flourish in liberty makes philosophical speculation on how their effects can be controlled a central issue in the politics of preserving and perpetuating popular government. For this reason it is extremely important that de Tocqueville's objections to the method prescribed by the Founders be examined and understood. The significance of his views is increased because de Tocqueville observed American society and political institutions after the advent of the Founders.

The Size of the Sphere

The lack of harmony between de Tocqueville and the American Founders on whether extending the physical sphere of a republic controls the effects of faction, has its foundation in a difference in the interpretation of the history of democracy and in the role of small republics in that history. The Founders believed that small democracies, including the pure democracies of the Greek city-states, had been scenes of contention, strife, and tumult. James Madison wrote, "They have been as short in their₂ lives as they have been violent in their deaths."²

Conversely, de Tocqueville felt that small republics were basically content and happy. Their resources were directed to the internal well-being of their people, they had no vain dreams of glory, and the conditions among their citizens were roughly equal. (This opinion had also been expressed by Montesquieu.) De Tocqueville further theorized that if the entire world were composed of small democracies, there would be no larger states to attack the small ones, and humanity would be free and happy. He reasoned that there is little attraction to ambition in small republics because resources are too limited to be concentrated in the hands of one man, and, even if a tyrant did arise, in a small

democracy it would not be difficult for the people to unite and overthrow him.

De Tocqueville did not deny that when tyranny exists in a small republic it is more vicious than in a large republic. The limited size of the smaller nation causes despotism to affect everything within the national realm. He did claim that tyranny is rare in small democracies because they are the "cradle of liberty," and freedom is their "natural condition."³

De Tocqueville's stand on large nations, especially large republics, is opposite to his opinion of small nations. He admitted that ideas circulate more freely in large nations, and that they contribute more to the increase of knowledge, civilization, and important discoveries than in small republics because they are able to concentrate their national resources. In his opinion, they also have the advantage of being stronger militarily than smaller democracies and are therefore able to withstand conquest. Nevertheless, for de Tocqueville, these positive characteristics did not counter the vices of large republics such as great wealth in the midst of dire poverty, huge cities, depraved morals, individual egoism, and a complication of interests. He concluded that these are some of the reasons that "history gives no example of a large nation long remaining a republic."⁴ Ambition grows with the power of the state and all of the passions destructive to democracy also grow with the increase of its territory. De Tocqueville rejected the basic premise of the Founders and followed the prescription of Rousseau, in that if a free people are to remain chaste in their civic virtue, the size of the republic must be small.⁵

How then, did de Tocqueville explain the existence of the extended republic of the United States under this philosophy? He claimed that, although it was true that the United States had

been the only extended republic in history of any duration, this phenomenon had occurred because Americans combined the positive aspects of both the large and the small republic. He declared that the United States "is free and happy like a small nation" and "glorious and strong like a great one."⁶ The positive characteristics of one sphere make up for the negative characteristics of the other. Because the United States is strong defensively, it can focus on internal improvements while public spirit in the union is only an extension of patriotism in the states and townships. Similarly political passions don't spread to engulf the nation,⁷ because they are broken up at the state level.

There is no doubt that de Tocqueville favored the characteristics of the small republic over those of the large republic. This view may have been partially determined by his cultural background and by his acceptance of the thought of certain political philosophers as well as by his understanding of history. To comprehend why he rejected the large republic as a remedy for faction requires a deeper analysis. Therefore, an overview of the American Founders' plan of the extended republic is necessary.

The Founders' Plan of Extension

The Founders expected the outcome of the U.S. Constitution to be the establishment of a confederation of the states. Like de Tocqueville, they did not view this larger union as a consolidation that would result in the loss of each state's political identity.⁸ According to Alexander Hamilton, this idea of being able to extend the sphere of a republic through confederation was supported by Montesquieu, and Hamilton quoted him in "Federalist Number 9":

It is very probable that mankind would have been obliged at length to live constantly under the government of a single person, had they not contrived a kind of constitution that has all of the internal advantages of a republican, together with the external force of monarchical, government. I mean a Confederate Republic.

This form of government is a convention by which several smaller states agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

It was Hamilton's conviction that if such a method of extending the sphere of republics was not possible, then the only alternatives would be an authoritarian regime or a small, pure democracy. Both alternatives, in his opinion, offered only gloomy prospects because if the sphere of democracy could not be enlarged, then it would be impossible for each nation to even be the size of the state of New York.¹⁰

The American lawgivers not only believed that a confederate republic was possible for America, but they also felt that it was an absolute necessity for several reasons. First, it seemed logical to them that to take care of national concerns, like defense, a strong, energetic national government was a prerequisite. Second, Hamilton and other framers of the Constitution saw the choice between a large or small republic as a choice between the purse and the sword. They claimed that large republics promote commerce and economic prosperity while small republics are militaristic because the people are preoc-

cupied with governing, and they don't have time for commerce. Instead they fight among themselves and with other small republics.¹¹

The most critical reason given for an extended republic is the effect that the Founders felt it would have on both majority and minority factions. To them a majority faction was especially to be feared in a democracy because it is intolerant of the rights of minorities and individuals. James Madison stated that tempering majority faction was the main purpose of the Constitution:

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object¹² to which our inquiries are directed.

Factions cannot be destroyed without also destroying their causes which are human nature and liberty. Obviously, "the remedy is worse than the disease." All that can realistically be done to solve the problem of factions is to control their effects by extending the orbit of the republic. Enlarging the geographical area of the republic would help to restrain factions in two

ways: first, principle of representation in the broadened sphere would allow the people to elect men of a more noble character than that of the masses themselves, while the broadened republic would provide a larger selection of candidates; and second, the enlarged sphere would take in a greater variety of parties and interests, making it less probable that "a majority of the whole would have a common motive to invade the rights and property of others."¹⁴ This multiplicity of interests would cause the majority to be broken up into a number of smaller factions that would, because of ambition and greed, compete with and balance each other.

The most dangerous and violent factions in Madison's opinion are factions that arise from the unequal distribution of "property," or class factions.¹⁵ He believed, however, that the extended republic offered a way to check these factions as well. The diversity of economic activity that is natural to a large geographical area creates multiple factions of varied economic interest that "cut across class lines." Association would arise from particular rather than from class interests. Such an association would be impossible in a small republic where economic activity is homogenous and usually limited to a small number of occupational fields.¹⁶

Under the Founders' plan of extension the majority still exists and the people are still sovereign, but the majority is a "mixed" majority of different interests and different classes. Consequently, it also is a neutral majority and one that the founders believed would generally rule for the common good.¹⁷

Ultimately, the Founding Fathers knew that if a majority was determined to get its way, for whatever purpose, it would eventually be able to do so. They did hope to place constitutional obstacles in the way of such factions. These

would be based upon the idea of the extended republic, and would include representation, the doctrine of enumerated powers, and the national judiciary. The lawgivers were persuaded that even if a majority were able to circumvent the law, they might be restrained by religion and morality, but the Founders also realized that these ideals could fail, leaving no restraint upon the will of the majority.

De Tocqueville's Observations and Argument

Alexis de Tocqueville read the writings of the American Founders extensively, and he observed the large middle class in America that is considered to be the result of their thought. He also examined the leveling effect that American ideology had upon such measures as land reform and education in the United States. In spite of all of these effects, he still found ample reason to argue with the Founders' premise that a large, extended republic is able to control the effects of factions.

Although de Tocqueville apparently conceded that a majority composed of all classes and many interests is a reality in the United States, he felt that the mere existence of any kind of majority is in and of itself a danger. Unlike Madison he believed that the majority doesn't constitute a faction but that any majority is always in peril of being persuaded to join the cause of minority factions.¹⁷

De Tocqueville was a great believer in the sovereignty of the people. Still, he did not share the Founders' belief that a majority in an extended republic generally seeks the public good. In his opinion the majority could also serve as a mechanism of tyranny that is intolerant of the minority or the individual that dares to speak out against its will. In this role, it affects and often debases the character and thought of

the nation and imbues national leaders with a kind of "courtier¹⁹ spirit" that is intent upon flattering the people.

De Tocqueville's views of the majority are strengthened because he felt that there were few if any obstacles placed in its path. He rejected the idea that representation allows the people to elect men superior to themselves. It was his contention that they elect men in their own image and that often the very nature of the majority, combined with the "courtier spirit," causes leaders to be elected that corrupt themselves and are actually inferior to the general public. He supported his thesis by pointing out the poor quality of American leaders in his time as compared to the Founders of the Constitution.²⁰ He claimed that there are also no other obstacles to the omnipotence of the majority in the law of the United States. He explained this lack of obstacles in the following way:

When a man or a party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves as its passive instrument. To the police? They are nothing but the majority under arms. A jury? The jury is the majority vested with the right to pronounce judgement [sic]; even the judges in certain states are elected by the majority. So, however, iniquitous or unreasonable the measure²¹ which hurts you, you must submit.

De Tocqueville felt that the few constraints that existed in the United States upon the majority were to be found outside the law in the

society itself. These constraints included morality and religion, the lack of an administrative bureaucracy (which in his opinion is one of the tools of tyranny), and the role of lawyers as a type of²² aristocracy that is acceptable to the masses.

A fourth, and probably the most important constraint, was that of the majority being tied to locality and to the division of the national government with the state. This constraint resembles the doctrine of enumerated powers and the national-federal principle of the Founders. De Tocqueville, however, expounded upon this principle and declared throughout Democracy in America that American government had its beginning in the township. In this way he made the idea of localism something that arose naturally in America before it was ever²³ officially part of the law or constitutional doctrine.

De Tocqueville's combined thoughts led him to see tyranny, rather than anarchy, as the possible cause of democracy's demise. This tyranny is the result of the contention and strife of factions and may gradually lead to a loss of power that results in anarchy, but because a society cannot remain long in anarchy, it will revert²⁴ again to tyranny, forming a continuous cycle.

De Tocqueville, therefore, hypothesized, in contrast to the Founders, that the great danger to the existence of the United States as a democratic-republic would be not the weakness of the union, but the strength of the union. He postulated that the majority in the United States has the capability of becoming so oppressive to minorities that the minority factions may eventually oppose this oppression and retaliate, causing the democratic system in American to collapse.²⁵ De Tocqueville saw this danger as very real, and he saw religion and morality as the only constraints in society that could possibly be strong enough to

protect ²⁶democracy in an enlarged geographic sphere.

Summary and Conclusion

Alexis de Tocqueville observed the effect of U.S. laws and political institutions upon American civil society approximately sixty years after the founding of those laws and institutions. In contrast to the views of the American lawgivers, de Tocqueville concluded neither the geographical extension of the United States nor the institutional constraints embodied in the Constitution served to repress the violence of factions and the tyranny of the majority.

What de Tocqueville did see as deterrents were societal restraints, such as the basically peaceful nature of the American majority, unaware of its own strength, and the contributions of local patriotism and of religion to national public virtue. In the matter of controlling factions, de Tocqueville thought the effect of civil society upon American laws was greater than the effect of laws upon civil society.

There is some irony in the fact that de Tocqueville's beliefs concerning tyranny of the majority led him, a man who had privately denied his own faith, to be more preoccupied with religion and morality than were the American Founders, most of whom were devoutly religious. De Tocqueville's ideas on how public virtue and morality serve a utilitarian function in the preservation of democracy cause religion to emerge as the overriding theme of his writings in Democracy in America.

Modern critics of American politics, such as Martin Diamond and Alexander Landi, disagree with de Tocqueville and uphold the political philosophy of Madison, Hamilton, and the other

Founders on the subject of the extended republic. More important, perhaps, is that de Tocqueville and the Founders have each posed strong arguments, and their synthesis is really the crucial point. Surely a democracy needs both good laws and a virtuous populace. It needs both a strong national government and state and local institutions that are closer to the people. The combined thought of the Founders and of de Tocqueville serves to make the national-federal principle one of the most prominent of the checks and balances of the American democratic system.

ENDNOTES

¹James Madison, The Federalist Papers (New York: The New American Library of World Literature, 1961), pp. 78-79.

²*Ibid.*, p. 81.

³Alexis de Tocqueville, Democracy in America, ed. J. P. Mayer, trans. George Lawrence, Anchor Books ed. (Garden City, N.Y.: Doubleday and Co., 1969), pp. 158-59.

⁴*Ibid.*, pp. 159-61.

⁵Harvey Flaumenhaft, "Hamilton on the Foundation of Good Government," The Political Science Reviewer 6 (Fall 1976):188-89.

⁶de Tocqueville, pp. 161-63.

⁷*Ibid.*

⁸Alexander Hamilton, The Federalist Papers (New York: The New American Library of World Literature, 1961), p. 75.

⁹*Ibid.*, pp. 74, 75.

¹⁰*Ibid.*, p. 73.

¹¹Flaumenhaft, pp. 186-89.

¹²Madison, p. 80.

¹³*Ibid.*, p. 78.

¹⁴*Ibid.*, pp. 82-84.

¹⁵*Ibid.*, p. 79.

¹⁶Martin Diamond, The Founding of the Democratic Republic (Itasca, IL: F. E. Peacock Publishers, 1981), pp. 72-75.

¹⁷Alexander Landi, "Madison's Political Theory," The Political Science Reviewer 6 (Fall 1976):95-96.

¹⁸de Tocqueville, pp. 173, 240.

¹⁹Ibid., pp. 220-21, 250-61.

²⁰Ibid.

²¹Ibid., p. 252.

²²Ibid., pp. 262-70, 287-301.

²³Ibid., pp. 87-98, 287.

²⁴Ibid., pp. 252-59.

²⁵Ibid., pp. 252-60.

²⁶Ibid., pp. 287-301, 442-49.

BIBLIOGRAPHY

- de Tocqueville, Alexis. Democracy in America. Edited by J. P. Mayer and translated by George Lawrence. Garden City, NY: Doubleday and Co. 1969.
- Diamond, Martin. The Founding of the Democratic Republic. Itasca, IL: F. E. Peacock Publishers, 1981.
- Flaumenhaft, Harvey. "Hamilton on the Foundation of Good Government." The Political Science Reviewer 6 (Fall 1976):143-214.
- Hamilton, Alexander; Jay, John; and Madison, James. The Federalist Papers. New York: The New American Library of World Literature, 1961.
- Landi, Alexander. "Madison's Political Theory." The Political Science Reviewer 6 (Fall 1976):73-111.

THE CHADHA DECISION: A NEW WEIGHT IN THE CONSTITUTIONAL BALANCE

Murray Snow*

Introduction

In the past decade, there has been an interesting argument in American legal circles concerning the constitutionality of the legislative veto. This type of veto is a provision included in legislation (and in some cases making up the legislation itself) which allows Congress to cancel executive actions.¹ Some scholars argue that since such vetoes take place and have the force of law without receiving the signature of the President, nor in many cases the approval of the other House of Congress, they are unconstitutional. Others point out, however, that for the Congress to exercise a legislative veto both Houses of Congress must have already agreed to, and the President have signed, a bill containing a legislative veto provision. Therefore, they argue, such propositions are indeed constitutional.²

Since the first use of the legislative veto in 1932, Congress has devised several different methods to achieve a cancellation of executive action. They have all subsequently come to be known as legislative vetoes. The first is the one-house negative veto. A veto of this nature authorizes either the House or the Senate to cancel an executive action if a majority of its members oppose it. This is the most common legislative veto device. The second method is the

*Murray is a senior majoring in Political Science. He is both a Truman and a Karl G. Maeser Scholar. He plans to attend law school this fall.

one-house positive veto. In this case, before an executive action can be made permanent, at least a majority of one House of Congress must approve it. Though this type of veto action has been considered by Congress, it has not yet been used. Other veto provisions which have been frequently used are those requiring either approval or disapproval of executive acts by concurrent resolutions of both Houses of Congress such as the War Powers Act. Still other veto provisions permit approval or disapproval of executive actions by the majority vote of a House or Senate committee. Finally, other such propositions permit Congress to approve part of an executive action while disapproving another part.³

Many cases have been brought to court challenging the constitutionality of the legislative veto, but only two have been decided on their merits. In the first, Atkins vs. U.S., the U.S. Court of Claims ruled that the legislative veto was a proper congressional exercise of authority under the Necessary and Proper clause. In the second, INS vs. Chadha, the Ninth Circuit Court of Appeals ruled that the legislative veto provision in the Immigration and Nationality Act was unconstitutional.⁴ The Supreme Court, shortly after the Ninth Circuit Court's decision, agreed to review the Chadha case and ultimately upheld that court's opinion. The decision reached in this case should prove to play a significant role in balancing the power between the executive and legislative branches of government in the near future. My research question is then, what will be the public policy implications of the Supreme Court's decision in INS vs. Chadha?

To answer this question it will be necessary to first examine the Chadha case and the resulting opinion of the Supreme Court. It will then be necessary to determine the breadth of the court's decision. Notably, does the reasoning expressed in this opinion invalidate all legislative

vetoed or merely one-house vetoes such as the one found in the Immigration and Nationality Act upon which the Chadha case was based? Or, was the decision sufficiently narrow so as to strike only the legislative veto provision in the Immigration and Nationality Act? Once these questions have been answered, it will be possible to evaluate some of the public policy implications of this decision and to suggest methods through which Congress might be able to continue to constitutionally pursue its oversight function in light of the Court's reasoning.

The Chadha Case⁵

Jagdish Rai Chadha, an East Indian born in Kenya, was admitted to the U.S. in 1966 with a non-immigrant student visa. The visa expired on June 30, 1972, but Chadha remained in the country. In October of 1973, he was summoned before the district director of the National Immigration Service to show cause why he should not be deported. Chadha, under Section 244 (a) (1) of the Immigration and Nationality Act, requested a suspension of deportation. This section of the act gave the attorney general of the United States the discretion to suspend deportation of aliens who met three conditions established in the act: First, the alien must have been in the United States continuously for a period of seven years. Second, he had to be of good moral character, and third, his deportation would have to result in extreme personal hardship.

The following June after an investigation, it was determined by an immigration judge that Chadha met all the requirements; consequently, his deportation was suspended. In accordance with the Immigration and Nationality Act, Congress was advised of the suspension. The act then gave either House of Congress the right to veto the attorney general's decision and invalidate

the suspension anytime within eighteen months after it was notified of the suspension. If Congress failed to act within this time period, the alien's status would be permanently changed to that of permanent resident alien.

In late December 1976, the House of Representatives, upon the recommendation of the House Judiciary Committee, voted to veto the suspension of Chadha and five others. The following January, Chadha's original immigration judge reopened proceedings to deport Chadha. Chadha moved to block the hearing on the grounds that the section of the Immigration and Nationality Act which granted Congress the legislative veto was unconstitutional. The immigration judge refused to rule on the motion since he had no authority to rule on the constitutionality of the sections involved. The Board of Immigration Appeals also refused to respond to the motion for the same reasons. Chadha finally filed a petition with the Ninth Circuit Court of Appeals for a review of his deportation order. The court, after hearing arguments, dismissed the deportation action on the grounds that the legislative veto contained in the act violated the constitutional doctrine of separation of powers.

The Supreme Court's Decision

The Chadha case was accepted by the Supreme Court on a writ of certiorari shortly after the Ninth Circuit Court had ruled. The case was first argued in the court in February 1982, but at the end of the term no decision was announced.

Rearguments were held in the 1982-83 term, and a decision upholding the Ninth Circuit Court was released on June 23, 1983. Before addressing the question of the constitutionality of the legislative veto in his opinion written for the

court, Chief Justice Warren Burger established that Chadha had standing, and that the case was a justiciable one.⁶ Then, he began to examine the constitutionality of the legislative veto. According to the Court, Article One of the Constitution establishes several different requirements for all legislative actions:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives. Art. I, s.1. (Emphasis added)

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; . . . Art. I, s.7, cl.2. (Emphasis added)

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be passed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.⁷ Art. I. s.7, cl.3. (Emphasis added)

According to the Court, the intent of the founders concerning these sections of Article One is clear. The legislature, in the view of the founders, was inherently the most powerful branch of government. It was therefore most necessary to contain the power of that branch. As one limitation, it was decided to require that legislation

pass through both Houses of Congress to ensure that the implications of all legislative acts would be carefully evaluated before being sent to the President for his signature. The next requirement, that of presentment of the legislation to the President, would constitute the second check on congressional power. The President, in effect, would represent the national interest and not the factionalized smaller interests one could find represented in Congress. If the President objected to a bill, he could veto it and thus prevent its implementation. If he approved a bill, he could sign it, and it would become law. It is clear that the founders intended for all congressional initiatives to pass by this process when it is noted that Madison, in debate over Section Seven Clause Three of Article One, when the section applied only to bills, suggested the idea that the legislature might try to escape the requirements imposed in the section by substituting the word resolution or vote in place of the word bill. Consequently, the Constitutional Congress⁸ changed this clause to its present reading.

To prevent the President from arbitrarily blocking Congress and deadlocking the government with his veto power, the founders provided that if two-thirds of both houses voted to do so, they could override the President and implement the legislation over his veto.

Does the legislative veto action taken in the Chadha case amount to a legislative act that would be subject to the bicameral and presentment requirements established by the Constitution for all legislative actions? First, the Court holds that when any branch of government acts, "it is presumptively exercising⁹ the power the Constitution has delegated to it." The power the Constitution has assigned to either House of Congress is that of legislation. Although there are express powers granted to the separate Houses of Con-

gress which are not legislative in nature, and thus not subject to the bicameral or presentment requirements of the Constitution, they are included in the Constitution in explicit and unambiguous terms. These powers are those of the House to bring impeachment charges against officials, and of the Senate to ratify treaties, judge in impeachment cases, and approve or disapprove presidential appointments included in Sections Two and Three of Article One and Section Two Clause Two of Article Two. The very explicit nature of these provisions provides support for the Court's conclusion that "congressional authority cannot be implied," and that powers that are not specifically granted to Congress, and are unobtainable through the Necessary and Proper Clause, are denied.¹⁰ Therefore, all legislative actions apart from these special cases specified in the Constitution are required to meet the specifications of bicameralism and presentment.

Second, whether a matter is in fact an exercise of legislative power depends upon the subject of the actions taken. In the Chadha case, it is clear that the action taken has been legislative "in purpose and effect." The House of Representatives has altered "legal rights, duties, and relations of persons including the Attorney General, Executive branch officials, and Chadha, [all of whom] are outside the legislative branch."¹¹ What this veto decision amounts to is a policy decision by Congress which, in absence of the veto provision of the Immigration and Nationality Act, would have required that a bill be passed by a majority of both Houses of Congress and be presented¹² for the President's signature to become law.

The Court acknowledges that the legislative veto is "efficient, convenient, and useful in facilitating functions of government." But the mere fact that it is useful does not mean that it

is constitutional. The Court in fact rules that the congressional veto provision in Section 244 (c) (2) of the Immigration and Nationality Act is unconstitutional.¹³

The Breadth of the Court's Decision

The Court in this decision has obviously not only ruled on the constitutionality of one legislative veto provision, but has established requirements for all actions of a legislative nature which seem to preclude virtually any form of the legislative veto. Although there was some speculation after this decision concerning the status of legislative vetoes by concurrent resolution, a reading of the decision reveals that even vetoes passed in both Houses still fail to meet the presentment requirements established in the opinion, and thus would presumably also be unconstitutional.

Justice Powell, though agreeing with the opinion of the court in the Chadha case, expresses the view in his concurring opinion that the decision should have been based on narrower grounds. He finds that Congress, in its determination that Chadha does not meet the criteria established for permanent residency, has assumed a judicial function and thus violated the principle of separation of powers. This alone, according to Powell, would be sufficient to decide the case in Chadha's favor.¹⁴ Instead, he notes that "The court's decision . . . apparently will invalidate the use of the legislative veto." The breadth of this holding gives one pause.¹⁵

Justice White, although agreeing with Powell that the case could be decided on narrower separation of powers issues, dissents in the case. He does not, however, seem to have any arguments about the resolution of the Chadha case itself. He is rather dissenting from the prece-

dent which in his opinion destroys the legislative veto.

Today the Court not only invalidates s. 244 (c) (2) of the Immigration and Nationality Act, but also sounds the death knell for nearly 200 other statutory provisions in which Congress has reserved a legislative veto. . . . [The] decision strikes down in one fell swoop provisions in more laws enacted by Congress than the court has cumulatively invalidated in its history.¹⁶

Though White in a footnote to his dissent expresses the hope that perhaps some form of a legislative veto will eventually be held as constitutional, (he suggests that a resolution of disapproval might not have legal effect in its own right, and thus not be subject to bicameral and presentment requirements)¹⁷ in light of the Court's decision it seems unlikely, even to him.

Assuming, then, that the reasoning in the Court's opinion, as well as the concurring and dissenting opinions of Powell and White indicate that, at least for the moment, all legislative vetoes can be held unconstitutional, what will be the consequences for Congress?

The History of the Legislative Veto

To answer the above question, it will be necessary to determine what statutes containing legislative vetoes were in force when the Chadha decision was made. The history of legislation containing the veto goes back to 1932, when Congress authorized President Hoover to reorganize the executive branch subject to the disapproval of either House of Congress.¹⁸ During the remainder of the 1930s and 1940s, twenty-three other veto provisions were passed.¹⁹

Several of these bills were again grants to the President to reorganize the executive branch subject to the approval of Congress. The majority of the remainder of the veto legislation passed during this period was special grants of authority to the President to cope with World War Two.²⁰ An example of such legislation would be the Lend-Lease Act. In this act Congress authorized the President to trade destroyers to Britain for leases on British military bases, but the Congress retained the power, through a legislative veto, to strip him of this authority at any time. Roosevelt thought at the time that the veto proposition in the Lend-Lease Act was unconstitutional, but, he did not veto the bill because it was necessary to his foreign policy.²¹ Though Roosevelt's failure to veto the legislative veto in the Lend-Lease legislation did not put an end to its use, as it might have done, none of the statutes from this time period are affected by the Chadha decision since the subject matter of that legislation is no longer relevant to any ongoing governmental program.

During the fifties and sixties, the legislative veto became much more commonly used. In fact, eighty-three statutes containing such provisions were passed during these two decades.²² In the early fifties the veto began to be used to regulate immigration processes and government construction contracts.²³ The Immigration and Nationality Act, which was the legislation under question in the Chadha case, was first passed in 1952 and then revised in 1967.²⁴ The Congress found that delegation of such matters as immigration to executive or independent regulatory agencies, subject to a veto of disapproval by Congress, was a convenient way to discharge their growing responsibilities. With the continued growth of government during this period, it soon became a necessity for Congress to delegate many matters other than immigration and government construction to executive departments and regulatory

agencies for administration.²⁵ The rules that these agencies made in the process of enforcing congressional legislation consequently had the same force of law as did congressional statute.²⁶

But often the rules made by these agencies went far beyond, or actually conflicted with, the intent of Congress in this legislation. The honorable Edith Green, congresswoman from Oregon and author of Title IX of the Secondary and Higher Education Act of 1972, gave a striking example of just such an occurrence to students at BYU. In a forum address delivered at BYU in the midst of that institution's struggle with the housing regulations issued by HEW subsequent to Title IX, Ms. Green identified the original intent of that section in The Secondary and Higher Education Act. The thirty-six words that make up the title were intended, according to Ms. Green, to "promote equality of opportunity among the sexes by eliminating admissions restrictions, scholarship discriminations, and providing female professors with the same pay as male professors."²⁷ Unfortunately, HEW manufactured over 20,000 words of regulations to enforce Title IX alone, which, among other things, had the effect of "eliminating intercollegiate sports, co-ed physical education classes, all male-choirs, the Boy Scouts, the Girl Scouts," and many other organizations. This "illegitimate progeny" of Ms. Green's legislation has often tempted her to deny original authorship.²⁸

Ms. Green also mentions in her address other Congressional problems in the regulation of administrative agencies. For instance, the speed with which these agencies make rules pursuant to legislation, compared to the time it takes Congress to overturn objectionable rules by specific statute, is an overwhelming obstacle for Congress. One month after the passage of the bill authorizing OSHA in April 1971, a special 250-page edition of the Federal Register was pub-

lished imposing new federal regulations derived from the original OSHA legislation which was only a few pages long.²⁹ In the face of regulating such prodigious regulatory activity, many Congressmen argue that the legislative veto is the only acceptable alternative.³⁰ With the veto provision included in legislation, Congress could eliminate the objectionable regulation by a majority vote of one House. Such a procedure was much easier than the passage by both Houses of Congress and submittal to the President for approval of a change of agency rules.

The increase in regulatory activity and the desire of Congress to oversee such regulation would have been enough to ensure the growth of the legislative veto in the 1970s. But legislative vetoes began to be used as well during this period to exercise direct checks on presidential initiatives. Over the course of America's history, Presidents had gradually usurped, or been freely granted by Congress, powers that were not originally granted to that office in the Constitution. For instance, the evolution of the executive agreement allowed the President to make agreements with other countries without submitting to the approval process of the Senate which seemed to violate the intent of the founders. As well, America had fought in the Korean and Vietnam wars without ever receiving any declaration of war from Congress which the Constitution seemed to require.³¹

The Congress, sensing the growing "imperial" nature of the Presidency, determined to subject several of the presidential prerogatives to the legislative veto. Consequently, Congress passed bills which were in essence legislative vetoes, giving it the right, among other matters, "to approve executive agreements to sell arms to foreign nations, to veto import relief decisions made by the executive, to determine which nations could have most-favored nation treatment in

trade matters, and to determine which countries are eligible ³²or ineligible for military or economic assistance." Some of these bills were measures such as the War Powers Act, the Budget and Impoundment Control Act, and the International Security Assistance and Arms Control Act. These acts, while leaving the President some degree of discretion in such areas as war powers, budget management, and international arms sales, still required the consent of at least one, and often both Houses of Congress before his actions could be fully carried out.

The legislative veto, then, has been used as a congressional device to control the executive in two broad areas. First, it is an attempt to control or at least oversee the administration of legislation by executive and independent regulatory agencies. Second, it attempts to control the initiatives of the President himself in the pursuit of his policies. ³³ Due to its newfound dual use, the Congress passed eighty-one laws containing 163 legislative veto provisions in the first half of the 1970s. ³⁴

In light of the amount of legislation passed in the last three decades containing legislative vetoes, the Court's decision in INS vs. Chadha could have enormous implications. Justice White, as an appendix to his dissent, added a selected list of different statutes containing legislative vetoes which, as a consequence of the court's decision, will be affected. These statutes regulated areas in almost every field of government, but especially in the areas of "governmental reorganization, budgets, foreign affairs, war powers, regulation of trade, safety, energy, the environment, and the economy." ³⁵

The Effect of the Legislative Veto and Its Cancellation

Despite the fact that the legislative veto has been widely used in legislation in the past several years, if it has not been an effective method to fulfill the congressional oversight function, there will be few, if any, implications for public policy.

There seems to be little debate, however, regarding the efficacy of the legislative veto in regulating agency rule making. Its cancellation should therefore prove to have the potential to return a considerable amount of regulatory "power" to the administrative agencies of the executive branch. The effect of such a power transfer is currently an item of some controversy.

Proponents of the legislative veto claim that this power now returns to a mass of fourth, fifth, and seventh level bureaucrats, who are responsible to no one.³⁶ Such bureaucrats, these veto proponents claim, are only trying to build their domain of influence, and have no electoral check, as does the Congress. To deny the legislative veto to Congress, as Chadha has done, is to invite a return to the regulatory abuses of the OSHA regulation and Title IX.

Opponents of the veto, however, applaud the decision of the Court. They contend that the veto device placed too much power in the hands of Congress, and that this power would be more dangerous vested in Congress than in the administrative agencies. First, they claim, the probability of governmental deadlock is much lessened by the Chadha decision. An agency trying to execute its statutory responsibilities before Chadha could be continually frustrated by legislative vetoes. When issuing a veto, the Congress is not required to indicate on what grounds they find a particular rule objectionable. Instead of offering suggestions for possible alternatives, it

merely issues rejections. Congress can, consequently, easily hide responsibility for failure of implementation on the "governmental bureaucracy" when, in reality, the failure is its own. Second, the legislative veto tends to permit sloppy legislation. Since Congress, with the veto, has been able to implement its will regardless of the statute's actual content, legislation tends to be less carefully written. This invites litigation and waste, and is the cause of some confusion in the regulatory agencies themselves. Third, special interest groups exercise a large influence in Congress. When special interest groups find certain administrative rules objectionable, as some certainly do, they can exercise considerable pressure on Congress to veto the rule. This, veto critics point out, is hardly in the public interest. Also, the veto's presence in statutes regulating industry allows Congress to be constantly revising rules which regulate that industry and consequently deprive those who are concerned of any sense of permanency in the rules regarding their industry.³⁷

The striking of the veto will result then, according to the opponents of the Court's decision, in an increase of "red tape" and a power grant to an unelected and uncontrollable bureaucracy. Proponents of the decision find that it will result in the elimination of the potential for governmental deadlock, and the end of sloppy legislation which could result in increasing litigation. Also limited, according to those who favor the decision, will be the power of special interest groups to regulate government, and the past impermanency of governmental regulation.

Both opponents and proponents of the Court's decision seem to conclude that, with Chadha, the Court has concluded that once Congress has delegated the power to make laws to regulatory agencies, it is limited in its control of the rules that those agencies make.³⁸

The legislative vetoes intended to place limits on presidential power have had a far more ambiguous effect. Some of them such as the International Security Assistance and Arms Control Act, which requires the President to gain approval of the Senate for all arms sales to other countries, have been undeniably effective. Note, for example, the rather extended Senate hearings regarding the sale of AWACS radar planes to Saudi Arabia.

Others, however, have not been so successful. For example, the Budget Impoundment and Control Act provides, among other things, that if the President impounds already budgeted funds, either House of Congress, acting within forty-five days of the receipt of such information, may require the President to spend those funds. In 1976, the General Accounting Office reported that President Ford had violated the act by failing to report the impoundment of 126 million dollars budgeted for child nutrition and education programs until after the adjournment of the annual session of Congress. By the time Congress had reassembled, the government had entered a new fiscal year, and thus lacked any power to force him³⁹ to spend funds in the previous year's budget.

It has also been asserted by Miller and Knapp that the War Powers Act, which allows Congress to remove troops placed in combat situations by the President, if, after 60 days, a majority of both houses of Congress do not consent to the deployment of the troops, is actually an empty shell which would never be invoked in the case of a Presidential commitment of troops to a combat situation. This is partly due to the fact that, as in the Mayaguez incident, often the military action in question would be terminated long before the time limit in which the President could freely act would be reached.

Second, the need and tendency for national unity in crisis situations seems to suggest that it

would be rather unlikely for Congress to override the President should any conflict last over the sixty-day limit. The War Powers Act thus seems to be another Congressional veto provision which has had little effect in practice in spite of its theoretical goal.⁴⁰

In short, though the Chadha decision has the potential to return the power to the President to institute freely his foreign and domestic policy, it is doubtful, in at least the instances cited above, that the President had ever lost it.

Legislative Remedies

Not long after the Chadha decision was reached, then Secretary of the Interior, James Watt, wrote a letter to Representative Morris Udall informing him that due to the Supreme Court's recent Chadha decision, Udall's House Interior Committee no longer had the authority to ban the Interior Department's controversial Montana coal sales.⁴¹ Although this legal opinion may have been technically correct, the executive departments and regulatory agencies would do well not to assume too much power as a result of the Chadha decision.

F. M. Kaiser, a senior research analyst for the Congressional Research Service, in seeming anticipation of the Chadha decision, wrote an article detailing the techniques that Congress has successfully used in the past to overturn agency rules, and suggests them as possible alternatives to the legislative veto. Interestingly enough, Kaiser suggests five statutory methods and six nonstatutory methods which Congress has at its disposal to regulate administrative agencies other than the veto. All, of course, are not equally efficacious.

The first method is the statutory rejection of a regulatory rule. This is a difficult and time-consuming procedure requiring the agreement of both Houses of Congress and the signature of the President. It has, however, the advantage of being a very effective method of overturning agency rules. In fact, the definition and clarity which necessarily accompany a statute make the statutory rejection a much more powerful refutation of an agency rule than a legislative veto.⁴²

Second, Congress has the authority to cut off funding for any regulatory program or, if it chooses, for the enforcement of a particular rule. Though this is an undeniably effective method for enforcing the legislative will regarding the enforcement of regulatory agency rules, it too has its drawbacks. For this method to be effective, it is necessary for Congress to reimpose the budget restriction on an annual basis. Besides the fact that yearly action is necessary, some regulatory activities, unfortunately for Congress, fall under budget allocations which are virtually indivisible.⁴³

Third, the bill which originally authorizes agency regulation in a certain area could require that specified agencies consult on possible regulations pursuant to the legislation. The establishment of this or other procedural requirements, could provide new insights and perspectives on possible rules and, in any case, would slow down the rule-making process which would make Congressional oversight easier.⁴⁴

Fourth, Congress could also require that agencies submit their proposed rules for congressional review before implementation. Though Congress no longer has the power to veto any objectionable rules that it might find, the fact that an agency's proposed regulations would be reviewed might result in more careful drafting of agency regulations.⁴⁵

The final statutory method which Kaiser suggests has been the most popular to date in regulating agency functions. Congress, it must be remembered, holds the ultimate trump of altering the authority of regulatory agencies. This could be accomplished in a variety of ways. First, Congress can grant exemptions of authority to the agency head. Second, it can remove areas from the jurisdiction of the entire agency. Third, it can, by statute, end regulatory rule making activities in certain areas. Fourth, it can provide certain organizations subject to agency regulations with waivers from such agency regulations. Fifth, it can transfer the regulatory authority from one agency to another more apt to comply with Congress. And sixth, Congress can, if it wishes to do so, completely deregulate the industry in question.⁴⁶ Although this method can be effective, it can also be dangerous.

Sometimes the change of agency jurisdiction to frustrate the implementation of objectionable regulation causes confusion as to which, if any, regulatory agency is concerned with which regulatory activity. This confusion tends to leave some areas which need regulation completely unregulated and, in the case of waiver provisions, leaves some businesses completely free from all regulation under a particular agency in what seems to be a discriminatory practice.

The nonstatutory methods which Kaiser suggests, would also seem to have considerable potential to regulate agency rules. First, pursuant to its legislative oversight, investigative, and confirmation functions, Congress could instigate an embarrassing oversight hearing into the regulatory actions taken by a particular agency. Second, it could establish permanent subcommittees to oversee agency rule making in general. Third, it could include with each bill which authorizes agency rule making Congressional instructions regarding such implementation.

Fourth, members of Congress could make floor statements critical of ongoing or proposed regulatory programs. Finally, congressional offices concerned with the implementation of a particular piece of legislation could enter into direct contact with the regulatory agency assigned to administer the bills implementation to offer their input.⁴⁷

Kaiser points out that due to the nature of politics, these nonstatutory methods may prove to be more effective in the long-run in overseeing agency activities⁴⁸ than the statutory methods he has cited above. However, it should be noted that they offer no direct effect on the rules made by agencies. They are only attempts to pressure the agency in question into conforming with the congressional will concerning implementation of its legislation.

The main reason Congress opted to use the legislative veto so extensively was due to the relative ease it provided Congress in dealing directly with specific agency functions. All of the options mentioned above by Kaiser have their relative strengths and weaknesses, but it should be noted that to achieve the same result, virtually all of them require considerably more effort on Congress's part than did the legislative veto.

Senator Jacob Javits, a proponent of the veto, points out that the policy of congressional delegation of legislative authority to the executive branch is too deeply imbedded in governmental policy to be reversed.⁴⁹ But, if Congress now has to spell out to the regulatory agencies with each bill just exactly what regulations they can and cannot make, or if it has to go through strenuous machinations to negate the effectiveness of one rule without damaging the regulation of others, it will be little advantaged by such a policy.

In light of the many methods offered by Kaiser through which Congress can control regulatory agencies, the question raised by the Chadha decision is not whether Congress has the power to regulate administrative agencies. Rather, the question seems to be whether or not, in view of the time requirements which such action would cost an already overburdened Congress, the legislative branch will have the will to impose its power on such agencies.

It is my conclusion that Congress, while not relinquishing the power to regulate administrative agencies, will find that the loss of the legislative veto will require the use of methods which are not nearly as efficient. Consequently, Congress will probably continue to regulate what are, in its opinion, the most serious administrative abuses of legislative authority, but it will not have the time to regulate as completely the implementation of its legislation as it has in the past. The result should prove to be a return of substantial initiative to the executive and independent regulatory agencies in the administration of legislation.

Though the legislature, in spite of the Chadha decision, retains the power to exercise control over regulatory agencies, should they decide to use it, it is not at all clear that in the absence of the veto it will be able to retain much, if any, of its authority over presidential initiatives.

Although Kaiser's suggestions would seem to be a powerful congressional tool in overseeing administrative agencies, it is doubtful that many of these techniques can be used successfully to regulate presidential initiatives. Administrative agencies, for the most part, owe their existence to Congress; therefore, Congress can manipulate their jurisdiction as it chooses. However, the President can claim authority from the Constitution, which puts him on a coequal basis with

Congress. As Kaiser suggests, the legislature does have the final trump of refusing to finance any presidential actions it opposes. But, it is not nearly so easy to cut off the funding of presidential programs as it is to restrict the budgets of administrative agencies. In the first place, it is the President himself who submits the budget to Congress. Theoretically, this does not affect the power of Congress to alter the presidential budget, but practice seems to indicate that the executive preparation of the budget can be a large advantage to the President in the preservation of his programs.⁵⁰ Besides this fact, the Congress, except in rare circumstances, is not unified against the President. The President, whoever he may be, can count on at least minimal support from those who are in his party, and from those who support his spending programs. Consequently, though it is not impossible, it is very difficult to withhold appropriations from a spending program which the President truly desires to implement.

In the past, congressional attempts to control the President through the legislative veto have suffered from the failure of Congress to clarify just what was meant by certain terms used in the veto provisions or by the failure of the veto to really propose an acceptable remedy to the presidential action in question. The President has often used these ambiguities to his advantage. Note, for instance, the funds for child nutrition and education which were successfully impounded by Ford in spite of the Budget Impoundment and Control Act, and the failure to invoke the War Powers Act in the recent crisis in Lebanon due to Reagan's refusal to acknowledge that the Marines had entered into "hostilities."⁵¹

It is probable that Congress will attempt to gain some say over the acceptability of presidential initiatives which it has apparently lost through the invalidation of the legislative veto. I

would suggest that in doing so, Congress repeal any veto legislation such as the War Powers Act which contains possibly ambiguous terms behind which the President could hide. Then, it should replace such vetoes with statutes which either define constitutional terms or require that certain presidential actions be carried out subsequent to the Constitution. For instance, if Congress desired to regain the power to declare war, it could repeal the War Powers Act, and in its place pass a statute defining exactly what a state of war is. Since the Constitution gives to Congress the power to declare war, should a President continue to carry on hostilities after he has surpassed the congressional definition of what a state of war is, he would be subject to impeachment by the House of Representatives. It is interesting to note that, in such a proceeding, the jury would be the Senate, and would presumably recognize the validity of its own legislation. The President would, of course, have recourse to the courts to challenge the statute, but, it seems to be a strong possibility in view of past cases involving war powers, that the court would find that the question was a political one, and would not accept the case for argument. However, if the Court were to accept the case, the Congress could note that the Supreme Court has held in Gibbons vs. Ogden that the power granted to Congress to regulate commerce is also the power to decide what commerce is.⁵² It does not seem to me to be a great leap of logic to assume, then, that the power to declare war is the power to decide what war is. It would, in any case, be seemingly difficult for the Supreme Court to declare such a statute unconstitutional and still maintain that Congress had any meaningful power to declare war. Nonetheless, if the courts were to hold the statute unconstitutional, Congress would still have recourse to the nonstatutory method of an oversight hearing which, though time-consuming and im-

practical in the long-run, could bring some political pressure to bear on the President.

Using this same method, and with a little imaginative legislation, Congress might regain much of the authority over presidential initiatives that it seemingly lost through the Chadha decision. For instance, Congress might pass a statute which required that all arms negotiations be conducted by treaty. If such a method were to be held constitutional, or if the courts refused to hear the case due to its nature, Congress would regain the power they seemingly lost through the invalidation of the legislative veto provision in the International Security Assistance and Arms Control Act.

It might be noted, however, that some serious disadvantages accompany this method of action. First, Congress must try to regain control over presidential initiatives in a piecemeal fashion. There appears to be no blanket method through which Congress could regain the control over the President it has apparently lost through the Chadha decision. If Congress cannot stake a valid constitutional claim in areas in which it desires to regain some control over presidential initiatives, it will probably never regain it. Second, any definitional statutes passed by Congress are bound to be somewhat arbitrary; they cannot, consequently, constitute a cure-all in terms of regaining for Congress the discretionary powers it desires. Third, and most significantly, any such measures would almost certainly have to be passed over presidential vetoes. The super-majorities required to pass such legislation, in light of party and other allegiances, would be most difficult to obtain.

It is an inescapable conclusion, considering these obstacles, that the Chadha decision has given to the President the unique power over much of the U.S. foreign and domestic policy he

enjoyed before Congress began to restrain the Presidential office through legislative vetoes. Though there are methods through which Congress could reassert its check on presidential power, it is doubtful, given the political considerations involved, that it would ever be able to successfully implement them. And, even if it were to successfully implement some such legislation, it would probably be impossible, without the President's acquiescence, to reobtain the broad control over the President which Congress enjoyed before INS vs. Chadha.

Conclusion

The Supreme Court, in its Chadha decision, effectively invalidated all legislative actions which are not subjected to bicameral approval and presentment to the President for his signature, other than those specified in the Constitution. This decision seems to have effectively invalidated all uses of the legislative veto.

This veto has been an effective tool for Congress in controlling administrative agencies and, to some degree, presidential initiatives. Its invalidation will require Congress to use less efficient means for overseeing regulatory activity. This will have both positive and negative results. For instance, Congress will probably be more careful in the content of its legislation and will be less able to change agency regulations subject to pressure from special interest groups. As well, Congress will probably introduce procedural barriers to slow down immature regulatory activity. However, as congressional oversight costs Congress more time, it is apt to engage in less of it. This will return a considerable degree of discretion to the appointed agency officials of the executive branch who are likely, in some instances, to frustrate the legislation's original intent. Due to the lack of checks on government bureau-

cratic personnel, and the time-consuming methods left to Congress to regulate their activity, probably only the more serious misapplications of legislative intent will be rectified by Congress.

With the Chadha decision, Congress also loses considerable ability to control presidential initiatives. Though again, theoretically, Congress is not left without recourse; political realities seem to suggest rather strongly that Congress will fail to regain, in any significant measure, its former control over the President.

Despite the fact that the legislative veto has been a useful tool to Congress, its utility has not, and perhaps should not have, saved it from being declared unconstitutional and thus void. But, in its refusal to acknowledge the practical application of the veto, the Court has refused to consider the alternatives left to Congress in its absence. In so doing, it has, in my opinion, promoted the ascendancy of the executive branch over the legislative, which, in the intent of the founders, would probably have been at least as unconstitutional a concept as the legislative veto.

ENDNOTES

¹Safire's Political Dictionary (1978), s.v. "One-House Veto," p. 485.

²David A. Martin, "The Legislative Veto and the Responsible Exercise of Congressional Power," Virginia Law Review 68 (February 1982):267; Immigration and Naturalization Service Vs. Chadha, No. 80-1832, slip op. at 15 (U.S. June 23, 1983) (White, J., dissenting).

³Editorial Comment, "The Constitutionality of the Legislative Veto," William and Mary Law Review 23 (Fall 1981):123-24.

⁴Ibid., p. 124.

⁵INS vs. Chadha, No. 80-1832, slip op. at 2-7 (U.S. June 23, 1983).

⁶Ibid., pp. 7-22.

⁷Ibid., p. 25.

⁸Ibid., pp. 26-28.

⁹Ibid., p. 31.

¹⁰Ibid., pp. 35-36.

¹¹Ibid., p. 32.

¹²Ibid., p. 34.

¹³Ibid., p. 39.

¹⁴INS vs. Chadha, No. 80-1832, slip op. at 2 (U.S. June 23, 1983) (Powell, J., concurring).

¹⁵Ibid., p. 1.

¹⁶Ibid., p. 1.

¹⁷Ibid., pp. 9-10.

¹⁸Martin, "The Legislative Veto and Responsible Exercise of Congressional Power," p. 262.

¹⁹Burger, Court's Opinion in INS vs. Chadha, p. 24.

²⁰White, Dissent in INS vs. Chadha, pp. 3-4.

²¹Robert H. Jackson, "A Presidential Legal Opinion," Harvard Law Review 66 (June 1953):1361.

²²Burger, Court's Opinion in INS vs. Chadha, p. 24.

²³Robert W. Ginnae, "The Control of Federal Administration by Congressional Resolutions and Committees," Harvard Law Review 66 (February 1953):581-83.

²⁴Ibid., p. 582; Editorial Comment, "The Constitutionality of the Legislative Veto," p. 124.

²⁵White, Dissent in INS vs. Chadha, p. 21.

²⁶Ibid.

²⁷Edith Green, "The Road is Paved with Good Intentions," Forum Address given at Brigham Young University, January 25, 1977.

²⁸Ibid.

²⁹Ibid.

³⁰Jacob K. Javits and Gary J. Klein, "Congressional Oversight and the Legislative Veto:

A Constitutional Analysis," New York University Law Review 52 (June 1977):459.

³¹Herman C. Pritchett, "The President's Constitutional Position," In Rethinking the Presidency, (Boston: Little, Brown and Company, 1982), p. 136.

³²Barbara Hinkson Craig, "The Power to Make War: Congress's Search for an Effective Role," Journal of Policy Analysis and Management 1 (1980):319.

³³White, Dissent in INS vs. Chadha, p. 3.

³⁴Burger, Court's Opinion in INS vs. Chadha, p. 24.

³⁵White, Dissent in INS vs. Chadha, p. 3.

³⁶Green, "The Road is Paved with Good Intentions."

³⁷Editorial Comment, "The Constitutionality of the Legislative Veto," pp. 126-29.

³⁸Javits and Klein, "Congressional Oversight and the Legislative Veto: A Constitutional Analysis," p. 460.

³⁹Arthur S. Miller and George M. Knapp, "The Congressional Veto: Preserving the Constitutional Framework," Indiana Law Journal 52 (Winter 1977):393.

⁴⁰Ibid., p. 392.

⁴¹"Free Enterprise System Disappoints Jim Watt," Salt Lake Tribune, September 20, 1983, p. A9.

⁴²F. M. Kaiser, "Congressional Action to Overturn Agency Rules: Alternatives to the

Legislative Veto," Administrative Law Review 32 (Fall 1980):670.

⁴³Ibid., p. 688.

⁴⁴Ibid., p. 670.

⁴⁵Ibid., p. 669.

⁴⁶Ibid., pp. 673-74.

⁴⁷Ibid., p. 669.

48

⁴⁹Javits and Klein, "Congressional Oversight and the Legislative Veto: A Constitutional Analysis," p. 460.

⁵⁰Donald H. Haider, "Presidents as Budget Policymakers," in Rethinking the Presidency, ed. Thomas E. Cronin (Boston: Little, Brown, and Co., 1982), p. 371.

⁵¹"President Disinclined to Say Magic Words," Salt Lake Tribune, September 19, 1983, p. A11.

⁵²22 U.S. (9 Wheat) 1, 6 L. Ed.d 23.

BIBLIOGRAPHY

Books

Bolton, John R. The Legislative Veto: Unseparating the Powers. Washington: American Enterprise Institute for Public Policy Research, 1977.

Haider, Donald H. "Presidents as Budget Policy-makers." In Rethinking the Presidency, pp. 371-87. Edited by Thomas E. Cronin. Boston: Little, Brown, and Co., 1982.

Pritchett, C. Herman. "The President's Constitutional Position." In Rethinking the Presidency, pp. 117-38. Edited by Thomas E. Cronin. Boston: Little, Brown, and Co., 1982.

Periodicals

Craig, Hinkson Barbara. "The Power to Make War: Congress' Search for an Effective Role." Journal of Policy Analysis and Management 1 (1980):317-31.

Editorial Comment. "The Constitutionality of the Legislative Veto." William and Mary Law Review 23 (Fall 1981):123-38.

Gelhorn, Ernest. "Adverse Publicity by Administrative Agencies." Harvard Law Review 86 (June 1973):1380-1441.

Ginnæ, Robert W. "The Control of Federal Administration by Congressional Resolutions and Committees." Harvard Law Review 66 (February 1953):569-611.

Jackson, Robert H. "A Presidential Legal Opinion." Harvard Law Review 66 (June 1953):1353-61.

Javits, Jacob K. and Klein, Gary J. "Congressional Oversight and the Legislative Veto: A Constitutional Analysis." New York University Law Review 52 (June 1977):455-97.

Kaiser, F. M. "Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto." Administrative Law Review 32 (Fall 1980):667-711.

Martin, David A. "The Legislative Veto and the Responsible Exercise of Congressional Power." Virginia Law Review 68 (February 1982):253-302.

Miller, Arthur S. and Knapp, George M. "The Congressional Veto: Preserving the Constitutional Framework." Indiana Law Journal 52 (Winter 1977):367-95.

Supreme Court Slip Opinions

INS v. Chadha, No. 80-1832, slip op. (U.S. June 23, 1983).

INS v. Chadha, No. 80-1832, slip op. (U.S. June 23, 1983) (Powell, J., concurring).

INS v. Chadha, No. 80-1832, slip op. (U.S. June 23, 1983) (White, J., dissenting).

Magazines and Newspapers

Coates, James. "Free Enterprise System Disappoints Jim Watt." Salt Lake Tribune. 20 September 1983, p. A9.

Mauro, Tony. "Will Congress' Veto Power Be
Vetoed?" Nations Business 71 (February
1983):62-63.

Pike, Otis. "President Disinclined to Say Magic
Words." Salt Lake Tribune. 19 September
1983, p. A11.

EARLY ELECTION PROJECTIONS: DO THEY AFFECT VOTER TURNOUT?

Shelley Snow*

The political emphasis in the United States is nominally on participatory democracy, and yet an increasing number of people are not taking advantage of their greatest opportunity to participate--the vote. Voter turnout in this country is declining, and everyone involved in the political process is concerned about that decline. One contribution to this decline, according to many politicians, voting rights groups, and others, is the influence of national television and radio broadcasts of early election predictions and projections on the voting behavior of the American electorate. Their concern seems to be that if Westerners, particularly those living in the five Pacific states (California, Oregon, Washington, Alaska, and Hawaii), hear the projected outcome of an election before the polls close, they will be less likely to get out and vote. The early predictions, they feel, are not conducive to maintaining an atmosphere of fair elections and maximum participation. The networks, as well as many academicians, contend, however, that there is not enough evidence to show that early election predictions have any influence on voting behavior, and that any attempts to restrict the broadcasting would violate media rights guaranteed by the First Amendment. This paper will examine the arguments of both sides in order to determine what problems, if any, exist in early election broadcasts.

*Shelley is a senior majoring in Political Science and has worked as a judge in the ASBYU Commons Court. This fall she will be working on a Master's degree in Political Science at the University of Tennessee.

History of Election Broadcasting

The changes in election reporting over the past sixty years can be attributed to the development of broadcasting, computer, and polling technologies--first in radio and later in television. In earlier election reporting, networks often hired field assistants to report newly counted returns in various jurisdictions. The process was slow and inaccurate, however, and the networks had to spend so much time gathering and analyzing the data¹ that little air time was given to the returns.

The year 1952 brought the advent of both television and computer processing, changing the course of network election broadcasts. The computers, though primitive, could count and analyze votes more efficiently, and announcements could be made more quickly. However, the networks realized the potential inaccuracy of computer returns, and used the analysis with caution. In 1956, the networks began using more advanced video and computer technology, using for the first time elaborate visual aids such as maps that lit up to illustrate different voting regions for viewers. Two trends began in 1956: an increased emphasis on special reports, and the practice of commenting on a race and predicting its outcome.²

Beginning in 1960, the networks subtly shifted their mode of election reporting and took on a more aggressive way of broadcasting election-night news: rather than passively reporting vote results, they began interpreting and analyzing the data for their viewers. In 1960, the race was not only between the two presidential candidates but also between the networks to see who could present the results of that close election race first.

The competition between networks increased in 1964, to the point that for the first time early election predictions were given even before the West Coast polls closed. A cooperative effort between the three networks, called the National (now News) Election Service (NEW), was established to promote efficiency in returns and analysis. The NEW sped up network returns considerably, enabling them to give early projections, and promoting extensive discussion over the merits and effects of such broadcasts. Nineteen sixty-four was also the first year that research was conducted into the problem of early election projections. Congressional hearings were held in 1967 to study the perceived problems.

The 1968 and 1972 elections were much the same, except that the 1972 race was so lopsided, the outcome was evident with or without news commentaries. One development which became clear, however, was that networks were relying less on actual vote count and more on other data such as sample data analysis and exit polls.

The 1980 election was characterized by cries of outrage from politicians and voting rights groups that the early projections are unethical and imposing. More hearings were held to again go through the arguments that had been heard since before 1960.

Criticism of the networks' projections ranges from mild comment to bitter diatribe. Most of the critics believe that the early election projections are disruptive to the electoral process, that early projections demean the value of the individual vote (particularly of those in the West), and therefore carry no useful societal purpose. Some witnesses in the 1981 hearings before Congress testified of the "terrible side effects" of the "modern reporting machines of 1980," and quoted some discouraged voters as saying, "We have

been cheated!" and "We don't count! Why bother to vote?"⁴ Speaking of the "infection by projection"⁵ problem, San Francisco Mayor Diane Feinstein said, "Clearly, the vote of the West is not equal to the vote of the East."⁶ Marvin Field of San Francisco's Field Research Corporation called the networks' reporting "irresponsible." "My feeling is, whether there was a drop-off in turnout or not, it's psychologically wrong for quasi-officials⁷ to declare a winner before the polls are closed." On this note, Truman Campbell, Chairman of the California State Republican Party said, "I think the analogy is that nobody goes to a ballgame in the ninth inning when the score is 100 to nothing." And that's just about what's happened here."⁸ Some even claim that the predictions "are in the nature of a created event by the networks, seemingly for the sole purpose of fostering inter-network competition."⁹

Many critics cite the Supreme Court decision in CBS vs. The Democratic National Committee which states:

Congress intended to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligation. Only when the interests of the public are found to outweigh the private journalistic interests of the broadcaster will government power be asserted within the framework of the Act.¹⁰

Is the public interest in this case outweighed by private journalistic enterprises? Is the public interest at stake at all? This criticism of the networks basically assumes that exposure to election predictions and projections immediately before voting is sufficient to make the potential voter act in a way somehow different from how he would have, had he not heard the projections.

The networks and the majority of academicians who have studied this problem argue differently. The networks say that there is no definitive proof whatsoever that projections have an effect on voting behavior--either to make a voter change his intended vote or to decide not to vote at all. Statistical evidence in study after study, beginning in 1964, shows no influence on voter behavior, or an influence so small that it can hardly be detected. William Leonard, President of CBS, said:

Our position is clear and uncomplicated. Our job is to report quickly and accurately as we can information we have on any subject, including election results. To . . . "exercise voluntary restraint" and withhold information we know to be true would be a violation of our fundamental responsibility.¹¹

Warren Mitofsky, Director of the CBS Election and Survey Unit, said in a telephone interview:

While you're suggesting that the people in California shouldn't know the votes in Florida (i.e., the Eastern States), what you're also saying is that people in Florida shouldn't know it either. Now I don't think these people would believe that there's a right not to know. California's wish to keep the votes secret really is infringing on Florida's right to know how they've done and what they're (the polling places) making publicly available.¹²

The networks use not only broadcasts to make election-night projections, but also a number of other modes including telephone calls, telegrams, news wire services, and newspapers. "Are we to muzzle every possible avenue of information about the progress of the election for the entire election

day and night?"¹³ The media have stated that they are willing to listen,¹⁴ but to solid evidence--not perceived notions.

Before one considers broadcasts and their effect, one must first consider basic theories concerning the media. First, for the media to have an impact on an individual, that individual must pay attention to it. In other words, not only must one watch the broadcast, one must also listen to it. It has been proven that both attention and recall of news is greatest among the highly interested--the most attentive and the strong partisans.¹⁵ One must consider also an effect called "selective exposure," which is the tendency to select out of broadcasts only information that conforms to ideas and values.¹⁶ Even an individual listening to the news might select only those things he wishes to hear and ignore those he does not wish to hear, such as the fact that his preferred candidate is purportedly losing. Even if the voter does listen to the news and does not subconsciously select out the information that his candidate is losing in certain states, it may not affect his behavior. Wolfinger and Rosenstone report that "regardless of how firmly a person believes his vote will not affect the outcome, the likelihood that he will vote increases with his interest in the election."¹⁷

With this basic information, we can address the issue at hand by considering two points: first, whether there is a gross influence on individual behavior; and second, whether the early projections have a net result on the actual outcome of the election. These will be discussed by exploring three separate subtopics: (1) potential and actual level of exposure; (2) effects of exposure on the vote switching; and (3) effects of exposure on turnout.

Exposure to Returns and Time of Exposure

Ironically, this is the area in which "anti-projectionists" (those who criticize early election projections) feel they hold the strongest argument against early projections, and yet it is the one area in which there is the most agreement. The actual time the networks began their projections in any given election year is recorded and is therefore incontrovertible. In 1960, all three networks projected Kennedy as the winner by 10:30 p.m. EST (half hour before most polls close in the West). In 1964 the presidential victory was so lopsided (even before the election itself began) that calls were made fairly early, precipitating dissent from the West. In 1968, the race was so close it was difficult to make predictions until the race was completely over, long after all the polls had closed.

Like 1964, the race in 1972 appeared from the start to be a landslide, so that all the networks were off the air by 2:00 a.m. EST, again precipitating cries of outrage. The 1976 election was much like the 1968 race--too close to call--and the first prediction came at 3:20 a.m. EST Wednesday morning. The 1980 presidential race, however, was different from the previous races; the race was deemed as close, but NBC predicted Reagan the winner at 8:15 p.m. EST. ABC declared Reagan the winner at 9:52 p.m., and CBS at 10:32 p.m. The interesting twist in this election was the concession of the race's incumbent--Carter--which came at 9:45 p.m. EST, before either ABC or CBS had predicted a winner. Thus, the only prediction that could possibly have influenced Western votes in the 1980 race was the NBC broadcast, given only an hour and a half before Carter's concession speech. The anti-projectionists claim that these early projections are the main problem in the issue of influence on voting behavior; at least in the case of the 1980 election, many more issues were centrally involved.

But while the times of the returns are incontrovertible, the actual effects of the exposure to returns are not. To determine actual effects of exposure on voting behavior we must first single out the potential effects of exposure on behavior. The potential for any voter to be exposed to returns can only arise, obviously, after the broadcasts have started. Since most voters in the United States have a television set or radio, or access to one, the potential for exposure to returns at any given time after they have started is fairly high. According to one study, two-thirds of the studied population recognized they had been exposed to predictions at one time during the elections day.¹⁸ Another study claimed that 92 to 96 percent of its studied population had been exposed.¹⁹ Therefore, in the course of the day a large proportion of the population heard or watched some kind of election news.

In determining the influence of voting behavior, we must look at that portion of the eligible voting population that voted after the broadcasts had begun. Most sources seem to agree that, particularly in 1964, about two-thirds of the voting population had voted by the time the projections started at approximately 7:00 p.m. EST, given time for pre-result commentaries, etc. (see Table 1 in Appendix). One regional breakdown indicates that by 7:00 p.m. EST, 95 percent of the East had voted, 89 percent of the Central region, 69 percent of the Mountain region, and 64 percent in the Pacific region.²⁰ Thus, a maximum of only 33 percent to 36 percent of the Western voters could potentially have been influenced by the broadcasts, assuming that 100 percent of that one-third had been listening or paying attention to any election news broadcasts. However, a noted study done by Aage Clausen, Study Director, Survey Research Center, at the University of Michigan, concluded that nationwide only 5 percent had heard an election broadcast

and voted afterward, and in the Pacific States he found only 14 percent (this study will be discussed below). In California Harold Mendelsohn found only 12 percent who had heard and voted afterwards, and Douglas Fuchs found only 13 percent. The small deviations in these three studies' statistics tends to give credence to their findings, and support to their theory that there is a statistically small number of people that actually hear the reports and vote afterwards.

Professor John E. Jackson at the University of Michigan, however, stated in a study that the networks in 1980 commented on the results of the election long before they actual declared any official results, thus accounting for the number of people that believed they heard the predictions earlier than they possibly could have. Therefore, people were influenced in their behavior by the media even before the actual network declarations were made.²¹ The rebuttal for this argument is that in an upcoming election, comments or even preliminary survey results can be seen or heard days and even weeks in advance. Thus, network commentaries have no relation to projections in that viewers understand commentaries are opinions, and projections are (nominally) based on actual results. To prove that many people hear about the election before results are broadcasted, Kurt Lang did a study and found that 14 percent of Eastern voters, who were not susceptible to broadcast projections before voting, had heard or seen something that indicated to them how the election was going.²²

Thus, only one-third of the Western voters, according to most reports, is potentially affected by early election broadcasts, and only 14 percent at most have been found to have listened to the reports and to have voted afterwards. To determine the actual effect on behavior, actual voter behavior must be studied. The only way behavior can feasibly and with any degree of scientific

accuracy be measured is by survey polls (which of course can be problematic in themselves if they are poorly worded or have biased or inaccessible questions, etc.). To measure change in voting behavior due to election-day broadcasts, a poll must measure pre-election intent and actual election behavior. Changes in intended and actual behavior may give us more clues as to possible effects of media on voting decisions.

Effects of Exposure on Vote Switching

"Vote switching," otherwise known as the "bandwagon" or "underdog" effect, is the change between pre-election candidate preference and post-report of voting. Vote switching and turnout (discussed in the next section) are the two main areas of voter behavior that anti-projectionists are concerned with. Their claim is that early predictions influence people to either change their vote intentions to vote for the reported winner (bandwagon effect); to change their intentions and vote for the reported loser (underdog effect); or not to vote at all even though they had intended to do so.²³ Anti-projectionists fear that change in preference intention could change the outcome of an election. Senator Hartke in front of a Senate hearing fielded this hypothetical example:

The late President Kennedy won the 1960 National election by a 112,692 plurality vote. If one voter in each of the 173,000 voting precincts in the U.S. had switched his vote from Mr. Kennedy to Richard Nixon, Nixon would have won the popular vote. However, this switch in votes cast would not automatically have meant a different president in 1960.

Realistically, had there been a switch of one vote in Nixon's favor in

each of the 10,400 precincts in Illinois plus a switch of nine votes in each of the 5,000 precincts in Texas, Mr. Nixon would have tallied the required 270 electoral votes and would have been our president.²⁴

The question is, how likely is a voter to change his vote? Unlike the hypothetical example given above, quite a bit of statistical evidence has been gathered about vote switching.

An important consideration in examining vote switching is the time the voter made his decision about election. Common sense would tell us that more newly formed decisions about who to vote for or whether to vote at all would be more susceptible to influence by election predictions than would be decisions that had been made, for example, since the convention. According to Aage Clausen, the popular idea that a majority of people make their candidate choice late in the game is a fallacy. He says that only 2 to 4 percent of voters actually make their decisions on election day according to pre- and post-election interviews (see Table 2). In an analysis of the 1964 election, scholars such as Clausen, Mendelsohn, Lang and Fuchs made various conclusions concerning vote switching. First, the percentage of voters found to have reached their decision on election day was very small: Clausen, 4 percent; Lang, 4 percent; Mendelsohn, 8 percent. Second, the voters who were found to have switched their vote according to their polled voting intentions was also small: Clausen, 5 percent nationwide; Fuchs, not more than 4 percent; Mendelsohn, 3 percent at the most.²⁵

Dr. Clausen's survey divided the studied voters into two groups: group A, those who voted before broadcasts or who voted after but did not hear the broadcasts; and group B, those

who had voted after they heard the predictions. If the predictions did cause a change in preference, then group B would have a higher deviation from intentions. In fact, the proportion of switches is the same in both groups: one out of twenty. Thus, although this does not prove the predictions had no effect, neither does it support claims that they do produce changes in behavior.²⁶ Also, not one of his 1,074 respondents mentioned election projections in connection with the reasons for his vote.

Like Clausen, Mendelsohn found that 97 percent of his 1,212 respondents voted as they said they would, with only 1 percent switching (two percent refused to say). Of that one percent (14 people), 12 voted for Goldwater and two for Johnson, indicating if anything a slight underdog effect. Warren Miller found similar results: four out of five eligible adult voters carried out their intentions. He says that there is no evidence exposure is associated with changes in behavior; in comparing voters who developed expectations about the result of the election as a result of hearing the predictions with those who heard but did not develop expectations, there was no difference in consistency of behavior (see Tables 3 and 4).²⁶

According to statistical evidence, then, the bandwagon or underdog effect does not seem to exist, or if so, in very minute percentages. Further evidence comes in the fact that 97 percent of Southern Californians polled disagreed with the statement: "If I have no clear preference, I like to be for the man who is running ahead."²⁸ Unfortunately, the anti-projectionists do not seem to have any statistical evidence arguing the existence of bandwagon or underdog effects, so there is little to which to compare the presented evidence. However, they argue that the early election projections do more than to simply make a voter change his preference; more

important, the projections influence him not to go to the polls at all. It is toward this issue--the effect of projections on turnout--that they point most of their arguments and criticisms.

Effects of Exposure on Turnout

Of these three sections of the issue of media influence, this one is the most hotly debated. Voter turnout has been consistently dropping since 1960 (see Table 5),²⁹ and politicians and voting rights groups want to find out why. Turnout dropped to a near low in the most recent presidential election, to 53.9 percent; this figure translates into nearly 74 million Americans who were eligible but failed to vote, the largest number in a presidential election in the nation's history, despite the surge of participation in the South. Turnout particularly in the West has been declining at a faster rate than in the rest of the country. The recent outcry, of course, is that media election coverage is responsible--in part if not completely--for the decline. The argument is that no one will get out and go to the polls and vote in an election they believe is already decided:

Common sense seems to indicate that a man who sits down to dinner just before going out to vote, switches on the TV and hears that so and so has already been declared the winner, might not engage himself in an exercise in futility.³⁰

In the three House hearings and one Senate hearing that have been held over the past 26 years, many have come forward to testify against the prediction procedures the networks use. March Fong Eu, California Secretary of State, testified that in 1980 her staff closely watched hour to hour percentages of voters going to the

polls, and based on those percentages judged the total percentage for the day to be 79.3 percent. However, only 77.24 percent actually voted, "suggesting a significant fall-off of participation after 5:00 p.m." She also cited a Field Institute Survey which found that 10 percent of those who said they were registered but failed to vote specifically blamed their failure on early projections. "That translates into some 401,000 non-voters."³² Former Congressman James Corman (CA) and Al Ullman (OR) both testified they believe their defeats were caused by early election projections, because, they said, participation declines hurt incumbents and media coverage cause that decline.³³ A Los Angeles Times poll in 1980 showed that 2.4 percent of registered voters claimed they did not vote because of early projections, and an L.A. county registrar said turnout was down 1 percent from the 1976 election in hours after the broadcast time. The Director of the Committee for Study of the American Electorate also testified that turnout declined in three out of five Western states most affected by broadcasts, and therefore some elections were decided by a little as 25 votes (in the case of a County Supervisor) and 800 votes (in the case of some Congressmen). Not only does turnout potentially affect the outcome of presidential races, it also affects (and more drastically) outcomes in local elections.

Dr. John Jackson gives a fairly convincing argument for effect of exposure on turnout. In his study done in 1980, he defines the intent to vote as the probability of voting. He estimates the probability of a person voting after 6:00 p.m. EST as a function of their stated intent, time left to vote, region, and exposure. Using probability statistics he shows that the probability of turnout is less after six than before six. The media, he concludes,³⁴ are responsible for that drop in probability. The two problems with this study, however, are (1) Can one use probability to

determine human behavior? and (2) While there may indeed be a drop in probability in turnout, there are many factors besides solely media influence that could account for the drop--particularly Carter's concessions at 6:45 PST in 1980.

The same basic problems are inherent in a Wolfinger study done in 1980. He tries to show that a 2.7 percent deviation from expected turnout to actual turnout "suggests that the networks did indeed affect Pacific voting in 1972."³⁵ The problems other than equating the perceived drop in turnout with effects of the media are (1) in 1972 the only election on the California ballot was the presidential; and (2) the census data he used was gathered weeks after the election and represents only one random member per household.

The networks and the majority of academicians completely disagree with the claims of these politicians and voting rights groups. The networks are as concerned as anyone about declining voter turnout, but they have found no conclusive evidence to prove that their projections contribute to the decline. When dealing with the effect of exposure on turnout, as with the last section, it must be remembered that we are dealing with 12 to 14 percent of the eligible Western voters--those who had been exposed and voted afterwards. Also, we are only dealing with the 1964, 1974, and 1980 elections (the only ones in which early predictions were made), even though the 1980 race was an anomaly due to Carter's concession.

A number of studies done after 1964 show that the effect of influence, if any, was negligible. Miller found that the great majority of the voters were stable on preference and participation (according to intent). The proportions of those who changed either preference or participation were the same for those who were exposed and unexposed (see Table 3).³⁶

Mendelsohn found that of his 1,074 respondents, approximately 1 percent did not vote though they had intended to, and in a one-hour post-interview not one of ³⁷ them mentioned exposure to election broadcasts. Fuchs and Lang both found similar results using pre- and post-election interviews and statistics.

Epstein and Strom in particular have developed an interesting argument. They say that the West's declining voter turnout relative to the rest of the country is only indicative of a trend, since in five out of six past presidential elections (both with and without early projections) Western turnout has been less than in non-Southern non-Western states (see Table 6).³⁸ In 1960 when the suspense was high, the rest of the country voted 4.4 percent more than the West. However, in 1964, with the broadcasts, the rest of the country only voted 1.5 percent more. And in 1972 Western turnout was actually higher than the rest of the country. If the assumption that network projections are reducing Western turnout is true, then in years when early predictions are made turnout should decrease substantially more. However, the opposite is true. In 1964, 1972, and 1980 Western turnout declines were less than for the rest of the non-Southern country. He concludes that "if anything, these data seem to indicate the perverse notion that early network projections cause Western turnout to increase!"³⁹

John Jackson criticizes the "unrealistic assumptions about elections and turnout" that these studies make, and says that many variables including salience of issues and candidate appeal "dominate these aggregate turnout statistics and thus obscure any impact on individual turnout for early reporting."⁴⁰ This may be true; however, it does show that Western turnout in general is not declining simply because of media influence.

The big concern among voting rights groups now is that networks depend more on exit poll predictions instead of actual election returns. The problem with this, the critics say, is that exit poll results are prone to large error, and an inaccurate prediction could mislead viewers. While in 1980 only one network used exit polls to make projections, in 1982 all networks did.⁴¹ This indicates a growing trend in the use of exit polls, enabling networks to make earlier and earlier projections even further impairing the voting process.

According to Warren Mitofsky, though, exit polls are a "red herring." CBS has been using exit polls since 1967, and they only use the information gathered in the polls to supplement raw election results. While they will gauge the progress of a race using exit polls, they "never, ever call on election based or exit polls--period."⁴³ While exit polls have the potential for abuse, they have been used fairly cautiously by the media, and do not presently appear to be a factor in changes in voter behavior.

Solutions and Conclusions

The solutions politicians have come up with to solve this perceived problem are many and varied. The networks themselves have suggested uniform polling hours, but some argue that some regions would sacrifice desirable voting times and there would be added expense in keeping polls open in late hours. Besides, the problems of exit poll predictions would still exist and would probably get worse. Some have suggested Sunday elections, but this might conflict with religious and recreational activities, would eliminate churches as polling places, and would entail substantial costs in opening public buildings on Sunday. A voting holiday has been proposed, but holidays cost the government \$18 million per day, and

recreational alternatives would doubtless be more attractive than voting. Congressmen have also suggested prohibiting the release of any election results until all polls are closed, but voting rights groups say that will force networks to rely more heavily on exit polls. One last proposal would prohibit any broadcasting of predictions before all polls were closed, but the obvious First Amendment violations would prohibit this proposal from being passed.

The question is, should legislation be passed on a perceived notion? No completely conclusive evidence on either side of this debate has been drawn to date. Congress has been debating this issue for at least 20 years and has not passed any legislation on it, indicating strong doubt that a problem really exists. All the researchers and voting rights groups have been able to conclude is that maybe there is an influence on voter behavior from early election projections. One voting rights group study states that, while they found "sufficient evidence to warrant concern," the "evidence of impact of projections on voter turnout was indicative rather than conclusive"⁴³ (emphasis added). While studies done to prove there is no relationship between early projections and voter behavior are inconclusive in the sense that they have not proven so beyond a shadow of a doubt, they are still highly reliable since one can never really demonstrate nonexistence scientifically. Overall, research has found little individual change in voter participation or preference during a campaign, and these findings have led to the generalization that the media has no discernible effect on voter behavior.

Besides the statistics, a close look at the logic--the basic assumptions--used by anti-projectionists will reveal a major discrepancy. The report done by the Committee on the Study of the American Electorate consists almost entirely of "proofs" that early election projections exist, and

therefore voter behavior is affected. The networks, though, fully concede to the allegations that they project early results, but do not concede to their effect on behavior. The logic of the anti-projectionists runs like this: the decline in voter turnout obviously results from the effect of early election projections, since many people will doubtless hear them, pay attention, and be influenced in their behavior. Since there are so many other potential long- and short-term forces at work on turnout, the assumptions made about the association between broadcasts and influence are incomplete, and therefore are not valid. The logic therefore is faulty.

One must also consider the three elections in which early predictions were made--1964, 1972, and 1980. In 1964 and 1972, the races were so lopsided that a landslide had been predicted for quite some time, and their outcomes were foregone conclusions. As Warren Miller says, it is useful to remember that election night broadcasts are simply an extension of all the coverage that has been going on during a campaign, and the creation of expectation concerning election results has gone on for months before any national election.⁴⁴ The 1980 race was a bit different, however; the race was deemed as close until the election started, and then the outcome was made readily apparent. While the projections were indeed relatively early, any statistics that might show that the projections affected outcome are skewed by Carter's concession, which came only an hour and a half after the first network prediction, and before the other two networks' predictions.

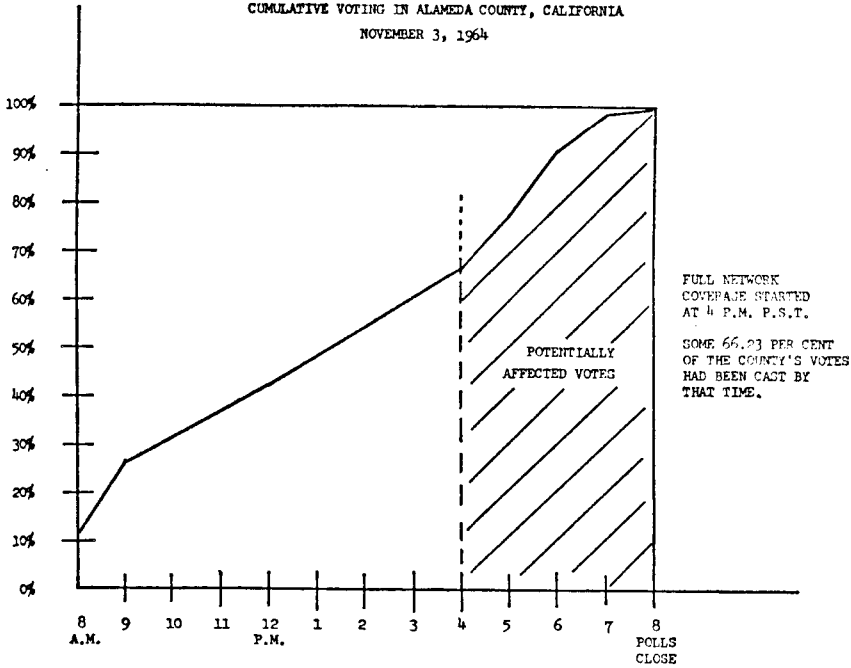
The problem in discussing an issue like this is the vast discrepancy in reports; some scholars using fairly similar techniques come up with completely different findings. However, one conclusion that can be drawn is that there is no immediate emergency, and no qualified evidence to call for a change in the present system. While

the networks should constantly be on guard to produce accurate results and to be certain that guesses are labeled as such, little can be done legislatively that would not infringe upon the media's First Amendment rights. The notion that "perception may be at least as important as the proof"⁴⁵ should not dominate legislative motivation for action. In comparison with influences on voter turnout such as registration procedures or interest in the election, the influence of election night coverage seems small indeed. Instead of worrying about problems that might exist, Congress should invest its time and money into more pressing problems concerning voter turnout.

APPENDIX

TABLE 1

CUMULATIVE VOTING IN ALAMEDA COUNTY, CALIFORNIA
NOVEMBER 3, 1964



NOTE: PERCENTAGES BASED ON A SAMPLE OF 302,882 VOTERS OUT OF A TOTAL OF 435,255.

*Taken from Douglas Fuchs, "Election-day Radio-
Television and Western Voting," Public Opinion
Quarterly 30 (Summer 1966):229.

TABLE 2
(In percent)

| Time of Decision | 1952 | 1956 | 1960 | 1964 |
|----------------------------|----------|----------|----------|----------|
| Before the conventions | 36 | 60 | 31 | 41 |
| At the time of conventions | 32 | 19 | 31 | 25 |
| After the conventions | 21 | 12 | 26 | 21 |
| Last 2 weeks of campaign | 9 | 7 | 9 | 9 |
| On election day | <u>2</u> | <u>2</u> | <u>3</u> | <u>4</u> |
| Total | 100 | 100 | 100 | 100 |

*Taken from Aage Clausen, "Political Predictions and Projections: How Are They Conducted? How Do They Influence the Outcome of Elections?" Hearings of the Telecommunications Subcommittee, U.S. House, 90th Cong., 1st sess., July 1967, p. 164.

TABLE 3

| <i>Turnover in preelection intentions and election day behavior</i> | <i>Percent</i> |
|---|----------------|
| a. No change from preelection choice for President and preelection intention to vote (or not to vote)----- | 78 |
| b. Changed in preference only; no change in participation----- | 13 |
| c. Changed, participation only (intended to vote but didn't or didn't intend to vote but did); no change in preference----- | 8 |
| d. Changed on both preference and participation----- | <u>1</u> |
| Total (N=1383)----- | 100 |

*Taken from Warren E. Miller, "Analysis of the Effect of Election Night Predictions on Voting Behavior," Hearings of the Telecommunications Subcommittee, U.S. House, 90th Cong., 1st sess., July 1967, p. 212.

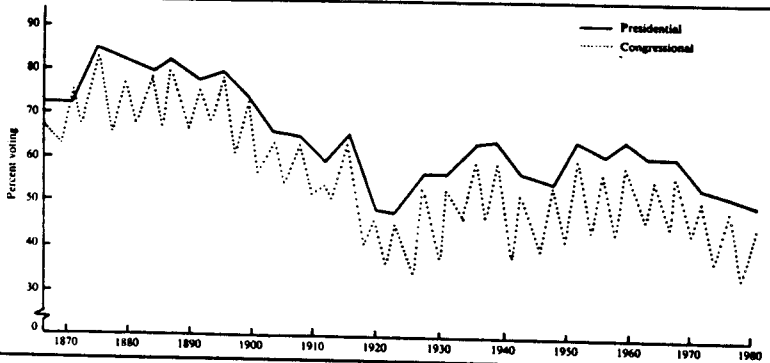
TABLE 4
(In percent)

| | Stable on preference and participation | Participation stable, preference changed | Preference stable, participation changed | Changed on both | Total |
|---|---|---|---|--------------------|-------|
| (1) Respondent felt he knew the outcome on election day because of information from the predictions he heard..... | 77 | 14 | 8 | 1 | 100 |
| (2) Respondent felt he knew the outcome on election day but did not get this information from the predictions which he heard..... | 83 | 10 | 6 | 1 | 100 |
| (3) On election day respondent did not know who was going to win, although he heard predictions..... | 79 | 14 | 6 | 1 | 100 |
| (4) Respondent did not hear predictions, but listened to election returns..... | 74 | 12 | 12 | 2 | 100 |
| (5) Respondent did not listen to election returns..... | 69 | 17 | 10 | 4 | 100 |

*Source: see above.

TABLE 5

FIGURE 1-2 Turnout of Eligible Voters in Presidential and Congressional Elections, 1868-1980



Sources: Historical Data Archive, Inter-university Consortium for Political and Social Research; U.S. Bureau of the Census, *Statistical Abstract of the United States*, 1980, 101st ed. (Washington, D.C.: U.S. Government Printing Office, 1980), p. 515.

*Taken from Wm. Flanigan and Nancy Zingale, *Political Behavior of the American Electorate*, 5th ed., p. 12.

TABLE 6

Turnout in the South, West, and the Rest of the U.S., 1960-1980*

| Year | South ^a (Change) | West ^b (Change) | Non-South, Non-West ^c (Change) |
|------|-----------------------------|----------------------------|--|
| 1960 | 40.3 +5.2 | 65.9 -1.1 | 70.3 -3.0 |
| 1964 | 45.5 +5.4 | 65.8 -4.8 | 67.3 -2.6 |
| 1968 | 50.9 +6.4 | 61.0 -1.9 | 64.7 -5.8 |
| 1972 | 44.5 +3.2 | 60.1 -6.8 | 58.9 -1.5 |
| 1976 | 47.7 +1.9 | 53.3 -1.7 | 57.4 -1.0 |
| 1980 | 49.0 | 52.6 | 56.4 |

*Regional turnout was calculated by dividing the estimated regional voting age population into the number of votes cast in the region. The data is taken from **Statistical Abstract**, 1979; Census Bureau, 1980, and Federal Election Commission 1981 as reported by Associated Press.

a. South includes the 11 former Confederate States.

b. West includes Alaska, California, Hawaii, Oregon, and Washington.

c. The District of Columbia is included after 1960.

*Taken from Epstein and Strom, "Election Night Projections and West Coast Turnout," American Politics Quarterly 9 (October 1981):482.

ENDNOTES

¹U.S., Congress, House, Committee of Energy and Commerce, Election Day Practices and Election Projections, Hearings Before the Telecommunications Subcommittee, 97th Congress, 1st and 2nd sess., December 1981 and September 1982, p. 153.

²Ibid., p. 153.

³Ibid., p. 154.

⁴U.S., Congress, House, Committee of Energy and Commerce, Early Election Returns and Projections Affecting the Electoral Process, Hearings Held Jointly Before the Committee on House Administration and the Telecommunications Subcommittee, 97th Congress, 1st sess., 1981, p. 231.

⁵New York Times, 19 January 1981, p. A24.

⁶"How the West Was Made to Feel that Its Votes Would Not Count," New York Times, 6 November 1980, p. A32.

⁷Kevin J. Calegari, Liz Ullman, and Susan E. Walters, "Public Interest vs. the Broadcast Industry, Election Night 1980," Hearings Before the Telecommunications Subcommittee, Committee on Commerce, U.S. House (97th Congress), 1st and 2nd sess., December 1981 and September 1982, pp. 157-58.

⁸Ibid., p. 159.

⁹Report on 1982 Network Election Projections, Non-Voter Study '83-'84, League of Women Voters and the Committee for the Study of the American Electorate, 1983, p. 3.

¹⁰Hearings 1981 and 1982, p. 247.

¹¹Hearings 1981, pp. 9-10.

¹²Telephone interview with Warren Mitofsky, CBS News, November 16, 1983.

¹³U.S., Congress, House, Committee on Energy and Commerce, Projections-Predictions of Election Results and Political Broadcasting, Hearings Before the Telecommunications Subcommittee, 90th Congress, 1st sess., July 1967, p. 267.

¹⁴Hearings 1981, p. 235.

¹⁵William Flanigan and Nancy H. Zingale, Political Behavior of the American Electorate (Boston: Allyn and Bacon, 1983), p. 153.

¹⁶Ibid., p. 155.

¹⁷Raymond Wolfinger and Steven Rosenstone, Who Votes? (New Haven: Yale University Press, 1980), p. 8.

¹⁸Warren E. Miller, "Analysis of the Effect of Election Night Predictions on Voting Behavior," Hearings Before the Telecommunications Subcommittee, Committee on Commerce, U.S. House (90th Congress), 1st sess., July 1967, p. 215.

¹⁹Douglas A. Fuchs, "Election-day Radio-Television and Western Voting," Public Opinion Quarterly 30 (Summer 1966):228.

²⁰Aage R. Clausen, "Political Predictions and Projections: How Are They Conducted? How Do They Influence the Outcome of Elections?" Hearings Before the Telecommunications Subcommittee, Committee on Commerce, U.S. House (90th Congress), 1st sess., July 1967, p. 164.

²¹John E. Jackson, "Election Reporting and Voter Turnout," American Journal of Political Science 27 (November 1983):623.

²²Kurt Lang and Gladys Lang, "Ballots and Broadcasts: Exposure to Election Broadcasts and Terminal Voting Behavior," Hearings Before the Telecommunications Subcommittee, Committee on Commerce, U.S. House, 90th Congress, 1st sess., July 1967, p. 240.

²³Harold Mendelsohn, "Election Day Broadcasts and Terminal Voting Decisions," Public Opinion Quarterly 30 (Summer 1966):212.

²⁴U.S., Congress, Senate, "Predictions and Projections of Election Results," Report of the Committee on Commerce, 90th Congress, August 30, 1967, p. 4.

²⁵Hearings 1967, p. 162.

²⁶Clausen, pp. 164-65.

²⁷Miller, p. 212.

²⁸Lang, p. 245.

²⁹However, decline in turnout is not new to this country: between 1872-1920, turnout dropped from an all time high of 95 percent to a low of 48 percent.

³⁰Senate Report, p. 7.

³¹However, Carter's concession speech at 6:45 p.m. PST doubtless contributed a great deal to the decline in after-six turnout.

³²Hearings 1981, pp. 115-16. The value of this survey is placed in doubt, however, when one considers that it was taken a full two and a half months after the election; and that the 10

percent mentioned only constituted 71 respondents, a hardly representative figure. There was also a high overreport of voting in this survey: 76.5 percent surveyed said they voted, an overreport of 25.9 percent.

³³However, Epstein and Strom have proven that drops in participation usually help incumbents, and that the median range in turnout (of high and low turnouts in Western States' districts) was 39 percent in years with and without early predictions.

³⁴Jackson, p. 633.

³⁵Raymond Wolfinger and Peter Linqutti, "Tuning In and Turning Out," Public Opinion (February/March 1981):57.

³⁶Miller, p. 212.

³⁷Mendelsohn, p. 224.

³⁸Laurily Epstein and Gerald Strom, "Election Night Projections and West Coast Turnout," American Politics Quarterly 9 (October 1981):480.

³⁹Ibid., pp. 480-81.

⁴⁰Jackson, p. 615-16.

⁴¹Non-Voter Study, p. 8.

⁴²Mitofsky Interview.

⁴³Non-Voter Study, p. 3.

⁴⁴Hearings 1967, p. 219.

⁴⁵Hearings 1981, p. 2.

BIBLIOGRAPHY

- Epstein, Laurily K., and Ström, Gerald. "Election Night Projections and West Coast Turnout." American Politics Quarterly 9 (October 1981):479-91.
- Flanigan, Wm. H., and Zingale, Nancy H. Political Behavior of the American Electorate. 5th ed. Boston: Allyn and Bacon, 1983.
- Fuchs, Douglas A. "Election-day Radio-Television and Western Voting." Public Opinion Quarterly 30 (Summer 1966):226-36.
- Jackson, John E. "Election Reporting and Voter Turnout." American Journal of Political Science 27 (November 1983):615-35.
- Mendelsohn, Harold. "Election-day Broadcasts and Terminal Voting Decisions." Public Opinion Quarterly 30 (Summer 1966):212-25.
- Mitofsky, Warren. Director, Election Information and Survey Unit, CBS News. Interview, November 1983.
- New York Times, 18 January 1981, p. A24.
- New York Times, 6 November 1980, p. A32.
- "Report on 1982 Network Election Night Projections." Non-voter Study '83-'84. Study done by the League of Women Voters and the Committee for the Study of the Americans Electorate, 1983.

U.S. Congress. House. Committee on Energy and Commerce. Early Election Returns and Projections Affecting the Electoral Process. Hearings Held Jointly Before the House Administration Committee and the Telecommunications Subcommittee of the Committee of Commerce, 97th Cong., 1st sess., 1981.

U.S. Congress. House. Committee on Energy and Commerce. Election Day Practices and Election Projections. Hearings Held Before the Telecommunications Subcommittee, 97th Cong., 1st and 2nd sess., December 1981 and September 1982.

U.S. Congress. House. Committee on Energy and Commerce. Projections-Predictions of Election Results and Political Broadcasting. Hearings Held Before the Telecommunications Subcommittee, 90th Cong., 1st sess., July 1967.

Wolfinger, Raymond, and Linqutti, Peter. "Tuning In and Turning Out." Public Opinion (February/March 1981):56-61.

Wolfinger, Raymond, and Rosenstone, Steven J. Who Votes? New Haven: Yale University Press, 1980.

PI SIGMA ALPHA ACTIVITIES 1983-1984

Dialogue and Doughnuts

Dean Martin B. Hickman of the BYU College of Family, Home, and Social Sciences and Eric A. Jones of the BYU Political Science Department discussed the "Korean Airliner Crisis" (from the viewpoints of U.S. and Soviet actions respectively).

Dr. Rhett R. Ludwickowski, former chair of modern political movements at Jagiellonian University in Krakow, Poland, and currently a visiting scholar at Stanford University's Hoover Institution, spoke on "The Nature of Totalitarianism."

Fred W. Freindly, a noted journalist, professor emeritus of Columbia University, and former President of CBS, talked about the delicate relationship between the mass media and the political institutions of the U.S. Constitution. Additional comments were made by Utah Supreme Court Justice and former BYU President, Dallin H. Oaks.

UNESCO official, Robert H. Cluff, addressed the topic of the U.S. invasion of Grenada and conflict in the Caribbean.

Former director of the Rockefeller Foundation's Division of Social Sciences, Joseph Black, talked about his recent experiences working with development programs in Indonesia, focusing on their political, economic, and social ramifications.

Michael Skol, Director of Policy Planning for the Bureau of Inter-American Affairs, U.S. State Department, discussed the previous and current negotiations between Nicaragua, other Latin American countries, and the United States. He

also talked about the reasoning behind U.S. actions taken against Nicaragua.

Dean Mann of the University of California, Santa Barbara, spoke on the topic of "Environmental Policy."

University of Virginia scholar, former editor of The American Political Science Review, and National President-elect of Pi Sigma Alpha, Dr. Charles Jones, talked about Reagan's campaign strategy for 1984 as a continuation of the President's 1981 agenda setting. He also discussed the political implications of the recent democratic primary elections on further presidential campaigning.

Welches and Cheese

Dr. Donna Lee Bowen spoke at Dr. Vetterli's house on "The Lebanese Quagmire."

Pi Sigma Alpha members had their own "Oktoberfest" at Professor Paxman's cabin.

Rod Decker, political writer of KUTV (Channel 2) and Lavar Webb, political columnist of the Deseret News, met with PSA members at Dr. Vetterli's house. They spoke about the "1984 Elections and Utah politics."

PSA members met at Dr. Mel Mabey's home and heard him speak about his experiences covering the 1983 British elections.

The last Welches and Cheese was held at Dr. Stan Taylor's house. Hugh Nibley related the "adventures" of Wenamon, an ancient Egyptian diplomat, to demonstrate the importance of appealing to people's humaneness in diplomatic relations.

Colloquia

Papers presented by Political Science faculty this year to Pi Sigma Alpha included the following:

"Goodbye to Goodtime Charlie--Hello to Capable Cathy"

--Dr. Keith Melville

"Plebiscitary Democracy: The Initiative and Referendum in American Politics"

--Dr. David Magleby

"Drawing the Lines: Legislature versus Commissions in Reapportionment"

--Dr. Lee Farnsworth

FACULTY NOTES

Donna Lee Bowen and Evelyn Early, of the University of Notre Dame, have received a grant from the National Endowment for the Humanities. With the grant, Bowen and Early will compile a Middle East reader, which will provide background information for undergraduate courses on the Middle East. Professor Bowen also helped found the Maghreb Studies Group, comprised of scholars specializing in North African studies.

The National Endowment for the Humanities awarded a grant to Gary Bryner to organize a conference on the Bicentennial of the Constitution. Historians, political scientists, and legal scholars will be at BYU from May 16-18, 1984, to discuss various constitutional issues.

Lee Farnsworth continues to publish his Newsletter of Research on Japanese Politics. He recently completed a chapter titled "Japan and the Third World" for the book Third World Policies of Industrialized Nations published by Greenwood Press.

Earl Fry is currently on leave as a fellow of the Council on Foreign Relations serving as Special Assistant to the United States Trade Representative in the White House.

The David M. Kennedy Center for International Studies recently awarded Ladd Hollist a fellowship to study poverty and industrialization in Brazil, Taiwan, and Korea. His book on the subject, Land, Poverty, and the State: The Political Economy of Development in Brazil, Korea, and Taiwan, will soon be published by Pinter Press. His article, "Dependency Transfigured: Brazilian Agriculture in Historical Perspective," appeared in Dependency Reversal and Less Developed Countries published by Praeger.

F. LaMond Tullis and Ladd Hollist are editing two books: A Global Political Economy to be published by Westview Press, and The Political Economy of Global Agriculture to be published by University of Nebraska Press.

David Magleby's book, Direct Legislation: Voting on Ballot Propositions in the United States, has been published by Johns Hopkins Press.

Dennis Thompson has been appointed as the Secretary to the Politics and Ethnicity Research Committee of the International Political Science Association. He was also appointed as chairman of the BYU Political Science Department. His book, The Private Exercise of Public Functions, will be published by Associated Faculty Press in the fall of 1984.

