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Evaluating Ukrainian Political Party Development: A Case Study of Ukrainian Elections 1994–2002

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ABSTRACT

Perhaps the key problem observed in the development of Ukrainian democracy, as it relates to the party system, is the fractionalization and nonconsolidation of political parties. This research will fill an existing need by generating more complete evidence of the weakness of institutional approaches to this problem in Eastern Europe. It will also provide substantiation for future broad consideration of elite-motivator explanations in other post-socialist countries. Traditionally, the favored approach in studies of party systems has been heavily biased towards institutional explanations. Recent studies, however, have shown this paradigm to be unsatisfactory when applied to post-socialist states in Eastern Europe and particularly to the former U.S.S.R., but thus far with a very limited number of cases. These studies have also tended to rely on cultural explanations in the absence of institutional theories, but without good discussion of what culture can and cannot explain. In contrast, the role of elites has received almost no consideration. Scholars that have discussed relevant elite behavior have not made a case linking these elite actions to the party system's failure to consolidate. This essay attempts to augment criticisms of the institutional approach by demonstrating the inadequacy of this approach in Ukraine, using added data about two Ukrainian parliamentary elections under different institutional arrangements. It then makes an argument that an elite-motivator paradigm provides a better explanation of the failure of Ukrainian parties to consolidate. This is based on the behavior of political elites in three of the most recent elections: the 1999 presidential election and the 1998 and 2002 parliamentary elections. The research shows that institutional changes in the Ukrainian parliamentary election procedure failed to improve the system and also finds evidence that the political elite rationally perpetuate many of the problems to their own advantage.

In 1996 Zbigniew Brzezinski, former National Security Advisor to President Jimmy Carter, wrote about what he considered the "three major geopolitical events of the

twentieth century." They were, first, the fall of European empires after World War I; second, the development of the Iron Curtain—predicted by Winston Churchill—after World War II; and third, the emergence of an independent Ukrainian state after the Cold War (1996, 3–8). The next year Brzezinski offered further explanation for this surprising statement. He described Ukraine as one of five "pivots" that geographically define the balance of power in Eurasia—"the chessboard on which the struggle for global primacy continues to be played" (1997, 31–47). Just this year in high-level meetings, Ukrainian and European leaders broached the idea of Ukraine joining the European Union in the next ten to twenty years.[1] With its possible membership in the European Union and acceptance by the global community of nations at stake, the international significance of democratic consolidation in Ukraine should not be underestimated. This is particularly true in light of the fact that it is uncertain whether the former Soviet republic will complete its evolution to democracy in the way that Western nations envisioned twelve years ago when the Soviet Union collapsed. Ukraine is an important case study not only for these reasons, but also because it offers the opportunity to develop hypotheses about democratic consolidation that can be applied in other post-socialist countries.

THE ROLE OF PARTIES IN DEMOCRATIC CONSOLIDATION

Although the role of mature parties is neither a necessary nor sufficient cause for democratic consolidation, without "well-organized and programmatically coherent political parties . . . it may prove more difficult to form an effective government" (Schmitter and Karl 1991, 84). More specifically, a significant aspect of the development of a party system requires that all of the major parties agree to work within the constitutional framework established by a developing democracy (Linz and Stepan 1996b, 15–16). This includes a general agreement among parties about the general policy direction of the country so that changes in the governing party do not equate to radical transformation of basic policies key to continued democratic consolidation.

Since economic reform often occurs simultaneously with political reform, especially in post-socialist countries like the European eastern bloc, political reform includes a general consensus on economic restructuring. Diamond writes, "The consolidation of democracy— so intimately linked to structural economic reform—requires the negotiation of some kind of agreement or 'pact' among competing political parties and social forces on: (1) the broad direction and principles of structural economic reform, which all parties support, no matter which one(s) come to power" (1990, 113). As Andrew Wilson, perhaps the preeminent scholar of independent Ukraine, and Arthur Bilous wrote in their very early study of Ukrainian political parties:

> Ukraine appears to have an anarchic and ineffective party system. A large number of small, ill organised and fractious political parties seemingly promote instability rather than stability, and hinder rather than help the tasks of building a stable civil society and market economy. . . . The fear must be that if such parties cannot exercise much influence on the development of society, they are helping to create a political vacuum that may well be filled by some kind of revived authoritarianism. (1993, 693)

In this essay the definition of "party nonconsolidation" takes in many of the negative characteristics described above, while "party consolidation" denotes the presence of their positive alternatives. For example, longevity is an important attribute of parties in a consolidated party system: these parties are generally affected only in a limited way by changes in leadership and are able to endure changes in government and society. Parties in a consolidated system develop coherent party programs or platforms that are usually practical and devote effort to enacting these programs. Such parties regularly compete in elections with the goal of controlling government in order to be able to do so.

Linz and Stepan have further written about the role of political parties in civil society. "A consolidated democracy requires that a range of political parties not only represent interests but seek by coherent programs and organizational activities to aggregate interests" (1996a, 274). This is particularly true of post-socialist countries—like Ukraine—that in most cases were totalitarian states. Because of the lack of civil society and a legacy of totalitarianism, the development of parties to buttress nascent civil society makes party systems in such states an even more important question than in states that do not suffer from the heritage of totalitarianism.

While this is not to suggest that development of the party system is the only factor affecting democratic consolidation, nor the most important, this research is particularly significant because it will help us to better understand the chances for continued democratic consolidation in post-socialist countries and also give greater insight into the party aspect of political restructuring that must occur during democratic transitions. In conjunction with other case studies from Eastern Europe, this study of Ukraine will lead to increased understanding of the situation in that region in both practical and theoretical terms.

THE WEAK SYSTEM: A BRIEF LOOK AT THE PROBLEMS WITH UKRAINIAN POLITICAL PARTIES

A brief background about the situation of the party system in Ukraine will provide a clearer understanding of some of the significant challenges that are faced in the democratic consolidation process. Throughout Europe in the early 1990s, center and center-left parties enjoyed electoral success throughout Europe, exemplified by Tony Blair and his "third way." In Ukraine, centrist parties have also been politically successful in the decade since independence; however, Andrew Wilson described the Ukrainian political center as a "black hole" and a "quagmire" (2002b, 172). These comments are typical of analyses of the situation by other scholars cited in this essay, which include the following quotations of Ukrainian observers and politicians:

> The various centrist factions . . . "can only be distinguished by their amorphousness and an absence of direction in terms of their political and economic orientation. For this reason, this agglomerate of forces can sooner be described as a gray void than as a political center. . . ." Rukh chairman Viacheslav Chornovil described these centrist factions as a "parliamentary sludge." "Sometimes they side with the leftists and sometimes with the rightists. They represent what might be called a situational majority, which, unfortunately, does not want to be constructive, and which, in the event of any

weakening, disappears. . . ." Within the amorphous center (often termed the "bolota," or "swamp") certain interest groups exist (clan, regional, economic, and so on). These centrists, or "pragmatists," as they prefer to be described, "often act not only indepen- dently of, but also contrary to decisions by, the individual factions to which these deputies formally belong. . . ."[2] This amorphousness weakened party and factional unity in Ukraine and increased the opportunity for splinter groups to form. (D'Anieri, Kravchuk, and Kuzio 1999, 160)

The illegitimacy of the left and the natural limitations of the right have produced an ersatz center that is synthetically strong, but in reality fractionalized and not consolidated. The illegitimacy of the left is perpetuated both by the more apolitical center and by the obstructionism of the left itself. The natural limits of the right are exacerbated by abuse of political power, also by the apolitical center, to ensure their continued nonviability as major political players (see Table 1). As Wilson writes, this "opaque centrist 'non-party' nature of Ukrainian government has produced a similar recipe [to the one party rule in Italy or Japan] for stagnation, corruption and the growing abuse of the power of the state" (2002a, 173).

Table 1: The Spectrum of Ukrainian Political Parties

Political Spectrum	Left	Center	Right
Main Parties	Communist Party (CPU) (Symonenko); Socialist Party (Moroz)	Our Ukraine (Yuschenko); United Ukraine (Kuchma³); SDP(U) Medvedchyuk)⁴	Rukh factions now part of Our Ukraine and United Ukraine
Problems/ Weaknesses	Unreformed; seen as illegitimate, not potential partners in government	Incoherent, lack of party platforms; personality-based	Nationalist agenda with limited regional appeal; old platform essentially fully implemented
2002 Parliamentary Election Results (PR seats/SMD seats)⁵	79/9	146/120	fn.⁶

As in Russia, political parties in Ukraine have not yet reached developmental maturity— they are temporary phenomena, often founded solely on the popularity of their leader and thus severely limited in their longevity, if not also in their platform and appeal. This is especially true of the political center, whereas the right-of-center parties are the best organized and the left-of-center parties the strongest electorally in Ukraine. Thus far, the centrist parties have not been forced to develop a coherent platform (other than to be nominally "reformist") nor engage in serious competition in order to retain control of the government.

The observation that the leftist parties are "illegitimate" can be explained as follows: Although parties of the left poll up to 40 percent of voters, unlike French Socialists, British

Labourites of old, or reformed Communists in Poland, Ukrainian Socialists and Communists are "not regarded as safe custodian[s] of state power" (172–73). This has meant that no left-of-center party is an actual competitor for government. That even the leftists recognize their ineffectiveness is demonstrated by what Wilson describes as the genuine surprise of Communist leader Petro Symonenko when President Leonid Kuchma suggested appointing a leftist prime minister (2002b, 193).

Part of the reason for the left's continued illegitimacy is its own obstructionism. As Wilson notes, "Nonconstructive opposition to the government in Kiev is actually a position of considerable psychological comfort to the Communists" (2002b, 193). He observes, "The Ukrainian Communists are even more unreformed than their Russian counterparts . . . [and the party] also remains one of the most left-wing parties in the post-Soviet world" (189–90). One of their most destructive influences has been opposition to economic reforms. The parliament elected in 1998, with a Communist plurality but not majority, was particularly obtrusive. In January of 1999 a bid to abolish the presidency failed by only two votes. "This was a distinctly anti-presidential and anti-governmental Parliament . . . [and] it continued to be a distinctly ornery Parliament" (Harasymiw 2002, 291).[7] Changing this situation will require more than just systemic reform or the effect of time on demo-cratic consolidation it will also require internal transformation by the parties themselves.

Whereas a Communist electoral victory was certainly not a complete impossibility in 1999 or earlier, the right is naturally limited in its electoral appeal by its nationalist program. "The permanent government of the corporate centre is paradoxically the result both of the [electoral] weakness of the right and the [electoral] strength of the left" (Harasymiw 2002, 173). The political event that has perhaps most shaped independent Ukraine was the so-called "Grand Bargain" between the Rukh nationalists and the National Communist defectors under former president Kravchuk. The Grand Bargain came about namely because of the weakness of the nationalists. "The Ukrainian nationalists, uncomfortably aware of their own minority status, have supported non-party, supposedly 'centrist' corporate gov-ernment from the outside (with a few key ministries for themselves), so long as it has been sufficiently 'Ukrainian'" (Harasymiw 2002, 173).

Two major problems with the right's nationalist platform limit the electoral strength of the right-wing parties. First, their Ukrainian nationalist program is highly regionalized: "voters in Galicia and parts of central Ukraine will back it come what may . . . [but] this guaranteed support represents a maximum of only 20–25% of the electorate" (172). In addition, the nationalist movements are not just unpopular east of central Ukraine, but the southeastern oblasts might very likely refuse even to accept any nationalist government. "The very stability of the state would be threatened if the national question were to be reopened" (206). Just as Wilson predicts that "Ukraine would split and one half would fight" (2002b, 316) if reintegration with Russia was attempted, the same would occur if the more extreme elements among the nationalists came to power.

The second problem is that the nationalist platform has essentially run out its logical course. The first two presidents of independent Ukraine, Leonid Kuchma and Leonid Kravchuk, enacted most of the official projects that the nationalists set out to undertake in the area of nation building. The right "has begun to lose momentum, as its political agenda

has seemingly been implemented by centrist proxy" (174). The only remaining nationalist agenda is necessarily extreme and would most likely lead to severe crises like those previously discussed. As Wilson wrote early on, "The right was never able to build any momentum. Despite the hope constantly expressed that it could expand in the key target area of central Ukraine and build on pockets of support in the east and south, the results of parliamentary elections in 1994 and 1998 showed that it could not, with support for the national demo-crats . . . even falling in some places" (179). Without new and innovative platforms, the right will continue to decline in electoral strength and will be more and more subject to the whims of the messy center. In other words, at present the prospects for rapid party consolidation are not promising.

PARTY THEORY IN THE POST-SOCIALIST WORLD: A REVIEW OF LITERATURE

In analyzing the development of party systems in Ukraine and elsewhere, traditionally, an institutional approach has held sway in the field of comparative politics. Recent research, however, has shown that such an approach has only limited applicability to the problems of party consolidation and institutionalization in newly democratizing countries of Southern and Eastern Europe. The nonconsolidation of the party system in the face of institutional reforms, however, makes these arguments unconvincing explanations for why parties in Ukraine have not coalesced. In place of these institutional explanations, however, most comparative political scientists have relied on cultural explanations while ignoring the elite-motivator approach. While there is certainly a place for cultural factors in studies of party consolidation and institutionalization, and evidence to support such explanations, these approaches have generally succumbed to some of the problems typical of cultural method-ologies (Ross 1997, 60–67). Particularly noticeable is the lack of consideration of elite-motivator factors. This research will support recent conclusions about the institutional approach, specifically in relation to Ukraine and then, in its place, provide arguments in favor of an elite-motivator method of explaining party consolidation (or the lack thereof) in Ukraine.

One of the earliest and still most respected works on party systems is Maurice Duverger's *Political Parties: Their Organization and Activity in the Modern State* (1963). Other significant works that have continued the institutional program include William Riker's chapter on Duverger's law in *Electoral Laws and Their Political Consequences* (Grofman and Lijphard 1986) and Giovanni Sartori's work, including *Parties and Party Systems* (1976). These authors focus on institutional constraints on party activity. They assign particular importance to electoral law and the institutions of representation in legislative systems. Applications of the institutional paradigm to post-Socialist cases in Eastern Europe and former Soviet Union have shown it to be an ineffective explanation for the unsuccessful development of strong party systems in those countries. For example, in the context of the former Soviet Union, the general expectation is that the introduction of a proportional representation system will lead to a reduction in the number of parties, rather than an increase.

Several studies have applied the institutional approach specifically in research on Ukrainian politics. These include D'Anieri, Kravchuk, and Kuzio's *Politics and Society in Ukraine* (1999), in which the authors provide cultural as well as institutional explanations for the weakness of the party system in Ukraine (150). They also note the effect of regionalism (153), which Douglas Rae studied generally in an institutional context in *Political Consequences of Electoral Laws* (1971). D'Anieri, Kravchuk, and Kuzio's conclusions, however, focus exclusively on institutional elements; and thus their study misses important implications of elite actions, which will be shown below (1999, 163). Sarah Birch—a specialist on Ukrainian elections, takes a similar approach in her study of changes in electoral law in Ukraine, under the assumption that such laws are the primary explanatory variable of party system operation (Birch et al. 2002). In a chapter in *Contemporary Ukraine* (Kuzio 1998), Birch attempts to discount rationality as an independent variable by showing that voter choice is extremely limited largely because of problems with regionalism (142).[8] She concludes, based on an institutional approach, that Ukraine can be described as a "proto-party system" that "is not conducive to further party system development" (150). Again, nonconsolidation of the party system in the face of institutional reforms makes these arguments unconvincing explanations as to why parties in Ukraine have not coalesced as they have in the Baltic states or in Poland. Because the rejection of rationality-based explanations has focused heavily on voter rationality, the problems resulting from overlooking elite-motivator explanations become even more obvious when evidence of the impact of elite actions is taken into consideration.

In the earlier literature, Matthew S. Shugart is alone in proposing a multifaceted approach to party system evaluation. His chapter in *Liberalization and Leninist Legacies*, edited by Beverly Crawford and Arend Lijphart (1997), describes how rational politicians acting within transitional structures and institutions create the long-term institutions that affect party systems (73–74). Shugart does not rule out culture as an important explanatory variable (74); however, he provides no in-depth discussion of such factors. Without a discussion of what a cultural approach can and cannot explain, an automatic reversion to cultural explanations does not increase understanding of the democratic consolidation process.

A radical shift away from the dominance of institutional approaches, which even called into question the inviolability of Duverger's law, was effected by Gary W. Cox in his 1997 book *Making Votes Count*.[9] Cox makes an observation about Duverger's law that is particularly applicable to Ukraine. He cites a "powerful national executive" as a key factor for institutionalizing political parties (182–93). In Ukraine, however, neither Leonid Kravchuk nor Leonid Kuchma have found it necessary to formally affiliate with a political party, thus presenting one possible explanation for Ukraine's weak party system. Krzysztof Jasiewicz continued Sartori's and Cox's work in a 1992 article, "From Solidarity to Fragmentation." Jasiewicz studied party fragmentation in Poland that did not accord with the expectations of an institutional approach.

Others who showed that perhaps an institutional methodology cannot "travel" to Southern and Eastern Europe include Marko Bojcun (1995), who studied the 1994

Ukrainian parliamentary elections, and Robert Moser, whose "The Impact of Parliamentary Electoral Systems in Russia" (1997) looked at the discrepancy between what might be expected under an institutional model and what was observed in the behavior of Russian political parties.

The first to make a study of political party systems specific to Ukraine after the collapse of the Soviet Union was Andrew Wilson (1993).[10] He considered three theoretical approaches to understanding the weakness of the party system: structural "bottom-up," structural "top-down," and political culture approaches. Due to the fact that this study was made ten years ago (before the Communist Party had recovered from its ban) and that Wilson draws no conclusion as to the relative value of these three approaches, another look at the Ukrainian political system is merited.[11]

Robert Moser's more recent article "Electoral Systems and the Number of Parties in Postcommunist States" (1999) provides the best evidence for questioning an institutional approach to studying party systems in the new democracies of Eastern Europe. He hypothesizes that the applicability of Duverger's law and other institutional paradigms "will be mitigated by the [degree] of institutionalization of the party system" (360). Moser makes his case using a quantitative analysis comparing party results in the two-tiered parliaments of Russia, Poland, Lithuania, and Hungary. (Each of these country's parliaments includes members elected using a proportional-representation system—the PR tier—and members elected from single-member districts—the SMD tier.) Moser includes Ukraine in the study, but only the 1994 parliamentary election before a proportional representation system was introduced. Perhaps this is intended as a control variable; however, Moser offers no such explanation; and hence Ukraine figures only marginally into his comparison of tiers (see Moser's Table 3).[12] In light of Ukraine's importance among former Soviet republics, it seems that this oversight could potentially cast doubt on Moser's conclusions, particularly as this leaves only Russia representing non-Baltic former Soviet states.

While Moser provides sufficient theory and evidence to show that traditional institutional explanations cannot be applied to consolidating democracies of the post-socialist world, he offers no in-depth explanation of his new independent variable—party institutionalization. Instead he discusses causal factors affecting party institutionalization, all of which are basically cultural in nature. Essentially Moser has rejected the established institutional explanations and left nothing in their place except for a few sentences about cultural elements of post-Soviet societies (373). This oversight is exacerbated by Moser's rejection of any elite-motivator explanations for mass or elite party behavior. Rationality in voting habits has never been in favor, due to the major limitations on voter choice mentioned previously in Birch's studies. The only reason to reject rationality in elite or party behavior—except as a consequence of the impossibility of voter rationality—is Moser's quantitative evidence about party fractionalization. In the case of Ukraine, it seems that Moser's conclusions are based on an insufficient understanding of the data used in his study. This work will attempt to evaluate whether Moser's conclusions about institutional explanations are appropriate.

The work of Andrew Wilson, which has covered all of the parliamentary and presidential elections since Ukraine's independence (2002b), provides ample reason to conclude that

Moser's inferences about the rationality of political actors ought to be questioned. His study of the most recent presidential election (2002a) particularly shows that there is reason to believe that elite-motivator factors are the most pertinent explanatory variables at the elite level. This research aims to fill the gaps in Moser's data and analysis to add Ukraine to the list of countries that do not follow the expectations outlined by an institutional approach to party systems and also to support an explanation of the weak party system in Ukraine based on elite-motivator explanations.

METHODOLOGY

The research is designed as a case study of four Ukrainian elections (three parliamentary and one presidential), looking at various approaches of explaining the development of the Ukrainian parliamentary system. The first part of the study evaluates changes in indicators of party fractionalization and consolidation during two parliamentary elections (1994 and 1998), held under different institutional arrangements. These two elections were chosen because they represent two different institutional arrangements, thus allowing the opportunity for analyzing institutional factors with variance in the independent variable. Statistical results and analysis have been provided in an attempt to bolster the quantitative research previously done in the field. The measures of party fractionalization I will use include an effective number of electoral and parliamentary parties (calculated, respectively, by comparing the proportion of the vote and proportion of parliamentary seats received by each party)[13] and the least-squares index of disproportionality (calculated according to the difference between the previous two measures).[14]

The second half of the study is a qualitative analysis of three elections (the parliamentary elections of 1998 and 2002 and the presidential election of 1999) with the purpose of testing to what degree the rational actions of political elites (to further their own ends) perpetuate the party fractionalization and nonconsolidation represented in the first half of the study. The purpose of this part of the study is to show that the elite-motivator approach—considered independently, or as a more specific subset of cultural explanations—can be used as an alternative to the institutional descriptions that have proven insufficient in explaining the development of political parties. These three elections were selected because they are most recent and thus provide the most accurate picture of the current state of party politics in Ukraine.

Several limitations will affect the conclusions presented by the research and will be addressed. As a case study, the research is subject to the recurrent problems connected with case studies and small-n size in general, along with problems of case selection. This includes the possibility of lurking variables, as well as the fact that analysis over time is difficult due to the short history of independence of Ukraine (twelve years). One significant advantage of the choice of Ukrainian cases, however, is the benefits of comparing multiple elections in a single country and the future possibilities of combining this case study with others as part of a larger project with multiple case studies.

Although an attempt has been made to include statistical indicators, such data from two parliamentary elections does not pretend to make this study quantitative. The research relies

heavily on qualitative data and analysis—concrete conclusions from the research will have limited explanatory value outside the area of focus. Without a larger sample size, including cases from a variety of world regions, it is unclear the degree to which the conclusions developed from this research should be applied to all post-socialist states, the Eastern European region, or generally. Without comparing cases with more significant variations in the status of elite actors, more general conclusions cannot be drawn about the causal relationship of elite-motivator explanations and party fragmentation. Additionally, it is impossible to determine to what degree the status of elite actors in Ukraine is tied to cultural factors and thus to what degree elite-motivator explanations ought to be distinguished from more general cultural explanations. While a single case study is only a beginning, an in-depth study can contribute with other studies to develop a more complete theoretical understanding of the region.

THE CASE AGAINST AN INSTITUTIONAL APPROACH:
THE 1994 AND 1998 UKRAINIAN PARLIAMENTARY ELECTIONS

In his 1994 study of electoral systems, Arend Lijphart wrote that when a country under-goes a change in its electoral arrangements "many potentially important explanatory variables can be controlled in the sense that they can be assumed not to differ or to differ only marginally: the same country, the same political parties, the same voters, and so on" (78). This potential is reduced in Ukraine, as it might be in any newly democratizing country, in that the political system has been less stable than in an established democracy. This is particularly true in regards to political parties, which have come and gone with regularity. Nevertheless, the comparison of two Ukrainian parliamentary elections, under different institutional arrangements (see Table 2), presents a unique opportunity to evaluate the explanatory power of an institutional approach to understanding the Ukrainian party system.

Table 2: Electoral Arrangements in Three Parliamentary Elections

Election	System Type	Single-Member Districts	Proportional Representation Seat Allocation	PR Threshold
1994	Two-round single-member districts	450; two rounds, absolute majority required in second round	N/A	N/A
1998–present	Mixed SMD/PR	225	225; party lists (distributed by Hare quota)	4%

Source: Birch, Sarah, Frances Millard, Marina Popescu, and Kieran Williams. 2002. *Embodying democracy: Electoral system design in post-Communist Europe.* New York: Palgrave Macmillan, 144.

One of the primary failures of the institutional approach in Eastern Europe is its prediction that single-member district systems have fewer parties than proportional representation systems. In former Soviet republics, single-member district seats have tradi-tionally been associated with electoral unaccountability and a proliferation of parties.

Therefore, "proportional representation [is] seen . . . as the system most likely to generate accountable majority government. . . . Though this may seem strange to comparative students of electoral systems, it made sense in the post-Soviet context, where party-list voting combined with a relatively high threshold of representation worked as an engine of party consolidation" (Birch 2002, 153). In Ukraine, as the electoral system moved away from single-member districts towards a proportional representation scheme, the expectation would be that the number of political parties would decrease; that is, parties would become less fractionalized, and the parties would become more consolidated, because of the large number of unaffiliated deputies elected from single-member districts. As this comparison will show, however, institutional explanations are disappointingly ineffectual.

THE 1994 PARLIAMENTARY ELECTIONS

The first set of institutional arrangements under which Ukrainian elections were held (the 1994 election) were developed by a national legislature that was elected before Ukraine declared independence, "literally in a different country," as Birch put it (2002, 147). In the years since independence, over three dozen political parties had developed; however "most were little more than coteries of elites, with severely underdeveloped grassroots support bases and little ideological distinctiveness" (147). Several factors played a role in the development of the electoral reform that would regulate the next set of parliamentary elections. Although elections were not scheduled to be held until 1995, parliament's legitimacy was undercut by the fact that it was elected under the Soviet system. Additionally, the state of the economy had continually worsened since the collapse of the U.S.S.R., leading to further frustration with post-independence governance. Another factor that Birch notes as significant was the reconstitution of the Communist Party (banned after the August Coup) and the Russian parliamentary crisis of the previous year, which featured Yeltsin shelling a confrontational, left-dominated parliament into submission and calling for new elections under a mixed PR-SMD system (146–47). All of these factors were important in the process leading to electoral reform.

The primary debate in the Verkhovna Rada about the proposal for electoral reform centered around whether or not to introduce some element of a proportional representation system, and if so, to what degree. In this dispute, the leftists—Socialists and newly enfranchised Communists—unaffiliated deputies, and pro-presidential forces generally opposed the establishment of a proportional representation element. They argued that the country was not ready for this type of reform because Ukrainian parties were weak. Those in favor of a mixed or entirely proportional system were the right and center-right parties. Their argument was that a proportional representation system would help to strengthen the parties and encourage the Rada to organize itself around parties.

A key element of the debate was the nominating procedures for candidates. This was a question of the old local patronage systems versus the new, national or regional parties. "The distinction between PR and the majoritarians was also viewed in terms of the corruptibility of the latter. The right saw the single-member system as a means for the old nomenklatura—the so-called 'party of power'—to maintain control of politics through

their patronage networks. . . . A law which downplayed party affiliation had the added advantage of allowing the 'party of power' to win seats without having to resort overtly to a label designating a discredited ideology" (149). In the Soviet Union, nominations for candidates had generally been made by workplace-based groups. If parties were to be effective players in the legislature, they would have to be given at least the opportunity to nominate candidates, if not complete control of the process.

In Shugart's study of party strength, he writes: "The concept of a strong party implies a party that is capable of presenting a coherent face to the voters so that they can asses its collective fitness for government. . . Electoral laws affect . . . how much authority is placed in the hands of party leaders to determine the rank and file's electoral prospects." One of his four indicators of party strength is whether or not the party controls who may run as a member of the party and in what order they are elected (1997, 44–45). In the end, the left-wing forces saw allowing parties to nominate candidates (as well as continuing the traditional methods) and indicating the party affiliation of single-member district candidates' on the ballot as sufficient steps to promote party consolidation (Birch 2002, 149). As discussed previously, in the process of democratic consolidation, the role of party consolidation has been shown to be important, especially in countries without a tradition of strong civil society.

Four plans were put to a vote in the Rada: a pure single-member district version, a 350 SMD/100 PR version, a 50–50 mixed version, and a pure proportional representation version. Although Communist and Socialist leaders had demonstrated willingness to compromise, even to the point of allowing the 50–50 version, the pure single-member district version received a majority of votes, with the 50–50 and pure proportional-representation versions receiving less than a third as many votes. With the scheduled elections just over four months away, the subsequent drafting was rushed and, as a result, some unintentional elements wound up in the final draft. First, an absolute majority, not just a plurality, was required for victory in the second round of voting.[15] Second, the incredibly difficult process for candidate nominations by parties is most probably explained by the fact that those requirements were originally intended to apply to party lists in a mixed or proportional representation system (Birch 2002, 150–51). Whereas any ten voters could constitute a group to nominate a candidate, and there were no requirements for workers' collectives to nominate a candidate, party regional conferences (the only forum in which parties could nominate candidates) had to be attended by 50 delegates or two-thirds of local party members (Birch 2000, 82).

The results of these apparent mistakes were disastrous. Out of the 450 districts, only 49 were able to meet the strict majority requirements, and the successive election the next month produced only 289 more, meaning that by the opening of the parliament, only about three-quarters of the seats had been filled. Elections to fill the remaining seats continued well into 1996 (nearly two years later), until a moratorium on elections was passed to give a weary electorate a respite. The effects of the overly burdensome requirements for candidates to be nominated by parties meant that only about ten percent of candidates were nominated by parties, compared with over sixty percent by citizen groups and about

a quarter by workers' collectives (Birch 2000, 82). Over half of the deputies elected were unaffiliated, although all but twenty joined various parties once the session began (Harasymiw 2002, 258–59). "The most striking difference between the candidate corpuses of 1990 and 1994 was the overall decline in political identification. . . . Candidates . . . were far less likely to be party-affiliated" (Birch 2000, 89).[16]

The effect on party consolidation—so important in democratic consolidation—was apparent (see Table 3). "The Soviet-era majoritarian system was left largely unchanged, and those alterations that were made proved detrimental to the development of organized multi-party competition" (82). The legislation "undeniably hindered the development of cohesive political parties" (Birch 2002, 151). These effects continued to be observed long after the convocation of parliament began. By 1996, the nine party groups that existed in 1994 had become twelve and the number of unaffiliated deputies had almost doubled. The Agrarian Party, Interregional bloc, and the Unity Party all suffered splits. At the end of the parliamentary convocation in 1998, there were once again nine party blocs—different, however, from the original nine—and the caucus of the unaffiliated had doubled yet again (Harasymiw 2002, 268).

Table 3: Measures of Party Fractionalization, 1994 Election

Case	PR Tier			SMD Tier		
	Effective Number of Eletoral Parties	Effective Number of Parliamentary Parties	Least-Squares Index of Disproportionality	Effective Number of Electoral Parties	Effective Number of Parliamentary Parties	Least-Squares Index of Disproportionality
1994	N/A	N/A	N/A	2.1681	1.4691	0.2907
1998						

THE 1998 PARLIAMENTARY ELECTIONS

The badly needed changes to the 1994 electoral law were delayed until just two months before the subsequent parliamentary elections in 1998—four years later. Parliament in the interim had been preoccupied with passing the country's first constitution in the era of independence. "The new constitution effectively entrenched the institutional status quo, but its adoption ended years of jockeying for power and wrangling over the design of the state" and allowed parliament to redirect its attention to electoral reform (Birch 2000, 102, 104). During this period, the same problems that had plagued the previous convocation continued: parliamentary factions appeared and disappeared, but the quagmire of the center remained muddled. "Factions formed, dissolved, and reformed to such an extent that by 1998 the political structure of the assembly bore only a vague resemblance to the party affiliations of the deputies elected four years earlier. . . . The region between [the Communist

and Rukh strongholds] was one of continued flux as aspirant leaders strove to attract followings from among the weakly-aligned centrist mass of the parliament" (102).

Birch outlines several factors that led to broad support for reform. Some parties, such as the Socialist and Rural parties had both failed to meet expectations in the 1994 election; other parties, such as the Communists, taking their cue from the 1993 Russian elections, saw the potential windfall that the introduction of a proportional-representation element might bring. The left-wing parties also realized that, as institutions, they had more in common with the institutionalized parties of the right than the unaffiliated deputies (2002, 153).

Furthermore, there was general recognition that the large number of parties and unaffiliated deputies made parliament ineffective. The situation was exacerbated by Kuchma's hostility towards parliament, which added a sense of urgency for parliament to become a decisive body. Kuchma's relationship with parliament is characterized at its extreme by the parliament's attempt early in 1999 to abolish the presidency and by Kuchma's second inauguration in 1999, which he decided to hold in a concert hall rather than in parliament. As a result, nearly 160 deputies did not attend, as a sign of protest (Harasymiw 2002, 291, 294).

In addition to the obvious changes to the electoral system that nearly all agreed needed to be made after the interminable by-elections that resulted from the previous electoral system in 1994, there was also a feeling action should be taken to strengthen the party system so that parliament would operate in a more effective manner. The general consensus was in favor of a mixed system such as had been used in Russia in 1993 and 1995. The primary points of disputation were whether some lesser type of turnout requirement should be retained, what percentage of the seats should be elected by proportional representation, and how high the threshold for parties should be in a proportional-representation system.

Early on in the process, five proposals were considered by parliament. There were three bills similar to the draft presented by a working committee of the Legal Policy and Judicial Reform Committee, which proposed that half of the seats be elected from a national proportional-representation list with a three percent threshold. The other proposal was for a pure proportional-representation system, also with a three percent threshold. Proponents of proportional representation maintained that single-member district seats were too easily bought, while their opponents claimed it would not be any more difficult to buy an entire national list. One of the alternate versions of the working group's proposal received the most votes, and a compromise with broad support was worked out with only one major revision: a four percent threshold. This bill passed with little opposition in March of 1997 (Birch 2002, 155–56).

Backing for the proposal, however, quickly disappeared as presidential supporters instigated active opposition. Kuchma was "wary of increased party organization by either his left-wing or his right-wing rivals. He therefore opposed a proportional law, especially one with a threshold that would exclude his centrist allies and magnify the seat share of the large parties" (154). The better organized parties also threatened to withdraw support, as they naturally favored a higher threshold level. Some members of smaller parties, centrists, and unaffiliated deputies continued to favor a purely single-member district arrangement.

These members' position intensified when they realized that a proportional-representation system with a low threshold would not pass.

This led to the bill's failure in nine successive votes, the introduction of two alternate proposals by presidential supporters, and finally by a presidential veto with a proposal for fifteen amendments when the bill finally did pass. After parliament accepted twelve of the president's proposed amendments, Kuchma finally acquiesced and signed the bill on October 22. This was not the end of obstacles to electoral reform, though. In February of 1998, with the parliamentary campaign already well underway, the Constitutional Court "delivered a scathing ruling, declaring the law was unconstitutional on more than forty counts." The Court ruled, however, that because it was so late in the process, the elections could proceed under the law (156–57).

In Birch's analysis of the new law, she notes several important advantages. "The law provided an incentive for political entrepreneurs to form parties, rather than relying on the local fiefdoms to gain seats. . . . At the same time it recognized the geographical heterogeneity of Ukrainian politics by allowing political organizations with concentrated regional support the opportunity to win seats locally without having to demonstrate national strength." Birch also notes, however, that the introduction of a proportional representation element with a relatively low threshold encouraged a number of new parties to form. Seventeen new parties formed between the 1994 and 1998 elections, and ten formed just in the year preceding the 1998 election (2000, 104).

In hindsight, the adoption of a four percent threshold rather than the five-percent level more standard in proportional-representation systems may have been fortuitous. Of the eight parties that cleared the four-percent threshold, four received less than five percent of the proportional representation vote. Three of these four were centrist parties, meaning that a five-percent threshold would have left two parties on the left (CPU and Socialists), one on the right (National Democrats), and only one centrist party (Social Democrats) to represent the political spectrum. As Wilson and Birch write, "the elections came within a whisker of producing an artificially polarized assembly" (1999, 1041). D'Anieri, Kravchuk, and Kuzio, however, disagree. They cite the four-percent threshold as one of the new electoral law's weaknesses that undermine the consolidation of parties because of a low incentive for parties to combine in order to pass the threshold requirement (1999, 156).

The effect of introducing a proportional-representation element into the electoral system appears to be small. In qualitative terms, parties were no more consolidated than under the previous arrangements. In parliament, "factions formed, dissolved, and reformed to such an extent that by 1998 the political structure of the assembly bore only a vague resemblance to the party affiliations of the deputies elected four years earlier" (Birch 2000, 102). The failure of right-wing parties to consolidate is evidenced by their poor showing in the proportional-representation list. After the deputies were seated, the lack of consolidation was manifest by the fact that it took nineteen rounds to elect a speaker (105, 107). In quantitative terms as well, the lack of change is clear (see Table 4). The effective number of electoral parties was essentially unchanged, while the single-member districts tier experienced an increase in electoral parties, contrary to expectations. Least-squares measures of

disproportionality, difficult to calculate due to the large number of independents, also showed little difference.

The results of institutional change in electoral arrangements, specifically the introduction of a proportional-representation element, demonstrate the weakness of the institutional approach to studying Ukrainian political party development. Traditional expectations that proportional-representation would increase the number of parties do not hold—as we would predict based on other post-socialist countries. The alternate expectation (under an institutional paradigm) that such electoral reform would produce party consolidation also does not hold. Having demonstrated the inability of institutional explanations to describe these developments in the Ukrainian parliamentary system, we now turn to an elite-motivator paradigm for further explanation.

Table 4: Measures of Party Fractionalization, 1998 Election

	PR Tier			SMD Tier		
Case	Effective Number of Electoral Parties	Effective Number of Parliamentary Parties	Least-Squares Index of Disproportionality	Effective Number of Electoral Parties	Effective Number of Parliamentary Parties	Least-Squares Index of Disproportionality
1994	N/A	N/A	N/A	2.1681	1.4691	0.2907
1998	10.7473	4.9549	0.2907	2.9896	3.2796	0.0271

THE CASE FOR AN ELITE-MOTIVATOR APPROACH:
THREE ELECTIONS UNDER KUCHMA (1998, 1999, 2002)

The problems with the Ukrainian system of political parties can be described in two general categories: first, a lack of party consolidation important in the process of democratic consolidation and, second, continued party fractionalization. The data previously introduced provides ample evidence for fractionalization, while much has been written qualitatively about the nonconsolidated nature of Ukrainian political parties. It is sufficient here to mention the problems outlined in the brief overview of political parties presented earlier: the illegitimacy of the left, the electoral weakness of the right, and the resulting incoherence in the center. Due to the illegitimate left and the weak right, the center parties are essentially guaranteed the leading role in government. "The Ukrainian centre 'parties' have therefore governed by default and their long free ride has not been good for Ukraine" (Wilson 2002b, 206).

Stagnation, corruption, and abuse of power are three major problems engendered by such a situation. Examples of these three woes include the stagnation of political and economic reforms by oligarchs seeking to preserve a status quo beneficial to themselves; corruption in the political process by centrist party members who are not forced to court the public in the fair and open forum of a democratic market of ideas; abuse of power by

incumbents to preserve the illegitimacy of the left and the electoral weakness of the right. So long as this situation continues it will be difficult for true reformist-liberals or centrist parties—those that will promote the democratic consolidation of Ukraine—to be successful in Ukrainian politics.

While others have concluded that voters and elites alike suffer from a lack of rational behavior—based on evidence that institutional factors cannot adequately explain these observed problems—a closer look at the machinations of the political elite will show that the status quo is intentionally, and rationally, preserved for the benefit of those incumbents in power. Three elections will illustrate these points: the 1999 presidential election provides an example of elite behavior that promotes nonconsolidation, while the 1998 and 2002 parliamentary elections offer evidence that elite actors deliberately promote party fractionalization to achieve their own ends. Both of these results, in turn, negatively impact the course of Ukrainian democratic consolidation.

Those in the center and on the right have prolonged the unreformed state of the left because they find it beneficial as a campaign issue. They have perpetuated the distrust of leftists as legitimate partners in government, and this is one of the major obstacles to the consolidation of a party system in Ukraine. This is especially true in comparison with other post-socialist countries where the former Communist Party has transformed itself into a viable political movement. Centrists and rightists know that as long as they can continue the present situation they are guaranteed at least one issue on which they can run. "The centre has even come to prefer the maintenance of a left-wing bogey to keep the range of governing options narrow and disguise their own lack of will for real reform" (Wilson 2002b, 206).[17]

THE 1999 PRESIDENTIAL ELECTION

The "red-scare" tactic was especially obvious in Kuchma's 1999 re-election campaign. "Kuchma obviously preferred to face a real ogre on the left. . . . Both Vitrenko [of the ultra-leftist Progressive Socialist Party] and Symonenko, leader of the Communists, were discretely supported as alternatives to the potentially more [electable and thus] threatening 'Ukrainian Kwasniewski,' Oleksandr Moroz. . . . The left had to be kept in its ghetto. Any potential breakout to the center had to be headed off" (200). It was even reported that the Kuchma campaign was responsible for a grenade attack against Vitrenko and the subsequent blame for the attack heaped on Moroz's supporters. "The media [controlled by the President and his supporters] seemed to favor Vitrenko over Moroz [and] observers, both journalistic and official . . . were of one opinion about the campaign—it was dirty" (Harasymiw 2002, 323). As Bohdan Harasymiw wrote, "Whom or what did Kuchma represent? In short, as the campaign revealed, it was power, and the political parties fragmentation worked in his favour" (323).

The sinister nature of these tactics was exacerbated by incumbent spending power and absolute control of the mass media. "During the campaign the government-controlled mass media were grossly one-sided in favour of Kuchma. The taxation authorities and other police harassed the independent media outlets" (323). The anti-party tactics were

apparent as early as the 1994 presidential campaign (see note 11) and were again evident in the 2002 parliamentary elections. In 2002, Vitrenko was resurrected "after her cameo performance in the presidential election . . . [and] was once again omnipresent—this time with only few of her own advertisements but with plenty of talking-head time on official television" (Wilson 2002a, 96). This final example shows that the tactics of preserving the nonconsolidation of the left spilled over from the 1999 elections to the 2002 elections. From a consideration of presidential campaigns, we now turn to a discussion of parliamentary elections. If the 1999 presidential elections are a perfect example of elite behavior maintaining party nonconsolidation, the 2002 parliamentary elections show how the same actors used the same tactics to extend party fractionalization, once again intentionally and rationally, in order to achieve their own ends.

THE 1998 AND 2002 PARLIAMENTARY ELECTIONS

Like the promotion of nonconsolidation, maneuvers to prolong party fractionalization, although perfected in the 2002 elections, actually began earlier. Such tactics had first been employed four years earlier in the 1998 parliamentary elections. In 1998, however, only "clones" had been used ("clones," Wilson's term, were parties designed to steal votes that would reduce opponents' shares of parliamentary seats; Wilson and Birch at that time referred to them as "spoiler" parties)—not "satellites" (parties designed to capture seats that could then be added to the presidential coalition), and they had been employed only against the left (see Table 5). The Agrarian Party was created to challenge the Village Party in rural areas; two different parties, one labor-based and one with a nostalgic appeal, were set up to take on the Communist Party; and, a division was engineered in the Socialist Party to create the Progressive Socialist Party, which was rumored to be receiving direct aid from pro-presidential forces, in spite of the fact that its members continued caucusing with the left. Indeed, the success of the "spoilers" in 1998 may have been even greater than that of the "clones" four years later (Wilson and Birch 1999, 1041, 1043).

Table 5: 1998 Parliamentary Election Spoiler Parties

Spoiler Party	"Spoiling" from	% of PR vote
Agrarian Party	Village Party	3.68%
Working Ukraine	Communist Party of Ukraine (trade unions)	3.06%
Party of Defenders of the Fatherland	Communist Party of Ukraine (veterans)	0.31%
Progressive Socialist Party	Socialist Party	4.05%

Source: Wilson, Andrew, and Sarah Birch. 1999. Voting stability, political gridlock: Ukraine's 1998 parliamentary elections. *Europe-Asia Studies* 51 (September): 1039–68.

In 2002, while maintaining nonconsolidation was the presidential team's preferred tactic for dealing with the left, engineering fractionalization was their modus operandi for opponents on the right. Rukh (Ukrainian for "movement"), the main opposition group

during the Soviet era, was subject to crippling disunity early on in the period of independ-ence. At their third congress, the first after Ukrainian independence, the movement broke into three factions and has remained more or less divided ever since.[18] Additionally, a number of ultra-nationalist (right-wing) parties sprang up in western Ukraine, further weakening Rukh (Wilson 2002b, 178–79). Just as they had during the presidential election of 1994, the right quickly sold their support to the incumbent based on his record of Ukrainian state-building (their primary concern), but just to be safe Kuchma's reelection campaign organized one more split of Rukh to ensure that the president would have no competition on his right (200).

The party-splitting practiced in the 1999 presidential elections gave way to even more advanced techniques of promoting party fractionalization in the 2002 parliamentary elections. Wilson's analysis of the president's campaign outlines a three-pronged plan to bolster Kuchma's influence in parliament. The first part of the plan proposed creating a Ukrainian version of the Russian Yedinstvo Party that had enjoyed parliamentary success in the Russian Duma elections earlier that year. The second part of the plan, however, was the creation of a number of "satellite" and "clone" parties. They were designed to mimic other parties and steal votes from them; in the case of the "satellites," in order to capture seats that could then be added to the presidential coalition modeled on Yedinstvo; in the case of "clones," votes that would reduce opponents' shares of parliamentary seats.

In the 2002 election "at least a dozen of the 33 parties and party blocs running in the elections were artificial projects with opaque sponsorship and nefarious purposes. . . . All such parties, however, were virtual in the sense of being nothing more than brands or fronts and vehicles for [other] issues" (Wilson 2002a, 94). (See tables 6 and 7). By merely increas-ing the number of parties in the campaign artificially, the actions of the president's inter-ests increased party fractionalization. Wilson gives two types of evidence of the "front" nature of these parties. First, by analyzing the party lists, supporters of the president and their business associates appear in parties incongruous to the individuals' identities—such as men in the Women for the Future Party, the aged in the youth-oriented New Generation Party, and executives from highly polluting industrial sectors in the Green Party. Second, all the "satellite" parties spent vast amounts on television campaigns (some even more than the president's own coalition and the chief opposition party, "Our Ukraine") that were developed by expensive Russian public relations firms. These parties were also given inordinate exposure in the state-controlled media and by television stations owned by presidential supporters (94–95).

Table 6: 2002 Parliamentary Election Satellite Parties

Satellite Parties	% of PR vote
Women for the Future	2.11%
Winter Crop	2.01%
Green Party	1.3%

Table 7: 2002 Parliamentary Election Clone Parties

Clone Parties	"Cloned" from	% of PR vote
Vitrenko Bloc	Ultra-left	3.22%
Communist Party of Workers and Peasants	Communist Party of Ukraine (left faction)	0.41%
Communist Party of Ukraine (renewed)	Communist Party of Ukraine (right faction)	1.4%
Bloc of the People's Movement of Ukraine	Our Ukraine	0.16%
Yabluko	Center/Reformists	1.15%
New Generation	Center/Reformists	0.77%

Source: Wilson, Andrew. 2002b. Ukraine's 2002 elections: Less fraud, more virtuality. *East European Constitutional Review* 11 (summer): 96.

In the end, however, only half of this part of the plan was successful. The "clone" parties succeeded in drawing votes from Our Ukraine, the Socialists, the Communists, and others, but the "satellites" failed simply because there were too many of them, and they crowded each other out of the field. Unlike the Progressive Socialist Party that met the threshold requirement in 1998, none of the "satellite" parties in 2002 broke the four-percent requirement to win seats in the Verkhovna Rada.

Reviewing elite actions in these three elections demonstrates the great adverse impact that Ukrainian elites have had on party system development and party consolidation. That these actions were undertaken for personal political gain should be clear, and eliminate questions about the rationality of elite actors. Considering the effect of these actors, political scientists studying Ukraine or other post-socialist cases ought not to ignore rational choice factors, particularly elite-motivator factors, any longer in analyses of party systems.

CONCLUSIONS

Ukraine, as one of the most important former Soviet republics, one of the most Western-oriented, and one of the most strategically important to the West, is an important beginning point for studies of democratization in the post-socialist world. Party consolidation, an important factor in any course of democratic transition, is even more salient in former Soviet states that lack a historical tradition of civil society. In these countries political parties are practically the only method for mass expression of political preference. Developing a theoretical understanding of how political party systems consolidate, or fail to do so, is clearly important to understanding democratization in Eastern Europe.

This study has shown that Ukraine, like other post-socialist countries of Eastern Europe, fails to meet the expectations of an institutional approach to studies of party systems. Considering the importance of Ukraine as a post-socialist case, and the fact that previous studies had failed to adequately consider Ukraine, this should be seen as a significant finding. In the place of an institutional paradigm, evidence presented here has demonstrated the salience of elite-motivator explanations for party system development. Elite actors intentional behave in such a way that prolongs party fractionalization and prevents

party consolidation. This is not symptomatic of a lack of rationality on the part of political actors, as has been suggested, but is done for political self-benefit and thus is likely to continue so long as other factors allow it to. This ought to provide justification for scholars to give greater consideration to elite-motivator paradigms when attempting to identify the causes of party development in post-socialist countries. Further study of such cases is necessary to determine with more precision the degree to which elite actors truly affect party development, and also to determine to what extent this is or is not a function of culture.

This has significant implications for outlooks on the process of democratic consolidation in Ukraine and elsewhere in Eastern Europe. Because of the historical lack of civil society in former socialist states, a lack of party development should be considered an important requirement for the continuation of this process. Institutional changes appear unlikely to generate considerable improvement in the current situation. This means that until the circumstances that permit political elites to unduly influence party fractionalization are eliminated or at least curtailed, further democratic consolidation in Ukraine appears tenuous at best.

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ENDNOTES

1. Russian-language news outlets in Russia reacted with great surprise, almost outrage, to such discussions.
2. Harasymiw noted in a study of party discipline that centrist deputies were even more undisciplined (27.1) than the officially unaffiliated (22.1), who, he notes, "had absolutely no reason to show caucus solidarity." Interestingly, three other factions were also less disciplined than the unaffiliated (2002, 269, 271).
3. Officially, the president is not affiliated with any party, although United Ukraine is explicitly a pro-presidential party.
4. Although the "Yulia Tymoshenko Bloc" received 7.3 percent of the PR vote (equating to 22 seats), it is unclear whether this group, more personality-based than most, ought to be considered a "main" party.
5. "PR" refers the proportional-representation system introduced after legislative reform. "SMD" refers to single-member district seats, of which the original parliament was fully comprised and which was retained in part after the reforms; 85 seats in SMD's went to independents, members of parties receiving less than 1 percent of the PR vote or that had results that were disputed. An additional 11 seats were unaccounted for by the Central Election Commission. Source: Ukrainian Central Election Comission. 2002 regular election results. At <http://195.230.157.53/pls/vd2002/webproc0v>. 10 Nov. 2003.
6. The parties of the right with enough support to win parliamentary seats all joined centrist party blocs for the 2002 election.
7. Harasymiw makes the following observations: "Parliament even issued an appeal to the Ukrainian people in October [1999], urging them not to vote during the presidential election for the incumbent Leonid Kuchma in order to ensure democracy. The president, for his part, was not above showing his disdain for Parliament by deciding, most importantly, to conduct his second inauguration on 30 November in a concert hall rather than in the Parliament building. In protest, about 160 deputies—Communists and other leftists—refused to attend." After a short-lived pro-presidential majority, "several weeks of turmoil followed. Both Deputy Speaker Martyniuk and Speaker Tkachenko were ousted, but Tkachenko refused to step down. The majority then adjourned to another place and on 1 February it elected Ivan Pliushch as speaker and Stepan Havrysh as deputy speaker. For about a week the two groups held parallel sittings, with the leftist minority physically occupying the parliamentary hall proper" (2002, 291, 294).
8. For example, some major parties do not compete in certain regions, particularly western Ukraine, which is a stronghold of the right. This limits voter choice and creates implications for the rationality of voters.
9. Earlier, Giovanni Sartori, in Grofman and Lijphart's *Electoral Laws and Their Political Consequences* (1986), laid background for such doubt about the explanatory power of institutionalism.
10. Although Wilson's article was written ten years ago, his description of the overall party system is still accurate—it was provided earlier at the end of the section on the important role of parties in democratic consolidation.

11. Wilson states, for example, that only Rukh movements had established offices in Kiev and respectable publishing arms. The author, however, has visited the substantial Communist Party headquarters in Kiev and is personally familiar with the many offerings from their presses.

12. Moser states in a footnote (46) that data was not available from the 1998 election, the second election case studied in this research. Sufficient data to calculate all of Moser's statistics, with the exception of effective number of candidates, is now available for both the 1998 and 2002 parliamentary elections.

13. Following Moser's methodology: "The effective number of parties index is calculated by squaring the proportion of the vote or seat shares of each party, adding these together, then dividing 1 by this total: N [sub v]=1/Σ(v [sub 1]?) or N [sub v]=1/Σ(s [sub i]?)" (Moser 1999, fn. 32).

14. Again, Moser's methodology: "The least-squared index of disproportionality is calculated by squaring the vote-seat share differences and adding them together; this total is divided by 2; and then the square root of this value is taken: LSq= [SqRt of ? Σ(v [sub i] −s [sub i])?" (Moser 1999, fn. 33).

15. The requirement that a candidate receive an absolute majority in order to be elected was exacerbated by the habit of some Ukrainians to vote against all candidates as a protest. In a close race, even a few such voters could prevent either candidate from receiving fifty percent of the vote (Birch 2000, 82–83).

16. An article in *Foreign Policy* in 1995 claimed that these problems were premeditated actions by President Leonid Kravchuk against the development of political parties. According to Anders Aslund, Kravchuk "tried to cancel the elections, and for a long time it was unclear whether they would take place. . . . Finally, Kravchuk settled for a very complicated electoral system with no role for political parties and low campaign-spending ceilings. . . . His declared hope was that less than 50 percent of Ukrainian voters would participate in the parliamentary elections, thus rendering them invalid and leaving Ukraine with an elected president but no parliament" (130). This provides a precursor of the anti-party actions of the elites that will be discussed.

17. One of the most destructive influences of the unreformed left has been opposition to economic reforms, which others—including the President—have used for their own ends. By using the leftist vote, business interests aligned with the president were able to hold up reforms in the Verkhovna Rada that were not beneficial to their own interests. Kuchma's allies also relied upon Communist votes to remove Yushchenko in a vote of no confidence in order to subdue a possible opponent of the president (Wilson 2002b, 329). D'Anieri, Kravchuk, and Kuzio wrote: "[The amorphous center] also works to strengthen the executive at the Rada's expense, as the president can often tailor draft legislation presented to the Rada for approval in such a way as to win the support of the center (his natural supporters) in alliance usually with the right or, occasionally, with the left" (1999, 160).

18. In 2001–2002, former Prime Minister Victor Yushchenko's managed to unite at least some of the rival Rukh factions in his "Our Ukraine" bloc of parties.

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PRIDE IN OUR PROGRESS:
An Examination of the John F. Kennedy Administration's Record Concerning Civil Rights and Environmentalism

Benjamin Mudrick

ABSTRACT

John F. Kennedy was president during a time of great social change and upheaval. Social issues that were once ignored by the federal government moved to the forefront of the presidential agenda. This essay seeks to evaluate John F. Kennedy's record on two important social issues—civil rights and the environment. His successes and failures are analyzed though the lens of the presidential role theory. In the end, it is shown that Kennedy used his roles in a nontraditional way and, in doing so, achieved mixed results.

In the wake of John F. Kennedy's assassination, President Lyndon B. Johnson pleaded with Congress, "No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long" (1963). The civil rights legislation eventually passed in the form of the Civil Rights Act of 1964, but Kennedy's legacy with regards to civil rights and other social issues has not been afforded such closure. While some consider Kennedy a champion of civil rights and other social concerns, others depict him as a cautious moderate who was forced into action by increasing public pressure. The truth, however, exists somewhere in the middle. Kennedy found himself in the Oval Office during a time when social issues began to play a progressively more important role in the presidential agenda. In an attempt to find balance between traditional presidential concerns and increasingly important social issues, Kennedy moved in a measured and cautious manner. Though unsuccessful in bringing about numerous concrete changes in the areas of civil rights and environmental protection, Kennedy used a variety of presidential roles in nontraditional ways to promote racial equality and environmentalism. Kennedy's successes, failures, and contributions to the future progress of these social issues are made more evident by examining his actions in the context of his different presidential roles.

THEORETICAL FRAMEWORK

Kennedy's stance on the issues of civil rights and the environment are most successfully understood when examined through the lens of presidential role theory. Byron Daynes, Raymond Tatalovich, and Dennis Soden define presidential roles as "the set of expectations by political elites and citizenry that define the scope of presidential responsibilities in a given policy area" (1998, 2). There are five major roles that are most often associated with the modern presidency: commander in chief, chief diplomat, chief executive, legislative leader, and opinion/party leader. According to Daynes, Tatalovich, and Soden, each role traditionally affords a different amount of power of influence for the president. For example, the Constitution and historical precedence offer much more power to a president in the role of commander in chief than in the role of legislative leader. This can be attributed to the clear stating of the commander in chief role in the U.S. Constitution. The role of legislative leader, however, has come into play only as an inferred power (and is in compe-tition with Congress). Daynes, Tatalovich, and Soden use the following chart to rank the presidential roles in terms of traditional power (6).

|| More Powerful || || Less Powerful ||

| Commander in Chief | Chief Diplomat | Chief Executive | Legislative Leader | Opinion/party Leader |
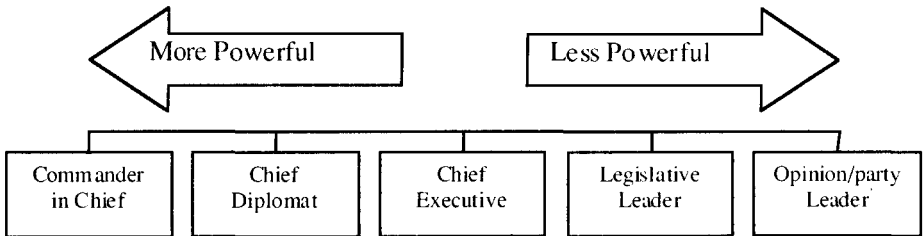
Throughout his administration, Kennedy attempted to use each role to further the issues of civil rights and environmentalism. In some cases, Kennedy effectively used a cer-tain role while at times other roles were ignored or ineffectual.

COMMANDER IN CHIEF

In their essay "The Changing Agenda of the Environment and the Commander in Chief," Ronald Ketter, Chris Bordick, and Michael Cabral explain, "Historically, the commander in chief role is considered to be the most powerful, meaning that presidents have more authority and resources available in this role compared to others" (1999, 228). This power comes directly from the Constitution, which states, "The President shall be Commander in Chief of the Army and Navy of the United States, when called into actual service of the United States" (art. 2, sec. 2). In short, the president has the final say in decisions directly related to the military services of the United States. During Kennedy's administration, President Kennedy used the role of commander in chief sparingly but effectively. In the few instances when he used this role, his actions spurred significant steps forward in the cause of civil rights.

Although the U.S. military was officially desegregated during the Truman Administra-tion, segregation still existed in the armed forces when Kennedy came into office in 1961.

Most significantly, reserve units and the Coast Guard remained segregated. James C. Harvey details Kennedy's efforts to further desegregation in the military.

> An indication of the president's interest was manifested by his anger over the fact that in his inaugural parade no Negro coast guardsmen took part. Kennedy found that the Coast Guard was virtually all white, and he immediately took steps to remedy that situation after he was sworn in as president of the United States.

> As of 1961 there were still six Negro reserve units in the Army. On April 3, 1962, Roswell Gilpatrick, the deputy secretary of defense, ordered them integrated. In June 1963 the Pentagon announced that the integration of the services had been achieved. (1971, 31)

Because the president has final say in matters involving the military, Kennedy's efforts to desegregate the armed forces were effective. To ensure that the integration of the military continued, Kennedy created the Committee on Equal Opportunity in the Armed Forces. When the committee reported that discrimination was still present on military bases and among the troops, Kennedy ordered Secretary of Defense Robert McNamara to act on the issue. In a letter to McNamara, Kennedy wrote:

> The recommendations regarding both off-base and on-base conditions merit your prompt attention and certainly are in the spirit that I believe should characterize our approach to the matter [of integration]. I would hope your review and report on the recommendations could be completed within 30 days. (1963d, 496)

The president's influence was immediately felt. Harvey explains,

> On July 26, 1963, McNamara sent out a directive to all those under his department. In the document the secretary noted that it was the responsibility of each military commander to oppose discriminatory practices affecting his men and their dependents in order to foster equal opportunity for them not only in areas under his immediate command but also in nearby communities. (1971, 34)

Another directive followed, asking base commanders to help families of soldiers in their attempts to enter their children into formerly segregated schools; cancel contracts with segregationist morticians; and ban participation of base athletic teams or musical bands in any off-base events that would take place in front of a segregated audience (U.S. Department of Defense 1963, 14358–59).

From this example, Kennedy's commitment to desegregation and the power of the role of commander in chief is clearly seen. Because of the role's inherent power, no other interest group or institutional body could effectively oppose Kennedy's authority with regards to the desegregation of the military. The changes, as evidenced in the Pentagon's quick reply, took place according to the commander in chief's directives with little debate or controversy.

A much more controversial issue in which Kennedy used the commander in chief role to further civil rights was the use of the military to desegregate schools in the South. In 1962—in direct conflict to a federal court order—the University of Mississippi refused to enroll James Meredith, an African-American. Governor Ross Barnett declared that no

school in Mississippi would desegregate while he was governor and claimed that the federal government could not meddle in the internal affairs of Mississippi. Though reluctant to do so, Kennedy sent 541 federal marshals to Oxford, Mississippi to escort Meredith, force the school into cooperation, and maintain order in case of rioting. Kennedy federalized the Mississippi National Guard and alerted several thousand federal troops in case more support was needed (Barrett 1965, 93–94, 221–22).

The next year a similar situation occurred in Alabama. Governor George Wallace defied a court order to desegregate the University of Alabama. When Kennedy signed an order federalizing the Alabama National Guard, however, Wallace quickly stepped aside (Harvey 1971, 41). The threat of force was enough to change the governor's mind.

These examples show Kennedy's commitment to civil rights through school desegregation, as well as the effectiveness of the commander in chief role. While Congress can always vote against a piece of legislation or ignore a president's opinion, very few choose to ignore or subvert the commander in chief. Southern politicians fought strongly against almost every attempt at desegregation. When the president used the role of commander in chief, however, things happened immediately. Clearly, the role of commander in chief is effective and powerful. Although Kennedy did not use it often, it was always effective.

In the case of the environment, Kennedy also used the commander in chief role in one instance. He saw the space program—usually considered a military or scientific program—as an opportunity to better understand the relationship between humankind and the planet. In an address given the day before his death, Kennedy spoke about the space program and its importance to the environment:

> Space research may open up new understanding of man's relation to his environment. Examination of the astronauts' physical and mental and emotional reactions can teach us more about the differences between normal and abnormal, about the causes and effects of disorientation, in metabolism which could result in extending the life span. When you study effects on our astronauts of exhaust gases which can contaminate their environment, and seek ways to alter these gases so to reduce their toxicity, you are working on problems similar to those we face in our great urban centers which themselves are being corrupted by gases and which must be cleared. (1963a)

Kennedy clearly believed a major function of the space program was to better understand and, conseqently, improve the environment.

CHIEF DIPLOMAT

Carolyn Long, Michael Cabral, and Brooks Vandivort explain the president's role as chief diplomat; "The constitutional and legal authority empowering the president to act as chief diplomat is significant, enabling the president, under most circumstances, to carry out the role as the primary foreign policy representative of the United States, with only limited intrusions by other branches of government" (1999, 189). In short, the president has the ability to act as the chief foreign policy officer of the United States. While in recent years presidents have used this role repeatedly to negotiate international environmental agreements, Kennedy did so only on two occasions.

Civil rights was considered a domestic issue, so Kennedy did not use the role of chief diplomat in his attempts to promote equality. He did, however, see possible foreign policy implications stemming from the civil rights struggle. Russell Riley comments, "Kennedy was concerned about racial struggles as a potential foreign policy problem, one which could not be ignored at a time when possible hotspots such as Vietnam, Cuba, or Berlin threatened to boil over, undermining the nation's security" (1999, 203).

As mentioned previously, the Kennedy Administration negotiated two international treaties that, in one way or another, concerned the environment. In 1963, President Kennedy signed the Treaty Banning Nuclear Weapons Tests in the Atmosphere, also known as the Atomic Test Ban Treaty. Long, Cabral, and Vandivort explain, "[The treaty] represented a significant step toward limiting the environmental damage of nuclear weapons testing, both in the atmosphere and underground" (1999, 203). In an address to the nation, Kennedy explained that the Atomic Test Ban Treaty was environmentally significant because "over the years the number and the yield of weapons tested have rapidly increased and so have the radioactive hazards from such testing. Continued unrestricted testing by the nuclear powers joined in time by other nations which may be less adept in limiting pollution, will increasingly contaminate the air that all of us must breathe" (1963e). In this case, Kennedy effectively used the role of chief diplomat to promote environmental concerns.

Kennedy also used the role of chief diplomat to negotiate the 1963 Protocol on North Pacific Furs. Late in his administration, he sent a delegation to negotiate an international protocol concerning north pacific fisheries. Kennedy explained, "It is obvious that unless international conservation agreements are strictly enforced there is grave danger of permanent injury to our ocean resources" (1963j). Clearly, Kennedy saw the importance of international agreements concerning the environment, but, as evidenced, his initiation of such agreements was limited.

Attempting to explain Kennedy's limited activism in regard to environmental diplomacy, Long, Cabral, and Vandivort hypothesize, "Several factors contributed to JFK's limited diplomatic activity; his focus on trade and the United States' growing role in Southeast Asia, his lack of personal interest in environmental matters, and his limited time in office" (1999, 189). It may also be noted that during the Kennedy Administration international environmentalism was still not an important political—or even scientific—concern. Although Kennedy did not use the role of environmental diplomat often, he was effective in the few issues in which he did involve himself. Most significantly, the Atomic Test Ban Treaty paved the way for future nuclear testing treaties and international environmental agreements.

CHIEF EXECUTIVE

Daynes and Sussman define the role of chief executive as "involving a president's relationship with the bureaucracy, his administrative staff, and domestic policymaking" (2001, 6). The extent to which Kennedy used this role to promote environmentalism and civil rights can be seen in his executive branch appointments, court appointments, executive orders, and creation of agencies and bureaus.

Kennedy first used his executive appointing power to increase diversity in the executive branch. He placed those who were sympathetic to the causes of civil rights and environmentalism in the administration. In regards to diversity, Kennedy appointed more African-Americans to positions in the federal government than any president before him. Robert C. Weaver was named to head the Housing and Home Finance Agency. George Weaver was made assistant secretary of labor. Carl T. Rowan was named assistant secretary of state for public affairs. Andrew Hatcher was appointed associate press secretary. Lisle Carter was named deputy assistant secretary in the Department of Health, Education and Welfare. Finally, Frank Reeves was named to the White House staff (Brauer 1977). Other important appointments were also made to increase diversity in the executive branch. Spottswood Robinson III was made a member of the Civil Rights Commission. John Duncan was appointed as commissioner for the District of Columbia. The naming of A. Leon Higginbotham to the Federal Trade Commission is particularly noteworthy. He was the first African-American to serve on a federal regulatory agency (Harvey 1971, 23).

Kennedy also appointed African-Americans to European ambassadorships. James C. Harvey writes, "For the first time blacks were named as ambassadors to European as well as African countries. Clifton Wharton was appointed as ambassador to Norway, and he was the first Negro to serve as ambassador to a predominantly white country and the first of his race to rise through the career service to become an ambassador" (Harvey 1971, 24).

Kennedy also appointed many minorities as federal judges. The most important was the appointment of Thurgood Marshall, one of the lawyers who argued *Brown v. Board of Education,* to the Second Circuit Court of Appeals. Kennedy also named the first female minority federal judge. Marjorie Lawson was nominated as a federal judge in Washington, D.C., and became the first African-American woman to be appointed to the federal bench (Harvey 1971, 23).

With regards to his appointment of several African-Americans to executive and judicial branches, the Southern Regional Council reported,

> The Negro vote had been of great importance in the president's election. It was in harmony with American political tradition and practice that the role of the Negroes in the election would have established the Negro's right to some of the spoils of victory. Kennedy paid off his political debt, and in doing so he brought into office blacks of recognized distinction and ability. (1962, 25)

While this view of the president's appointments makes them seem politically motivated, it does highlight the extent to which he appointed minorities to federal positions and how his actions were perceived by the nation.

Kennedy made two significant appointments on which he relied for most of his environmental decisions. Dennis L. Soden and Brent S. Steel state, "It is noted that [Kennedy] knew little about agriculture or natural resource issues, but relied on strong Secretaries, Orville Freeman and Stewart Udall, respectively—at Agriculture and Interior, to direct policy making in these areas" (1999, 228). Kennedy's commitment to the issue of conservationism can be seen in the trust he placed in his advisors.

Kennedy also issued several Executive Orders concerning civil rights and environmental concerns. With regards to integrating federal housing, Kennedy issued an order entitled Equal Opportunity in Housing. The order announced that discrimination and segregation was to end in all federally owned or subsidized housing:

> Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits there under are made available to all Americans without regard to their race, color, creed, or national origin. (1962a)

To enforce this order, Kennedy created the President's Committee on Equal Opportunity in Housing. He also attempted to end discrimination in the hiring practices of the federal government. On March 7, 1961, Kennedy announced,

> I am today issuing an Executive Order combining the President's Committee on Government Contracts and the President's Committee on Government Employment Policy into a single President's Committee on Equal Employment Opportunity. Through this vastly strengthened machinery I intend to ensure that all Americans of all colors and beliefs will have equal access to employment within the government, and those who do business with the government. (1962c, 121)

Kennedy continued his assault of discrimination in the workplace with Executive Order 11114 on June 22, 1963. This order extended the authority of the Committee on Equal Employment Practices to cover any federally assisted construction project, whether by loan, grant contact, guaranty, or insurance. The committee was given the power to withhold funds from any project where discrimination was encountered (1963c). All in all, the president issued five executive orders that dealt with race and equal opportunity. Kennedy clearly saw the power of chief executive as a method to end discrimination and further the civil rights agenda. During the first meeting of the Committee on Equal Employment Opportunity, Kennedy spoke of executive power and its role in promoting equality:

> I am hopeful and confident that from this time forward the Committee will exercise the great powers given to it by executive order to permanently remove from Government employment and work performed for the Government every trace of discrimination because of race, creed, color, or place of national origin. (1961a)

Kennedy also used executive orders to promote his environmental agenda. According to "John F. Kennedy's Executive Orders 1961–1963," Kennedy issued nineteen executive orders that had to do with environmental issues. These accounted for nine percent of all of the executive orders that he issued; nine dealt with parks and forests, three with radioactivity, four with land use, and three with general environmental issues. For example, Executive Order 11072 states, "Whereas it would be in the public interest to extend the exterior boundaries of the Superior National Forest in Minnesota and the Clark National Forest in Missouri to include certain lands acquired or which may be hereafter acquired for

national forest purposes; together with adjoining public lands" (1962b). Kennedy used this and other executive orders to extend national forests, protect parks and resources, and further other environmental concerns.

From these examples, Kennedy's use of the chief executive role in the cases of civil rights and environmental protection is better understood. Obviously, Kennedy used the role of chief executive frequently; however, its effectiveness, at least in the case of civil rights, is questionable. James Harvey explains why Kennedy's executive orders concerning discrimination in the workplace were ineffective:

> Harold Fleming in 1965 pointed out that the attempt to deal with discrimination in jobs [with executive orders] had had little impact. He gave the following reasons: there was little jurisdiction over labor unions; automation had caused a decline in less skilled jobs, leaving Negroes at a disadvantage . . . and enforcement provisions were practically never used. In fact, "the ultimate sanction"—contract termination—has never been applied, no hearings have been held, and only a few companies have been put on the list of ineligibles for future contracts. (1971, 48)

Clearly, the implementation and enforcement of these executive orders proved difficult. For this reason, though used more frequently than other presidential roles, the role of chief executive was still less effective than other presidential roles in bringing about consequential change in regards to civil rights and environmental protection.

LEGISLATIVE LEADER

Traditionally, the role of legislative leader has been considered less powerful than most other presidential roles, because of the powerful position of Congress in creating legislation. Although the president may recommend legislation and use his influence to get things passed, he cannot vote. And in the end, it is the vote that matters. This is not to say, however, that the role cannot be important or used effectively. Daynes and Sussman explain, "While [legislative leader] is one of the president's weaker roles, lacking in both authority and resources, it is, nevertheless, a role of lasting consequence to most presidents—and a role that can build the social agenda." They continue, "The President may veto important acts of Congress, refuse to appoint persons with legislative support to administrative positions, or neglect to consult with representatives or senators on policy issues" (2001, 63).

Though Kennedy served in Congress for over a decade before his presidency, he rarely used the role of legislative leader to further civil rights or the environment. In 1961, Kennedy sent "A Special Message to the Congress on Natural Resources." This message showed great foresight in stating that "problems of immediacy always have the advantage of attracting notice—those that lie in the future fare poorly in the competition for attention and money. . . . We cannot, however, delude ourselves—we must understand our resources problems, and we must face up to them now. The task is large but it will be done" (1961b). It called for legislative action regarding water resources, electric power, forests, public lands, and ocean resources. The administration, however, did nothing following the

release of this message to push for the legislation. Only one piece of significant environmental legislation was passed during the Kennedy Administration. The Clean Air Act of 1963 set restriction on pollution and contamination. Kennedy supported the bill, but was not an original proponent of it. Why Kennedy ignored the opportunity to use the role of legislative leader to preserve the environment as he initially proposed is unknown, but his failure is clear.

The reason for his legislative inaction on civil rights, on the other hand, is clearer. As a Democratic president, Kennedy found himself in a precarious position with Congress. While a majority of his party supported progressive civil rights legislation, a good portion of the party belonged to the southern "Dixiecrat" coalition. The Dixiecrats were southern segregationists who distrusted the federal government and vehemently opposed any civil rights legislation. The Dixiecrats held several important committee chairmanships in both the House and Senate and vowed to stop any civil rights legislation from getting to the floor. Alexander Bickel explains:

> A first and obvious generalization is that the [civil rights] performance through 1962 was almost wholly executive. The administration broke no lances with Congress. As to this, one need perhaps say no more than President Kennedy was a realist, and he had troubles enough in what was in all intents and purposes a three-party legislature, with a species of [southern] Democrats holding the balance of power. (1962, 1877)

By 1963, however, Kennedy decided to push for a strong piece of civil rights legislation in the Congress. On February 28, 1963, Kennedy sent a special message to Congress concerning civil rights. It stated:

> In the last two years, more progress has been made in securing the civil rights of all Americans than in any comparable period in our history. Progress has been made— through executive action, litigation, persuasion and private initiative—in achieving and protecting equality of opportunity in education, voting, transportation, employment, housing, government, and the enjoyment of public accommodations.
>
> But pride in our progress must not give way to relaxation of our effort. Nor does progress in the Executive Branch enable the Legislative Branch to escape its own obligations. On the contrary, it is in the light of this nationwide progress, and in the belief that Congress will wish once again to meet its responsibilities in this matter, that I stress in the following agenda of existing and prospective action important legislative as well as administrative measures. (1963h)

Kennedy sent a clear message to Congress that the time for meaningful civil rights legislation had arrived. Unlike his message on natural resources, however, Kennedy followed up on this message and devoted great time and energy to the success of civil rights legislation.

When Congress did not propose any meaningful legislation after the delivery of his special message, the Kennedy Administration decided to take matters into its own hands. Harvey writes, "The president decided to go ahead with a sweeping new bill on May 31, over the objection of some of his political advisors who foresaw both congressional and electoral defeat" (1971, 56). On June 19, 1963, Kennedy sent another special message to

Congress entitled "Civil Rights and Job Opportunities." In the message, Kennedy proposed that Congress stay in session until meaningful legislation was passed. He also asked for the following provisions: an extension of the Civil Rights Commission, an increase in voting rights, equal accommodations in public facilities, equal opportunity in employment, more federally assisted programs for minorities, and broader efforts in the desegregation of schools (1963i).

Kennedy also attempted to get civil rights legislation through Congress. He actively lobbied congressional leaders from both the Republican and Democratic parties and held daily meetings in regards to the legislation's progress. Unfortunately, Kennedy was assassinated before the legislation was enacted. However, as President Johnson later stated, the eventual passage of the Civil Rights Act of 1964 can partially be attributed to "President Kennedy's memory" (1963).

As evidenced in this section, Kennedy did not use his role as legislative leader as frequently as other roles, but in the one case in which he did, he eventually found great success—though posthumously—despite strong opposition from Congress. This demonstrates that the role of legislative leader is not necessarily as powerful or influential as other presidential roles in bringing about social change, but can be significantly effective when it is used properly. For example, the Civil Rights Act, though slow in its incubation, was significantly more influential than any of Kennedy's other executive orders on civil rights.

OPINION/PARTY LEADER

Opinion/party leader is generally considered the weakest of the presidential roles. Daynes and Sussman define the role: "The opinion/party leader attempts to mobilize public support for the policies and programs of the administration and party on one hand and respond to constituent interests on the other." They continue, "At the same time, the president must decide which issues to address and then present a case for them to the public" (2001, 32). In the case of both the environment and civil rights, Kennedy progressively dedicated more time to each issue in his role as an opinion leader.

The Democratic Party Platform of 1960 contained small sections on both the environment and civil rights. An entire section on natural resources stated, "Sound public policy must assure that these essential resources will be available to provide the good life for our children and future generations" (Democratic National Committee, 45). The same platform contained two sections on civil rights issues. One is entitled "Discrimination in Employment" and the other "Civil Rights." This section came to be known as the "Rights of Man" document. It states, "We shall also seek to create an affirmative new atmosphere in which to deal with racial divisions and inequalities which threaten both the integrity of our democratic faith and the proposition on which our nation was founded—that all men are created equal" (Democratic National Committee, 47). In his acceptance speech, at the Democratic Convention, Kennedy accepted the party platform and dedicated himself to fulfilling the "Rights of Man."

During the early years of his administration, however, Kennedy did not use his role as opinion leader frequently in the cases of civil rights and environmentalism. He mentioned both briefly in his first State of the Union Address but provided no specifics on how he planned to deal with the issues. Concerning Kennedy's early rhetoric on civil rights, Carl Brauer writes, "Evidently fearing an adverse reaction from Southern Democrats, Kennedy avoided the 'bully pulpit.' He did not devote a major address to the issue" (1977, 74).

This trend continued until Kennedy decided to fully push the civil rights legislation mentioned earlier. The day following his standoff with George Wallace over the admission of African-Americans into the University of Alabama, Kennedy delivered a nationally broadcast speech concerning the topic of civil rights. Kennedy not only explained his reasoning for federalizing the Alabama National Guard, he redefined the entire civil rights struggle as a moral issue facing the country. Kennedy stated, "We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated" (1963f). For the first time, an American president spoke to the entire nation about civil rights and the nation's moral obligation to make necessary changes. From the time of this speech, Kennedy spoke frequently and passionately about the issue of civil rights.

As with civil rights, Kennedy did not use the "bully pulpit" to discuss environmental issues early on in his administration. A few months before his death, however, he embarked on a "Conservation Tour of America" during which he spoke about conservation and natural resources all over the country. At the first stop on the tour, Grey Towers, Kennedy expressed his views on conservationism, "The riches of this continent should be used for all the people to provide a more abundant life, and . . . that the waste of these resources, or the exploitation by a few, [is] a threat to our national democratic way of life" (1963b). Kennedy continued his tour throughout the United States over the next week and, in his final stop in Las Vegas, expressed his ultimate goal concerning environmental protection:

> Our task, the task of propelling a third wave of conservation in the United States, following that of Theodore Roosevelt and of Franklin Roosevelt, is to make science the servant of conservation, and to devise new programs of land stewardship that will enable us to preserve this green environment, which means so much to all of us. . . . We must mount a new campaign to preserve our natural environment in order that those who come after us will find a green and rich country. (1963g)

As with civil rights, Kennedy made a more concerted effort to affect public opinion concerning the issue of the environment as his presidency drew to a close. Had Kennedy not been assassinated, it is possible that he would have used the role of opinion/party leader to a much greater extent.

While opinion/party leader is not considered a powerful role, Kennedy used it increasingly more often and more effectively as his administration progressed. Because of the strong opposition he faced in Congress, Kennedy found it necessary to appeal to the public, especially in the case of civil rights. By appealing to the moral conscience of America, Kennedy increased the chances for his legislative and executive policies to succeed.

CONCLUSION

In his attempt to promote civil rights and conservationism, John F. Kennedy used with varying levels of success all of the different roles available to him. As commander in chief, Kennedy successfully continued the integration of the military that began during the Truman Administration and successfully desegregated universities in the South. He also used this role to promote the continuance of the space program to research the environment and its relation to man. Whenever Kennedy used this role to address these issues, the results were positive. Because conservationism and civil rights were considered domestic political issues, however, Kennedy used the role of commander in chief infrequently. Kennedy's use of the chief diplomat role mirrored his role as commander in chief. The times he used diplomacy for environmental issues, though infrequent, were successful.

Kennedy used the chief executive role more frequently than any other role. Kennedy appointed more African-Americans to positions in the federal government than any president before him. He appointed the first minority ambassador to a European nation and appointed many minorities as federal judges—including Marjorie Lawson, the first female minority federal judge, and Thurgood Marshall, an eventual Supreme Court Justice. Kennedy also appointed strong environmentalists to positions and relied on their judgment when faced with related issues.

Through the use of executive power, Kennedy created the Equal Opportunity Employment Commission and bolstered the power of the Civil Rights Commission. Kennedy also used this role to further integrate schools and the military. Kennedy also issued several executive orders concerning national parks and forests. Clearly, the role of chief executive was Kennedy's most frequently used role and, in most cases, was quite effective.

The role of legislative leader was not used often by Kennedy. In the one case that he pushed Congress to enact the Civil Rights Act, however, the legislation eventually passed (though after his assassination). Clearly, the role of legislative leader can be used to promote the social agenda, but it faces strong opposition and requires a great deal of effort. In many cases, however, its effects can carry greater influence nationwide than military actions and executive orders.

The role of opinion/party leader is the least effective of all of the presidential roles, but by the end of his administration Kennedy found it important to discuss the social issues with the public. He gave more and more speeches on the issues of civil rights and conservation as his presidency progressed. While it is difficult to measure the effectiveness of his effort, the frequency with which he used speeches to influence social policy reflects the role's importance

This diagram was presented earlier to show the relative power of presidential roles.
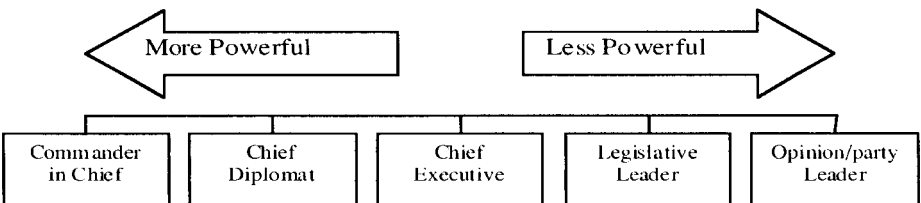
As evidenced, the relative power of each role was consistent during the Kennedy Administration. For example, his infrequent uses of commander in chief and chief diplomat were always successful. His frequent use of chief executive, however, produced mixed results. It is interesting that John F. Kennedy, though probably cognizant of the differing powers of each role, used less powerful roles more frequently than more powerful roles. The following diagram shows the frequency with which Kennedy used different roles to promote his civil rights and environmental agenda.

CIVIL RIGHTS

More Frequent		Less Frequent		
Chief Executive	Opinion/Party Leader	Commander in chief	Legislative Leader	Chief Diplomat

ENVIRONMENT

More Frequent		Less Frequent		
Chief Executive	Opinion/Party Leader	Chief Diplomat	Legislative Leader	Commander in chief
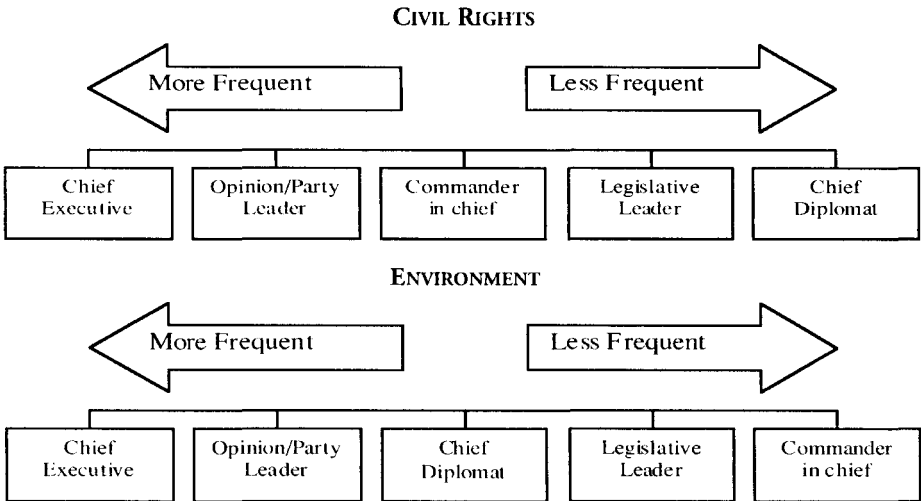
In terms of the social agenda, Kennedy found the roles of chief executive and opinion/party leader to be most suited to his policy concerns. While these roles are not always the most effective or powerful, they fit with the attributes of social issues during the Kennedy Administration.

Although Kennedy was not entirely successful in bringing about monumental changes in civil rights and environmental issues, he did use almost every role at his disposal in attempts to further both issues. Following his assassination, a great deal of progress was made in relation to both issues. Clearly, he planted the seeds for future change.

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A LAND WHEREIN THOU ART A STRANGER: Notes on Ukrainian National Identity

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ABSTRACT

Selection from an Honors thesis in partial fulfillment of University Honors. Ben Peters examines Ukrainian national identity as a contemporary phenomenon fraught with tensions and paradoxes. Here in the introduction and final chapter of his undergraduate thesis, Peters briefly presents, first, Ukrainian national identity in light of a number of theoretical approaches (e.g., Herder, Renan, Honig, Benjamin, Smith, and Anderson) and then turns his attention toward synthesizing observations about Ukrainian architecture of public space (e.g., monuments, institutions, symbols) into two general themes of Ukrainian national identity: national otherness and resurrection. When seen as the Hegelian "other," Ukrainian history leads toward an internal intolerance of identity. Instead, Peters suggests that dismissing the label "other" and not those labeled "others" in historical and present situations provides a fertile soil in which a Ukrainian national identity capable of meeting the demands of democracy may develop.

INTRODUCTORY NOTES ON UKRAINIAN NATIONAL IDENTITY

If nations are actors on the stage of their state, then independent Ukraine since 1991 has the script and cast for a world-class soap opera. Members of the Ukrainian collective squabble over cultural inheritance, the closest of ethnicities clash, and religious zealots boil over inheritance claims. Ukraine today struggles to stabilize its many conflicting characters—jealousy, heated spats, and grudges are not uncommon spices in brewing the modern Ukrainian nation. Altogether, Ukraine makes for a fantastic drama.

Ukraine also makes a sterling subject to study Eastern European national neighborhoods. Zbigniew Brzezinski, Jimmy Carter's former National Security Adviser, called Ukrainian independence "one of the three major geopolitical events of the twentieth century" because

Russia, that great historical empire, would not rise again to superpower status as long as Ukraine remains independent (Zbigniew 1996, 3–8; Wilson 2002, 368). The Ukrainian nation then is a modern milestone of Russia's post-imperial legacy—its independence indirectly means that a superpower is no more. In the words of Benedict Anderson, a nation, as all other imagined communities, is sovereign but limited. Ukraine is becoming a nation in these terms but is neither completely sovereign nor aware of its limitations. Neither Ukrainian confines nor power are fully formed: Ukraine is not yet entirely sovereign nor is it perhaps even adequately aware of its limitations because Ukrainians on the whole do not yet have a common understanding of what it means to be Ukrainian. As Anatolii Pohribnyi, former Minister of Education, forewarns, "[Ukraine] cannot . . . pull [itself] out of economic crisis without uniting the clear majority of the population around the national idea" (Wilson 2002, 235). This work attempts to help address the creation of that Ukrainian national idea.

To study independent Ukraine is to watch an important balancing of future and past: as Ukraine tries to unite behind its new role as Eastern Europe's post-Soviet flagship of independence, it also ought to account for the historic pluralism that tends to divide its population. Left to watch any one episode of Ukraine's recent, knotty history, most outside observers would be left dumbfounded by the diversity and disunion found within its boundaries. Yet despite recent national independence placing Ukraine delicately upon an edge between Europe and Russia, Catholicism and Orthodoxy, West and East, Ukrainian's pluralism also carries a productive potential in terms of developing a consensual national identity. And what Tocqueville said, "Democratic ages are times of experiment, innovation, and adventure" holds true for contemporary Ukrainian nation-building. All democracies, but especially new ones, are constantly in a state of flux and fluidity—concrete national identity is impossible in democratic societies without a built-in societal consensus toward tolerating foreignness among its natives.

What is a nation? I will try to follow Anderson's superb prescription that a nation is an "imagined [not imaginary] community . . . limited and sovereign" (1996, 7). Ukraine as a nation with borders functions as an evolving organism formed by two interacting, interwoven substances—or as Ernest Barker, distinguished British political theorist, describes "a nation [as something that] is simultaneously, and coextensively, two things in one. It is a social substance, or Society . . . [and] a legal substance; a single compulsory association . . . to make and enforce rules for all" (Barker 1956, 4). Conflict between differing social groups in Ukraine is largely kept in check by legal oversight; yet justification for disobedience to the state among these groups draws heavily upon centuries of predemocratic social-state relations, while state oversight falters out of inexperience. Some historical elements of the Ukrainian nation are centuries old, but Ukraine as a nation-state has only existed since the early 1990s. In brief, while only one section of this essay is dedicated to the legal situation in Ukraine per se, compulsory policies and politics between the state and society pervade discussion throughout. As illustrated in Ukraine's case, a nation is a sovereign community limited by its relative composition of and compromise between social and compulsory components.

   To understand the origins of nation, one must consider two leading concepts that have shaped debate over the past two centuries. One is Renan's endorsement of forgetting the past to develop national solidarity, and the other is Herder's claim that a nation is organically rooted in a historical folk or people. The first is a synchronic argument, the second diachronic. Either a nation is born of imagined memory or out of the very dirt of organic fact. This dialectic between inventive remembering and forgetting remains key to the following discussion of Ukraine. In brief, the battle between mind and blood, politics and history, collective memory and its misplacement will ultimately define independent Ukraine as a nation. For democracy to succeed, a nation must be amenable to a new set of national memories that can allow its present people to accept diversity and difference of organic characteristics (e.g., language, ethnicity, religion).

   Some see history as nothing but the web of stories about the past; others see it as a professional academic field of inquiry; and yet others see history as the factual content of past time, things as they "really" happened. Here history will refer to that mutable record of roots that resurrects the past into the present and defines the collective potential, memory, and consciousness of a people. As Walter Benjamin (1968) argues, history enlivens the past only by being a version of the present. Especially because Ukraine's history is a composite of foreign nations and alien entities, Ukrainians need to unravel their patchwork of painful history and abstract their own modern national identity to embrace its many contributors. The questions between "us" and "other" will be answered by the modern rendering of Ukrainian history. We need to, as Bonnie Honig argues, switch the question from "how should we solve the problem of foreignness" to the question "what problems does foreignness solve for us" (2001)—in other words, only that which is the "other" in Ukraine can liberate Ukrainian identity from the bonds of historical resentment into present equivalence for all its people. The "other" in Ukraine is not the problem—it is the solution.

   What is national identity? Anthony D. Smith's five fundamental features of national identity provide a platform for investigating the embryonic formation of claimed ancient Ukrainian identity. According to this formula, a successful Ukrainian national identity would require

   1. A historic territory, or homeland,
   2. Common myths and historical memories,
   3. A common, mass public culture,
   4. Common legal rights and duties for all members, and
   5. A common economy with territorial mobility for members. (1991, 14)

   Commonality is perhaps the stickiest subject for Ukraine: are memories, myths, and culture truly common or do they remain only because of collectively imposed Soviet nation-building policies? Probably the latter, but it remains a question. I will argue that in some sense foreigners have done more—by fanning Ukrainian nationalism in the Canadian Diaspora or by simply occupying the area—to create Ukraine today than Ukrainian polity or policy have had time to do themselves. The race to make Ukraine is run today by natives trying to catch up with what foreigners have done or are doing.

Who, then, is a Ukrainian today? A brief demographic sketch of Ukraine reveals about 49 million inhabitants in a little over 600,000 square kilometers (an area slightly smaller than Texas). Ukraine is thus the largest country in European Eurasia besides Russia (U.S. State Department 2002). Ukrainian history houses the mixed political legacies of the Soviet Union, Russia, Poland, Lithuania, the Cossacks, the Hapsburg empire, and Kyiv Rus as well as the religions of Orthodoxy, Catholicism, Protestantism, Judaism, Islam, and Paganism. Ethnic groups include, in descending order, Ukrainians (73%), Russians (22%), Jews, Belarusians, Moldovans, Bulgarians, Poles, Hungarians, Romanians, Crimean Tatars, and others. The rubrics of Ukrainian and Russian ethnicity often are politicized and misleading. Many citizens of Russian ancestry claim Ukrainian ethnicity out of allegiance to territory rather than actual genealogy, skewing true ethnic distinctions. Traditional religious movements include Ukrainian Orthodoxies (of Moscow and Kyiv Patriarchates and other less prominent variants), Greek Catholicism, Judaism, Roman Catholicism, and Islam.[1] Ukraine has no simple majority along religious, political, ethnic, linguistic, or even economic lines. Economically, the nation's predicted 2002 GDP was near 40 billion USD (a 4.1% increase since 2001). This remains surprisingly small compared to its European neighbors to the west.

Ukrainian internal divisions are largely due to its history with neighboring nations. Perhaps the political question for Ukraine in the twenty-first century follows: with which neighbors will it choose to seek the most affiliation and communication? East or West? Before the fall of Communism, John A. Armstrong treated the Soviet Republic of Ukraine as a "younger brother" of Russia (together with Belarus) in understanding post-Communist Ukraine. Now, however, we must also investigate independent Ukraine's split relationships with its neighboring nations. The European Union is looking more and more attractive to western Ukraine, while economic alliance with Russia remains the primary interest of eastern Ukraine. The elusive answer to the question "what Ukrainians consider to be Ukrainian" lies in how those within Ukraine's borders will treat those beyond its borders.

IDENTITY IN OTHERNESS AND HISTORY, DEATH AND RESURRECTION

"And I will give unto thee, and to thy seed after thee, the land wherein thou art a stranger . . . for an everlasting possession; and I will be their God" (Genesis 17:8).

The Judeo-Christian tradition of inheritance (seed), possession (territory), and exile (stranger) are central to Ukrainian national identity. Much like when Abram (later known as Abraham) received the land of Canaan as his divinely appointed inheritance, the newly formed Ukrainian state in 1991 received its land as a stranger. In a strong sense, Ukraine is a stranger in its own land. This will be better demonstrated as I trace two themes in Ukrainian national identity: the presence of otherness and the prevalence of death and resurrection.

OTHERNESS IN NATIONALITY

As the historian Lord Acton once said, "Exile is the mother of nationalism." Ukraine has been an exile cast upon itself. The idea of alienness is closely associated with the idea of

land: typically those who possess the land are entitled to make the distinction between the near-cognates extraterrestrial (i.e., alien) and extra-territorial (i.e., foreigner)—however, in Ukraine the distinction between alien and foreigner is obscured as is the land's possessor.[2] Ukraine has historically been its own alien: Constantinople, Poland-Lithuania, Russian Muscovy, Nazi Germany, and Soviet Moscow have all contributed to a contemporary Ukrainian national identity—they, Ukraine's historical possessors, were not what Ukraine is.

Whom we recognize as "other" is perhaps the ultimate political question; it is not about how, but with whom we interact that forms the whole human order. For instance, academics in the Ukrainian Diaspora in Canada have ostensibly kept alive Ukrainian nationalism and, with it, a version of Ukrainian identity characterized by the anti-Russian Orthodox sentiment prevalent during the Soviet era. Much like their original national prophet Taras Shevchenko, who was stranded in alien Russia, expatriate Ukrainian nationalists fought most vigorously for a distant homeland. Because he is the quintessential epitome of exile, Shevchenko also makes for a resilient source of collective identity. He wrote the bulk of his nationalistic poetry from the then remote capital of St. Petersburg. Such a textual Diaspora breeds life. In fact the word *Diaspora*, related to our *spore*, comes from Greek for dispersion, dissemination, or sowing about of seeds—in other words, foreign soil brings new life to seeds of distant nations. The Diaspora defines the field of the very thing it is not, a national homeland.

Borders magnify national distinctions. Between Ukrainian borders, the words of foreigners—be they imperialist and ecclesiastical rulers or displaced and disaffected nationalists—have been history's law. Now, Ukrainians would do well to recognize the historical and contemporary presence of otherness found in the territory between their borders. In short, the outsider has largely defined Ukrainian national identity to date.[3] If consciousness, as Hegel's parable puts it, is "itself the gazing of one self-consciousness into another, and itself is both, and the unity of both is also its own essence," then Ukraine is awakening to its true essence, the presence of the other within itself (1807, 251). Ukraine has long viewed itself, its history, and its future through the eyes of others—now, looking deep into the reflective pool of Ukrainian social territory and texts, it finds the eyes of another staring intently back.

DEATH AND RESURRECTION

In an interview with the Russian national newspaper *Izvestia* on 11 September 2003, Ukrainian President Kuchma said, "What is the main holiday for Catholics, and what is the main one for us? They have Christmas—Christ was born; we have Easter—Christ rose from the dead. In Ukraine, in order to be understood, you have to die first" (Radio Free Europe 2003). The prevalence of evidence on national death and resurrection in public space exposes the life force behind many conflicting national memories during millennia of national otherness. Death, after all, signifies life past—that which is dead once lived. Ukraine is a historical graveyard, and a contemporary garden, identities.

Modern Ukrainian national identity is steeped in past death; nearly all claims made for national identification are paralleled by both termination anmesd rejuvenation of life. The

University of Petro Mohyla Academy was restored in 1991 as the largest, most prestigious private university in Kyiv—characterized by strong nationalist publications meant to create a Ukrainian intellectual spirit through a sort of "nonprofit entrepreneurship" that energetically drives the faculty at Mohyla Academy to restore lost national virtues and cachet among educated readers.[4]

Yet death has spread at least two shadows over their work toward national revitalization. The first, in responding to the "denationalization" of Ukraine during the Russian and Soviet rule, Mohyla Academy recognizes the enervating loss of national spirit. After all, historical defeat—the death and dependency of the Ukrainian nation to outside empires—could only be fought so vigorously by Ukrainian scholars given an almost universal interpretation of national defeat from foreign scholars.

The second and more interestingly explicit recognition of death is in the Academy's own name and placement: "Mohyla" (Могила in both Russian and Ukrainian) means grave, an odd yet more appropriate name than most because Mohyla Academy's campus is built upon the vestiges of 1615 Petro Mohyla's (an early Ukrainian Orthodox metropolitan, educator, and Cossack leader) original academy of higher education that was dismantled and transported to St Petersburg in 1815.[5] On the nominal and literal grave of higher education arises, like the phoenix from its ashes, modern Ukrainian national education. Accepting and then turning to fight death has become a modern way of life for many educated Ukrainians.

Religious undertones and overtones unite public death and life in Ukraine. Soviet and modern public monuments unanimously celebrate national conception and even more visibly (though not intentionally) national death. The 1980 Brezhnev-built leviathan of Soviet statues in Kyiv, the Mother of the Motherland (Родина Мать), towers over the Dnieper River with sword stretched in stalwart pose, reminding Kyiv of its double role as protector in war and life-source of Slavic history. The statue stands in the center of the city's vast World War II memorial complex and right above the Park of Eternal Glory dedicated to commemorating past death inflicted at the hands of history and glorifying, Soviet-style, the longevity of the Ukrainian nation. Although many consider the leviathan statue a Soviet scar, no action is being taken to remove it. Only the nearby steeple of the Pechersk Complex of the Moscow Orthodox Patriarchate stands higher than the sword of the Mother of the Motherland statue. The sword was supposedly shortened immediately after it was built because the Russian Orthodox Church pressured Brezhnev to avoid blaspheming God by placing the state higher than the church. The parallel is unnerving; wartime monuments are built in honor of personal sacrifice (i.e., the loss of life) for national longevity while monuments in honor of Orthodox religion are founded on the idea of life after death (i.e., resurrection).

Other public monuments include the marbled grave of Kyiv Orthodox Patriarch Volodymyr, which lies near a bus stop on a central public square a few meters outside the entrance to the resplendent Divine Wisdom Cathedral, an awkward result of a religious squabble in 1995 over the placement of religious graves on public grounds.[6] It is not surprising that Shevchenko fills his paintings with crosses and graves that draw the center of

attention. As another example of life and death in one institution, the Nikolaevskyi Roman Catholic cathedral in downtown Kyiv was built just before it was taken over by the Soviets and converted into a "Silencer"[7]—a storage silo for equipment to silence international radio broadcasts. Now, restored to its original function, the cathedral hosts international choirs and organ recitals. Once a disruptor of radio waves, the cathedral now transmits its own melody for all to hear. It, like much in Ukraine, has undergone a turnabout of signals—from static to sound, from death to life. As in Ukrainian Orthodoxy, as in Ukrainian culture, death is as active as life.

But perhaps the most symbolic union of death, rebirth, and modern Ukrainian identity is the Christian cross. The Christian cross has become such a common occurrence since independence that its significance almost disappears in Ukrainian culture like leaves do on a tree. For instance, although a Soviet military cemetery in downtown Kyiv was bereft of crosses until 1991, practically every additional gravestone placed since bears a cross. Socialist Party leader Oleksandr Moroz said profoundly of a cross erected at the site where the body of a slain reporter—Heorhiy Gongadze—was found, "This is not just a symbol of the death of a man, this is a symbol of truth, of the fight for truth." Thus topping Mafioso jewelry, political rhetoric, and rural hilltops alike, the cross crowns many actors and institutes of modern Ukrainian culture, symbolizing the religious zenith of popular identity and evidencing the strong prevalence of death and resurrection as key ideological ornaments with which Ukrainians decorate their public spaces, services, and lives. Although the crosses come in many varieties (e.g., if a figure of Christ's body is attached to a cross, a Greek Catholic crucifix has one nail through both feet, while an Orthodox crucifix has a nail through each foot), the social connotation is the same: Ukraine remembers death and resurrection as part of its collective conscience.

A Jewish memorial at Babi Yar (where the Nazis exterminated over 100,000 Jews in Kyiv) evokes renewed life from death in three languages (Ukrainian, English, and Yiddish) with an inscribed winged angel carrying a crossed shield and a sword (not too unlike the Mother of the Motherland statue in its minute features) and a quotation of Ezekiel 34:14: "I will put my breath into you and you will live again." Another public monument on Kyiv's central street—Khreshatik (Хрещатик)—marks the place of, and in names identifies, the baptism of Kyiv Rus in the Dnieper River, marking the state-sponsored birth of Christianity and the official grave of paganism. Ukrainian baptism by immersion refers once again to the death and rebirth of a nation.

Perhaps the most colorful national symbol is the Ukrainian nationalist emblem: an inverted triangle with black and red vertical halves, a white cross, and a green trident symbol encircled by black. The color black stands for Ukrainian soil (territory), the red symbolizes spilt Ukrainian blood, the white cross invokes Christian purity, and the green trident refers to Ukrainian mythology. In all, this symbol subtly portrays Ukrainian nationalistic identity: religion and farmland that have survived a bloody and noble history. While this formula of nationalism is largely contrived, it draws well from century-old national colors, red for life and black for death that is ubiquitous in Ukrainian folk art, fabric, and design.

The death and rebirth of Ukrainian national heroes contrasts distinctly with America's national heroes. Shevchenko has achieved much more since death than in life. George

Washington, in contrast, remembered for living to make America free from Britain and for his role in participating in the birth of America, has earned the rightful title of forefather to his nation.[8] In contrast, Ukraine has its Shevchenko, who glorifies the female whose bearing of life has often brought death. Instead of forefather, Shevchenko is the foreteller of his nation, silenced in life in all but script; doomed to be unable to bring about national independence, he imagined a Cossack historical heritage that would help Ukraine free itself from others and possess the whole of its bright future. While George Washington lived to free America, Shevchenko died foretelling Ukrainian rebirth.

Another social text, the national anthem, spells an interesting contrast: while the American national anthem emphasizes ever waving banners, freedom, and fighting, the Ukrainian national anthem "Ще не вмерла Україна" translates "Ukraine has not yet died," morbidly hinting that death has long been a serious concern and has yet to leave the nation's foreseeable horizon. The Polish national anthem similarly reads, "My zyjemy, my zyjemy, Polska nie zginela" or "we live, we live, Poland has not perished!" As other testaments to how exile and foreign nationalities in tandem give birth to new nations, the Polish historical national anthem begins "oh, Lithuania," the Dutch national anthem begins with "all those of German blood," France's name comes from the Germanic tribe, the Franks, and lastly, the Ukrainian national anthem testifies to how all Ukrainian brothers are "of Cossack kin." Ukraine—like Europe—shares ancestors of foreign blood. Extending from Remi Brague's (2002) arguments on Europe, Ukraine could also benefit from a national identity willingly built on original sources outside of its current self.[9] Ukrainian identity is found in its search—an unsettled national identity ensures that cultural stagnation and self-absorption will be washed away in a stream of change.

ON THE THEORY OF THE DEATH OF THE OTHER

Echoing its second theme, modern Ukrainian identity is currently transitioning from death in its past to its resurrected present. Given the prevalence of plural otherness as a defining factor in Ukrainian history and the continual reoccurrence of death and rebirth in modern Ukrainian culture, the Ukrainian nation will be able to overcome its identity crisis through a careful balance between national selfhood and otherness. G.W. F. Hegel offers a compelling account of the achievement of full personhood (which can be extended to include full nationhood) over the "other" through trial by death:

> The individual [nation] who has not staked his life, may, no doubt, be recognized as a Person [Nation]; but he has not attained the truth of this recognition as an independent self-consciousness. In the same way each must aim at the death of the other, as it risks its own life thereby; for that other is to it of no more worth than itself; the other's reality is presented to the former as an external other, as outside itself; it must view its otherness as pure existence for itself or as absolute negation. (1807, 233)

The key to this trial by death is consensus on what "self" means. Without consensus, the most likely and most dangerous misinterpretation of Hegel's "the death of the other" leads us to internecine aggression against other nations, which unfortunately characterizes much of European history since Hegel. The secret to making this Hegelian formula

friendly is rejecting the label of "other" and not those labeled "other." By defining collectives not in terms of what is "other" but by dismissing altogether the term "other," a nation is congealed and created. Otherness must be embraced (or at least ignored) in policy and by polity if nontraditional persuasions are to survive on the national level.

World history would suggest that collectives tend to chafe at the suggestion of accepting nontraditional groups as one's own, but as the poet Friedrich Hölderlin said, "Wo die Gefahr ist, wächst das Rettende auch"—where danger is, there lies salvation. Undeniably, the question of what is Ukrainian will go unanswered until the question of "other" is resolved, or dismissed altogether.

What then is "other"? For any European collective identity, the "other" is its "outside self" and not "outside itself." For Ukraine, the other cannot arguably be considered any one minority because it would be foolish not to recognize its own centuries of abuse that Ukrainians endured as minorities under other foreign rulers. In a strong sense, Ukraine is its other.

IMPLICATIONS OF A MODERN UKRAINIAN NATIONAL IDENTITY

Independent Ukraine has made a fresh start from its history of abuse and suppression. For example, most people within its borders welcome distancing Ukraine's image from Soviet history. This may allow for a clean break from sticky national history, facilitating a more potent national reconstruction, a literal re-member-ing of Ukrainian memory.

On the whole, deliberately (re)envisioning national history in attempt to form a Ukrainian identity is not unique, nor is it necessarily wrong. In 1882 Ernest Renan stated: "Getting history wrong is part of being a nation" (1996, 52–54). The word "nation" itself derives from the Latin past participle of *nasci*, to be born. Thus quite literally, in reinventing history, every new nation is reborn as an imagined nation.[10]

For Ukraine, to remember is to actualize the past in the present. Walter Benjamin helps explain how political stability and national memory—an invariably misinterpreted institutionalization of memories both kept and forgotten—are related and therefore necessary for establishing national movements. With the onset of World War II not long past, Benjamin (1968) pictured the present as a critical meeting of history where the future would fail if a missing history was not resurrected. Similarly, Ukrainian historian Yaroslav Hrytsak argues that in fact Ukrainian history is as "normal" as any other national history (1996, 3). Because Ukraine is not unique in its history, it needs to treat carefully its divisive history. The value of history is an ongoing moral, even almost religious, task for the Ukrainian people—it should be kept out of reach of legislation, state-sponsorship, and arenas of factious national questions but well within reach of a public devoted to tolerating one another.

Ukrainian identity has not yet been unmade. In other words, Ukraine is still entangled in the political and religious histories with which it has been involved over the past centuries. Abstracting, instead of constructing, a national identity better describes the intellectual activity at hand because it needs to find itself among consensual principles and not among the divisive details and distinctions of its past. Consensus is the key to democracy, another ambition on the national agenda.

A few areas in the country seem to display such tolerance, giving hope to the whole. Odesa, the southern city with a cosmopolitan port and population ostensibly illustrates legislative tolerance toward its many minorities and forms an excellent example for the larger Ukrainian state. Public declarations are consistently bilingual and restrictions placed upon religious and ethnic groups are only on the basis of legal infraction and not on the bias of exclusive treatment. Odesa seems to embrace otherness, which is key to the success of Ukrainian state and nation. While groups united by similar characteristics (race, religion, and language, to name a few) retain power on the state level, the state itself should seriously consider going beyond blindness toward difference to the degree of seeking out and seizing opportunities to tolerate disparate groups within the nation.

Jewish and Gypsy minorities in Odesa are also excellent micro-examples of the sort of variegated, tolerant pluralism needed in Ukraine: Jews and Gypsies are Europe's two international minorities. Before 1948, neither had a homeland or a set 'nation' of its own; in addition, the two groups are historically antipodal to one another: while Jews have long integrated and dominated social capital across Ukraine (and all of the Western world), Gypsies generally have preferred close-knit communities separated from their host nations. Thus socially perpendicular, Jews and Gypsies have found at least one tolerant point of intersection in Odesa, which city houses its own Jew–Gypsy cemetery, another instance of a place of death as the Ukrainian medium for finding new hope for the future.

Differences, however, are not absolute or irreducible—they are occasions for understanding, not separation. The key to integration of a larger national identity into a state with many minorities is for no element of the nation to consider itself superior to others. Instead, as Professor Roman Szporluk writes that any dominant majority should "dissolve itself within or identify itself with a broader territorial, political, and or ideological concept as well. And so we have Americans, not 'WASPS'; Ottomans, not Turks; British, not English; Spaniards, not Castilians" (2001, 249). Thus we can have all Ukrainians, not merely Poles, Russians, Catholics, Orthodox, etc.

CONCLUSION ON THE *CHERNOZEM* (BLACK EARTH) OF HISTORY

A nation's history is a composition greater than the sum of its components, which can transform a nation from a historical graveyard into a garden of identities. Ukrainian history is in fact Ukrainian national identity's surest friend. Now, to succeed in its openly pro-European Union foreign policy, the Ukrainian state can foster a society whose ideals are based on tolerance of internal otherness, or a national identity in differences. In particular, Ukraine would do well to adopt a capability of Europeans, to accept one's preferred identity as secondary to a larger identity. As Remi Brague argues, this idea of voluntary secondarity to a greater source is originally Roman. In other words, the ability that Europeans have to think that they are Greek is actually Roman. The Romanity of Europe allows Europe to accept itself on the whole as secondary to its Greek origins. In the same light, Ukrainians can be European if they will accept their local identity as secondary to that of an all-embracing Ukrainian identity. Thus the success of democratization and nation-

building—Ukraine's two greatest political experiments—hinges on humility, or the recognition of self as secondary to a greater good.

Ukraine needs its pluralistic history and heritage to show that it was not always what it thinks it was; such an understanding will help it become more than what previous visions of its origins would allow. Ironically, without its traumatic history with its neighbors, Ukraine could never have become what it is today, heterogeneous and diverse. The ultimate reversal of Shevchenko's rue and rath against Muscovy and Poland, Ukraine's past plight under foreign rulers has lead Ukraine to this point where, given its embryonic statehood and inveterate historical pluralism, it must become one of the most progressive, tolerant nations in all of Eastern Europe to survive independently.

The coals of Ukrainian national history glow red under the ashes of time. As Emmanuel Levinas said, history is "truth [that] illuminates whoever breathes on its flame and coaxes it back to life. More or less. It's a question of breath. To admit the effect that literature [and all other national texts] has on men is perhaps the ultimate wisdom of the West in which the people . . . may recognize themselves" (1989, 266).[11] Will history's heat and flame be used to burn the intruder's hand, or will the flame harmlessly traverse a nation, thawing the bitterness of a painful past? History is a question of breath. A controlled diaphragm can build a bonfire, while a careless breeze can set the whole territory ablaze. Only by finding their national image refracted and imperfect in the dissonance of their many historical texts, will Ukraine be reborn strong and supple. Ukraine lies in the world's richest soil, *chernozem,* or literally black earth, which history has made again to cultivate its perennial crop, Ukrainian national identity.

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ENDNOTES

1. A patriarchate is the geographic and spiritual center of an Orthodoxy church that houses a patriarch who rules over all other bishops. Since authority of church doctrine and political clout remain intertwined today, this concept of patriarchate will be useful for later discussion of conflicting national churches.

2. A similar word play, the Russian word for "country," invokes its sister word for "strange."

3. For another attempt of an outsider who tries to define Ukraine as a nation, see this essay. For an excellent and accessible treatment of the process of identity and otherness, see Honig 2001.

4. This term is borrowed from the author's father, John Peters, who made the observation while visiting Mohyla Academy in summer 2003.

5. Incidentally, *mohyla*, or grave, is another of Shevchenko's favorite words, appearing almost as often as its conceptual partner, *chuzhii*, or foreign. Also, Petro Mohyla's innovative brand of Orthodoxy combined with the fighting Cossack counterculture to create in 1648, perhaps for the first time, a distinctly Ukrainian (non-Rus, non-Ruthenian) society.

6. The Divine Wisdom Cathedral is most commonly known in English as the mistranslation "Saint Sophia's Cathedral." However, the translation "divine wisdom" adheres more closely to the original meaning of the name of the building after which the Divine Wisdom Cathedral was patterned—the Hagia Sophia in Instanbul, Turkey. In fact Hagia Sophia is originally an Eastern Orthodox title for Jesus.

7. Literally a "Silencer" in Russian, which could also be rendered "jamming station" in English.

8. Considering Washington as America's forefather, it is interesting to note that some interpret the Washington monument as a phallic symbol.

9. See Brague 2002 for more on the treatment of European identity and otherness.

10. As a young boy, the author created the word "remembertend," a portmanteau of "remember" and "pretend," that might work well for Ukraine in imagining anew a collective, consensual national identity.

11. Brackets added.

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THEORIES OF MONEY IN POLITICS:
The 2002 Missouri Senate Race

John J. Nielsen

ABSTRACT

*The 2002 Missouri Senate race, in which challenger James Talent (R) defeated incumbent Jean Car-
nahan (D), is used as a case study to determine the strength of various theories relating to money in
politics. A brief history is offered on the race itself as well as the 2000 election that necessitated it.
In examining the theoretical and actual roles of war chests and candidates, parties, and interest-
group spending, it seems that money was not the deciding factor in this race. No one bought the elec-
tion because it could not be bought, although presidential popularity possibly gave the marginal edge
to Talent. This study concludes with counterfactuals to test the effect of three different campaign
finance regimes—public financing, an open system, and BCRA (2002)—and finds that the election
would not have turned out differently under any of them. Therefore, campaign finance reform in this
case would constitute unnecessary and unconstitutional restrictions on speech without providing the
desired benefits of greater competitiveness and democratic responsiveness.*

To say that money is the lifeblood of politics is not to say that money overrides all other
considerations at all times and under all circumstances, but rather to make the point
that politics as we know it would be impossible without it—lots of it. The role of money
in politics in general is as controversial as it is vital, and elections, as no other aspect of the
political process, make this abundantly clear. Money in elections is controversial because if
the candidate who has the most money wins at the polls—and he or she usually does—
then the very essence of democracy seems to be threatened. However, money in elections
is vital because, in addition to organization of every other imaginable logistical category
involved in running a campaign that has any chance of winning, staffs must be hired, fund-
raisers organized, fliers and mailers printed and sent out, television ads produced and time
purchased, personal appearances organized, and travel coordinated. The concern over
campaign finance has developed into an intense political and scholarly debate that is not

likely to be resolved any time soon; however, even though there may be a certain amount of aporia involved, it is nonetheless crucial to examine the evidence, theories, and practical application of the campaign finance reform debate in order to craft an electoral system that will provide the broadest freedom of participation possible, while making sure that there is a level playing field.

In this essay, I will test competing theories from campaign finance literature using the 2002 Missouri Senate race as a case study. The literature heavily emphasizes competitive races because they attract the most money (Mann and Corrado 2002; Goodliffe and Magleby 2001). This race was extremely competitive throughout, providing an excellent case study for theory testing. Focusing on one race is advantageous because it can provide a deep understanding of the forces at work in a single case, but it is also problematic because particular circumstances reduce the likelihood that the results can be extrapolated to other races. Senate races in general differ from House races in that they are broader in scope, they are much more competitive, and the candidates are better known and better funded. This particular senate race differs from most others in that the incumbent was appointed rather than elected. Nevertheless, a study of this sort can provide interesting insights into the workings of a state's politics and the possible effects of further campaign finance reform.

I will begin with a brief description of the 2000 Missouri Senate race, whose special circumstances made the 2002 race necessary, and briefly trace the candidates' political background and experience. Then, in examining the race itself, I will follow the campaigns of incumbent Jean Carnahan (D) and challenger James Talent (R) from before the primaries up through Talent's narrow victory on election night, examining the effect of money at each stage of the process. My findings indicate that money was not the determining factor in the 2002 Missouri Senate race. Spending on each side essentially cancelled out spending on the other side and did not significantly affect candidate entry, expected vote share, or actual votes. Thus, to the extent that other Senate races are similar to the 2002 Missouri race, campaign finance reform would unnecessarily hinder political speech without significantly affecting the outcome. For those who would doubt the general applicability of these findings, this essay provides clear evidence that campaign finance reform can have detrimental, though unintended, effects on political speech without accomplishing the intended goals of increased competition and accountability.

THE 2000 ELECTION

The 2000 Missouri Senate race promised to be one of the most hotly contested races in the nation. Governor Mel Carnahan (D) was finishing his second term as governor and challenging former governor and then-freshman Senator John Ashcroft (R). Just three weeks before Election Day, Governor Mel Carnahan, his son Randy, and an aide were killed in a plane crash. Politics and campaigning stopped for a couple of days as the acting governor, Roger Wilson, decided what to do. Because Missouri law did not allow Carnahan's name to be removed from the ballot, Wilson announced that he would appoint the governor's wife, Jean Carnahan, to fill the seat for two years if the late governor won (appointing the spouse of a deceased senator is common practice among governors). The

Republicans were furious, but Senator Ashcroft assented, Mrs. Carnahan agreed, and the campaign went forward. The race remained close to the end—a *Kansas City Star* poll commissioned two weeks before the election had the candidates deadlocked at 46 percent apiece (CBS News 2002)—but the late governor Carnahan won with 50 percent of the vote to Ashcroft's 48 percent. Ashcroft refused to contest the results despite significant pressure from the Republican Party on the grounds that late poll numbers from St. Louis should have been excluded from the count and that Jean Carnahan should have been a write-in candidate instead of an appointee (Bellamy 2002). Insisting that the people had spoken, Ashcroft conceded to the results of the election on November 8 and Jean Carnahan was appointed by Acting-Governor Wilson to fill the Senate seat for two years (*Jefferson City News Tribune* 2002).

CARNAHAN AND TALENT—BACKGROUND AND POLITICAL EXPERIENCE

Mel Carnahan had been a fixture in Missouri politics for a long time, a well-known and respected Democrat who, in addition to being the former lieutenant governor and governor, had served as state treasurer, a member of the state House of Representatives, and a municipal judge after practicing law for a few years. Jean Carnahan, however, was an inexperienced appointed state senator, and appointed senators do not fare very well in reelection bids—according to James King (1999), their success rate is a mere 38.3 percent (434).

The fact that Jean Carnahan would be facing a high-quality Republican would not help her cause either. Her opponent, Jim Talent, had an extensive background in the law, campaigns, and elected office. He had served as minority leader in the state House of Representatives, had been a member and assistant majority leader of Congress for eight years (1992–2000), and had narrowly lost (by 22,000 votes) a bid for the governorship to Bob Holden in 2000. He had been the candidate of choice for Republicans after John Ashcroft had been appointed and confirmed U.S. attorney general in January 2001 and had formally declared his intention to run in October of that year.

With this basic understanding of the race and the candidates involved, we can now enter into a discussion of the role of money during the campaign, examining whether money was able to keep challengers from entering the race by looking at the money primary, the party primaries, the role of the political parties, and the effects of war chests.

DID MONEY KEEP OUT CHALLENGERS?

The Money Primary

Theory. Winning the money primary, the race for dollars in the months leading up to the party primaries, is often crucial to winning elections. According to a study of presidential elections conducted by Adkins and Dowdle (2002), the winner of the money primary tends to win the party primary overwhelmingly, and because the primary season is "front-loaded," or weighted towards the first quarter of the year, this early money becomes even more important. Adkins and Dowdle cite four important advantages of early money: it allows candidates to more easily hire skilled personnel and set up campaign organizations;

it affects media coverage, as news outlets often determine the level of coverage given to a candidate by how much money that candidate has; it is an early sign of support, which helps with future fund-raising; and it allows the candidates to deal with unexpected set-backs (258). Therefore, the more early money a candidate raises, the greater his or her chances of success become. The most significant factors determining who gets this early money are strong poll performance and a large commitment of monies to fund-raising (273). Even though this particular study dealt with presidential primary races, it might prove useful in understanding the 2002 Missouri Senate race; if Adkins and Dowdle are right, then Carnahan and Talent won the money primary and probably had strong poll numbers and a significant amount of money committed to fund-raising.

   Evidence. Both candidates won the money primary and had strong support in public polls, though it is unclear just how much they committed to fund-raising. In the months leading up to the party primaries, Carnahan and Talent raised a great deal of money. As of December 31, 2001, Carnahan had already raised $2.2 million and had reached $3.47 million by primary season, the summer of 2002 (Quaid 2002b). Talent had raised $2.12 million by the same time (Quaid 2002b). In accordance with Adkins and Dowdle's results, both candidates had excellent performance in statewide polls, and Carnahan's greater success at this stage could be attributable to a greater organizational investment in fund-raising. Because it was clear early on to both voters and political parties in Missouri that Carnahan and Talent would be their respective party's candidate, they attracted almost all the money and were both incredibly successful not only compared to their in-party opponents (whose combined fund-raising totaled $29,198) but also to senate candidates across the nation (politicalmoneyline.com 2002). This confirms the assertion that those who win the money primary tend to win the nomination of their party. But, was it the money per se that scared off the competition? The answer requires an investigation of the primary itself and those who planned to run.

The Party Primaries

Though there were a number of quality Democratic candidates who could have entered the Missouri Senate race in 2002, none showed any interest, at least publicly, in running. This is to be expected, given that incumbents rarely face opposition for reelection from within their own party. Aside from the incumbent Carnahan, possible contenders included Governor Bob Holden; Lieutenant Governor Joe Maxwell; state Attorney General (and former senate challenger) Jeremiah (Jay) Nixon; state senate minority leader Ken Jacob; and state house minority leader Mark Abel. Governor Holden, as previously discussed, had been in office only since 2000 and did not show any interest in running, especially against Talent, whom he had so narrowly defeated. The lieutenant governor never expressed interest, at least not publicly, and probably would not want to leave office after only two years to challenge an incumbent senator. Jacob and Abel never showed interest. Only Jay Nixon decided to enter the primary, but did not raise any money, showing that he was not serious about winning. Other candidates included Darrell Day, a man with no electoral experience who was in jail for violation of probation at the time of the vote, and Alan

Wheat, another man with no experience in politics who raised no money during the entire election cycle. Carnahan won the Democratic primary handily against such token opposition with 81 percent of the vote.

In the Republican primary, Talent's opposition was as weak as Carnahan's. On the Republican side, besides Jim Talent, quality potential candidates included other U.S. representatives from Missouri; 1996 gubernatorial candidate State Auditor Margaret Kelly; state senate majority leader Michael Gibbons; and state house speaker Catherine Hanaway. Aside from Talent, two other U.S. representatives, Jo Ann Emerson and Kenny Hulshof, showed interest early, but they quickly dropped off the radar because of a lack of support. Republican party members, leaders, and contributors began to solidly back Talent by mid-2001, shortly before he announced his candidacy (Quaid 2001). Actual primary candidates included Joseph May, former president of a local dental association; Martin "Mad Dog" Lindstedt, a former libertarian and militiaman whose only campaign experience was a losing bid for Newton County sheriff in 1996; and Scott Craig Babbit, a write-in candidate who took time off from running a website dedicated to conspiracy theories (www.thefinaldays.com) to try for the Republican nomination. Talent swept the field with 91 percent of the primary vote.

It is not intuitive to imagine anyone wanting to go up against candidates with as much financial backing as Carnahan and Talent had; however, the reasons for the lack of quality challengers go beyond money. Recent Missouri Senate races had a legacy of lackluster candidates. Going back to 1992, unsuccessful challengers from both parties in the primaries included Marc Perket (R), who bragged that if he lost the primary, "I have gotten my 200 bucks worth of entertainment out of it" (Quaid 2000); James Askew (D), a truck driver who seemed to enjoy just declaring candidacy in the primaries; Ronald Wagganer (D), a teamster with no party backing; and Doris Bass Landfather (R), a self-proclaimed student of national politics with no political experience of her own. These challengers were not just a few nuisance candidates—they were the only candidates from the major parties that ran and did not go on to win the nomination. In this case, Carnahan's and Talent's monies that accumulated up to the party primaries were not even sufficient to deter nuisance challengers (Goodliffe 2002, 12), let alone quality challengers.

Party Strength, Not Money, Was Responsible for the Lack of Quality Challengers

Given the candidates in Missouri Senate races in the last decade, it appears that party politics in Missouri is very strong and is responsible for the lack of quality opposition in primary races. It seems that it is not the money that deters challengers, but it is the party that both keeps challengers away and brings in the money for its chosen candidate. This assumption would confirm the suspicion of Jo Mannies, political correspondent with the *St. Louis Post-Dispatch*, that both parties were solidly behind their chosen candidate, which support had a deterrent effect (2003). It is possible that decisions were made even before Carnahan and Talent formally announced their candidacies, perhaps in order to prevent infighting and to concentrate scarce resources for what all predicted would be a very close,

hard-fought race. It could also be the case that Carnahan and Talent were such high-quality candidates that quality challengers refused to run against them. In any case, it does not seem to have been money that determined the candidates.

War Chests in the General Election

Theory. Though both Talent and Carnahan had large amounts of money going into the general election—they had accumulated large "war chests"—in the general election, Carnahan's war chest would play the most important role; as the incumbent, she would have the greatest chance of any Democrat of getting enough money to deter quality challengers from the Republican Party. Some scholars would confirm that incumbent war chests are indeed important signaling devices that deter challengers and stifle competition, but others see war chests merely as leftover funds from a previous campaign. Hersch and McDougall (1994) are of the former persuasion, holding that large war chests are sufficient to deter quality challengers from entering races. These "unencumbered funds" deter by serving as a sign to potential challengers that the incumbent is willing and able to engage in a "formidable campaign" (630). The authors propose three mechanisms for this effect: the money itself, the money as a signal of future fund-raising power, and the money as a signal of nonobservable attributes of the incumbent (i.e., tenacity, charisma) (633). According to this theory, given the advantages of incumbency (franking privilege, greater fund-raising capability, greater visibility, and so on), quality challengers are unlikely to enter unless they believe that they have a good chance of winning because they do not want to squander their hard-earned political capital. The data of Hersch and McDougall suggests that variables such as party strength, lagged (previous election) vote, and tenure all surpass war chests in substantive significance, but leave room for the assertion that experienced challengers are deterred by war chests and the signals they send (640).

Goodliffe (2001) takes a very different view. (See also Ansolabehere and Snyder 2000a.) Rather than endowing war chests with great symbolic importance and understanding them as strategic funds accumulated in anticipation (or prevention) of a tough campaign, he asserts that they are simply the funds left over after an election (2001, 833; 2002, 1). The effect of war chests disappears when previous (or lagged) vote share is taken into account along with the quality of the previous challenger (measured in terms of political experience in elective office). In other words, just as we would expect, politicians defeating a weak challenger by a large vote margin have a lot of money left at the end of a campaign simply because they did not have to spend it to win.

Evidence. Carnahan's incredible fund-raising success is documented above, but in order to examine the possible deterrent effect of war chests on Republican challengers, it is necessary to go further back to the beginning of her term in 2000, when Republicans began making their decisions on running against her in 2002. In her first six months in office, she raised $1.7 million (Quaid 2002a); even this unusually large amount was not enough to dissuade Jim Talent, a high-quality challenger, from entering and eventually winning the race. Indeed, Carnahan might have engaged in so serious fund-raising in an attempt to scare off the competition, but it did not work.

This conclusion is difficult to accept because it both seems counterintuitive and goes against anecdotal evidence. First, Jonathan Salant (1996) offers a number of examples of candidates who explicitly state that they did not enter a race because of the incumbent's war chest. Also, Milyo and Groseclose (1999) quote Mitt Romney, a multimillionaire, as saying that he did not want to go up against the kind of money his opponent had saved up. It seems that war chests are not so much a deterrent as a convenient excuse—why would an experienced politician or a multimillionaire be frightened off by some money their opponents had saved up? Despite this anecdotal evidence to the contrary, war chests do not exert a systematic deterrent effect on entry of either high-quality or low-quality challengers (Goodliffe 2001, 838). However, the fact that money did not keep anyone out of the race does not preclude the possibility that Talent bought his victory. In order to determine what effect Talent's spending had in the general election, it is necessary to examine his campaign.

Did Talent Buy the Election?

Theory. The suspicion that Talent won the Missouri Senate election because of his money reflects one of reformers' greatest concerns, that candidates can "buy" a campaign. As evidence that campaigns are for sale to the highest bidder, reformers cite the 2000 New Jersey Senate race, in which Democrat John Corzine spent over $60 million of his own money on the way to victory. Assuming that Corzine did not win because of political skill or other personal characteristics, reformers see the troubling prospect that elective office, at least in some cases, may go not to the most qualified candidate, but to the candidate with the most money (Jacobson 1990; Gerber 1998; Damore 1997). This theory becomes more complicated when spending effects are taken into account. In the case of John Corzine, the election might not necessarily have gone to the highest bidder, but it went to the most effective spender. Spending in and of itself may be insufficient as a means of gaining victory because the returns on that spending in terms of votes might be different for incumbents and challengers.

In studying house elections, Jacobson (1990) finds that spending effects are indeed different for incumbents and challengers. Does this apply to the Senate? Although there are some fundamental differences between house and senate races (such as that in senate races the challengers are more well known and the races are generally more competitive), Jacobson's findings might well apply to Carnahan and Talent.

Jacobson uses 1986 ABC News polling data to track the expected vote and detect change during two distinct "waves" of political advertising. Keeping partisanship, support for then-President Reagan, and economic expectations constant, he finds that there is statistical evidence for the claim that incumbent spending does not go as far, dollar for dollar, as challenger spending (345). Because challengers are not as well known, they get more for the marginal dollar (355); therefore, spending limits would harm competition in congressional races.

Two different studies criticize Jacobson's research and make the case for spending limits. First, Erikson and Palfrey (2000) hold that spending effects, especially in close elections, are

equal for incumbents and challengers. They fault Jacobson for not correcting for endogeneity (simultaneity bias) in running Ordinary Least Squares (OLS) regressions that compare the spending effectiveness of incumbents and challengers and they propose to correct for it themselves by focusing solely on close elections. To do so in their study, they use game theory, which says that our choices and the choices of others have an effect on each other. Using game theory, they examine the variables endogenous to (accounted for in) Jacobsen's study—district characteristics, short-term forces, candidate characteristics, campaign spending, and chance—and the exogenous (unaccounted for) variables of lagged incumbent vote, district vote for incumbent party, year, and southern states. Looking at these endogenous and exogenous variables, Erikson and Palfrey determine that safe seats cost the least and that total spending is "continuously increasing in the expected closeness of the race" (605). In close races, the marginal value of money is basically equal, and because incumbents have more money to spend, they have an unfair advantage in the races that are most important. Because Jacobson included all races, the high number of safe seats skewed the results and did not reflect this unfair advantage. Spending limits, therefore, would favor challengers by giving them a greater chance of winning and would also increase electoral competition, which would improve the quality of elected officials.

Second, Gerber (1998) puts forth the same critique of Jacobsen, but proposes a different solution to arrive at the same conclusion as Erikson and Palfrey. He presents his work as a departure from previous studies on the effect of spending by incumbents and challengers. The conventional view, supported by OLS regressions, is that challenger spending is much more effective than incumbent spending. Gerber corrects for endogeneity bias of candidate spending inherent in OLS regressions by running a Two Stage Least Squares (TSLS) regression. The dependent variables are challenger spending and incumbent spending. Independent variables include measures of challenger quality (previous elective office); dummy variables to control for scandal, health, and so forth; a number related to party; and three additional original variables (1998, 401). Gerber's biggest contribution is the inclusion of three instrumental variables: challenger wealth, state population, and lagged (previous election) spending. When all are included in a TSLS analysis, the gap between spending effectiveness of incumbent and challenger disappears.

In a study unconnected with the three just discussed, Leavitt (1994) offers an entirely different explanation: spending effects are equal for challengers and incumbents because spending does not make any difference at all. According to his study, previous studies had not adequately controlled for candidate quality. This oversight introduces a bias into spending analyses: having certain personal characteristics and spending a lot of money won high-quality challengers a large share of the vote. To control for candidate quality, Leavitt examines rematch races in the House, which would make them more similar to Senate races by involving well-known candidates that presumably would not have as much to gain from increased spending as obscure candidates would. He finds that spending has "an extremely small impact, regardless of who does [it]" (777). If spending does not increase candidates' chances of winning, why then do politicians spend so much money on campaigns? Leavitt believes that either the politicians are acting on faulty assumptions or the

marginal cost of fund-raising is low (796). In essence, the candidates are either bidding on the electoral equivalent of oceanfront property in New Mexico or spending money because it comes, and goes, relatively easily.

Evidence. The data from Carnahan's and Talent's campaigns supports the assertion that money had no effect on the outcome of the election. Figures 1 and 2 track polling results (or expected vote) and candidate spending and compare the effect of spending on the results.

Figure 1 comes directly from Kropf et al. (2003, 11) and Figure 2 is made from FEC numbers.

As Figure 1 shows, the race was too close to call, even from the earliest stages of the campaign. Neither Carnahan nor Talent had a lead outside the margin of error in the available polls. It seems that voters had made up their minds early on in the race.

Figure 1 Missouri Polls Taken during 2003
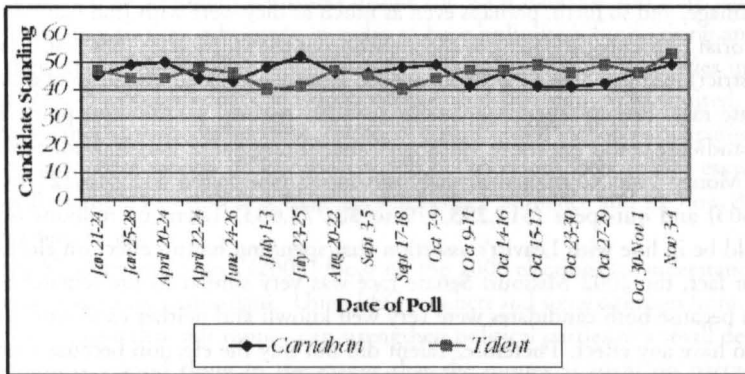
This graph represents an author compilation of the different polls taken during the course of the campaign including those by American Viewpoint, Garin-Hart-Yang, Research 2000 and the *Kansas City Star.*

Figure 2 Candidate Spending in the 2002 Missouri Senate Race
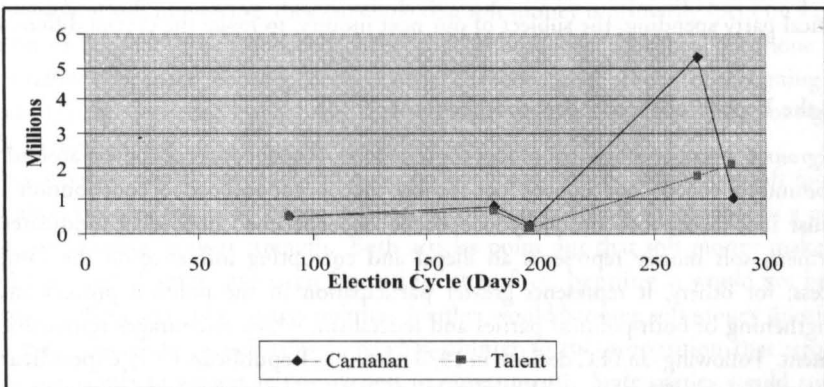
Note: "Election Cycle" in Figure 2 is measured in days beginning in February and ending in November. The months for the five data points are April, July, late July, October, and November, respectively.

Figure 2 shows that candidate spending (tracked from April to November) through July was basically equal and had no effect on poll standing in Figure 1. Although spending changed drastically during the October quarter when Carnahan more than doubled Talent's spending, and equalized again in the weeks leading up to the general election, the candidates' standings did not experience a proportional change. Even though huge amounts were spent on both sides, and relatively more by the incumbent, candidate spending did not significantly affect expected or actual vote. Because Talent won even while spending significantly less money, it appears that Jacobsen's theory is confirmed: challenger spending is more effective than incumbent spending.

In this 2002 election, the recent past could account for the futility of Carnahan's spending; Jim Talent was not a typical challenger. In 2000, Jim Talent lost the Missouri governorship to Bob Holden by only 22,000 votes; he had run and barely lost a statewide campaign only a couple of years before. Voters were already familiar with his policy views, his face, image, and so forth, perhaps even as much as they were with Jean Carnahan's. The gubernatorial race brought Talent to the attention of the entire state (not just his congressional district) in such a way as to eliminate the already-mitigated obscurity of a challenger in a senate race. Perhaps spending canceled out or reached a saturation point at which neither candidate could get more votes with their marginal dollar; indeed, according to Political Money Line, Carnahan actually out-raised (she raised $12,316,325 to Talent's $9,431,603) and out-spent ($12,293,579 to $8,777,033) Talent by millions of dollars. This could be in line with Leavitt's assertion that spending has no effect on electoral outcomes; in fact, the 2002 Missouri Senate race was very similar to the rematches Leavitt examines because both candidates were very well known and neither candidate's spending seemed to have any effect. Therefore, Talent did not buy the election because it could not be bought by a candidate. It is also plausible that spending by both candidates simply suffered from diminishing marginal returns, which Jacobson suggests is not the case with lesser-known candidates (1990, 355).

But what if the bidders in the electoral auction are not just the candidates? What if their political parties are bidders as well? Some reformers believe that it is possible for political party spending, the subject of our next inquiry, to make the crucial difference.

Did the Republican Party Buy the Election?

Background. Another of campaign finance reformers' largest concerns centers around what is commonly called "soft money," or money that is not subject to contribution limits because it is donated to the party as a whole rather than to individual candidates. For reformers, soft money represents an illegal and corrupting influence on the campaign process; for others, it represents greater participation in the political process and the strengthening of both political parties and federalism, which encourages responsive government. Following an FEC decision in 1978 relating to Republican Party expenditures in Kansas, soft money has grown both in the amount spent and areas of expenditure, with parties using millions each election cycle for everything from "building funds" to "coordinated expenditures," always in the name of party building (Corrado 1997, 168). Soft

money expenditures also free up hard money funds, making them available for express advocacy and close races. For example, a party can spend soft money on building fees and other overhead expenses, allowing them to spend more hard money on the campaigns themselves.

La Raja (2001) seeks to discredit the idea that soft money is by nature a corrupting influence. Though he concedes that parties violate the spirit, and possibly the letter, of the law in their soft money raising and spending, he asserts that parties are stronger as a result, which strength seems to be a good thing. Using FEC numbers (1992–1998) and comparing the major parties, he explores the sources and uses of soft money over time and finds that the amount of soft money in campaigns has risen dramatically in the 1990s, with individuals contributing the most (for both parties), followed by business (with a slight edge to Republicans). Labor unions give Democrats nonfinancial benefits, which aid in mobilization efforts. Both parties are about equal in terms of soft money, so neither really wants to reform the system. Though reformers dislike the ways national and state parties have worked the system to their advantage in order to have unlimited fund-raising and expenditures, they also recognize that soft money has strengthened political parties in positive ways. La Raja concludes with a recommendation that soft money be limited, but that parties have some access to other funds for party building and citizen participation (2001, 106). The normative aspects of soft money will be addressed later in this essay. At this point, I will examine two differing views on soft money influence and see how they apply in the Missouri race.

Theory. Magleby and Smith (2002) focus on the 2000 elections to understand the role of soft money in today's campaigns. Using FEC numbers and some estimates from scholarly journals, they prove that soft money can strengthen political parties to a small degree; this strengthening is a good thing to the extent that the money is spent on party-building activities (registration, Get Out the Vote (GOTV) drives, communication, and so forth) as opposed to mere federal campaigns. They point out three advantages that soft money has over hard money: it can be more easily raised and in unlimited amounts, it is easily transferable, and it frees up hard money for more direct campaigning (34–36). From their examination of soft money use, they conclude that soft money is primarily spent on a combination of "air war" (television and radio) and "ground war" (mailing, telephone call) efforts rather than party building. Because such "electioneering" efforts (campaigning that is ostensibly issue-oriented but actually directed for or against a candidate) do not significantly strengthen parties, soft money should be regulated (45–46).

Ansolabehere and Snyder (2000b) focus on the consequences of banning soft money. They also extol the virtues of strong political parties but conclude that money is a major factor contributing to their strength. Both articles point out that soft money makes up only 12 percent of total campaign financing; therefore, banning it would not have a devastating effect on national party politics. Neither would banning soft money drastically affect party discipline (which runs somewhat counter to the proposition that stronger parties contribute to greater responsiveness in government). State parties would sustain the most damage from the effects of a soft-money ban. Here they dispute Magleby and Smith's claim that nonfederal (state) money is almost exclusively used for media blitzes.

Money given to state and local parties, they claim, is under the state, not national, party's discretion and is used largely for party-building purposes; as such, cutting it would significantly lower voter turnout.

Evidence. The national parties put substantial amounts of money into the Missouri 2002 Senate race, though not in equal amounts. According to Political Money Line, the Republican National Party spent $171,850 and the Democratic National Party $16,500 in "nonfederal" funds. This favors Talent, of course, but apparently the DNC understood that Carnahan's campaign had plenty of funds. According to the FEC, Carnahan transferred $782,000 back to the national party in soft money.

Soft money and other party resources can be spent on radio or TV issue advocacy (the "air war"), which attacks or defends a candidate for federal office without expressly advocating the election or defeat of that candidate. Issue advocacy is distinguished from what is called express advocacy by the Buckley test. In *Buckley v. Valeo* (1976), the Supreme Court determined that Congress could limit expenditures on advertisements that expressly advocated the election or defeat of a candidate for federal office. The so-called "magic words" test from this case opinion defines an advertisement as express if it contains words such as "vote for or against," "elect," or "defeat." If it does not contain such terms, an advertisement is defined as issue advocacy. These advertisements are not qualitatively different than express advertisements (Baker and Magleby 2002, 54) but avoid regulation by using phrases like "call candidate x and tell him or her what a great or lousy job he or she is doing" or "let candidate x know how much you care about issue y." These types are sometimes referred to as "sham" or "electioneering" advertisements. Soft money can also be put into party building, GOTV drives, and direct mailings (the "ground war"). According to Kropf et al. (2003), the air war was basically a wash: the Democrats spent $2,718,344 on television and $217,757 on radio; the Republicans spent $2,561,385 and $146,950, respectively (2).

The ground war involved, according to Kropf et al., "unprecedented direct mail programs" totaling nine million pieces and costing $4 million (4). This portion of the ground war for Talent targeted women. To narrow the gender gap, most mailers addressed women's concerns on various issues from health care to education. There were also a number of visits by nationally prominent Republican women such as Laura Bush and Janet Ashcroft (3). Mailers were also sent defending Talent's issue stances from Democratic attacks (4). The ground war for Carnahan focused on her voting record and her stance on issues such as defense and the economy and targeted traditional Democratic supporters such as labor unions and blacks (3, 4).

Both parties also invested heavily in getting citizens out to vote. Using past voting records, volunteer public gatherings, phone calls, and door-to-door visits, the Democrats targeted those of their party most likely to vote. The day of the election, volunteers staked out the polls and drove about in volunteered cabs, reminding the party faithful to get to the ballot box (4–5). The Republicans are not historically successful at getting out the vote, especially since they do not traditionally have much support in large cities. Because they did not have enough volunteers, the Republicans ended up hiring staff to work

contacting loyal party members by any means possible (5). A couple of visits in late October and early November by President Bush probably helped out as well (5).

According to recent estimates, the Democratic Senatorial Campaign Committee (DSCC) transferred about $2.9 million in hard money and $5.8 million in soft money for a total of $8.6 million to the Missouri state Democratic Party for use in the campaign; the National Republican Senatorial Committee (NRSC) transferred $2.2 million in hard and $5.6 million in soft money to their state party for a total of $7.7 million (though reports indicate it was closer to $8.1 million; Magleby and Monson 2004, 47). It seems that each party either canceled out the other's spending in both soft and hard money or just matched the other's spending for the sake of not falling behind. Andy Grossman of the DSCC recently commented at the National Press Club that a lot of his party's spending in Missouri was "absurd. . . . It was a waste of money. We did it because [the Republicans] did it. We had to respond" (Magleby and Monson 2003, 28). The Republican Party did not "buy" the election. Could special interest groups have made the difference?

Did Special Interests Buy the Election?

Theory. Many reformers target special interest groups in addition to candidates and parties, believing that interest-group money reflects the narrow preferences of an elite few. Baker and Magleby (2002) study the impact of interest group activity on the 2000 elections, guiding their work with Madison's analysis of factions in *Federalist* No. 10. Is the large republic theory of pluralist competition enough to control modern factions? Interest groups work mostly through soft money contributions and issue advocacy. A concern for candidates is that even groups that support them can influence the direction of their campaign and force them to change their strategy. Baker and Magleby believe that no reform will be meaningful unless it challenges independent sham issue ads and changes disclosure requirements, thereby limiting the undue influence of special interests (72–73). They believe reform is necessary and that competition is not sufficient to control interest groups in campaigns.

Schneider (2002) takes a similar view of interest groups. His argument in a nutshell is as follows:

X is good; Americans like X.

Special interests Y, Z are against X.

Y and Z support the two political parties.

Therefore, contrary to the preferences of most Americans, the parties do not support X.

Solution: eliminate Y, Z influence in the Democratic Party, and at least one party will be responsive to the people and pass X.

According to this view, interest groups merely represent the narrow interests of a select few that seek their own benefit at the expense of the average voter. Clawson et al. (1998) agree and assert that corruption persists in the system even among those interest groups that

follow the rules. They equate contributions to a candidate with gifts subject to the "norm of reciprocity"—a feeling of obligation to return favors or gifts for favors or gifts received (34). If nothing else, contributions limit the uncertainty that a given representative will vote or act on a certain issue important to the donor. They divide corporate donors into two broad categories: pragmatic and ideological. The former aim to achieve short-term, specific goals, and the latter are more concerned with the ideological composition of a given branch of the government. They assert that "better than 80 percent are prag- matic, given patterns in PAC donations" (39). They conclude that donations are given primarily to establish personal connections, to grant access, and to promote a feeling of obligation in the donee.

Others disagree with the assertions above and instead argue that interest groups promote rather than limit citizen participation and represent broad rather than narrow interests. James Bopp, lead counsel for National Right to Life, asserts that they are the best, if not the only, form of participation through which the citizen of "average means" can influence the political process. Besides, interest groups do not seek "undue" influence because they seek only to support those who already share their beliefs (2003). This is a view of interest groups more in line with Bauer et al.'s (1963) assertion, which says that interest groups act more like "service bureaus" than pressure groups. Bauer con- cludes that lobbyists spend most of their time working with political friends rather than enemies and therefore miss out on opportunities to sway those in the middle (350). In a study of late 1950s and early 1960s trade legislation, rather than out-and-out corruption, he finds in these instances that interest groups often work as "service bureaus" in that they give logistical and informational support to those that further their causes and spread the word about legislation to the general public. Though Bauer does not dismiss entirely their ability to exert pressure, he disagrees that it is their primary focus. Instead, each group seeks to help out its friends (which for purposes of this essay includes election efforts as well as support once they are in office), and since there are often groups lined up on both sides of an issue, the result is a stalemate (398).

Evidence. Another list from PoliticalMoneyLine (2003), though it varies in money totals and sources, contains essentially the same players. An examination of the two lists shows that the supporting interest groups line up predictably for each candidate—business, finance, and pro-life groups for the Republican and lawyers, labor, and pro-choice groups for the Democrat. The biggest interest group donors for both candidates were those that had an electoral motive—the candidates' political friends. This confirms the more pluralist view of parties put forth by Bopp and Bauer et al. above. In addition to the campaign contributions listed above, interest groups also engaged in the air and ground wars. Labor unions expended great resources in attempts to mobilize about 600,000 voters for Carnahan (Kropf et al. 2003, 5). Issue groups on both sides of the abortion debate, senior groups, business groups, and environmental groups sent out mailers in behalf of their preferred candidate (7).

Direct contributions are not the only way for interest groups to participate, however. They may also spend money on issue advocacy. According to nationaljournal.com (2003),

Figure 3 Top Fifteen Hard Money Contributors to Talent and Carnahan.

TALENT:	CARNAHAN:
Finance, Insurance, Real Estate ($935,901)	Lawyers, lobbyists ($1,222,954)
Business ($916,819)	Lawyers, firms ($1,088,601)
Miscellaneous ($738,769)	Ideology, Single Issue (Pro-abortion)
Ideology, Single Issue (Pro-life) ($561,639)	($1,795,371)
Health ($546,281)	Miscellaneous ($810,679)
Construction ($386,745)	Finance, Insurance ($670,175)
Agribusiness ($350,957)	Labor ($464,650)
Health Professionals ($318,248)	Communications, Electronics ($417,289)
Energy, Natural Resources ($304,857)	Health ($374,690)
Insurance ($205,266)	Health Professionals ($208,000)
Commercial Banking ($141,427)	Entertainment ($188,714)
Oil, Gas ($130,950)	Education ($151,800)
Pharmaceuticals ($114,300)	Lobbyists ($134,353)
Accountants ($66,050)	Telephone, Utilities ($75,600)
Gun Rights ($21,000)	Computers, Internet ($68,345)
	Gun Control ($10,300)

Source: Center for Responsive Politics. 2003. Opensecrets.org. At <http://www.opensecrets.org/>

the Sierra Club and anti-abortion groups weighed in for Carnahan, and seniors' groups advocating tax cuts favored Talent. A number of groups, whose composition is so similar to those listed above as to render a separate listing unnecessary, also engaged in independent expenditures. Independent expenditures must be disclosed but do not count against contribution limits. Magleby and Beal (2002) assert that interest groups "now exploit all the means of communication open to them" in attempts to influence elections, including those at issue here (93). Though independent expenditures are far surpassed by soft money (and hard money for that matter), the authors assert that independent expenditures can significantly affect election outcomes—the more a candidate has, the greater chance he or she has to win. According to PoliticalMoneyLine, $656,707 was spent for Carnahan or against Talent, and $494,501 was spent for Talent or against Carnahan (2003). Magleby and Beal are wrong in this particular case. The money spent on behalf of the winner was substantially less than that spent for the loser, which occurrence indicates that spending was not effective. Kropf et al. (2003) estimate that advertisement spending from interest groups for Talent or against Carnahan ($456,000) was significantly less than those for Carnahan or against Talent ($718,000) (17). Carnahan had the edge again and still did not win. Overall, there was a lot of money and effort spent by interest groups on both sides in a number of ways, but it did not seem to make much of a difference.

RESULTS AND SUMMARY

It is impossible to run for federal office in the United States without a great deal of money, especially if the race is extremely competitive, as it was in Missouri in 2002. But big spending by no means guarantees a victory. Carnahan, Talent, the Democratic Party, the Republican Party, and a myriad of interest groups on both sides raised and spent incredible sums, but each side canceled the other out in each case. Candidate spending seemed to reach a point of little-to-no marginal returns, if it had an effect at all. Perhaps it is the case that presidential popularity and personal campaigning tipped the scales for Talent (Kropf et al. 2003, 10), or the Republicans were better able to get out the vote; whatever it was, it does not seem to have been money.

COUNTERFACTUAL ANALYSIS AND NORMATIVE CONCERNS: WHAT WOULD HAPPEN IF THIS ELECTION HAD BEEN RUN UNDER . . . ?

Campaign finance laws have changed since the 2002 election cycle, and a number of reforms are possible in the future. To determine the possible effect of these reforms on the 2002 Missouri Senate race, I will perform some counterfactual analysis and address the normative implications of three proposed regimes: full public financing, a completely open system, and the Bipartisan Campaign Reform Act (BCRA) with all restrictions upheld by the Supreme Court.

Full Public Financing. Schneider (2002) proposes a system of full public financing for elections, alleging that such a system would minimize corruption and make representatives more responsible to constituents. What would have been different in the 2002 Missouri Senate race had it been run under a fully public-financed regime? The parties seem to have chosen their respective candidates long before the primary, so there would have been no difference there. Candidate spending would have been completely equal (assuming Carnahan and Talent each spent all they received). Given the preceding results, spending cancelled out anyway, and since Talent was already well known statewide, he would have not gained an advantage from such spending limits. The parties and interest groups would have adjusted their strategies to fit whatever limits the system imposed. If, for example, any media relating directly or indirectly to the race had been outlawed within a couple of months of the election, they would have concentrated their efforts on the latest date possible. If those avenues were not available at all, then they would focus so entirely on newspapers, magazines, and so forth, that even the most strict campaign finance systems would not be able to limit, even with a narrow interpretation of the First Amendment. Perhaps the media would then resemble nineteenth-century American media, which was considerably more partisan. It could also be that such a regime would force parties to focus more on mobilization and party building. The candidates would also have exercised greater control over their campaign messages. Given the closeness of the race, however, the outcome would not likely have changed, because it depended on non-monetary factors.

A number of concerns arise even though the result would most likely have been the same under such a regime and would have had the added benefits of controlling for

corruption as well as the appearance of corruption. For example, the First Amendment freedoms of petition and speech could be at risk. If individuals and groups did not have the right to air concerns about policies and candidates that could have any discernable impact (whether direct or indirect) on federal elections, then that would raise serious concerns about free participation in a democracy. Also, such a system could actually increase the potential for corruption. If interested money will always flow into the system, then bribery and graft could increase as a result of full public financing (Smith 2001, 194). Finally, since freedom of the press is still protected under this system, power would be more concentrated in the hands of media elites, lessening the avenues for participation by "citizens of average means" (Smith 2001, 197–98; Bopp 2003).

A Completely Open System. Smith (2001) proposes the polar opposite of Schneider. His solution is to open the floodgates and allow the money to flow where it may, only requiring full disclosure from all groups and individuals. Smith argues that campaign finance laws merely change the ways that parties, candidates, and interest groups spend their money. This idea that money will flow into politics regardless of regulation was confirmed in the Supreme Court's recent ruling on *McConnell v. FEC* (2003). An open regime might actually increase the amount of control that candidates could exercise over their own campaigns in that they could coordinate more with those who agree with them and plan a broader strategy than is now possible. Such a system would not likely have changed the outcome of the 2002 Missouri Senate race, but it would have perhaps benefited it by promoting more participation and decreasing the complexity of the current system, thereby increasing competitiveness by making it possible for candidates to enter the fray without a team of legal and accountancy experts to keep track of all the subtleties of current laws. A drawback of such a system is the possible institutionalization of perceived corruption, which institutionalization could further decrease trust and participation in the system (Schneider 2002).

BCRA 2002 with All Restrictions Upheld. In 2002, Congress passed the Bipartisan Campaign Reform Act, which is the latest amendment to existing campaign finance law. Other than raising contribution limits (from $1000 to $2000 per election cycle), its major focus is to address soft money and issue advocacy. Under the act, soft money will be banned entirely and issue advocacy will be more limited both by stricter definition of it and stricter regulation of the time before an election during which they could be run (thirty days before the primary, sixty days before the general election). If these restrictions were to have applied to the 2002 Missouri Senate race, what would have been different? First, the air war would have been conducted quite differently by the parties and interest groups, in that it would have been more limited. Any advertisements mentioning the names of candidates at all would have to be run a month or two before the primary and general elections. Also, most of the campaign advertisements were "electioneering" in nature, in that they did not fall under the hard money requirements because they did not expressly advocate the election or defeat of a candidate. Perhaps they would have focused more on the ground war in news editorials, direct mailings, and telephone campaigns. Expenditures by the parties would have been more focused on party building activities and

getting out the vote (GOTV) drives, which most likely would have favored the Democrats, though it is unclear how much. Democrats traditionally outnumber Republicans in big cities, and voter mobilization efforts would have been easier in the large population centers of St. Louis and Kansas City. It is more difficult for Republicans to mobilize because their support comes largely from rural areas, and GOTV efforts are much less efficient in rural areas than in more populous ones. Since mobilization seems to have been key in this race, it could have tipped the scales in favor of Jean Carnahan, if under BCRA the Democrats would have spent more on such activities.

But the Democrats did not spare any expense to mobilize in 2002. Their GOTV efforts, according to Kropf et al., were "unprecedented" (2003, 5). They had poll checkers, poll runners, sandwich makers, volunteer cab drivers, callers, and "pull teams" that would search out those who had not voted yet (5). And the Republican's efforts were equally impressive—when they came up short on volunteers, they hired to fill the gap (5). There-fore, though the paths that the money took would have been different under BCRA, it would not have changed the outcome of the election. This conclusion is in line with research by Flowers et al. (2003) that even if all voters would have turned out on election day, the result would have been the same.

Implications for Campaign Finance in General. Ultimately, the desirability of campaign finance reform depends upon an individual's value judgments. What is more important, freedom or equality? If equality, then government would seem to have a role in "leveling the playing field" to encourage and allow for broad participation in elections; if freedom, then government should largely step out of the way and let the chips fall. The former, iron-ically, could actually hurt broad participation by limiting the scope and means of partici-pation available, but could also increase accountability by reducing the influence of money in elections. Even then, would the perceived corruption merely shift more to the lawmaking process? The latter would allow a wider range of options for participation, but could increase the perception of corruption in elections unless stringent disclosure requirements were put in place.

For the author, the results of this case study have definite normative implications. It does not seem that money has a corrupting influence in elections, and since regulation often implies restrictions on speech, then BCRA and other reforms would seem not only to be ineffective but also damaging. It seems that limits on soft money, issue advocacy, expenditures, and the like would have merely changed the avenues that money would have taken, not its influence. Though it is conceded that soft money limits could have impacted the outcome in Missouri, is it right to systematically favor Democrats by limiting such expenditures? Ideology would certainly affect the answer to that, but if we seek a system that promotes competition and participation while controlling for corruption, more regulation does not seem to be the answer, and the current system most likely will not "fix" much at all while it will unnecessarily infringe on First Amendment rights to political speech when they matter the most.

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THE PRECEDENT OF A PRESIDENT:
Theodore Roosevelt and
Environmental Conservation

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ABSTRACT

The legacy of President Theodore Roosevelt is one of expansion and great political prowess. Roosevelt's characteristic vigor allowed him to pursue even the most obscure issues in the realm of politics. Because the president had a firm conviction concerning the cause of conservation, he managed to convey its importance and bring it out of obscurity. Though Roosevelt used every presidential role to further his environmental policies, the most important to him were the expanding roles of chief executive and legislative leader. While conservation was virtually unknown to presidents before Roosevelt, it became a matter pertinent to the presidential agendas that followed.

When President William McKinley was assassinated in 1901, the nation was unsure of the role the succeeding president would pursue. Theodore Roosevelt was chiefly known for his peculiar mannerisms and background filled with epic adventure and legislative prowess. "Roosevelt literally created the character he lived out, and then lived within it until he finally became his own creation" (Brands 1997). Such was the nature of his presidency.

Specifically, Roosevelt's love for the environment led him to actively pursue an agenda of conservation. This active approach to environmental conservation set a precedent for the issue to become an influential factor in presidential politics.

Overall, the legacy of President Theodore Roosevelt is one of expansion and great political prowess. Roosevelt's characteristic vigor in the realm of politics allowed him to pursue even the most obscure issues. As president, Roosevelt had a firm commitment to the cause of conservation, and he managed to convey the issue's importance and bring it out of obscurity. Conservation was largely unknown to the presidents before Roosevelt, but it became pertinent to the presidential agendas that followed.

THEODORE ROOSEVELT AS CHIEF EXECUTIVE

In their book, *The American Presidency and the Social Agenda*, Byron W. Daynes and Glen Sussman describe four specific presidential roles impacting presidents' social agendas. They define a role as "the set of expectations by political elites and the citizenry that define the scope of presidential responsibilities within a given policy area" (2001, 5). Specifically, the role of chief executive would appear "on the surface" to be the most powerful presidential role. However, as history has revealed, a president finds it difficult to pursue a social agenda free from the influence of such factors as the bureaucracy (89). This was not the case during Theodore Roosevelt's administration. In fact, Roosevelt showed that the executive role, if strategically used, can largely be the most powerful role despite a controlling bureaucracy. Roosevelt took advantage of the Framers' "vague manner" of granting these administrative powers and expanded the role of the executive to include everything not specifically prohibited in the Constitution (89). His efforts at conservation are a prime example of how he expanded the role.

Of all the roles assumed by Roosevelt's presidency, chief executive is perhaps most significant. It was in this role that the president exercised his personal convictions of political and environmental stewardship most explicitly. Furthermore, when his legislative actions fell short he was able to compensate by assuming a strong executive role. Factors such as personal convictions, appointments, and executive orders shaped the Roosevelt Administration and are useful tools in assessing this role.

Roosevelt's personal commitment to the cause of environmental conservation stemmed primarily from his conception of the stewardship theory accompanied by a deep respect and love for the environment (Miller 1992, 36–39). The stewardship theory of government describes the role of the president as a "strong" and "assertive" one that is "confined only at points specifically prohibited by law" (University of Western Michigan 2003). This philosophy helped to shape him as an executive leader. In his autobiography, Roosevelt describes the influence of such philosophical underpinnings:

> My View was that every executive officer . . . was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. . . . My belief was that it was not only his right by this duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws. (1958, 197)

President Roosevelt used the prospect of a strong executive to expand presidential powers. As he incorporated his commitment to the stewardship philosophy into his role as executive, he spared no time in bringing the environment into his political agenda.

For example, when Roosevelt took office, he alluded to the problem of the environment in a significant part of his inaugural address. In doing so, he also alluded to his sense of stewardship that would become a significant underpinning to his administration: "They [the American founders] did their work; they left us the splendid heritage we now enjoy. We in our turn have an assured confidence that we shall be able to leave this heritage

unwasted and enlarged to our children and our children's children" (Roosevelt 1905). This philosophy would eventually lead him to vigorously pursue his ideas on sustainable development and environmental preservation.

A perfect example of the significance of this role is Roosevelt's use of the appointment power. Roosevelt's involvement in conservation was greatly influenced by his appointment of long-time friend and leading conservationist Gifford Pinchot as chief of the Division of Forestry (Smith 1971, 6). Pinchot not only held the same beliefs of stewardship and sustainable development as the president, he was able to convince the president conservation was a politically pertinent issue. Unsurprisingly, the environmental policy that followed Pinchot's appointment was marked by his interest in forestry as well as by his firm belief in sustainable development. For instance, in 1905, Roosevelt, along with the influential Pinchot, instigated a legislative act that would transfer the nation's forest reserves to the Department of Agriculture (U.S. Congress, House and Senate, 1905). It was exclusively from this act that Pinchot exercised most of his influence as chief.

Perhaps Pinchot's most visible role was his involvement in numerous commissions, conventions, and conferences wherein Roosevelt made it a point to always include him. First and most evident was the Keep Commission, organized in 1905 with the specific purpose of attending to the restructuring of the executive. Roosevelt set a precedent for future administrations, particularly that of his cousin, Franklin Delano Roosevelt, by instigating a "substantial reorganization of the executive branch" (Miller 2001, 342–43). The efforts of the Keep Commission were preceded by a 1905 meeting at which Pinchot instilled within the president the need for complete reorganization as an effort to compensate for the weaknesses of the bureaucracy. The ultimate goal was to make conservation efforts easier to pursue. The commission's mandate asserted the need to "investigate . . . what changes are needed to place the conduct of the executive business of the Government in all its branches on the most economical and effective basis" (342). To combat the problems of a "bloated bureaucracy," the commission created a centralized procurement office and a clear form of centralized management and decision-making (342–43). Such recommendations were acknowledged by an appreciative president, who noted in his autobiography that they "resulted in a promulgation of a set of working principles for the transaction of public business which are as sound today as they were when the committee finished its work" (1958, 135). Perhaps the commission's most significant contribution was the launching of a precedent that would eventually empower and expand the presidency. Most importantly though, the path to conservation was made substantially easier.

In addition, Roosevelt appointed Pinchot to the Public Lands Commission dealing specifically with conservation efforts in the Western lands. In his address to the 58th Congress, Roosevelt outlined the need for such a commission: "In order that definite information may be available for the use of the Congress, I have appointed a commission . . . to report at the earliest practicable moment upon the condition, operation, and effect of the present land laws and on the use, condition, disposal, and settlement of the public lands . . . especially on what changes are needed" (Roosevelt 1903, 7). The president proceeded to name Pinchot as a driving force who helped him see the need for the commission. What

is more, Pinchot was the only person explicitly mentioned in the address to be part of the commission.

Finally, Pinchot was a significant force in Roosevelt's organization and instigation of numerous additional commissions and conferences such as the Conference of Governors, at which Roosevelt, acting on Pinchot's advice, sought to provide a "catalyst" for the compilation of various state laws and viewpoints into a single "unified structure" (Clepper 1966, 26). The conference dealt with a wide range of environmental issues and most importantly signified Roosevelt's expansionary nature by including more than simply governors. Among the invited guests were members of the Supreme Court, representatives of major scientific and conservation groups, members of Congress, and specific leaders of U.S. industry and commerce (Bennett 1983, 18). This is perhaps one of the most significant examples of Roosevelt's dealings with the dispersal of powers through federalism. While much of the conservation effort took place on the federal stage, Roosevelt saw the need to incorporate all levels of government in an effort to get the most accomplished. Moreover, Roosevelt saw it as vital to gain some sort of a consensus from all facets of the nation's leadership (18).

Table 1.1 Pinchot's Role in Shaping the Roosevelt Administration and Agenda
Commissions and Conferences
Keep Commission
Conference of Governors
National Conservation Commission
Public Land Commission
North American Conservation Conference
Four of seven total study commissions
Other Contributions
Created Division of Forest Service
Centralized procurement office under the Keep Commission
First national inventory of natural resources
Influenced numerous executive orders dealing with conservation
Source: Theodore Roosevelt Association. n.d. Conservationist: The life of Theodore Roosevelt. At <www.theodoreroosevelt.org/life/conservation.htm>.

Another example of Roosevelt's expansionary and unilateral approach relates to the North American Conservation Conference. While this event will be discussed in greater detail later, it is important here to signify Roosevelt's unilateral tendencies. The conference was organized to address the issue of conservation on a larger international scale. Following an attempt to gain congressional support of the conference, Roosevelt realized that Congressional cooperation could not be obtained. He thus independently convened the North American Conservation Conference in 1909 without congressional support. Pinchot was selected as executive chair of the committee, assuming a highly influential role. Roosevelt's emphasis on conservation is indicated through the total number of study commissions and conventions specifically organized for that cause. Out of a total of seven, four

were organized to examine various aspects of conservation (Theodore Roosevelt Association 2003). Herein Roosevelt also invoked his stewardship philosophy of sustainable development. In a message to the Deep Waterway Convention, Roosevelt indicated the pressing need for his breakthrough unilateral executive role in terms of the conservation effort: "Conservation of natural resources is the fundamental problem. Unless we solve that problem it will avail us little to solve all others" (1907).

Roosevelt used executive orders concerning the environment primarily to secure land for national monuments, parks, and reservations. Following the advice of Pinchot, Roosevelt issued an executive order prior to the Fulton Agricultural Bill of 1907. As a result, 16 million acres of timberland were put under the control of the Forest Service, protected from the private sector. Roosevelt recalled this event: "They [Congress] discovered that sixteen million acres of timberland had been saved for the people by putting them in the National Forests before the land grabbers could get at them. . . . Opponents turned handsprings . . . and dire were their threats against the Executive" (1913, 130). Ultimately, Roosevelt was able to increase the forest reserves of the United States by 400 percent, expanding the acreage from 43 million to an unprecedented 195 million (Theodore Roosevelt Association 2003).

In addition to preserving the national forests, Roosevelt also used the role of chief executive to set aside a total of fifty-one federal bird reservations over a span of six years (Theodore Roosevelt Association 2003). Beginning with Pelican Island in Florida, he issued official declarations for all fifty-one reservations in a quick, sporadic fashion. While Roosevelt was governor of New York, he had suggested the need for such reservations but was constrained in implementing them on a larger scale. Thus, when Roosevelt assumed the presidency, he had enough power and was finally in a position to do something more about the situation (Cutright 1956).

The first bird reservation came from citizens' appeals. Roosevelt answered by posing the question, "Is there any law that will prevent me from declaring Pelican Island a Federal Bird Reservation?" When the citizen leaders answered "no," Roosevelt replied, "Very well then, I declare it" (Roosevelt 1913, 145).

Finally, Roosevelt used his expanded executive role to order the securing of national monuments. With the aid of the American Antiquities Act of 1906, Roosevelt was able to establish a total of eighteen national monuments. No other president has matched his record (Theodore Roosevelt Association 2003).

Table 1.2 Results of President Roosevelt's Expanded Executive Role Compared to Previous Situations

	Before T.R.	After T.R.
Bird Reserves	0	51
National Monuments	0	18
Forest Reserves	43 million acres	194 million acres

Source: Theodore Roosevelt Association. n.d. Conservationist: The life of Theodore Roosevelt. At<www.theodoreroosevelt.org/life/conservation.htm>.

While Roosevelt's actions as chief executive were met with substantial opposition, he was, nonetheless, successful. Moreover, this particular role was by far his most influential in terms of conservation. Equipped with a philosophy justifying his expansive tendencies, Roosevelt pursued an agenda unprecedented for his time. As a result of his enterprising actions, the environment has become a pertinent issue to presidential politics.

THEODORE ROOSEVELT AS A LEGISLATIVE LEADER

Presidential scholars Edward Corwin and Louis Koenig state that "virtually all presidents who have made a major impact on American history have done so in great degree as legislative leaders" (1956). This role is traditionally considered the direct relationship that a president cultivates with Congress concerning an active policy-making agenda. The degree to which a president is successful in office is largely determined by his success at initiating and passing legislation. Roosevelt's role as legislative leader is an important example of how a president can leave his mark through the auspices of legislation. While Daynes and Sussman suggest the legislative leader as one of any president's weaker roles (2001), Roosevelt proved that in the right hands it could be a role of "lasting consequence."

In an effort to propagate environmental conservation, Roosevelt pursued a robust legislative agenda while garnering enough support to become a successful legislative leader. Roosevelt's legislative activities during his presidency were derived from a sense of political expediency, concerning the current environmental situation, that motivated him to use the role of legislative leader to pursue the cause of conservation.

When Roosevelt assumed office, the quality of the environment was decreasing, as conservation was unfamiliar among most Americans. Environmental conservation had taken a backseat to the great industrial developments of the day. Consequently, Roosevelt considered the nation's natural resources to be threatened by total exhaustion and felt that intervention was necessary. In the manuscript "Origins of American Conservation," the Natural Resources Council of America describe the situation of natural resources at the inception of Roosevelt's administration. They note that most of the destruction and depletion of resources took place during the latter part of the nineteenth century and continued into the twentieth century. "Forest devastation, fishery decline, wildlife extirpation, and wasteful exploitation were generally rampant. . . . The federal government did little to try to stop the trend . . . which was helped along by a lack of a national policy" (Clepper 1966, 8). The situation warranted the attention of Roosevelt and justified his legislative agenda.

The most useful tools for assessing a president's relationship with Congress are his State of the Union addresses. Daynes argues that the State of the Union Address is perhaps the most significant formal interaction a president has with Congress (1999, 272). It is during this speech that a president lays out his plan for legislation in a formal attempt at nurturing a strong relationship with Congress. Issues that are of greatest concern to a president will be mentioned in detail during the State of the Union. A successful president will be able to set forth his policy-making agenda while simultaneously gaining more congressional support. Roosevelt demonstrated a concern for the environment, a concern largely unfamiliar to most legislators, in his first State of the Union Address. The conservation

emphasis of this speech was an unparralleled approach to environmental politics. The message enabled Roosevelt to assume the role of legislative leader in terms of environmental conservation early in his presidency.

In this first State of the Union, Roosevelt paid significant attention to the need for "wise forest protection" as providing an assurance of "larger and more certain supplies" (1909). He described the practicality of preservation: "It is a means to increase and sustain the resources of our country and the industries which depend upon them, . . . [T]he preservation of our forests is an imperative business necessity." Roosevelt also described his preservation plan to unite in purpose the Bureau of Forestry, the General Land Office, and the United States Geological Survey, in an effort to prevent "diffusion of responsibility." Finally, he foreshadowed what would probably be one of his most noteworthy achievements, the Reclamation Act of 1902. "Our aim," he noted, "should be not simply to reclaim the largest area of land and provide homes for the largest number of people, but to create for this new industry the best possible social and industrial conditions" (Roosevelt 1909).

The issue of conservation was a prominent issue in all eight of Roosevelt's State of the Union addresses. As Table 2.1 indicates, the number of words dedicated to conservation in each address ranged from 835 to 4,146, dwarfing the number in previous presidents' addresses. Those preceding Roosevelt mentioned the environment only in passing, if at all (Clepper 1966, 8). The fact that Roosevelt's State of the Union addresses conveyed the importance of conservation set another precedent for future presidencies. However, those presidents who followed devoted much less to conservation in their individual State of the Union addresses. For example, President Clinton is the most recent environmentally minded president; however, conservation took up only 55 to 243 words in his State of the Union addresses.

Table 2.1 Theodore Roosevelt's Total Use of Environmental Words in State of the Union Addresses.
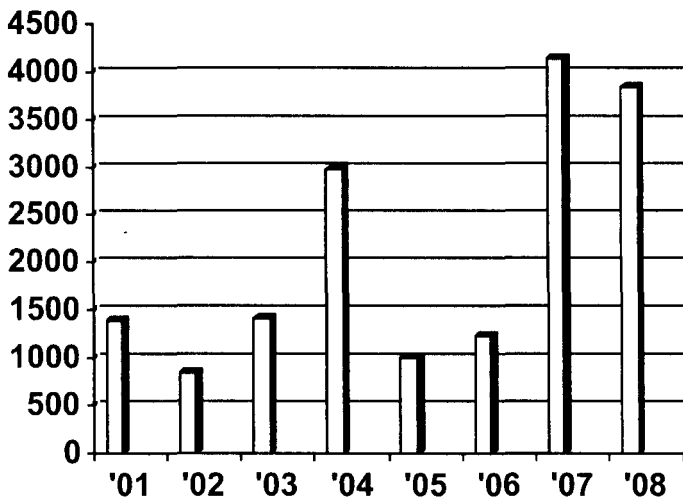
Based on a compilation of all eight State of the Union messages and estimated by assessing the context within which each word was used.

In terms of his record as legislative leader, Theodore Roosevelt succeeded for the most part. He was able to gather the necessary support for large-scale environmental legislation while simultaneously using the presidential veto power to insure there was no deviation in legislation that would alter his idea of environmental preservation.

Perhaps the most significant and encompassing piece of legislation Roosevelt passed through Congress was the Newlands Reclamation Act of 1902 (U.S. Congress, House and Senate 1902). Not more than a year after he was sworn in as president, Roosevelt, along with Pinchot, supported this legislation that previously had been doomed to failure. The act gave incredible control of irrigation of arid lands to the federal government, set up a federal irrigation project, and ultimately cultivated Western development. Though the legislation gave the federal government significant power over the environment, it was met with firm opposition from within the federal government. Specifically, Speaker of the House and member of Roosevelt's party, Joseph Gurney Cannon publicly opposed the president's efforts. Roosevelt attempted to gain the support of the Speaker in an unprecedented manner by drafting a personal letter to him. He wrote, "I do not believe that I have ever before written to an individual legislator in favor of an individual bill, but I break through my rule to ask you as earnestly as I can not to oppose the Irrigation measure. . . . I cannot too strongly express my feelings upon this matter" (1902). However, the letter was not successful in swaying the Speaker's vote. Cannon continued to vocally contest Roosevelt's efforts.

Despite Cannon's strong opposition, Roosevelt's firm commitment to the bill produced enough support among Republicans and Democrats alike that it eventually passed. As a result, numerous projects were able to sustain the intended federal irrigation program (Reclamation Service 1903, 42). What is more, the act potentially allowed for 100,000,000 acres of arid lands to be reclaimed for storage purposes (72). This marked the beginning of governmental concern with the environment in terms of legislation.

In addition to the Reclamation Act of 1902, Roosevelt exhibited a similar legislative prowess in relation to the American Antiquities Act of 1906. Successful lobbying efforts again allowed Roosevelt to instigate and pass a very important piece of legislation. The act granted unparalleled presidential power, allowing the protection of lands for the preservation of historic or scientific sites (U.S. Congress, House and Senate 1906). Its intent was not only to further the cause of conservation, but also to expand the role of the executive as well. While it specifically enabled the president to protect "any historic or prehistoric ruin or monument, or any object of antiquity," it became an indication of the transfer of power from Congress to the president (1906). This shift in power would essentially overshadow twentieth-century politics (White House Historical Association 2003). Consequently, Devil's Tower, Wyoming, was declared the first national monument (Theodore Roosevelt Association 2003). Seventeen other national monuments would be designated during Roosevelt's administration alone. Furthermore, as Table 2.2 indicates, several presidents following Roosevelt used the Antiquities Act to expand the country's national reservations, parks, and monuments. Of these, Bill Clinton's use of the Antiquities Act was the most exhaustive. This recent use indicates the Act's continued prominence in American politics and, in general, Roosevelt's contributions to contemporary conservation.

Table 2.2. Usage of the Antiquities Act by Presidents Following Roosevelt

William Howard Taft	Franklin D. Roosevelt
3/20/09 Navajo, AZ	4/26/33 Channel Islands, CA
7/12/09 Oregon Caves, OR	8/22/33 Cedar Breaks, UT
7/31/09 Mukuntuweap, UT	1/4/35 Fort Jefferson, FL
9/21/09 Shoshone Cavern, WY	8/10/36 Joshua Tree, CA
11/1/09 Gran Quivira (now Salinas Pueblo Missions), NM	1/22/37 Zion, UT
3/23/10 Sitka, AK	4/13/37 Organ Pipe Cactus, AZ
5/30/10 Rainbow Bridge, UT	8/2/37 Capitol Reef, UT
6/23/10 Big Hole Battlefield, MT	7/16/38 Fort Laramie, WY
5/24/11 Colorado, CO	5/17/39 Santa Rosa Island, FL
7/6/11 Devils Postpile, CA	7/24/39 Tuzigoot, AZ
Woodrow Wilson	3/15/43 Jackson Hole, WY
10/14/13 Cabrillo, CA	**Harry S. Truman**
1/31/14 Papago Saguaro, AZ	10/25/49 Effigy Mounds, IA
10/4/15 Dinosaur, UT-CO	**Dwight D. Eisenhower**
11/30/15 Walnut Canyon, AZ	7/14/56 Edison Laboratory, NJ
2/11/16 Bandelier, NM	1/18/61 Chesapeake and Ohio Canal, MD-WV
7/8/16 Sieur de Monts, ME	**John F. Kennedy**
8/9/16 Capulin Mountain (now Capulin Volcano), NM	5/11/61 Russell Cave, AL
10/25/16 Old Kasaan, AK	12/28/61 Buck Island Reef, VI
6/29/17 Verendrye, ND	**Lyndon B. Johnson**
3/18/18 Zion, UT (incorporated Mukuntuweap NM)	1/20/69 Marble Canyon, AZ
8/3/18 Casa Grande (now Casa Grande Ruins), AZ	**Jimmy Carter**
9/24/18 Katmai, AK	12/1/78 Admiralty Island, AK (Forest Service)
12/12/19 Scotts Bluff, NE	12/1/78 Aniakchak, AK
12/12/19 Yucca House, CO	12/1/78 Becharof, AK
Warren G. Harding	12/1/78 Bering Land Bridge, AK
1/24/22 Lehman Caves, NV	12/1/78 Cape Krusenstern, AK
10/14/22 Timpanogos Cave, UT	12/1/78 Denali, AK
10/21/22 Fossil Cycad, SD	12/1/78 Gates of the Arctic, AK
1/24/23 Aztec Ruin (now Aztec Ruins), NM	12/1/78 Kenai Fjords, AK
3/2/23 Hovenweep, UT-CO	12/1/78 Kobuk Valley, AK
3/2/23 Mound City Group, OH	12/1/78 Lake Clark, AK
5/31/23 Pipe Spring, AZ	12/1/78 Misty Fjords, AK (Forest Service)
6/8/23 Bryce Canyon, UT	12/1/78 Noatak, AK
Calvin Coolidge	12/1/78 Wrangell-St. Elias, AK
10/25/23 Carlsbad Cave, NM	12/1/78 Yukon Charley, AK
4/18/24 Chiricahua, AZ	12/1/78 Yukon Flats, AK
5/2/24 Craters of the Moon, ID	**William J. Clinton**
10/15/24 Castle Pinckney, SC	9/18/96 Grand Staircase-Escalante, UT
10/15/24 Fort Marion (now Castillo de San Marcos), FL	1/10/00 Pinnacles National Monument, CA (Expansion)
10/15/24 Fort Matanzas, FL	1/11/00 Grand Canyon-Parashant National Monument, AZ
10/15/24 Fort Pulaski, GA	1/11/00 Agua Fria National Monument, AZ
10/15/24 Statue of Liberty, NY	1/11/00 California Coastal National Monument, CA
12/9/24 Wupatki, AZ	4/15/00 Giant Sequoia National Monument, CA (Expansion-USDA
2/26/25 Glacier Bay, AK	Forest Service)
2/26/25 Meriwether Lewis, TN	6/09/00 Hanford Reach, WA
9/5/25 Father Millet Cross, NY	6/09/00 Ironwood Forest, AZ
11/21/25 Lava Beds, CA	6/09/00 Canyons of the Ancients, CO
Herbert Hoover	6/09/00 Cascade-Siskiyou, OR
4/12/29 Arches, UT	7/07/00 President Lincoln and Soldiers' Home National Monument
5/11/29 Holy Cross, CO	11/9/00 Craters of the Moon, ID (Expansion of Existing Monument)
5/26/30 Sunset Crater (now Sunset Crater Volcano), AZ	11/9/00 Vermillion Cliffs, AZ
3/17/32 Great Sand Dunes, CO	1/17/01 Carrizo Plain, CA
12/22/32 Grand Canyon, AZ	1/17/01 Kasha-Katuwe Tent Rocks, NM
1/18/33 White Sands, NM	1/17/01 Minidoka Internment, ID
2/11/33 Death Valley, CA-NV	1/17/01 Pompeys Piller, MT
3/1/33 Saguaro, AZ	1/17/01 Sonoran Desert National Monument, AZ
3/3/33 Black Canyon of the Gunnison, CO	1/17/01 Upper Missouri River Breaks National Monument, MT
	1/17/01 Virgin Islands Coral Reef, VI

Source: National Parks Service. n.d. Monument proclamations under the Antiquities Act.
At <http://www.cr.nps.gov/history/hisnps/NPSHistory/monuments.htmNational>.

While the Reclamation and Antiquities Acts were Roosevelt's most successful legislative accomplishments, the president was able to do other things to advance the cause of the environment. For instance, he doubled the number of national parks and added land to those already in existence. His viewpoint on sustainable development to preserve the

environment was made clear in his seventh State of the Union Address. He stated, "Optimism is a good characteristic, but if carried to an excess, it becomes foolishness. We are prone to speak of the resources of this country as inexhaustible; this is not so" (Roosevelt 2003).

Roosevelt also used the role of legislative leader to veto a number of bills that failed to correspond with his intended conservation goals. Only a strong legislative leader like Roosevelt would have been able to pass a large-scale environmental legislation package while concurrently making use of the veto power to pursue his environmental agenda. Generally,

Table 2.3. Results of Roosevelt's Legislative Efforts

Reclamation Projects	National Parks
Salt River, Arizona – 1903	Crater Lake National Park, Oregon – 1902
Milk River, Montana – 1903	Wind Cave National Park,
Newlands, Nevada – 1903	South Dakota – 1903
North Platte, Nebraska and Wyoming – 1903	Sullys Hill, North Dakota – 1904
Uncompahgre, Colorado – 1903	Platt National Park, Oklahoma – 1906
Belle Fourche, South Dakota – 1904	Mesa Verde National Park, Colorado – 1906
Lower Yellowstone, Montana and North	
Dakota – 1904	**National Monuments**
Minidoka, Idaho – 1904	Devil's Tower, Wyoming – 1906
Shoshone, Wyoming – 1904	El Morro, New Mexico – 1906
Yuma, Arizona and California – 1904	Montezuma Castle, Arizona – 1906
Boise, Idaho and Oregon – 1905	Petrified Forest, Arizona – 1906
Huntley, Montana – 1905	Chaco Canyon, New Mexico – 1907
Klamath, California and Oregon – 1905	Lassen Peak, California – 1907
Rio Grande, New Mexico – 1905	Cinder Cone, California – 1907
Carlsbad, New Mexico – 1905	Gila Cliff Dwellings, New Mexico – 1907
Okanogan, Washington – 1905	Tonto, Arizona – 1907
Strawberry Valley, Utah – 1905	Muir Woods, California – 1908
Umatilla, Oregon – 1905	Grand Canyon, Arizona – 1908
Yakima, Washington – 1905	Pinnacles, California – 1908
Sun River, Montana – 1906	Jewel Cave, South Dakota – 1908
Orland, California – 1907	Natural Bridges, Utah – 1908
Wheeler, Colorado – 1908	Lewis and Clark, Montana – 1908
Mount Olympus, Washington – 1909	Tumaeacori, Arizona – 1908

Note: National monuments were specifically addressed through the American Antiquities Act.

Source: Theodore Roosevelt Association n.d. Conservationist: The life of Theodore Roosevelt.
At <www.theodoreroosevelt.org/life/conservation.htm>.

Roosevelt used the veto to expand his executive role. Of forty-two presidents, in fact, Roosevelt comes in seventh in terms of presidential vetoes cast (United States House of Representatives 2003). More specifically, though, Roosevelt used the veto as a tool for keeping environmental conservation out of the private sector. In 1903, Roosevelt vetoed a bill that would have allowed a private power firm to build a large-scale dam on the Tennessee River in Muscle Shoals, Alabama (Roosevelt 1903). This veto, in particular, confirmed a principle of national ownership and also protected the future commencement site of the Tennessee Valley Authority. In his address to Congress, Roosevelt stressed the importance of innovative resource preservation being protected from the dangers of privatization,

arguing that private ownership of such efforts would not be for the good of the entire public. He indicated, "I think it is desirable that the entire subject . . . should be considered in a comprehensive way and that a general policy . . . should be adopted under which these valuable rights will not be . . . given away, but will be disposed of after full competition in such a way as shall best conserve the public interests" (1903). The president was sympathetic to other legislation that prevented the private sector from controlling the environment. For instance, the General Dam Act of 1906 specifically outlined the regulations for widespread hydroelectric dam construction on a federal level (U.S. Congress, House and Senate 1906). While Roosevelt did not instigate this legislation, he saw that the generality of the bill indicated a strong federal role, one that would combat the threat of interference in the environment on the part of the private sector. Thus, he supported the bill by not exercising his veto power.

As Table 2.3 suggests, President Roosevelt's legislative efforts were quite extensive. Roosevelt actively sought to expand the role of the executive branch by nurturing a healthy relationship with Congress. While he frequently met with opposition from within his own party, Roosevelt was successful more often than not at gaining just enough support to pursue his environmental agenda. As a result, large-scale legislation was enacted and the role of the president as legislative leader was forever strengthened. Moreover, the issue of the environment gained more attention in succeeding presidencies.

THEODORE ROOSEVELT AS CHIEF DIPLOMAT/COMMANDER-IN-CHIEF

In terms of general authority and resources, the role of chief diplomat/commander-in-chief is primarily the strongest role (Daynes and Sussman 2001, 6, 123). The power that this role usually exhibits is largely unchecked as the president is "designated as the sole organ of communication with foreign nations" as well as serving as a "civilian authority while presiding over a vast defense establishment" (120). While Theodore Roosevelt was an effective diplomat and commander-in-chief in other areas, such as his "big stick" foreign policy, he utilized these roles minimally in terms of his conservation efforts.

The issue of the environment was unfamiliar to the American public when Roosevelt came into office. So it is not surprising that conservation was essentially unknown on an international scale. Often he found conservation to be an uphill battle on the domestic front. Pursuing the issue internationally was even more complex. Roosevelt felt that conservation should extend beyond U.S. borders, and he tried to confront this problem as best he could. Probably the sole example of his efforts was the convening of the North American Conservation Conference in 1909. With the mandate that conservation was of the utmost importance and should become "worldwide in its scope," the conference became the first international conference to consider this issue (Pinchot 1940, 8–10). In his address at the opening of the conference, Roosevelt stated the importance of conservation on an international scale:

> In international relations the great feature of the growth of the last century has been the gradual recognition of the fact that instead of its being normally to the interest of each nation to see another depress, it is normally to the interest of each nation

to see the others elevated. . . . I believe that the movement that you this day initiate is one of the utmost importance to the hemisphere and may become of the utmost importance to the world at large (Roosevelt 1909).

This initial conference was to be the forerunner to future worldwide conferences. Delegates from Mexico and Canada joined the United States in mutually pursuing conservation as an international priority. Mutual interests with regard to forests, water, land, mineral, and game conservation were conceptualized as boundary-less. Moreover, delegates discussed the need for cooperation over threats such as pollution and public health crises. At the close of the conference, the delegates issued a plea to the world that a similar effort needed to be made on a wider international scale (Bennett 1983, 18).

America was moving into a new age wherein international relations needed to flourish and national prestige was vital. Efforts that focused on conservation were a primary element of such aims. Pinchot described the situation: "Natural life everywhere is built on the foundation of natural resources. Throughout human history, the exhaustion of those resources and the need for new supplies have been among the greatest causes of war" (Pinchot 1940, 9). However, environmental goals for the Conference were never reached. Though Secretary of State Elihu Root stated that preliminary measures had been taken to invite representation from thirty nations to a future conference, the prospective conference suffered a bitter defeat at the hands of President William Howard Taft, Roosevelt's successor, who apparently "killed the plan" (Pinchot 1940, 10).

Roosevelt's international diplomatic efforts were more indirect than direct in nature. Other than the aforementioned conference, he took virtually no action internationally. However, the administration's success should be measured by the fact that it was the first to advocate conservation as an international concern. Even today, Theodore Roosevelt's environmental vision has been noted in contemporary efforts to respond to global concerns.

THEODORE ROOSEVELT AS OPINION/PARTY LEADER

Compared to the other presidential roles, the president often exerts the least amount of power as opinion/party leader (Daynes and Sussman 2001, 6). The role serves two functions as the president seeks to maintain the support of his party while also gaining enough public support to be reelected. In the pursuit of these functions, a president seeks to find those social issues that "generate public support for his own program, for his administration, and for his party" (25). As a result, presidents tend to emphasize those social issues that facilitate both functions. However, some issues that facilitate one function and obstruct the other must be addressed nonetheless. Daynes and Sussman describe this potential difficulty, "Once these issues become politicized by whatever means, however, a president finds it difficult to avoid them" (32). Thus, there is always a large possibilty of conflict between the two functions. Conservation was not widely accepted during Roosevelt's era and his role as opinion/party leader was largely suggestive of that.

Roosevelt's conservation agenda was oftentimes a unilateral effort that ignored party lines and attracted strong opposition to his agenda. During this time period the political climate across the nation was underlined by the Progressive ideology. Roosevelt was a firm

believer in this ideology, and, as a result, his stance on conservation reflected his party's platform only on occasion. In many instances, Roosevelt chose Progressivism over the Republican Party platform.

The issue of conservation was unfamiliar to most Americans until the Roosevelt Administration placed it on the public agenda. Public opinion concerning conservation was derived primarily from the president's actions, as Roosevelt's actions lacked an executive precedent. Indeed, Roosevelt's role in conservation molded public opinion rather than acting on its behalf. As a result, it is often difficult to determine precisely what the public felt about conservation.

As party leader, Roosevelt sought to remedy social ills through conservation. In fact, the Progressive Party's platform dedicates an entire section to the importance of land and resources: "The land, including all the natural sources of wealth, is the heritage of the people, and should not be monopolized for speculative purposes" (Scott 1959, 691). Furthermore, progressive ideology, as defined by the Roosevelt administration, emphasized the need for development and preservation as well as the prevention of large-scale privatization of environmental interests (Roosevelt 1907).

While evidence supporting Roosevelt in this role is lacking, there are numerous instances when the president's actions went beyond party lines. His role as opinion/party leader was more moderate than strong. As discussed earlier, the president used the role of legislative leader to encourage passage of the Newlands Reclamation Act without full backing of the party leadership. This instance was perhaps the most blatant example of Roosevelt disregarding his party's wishes and pursuing a unilateral approach to conservation. Although the legislation ultimately passed, Roosevelt had to pay the price by assuming a weaker party leader role.

As public opinion leader, Roosevelt mentioned the significance of public opinion to show his support of it. For instance, in his message "On Conservation," he specifically declares public opinion was swayed as a result of the administration's efforts (Roosevelt 1904). Similar suggestions appear in his State of the Union addresses.
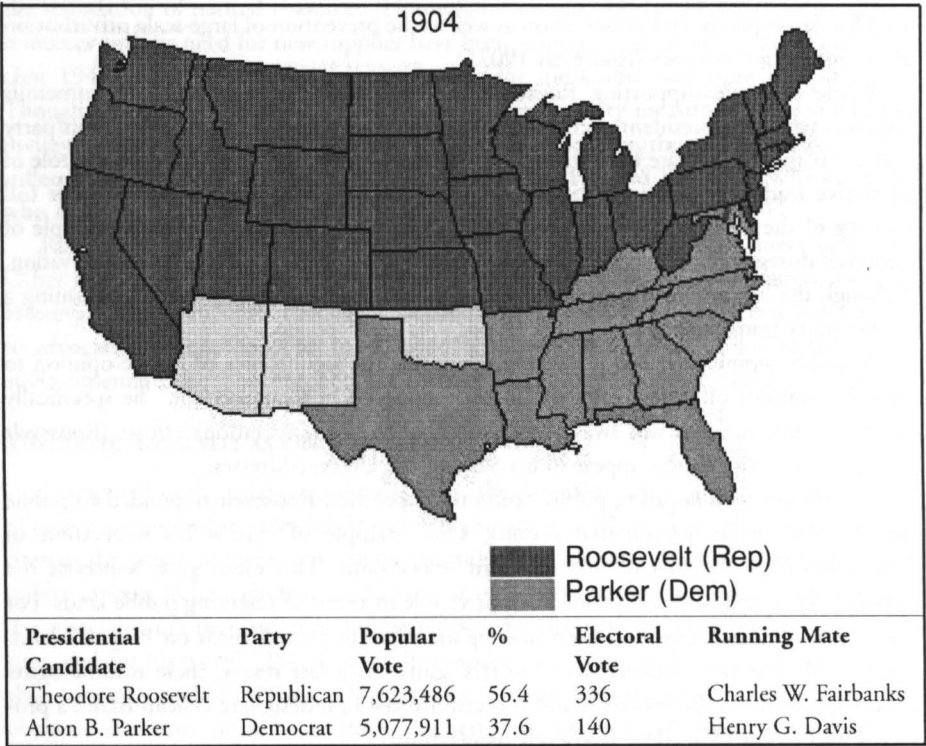
In addition to advocating public opinion in speeches, Roosevelt responded to public grievances in many presidential actions. One example of this is his reservation of Pelican Island as the first of fifty-one bird reservations. This event gave Roosevelt the opportunity to exhibit his expanded executive role in terms of reserving public lands. For some time, ornithologists had been making an effort to protect birds on Pelican Island, where birds had been subjected to hunters' guns. As a last resort, these ornithologists appealed directly to the president and successfully saw him designate Pelican Island a protected bird refuge (Theodore Roosevelt Association).

A good indicator of Roosevelt's weak postion as party leader was the amount of political cartoons of the time period that featured him. Specifically, when Roosevelt advocated the non-privatization of public lands and natural resources, a number of political cartoons attacked the president's motivation. As depicted in the cartoons, oftentimes the public saw Roosevelt as merely a mouthpiece for the radical conservationist Gifford Pinchot (McCutcheon 1910, 136–39).

Roosevelt's opinion/party leader role can also be measured by the 1904 election results. Roosevelt assumed the presidency upon President McKinley's assassination. As a result, he was not bound by specific election promises as most presidents are during their first term. Rather, when Roosevelt ran for election in 1904 he relied on specific legislative accomplishments during his first term to secure the support of the public. Most states that supported Roosevelt's reelection were Western states who had been subject to much of his legislation. Ultimately, conservation oriented legislation like the Newlands Reclamation Act, while initially controversial, passed into law and apparently helped Roosevelt garner enogh public support to be reelected.

The issue of conservation was virtually non-existent in American politics until Roosevelt incorporated it into his social agenda. As the first president to focus on conservation,

Table 4.1 Geographical Support and Vote Breakdown of the 1904 Presidential Election

Presidential Candidate	Party	Popular Vote	%	Electoral Vote	Running Mate
Theodore Roosevelt	Republican	7,623,486	56.4	336	Charles W. Fairbanks
Alton B. Parker	Democrat	5,077,911	37.6	140	Henry G. Davis

Source: United States Department of the Interior. Presidential Elections 1789–2000. At < http://nationalatlas.gov/electionsprint.html >.

public opinion concerning Roosevelt's actions was based solely on those actions' results without comparison to the actions of past presidents. Consequently, measuring Roosevelt's ability to lead opinion in comparison to that of other, previous presidents is difficult.

Roosevelt's role as party leader was hamstrung by his adoption of an agenda largely independent of the Republican Party's official platform. The conflict between party and personal belief becomes quite clear when we consider the Progressive ideology that he devoutly adhered to. While Roosevelt was certainly a member of the Republican Party during his presidency, he had a progressive mind-set that put him in a position to help form the Progressive Party of 1912 after Taft's election to the presidency (Roosevelt 1913). While Roosevelt's role as opinion/party leader was relatively weak as a Republican, if considered under the auspices of Progressive ideology and the eventual Progressive Party, it was quite strong.

CONCLUSION

Environmental policy was affected by all four of Theodore Roosevelt's presidential roles. However, two of the the four roles were of greater influence. In terms of Roosevelt's environmental work, the roles that are customarily the strongest were really the weakest (Daynes and Sussman 2001). The role of commander-in-chief, usually viewed as the source for the most presidential power, was almost nonexistent in Roosevelt's environmental presidency. While Roosevelt exercised this role mostly in terms of foreign policy and international relations, it had little, if any significance, on conservation. His accomplishments as chief diplomat were also limited.

On the other hand, Roosevelt's role as chief executive proved to be his most important regarding environmental policy. He left a legacy of an active president preserving and protecting the environment, an issue that would have otherwise been obscure. Moreover, he set a precedent for environmental issues to become leading factors in presidential politics.

Roosevelt helped prove that a strong personal commitment to a cause could lead a president to pursue an issue even at the risk of marginalizing his own political party. Roosevelt also showed that subjecting himself to a certain philosophy could guide all facets of a presidency. He was able to expand the presidential function to include everything not explicitly limited by the Constitution. Furthermore, he applied this philosophy to traditionally significant policies such as foreign relations as well as to policies thought to be more insignificant, like the environment. It seems as though Roosevelt did not differentiate between the two; rather, he valued the environment equally.

Following the Roosevelt era, the issue of the environment became largely dormant under President Taft, who did not find the issue pertinent to his agenda. It was not until Franklin D. Roosevelt's election that the environment again became an active issue. Building on the work of Theodore Roosevelt, F.D.R. was able to further the cause of conservation and attach an importance to environmental issues that continued throughout his and subsequent presidencies. Without Theodore Roosevelt's instigation of the conservation cause near the beginning of the twentieth century, the issue of the environment might not be nearly as significant in modern politics.

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LEGAL INDETERMINACY, POLITICS, AND THE SUPREME COURT: Critical Legal Studies and *Lawrence v. Texas*

Taylor M. Dix

I magine a man who holds up a gas station and steals all the money in the drawer and safe. Or, suppose a man is caught driving while severely inebriated. Lastly, consider a university student who is caught cheating on a final exam. The Western legal worldview which gives our society security and predictability dictates that the three people in the above examples should all be punished for their actions; they broke the law—in these cases written statutes that declare: "If one shall commit A then punishment B will follow—and common sense, based on the myriad legal experiences that one appropriates through life, says that the perpetrators should not profit from their crimes. Not only should they not profit, but society should also reprove them and, through such reprobation, deter them and society at large from committing the same crimes in the future.

However, not all legal cases are as clear-cut as the previously cited examples seem to be. While some interpretations of civil and criminal laws are straightforward and preclude any protracted debate about their correctness, conflicting statutes and principles can often muddy the water. For example, if a doctor is prosecuted for assisting his patients in committing suicide, two principles naturally clash.[1] Furthermore, similar situations are found in legal situations involving the separation of church and state and in those times in which one's actions are taken by one group to be an expression of free speech, while another group simultaneously takes the same actions as displays of oppression and offense. Suddenly, abstract principles that our society holds as important are conflicting with a strict interpretation of the statutes. This is not to say that the people in the first examples should be exonerated without question; they committed wrongdoings and should receive some sort of punishment. But should certain principles—aiding those in need, promoting equality and fighting oppression, and striving to educate people from all levels of society—convince judges to mitigate their punishments?

Many noted legal theorists claim that a nation's legal system is rarely defined by those cases that never go to court; in these cases, conflicts are not resolved and overarching principles are not outlined. Rather, the cases that are adjudicated and decided upon by the judiciary often define the nature of a nation's legal system. But how are these cases decided, and what does this say about our modern legal system? What guidelines does the judiciary follow in the adjudicative process? It is possible that judges are bound by metaphysical principles, common agreement, economic utility, or the weight of precedent to make certain decisions. Legal determinism, as this point of view is known, states that, given a certain case, an external causal chain uses its force to bind the judiciary—thereby controlling the human decision process.

One modern school of thought rejects the legal deterministic viewpoint and argues that any appeal to metaphysical principles carries inherent problems. In the twentieth century, legal realism gave way to the Critical Legal Studies (CLS) movement, which attacked the foundation of every prevailing legal theory and claimed that the modern legal process is intrinsically indeterministic. Not only did the CLS school argue for the indeterminacy of law, but it also asserted that the legal scene was nothing more than a mere extension of the political battleground. This essay will examine the primary tenets of CLS theory and will argue, through a study of modern Supreme Court cases, that law is intrinsically indeterminate and that the modern judicial system is primarily an extension of the political debate.

THE SHAPE OF CLS

As noted above, the CLS movement was, in its largest scope, a reaction to the idea of legal determinism that comprised the mainstream of legal thought. Both H.L.A. Hart and Ronald Dworkin argue that, although law could be open to interpretation at its fringes, the great majority of legal cases were closed to interpretation. That is, such cases are primarily fixed in their outcomes either by a "soundest theory" or by some other method. Such theorists believe in some form of objectivity surrounding legal adjudication. The CLS school, however, rejects this notion of objectivity by attacking its metaphysical and epistemological foundations. Roberto Unger attacks those who still uphold the Platonic world of forms and who claim to have access to an absolute knowledge of the essences of right and wrong (1975, 130). Because no metaphysical categories are thus preset, any attempt to describe and understand the world (be it linguistically, scientifically, etc.) can be only partial, and Unger uses this starting point to make one realize that the way in which we categorize the world is wholly self-determined (130–31). The implications of Unger's writings for legal validity are far reaching and destructive; they remove all connection between laws and reality because "reality is put together by the mind" (130). Unger finds fault with the prevailing legal theories because they are all bound by theory-based concepts—theories that have internal contradictions that produce paradoxes. Unger does not deny that theories are beneficial for producing knowledge, but he claims that this knowledge is never complete. Because theoretical underpinnings always contain some form of incoherence, total understanding is never possible.

The metaphysical problems presented by Unger inductively lead to equally important epistemological problems that demand a response from legal determinists. The chief among these problems surfaces when a case is presented in which different rules or principles conflict. The facts of any case may leave room for two different phenomenological appeals that may invariably demand two different decisions. In criticism of Hart's theories Andrew Altman argues that in such cases one cannot know which rule is the "correct rule" to use as the foundational standard (1999, 122). In reaction to Dworkin's claim that one can objectively adjudicate because of principles that will differentiate between competing rules, Altman emphatically denies that one can discover any semblance of a "metaprinciple for assigning weights" among competing rules (133).

Brian Leiter takes the metaphysical and epistemological foundations laid by Unger and Altman and uses them to expand the phenomenological implications of CLS thought. He agrees that determinism, or "mechanical jurisprudence," cannot hold and that no specific set of background conditions and rules can produce a causally predetermined outcome (Leiter, 275). Keeping in line with realist and CLS tradition, Leiter argues that law is not a knowable body of concrete knowledge, existing separate from man and waiting to be tapped. Instead, law is the creation of judicial action; law is what judges say it is. In short, the foundation of law is empirical rather than metaphysical (264).

Leiter argues that realists and proponents of CLS thought agree on two theses. First, "The law is rationally indeterminate locally not globally." Second, "The law is causally indeterminate in the cases where it is rationally indeterminate" (265). The first of these theses attacks the efficacy of precedence in adjudication because it asserts that no set of preconditions can demand a certain outcome. This view holds that there are too many conflicting, yet equally legitimate ways of interpreting the sources (statutes, precedent, principles, etc.) and the facts of any case, thus allowing judges to draw a host of different conclusions from the same facts. This thesis destroys the value of precedent because former cases were not decided mechanically, and precedent, therefore, "can be interpreted to stand for more than one rule, and so justify more than one outcome" (266). The second thesis is merely the logical extension of the first. If the law is rationally indeterminate on some point, and legal reasons justify more than one decision, then we must look at extra-legal sources to determine why a judge decided in some particular way (267). The move to describe law from an extra-legal standpoint results in a normative theory of law that can only describe what happens. It lacks the power to prescribe what ought to happen.

What, then, is law, if not a knowable set of rules that can be used in a predictive fashion? Prussian military philosopher Carl von Clausewitz said that war is nothing more than an extension of politics on the battlefield, and Altman takes the same position with law. For the CLS school, law is a patchwork of ideologies, pieced together for the benefit of political parties and special interest groups (Altman 1999, 134). "In other words," Altman writes, "the spectrum of ideological controversy in politics is reproduced in the law" (134). Before considering a court case that demonstrates the validity of CLS theory, I will first show how the presupposition that law is an extension of political maneuvering clearly infects the

decisions of those who control the interplay between the highest levels of executive and judicial power in our country.

THE POLITICS OF FEDERAL JUDICIAL NOMINEES

Given the prevailing philosophical streams of the twentieth century, one should not be surprised to observe the erosion of legal philosophy's metaphysical underpinnings. Existentialism, deconstructionism, and other continental schools of thought all question man's ability to have absolute knowledge of any concept or category. These philosophies have caused society to perceive reality in terms other than absolutistic and causal. Instead, reality is seen in subjective terms of individual power, ambitions, and financial rewards. Against this backdrop, the structure of our legal system appears to be a vehicle for the realization of personal and collective political goals.

In fact, the public and the upper echelons of political power both realize that our nation's courts can be used to formalize political ideologies as law, and this realization has become more pronounced in the past half century. Not since the nineteenth century, when the Senate took a far more active role in appointing federal judges, have presidents had to personally fight, having the real possibility of defeat looming on the horizon, to have their nominations pass congressional review. Indeed, President Lyndon B. Johnson was the first president since the pre-Depression era to have a nominee fail to gain senatorial approval. Johnson attempted to have Abe Fortas elevated to the position of chief justice, but the Republicans refused to consider the nomination because Fortas's views were too similar to those of his predecessor, Earl Warren, whose views were particularly damaging to Republican ideologies. From this moment, when the modern politicization of judicial nominees began, political ideologies have dominated the formation process of our nation's judiciary. Democrats vowed revenge after the Fortas fiasco, and they exacted their revenge by blocking the appointment of Clement Haynsworth, one of Nixon's protégés. As Senator Gale McGhee, a Democrat, then conceded: "Had there been no Fortas affair . . . a man of Justice Haynsworth's attainments . . . undoubtedly would have been confirmed" (qtd. in Shenkman 2001).[2] However, this act only provoked the Nixon Administration to continue the political games by "find[ing] a good federal judge further south and further to the right [than Haynsworth]" (Shenkman 2001).

Vying for political ideological supremacy in Washington, far from subsiding, has only increased in intensity and has aided greatly to the dividing and polarizing of the political parties. Each believes that "packing" the Court will provide future political dividends.[3] However, Washington will likely not admit that it is playing this game, even though any casual observer can easily note otherwise. For example, take the senatorial furor that has surrounded President Bush's most recent federal nominees. Filibustering, used by Democratic senators solely to block judges that they expect to adjudicate in one specific way (tied, of course, to political affiliation), proves that politicians assume judges are not restrained by metaphysical principles, but are rather merely pawns of the larger political organizations. This view casts the Supreme Court of the United States, the one institution vested with the power to defend and uphold the Constitution and the rule of law, as nothing more than an

extension of the political battleground on which major policy issues are driven by money, prestige, and potential votes rather than on a strict interpretation of the law.

The Democrats are not the only group that falls into this camp. Recently, the Republicans were accused of believing that "judging is an apolitical task only as long as judges do the right thing by administration lights," even though the Bush Administration argued that "nominees should not be stalled because of politics and that senators should confirm qualified judges who will observe the law, irrespective of ideological differences" ("Editorial" 2002). It seems as though the right hand hypocritically calls for apolitical adjudication, while the left hand offers federal support to those judges who decide in favor with the Republican agenda. No real assent to a cognitively tenable body of legal knowledge is made, and the actions of politicians and judges alike betray that sociological, political, and personal reasons drive the adjudication process towards rulings that, given the same facts and rule but viewed by an absolutely external and objective judge (an obvious impossibility), might not be made otherwise. Is this not one of the key claims of the CLS school of thought? This state of affairs destroys the notion that the highest Court of the land is a mere bystander in the dialectic evolution of American culture. Rather, the Court is active in writing and rewriting laws to fit certain political ideologies, liberal and conservative alike.

LAWRENCE V. TEXAS

We will now examine a recent case to analyze the remaining tenets of CLS theory. Is the modern American legal system both rationally and causally indeterminate? Does the judiciary pick and choose which rules and principles have precedence in a given case? Does the judiciary act, in defiance of constitutional precedent, as a legislative body? Finally, is the court really an additional battleground for political supremacy? A review of *Lawrence v. Texas*, a case decided in June 2003, will answer these questions.

Lawrence v. Texas considers the case of two men who were caught having consensual sexual relations, a violation of Texas law at the time. To rule in this case, the Supreme Court drew on rules and principles outlined in three previous cases: *Roe v. Wade, Bowers v. Hardwick*, and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. In *Roe*, as many know, the Court gave women a fundamental right to control every aspect of their pregnancies by extending federal protection to those who choose to abort their unborn children. *Bowers*, ruled in 1986, states that a Georgia law classifying sodomy as a criminal act is constitutionally permissible. The ruling in *Lawrence* effectively overturned any precedent set in *Bowers*. *Casey*, ruled in 1992, at heart, reaffirms the holding that the state can not interfere with the abortion of unborn children, even to the point of striking down provisions that require spousal consent to abortions. The manner in which the Supreme Court interpreted the three cases in the *Lawrence* decision serves as evidence for both the indeterminacy of law and for the supreme role that political ideology plays in modern adjudication. We will first examine rational legal indeterminacy.

First, the violation of personal privacy is offered as one of the primary reasons for striking down the Texas sodomy law in *Lawrence* (Kennedy 2003). However, beginning with *Roe*,

the line of thinking that grants an inalienable right to privacy to all American citizens is faulty. The right to privacy is not a fundamental right granted by the Constitution but is rather a contrived right produced by the Court, and the *Bowers* decision upholds this view. The majority opinion in *Bowers* pointed out that the Supreme Court rests on dangerous grounds when it discovers "new fundamental rights imbedded in the Due Process Clause. . . . The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language . . . of the Constitution" (White 1986). Justices can choose either to see the right as fundamental or not. In either case, conflicting rules are present from the beginning, and the justices must reach outside of the law to further defend any legal position. One's personal political leanings would provide the most rational basis for defending or attacking this right to privacy, which only strengthens the CLS standpoint that law is fundamentally rationally indeterminate.

Second, a clause written by Sandra Day O'Connor was used as key defense in the *Lawrence* decision. In her majority opinion in *Casey*, Justice O'Connor wrote that everyone has "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life" (O'Connor 1992). Using this reasoning, the majority decided that two consenting adults have the right to decide on the nature of their relationship, and the State has no right to interfere in that creative process. However, one can obviously use the above reasoning to defend nearly any claim about civil rights, criminal actions, actions demanded by religion, and general statements on the nature of reality and humankind. In the same vein, Anthony Kennedy wrote in his *Lawrence* opinion: "As the Constitution endures, persons in every generation can invoke its principle in their own search for greater freedom" (Kennedy 2003). Can anyone who clings to a formalist legal approach hold that such an interpretation of the Constitution demands a certain course of action? In essence, the above clauses allow for any interpretation on nearly any subject resulting in a state of affairs that offers no help to judges and only encourages them to seek extra-legal sources to base adjudication on, once again showing the rational indeterminacy of law.

Third, Justice Kennedy shows yet another position in the *Lawrence* majority opinion whereupon judges must seek extra-legal help to interpret a legal principle. Kennedy accepts the principle that rulings should follow traditions that are deeply ingrained in the fabric of our nation, as do the Justices who dissented, but this legal principle makes no definitive statement as to how such rulings should be interpreted. The majority used certain evidence to show that an aversion to sodomy between consenting adults was not an integral part of American heritage, while the dissenting side used counterevidence to show that the American public and political machine have always been opposed to such actions. Again, extra-legal principles and historical evidence are needed to provide grounds for a legal ruling.

The point at issue is that both sides had to resort to historical evidence to interpret a certain legal principle, and equal, yet diametrically opposed, conclusions were reached. Even when presented with evidence that would show that sodomy was abhorred by the constitutional framers and early Americans, Kennedy writes, "In all events we think that our laws and traditions in the past half century are of most relevance here" (Kennedy

2003). The Justice has introduced yet another extra-legal lens through which to view the case as a whole. By narrowing the temporal requirement of honoring traditions, Kennedy is able to manipulate the judicial outcome to fit his personal political opinions.

Fourth, Kennedy criticizes the legal methodology used to support *Bowers* and later uses the same legal principle to support *Lawrence,* which effectively overturned *Bowers.* He writes the following:

> *Bowers'* rationale does not withstand careful analysis. In his dissenting opinion in *Bowers* Justice Stevens came to these conclusions: ". . . First, the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice." (Supreme Court 2003)

In short, the majority's view on morality should not be a deciding factor in the constitutionality of statutes. Nonetheless, the Court majority then reorders its position and says that *Lawrence* should be upheld because a majority of citizens has "an emerging awareness" (Supreme Court 2003) that homosexual acts should not be criminalized. Kennedy is, in essence, picking and choosing the times when one should allow the principles that form the majority's opinion to be legalized. If the *Bowers* Court is not allowed to use an extra-legal principle to support their case, why is Kennedy then justified in his decisions? It seems that two mutually exclusive, yet equally rational, conclusions were reached.

Lastly, the Kennedy decision in *Lawrence* supports rational legal indeterminacy by accusing the *Bowers* Court of "[h]aving misapprehended the claim of liberty" presented to them in the 1986 case (Kennedy 2003). This case of rational indeterminacy is blatantly obvious—the Justices themselves feel that they would have come to a different conclusion given the same facts. The root of this accusation lies in the fact that Kennedy and his supporters interpreted the legal definition of "liberty" differently than those who upheld the *Bowers* case. Here we see how rational legal indeterminacy fuels judicial revisionism and activism; judges believe their opinions and interpretations are more legally sound and impose them, in the form of precedent (which is, itself, metaphysically groundless), on ensuing generations.

Turning to causal legal indeterminacy, one can see that the plethora of conflicting rules and principles, all subject to equal weight and interpretation, will never dictate a single course of adjudicative action. In the *Lawrence* case, causal legal indeterminacy is most evident when one realizes the legal implications that stem from the majority's ruling, namely the overturning of *Bowers.* In her opinion discussing the ruling in *Casey,* Justice O'Connor wrote the following:

> (e) The *Roe* rule's limitation on state power could not be repudiated without serious inequity to people who, for two decades of economic and social developments, have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain costs of overturning

Roe for people who have ordered their thinking and living around that case be dismissed. (Pp. 855–56)

(i) Overruling *Roe*'s central holding would not only reach an unjustifiable result under stare decisis principles, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. (Supreme Court 1992)

In 1992, O'Connor and the rest of the majority were not willing to sacrifice the integrity of the Court by overturning precedent decided less than two decades earlier. The social repercussions would likely be undesirable, and a major cultural upheaval would be expected should *Roe* be overturned. Additionally, they found the principle of *stare decisis*— basically, a respect for precedent—to be seemingly sacrosanct.

In his *Lawrence* dissention, Justice Antonin Scalia wrote,

"Liberty finds no refuge in a jurisprudence of doubt. . . ." That was the Court's sententious response barely more than a decade ago, to those seeking to overrule *Roe v. Wade* [in *Casey*]. The Court's response today . . . is very different. . . . I begin with the Court's surprising readiness to reconsider a decision rendered a mere 17 years ago in *Bowers v. Hardwick*. . . . I do believe that we should be consistent [with precedent] rather than manipulative in invoking the doctrine. . . . There [in *Casey*], when *stare decisis* meant preservation of judicially invented abortion rights, the widespread criticism of *Roe* was strong reason to reaffirm it. (Scalia 2003)

Justice Scalia saw the hypocritical façade that the *Lawrence* majority was acting under, and his comments shed light on the causal legal indeterminacy that surrounded the court case. In one situation, the Court was reticent to overturn precedent because liberty found "no refuge in a jurisprudence of doubt." Yet in *Lawrence,* the Court had to rule on moral rights dealing with sexuality and reproduction, and precedent was swiftly overturned because of "an emerging awareness" in America's thinking on sex. Just one decade apart, one ruling defended the sanctity of precedent, while the other erased precedent because of its harm on "progressive" American social norms. Perhaps causal legal indeterminism's greatest piece of evidence is Kennedy's statement that "*Bowers* was not correct when it was decided, and it is not correct today" (Supreme Court 2003). Given all the same rules, principles, and background information, Kennedy would have decided contrary to the majority in *Bowers*. Because adjudication is inherently indeterminate, no given set of conditions can prescribe a singular judicial outcome.

In all of these examples, the reader should not see any imposition of valuative judgments. I am not concerned with whether one interpretation is right and one is wrong. The crux of the argument rests solely with whether a window exists for equally differing legal interpretations that forces Justices to look to extra-legal sources for adjudicative purposes. If it does, then CLS theory has proven the rational indeterminacy of law. Similarly, I do not mean to judge the correctness of any Court decision, but wish rather to show that, given the same set of rules, principles, and conditions, judges will arrive at different decisions in different cases. This displays the second tenet of CLS theory—the causal indeterminacy of law.

LAW AND POLITICS

Lawrence clearly demonstrates both the rational and causal indeterminacy of law. After removing the traditional adjudicative foundations, however, one must be prepared to replace them with another superstructure. If law is not a causal chain of following statutes, then what is it? Turning again to the situation in *Lawrence*, the obvious answer seems to agree with the CLS opinion that law is an extension of the battle between competing political ideologies. Of course, one might not remove all uncertainty of political influence, but the preponderance of evidence points towards it as the most dominant force that manipulates the adjudicative process.

As explained above, the general public and many political leaders believe that law is influenced by politics. The statements of the Justices themselves also betray this opinion. The case in *Lawrence* quickly became as much about the political rights of a self-proclaimed minority group as it did about the legality of a Texas sodomy law. Sandra Day O'Connor explicitly stated that she ruled to strike the Texas law because doing so protected the rights of a "politically unpopular group" (qtd. in Scalia 2003). It is well known that the homosexual issue is charged with political ramifications—something that was relatively lacking twenty years ago—and that people are automatically labeled homophobic, intolerant, or politically incorrect should they oppose giving any and every right to those who have homosexual tendencies. Additionally, the Democratic Party has aligned itself with voters who describe themselves as homosexual, and liberal judges are therefore disinclined to rule unfavorably for such voters.

Perhaps the most scathing political accusation directed towards those who compose the majority in *Lawrence* comes from a fellow justice, Antonin Scalia. Finding no plausible distinction between upholding a right to abortion (in *Roe*) and overruling the condemnation of homosexuality (in *Bowers*), Justice Scalia concluded, "Today's opinion is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda. . . . It is clear from this that the Court has taken sides in the culture war" (Scalia 2003). Judicial activism that takes a side on a hot political issue undoubtedly reveals the political influence that partisan leaders and platforms exert on the Supreme Court.

CONCLUSION

One can easily provide counterexamples to those who subscribe to a formalistic theory of law. Law, especially in those cases that actually reach the courtroom, is not mechanically determined; judges are not compelled to always adjudicate in a given way; different outcomes, replete with supporting reasons and facts, are always probable in any given situation. The very fact that the vast majority of federal rulings are not unanimous supports this theory; different judges rule differently in spite of identical background circumstances and applicable statutes. The CLS theory, when taken as a theory of adjudication, satisfactorily explains this phenomenon. Its stress on the indeterminacy of law, both rational and causal, illuminates the need for judges to reach out to extra-legal principles to formulate their rulings. This essay has shown how the Supreme Court, in the case of *Lawrence v. Texas,* was forced

to look beyond the written law to justify both the majority and minority opinions. More-over, given the social and political conditions surrounding the ruling, one can confidently assume that the legal ruling, in this case, was derived from the political battle raging outside of the Court's chambers.

ACKNOWLEDGMENTS

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ENDNOTES

1. In this case, principle one would be something like: "If person x helps in causing the death of person y, then person x is guilty of murder." Principle two would read something like: "If person x no longer has any desire to live, he is free to end his life." Naturally, the two principles conflict.
2. The basic information in the preceding paragraph was gleaned from the body of his article.
3. "Packing"—a word used often by politicians and the media that betrays the fact that Justices are merely tools of political advancement who serve the political bosses who appointed them.

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