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# Sound *Politicks*

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UNIVERSITY of PENNSYLVANIA

# letter from the editor

“May the first principles of Sound Politicks be fix’d in the minds of youth.”

While this quotation may be to some people no more than one of Benjamin Franklin’s many wise adages, it has come to mean much more to me both as a member of the University community that he founded and as a student of political science.

In fact, two words in particular stand out to me as the inspiration for this journal, with the first of them being *Sound*. In the ever-turbulent realm of politics, it is of the utmost importance to ensure that our political knowledge, reasoning, and values have a sound foundation. The use of this word by no means suggests that our beliefs must be “correct” or “similar”—it actually means just the opposite. For me, the word *sound* not only means solid and informed, but also means that political discourse must always be populated by a loud chorus of voices with diverse worldviews, opinions, and convictions.

The second word from Franklin’s quote that I see as instrumental is the word *youth*. The works contained in this journal are the products of student authors who bring fresh perspectives to the areas of civil discourse that they explore. The pieces in this year’s journal tackle an array of complex and profound political questions, ranging from the constitutionality of familial DNA searching in criminal investigations to the uncertain future of the European Union. One piece takes a look back at the significance of the Bush Doctrine in American history, while another takes readers to the slums of North Africa in search of one of the root causes of poverty in Algeria. Our featured article, “Minority Rule? Primary Election Rules and Legislator Ideology” by Jonathan Fried, explores a potential answer to the question of why candidates for political office are becoming more ideologically extreme—a puzzle that permeates virtually all aspects of American politics today.

The works contained in this journal capture the contrast that I have presented here by providing political analyses that are sound and informative, while at the same time part of a dynamic discourse fueled by young enthusiasm. Politics – we must remember – is most safe and sound when informed by a multitude of voices. I hope that you will enjoy listening to the voices that are recorded on these pages.

Best wishes,



Abigail Hathaway  
Editor-in-Chief

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\*Winner of the 2012 Sound Politicks Best Article Prize

# Minority Rule?

## Primary Election Rules and Legislator Ideology

BY JONATHAN FRIED

### INTRODUCTION

Since the 1970s, the United States Congress has become increasingly polarized along ideological lines; since the 1960s, a substantial ideological gap has formed between the Republican and Democratic parties. Few scholars will dispute this increasing ideological divergence between partisan congressional elites. On the identity and gravity of the causes, there is more division. The role of congressional primaries, in particular, has recently engendered some controversy: some have found that primary elections facilitate the election of more ideologically extreme legislators, while others have reported “little evidence” for primaries’ supposed polarizing effects.<sup>1</sup>

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1 Nolan McCarty, Keith Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge, MA: MIT Press, 2006); Hahrie Han and David Brady, “A Delayed Return to Historical Norms: Congressional Party Polarization After the Second World War,” *British Journal of Political Science* 37, no. 3 (2007); David W. Brady, Hahrie Han and Jeremy C. Pope, “Primary Elections and Candidate Ideology: Out of Step with the Primary Electorate?” *Legislative Studies Quarterly* 32, no. 1 (2007); Barry C. Burden, “The Polarizing Effects of Congressional Primaries,” in *Congressional Primaries and the Politics of Representation*, eds. Peter F. Galderisi, Marni Ezra, and Michael Lyons (Lanham: Rowman & Littlefield, 2001); Morris P. Fiorina and Matthew S. Levendusky, “Disconnected: The Political Class Versus the People,” in *Red and Blue Nation? Vol. 1: Characteristics and Causes of America’s Polarized Politics*, eds. Petro S. Nivola and David W. Brady (Washington, D.C.: Brookings Institution, 2006), 49-117; Morris P. Fiorina, Samuel J. Abrams, and Jeremy C. Pope, *Culture War?: the Myth of a Polarized America* (New York: Pearson Education, 2006); Hirano et al. “Primary Elections and Partisan Polarization in the U.S Congress,” *Quarterly Journal of Political Science* 5, no. 2 (2010).

From a policy standpoint, however, congressional primary-induced polarization carries little significance. Few, if any reasonable politicians would propose abolishing the congressional primary election altogether. For all its supposed perniciousness, the primary election is infinitely preferable to voters when the alternative is candidate selection by cigar-chomping party officials in smoke-filled back rooms. Many practical-minded scholars have therefore focused on the effects of primary *design*, examining whether more “open” party primary designs with laxer voting eligibility requirements lead to more moderate candidates. Despite a relatively stable consensus regarding the proposed mechanism through which congressional primaries should induce polarization, there is significant disagreement between those who find that more “open” primaries produce significant moderation and those who do not.<sup>2</sup> Even those who find

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2 Elizabeth R. Gerber and Rebecca Morton, “Primary Election Systems and Representation,” *The Journal of Law, Economics, & Organization* 14, no. 2 (1998); Kristin Kanthak and Rebecca Morton, “The Effects of Electoral Rules on Congressional Primaries,” in *Congressional Primaries and the Politics of Representation*, eds. Peter F. Galderisi, Marni Ezra, and Michael Lyons (Lanham: Rowman & Littlefield, 2001), 116-131; Karen M. Kaufmann, James G. Gimpel, and Adam H. Hoffman, “A Promise Fulfilled? Open Primaries and Representation,” *The Journal of Politics* 65, no. 2 (2003); Eric McGhee and Daniel Krimm, *Open Primaries* (San Francisco, CA: Public Policy Institute of California, 2010); Eric McGhee et al., “A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology,” *Social Science Research Network* (20 Oct 2011); Nolan McCarty, “The Limits of Electoral and Legislative Reform in Addressing Polarization,” *California Law Review* 99, no. 359 (2011).

evidence for a link between openness and moderation disagree regarding its magnitude.

In this paper I attempt to answer the following question: do more “open” primary designs that allow independent voters (who have not registered with a party) to vote in party primaries produce less ideologically extreme elected legislators? That is, is there a significant difference in the ideological extremism of Congressmen elected via a closed primary and those elected by semi-closed and nonpartisan ones? In order to provide a conclusive response, however, I must first answer three preliminary questions: (1) Are primary voters more ideologically extreme than voters in the general electorate? (2) Are primary voters in states with closed primaries more ideologically extreme than those in states with semi-closed or nonpartisan primaries? and (3) Is a legislator’s ideology responsive to the ideology of their primary constituency? If all answers are in the affirmative, I can continue to evaluate my original, overarching question, and interpret the results accordingly. Additionally, I pose a hypothetical question: if primary type *does* affect legislator ideology, then how would electoral rule changes (institution of closed or semi-closed primaries) shift legislators’ ideology, assuming *ceteris paribus*? After a brief definition and overview of state primary rules, I begin with an evaluation of the theoretical mechanism through which congressional primaries, particularly closed primaries, cause ideological polarization. After reviewing several foundational works, I will explain the need for and propose the collection of new data.<sup>3</sup> I will proceed to describe my proposed hypotheses as derived from my research questions and to suggest several empirical tests. I summarize my previous research from “The Impact of Primary Election Systems on Legislator Ideology in the U.S. Congress,” in which I show that primary voters were more ideologically extreme than non-primary voters in 2008, but that states with semi-closed and nonpartisan primaries did *not* produce less ideologically

extreme (“polarized”) legislators.<sup>4</sup> Finally, I conclude with a discussion of the significance of my findings and of issues relating to the theory of polarizing primary elections.

### VARIATION IN STATE PRIMARY RULES

Significant variation exists among states regarding voter eligibility in either party’s congressional primary. Many states hold closed primaries that bar members of the opposing party and, critically, independent and unaffiliated voters from voting in a party’s primary election. Some utilize semi-closed (also known as semi-open) primaries that allow registered partisans *and* independents to vote in party primaries, but still bar members of the opposite party. Pure open elections, predictably, allow any registered voter to vote in the primary of their choice, regardless of party. Finally, two states currently utilize a nonpartisan blanket primary, in which all candidates for an office are listed on the same ballot. A runoff election between the top two vote-getters only occurs if no candidate receives a majority of votes in the first round of voting.<sup>5</sup>

A state-by-state analysis of these laws, including data from FairVote.org, various secretaries of state, and previous work by Eric McGhee and Kristin Kanthak and Rebecca Morton, reveals that state primary rules change relatively often.<sup>6</sup> Over the period of 1982-2006, McGhee documents that states have tended not to abandon or adopt open systems, but many have vacillated between closed and semi-closed designs. Moreover, California, Louisiana, Alaska, and Washington have all adopted a blanket primary at one point, although all but Louisiana were forced to abandon it for several years after the US Supreme Court’s ruling in *California Democratic Party v. Jones* (2000). These variations provide ample opportunity for future panel analyses to isolate the effects of these primary changes.

<sup>3</sup> Brady, Han and Pope; Gerber and Morton; Kanthak and Morton; McGhee et al.; Shigeo Hirano et al, “Primary Elections and Partisan Polarization in the U.S Congress,” *Quarterly Journal of Political Science* 5, no. 2 (2010): 169-91.

<sup>4</sup> Jonathan E. Fried, “The Impact of Primary Election Systems on Legislator Ideology in the U.S. Congress,” Final research project, University of Pennsylvania, 2011.

<sup>5</sup> Kanthak and Morton.

<sup>6</sup> McGhee and Krimm; Kanthak and Morton.

## THEORY

The case for the polarizing primary proceeds in several distinct steps and outlines how a politically active, ideologically extreme subset of voters exerts a disproportionately large influence on election outcomes relative to their size. Ultimately, this minority plays a large role in nominating candidates for general congressional elections, leaving a majority of generally moderate vot-

ers with unsatisfactory choices in general elections that skew toward the ideological fringes. Because the congressional primary (or caucus) is a critical chokepoint on the road to Capitol Hill, it allows these ideologically extreme primary voters to control the filtering of candidates into the general election.

First, far fewer citizens vote in primary elec-

TABLE 1. US STATES BY PRIMARY TYPE, NOVEMBER 2011.

State	Primary Type	State	Primary Type
AL	Closed	MT	Semi-closed
AK	Closed (R) / Open (D)	NE	Open
AZ	Semi-closed	NV	Closed
AR	Open	NH	Closed
CA	Top-Two Nonpartisan	NJ	Closed
CO	Open	NM	Closed
CT	Closed	NY	Closed
DE	Closed	NC	Closed
FL	Closed	ND	Open
GA	Open	OH	Open
HI	Semi-closed	OK	Closed
ID	Closed (R) / Semi-closed (D)	OR	Closed
IL	Closed	PA	Closed
IN	Closed	RI	Semi-closed
IA	Closed	SC	Open
KS	Closed	SD	Closed
KY	Closed	TN	Open
LA	Open	TX	Open
ME	Closed	UT	Closed
MD	Closed	VT	Open
MA	Semi-closed	VA	Open
MI	Closed	WA	Top-Two Nonpartisan
MN	Open	WV	Semi-closed
MS	Open	WI	Open
MO	Open	WY	Closed

Source: FairVote, November 2011



**Ultimately, this minority plays a large role in nominating candidates for general congressional elections, leaving a majority of generally moderate voters with unsatisfactory choices in general elections that skew toward the ideological fringes.**

tions than in general elections. In the study “Primary Elections and Candidate Ideology: Out of Step with the Primary Electorate?”, David W. Brady, Hahrie Han, and Jeremy C. Pope found that, between 1956 and 1998, “general-election turnout [was], on average, approximately three times the size of primary-election turnout.”<sup>7</sup> For the average and relatively politically apathetic voter, there are significant costs associated with attending *any* election: lost wages, transportation costs, and dull queues, to name just a few. Due to apathy, inability, or ignorance, few citizens choose to vote in most congressional primaries. Those who do, however, are a more dedicated bunch than the general electorate: unlike general election turnout, which drops significantly in off-presidential election years, primary turnout is generally stable across time.<sup>8</sup> Moreover, primary voters tend to hold more extreme ideological positions (or, rather, those who have more extreme ideology tend to be more motivated to involve

themselves in the political process to defend their beliefs).<sup>9</sup> Explains David C. King:

Primary election voters are far more likely to be ideological purists, more likely to have contributed to a political party, more likely to have tried convincing someone how to vote, and more likely to be upper-middle class (Wolfinger and Rosenstone 1980; Neuman 1986; Rosenstone and Hansen 1993; McCann 1996)... as turnout in primary elections continues declining... primary elections [are continually] dominated by the preferences of party activists.<sup>10</sup>

This meshes well with general expectation. One should expect that those who care the most about policy outcomes are more likely to commit their time to voting in elections, and vice versa. Data from the 2008 Cooperative Congressional Elections Survey (Figure 1) quantitatively confirm King’s predictions. In 2008, Democrats who voted in a primary election or caucus were more liberal than those who did not; likewise, Republican primary and caucus voters were more conservative. Analysis on a 5-point ideological scale confirms the same trend. As predicted, partisan primary voters tend to be more ideologically extreme.

Faced with two ideologically distinct electorates, candidates face a strategic dilemma –which electorate should they cater to more? Empirical research from Han, Brady, and Pope demonstrates that congressional candidates tend to choose the primary electorate, an understandable choice given that a candidate must survive the primary election to even be considered by general election voters.<sup>11</sup>

Consequently, due to low voter turnout and a consistently strong showing of ideologically extreme voters, the congressional primary effectively over-represents a minority population of partisan voters. This gives them a “special influence” at a critical electoral juncture.<sup>12</sup>

9 Fiorina and Levendusky.

10 David C. King, “Congress, Polarization, and Fidelity to the Median Voter,” (Manuscript, Harvard University John F. Kennedy School of Government, 2003), 13.

11 Brady, Han, and Pope.

12 V.O. Key, *Public Opinion and American Democracy* (New York: Knopf, 1964), 581; Brady, Han, and Pope, 91.

7 Brady, Han, and Pope.

8 Ibid.

In theory, closed primaries should only magnify the aforementioned effects. By blocking potentially motivated, moderate independent voters from participating, primaries that restrict voting rights to declared partisans create a more homogeneous pool of voters, skewed further to the extremes of the ideological spectrum. The median primary voter in a closed primary, therefore, should be more extreme than if the election were a semi-closed primary, all other things equal. Indeed, Elizabeth Gerber and Rebecca Morton affirm: “voter turnout in gubernatorial primaries from 1952 to 1982... is lower in closed primaries than in open primaries, even after controlling for other institutional and election specific factors that can affect turnout.”<sup>13</sup> Kenney (1986) reports similar findings, noting that nonpartisan blanket primaries have particularly high turnout rates relative to closed primaries while confirming Jewell’s results.<sup>14</sup>

The data in Figure 1 provide extra support for this thesis by confirming that independent, nonpartisan voters do indeed tend to be ideological moderates, falling in the middle of Democrats and Republicans on the ideological spectrum. This indicates that disenfranchising moderates from primary elections could alienate a segment of moderate voters, thereby providing credence for the claim that closed primary electorates are more ideologically skewed. In this way, the closed congressional primary may contribute significantly to elite polarization in Congress, further augmenting the concentration of ideological extremists within the primary electorate.

### OPENNESS AND MODERATION: A DEBATE

The existing literature on the connection between the openness of primaries and the moderation of elected officials, however, produces conflicting empirical results. The connection between the ideology of primary electorates and that of their districts’ elected representatives is far from certain.<sup>15</sup>

Some have found clear, empirical support for

<sup>13</sup> Gerber and Morton, 312.

<sup>14</sup> Patrick J. Kenney, “Explaining Primary Turnout: The Senatorial Case,” *Legislative Studies Quarterly* 11, no. 1 (1986): 65-73.

<sup>15</sup> Fried, 6.

the polarizing primary theory. Gerber and Morton find that semi-closed and nonpartisan primaries produce the most moderate legislators by regressing candidate Americans for Democratic Action (ADA) scores on primary type while controlling for district ideology using Democratic presidential vote shares.<sup>16</sup> Kanthak and Morton repeat this analysis and confirm its results.<sup>17</sup> Mandar P. Oak’s research concurs via a “mathematical model of political competition,” and both Michael R. Alvarez and Betsy Sinclair (2010) and Will Bullock and Joshua D. Clinton (2011) show empirically that nonpartisan blanket primaries facilitate legislative agreement and more moderate representation.<sup>18</sup>

Although openness is said to cause moderation, this is generally not the case for pure open primaries. The generally accepted explanation is electoral raiding, in which strategic voters “cross over” to vote for weaker candidates in the opposing party’s primary election.<sup>19</sup> When I include open primaries in my hypotheses, I therefore group them with closed primaries, as my theory predicts that both will be correlated with more ideologically extreme representation (albeit for different reasons).

More recent works, however, have challenged these claims and their underlying causal logic. McCarty, Poole, and Rosenthal (2006) find that winning candidates from states with closed primary elections tend to be *more* moderate than those from states with semi-closed primaries, not less. McCarty (2011), similarly, shows that there is no statistically significant effect of primary type on legislator ideology. Using perhaps the most comprehensive dataset yet in the literature, McGhee et al. (2011) report that openness has “little consistent effect on [state] legislator ideology” and that openness is, in fact, slightly correlated with ideological extremism rather than moderation.<sup>20</sup> Finally, Hirano et al. (2010) dispute even the more basic claim that direct primary elections cause polarization,

<sup>16</sup> Gerber and Morton.

<sup>17</sup> Kanthak and Morton.

<sup>18</sup> Fried, 6.

<sup>19</sup> Gerber and Morton; Kanthak and Morton; Kenney, 8.

<sup>20</sup> McGhee, 17.



showing that the introduction of direct primaries in seven US states did not cause significant ideological polarization.<sup>21</sup>

There now exist two clearly divided camps on the issue. The results of work from the past two years indicate that the tide is shifting toward the skeptics, but there remains more work to be done before a true scholarly consensus can be reached.

### PURE OPEN PRIMARIES

Although openness is said to cause moderation, this does not seem to be the case for pure open primaries. The generally accepted explanation is electoral raiding, in which strategic voters “cross over” to vote for weaker candidates in the opposing party’s primary election.<sup>22</sup> The mechanism, however, flies in the face of empirical work which demonstrates that raiding is very rare, due to the difficulty of coordinating voting tactics *en masse*.<sup>23</sup> Nevertheless, I exclude open primaries from my hypotheses because of the previously observed effects, regardless of what the cause might be.

### PROPOSAL: GATHERING COMPREHENSIVE PANEL DATA

Comprehensive study of how the openness of primary elections impacts mass and elite ideology must include reliable ideological indicators. For elites, DW-Nominate scores are quite sufficient, but mass-level ideology is more elusive. Some scholars use presidential vote shares as a measure of district ideology, which risks conflating the choices available to a voter with her ideal, but nevertheless absent, choice.<sup>24</sup> Furthermore, as King (2003) points out, relatively

21 Kenney, 7.

22 Gerber and Morton; Kanthak and Morton.

23 Michael R. Alvarez and Jonathan Nagler, “Party System Compactness: Measurement and Consequences,” *Political Analysis* 12, no. 1 (2002): 46-62; John Sides, Jack Citrin, and Jonathan Cohen, “The Causes and Consequences of Crossover Voting in the 1998 California Election,” in *Voting at the Political Faultline: California Experiment with the Blanket Primary* eds. Bruce E. Cain and Elizabeth R. Gerber (Berkeley, CA: University of California, 2002).

24 Gerber and Morton; Kanthak and Morton; McGhee; McGhee et al.; Fiorina et al.

centrist districts often vacillate between electing ideologically extreme Democrats and Republicans due to surges of activity from committed partisan primary voters. Thus, accurate analyses must control for the ideology of district primary voters as well as that of the general electorate. Others introduce sampling bias by using primary election exit polls, which exclude less sorted nonvoters, thereby “exaggerat[ing] the level of polarization in the American public.”<sup>25</sup> Previous works, therefore, do not always utilize accurate ideological control variables; future studies should include reliable indicators for *primary* electorate ideology as well as general district ideology.

Although self-reported ideology may not always accurately reflect political behavior, I prefer to use randomly sampled survey data to measure district ideology. With a small enough ideological scale, like the 5-point one in the Cooperative Congressional Election Survey (CCES), respondents have enough leeway to sort themselves fairly accurately into broad categories. Using survey data also allows for the incorporation of more accurate demographic control variables into analyses such as race, income, education, and political knowledge. Most importantly, it suffers from neither sampling bias nor inaccurate extrapolations of ideal voter choice and allows for the separation of primary voters from the general sample.

However, there currently exists a general dearth of comprehensive, readily available survey data that include a variable indicating whether a respondent voted in a primary or caucus. The CCES adopted this variable in 2008, but suffers from sampling bias: for 2008, some 64 percent of respondents reported voting in a primary or caucus, which far exceeds average primary election turnout and even general presidential election turnout.<sup>26</sup> To my knowledge, the only other comprehensive, nationwide survey to include a primary vote variable was the 1988 American National Election Study (ANES). In order to provide accurate indicators of primary voter

25 Hirano et al.; Markus Prior, *Post-Broadcast Democracy: How Media Choice Increases Inequality in Political Involvement and Polarizes Elections* (New York: Cambridge University Press, 2007).

26 Brady, Han, and Pope; Fried.

ideology, future surveys should both include a question distinguishing primary voters from non-primary voters and work to ensure a more representative random sample.

Furthermore, future studies must work to correct inconsistencies in indicators of legislator ideology. Although most recent studies have utilized DW-Nominate scores, previous authors such as Gerber and Morton (1998) and Kanthak and Morton (2001) used ADA scores. No one measure corresponds to a particular conclusion: while the previous two papers both find a significant connection between primary elections and legislator ideology, so too did Brady, Han, and Pope (2007), who used DW-Nominate scores. Nevertheless, I propose that all regressions be performed using both DW-Nominate *and* ADA scores to ensure consistency.

Finally, historical records of state congressional primary laws are sparse and scattered; I was unable to find a single comprehensive listing of state primary laws over time. Although much data is available, most of it exists only for single years for single states. In the literature, only McGhee (2010) reports such a list, which extends from 1982 to 2006; however, some of his findings conflict with state records.<sup>27</sup> Some researchers, like Brady, Han, and Pope (2007), have undertaken the arduous task of collecting and aggregating this data, but I was unable to find a researcher who made their dataset publicly available.

In order to conduct further study using panel data, I therefore propose the following: (1) the regular incorporation of a question asking respondents whether they voted in a primary election or caucus in the CCES and ANES for all future years; and (2) the collection of a comprehensive list of state congressional primary laws for all even-numbered years since World War II. This data will enable time-series regressions which measure the effect of changing state primary laws over time on legislator DW-Nominate and ADA scores as well as the ability to control for district ideology in future years. Of course, this will also generally account for more variance in the data by increasing the sample size of analyses going forward.

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<sup>27</sup> Fried.

My proposed analysis, therefore, will use a compilation of DW-Nominate scores from Howard Rosenthal and Keith Poole's Voteview.com alongside ADA scores from Adaction.org to measure legislator ideology. To examine and control for district ideology, I will utilize all available survey data that establishes the distinction between primary voters and non-primary voters. I will also include district Democratic presidential vote shares as a separate indicator to account for any discrepancies between the two available measures. Finally, I will analyze this data in light of the aforementioned comprehensive list of state primary laws over time.

### 2008 CROSS-SECTIONAL ANALYSIS

In "The Impact of Primary Election Systems of Legislator Ideology in the U.S. Congress," I undertake the first analysis of the link between openness of congressional primaries and legislator ideology that controls for voter ideology at the individual level (with the exception of Hirano et al., 2010, who use skewed exit poll data).<sup>28</sup> I constructed a list of 2008 state primary laws by cross-referencing data from Fairvote.org, McGhee (2010), and various secretaries of state, and compared it to DW-Nominate data from Voteview.com. For data on mass ideology, I utilized the 2008 Cooperative Congressional Election Study. Due to the limited nature of available survey data, my analysis is restricted to data from 2008, which corresponds to the 111th Congress. Although the explanatory power of my analysis is somewhat limited by its cross-sectional nature, the general conclusions are nevertheless valid.

My results are similar to those of Hirano et al. (2010) and McGhee et al. (2011) in that they fail to produce convincing support for the polarizing nature of closed primaries.<sup>29</sup> Although I do confirm that partisan primary voters tend to be more ideologically extreme and that independents are, on average, moderates, I lack "statistically significant results that show that closed primaries produce more polarized legislators than semi-closed primaries."<sup>30</sup> Contrary to expectations, I actually find that closed primaries are correlated with the elec-

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid, 12.



**Money plays a large role in modern campaigns, and to gain access to party resources, candidates will often need to adopt the polarized party line.**

tion of slightly more *moderate* Republican legislators, with no statistically significant effect on Democrats. I also interpret the results of a later regression to mean that legislator ideology is strongly correlated with general district ideology, but very weakly with the ideology of primary voters.<sup>31</sup>

Although my inclusion of a measure of primary electorate ideology bolsters the accuracy of my results relative to other previous works, the fact remains that an analysis of data from only a single year is far from the comprehensive time-series analysis necessary to construct more solid conclusions. Moving forward with my proposal to gather and analyze comprehensive panel data will bring clarity and confirmation both to my results and to those of previous authors.

## DISCUSSION

From a purely theoretical standpoint, permitting independents to vote in primary elections should, at a bare minimum, lead to more moderate congressional nominees, if not outright election winners. Moderate independents should, in theory, pull the median primary voter away from extremes, resulting in more moderate winners of primary elections. As long as candidates remain responsive to the will of the voter and satisfy their “strategic dilemma” by shifting toward the primary electorate, then semi-closed and nonpartisan primaries

should be associated with more moderate primary constituencies and more moderate elected officials.<sup>32</sup>

Real-world observation, however, illuminates significant gaps and potentially faulty assumptions in this theory. My results indicate that legislator ideology may, in fact, be more closely correlated with the ideology of the average voter, rather than with that of the average primary voter, as previous research has predicted.<sup>33</sup> Without this critical linkage, primary laws may not have much of an effect. Still, intuitively, this makes little sense. There is a large body of research that indicates that primaries matter quite a lot when determining the choices available to the average voter, and that primary voters are significantly more ideologically extreme than the median voter (my own research included). What, then, might disrupt this apparently intuitive causal chain?

One possibility is the influence of party infrastructure. Money plays a large role in modern campaigns, and to gain access to party resources, candidates will often need to adopt the polarized party line.<sup>34</sup> Absent significant campaign finance reform, the resource advantage afforded to party-preferred candidates may overcome any possible effects of primary rules on legislator ideology.

Perhaps it is presumptuous to assume that independent voters will vote in primary elections simply because they can. After all, as previously mentioned, polarized partisans tend to comprise the bulk of primary voters because they are simply more politically committed. “If you let them, they will come” may be a catchy concept, but not necessarily a practical one. By their nature, moderate independents simply might not be motivated enough to make a real difference in primary elections. Indeed, McCarty (2011) shows that turnout is virtually identical in states with open and closed primaries.

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<sup>32</sup> As Han and Pope (2007) predict.

<sup>33</sup> Fried, 28, 31.

<sup>34</sup> Eric Heberling, Marc Hetherington, and Bruce Larson, “The Price of Leadership: Campaign Money and the Polarization of Congressional Parties,” *The Journal of Politics* 68 (2006): 992-1005; Kathleen Bawn et al, “A Theory of Political Parties,” (paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, Pennsylvania, 2006).

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<sup>31</sup> Ibid.

Finally, the same logic may apply to potential congressional candidates. Even if primary electorates become more moderate, the emergence of more moderate candidates is far from guaranteed. Like primary voters, today's congressional candidates tend to be more policy-focused and ideologically inflexible than the career politicians who used to dominate the United States political landscape. Existing candidates, moreover, might not shift their behavior to better reflect the ideology of the primary electorate. The theory of the polarizing primary assumes that candidates will shift their behavior toward the middle to account for more moderate electorates, and perhaps unfairly so. People are stubborn in their beliefs, and sometimes do not have perfect information regarding the preferences of their potential primary constituency.

Why did earlier works find that closed primaries produced more polarized legislators, while more recent ones have not? It is difficult to say. Different methodologies may produce different results, different years may reflect different trends, and different biases may lead to different interpretations. The best way to resolve this discrepancy, I think, is to use the most comprehensive datasets possible, and to account for different indicators of ideology. Indeed, my proposed analysis strives to construct one of the most comprehensive datasets yet in the literature, accounting for differences (such as between DW-Nominate and ADA scores) and misconceptions (such as the belief that proxies for district ideology are acceptable substitutes for measures of primary electorate ideology) in previous works.

Eventually, an answer may emerge. If recent works are indicative of a forthcoming scholarly consensus, however, then policymakers may need to look to avenues other than primary election reform to find ways to reduce the widening ideological divide in Congress. ■

# Familial DNA Searching

## Constitutionality and Civil Liberties Implications

BY KATIE WYNBRANDT

### INTRODUCTION: A BRIEF OVERVIEW OF FAMILIAL DNA SEARCHING

A serial killer responsible for the murders of at least ten women and one man in Los Angeles successfully eluded police for twenty-five years. The killer, dubbed the “Grim Sleeper” because of the break in his murders between 1988 and 2002, was able to “strike terror and hopelessness throughout one of the city’s poorest areas” since 1985 because the police were simply unable to figure out who he was.<sup>1</sup> But in 2010, law enforcement ran the unidentified murderer’s DNA profile through the state’s database in an effort to find a familial link to the killer. The software indicated that a man named Christopher Franklin (whose DNA was in the system after having been convicted of a felony weapons charge) may have been related to the murderer, and after considering Franklin’s family members’ ages, geographical proximity to the crime scene, and other circumstantial evidence, investigators narrowed their search to Franklin’s father Lonnie D. Franklin Jr. Detectives then collected Lonnie Franklin’s DNA from a discarded slice of pizza, matched it to the DNA found at one of the Grim Sleeper’s crime scenes, and promptly

arrested the culprit. According to *The New York Times*, this “arrest in the case of the ‘Grim Sleeper’... has put one of the hottest controversies in American law enforcement to its first major test” – namely, the controversy surrounding familial DNA searching in America’s criminal justice system.<sup>2</sup>

Familial DNA searching – defined for the purpose of this paper as the practice of using DNA samples already present in a DNA database to identify relatives who may have committed an unsolved crime – has been employed on a very limited basis since 2002, when the method led investigators in Great Britain to the son of a serial rapist whose crimes were committed in the 1970s.<sup>3</sup> Between 2002 and 2004, “Police in the U.K. used this technique roughly twenty times..., achieving a 25% success rate,” and familial searching is currently legal throughout the United Kingdom and New Zealand.<sup>4</sup> In

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<sup>2</sup> *Ibid.*

<sup>3</sup> Murphy, Erin. “Relative Doubt: Familial Searches of DNA Databases.” *Michigan Law Review* 109.3 (2010): 301.

<sup>4</sup> Suter, Sonia M.. “All in the Family: Privacy and DNA Familial Searching.” *Harvard Journal of Law and Technology* 23.2 (2010): 324.  
Murphy, p. 301.

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<sup>1</sup> Steinhauer, Jennifer. “‘Grim Sleeper’ Arrest Fans Debate on DNA Use.” *New York Times* 8 June 2010. Accessed 4 May 2011 <[http://www.nytimes.com/2010/07/09/us/09sleeper.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2010/07/09/us/09sleeper.html?_r=1&pagewanted=print)>.

the United States, however, the legality of the method varies from state to state. State practices range from California's explicit authorization of familial searches to Maryland's statute prohibiting familial searching. "Of the remaining states, thirteen have spelled out their policies in internal lab manuals, and... the vast majority of states have DNA laws that neither expressly permit nor forbid kinship searches."<sup>5</sup>

On a more technical level, familial DNA searching differs from the type of DNA testing traditionally used by law enforcement because it involves searching a DNA database for a partial DNA match rather than a 'cold hit' – in other words, a complete match on all 26 alleles. But "although it is possible to draw inferences of relatedness based on a particular pattern or distribution of alleles in the genetic profiles of two individuals" because "we share more of our genetic material with biological relatives than with others," there is no way to tell with certainty that a given pattern of matching genetic information indicates a familial relationship.<sup>6</sup> In *Relative Doubt: Familial Searches on DNA Databases*, Murphy reports, "Studies show that, if the database does indeed contain a relative and the search threshold is set widely enough, it is 80 to 90 percent likely that a partial match search will include the relative in its results. But studies also show that such a search is also likely to return a number of persons that are not in fact related to the source."<sup>7</sup> It is this degree of uncertainty that threatens to make suspects out of innocent people when familial searching is employed.

This paper aims to explore the constitutionality of familial searching with regard to three potential challenges: privacy, equal protection, and Fourth Amendment searches and seizures. Because "no court has yet ruled on the constitutionality of familial searching," I will rely upon a set of recent law review articles and related case law in my analysis of each potential constitutional claim. Ultimately, despite several noteworthy ethical objections to the practice, I posit that the United States Supreme Court would deem familial DNA searching constitutional.

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5 Murphy, p. 302.

6 Murphy, p. 295; Suter, p. 318.

7 Murphy, p. 298.

## CLAIM I: DOES FAMILIAL DNA SEARCHING VIOLATE AMERICANS' CONSTITUTIONAL RIGHT TO PRIVACY?

Although the constitutional right to privacy cannot be located in one particular clause or amendment, the Supreme Court has repeatedly affirmed that this right exists. *Griswold v. Connecticut* (1965), for example, carves out a "zone of privacy created by several fundamental constitutional guarantees," including those found within the First Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Ninth Amendment. Justice Kennedy's 2003 opinion in *Lawrence v. Texas* further asserts that "the petitioners are entitled to respect for their private lives" and that "it is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." Accordingly, the degree to which familial DNA searching would allow law enforcement to "enter" this "zone of privacy" or "realm of personal liberty" must be considered. More specifically, this right to privacy should be examined with respect to two groups of people affected by familial searching: 1) the individual whose sample is already in the DNA database and 2) the relatives to whom the database search leads investigators.

### *Privacy rights applied to individuals already in the DNA database:*

*Katz v. United States* (1967) establishes that this "zone of privacy" applies when "a person [has] exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Yet, in the context of this framework, it is crucial to note that DNA databases are not limited to samples taken from convicted offenders. Many states currently include DNA profiles from arrestees, victims, and other individuals who voluntarily offer their profiles to exclude themselves in an investigation.<sup>8</sup>

As the "majority of courts" have found that "the privacy and civil liberty interests of offenders are sufficiently minimized to justify the creation of DNA profiles" and "the societal value of DNA databanks outweighs the privacy interests of convicted offenders," it seems reasonable to conclude that any database search

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8 Murphy, p. 316.

“ This “arrest in the case of the ‘Grim Sleeper’... has put one of the hottest controversies in American law enforcement to its first major test” – namely, the controversy surrounding familial DNA searching in America’s criminal justice system.

of convicted offenders’ profiles does not violate those offenders’ privacy rights.<sup>9</sup> It also seems reasonable to conclude that individuals who submit their profiles voluntarily no longer hold the “(subjective) expectation of privacy” that *Katz* requires.<sup>10</sup> Additionally, while the European Court of Human Rights considers “unqualified inclusion of arrestees” in the United Kingdom’s database to be a violation of international privacy rights, *United States v. Pool* (2009) “holds that after a judicial or grand jury determination of probable cause has been made for felony criminal charges against a defendant, no Fourth Amendment or other Constitutional violation is caused by a universal requirement that a charged defendant undergo... DNA analysis to be used solely for criminal law enforcement... purposes.”<sup>11</sup> Thus, despite the fact that normative “concerns are heightened when databases include samples from arrestees,” the constitutionality of arrestee DNA analysis has already been

9 Suter pp. 348, 330.

10 As I will concede in the essay’s conclusion, individuals who voluntarily submit DNA samples in the course of one investigation but do not provide informed consent to the use of their profiles in other investigations *can* still hold a “subjective expectation of privacy.”

11 Murphy, p. 316.

addressed and affirmed in federal court.<sup>12</sup> Moreover, the DNA pool from which familial searching locates partial matches is identical to that from which traditional methods of DNA database searching locates complete matches. Any objection to familial DNA searching on the grounds that it violates the privacy rights of those included in the database would therefore not be unique to familial searching; rather, it would solely necessitate that the DNA database in question be adjusted to exclude individuals whose privacy rights are reflected in the *Katz* framework.

On a separate note, critics also oppose familial DNA searching on the grounds that the practice violates individuals’ rights to the privacy of the genetic information that their DNA contains. But because the 13 loci of DNA profiling that U.S. databases include are considered “noncoding or ‘junk’” (i.e., “current science discerns little personal information that can be gleaned from the ‘junk’ DNA loci used for forensic identification purposes”), the potentially “private” biological information that would result from a familial DNA search primarily involves investigators’ probing into the biological links between family members.<sup>13</sup> However, even if

12 Suter, p. 339.

13 Epstein, Jules. “‘Genetic Surveillance’ - The Bogeyman

familial DNA searching has the potential to lead police to question an offender about his family ties, this type of intrusion is commonplace in police investigations in which familial searching is not employed. Consider situations in which a key piece of evidence is found in a family home or an anonymous tip suggests that the perpetrator is related to a particular offender. In these circumstances, no law prohibits police from questioning offenders about their biological ties. Furthermore, the familial search method does not necessitate that investigators ask potentially innocent relatives about their familial relationships. Thus, the primary intrusion of privacy that results from a familial DNA search remains limited to a class of individuals who have volunteered for genetic inclusion in a DNA database or whose legal status involves a loss of privacy and thereby compels them to offer their DNA for law enforcement purposes.

*Privacy rights applied to relatives of those identified in a familial DNA search:*

Opponents of familial searching contend that “even if persons in the database have forfeited their privacy interests, they surely cannot have relinquished the interests of their father, mother, brothers, sisters, and children.”<sup>14</sup> That is, because the process of familial searching requires that the crime scene DNA be matched to the DNA of a perpetrator whose profile is not yet in the database, it is important to consider the privacy rights of those who come under suspicion based on the partial match between a mystery crime scene profile and a convicted relative’s profile from the database. However, the group is certainly more likely to include the actual perpetrator than a random set of “any other” individuals. But regardless of these relatives’ innocence or guilt, the relevant privacy questions here are whether individuals whose DNA is not included in a local, state, or national database have a “(subjective) expectation of privacy” and whether that expectation is “reasonable” according to society.

No matter how investigators go about retrieving samples from these relatives (voluntarily or involun-

tarily), case law demonstrates that the Katz framework would not protect the privacy of relatives’ DNA. Epstein explains:

Like little else, DNA is exposed to the public and abandoned every time we move. Coupled with the loss of privacy occasioned by our ‘exposing’ our DNA to others is the Supreme Court’s ‘sliding scale’ approach to privacy, treating it at least in part as a function of how technological advances have exposed aspects of our personal lives.... For DNA testing, the technology is not in the hands of private individuals but is easily obtained, at modest cost, from labs nationwide.<sup>15</sup>

Here, Epstein alludes in part to *Kyllo v. United States* (2001), in which the Court evaluates privacy rights as dependent on whether a given technology is “in general public use.” The accessibility of DNA profiling technology to the “general public” – unlike that of the thermal imaging device in *Kyllo* – would render any “expectation of privacy” unreasonable according to the “society” that *Katz* references. And just as the Court found in *United States v. Dionisio* (1973) that no privacy rights can be derived from the sound of a person’s voice because “physical characteristics of a person’s voice... are constantly exposed to the public,” DNA’s constant exposure to the public allow this type of analysis to be applied.<sup>16</sup>

Ultimately, I submit to Suter’s view that “despite the various privacy and civil liberty concerns raised by DNA profiling and familial searches, those concerns are not necessarily greater or more threatening than those raised by other forms of police surveillance or searches.”<sup>17</sup> And in the United States, where “other forms of police surveillance” have been deemed constitutional, familial DNA searching is constitutional with regard to Americans’ right to privacy as well.

**CLAIM II: DOES FAMILIAL DNA SEARCHING VIOLATE AMERICANS’ RIGHT TO EQUAL PROTECTION?**

In contrast to the indirectly articulated right to privacy guaranteed by the United States Constitution, the

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Response to Familial DNA Investigations.” *University of Illinois Journal of Law, Technology & Policy* (2009): 165. Murphy, p. 315.

<sup>14</sup> Murphy, p. 317.

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<sup>15</sup> Epstein, p. 151.

<sup>16</sup> *Ibid.*

<sup>17</sup> Suter, p. 328.



right to ‘equal protection’ is explicitly addressed in the Fourteenth Amendment: “no state shall... deny to any person within its jurisdiction the equal protection of the laws.” The Fourteenth Amendment’s applicability to state laws is particularly appropriate in the context of familial DNA searching, as the current legality of the method is dependent on state regulations. Arguments that characterize familial DNA searching as a violation of the Equal Protection Clause generally fall within two main categories, either classifying the practice as racially discriminatory or arbitrary in generating government suspicion.

*Familial DNA searching and racial discrimination:*

One side of this debate argues that “familial searches of convicted offender and arrestee databases exacerbate the actual and apparent disparities of the criminal justice system, in which people of color are disproportionately represented.”<sup>18</sup> According to Sonia M. Suter in her article *All in the Family: Privacy and DNA Familial Searching*, “The probability that an African American, Hispanic, and non-Hispanic white person will be incarcerated in his lifetime, respectively, is 18.6%, 10%, and 3.4%.”<sup>19</sup> Familial DNA searching only extends this degree of inequality, since the group of suspected family members will be of the same race as the single offender in the database. In fact, a recent estimate suggests that familial searches could identify up to 17 percent of African-American citizens and only 4 percent of Caucasians.<sup>20</sup> While these statistics reflect neither an equal distribution of the two races nor a morally palatable state of affairs, they would not render familial DNA searching unconstitutional.

Pursuant to the Court’s findings in *Arlington Heights v. Metro Housing Development Corporation* (1977) and *Washington v. Davis* (1976), “disparate impact alone does not raise a colorable constitutional

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18 Murphy, p. 321.

19 Suter, p. 368.

20 Rosen, Jeffrey. “How Far Should the DNA Dragnet Go: Privacy Risks and Racial Bias.” *New York Times* 15 July 2010. Accessed 4 May 2011 <<http://www.nytimes.com/roomfordebate/2010/07/14/how-far-should-the-dna-drag-net-go/discrimination-and-privacy-concerns-with-familial-dna-searches>>.

claim.”<sup>21</sup> Rather, an Equal Protection claim would need to prove that the state’s *intention* was to racially discriminate. Familial DNA searching clearly has no racially discriminatory motives, as any racial discrimination would be perpetrated by a computer program that does not recognize DNA profiles based on race. Moreover, the unequal set of data from which the computer finds a potential match results from biases in the criminal justice system that are not unique to familial DNA searching. Even outside the realm of DNA databases, the practice of identifying suspects based on race occurs every time an eyewitness describes a suspect’s appearance and police use a facial composite sketch to compile a list of suspects. The use of race as a factor in suspect identification is surely nothing new to America’s criminal justice system.

*Familial DNA searching and arbitrary suspicion:*

Even Murphy admits that “The stronger argument might be one based on the arbitrariness of a formal practice and policy that distinguishes between relatives of convicted offenders and relatives of nonoffenders in generating government suspicion.”<sup>22</sup> However, because these categories are not characterized as “suspect” according to Supreme Court doctrine, such a claim would be subject to a minimal scrutiny test.<sup>23</sup> That is, familial DNA searching only needs to be reasonably related to a legitimate state interest to be found constitutional. The mere fact that familial searching provides a means of identifying criminals satisfies those standards, as law enforcement is a legitimate state interest, and a technique that has proven effective in cases as difficult to solve as the Grim Sleeper murders is “reasonably related” to that interest at the very least.

Murphy attempts to bolster this “stronger argument” by contending, “Absent evidence or a rational basis for believing that relatives of offenders are more likely to have committed a crime than relatives of nonoffenders, distinguishing between the legal protection ac-

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21 Murphy, p. 331.

22 *Ibid.*

23 *Ibid.*

corded each group seems indefensible and irrational.”<sup>24</sup> Yet, as politically incorrect as a ‘crime runs in families’ argument may be, Bieber, Brenner, and Lazer’s article *Finding Criminals Through DNA of their Relatives* cites studies that “clearly indicate a strong probabilistic dependency between the chances of conviction of parents and their children, as well as among siblings.”<sup>25</sup> A 1996 U.S. Department of Justice survey also indicates that 46% of jail inmates reported having one or more close relatives who had been incarcerated.<sup>26</sup> While these studies do not definitively prove that offenders’ relatives are more likely to engage in criminal behavior than are other members of the United States population, they do satisfy Murphy’s call for “evidence.” Regardless, familial searching’s satisfaction of the Court’s minimal scrutiny test is sufficient to qualify the practice as constitutional on these grounds.

Furthermore, as Mnookin points out, law enforcement “use[s] partial information all the time in other settings. If someone looks at suspects in a photo spread, for example, and says, ‘It’s not any of those people, but the perpetrator looked a lot like No. 3,’ any competent investigator would think to ask if No. 3 had a brother.”<sup>27</sup> Familial DNA searching simply translates this type of visual similarity to genetic similarity. The Court does not consider visual similarity to be an unconstitutional means of identifying suspects, so it should afford familial searching the same latitude.

### CLAIM III: DOES FAMILIAL DNA SEARCHING VIOLATE AMERICANS’ FOURTH AMENDMENT RIGHTS?

Here, it is important to note that several elements of Americans’ Fourth Amendment rights have already been covered in this paper. The *Katz* framework, the Court’s analysis in *Kyllo v. United States*, and the issue of casting arbitrary suspicion on relatives of offenders,

<sup>24</sup> *Ibid.*, p. 332.

<sup>25</sup> Bieber, Frederick R., Charles H. Brenner, and David Lazer. “Finding Criminals Through DNA of Their Relatives.” *Science* 312 (2006): 1316.

<sup>26</sup> *Ibid.*

<sup>27</sup> Mnookin, Jennifer. “Devil in the DNA Database.” *Tulsa World* 15 Apr. 2007: G3. *LexisNexis Academic*. 4 May 2011.

for example, are related to rights guaranteed by the Fourth Amendment. In addition to these matters, the Fourth Amendment invites us to consider the constitutionality of compulsory DNA sample collection from unincarcerated relatives and DNA sample retention for future law enforcement purposes.

### *Compulsory DNA sample collection:*

Suter clearly explains that “Courts have relied on two approaches – the special needs test and the totality of the circumstances test – to conclude that compulsory collection of DNA samples does not violate the Fourth Amendment, even though it may constitute a suspicionless search and seizure.”<sup>28</sup> In essence, these tests weigh the intrusions upon a person’s privacy caused by the DNA collection against the degree to which the search is necessary to serve legitimate state interests.<sup>29</sup> In *United States v. Kincade* (2004), for instance, the Ninth Circuit Court of Appeals ruled that the Fourth Amendment allowed compulsory DNA sampling of a group of conditionally-released offenders without suspicion that the offenders committed other crimes. The Court justified the ruling on the grounds that society’s interest in the DNA collection “under the totality of the circumstances” outweighed the releasees’ privacy interests in light of the minimally intrusive sampling procedure and the offenders’ forfeited expectations of privacy. But notwithstanding these constitutional tests, “it is for the non-custodial individual where DNA can be obtained virtually on a whim.”<sup>30</sup>

Because DNA is deposited on myriad objects we touch every day, it inevitably ends up in trash that the Court considers ‘abandoned.’ For example, in *California v. Greenwood* (1988), the Court ruled that contents of garbage deposited outside the home become legal objects of police search and seizure. This ruling corroborates the legality of law enforcement’s collection of Lonnie D. Franklin Jr.’s DNA from a discarded pizza crust to identify him as the infamous Grim Sleeper mur-

<sup>28</sup> Suter, pp. 329-330.

<sup>29</sup> Henning, Anna C.. “Compulsory DNA Collection: A Fourth Amendment Analysis.” *Congressional Research Service* (2010): 7. 4 May 2011.

<sup>30</sup> Epstein, p. 167.

derer. Epstein also clarifies:

Placing DNA seizure and analysis within the reach of the Fourth Amendment does little to inhibit its collection by law enforcement. The great flexibility in the Fourth Amendment “reasonableness” doctrine as an overlay to its warrant and probable cause requirements is at the root of court approval of a variety of means for the warrantless securing of DNA samples, to the point that it may appear as if there is no barrier whatsoever.<sup>31</sup>

While this lack of a “barrier” to DNA collection by law enforcement enhances investigators’ ability to obtain samples, “surreptitious sampling” is by no means necessary to the process of familial searching. A requirement that investigators gain “informed consent” before they collect samples would not necessarily inhibit the process of familial searching; in fact, several advocates of familial searching support such a requirement.<sup>32</sup> However, despite any remaining uncertainty regarding the constitutionality of “surreptitious sampling,” the reality that this type of sampling occurs regularly in the context of familial DNA searching and traditional methods of DNA searching indicates that the process of familial searching would not be ruled unconstitutional on these grounds.<sup>33</sup>

#### *Sample retention for future law enforcement purposes:*

Recent opinions also reveal that DNA samples lawfully obtained through one police investigation can be used in another. For example, in *Wilson v. State* (2000), the Court ruled that a defendant’s Fourth Amendment rights were not violated when the police used a biological sample from an unrelated case to analyze his DNA.<sup>34</sup> Although this particular case did not involve familial DNA searching, the principle of DNA sample retention and reuse is vital to the familial searching process. That is, familial searching relies on DNA samples uploaded to a local, state, or national database in conjunction with one case to be used in the

familial searching case in an effort to identify a partial match to the crime scene DNA. Without investigators’ ability to utilize those previously uploaded samples, there would be no link to the perpetrator.

Nevertheless, the Fourth Amendment would not allow any third party to object to this type of use in the first place. Epstein explains, “It is clear that Fourth Amendment doctrine precludes any third-party objection to use of one family member’s DNA already lawfully in police possession to generate leads. The Supreme Court’s expectation of privacy cases deny standing to other family members, as Fourth Amendment rights are deemed ‘personal.’”<sup>35</sup> This type of analysis leads to a sort of Catch-22 for critics: if offenders cannot bring suit because their samples are legally permitted to be used in future investigations, but no third-party can bring suit because of the “personal” nature of Fourth Amendment rights, then who is left? And without a case, the Supreme Court cannot rule familial searching unconstitutional.

#### CONCLUSION: CIVIL LIBERTIES IMPLICATIONS

Thus far, the aim of this paper has been to demonstrate that the United States Supreme Court would consider familial DNA searching constitutional. In an effort to do so, however, I concede that I have not afforded adequate attention to the encroachments on Americans’ civil liberties that familial DNA searching might entail. For example, existing laws may allow a DNA sample that is submitted voluntarily to “get lost in a year-long backlog during which the suspect’s name is muddied and tarred,” and once a suspect’s DNA finally excludes him or her from police consideration, no law compels “the officer [to] return and assure the suspect’s family and coworkers that he is truly as innocent as he was the day before the investigation began.”<sup>36</sup> And even at that point, national laws would permit investigators to keep the DNA sample and upload it to the national database.<sup>37</sup>

I have also treated these possibilities as unrelated to the constitutionality of familial searching because

<sup>31</sup> *Ibid.*, p. 153.

<sup>32</sup> *Ibid.*, p. 167.

<sup>33</sup> Suter, p. 359.

<sup>34</sup> Epstein, p. 159.

<sup>35</sup> *Ibid.*, p. 161.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*



**Ultimately, familial DNA searching should be treated as a valuable investigative tool in cases when no other method proves fruitful. It should be employed cautiously and with perpetual consideration for Americans' civil rights and civil liberties.**

they do not necessarily occur when familial searching is employed. Yet, I would argue that uploading DNA profiles from innocent individuals who offer samples purely to clear their names – or even failing to destroy those profiles at the conclusion of an investigation – would violate privacy rights, and familial searching certainly opens the door for these situations to occur. As a result, the constitutionality of familial searching necessitates that individuals who submit DNA profiles voluntarily (e.g., victims and those who submit profiles to clear themselves of suspicion in a criminal investigation) must consent to the future inclusion of their profiles in database searches. Additional precautions, such as a screening method called Y-STR testing (which “quickly reduces the suspect list and...offers a means of ensuring that any ‘search’ of familial DNA is ‘reasonable’”), should be taken even if they are not necessary for the constitutionality of familial searching.<sup>38</sup>

Ultimately, familial DNA searching should be treated as a valuable investigative tool in cases when no other method proves fruitful. It should be employed

cautiously and with perpetual consideration for Americans' civil rights and civil liberties. Under such circumstances, familial DNA searching does not violate the United States Constitution. ■

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*Arlington Heights v. Metro Housing Development Corporation* (1977)

*California v. Greenwood* (1988)

*Griswold v. Connecticut* (1965)

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*Lawrence v. Texas* (2003)

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*United States v. Dionisio* (1973)

*United States v. Kincade* (2004)

*United States v. Pool* (2009)

*Washington v. Davis* (1976)

*Wilson v. State* (2000)

*Winston v. Lee* (1985)

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<sup>38</sup> Epstein, pp. 148-149.

# Algeria's Marginalized Poor

## Housing Disparities as Indicators of Uneven Economic Development

BY AMMAR MIAN

### INTRODUCTION: GLOBALIZATION'S "UNDERBELLY"

Perhaps in certain exotic imaginings by Western minds of Algerian life, the country's delightfully alien Berber population roams the lush countryside, traversing a terrain dotted by ancient Islamic and Roman ruins. To the slightly more cinematically aware, Algeria may evoke the memory of "The Battle of Algiers," the 1966 film examining terror tactics employed by insurgents. Tourists to Morocco may wonder if Algeria's *casbahs* and *souks* are as colorful and energetic as their North African counterpart's supposedly are. Multinational corporations, meanwhile, may point to the appearance of luxury boutiques and hotels in the capital city of Algiers as a demonstration of prosperity, wealth, and a healthy investment environment.

What escape these imaginations are the realities that exist literally feet from these luxuries. Across the street from the malls, hotels, and ministry buildings in the El Madania district of Algiers is the sprawling shantytown named *Diar Echams* (or "houses of the sun"). This community consists of 1,500 families crammed into about 100 makeshift huts and "little shacks made partly of wood or metal...that are chaotic and lack basic services."<sup>1</sup> In October 2009, this community

came under fire by Algerian security forces attempting to evict the slum dwellers of *Diar Echams* and clear their homes. The ensuing violence and riots turned the streets of Algiers into a battlefield between the city's disgruntled youth and the police.<sup>2</sup>

The outbreak of riots like those in *Diar Echams* have increased in frequency over the past several years in Algeria as the country's young and unemployed take to the streets, protesting the lack of adequate housing and sanitation services, the abrupt rises in food prices, the disproportionate allocations of resources and wealth, and the institutionalized corruption of public officials.<sup>3</sup> Similar cries denouncing socioeconomic inequalities ring from the overpopulated centers of the developing world. Like in Algiers, Rio de Janeiro's crime-ridden *favelas* and Mumbai's infamous slums sit dwarfed by the skyscrapers of modernity in their respective cities.

These monumental displays of fortune act as an

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*Middle East*. Web. <<http://news.bbc.co.uk/2/hi/8356598.stm>>

<sup>2</sup> Ait, Arezki. "Alger sur un Poudrière." *Le Figaro*: Oct 10 2009. <<http://www.lefigaro.fr/international/2009/10/22/01003-20091022ARTFIG00389-alger-sur-une-poudriere-.php>>

<sup>3</sup> Ibid.

<sup>1</sup> BBC. "Slum Life in Algeria, Sudan, and Yemen." *BBC News*

architectural cloak that hides the ugly underbelly of globalization. Over the past 20 years, as neoliberal trade policies and free-market capitalism have become the ordering principle of the world economic system, business ventures targeting lucrative new markets have come to dominate. Globalization for much of the Western world has meant further access to mobile phones and the Internet, televisions, and petroleum-fueled vehicles for all but a tiny minority. On the other hand, much of the non-Western world has not seen such broad distribution of globalization's blessings. Rural populations are flocking to cities because control of agricultural production has shifted to multinational corporations who hold monopolies on arable land and agriculture technology. Private developers around the world race to build bold new hotels, mansions, and architectural masterpieces, working with public housing authorities to clear slums and informal settlements in order to make space for these projects. As governments and private interests race to sectors of the economy that appear most profitable, the wealth generated by these economic endeavors has eluded the pockets of the poor. Globalization in a developing country like Algeria has manifested itself in the form of a dual economy.

### THE CASE OF ALGERIA

Algeria, in particular, has suffered from uneven growth and its subsequent marginalization and demobilization of the low-income population. The vast housing disparities in Algeria are indicative of this increased marginalization of the country's poor due to the forces of globalization. These disparities manifest themselves in the lack of affordable housing options available to these households, and the rise of informal housing in response to this inadequate affordability and availability. These disparities are symptoms of Algeria's ineffective participation in the global economy. The country's domestic economy relies heavily on the export of natural gases and on foreign direct investment (FDI), which exploits cheap labor and ultimately benefits Algeria's well-established economic sectors. The dependence of Algeria's economy on just a handful of global markets has formed a dual-speed globalization that provides economic growth at very uneven rates to high-skill and low-skill sectors. As the high-skill sectors of Algeria's

economy have led the country's economic growth over the past decade, the members of Algeria's forgotten low-skill sectors—farmers and factory workers—have become increasingly marginalized by the forces of globalization.

In advancing my thesis, I will divide my argument into three parts. In the first part, I will discuss the housing disparities themselves and how they manifest themselves in Algeria's cities. By doing so, I will establish a micro-level image of the problem of uneven growth vis-à-vis the country's housing sector. In the second part of my argument, I will discuss Algeria's macro-level dependence on the global natural gas market and FDI, and how it ultimately creates and propagates uneven growth and development in the country. Finally, I will return to a domestic-level analysis to show the consequences of these economic policies on the livelihoods of Algeria's marginalized poor, detailing the tangible effects they have on the housing options and living conditions of the poor. In tying my argument together, I will show that globalization in a developing country like Algeria has manifested itself by creating a dual economy that props up the "haves" and further demobilizes and marginalizes the "have-nots."

### PART I: DISPARITIES IN ALGERIA'S HOUSING SECTOR

A rising tide of unrest among low-income communities in Algeria's major cities precipitated a series of riots and clashes with the country's security forces in 2011 in response to the government's attempts clear out shantytowns, slums, and squatter communities. To understand what moved these communities toward uprising, we must first analyze the nature of Algeria's housing sector and how it ignores the poor. The Algerian government, like the governments of many developing countries that are experiencing rapid population growth, struggles to solve the "slum" problem. Disparities in Algeria's housing sector have only fed this systemic issue. To explain the extent of these disparities and why they are relevant to our understanding of Algeria's marginalized classes, I will (1) claim that affordability, rather than availability, is the biggest problem plaguing the Algerian housing sector, (2) show how public housing programs and private real estate development have created a sharper dis-

inction between low-income and high-income housing, and (3) conclude that, consequently, the ultimate option left for the country's poor is to turn to informal housing.

### *Affordability & Availability: Systemic Problems in Algeria's Housing Sector*

Reports published by Algeria's National Socio-Economic Consulate (CNES) have mainly depicted the housing problem in Algeria as a problem of availability.<sup>4</sup> The government has undertaken measures to construct new public housing units and has attempted to reduce the average number of dwellers per housing unit, which is called the dwelling occupancy rate (DOR). At first glance, this approach makes sense, as Algeria has experienced an average population growth rate of 1.6 percent over the past 10 years. Additionally, 63.5 percent of Algerians live in urban areas as of 2007, a sharp increase from 49.7 percent in 1987.<sup>5</sup> This rapid urbanization and population growth may indicate that the emphasis of housing policy in Algeria should be on the construction of new housing projects, with government reports indicating a shortage of 990,000 housing units in 2010.<sup>6</sup>

However, an analysis of the affordability of housing options in Algeria suggests otherwise. A 2010 World Bank report claims that 400,000 empty houses exist in the capital city of Algiers *alone*. This number is equal to 6.7 percent of Algeria's entire housing stock. In comparison, Algiers has a slum population of 420,000, demonstrating the enigma of empty homes keeping their doors closed to those who need roofs over their heads.<sup>7</sup> As the population of urban areas has increased, so has the demand for housing and, consequently, prices for housing. The World Bank uses ratio of house price-to-household income to determine roughly how affordable or expensive it is to buy a house. In 2002,

Algeria's ratio was 8.1:1.<sup>8</sup> This ratio approximates the number of years it would take a middle-class household to purchase an "average dwelling" in an urban area if it were to save all of its annual income.<sup>9</sup> Because the poor are more sensitive to housing prices, this ratio affects them considerably more than it does middle-income households. An 8.1:1 ratio translates to approximately 8 or 9 years of such savings. Countries with similar house price-to-household income ratios include Iran, Yemen, and Egypt. In stark contrast, this ratio in Spain rose to a high of 5.5:1 in 2006 during the country's property bubble.<sup>10</sup> Meanwhile, the United States has maintained a ratio hovering around 3.5:1 since the 1980s. Clearly, households in Algeria are systemically disadvantaged against purchasing homes built for their income bracket.

### *The Ineffectiveness of Public Housing Programs & Private Development*

More significantly, however, the problematic relationship between public and private interests surrounding housing in Algeria has led private developers to cater primarily to high-income households and the government to focus primarily on low-income households. Public investment and programs dedicated to low-income housing have not been very effective in alleviating affordability issues. State-owned banks hold 93 percent of all deposits and make nearly all mortgage loans, and outstanding debts on loans and mortgages are much lower in Algeria than in countries with successful housing sectors. In 2010, Algeria had these debts account for only 1.6 percent of its GDP. Neighboring Morocco, which has faced similar chronic housing issues to Algeria's, has developed a stronger and more comprehensive mortgage system. Moroccan debts on mortgage loans subsequently grew to account for 7 percent of its GDP in 2010.<sup>11</sup> The unwillingness of the government, then,

4 Conseil National Economique et Social (CNES). *Rapport National sur le Développement Humain: Algérie 2006* (CNES: 2007). 60.

5 Bellal, Tahar. "Housing Supply in Algeria: Affordability Matters Rather Than Availability." Theoretical and Empirical Researches in Urban Management. No. 3/12 (CCASP-TERUM: Aug 2009). 101-102.

6 Ibid.

7 World Bank. "Report 55427: National Slum Upgrading Program." *People's Democratic Republic of Algeria: Mortgage Finance Technical Assistance Project*. Jun 29 2010.

8 Ibid.

9 Baharoglu, Deniz, and Nicolas Peltier, Robert Buckley. *The Macroeconomic and Sectoral Performance of Housing Supply Policies in Selected MENA Countries: A Comparative Analysis*. (World Bank: Apr 2005). 3.

10 World Bank.

11 Ibid.

to privatize banks and to adopt more flexible policies governing the generation of mortgage loans has served to dampen a housing economy that already makes it nearly impossible for low-to-middle-income households to purchase or mortgage a housing unit.

The private sector, meanwhile, finds it difficult to develop housing units targeted at low-income communities because the government has limited its involvement in the development of these types of housing. A 2005 government land subsidy decreed that an 80 percent rebate would be given to private investors if they purchased government land for the purpose of housing development. However, only 14 percent of these subsidies have gone towards developing housing for the poorest quartile of urban households in Algeria.<sup>12</sup> The reason for this is that the government has also adopted more stringent quality standards for all new housing projects. This has caused costs to rise for private developers, construction companies, and dwellers alike. If inhabitants of new housing projects cannot afford to pay rent, and if appropriate instruments to obtain mortgage loans do not exist, then there is virtually no incentive for private developers to cater any housing projects to low-income households.

### *The Growth of Informal Housing in Algeria*

As a result of the rising demand for housing and the increasingly stringent quality standards for new housing developments, prices for homes have risen tremendously. This has priced many low-income households out of the formal real estate market. Because they cannot afford to live in publicly administered projects or privately developed apartments, the poor of Algeria have begun occupying unused land in the suburbs of major cities, erecting makeshift huts and shantytowns at an alarming rate. The most striking aspect of these *bidonvilles*, as slum dwellings are called in Algeria, is “the fragility of the structures, the variety and the poor quality of the materials used, and the scale of individual units. The units were often formed of a single room, a *pièce-logement* that sheltered an entire family.”<sup>13</sup>

<sup>12</sup> Bellal, 108.

<sup>13</sup> Celik, Zeynep. *Urban Forms and Colonial Confrontations: Algiers under French Rule* (Berkeley: University of California Press, 1997). 111.

“Clearly, households in Algeria are systemically disadvantaged against purchasing homes built for their income bracket.

Post-independence discussion amongst architects, circa 1970, about the existence of *bidonvilles* seemed encouraging. In the minds of several Algerian urban architects, if these slums could be redesigned to allow for a greater access to basic utilities, they could become “tomorrow’s habitat” and a model for “extreme sensibility and highly human qualities.”<sup>14</sup> However, during the mid-20<sup>th</sup> century, policymakers viewed slums as an urban problem. It has only been since the extreme population bulges and the migration of the rural poor during the 1990s and onwards that these *bidonvilles* have come under public scrutiny. As of 2010, 6.4 percent of Algeria’s population lives in slums, while 11.8 percent of its urban population occupies a slum.<sup>15</sup>

### PART II: ALGERIA’S ECONOMIC DEPENDENCE

Although the housing sector of Algeria illustrates the country’s economic disparities, a glance at Algeria’s macroeconomic activities would initially suggest a prosperous climate. GDP per capita increased 22 percent from 2000 to 2009, and unemployment fell from 29.5 percent to 10.2 percent during that same span.<sup>16</sup> However, these statistics conceal the dependence that Algeria’s economy has on natural gas exports and on foreign capital.

<sup>14</sup> Ibid, 113.

<sup>15</sup> World Bank.

<sup>16</sup> De Bock, Reinout and Jose Gijon. *Algeria: Select Issues Paper*. IMF Country Report No. 11/4 (International Monetary Fund, Feb 2011). 18.



### *Algerian Economic Dependence on the Global Gas Market*

Algeria's resource wealth in natural gas single-handedly fuels its economic development. Forty-nine percent of all exports are natural gas exports, and 98 percent of all export revenues are from gas exports.<sup>17</sup> This reliance on the energy sector continues to increase: 45 percent of Algeria's GDP came from natural gas production in 2005, compared to 38 percent just the year before. In comparison, 10 percent of the country's GDP came from agricultural yields in 2003; this statistic dropped to only 7.7 percent in 2005.<sup>18</sup> The lack of diversification of its exports puts the Algerian economy in a precarious situation. As noted by a 2011 IMF report, the "[economic] crisis of 2008 and the collapse of industrial gas demand in Europe sharply reduced Algeria's gas exports. Following an unusually cold winter in 2010, the modest industrial recovery, especially in Spain and Italy, has kept natural gas exports at relatively low levels."<sup>19</sup> In other words, Algeria's economic fortunes are tied to global demand for natural gas. At a domestic level, this dependence on natural gas has been addressed by the government not by diversifying exports, but rather by attempting to maintain the stability of SONATRACH, the state-owned energy giant. In 2006, a law made it mandatory for all new oil, gas, or transport-related projects to give a 51 percent stake in the project to SONATRACH.<sup>20</sup> Such laws serve to continue the cycle of Algerian dependence on gas exports.

### *Algerian Dependence on Foreign Investment*

Algeria's relationship with private investors and foreign direct investment (FDI) has also furthered its dependence global markets. As of 2010, Algeria had \$19.5 billion of FDI in stock from investors, primarily from Kuwait, Spain, Egypt, the United States, and China.<sup>21</sup> Just

over 91 percent of FDI has been funneled to Algeria's energy, telecommunications, and tourism sectors. However, while the stock of FDI available to Algeria has remained high, the inflow of FDI as of 2009 has been rapidly declining. The year 2009 saw a 60 percent decrease in FDI to Algeria due to "tough new conditions imposed on foreign firms in Algeria."<sup>22</sup> As the global economic crisis has intensified many of the grievances of the lower classes of societies around the world, the Algerian government has defensively decided to name its dependence on foreign investment as the culprit for its socioeconomic woes. A 2011 law, for instance, placed a 49 percent ceiling for foreign stakeholders on any new FDI project and made it mandatory for all foreign investors to find local partners.<sup>23</sup> While this law would be helpful if Algeria's economy had a diverse array of successful exports, it hampers the country's attempts to loosen its dependence on its energy sector. Most FDI in Algeria targets the energy sector, so a reduction of FDI inflows will negatively affect GDP growth in the short-term because natural gas exports will be contributing to a lower share of that growth.

### PART III: THE MARGINALIZATION OF ALGERIA'S POOR

Algeria's economic dependence on the energy sector and foreign investors and the government's suppression of the private sector have played significant roles in alienating low-income communities in Algeria from the rest of Algerian civil society. The housing disparities witnessed on the ground put into motion the negative consequences of an economy that is dominated by its natural gas sector. The subsequent marginalization of Algeria's poor is evidenced by uneven economic growth, abrupt changes in city demographics, and the growth of Algeria's informal economy.

17 De Bock, 17; Arieff, Alexis. *Algeria: Current Issues* (Congressional Research Service: Apr 13 2011). 12.

18 OECD. "Algeria." *African Economic Outlook*. (AfDB/OECD: 2007). 94.

19 De Bock, 8.

20 Arieff, 17.

21 Credit Agricole Egypt. "Algeria: Investing." *Export Enterprises, SA*. Dec 2011. <<http://www.egypt-import-export.com/en/>

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country-profiles/algeria/investing>

22 Ahmed, Hamid Ould, and Christian Lowe. "Algeria Restrictions Hitting Foreign Investment: IMF." *Reuters Africa*. Nov 4 2010. <<http://af.reuters.com/article/energyOilNews/idAFAHM45625020101104?pageNumber=2&virtualBrandChannel=0>>

23 De Bock, 17.

### *Evidence of Uneven Economic Growth and Development*

Algeria's promotion of the growth and development of the energy sector has prioritized its prosperity over the success of all other economic sectors. Gas exports, for instance, contributed 43 percent of the growth of Algeria's economy in 2005, as opposed to just 25 percent the year before. In contrast, while agricultural exports provided 19.7 percent of economic growth in 2003, in 2005 they only contributed 1.9 percent of growth.<sup>24</sup> This is significant because while low-skill sectors such as agriculture and manufacturing attempt to supply the entire country with food and other basic necessities, the majority of the country's financial resources are diverted to high-skill sectors such as telecommunications and energy. As wages decline for low-skill workers and soar for high-skill workers, a dichotomy of haves and have-nots has distinctly emerged through this uneven allocation of resources and investments. While the availability of modern medicine, Internet, cars, and mobile phones has increased tremendously due to this allocation, access to basic needs such as food, housing, sanitation, and security have remained limited to those who cannot afford to pay for them.

### *Urban Demographic Changes in Algeria*

Demographic changes caused by internal migration and rapid population growth have caused incredible stress on the already weak institutions that govern vital infrastructures in cities. Urban populations now account for 63.5 percent of the country's total population, as compared to just 49.5 percent in 1987.<sup>25</sup> Infant mortality rates and fertility rates in Algeria have fallen considerably over the past decade, but high fertility rates in the 1980s have driven down the median age of the population to 27.6 years old. Moreover, in 2008, the population of Algerians aged between 20 and 29 grew by 30 percent, meaning that a large number of individuals have only recently just entered the labor force in search of full-time employment.<sup>26</sup> However, job opportunities

<sup>24</sup> OECD, 94.

<sup>25</sup> Bellal, 102.

<sup>26</sup> Index Mundi. "Algeria." Web. Accessed Dec 10 2011. <<http://www.indexmundi.com/algeria>>

“When asked why he is nervous to get married, Yasin said, “No wife would accept these living conditions. Where is she going to live? If she comes here, I’ll have to live outside. I’m trapped.”

are few and far between in an economy that relies heavily on a volatile global gas market. This rapid growth of individuals entering the labor force has led to a 66 percent increase in overall consumer prices since 1995, while wages have only increased 44 percent during that same time. As a result, 20 percent of Algerians live on less than \$1 a day.<sup>27</sup> The most interesting indicator of this further marginalization of the poor is that, in 2002, only 14.41 percent of men aged 25-29 were married, as opposed to 49.84 percent in 1987.<sup>28</sup> A France-24 television program on Algeria's housing crisis illuminated this phenomenon in its interview with “Yasin,” a 30-year-old resident of the *Diar Echams* shantytown. When asked why he is nervous to get married, Yasin said, “No wife would accept these living conditions. Where is she going to live? If she comes here, I’ll have to live outside. I’m trapped.”<sup>29</sup> Therefore, competition for housing, employment, spouses, social services, and everything in between is fierce.

<sup>27</sup> Tiliouine, Habib, and Robert A. Cummins, Melanie Davern. “Measuring Wellbeing in Developing Countries: The Case of Algeria.” *Social Indicators Research*. Vol. 75, No. 1 (Springer: Jan 2006). 6.

<sup>28</sup> Index Mundi.

<sup>29</sup> Tazir, Ahmed. “Housing Crisis Triggers Clashes in Algiers Shanty Town.” France-24 Broadcasting. Video. <<http://www.youtube.com/watch?v=XouM6bDo0KA&feature=youtu.be&t=1m24s>>

### *Algeria's Growing Informal Economy*

Due to the lack of sufficient access to credit and loans, the impact of the unaffordable costs of gas, electricity, and other utilities leaves Algeria's poor moving away from their already-overcrowded apartments, choosing instead to build up makeshift housing on undeveloped land. In a similar vein, an increasing number of the country's impoverished, frustrated by the negative externalities of formal employment, turn to Algeria's growing informal economy. According to the World Bank, 64.7 percent of private firms have made informal payments to public officials to "get things done."<sup>30</sup> The institutionalization of corruption by government officials has dissuaded interest in private enterprise, which is evidenced by the fact that 97 percent of private firms in Algeria employ less than 10 people.<sup>31</sup> As the cost of entry into civil society is too great for most households, individuals have turned to Algeria's informal economy, which accounts for 35 percent of the country's GDP.<sup>32</sup> This informal economy consists of a vast network of street vendors who only take cash payments, do not file taxes, and do not receive the benefits of social welfare services. However, this informal economy also consists of patriarchal gangs and criminal organizations that offer individuals more lucrative salaries than an entry-level job would. This element of the informal economy, in exchange for loyalty and support, provides the poor a means of circumventing the institutionalized greased palm of public officials.

### CONCLUSION: GLOBALIZATION'S DUAL ECONOMY

Due to Algeria's dependence on high-skill sectors for its economic growth, its suppression of the private sector in favor of the public sector, and its ineffective housing and credit policies for low-income communities, a dual economy has emerged in Algeria. The first economy is the one touted in tourist guides and investment profiles. It is dominated by the rich, as the prosperity of this first-tier economy only feeds into itself. The second

economy is the one occupied by the down-and-out and the destitute, the farmers who attempt to provide food for themselves and for the rest of the country, the workers in manufacturing plants that assemble materials that they themselves cannot afford, and the growing population of "informal" residents who live outside the realm of civil society. The separation of society into two distinctly and independently functioning entities has denied Algeria the development of a unified spirit. The constant violence and political unrest between the country's numerous factions only reinforce this trend. While one may consider the political and socioeconomic struggles of Algeria as simply the growing pains of a developing country, the dependence that Algeria's economy has on foreign markets will only further cement the polarized nature of its domestic society. ■

<sup>30</sup> World Bank Data 2007.

<sup>31</sup> OECD, 94.

<sup>32</sup> OECD, 100.

# Out of Many, One?

## The Infeasibility of Federalizing the European Union

BY MATTHEW CHIARELLO

### OPENING REMARKS

Although originally conceived of as a collection of supranational institutions by Jean Monnet and several likeminded political elites in the aftermath of the Second World War, the European Union (EU) has consistently defied pressures to assume the mantle of a federated political system. From its nascent manifestation as a common market created in the Treaty of Rome to its more modern incarnation under the Treaty of Maastricht (TEU) in 1992, the EU has deftly dodged attempts to structure its union in the mold of a federal system. Instead, the collection of member state governments have opted for a more nebulous confederal institutional arrangement. Now, however, with a looming debt crisis, a strident supranational judicial system, and an ever-increasing concern about the appropriate role of member state action and interaction within the bounds of the union, the EU must take steps to reconnect to its Monnetist roots and federalize.

Yet, I would argue that the prospects for such a dramatic shift in political arrangements are overwhelmingly bleak. Thus, while this paper acknowledges the present, untenable position of the union, it rejects policy prescriptions advanced by certain scholars of the EU who, like Larry Siedentop, suggest that a federal entity could plausibly arise from a loose confederation. The following will address the concerns stemming from the process of federalizing the EU in two distinct ways. The first will consist of a brief qualification and rejection of the notion that the EU contains relevant federal and federalizing attributes and tendencies, both in the

present and in its history. This discussion will then proceed into a second, in-depth argument concerning the invalidity and infeasibility of the claims requisite to federation advanced by Siedentop in his work, *Democracy in Europe*. Both of these arguments will aim to substantiate the central claim of this paper, which stands to elucidate the notion that the EU is not a federation and stands very little chance of becoming such a political system in the near future.

### PART 1: THE HISTORICALLY FLAWED CASE FOR FEDERALISM

Certainly the case can be made suggesting that the EU already evidences salient federal characteristics in its institutional framework. This argument is codified in fairly broad strokes by Neill Nugent, as he highlights three elements of the EU that align themselves beneath a banner of federalism in his work, *The Government and Politics of the European Union*.<sup>1</sup> The first element that he points to consists of the exclusive powers within the spheres of fiscal and public policy that the EU wields over its collective, constituent member states. This argument suggests that the will of the Commission and similar supranational institutions has guided and continues to guide European policy as a whole, independent of member state preferences. Such a view neglects the historical member state centric arrangement

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<sup>1</sup> Nugent, Neill. *The Government and Politics of the European Union*. Durham: Duke UP, 2006. Print. 423.

of the union, as explained by Andrew Moravcsik's inter-governmentalist model, which holds member state preference sets as the primary motivating force behind EU action. This mode of institutional interpretation can be evidenced through numerous examples drawn from the history of the union, from French support for an otherwise economically detrimental Common Agricultural Policy (CAP) to the rejection of a federalist plan for an atomic energy consortium in favor of a less potent European Atomic Energy Commission (EURATOM).<sup>2</sup> Within this more historically accurate model, the member state governments have sought sanctuary from supranational institutions by relying on their national sovereignty to push for confederal arrangements in which their respective domestic policies are not wholly subsumed by a supreme federalized union (Figure A).

The second element that Nugent discusses is the federal nature of the union's "supreme judicial authority" as vested in the European Court of Justice (ECJ) and its coequal and subsidiary courts.<sup>3</sup> While this argument may be the most credible of those advanced in favor of a presently federalist conception of the EU, this supranational spirit is concentrated in and confined to the courts themselves. That suggests that there exists an inability of the judiciary to expand its federalist capacity to its companion EU institutions. This topic is cogently dealt with by J.H.H. Weiler in his collection of essays, *The Constitution of Europe*, which conclude that despite the unilateral expansion of power exhibited by the courts – especially in the area of enforcing a consistent standard of human rights – they have failed to provide for union-wide institutional change. Weiler points to the fact that while the ever-expanding competency of the court remains loosely bounded by treaties, the court has yet to subsume any other branch of the EU into its own federal framework. In fact, Weiler goes as far as to argue that where the courts have failed in federalizing the union as a whole, they have antithetically succeeded in antagonizing member state judiciaries and in so doing they have created further incentives

“As such, the pursuit of a common pan-European identity cast in the mold of early American ethnic and linguistic uniformity will do very little to aid in the reformation of EU institutions.”

for national governments to retain and withhold as much sovereignty as possible.<sup>4</sup>

Finally, the last element examined by Nugent regards the division of power between the institutional apparatus of the EU -- embodied in the Commission, the Council of Ministers, the European Parliament (EP), and the bureaucratic offshoots thereof -- and the constituent member state governments.<sup>5</sup> While this may remain functionally true, in part, the relationship is not one of overriding or exclusive competency in areas of EU policy as imposed stringently on national governments. This is evidenced by a plethora of realities that include the institutional ability of member state governments to veto legislation, to build coalitions within the EP, and to potentially secede from the union. These strikingly confederal tendencies, in my view, have worked to the detriment of the union as a whole and need to be remedied in the immediate future if the EU plans on weathering both the economic and political crises that threaten its existence. This notion will be examined below in a full discussion of Siedentop's plan

2 Moravcsik, Andrew. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell UP, 1998. Print.

3 Nugent, Neill. *The Government and Politics of the European Union*. Durham: Duke UP, 2006. Print. 424.

4 Weiler, Joseph. *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge: Cambridge UP, 1999. Print.

5 Nugent, Neill. *The Government and Politics of the European Union*. Durham: Duke UP, 2006. Print. 424.

for the constitutional reformation and federalization of the EU's institutional framework.

## PART II: THE BLEAK FUTURE OF FEDERATION

Alongside the debates that raged within the European Community (EC) – the forerunner to the EU – in the run-up to the monetary union as established in the TEU, there was a simultaneous and equally fierce dispute surrounding the conditions under which further political integration would take place. This ideological clash arose in part over a particular phrase within the body of the treaty that said that the newly christened EU should position itself to “evol[ve] in a federal direction.” Such language proved controversial and unacceptable to a handful of states, not least among them the United Kingdom, which argued for a more centrist rewording of the text. This view eventually carried the day during the negotiations and the phrase was augmented in the final document to read that the treaty would “mark a new stage in the process of creating an ever closer union among the peoples of Europe.”<sup>6</sup> It is precisely this hesitancy towards federation and the necessity for a genuine push towards a “closer union” that underpins Siedentop's *Democracy in Europe*. The author posits that this union and the avoidance of the “bureaucratic despotism” inherent in the present system can only be achieved by the construction of a written federal constitution structured along the lines of a Madisonian model of a “compound republic.”<sup>7</sup> Such a document would explicitly delineate the role of EU institutions in relation to both its constituent member state governments and the citizens therein. However, Siedentop diverges radically from the traditional arguments for resettling the union on a constitutional foundation in that he claims that such a reformation could only be enacted and properly implemented through an ideological homogenization of the EU's population. Siedentop argues along two distinct dimensions for the full realization of this transition, which include (i) the creation of a culture of local governance crafted through the cultivation of a shared language and citizenship, as

6 Corbett, Richard. *Treaty of Maastricht: Comprehensive Reference Guide*. England: Longman Current Affairs, 1993. Print.

7 Siedentop, Larry. *Democracy in Europe*. New York: Columbia UP, 2001. Print.

well as (ii) the formation of a common moral identity.<sup>8</sup> These two prescriptions will be addressed and qualified below.

## CONSTRUCTING THE EUROPEAN CITIZEN

Centering his discussion of the EU on a synthesis of Alexis de Tocqueville's *Democracy in America*, Siedentop crafts an explicit parallel between the founding of the American federal state and the reforms he offers for the European continent. This juxtaposition seeks to advance the notion that for the EU to streamline its operations, reduce its “democratic deficit,” and thrive despite economic challenges, it must engender the preconditions for a federal state as they existed in post-revolutionary America. As such, Siedentop proposes a reliance on a politically active “culture of consent” within the European population, which he believes can be achieved through an adherence to a universal application of the English language and through the formulation of a common Euro-centric identity.

Yet, this bottom-up approach – a movement from reformed citizenry to remade supranational institutions – proves to be potentially detrimental to the fundamental aims of the union. That is to say that the present system is predicated on the aggregation of divergent interests – political, cultural, linguistic, and otherwise – in the formation of pan-European policies. Thus, the creation of a monolithic body of English-speaking Europhiles who would be willing to divest national sovereignty for the sake of European federalism would prove highly detrimental to overarching EU objectives. This argument is encapsulated by Moravcsik in his scathing review of *Democracy in Europe*, as he notes that the “true pillars of the EU – economic welfare, human rights, liberal democracy, and the rule of law – appeal to Europeans regardless of national or political identity.”<sup>9</sup> This universality sloughs off cultural and linguistic identifiers and grants the EU a tacit mandate to pursue policies and objectives that impact a continental population as heterogeneous as the member

8 Ibid.

9 Moravcsik, Andrew. “Despotism In Brussels? Misreading the European Union.” *Home | Foreign Affairs*. Web. <<http://www.foreignaffairs.com/articles/57040/andrew-moravcsik/despotism-in-brussels-misreading-the-european-union?page=show>>.

states that comprise the union itself. Thus, as Moravcsik emphasizes, the “institutions are stable not because they are culturally coherent, but because they serve the complex, increasingly interwoven interest of citizens in interdependent, advanced industrial nations.”<sup>10</sup> As such, the pursuit of a common pan-European identity cast in the mold of early American ethnic and linguistic uniformity will do very little to aid in the reformation of EU institutions.

Furthermore, on a more practical and statistical level, trends in voter participation and national identification do not bode well for Siedentop’s whiggish notion of cultural unification. In terms of voter participation in European Parliamentary elections, only 45.6 percent of the eligible electorate turned out in 2004, compared against 62 percent in 1979.<sup>11</sup> This precipitous drop in turnout not only mirrors international trends in voting, but also is one that is expected to continue into the foreseeable future.<sup>12</sup> Additionally, a recent Eurobarometer survey suggests that while 91 percent of those polled identified with their nation, only 49 percent felt an additional cultural attachment to the EU (Figure B).<sup>13</sup> Thus, the present population of the union hardly appears a ready fulcrum upon which to leverage Siedentop’s vision of a federated political system.

### A CRISIS OF MORAL IDENTITY?

For Siedentop, uniformity within the political realm might not prove to be enough to generate a functioning constitutional federation. Indeed, the author calls for extensive modification to the European continent’s moral compass as well. Stunningly, Siedentop posits a positive correlation between Judeo-Christian value sets and functioning democratic institutions. He holds that adherence to the “residual moral form” of these reli-

gious institutions forms a “necessary condition [for] sustaining a liberal democratic culture.”<sup>14</sup> Thus, continuing his American parallel, Siedentop points to the assumed historical ability of the United States to incorporate immigrants not only along political and cultural dimensions, but also within the moral sphere. In fact, Siedentop predicates his aforementioned notion of political commonality and American constitutionalism on the ability of a moral hegemony to shape public consciousness and in turn craft support for a federated democratic state. Along these controversial lines, then, Siedentop pushes for the importation of a common form of morality in the mold of a modern religion-based Marshall Plan. This Judeo-Christian prescription for European continental democracy, I contend, can be disputed and dismissed along two fronts: (i) by an examination of the present religiosity of the EU and its member states and (ii) through an understanding and an affirmation of the primarily secular goals of the present union.

While Siedentop claims that a communal moral compass aligned to the pole of Judeo-Christian values would inevitably facilitate the rise of a democratic constitutional continent, he appears to neglect the present religious composition of Europe. His argument vastly distorts the realities of religious affiliation among the member states of the EU and mistakenly situates the United States as a bastion of religious monoculture. Comparisons across the Atlantic yield results startlingly antithetical to Siedentop’s alarmist vantage point. For instance, a University of Copenhagen study conducted in 2004 concluded that based on survey data, the United States could be considered “religiously plural” when compared against its internally “religiously homogenous” European state counterparts.<sup>15</sup> Additionally, while nearly 80 percent of Americans identify with Judeo-Christian religious institutions, according to a Pew Research study, so too do nearly three-quarters of Europeans (Figures C & D).<sup>16</sup>

<sup>10</sup> Ibid.

<sup>11</sup> “Poll: Voter Interest in EU Elections Remains Low.” *EurActiv | European Union Information Website (EU and Europe)*. Web. <<http://www.euractiv.com/en/eu-elections/poll-voter-interest-eu-elections-remains-low/article-178667>>.

<sup>12</sup> Malkopoulous, Anthoula. *Lost Voters: Participation in EU Elections*. Print.

<sup>13</sup> “European Values and Identity.” *EurActiv | European Union Information Website (EU and Europe)*. Web. <<http://www.euractiv.com/en/culture/european-values-identity/article-154441>>.

<sup>14</sup> Siedentop, Larry. *Democracy in Europe*. New York: Columbia UP, 2001. Print. 182.

<sup>15</sup> Lüchau, Peter. *Report on Surveys of Religion in Europe and the United States*. Print.

<sup>16</sup> “Church Statistics and Religious Affiliations - U.S. Religious Landscape Study.” *Religion in American Culture* –

Taking these figures into account, Siedentop's argument then rests solely on the perception of low political salience as attributed to religious institutions in the policies enacted on the European continent. Here, the author's claim to the low efficacy of religiosity in public affairs would seem to be largely substantiated by the findings of the Copenhagen study, which noted that religion was typically both, "more pervasive [and] more accepted in the public debate in the United States than [it is] in Europe."<sup>17</sup> But this correlation is ultimately immaterial to the goals of the EU. That is, the religious composition of individual member states and the respective policy objectives attached to those moral roots are intrinsically separate and distinct from the competence of the union's institutions. This claim is substantiated by an episode drawn from the relatively recent failure of the EU's potential constitution in its attempt to gain traction and ratification as it emerged from the Convention on the Future of Europe.

Here, much like the aforementioned inclusion of the word "federal" in the TEU, several member states argued for the inclusion of an explicit reference to the common Judeo-Christian heritage of the union in the preamble of the constitution. This view was superseded by a more secular movement that supplanted such a reference with a phrase that referred to the, "cultural, religious, and humanist inheritance of Europe." Here, a Judeo-Christian value set was rejected as a criterion for policy competence and objective setting within the union as a whole. This decision was strikingly supported by many primarily Christian nations, including Spain, whose foreign minister, Miguel Moratinos, explained his nation's position by noting that, "Spain is a Catholic country, but in the European constitution our government is rather secular."<sup>18</sup> Given this perspective, the conclusion can be drawn that Siedentop's call for a common moral purpose within the citizenry of the EU

proves ineffectual and as unnecessary as his notions of political and linguistic unity in forging a new constitutional arrangement for the union.

## CONCLUDING REMARKS

Summarily, the foregoing concludes that there is limited applicability for Siedentop's claims regarding federation of EU institutions through political, cultural, and moral homogenization. As evidenced, these notions prove both impractical and ultimately detrimental to the very union that they are intended to improve. Both Siedentop and I agree on the need for radical reform within the EU for its continued viability, but we differ strongly on both the methods for such augmentation and the potential for success. Unlike Siedentop, I posit that the answer to the question of European federation does not lie in the modification of an intrinsically diverse citizenry. If federalism is to be the mode of governance of the EU – and I believe it should be – it must be brought about through a top-down reworking of the union, rather than assembled from an apathetic electorate. Thus, the impetus lies on the EU to reinforce its presently weak federal tendencies, expand the sphere of competence of its judiciary, and draft a forward-thinking constitution. Only in this way will the union be capable of crafting a federated polity from within its existing framework, rather than through Siedentop's proposed process of forcible cultural coalescence. Thus, there exists a path for the EU to tread in order to appropriately federalize, but whether it will choose to do so remains to be seen. ■

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*Pew Forum on Religion & Public Life*. Web. <<http://religions.pewforum.org/affiliations>>.

<sup>17</sup> Lüchau, Peter. *Report on Surveys of Religion in Europe and the United States*. Print.

<sup>18</sup> "Christianity Bedevils Talks on EU Treaty." *The Guardian*. Web. <<http://www.guardian.co.uk/world/2004/may/25/eu.religion>>.



FIGURE A: TREATY OF ROME NEGOTIATION, 1955-1958: PREFERENCES AND OUTCOMES.  
SOURCE: MORAVCSIK

Issue Area	Germany	France	Britain	Monnet & Action Committee	Outcome
Agriculture	Prefers status quo of bilateral arrangements to preferential arrangement unless common price subsidies remain high enough to maintain farm incomes.	Strongly supports regional arrangements to gain preferential access to German markets for surplus grain, sugar, dairy products, and beef. Seeks to ensure access for tropical products from overseas territories.	Opposes any preferential arrangement in order to protect low domestic prices, high direct subsidies, and grain imports from Commonwealth and world markets.	Opposes customs union.	Deadlines for elaboration by unanimity vote of a preferential Common Agricultural Policy with common prices and external levies. Negotiation of details postponed.
Atomic Energy	Favors only a minimal program	Favors preferential European market and intensive R&D cooperation. No compromise of French nuclear program.	Favors only a minimal program if any.	Very strongly supports, with clause to ban military use of nuclear materials.	Euratom is formed but remains minimal, with no preferential purchasing of uranium, modest common research, no ban on military use.

FIGURE B: ATTACHMENT TO EU & MEMBER STATE. SOURCE: EUROBAROMETER

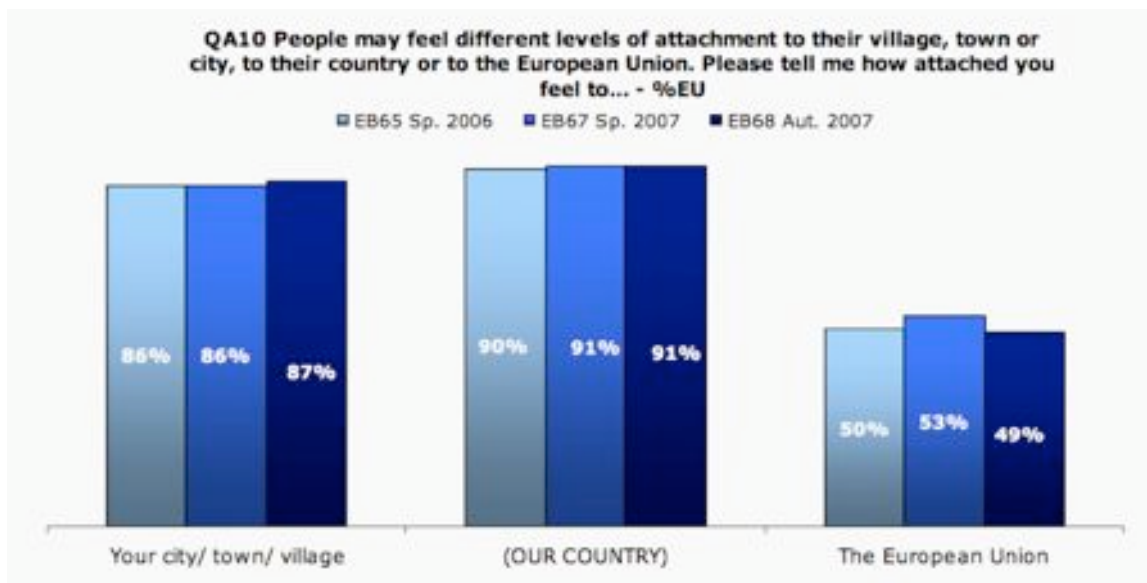


FIGURE C: RELIGIOUS AFFILIATIONS IN AMERICA BY DENOMINATION. SOURCE: PEW RESEARCH

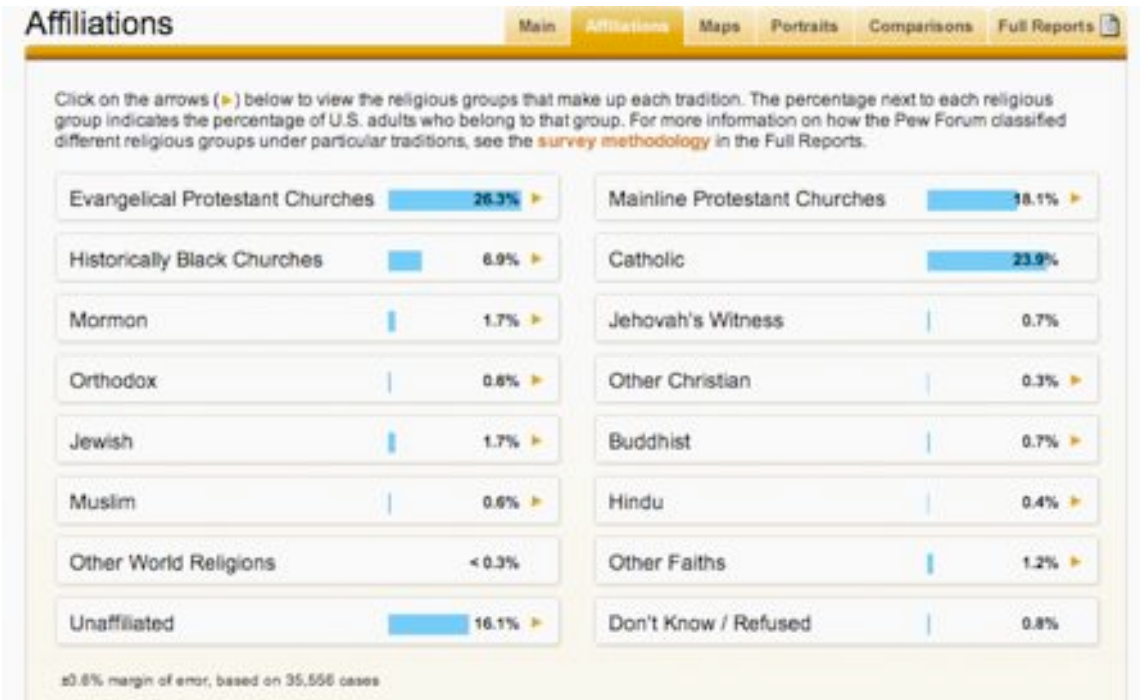
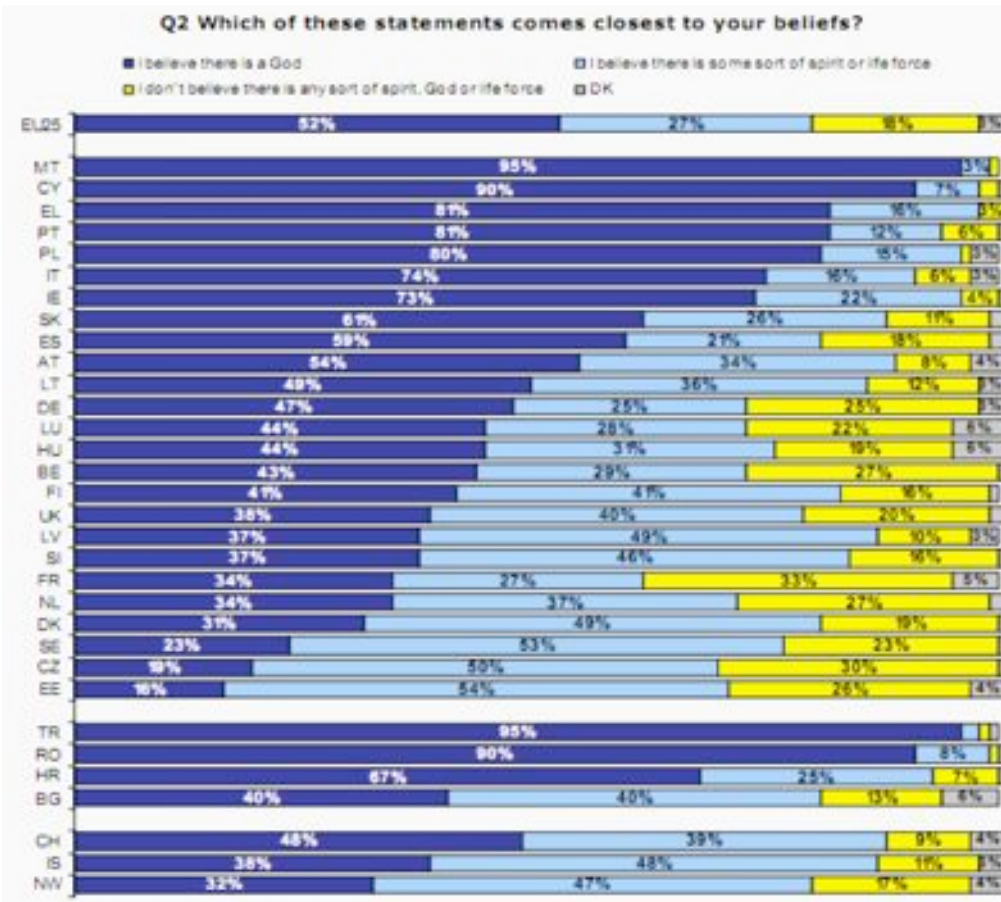


FIGURE D: RELIGIOUS AFFILIATIONS IN EUROPE BY COUNTRY. SOURCE: EUROBAROMETER



# Contextualizing the Bush Doctrine in American Diplomatic History

BY JONATHAN MESSING

To a large extent, the Global War on Terror has shaped the international political discourse of the early twenty-first century. Naturally, much attention has been given not only to the warfare, but also to the Bush administration's framing of the global conflict. While not explicitly codified in a doctrine, a specific set of assumptions and ideological perspectives seemingly formed the basis of the administration's foreign policy. In particular, the idea that 9/11 presented the United States with a unique opportunity to transform the international political landscape, and the related beliefs that the United States had the ability and the responsibility to do so, drove the administration's ambitious strategic aims and practices. By analyzing the rhetoric of the Bush administration in conjunction with that of previous administrations, this paper posits that these principles may have manifested themselves in a unique foreign policy under Bush, but that they were not particular to his administration. The "Bush Doctrine" represented an amplification of, but not a departure from, traditional themes of American foreign policy.

The Bush administration perceived 9/11 as a great opportunity to restructure the world along American ideological beliefs. In particular, the Bush adminis-

tration saw the attacks as an opportunity to revise the fragile global balance that came about after the collapse of the Soviet Union. The *National Security Strategy of the United States of America*, issued in September 2002, conveyed the idea that 9/11 should be viewed as the end of the post-Cold War transition period for international politics and a launching point for America's attainment of a new global order. It said:

An earthquake of the magnitude of 9/11 can shift the tectonic plates of international politics. The international system has been in flux since the collapse of the Soviet power. Now it is possible – indeed, probable – that that transition is coming to an end. If that is right, if the collapse of the Soviet Union and 9/11 bookend a major shift in international politics, then this is a period not just of grave danger, but of enormous opportunity.<sup>1</sup>

By interpreting the attacks as an affront to the world order and as an opportunity for the United States to reshape it, the Bush administration promoted the

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<sup>1</sup> Alex Callinicos, "Iraq: Fulcrum of World Politics," *Taylor and Francis* 26 (2005): 599.

idea of engaging in an ideological battle with an emphasis on opportunism. The dissolution of the threat of the Soviet Union and the emergence of the dangers of Islamic extremism marked the end of a period of transition in the international system. In essence, by framing the attacks as a major bookend in global history, the doctrine made the spread of American values into a rational and attainable goal as the world began to enter a new chapter of history.

President Bush's opportunistic reaction to the 9/11 attacks was reminiscent of President Wilson's interpretation of the global structure after World War I. In his annual address to Congress after the war, Wilson conveyed his belief that the world was witnessing a clash between democracy and autocracy. He asserted:

*I think we all realize that the day has come when Democracy is being put upon its final test. The Old World is just now suffering from a wanton rejection of the principle of democracy and a substitution of the principle of autocracy as asserted in the name, but without the authority and sanction, of the multitude. This is the time of all others when Democracy should prove its purity and its spiritual power to prevail.<sup>2</sup>*

Wilson articulated his belief that the principle of democracy, and all those who wished to live by it around the world, was being threatened by a despotic few. In articulating his own belief that the United States would “defend the peace against the threats from terrorists and tyrants” and “extend the peace by encouraging free and open societies on every continent,”<sup>3</sup> President Bush expressed a worldview akin to Wilson's. The two conveyed a sense that the world was dominated by a clash between freedom and repression. Further, the two envisioned a world in which free societies would triumph over and emerge from under the oppression of tyrants and terrorists. Operating within different circumstances

<sup>2</sup> Woodrow Wilson, “State of the Union Address,” December 7 1920, <<http://teachingamericanhistory.org/library/index.asp?document=1334>>

<sup>3</sup> George Bush, “Graduation Speech at West Point,” 1 June 2002, <<http://www.nytimes.com/2002/06/01/international/02PTX-WEB.html>>

nearly a century before the Bush presidency, Wilson's statement shows that President Bush's ideological vision for the world was not a part of a unique doctrine.

The Bush administration's belief in its power to restructure the world was also similar to the Truman administration's estimation of its own ability to transform the international political landscape after World War II. Drafted by the National Security Council under Condoleezza Rice, Bush's future Secretary of State, *The National Security Strategy of the United States of America* issued in 2002 outlined the administration's “forward strategy of freedom.” Elaborating on the administration's understanding of the 9/11 attacks, the document conveyed a sense of great confidence that the United States would transform the nature of international politics. Interpreting the attacks as both an affront to the world order and as an opportunity for the United States to reshape it, the document stated: “Before the clay is dry again America and our friends and allies must move to take advantage of these new opportunities. This is, then, a period akin to 1945 to 1947, when American leadership expanded the number of free and democratic states – Japan and Germany among the great Powers – to create a balance of power that favored freedom.”<sup>4</sup> To Rice and others in the administration, America had the potential to be as defining a force in the world as a sculptor is to his or her clay. This belief contributed, in part, to the public's conception of a “Bush Doctrine.” However, the confidence espoused in this passage pales in comparison to the beliefs of the Truman administration, which spanned, in part, the period mentioned by Rice. In particular, Truman's Secretary of State, Dean Acheson, compared the administration's successful creation of a liberal capitalist bloc after World War II to the creation of the world.<sup>5</sup> Comparing the statements of the two Secretaries of State, it appears to be the case that the starkest contrast between the administrations' visions was the scope of their ambition but not its scale. Whereas Truman's administration contented itself with the transformation of a bloc, Bush's aspired to reform the entire world. The Bush Doctrine was novel with regard to its intended reach but not its

<sup>4</sup> Callinicos, “Iraq: Fulcrum of World Politics,” 599.

<sup>5</sup> Ibid.

idealism.

Yet another component of the public's perception of the Bush Doctrine was the President's sense of personal responsibility for the future stability of the world. In the wake of the attacks of September 11, Bush promoted the belief that he had a personal responsibility to restructure the world towards freedom and thus create a more peaceful and prosperous planet. A week after the attacks, he is reported to have told one of his closest aides, "We have an opportunity to restructure the world toward freedom, and we have to get it right."<sup>6</sup> Bush's use of the first person conveys a sense of a personal mission. Bush further declared, "We understand history has called us into action, and we are not going to miss that opportunity to make the world more peaceful and more free."<sup>7</sup> Without equivocation, the President articulated the idea that some intangible force called "history" had called him into action. He was accountable not only to his populace, but to a higher force in the world.

The idea of turning a historical opportunity into a personal mission to restructure the world is a recurring one in American history. Perhaps the most overt example is the following declaration made by President Kennedy in his inaugural address: "In the long history of the world, only a few generations have been granted the role of defending freedom in its hour of maximum danger. I do not shrink from this responsibility – I welcome it."<sup>8</sup> Just as Kennedy welcomed his historical opportunity, Bush assumed responsibility for reshaping the world. As Bush states in his opening letter to the 2002 *National Security Strategy*, "In the new world we have entered, the only path to peace and security is the path of action...The United States welcomes our responsibility to lead in this great mission."<sup>9</sup> Additionally, just as Kennedy highlighted the rarity of his opportunity, Bush once asserted that history had given him a "unique op-

6 Robert Jervis, "Understanding the Bush Doctrine," *Political Science Quarterly* 118:3 (2003): 368.

7 Ibid.

8 Scott Kline, "The Culture War Gone Global: 'Family Values' and the Shape of US Foreign Policy," *International Relations* 18 (2004): 454.

9 George Bush, "Letter Accompanying National Security Strategy of the United States," Washington D.C., September 2002.



**Also related to Bush's assumption of personal responsibility for shaping the course of history was the administration's belief that the United States had a God-given duty to advance the spread of democracy in the world – a tradition in American political rhetoric.**

portunity to defend freedom."<sup>10</sup> For Bush's perception of his opportunity to be unique, however, there can be no precedent for such a view. Thus, when weighed against the Kennedy administration's professed understanding of its role in world history, the Bush administration's seems rather unexceptional.

Also related to Bush's assumption of personal responsibility for shaping the course of history was the administration's belief that the United States had a God-given duty to advance the spread of democracy in the world – a tradition in American political rhetoric. Highlighting this belief, Bush invoked a civil religion argument at the end of his 2003 State of the Union address, less than two months before the invasion of Iraq. He said, "Americans are a free people, who know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world, it is God's gift to humanity."<sup>11</sup> Bush articulated the idea that the spread of democracy is both a nexus between God and the world and also the destiny of mankind. In the same vein, President Kennedy elab-

10 Jervis, "Understanding the Bush Doctrine," 368.

11 Kline, "The Culture War Gone Global," 455.

orated on the connection between freedom and divine providence in his inaugural address. He said, “The same revolutionary beliefs for which our forebears fought are still at issue around the globe – the belief that the rights of man come not from the generosity of the state, but from the hand of God.”<sup>12</sup> Both Presidents conveyed what amounts to a more overtly religious version of a fundamental American belief found in the Declaration of Independence – man’s inalienable right of liberty. Just as the Declaration asserted that individuals are “endowed by their Creator”<sup>13</sup> with this right, Kennedy and Bush believed that individuals are endowed by God. In essence, the idea has persisted unchanged.

Bush’s belief that America must play a central role in advancing the cause of freedom in the world – indeed, of treating freedom as a God-given cause and the destiny of mankind – is not unique to his administration. Rather, it can be traced back to the tenets of Manifest Destiny and previous Presidents’ rhetorical adaptations of those themes. In a speech to Congress after WWI, President Wilson articulated the integration of Manifest Destiny into America’s foreign policy, saying, “This is the time of all others when Democracy should prove its purity and its spiritual power to prevail. It is surely the manifest destiny of the United States to lead in the attempt to make this spirit prevail.”<sup>14</sup> Wilson’s affirmation of the purity and spiritual power of democracy is akin to Bush’s claim that liberty is God’s gift to the world. Furthermore, almost a full century before Bush, Wilson was championing the belief that America should help steer the nations of the world to their common destiny of freedom.

In a related way, President Bush perceived the future stability of the world as dependent upon the outcome of a struggle between freedom and repression. If tyranny and oppression were to remain in the world, so too would terrorism, he argued. The post-9/11 political environment provided the United States with the prospect of advancing the spread of liberal democracy and of solidifying its security by striking at what it perceived

to be the source of this danger – oppression in the Muslim world. George Bush conveyed this sentiment, saying:

By advancing freedom in the greater Middle East, we help end a cycle of dictatorship and radicalism that brings millions of people to misery and brings danger to our own people...If the greater Middle East joins the democratic revolution that has reached much of the world...a trend of conflict and fear will be ended at its source.<sup>15</sup>

By splitting the world into two camps, those that have undergone the democratic revolution and those that have not, Bush articulated his view of the source of conflict in the world. Moreover, he used this global context to frame American military engagement as a means to the end of promoting freedom. Pointing to a self-perpetuating cycle of dictatorships and radicalism, Bush argued that an active spread of democracy would promote the United States’ security. In effect, the administration pursued a strategy that it believed would create a balance of power that favors freedom.<sup>16</sup>

President Bush’s interpretation of the role oppression plays in world history, and the need to confront it, may be best understood in the context of President Truman’s similar understanding nearly sixty years before. Disseminating the so-called “Truman Doctrine” before a joint session of Congress on March 12, 1947, Truman asserted: “The seeds of totalitarian regimes are nurtured by misery and want. They spread and grow in the evil soil of poverty and strife.”<sup>17</sup> A failure to deal with misery, want, poverty, and strife would lead to an alignment with the Soviets in opposition to the United States. Similar to Bush, Truman argued that these societies would eventually pose a threat to the United States. Thus, it was necessary to support those states financially and militarily. Truman established the means by which Bush was willing to attempt to advance freedom. Given the scale and scope of the efforts to oppose the Soviets and spread liberalism in the Cold War, Bush’s attempts to spread democracy do not seem that

12 John F. Kennedy, “Inaugural Address,” 20 January 1961, <<http://www.americanrhetoric.com/speeches/jfkinaugural.htm>>

13 The Declaration of Independence.

14 Woodrow Wilson, “State of the Union Address.”

15 Callinicos, “Iraq: Fulcrum of World Politics,” 601.

16 Ibid.

17 Kline, “The Culture War Gone Global,” 454.

grand.

President Bush's perception that the future stability of the world is dependent upon the outcome of a recurring historical struggle between good and evil also continued a theme propagated by the Reagan administration. Closing his 2003 State of the Union address, Bush declared: "We do not claim to know all the ways of Providence, yet we can trust in them, placing our confidence in the loving God behind all of life, and all of history."<sup>18</sup> This ultimate trust in God reads like President Reagan's proclamation before the British House of Commons that "the forces of good ultimately rally and triumph over evil."<sup>19</sup> Both presidents espoused a view of the world as one split between good and evil. Further, speaking at the pulpit of the National Cathedral in Washington, DC three days after the attacks of 9/11, Bush declared: "Our responsibility to history is already clear: to answer these attacks and rid the world of evil."<sup>20</sup> Once again iterating his historic role, President Bush's declaration of foreign policy objectives from a place typically reserved for religious sermons speaks to the administration's blending of the metaphysical and the political. Similarly, before the National Association of Evangelicals Convention in Florida, President Reagan referred to the Cold War as a "struggle between right and wrong and good and evil."<sup>21</sup> One salient difference between these two statements, however, is Bush's assumption of responsibility for the outcome of the recurring conflict. Whether the word "our" is understood to refer to his administration or the nation as a whole, Bush went beyond trusting that God would ensure that the forces of good would triumph over evil – he believed that he (or the nation as a whole) was responsible for bringing about that victory. In this way, Bush's rhetoric is nothing more than a continuation of old themes in modern circumstances with an emphasis on man's responsibility to history (or God).

Bush's tenet of spreading democracy abroad was a novel interpretation of the long-standing American

tradition of striving to be a city on a hill. The Bush administration both espoused this long-standing American belief and expanded upon it to serve its foreign policy ambitions. John Winthrop's "A Model of Christian Charity" sermon articulated the idea that America is a national manifestation of the biblical verse, "You are the light of the world. A city that is set on a hill cannot be hidden" (Matthew 5:14). Winthrop declared: "For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us."<sup>22</sup> This ideal has repeatedly resurfaced in the nation's presidential rhetoric, most recently in the Bush administration's more pronounced form. In his second inaugural address, Bush asserted that America had lit a fire in the minds of men and that "one day this untamed fire of freedom will reach the darkest corners of the earth."<sup>23</sup> While Bush's belief in the power of the American example is common to previous American leaders – Kennedy explicitly cited Winthrop in his own inaugural address – his ambitious interpretation of the theme is not. In April 2003, after the invasion of Iraq, Bush posited that "a free Iraq can be an example of reform and progress to all the Middle East."<sup>24</sup> In addition to simply recognizing that America's example could spur other nations to seek democracy on their own – Bush's spread of "fire" through the world is quite similar to Winthrop's "light" unto the nations – Bush conveyed the idea that America can actively export the light to other nations. In essence, Bush expanded upon the ideal of a "city on a hill" by turning it into an international franchise.

While the Iraq War may be seen as an expression of one of the tenets of the Bush Doctrine – the use of unilateral force – it also reflects the strategic thinking of the preceding decade more generally. In addition to the ideological motivations behind it, the Iraq war may be a consequence of the more material interest of solidifying America's global hegemony. In 1992 a leaked Pentagon document, *Defense Planning Guidance*, ar-

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18 Ibid, 455.

19 Ibid, 454.

20 Ibid, 455.

21 Ibid, 454.

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22 John Winthrop, "A Model of Christian Charity," On Board the Arbella, 1630, <<http://religiousfreedom.lib.virginia.edu/sacred/charity.html>>

23 George Bush, "Second Inaugural Address," 20 January 2005, <<http://www.npr.org/templates/story/story.php?storyId=4460172>>

24 Jervis, "Understanding the Bush Doctrine," 368.

ticulated this strategic imperative:

Our first objective is to prevent the re-emergence of a new rival. This...requires that we endeavor to prevent any hostile power from dominating a region whose resources would, under consolidated control, be sufficient to generate global power...We must maintain the mechanisms for deterring competitors from even aspiring to a larger regional or global role.<sup>25</sup>

Occupying Iraq went beyond preventing another power from controlling essential resources – it may be viewed as an attempt by the United States to control those resources itself. Moreover, the United States' shock-and-awe military tactics were intended to dissuade potential competitors from aspiring to greater global influence as much as they were meant to demoralize the primary adversary. In the words of the 2002 *National Security Strategy*: "Our forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in the hopes of surpassing, or equaling, the power of the United States."<sup>26</sup> While certain key members of the Bush administration were involved in the preparation of the Pentagon document – Paul Wolfowitz and Dick Cheney in particular – the comparison shows that the Bush administration's actions were not only a response to the contemporary political landscape, but also to the fears and strategic planning of the preceding decade.

The Bush administration's desire to act unilaterally might also be understood in the context of the historical American desire for flexibility in international affairs. While the third section of the *National Security Strategy* of 2002 is titled "Strengthen Alliances to Defeat Global Terrorism," its content points to a different approach. Elaborating on the ways in which the administration sought to destroy terrorist networks through global partnerships, the document provided the following caveat: "While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone."<sup>27</sup> As op-

posed to seeking to act in tandem with the international community, the United States only sought backing. In other words, by not committing to act in conjunction with the international community, the United States retained the right to act however it saw fit.

President Bush's formation of a "Coalition of the Willing" for the invasion of Iraq might be viewed as a manifestation of America's traditional desire to maintain a degree of separation from allies. As the United States contributed the vast majority of the troops for the mission, the coalition was more a collection of states that vocally supported the war than an alliance. In a similar fashion, President Wilson insisted that the coalition for World War I be called the "Allied and Associated Powers."<sup>28</sup> Wilson accentuated the idea that the United States was not an ally, but an associate – a nation that retained the right to act independently. Just as Wilson enhanced America's ability to act independently by distancing it from an existing formal alliance, Bush guaranteed freedom of action by seeking only the support of other nations – by not even creating an alliance. Thus, while the willingness to act without any international assistance might be particular to the Bush administration, the desire to maintain freedom of action is not.

The Bush administration's preference for unilateralism might also be a consequence of the disparity in capabilities between the United States and Europe. Over the past ten years, the number of active duty military personnel in Europe has declined by a third, and the United States has gone from funding about one half of the NATO defense budget to about three quarters of it.<sup>29</sup> Given also the lopsided commitments of the United States and Europe to the "joint" military interventions of the 1990s, unilateralism may indeed have been the most rational course for Bush to take. According to James Mann, the French Ambassador to Washington, Francois Bujonde L'Estan, described the United States' rejection of the offer of French troops for the War in Af-

25 Callinicos, "Iraq: Fulcrum of World Politics," 598.

26 White House, "National Security Strategy of the United States," Washington DC: September 2002: 30.

27 National Security Strategy, 6.

28 Jervis, "Understanding the Bush Doctrine," 383.

29 Lawrence F. Kaplan. "Open Wide: How Libya Revealed the Huge Gap Between U.S. and European Military Might," The New Republic, 26 April 2011, <<http://www.tnr.com/article/crossings/87377/libya-nato-military-power-europe-us?page=1,0>>



ghanistan as the “Kosovo syndrome.” He explains:

During the 1990s American military leaders had been exasperated by the process of seeking consensus within NATO for military action in the Balkans...This particular strand of American unilateralism, then, did not originate with the Bush administration. It grew directly out of the military realities of the 1990s: the operational difficulties between the US and allied forces in the Balkans and the overall disparity in military power between America and Europe.<sup>30</sup>

Kosovo demonstrated the operational difficulties of military coordination that President Wilson, and later Bush, sought to avoid. In addition, that intervention, in which 83 percent of the bombs dropped came from American planes,<sup>31</sup> exemplified the inevitable lopsided nature of any American alliances. In the words of President Bush’s Secretary of Defense, Robert Gates, NATO is “evolving into a two-tiered alliance, in which you have some allies willing to fight and die to protect people’s security and others who are not.”<sup>32</sup> While the Bush administration may indeed have embraced unilateralism more readily than previous administrations, it may not have had any other option.

The Bush administration’s assertion of its right to launch unilateral, preventive wars anywhere in the world also represented a growing ambitiousness of the United States on the world stage, but not a departure from previous administration’s foreign policy. The threat of American unilateral action extends as far back as the Monroe Doctrine, which warned the world “that this hemisphere intends to remain the master of its own house.”<sup>33</sup> In essence, the doctrine stated that the United States would regard threats against any nation in the western hemisphere as threats against itself. Coupled with President Roosevelt’s corollary, which explained that “the adherence of the United States to the Monroe Doctrine may force the United States...to the exercise of



**As opposed to crafting policies in response to the dangers that adversaries pose, the administration sought to eliminate the need for any fear in the first place.**

an international police power,”<sup>34</sup> these doctrines established a precedent for preventive war. The United States would act to eliminate threats to its national security before they fully materialized. Moreover, this attempt by James Monroe and Theodore Roosevelt to prevent the emergence of a rival in the Western hemisphere is similar to the attempt by the Bush administration to prevent the emergence of a new rival more generally. President Bush’s warning that the United States would deal with threats to itself and its interests before they have “fully formed”<sup>35</sup> may be perceived as novel in the scope of its audience – the entire world – but not its content.

In the context of the ideology of previous administrations, the Bush administration’s is not unique. However, while it may have only adapted previous administration’s policies and traditional American beliefs, the Bush Doctrine did represent a transformation of the United States’ conception of what constitutes national security. In a speech in Cincinnati on October 7, 2002, President Bush proclaimed, “We will not live in fear.”<sup>36</sup> This simple statement demonstrates a larger shift in the thinking concerning the country’s security. As opposed

30 Callinicos, “Iraq: Fulcrum of World Politics,” 597.

31 Kaplan, “Open Wide.”

32 Ibid.

33 James Monroe, “Annual Message to Congress,” 2 December 1823, <<http://millercenter.org/scripps/archive/speeches/detail/3604>>

34 Theodore Roosevelt, “Annual Message to Congress,” 6 December 1904, <<http://ednet.rvc.cc.il.us/~PeterR/IR/docs/trcors.htm>>

35 George Bush, “Letter Accompanying National Security Strategy.”

36 Jervis, “Understanding the Bush Doctrine,” 371.

to crafting policies in response to the dangers that adversaries pose, the administration sought to eliminate the need for any fear in the first place. In the process, though, the administration created a new danger. As Edmund Burke put it, “I dread our own power and our own ambition; I dread our being too much dreaded. It is ridiculous to say that we are not men, and that, as men, we shall never wish to aggrandize ourselves.”<sup>37</sup> Burke alluded to the fact that from the perspective of others, the United States not only deals with dangers to international security, but that its own power and ambition pose a threat to stability as well. Even if the United States has good intentions for all nations, the rest of the world does not necessarily view its power as benign. An incorrect global assessment of the United States’ goals can create friction in the international system. Therefore, without rejecting or endorsing the Bush administration’s national security policies, it is important to recognize that the United States should adhere to its principles and ideology, but should always strive to behave in ways that reassure other nations of its intentions and vision. ■

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<sup>37</sup> Ibid, 380.

# Interview

## with John Lapinski

CONDUCTED BY ABIGAIL HATHAWAY

John Lapinski is an Associate Professor of Political Science and Undergraduate Chair of the Political Science Department at the University of Pennsylvania. He also works as a Senior Election Analyst at NBC News.

Prior to joining Penn, he was an Associate Professor of Political Science at Yale University. His primary area of research is concerned with understanding lawmaking in Congress. He has also taught and written about congressional and presidential campaigns and elections, American national institutions, American political development, and quantitative methods. Professor Lapinski's research has appeared in *the American Journal of Political Science*, *Perspectives on Politics*, *the Journal of Politics*, and *the British Journal of Politics*.



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*SOUND POLITICKS SAT DOWN WITH PROFESSOR LAPINSKI TO DISCUSS THE 2012 PRESIDENTIAL ELECTION AND POLITICAL POLARIZATION IN CONGRESS.*

**YOU HAVE EXPERIENCE WORKING IN THE MEDIA INDUSTRY. ARE THERE ANY ASPECTS OF THE CAMPAIGN OR THE CANDIDATES THAT YOU THINK THE MEDIA OVERLOOKS?**

It's not so much that there are very many aspects of the candidates that are overlooked. Often times what you see is that certain aspects of the candidates that might get more attention than they should. It really is dependent on and contingent on which race

you're looking at—the 2012 Republican primary is a unique race. It's a unique race on the Republican side in the sense that it has gone on for so long. One of the things that is different about campaigns today (not necessarily just in 2012, but over the last few cycles) is that these campaigns are going on and on and on. We can go back and look at the 2008 Democratic nomination contest. That was sort of an epic battle in the sense that it lasted into June. When you have races that go on this long and also the proliferation of media—in which everything from new media to bloggers to nontraditional

media are becoming more accepted sources—very few things get overlooked. What often times gets too much attention is the trivial. For example, we can look at the Etch A Sketch comment made by Mitt Romney’s senior campaign adviser following the Illinois primary.

*[From CNN: Eric Fehrstrom, Romney’s senior campaign adviser, was asked in a CNN interview Wednesday morning whether the former Massachusetts governor had been forced to adopt conservative positions in the rugged race that could hurt his standing with moderates in November’s general election. “I think you hit a reset button for the fall campaign. Everything changes,” Fehrstrom responded. “It’s almost like an Etch A Sketch. You can kind of shake it up, and we start all over again.”]*

A lot of people have talked about the Etch A Sketch comment as being one of those legendary missteps on the campaign trail. You can go through history and come up with lots of different examples of where people have done things that were not the best things for their campaigns. The Etch A Sketch controversy comes after Mitt Romney’s huge win in Illinois. You would think the discussion after a huge win in Illinois would be about the huge win in Illinois. Illinois is less evangelical, and the evangelical split in the electorate is clearly what is driving this Republican contest, so we can talk about how that played out in Illinois, in Chicago, and in the suburbs. No, what the media talked about was Etch A Sketch, and it got a tremendous amount of attention when it was something that Romney himself didn’t even say—it was one of his campaign aides. What I sometimes think is that the trivial gets blown out of proportion and there’s an easy reason for it. I think that people think it’s cute and fun and sometimes that gets more attention than I think it should. Things that are funny are easy to latch on to, but they are not very substantive. Some people will make the case that it is substantive because it speaks to Romney’s character and the question of whether he is a flip-flopper. Still,

Mitt Romney himself didn’t make the comment, and yet all of the major media outlets have covered the story. The question is, in the context of the major Illinois win and the other substantive parts of the campaign, are these trivial things worth our time? I wouldn’t say that you shouldn’t report on something like this, but should it dominate the media cycle for days? I think that’s an overemphasis.

IN YOUR 2004 ESSAY ENTITLED “‘TARGETED’ ADVERTISING AND VOTER TURNOUT: AN EXPERIMENTAL STUDY OF THE 2000 PRESIDENTIAL ELECTION,” YOU DISCUSS THE RELATIVELY NEUTRAL EFFECT OF NEGATIVE ADVERTISING ON VOTER TURNOUT. THIS ELECTION CYCLE, *THE WASHINGTON POST* HAS REPORTED THAT NEGATIVE ADVERTISING IN THE GOP PRIMARIES HAS SHOT UP TO 50 PERCENT OF ALL ADVERTISING, UP FROM ONLY SIX PERCENT IN 2008. WILL THIS AFFECT VOTER TURNOUT THIS YEAR IN A DIFFERENT WAY THAN YOU THOUGHT IT WOULD IN 2000?

Clearly the dynamics of campaigns have changed since I wrote that paper and one of the dynamics that has changed is that super PACs exist where they didn’t used to be able to exist. The Citizens United Supreme Court case has altered the dynamics of presidential campaigns and campaigns in general. The flow of money has increased in politics. That case was almost legislation and is sometimes called the ‘local television recovery act’ in the sense that so much money began flowing into local television stations. What I think is funny is that a lot of people say, ‘Oh my goodness, all this negativity is decreasing turnout,’ and their evidence is the 2012 GOP nominating contest—but it’s not true. For example, I just finished covering the Louisiana and Illinois primaries and there are all these places where turnout is up and other places where it is down. It’s unusual. In this case there have been tremendous amounts of negative advertising and the turnout is uneven. There certainly seem to be some issues with enthusiasm in this contest, but it really varies from state to state. Some of our turnouts have been record turnouts and others have been depressed. I don’t think you can

<sup>1</sup> [http://articles.cnn.com/2012-03-21/politics/politics\\_campaign-wrap\\_1\\_mitt-romney-eric-fehrstrom-general-election?s=PM:POLITICS](http://articles.cnn.com/2012-03-21/politics/politics_campaign-wrap_1_mitt-romney-eric-fehrstrom-general-election?s=PM:POLITICS)

draw a causal link between the negativity and whether turnout will be low in the primaries or in the general election. What determines turnout is often the get out the vote (GOTV) efforts. Those GOTV efforts have to do with pounding the pavement and personal involvement. President Obama showed this in his 2008 primary victory by building up these massive organizations state-by-state and getting voters into the polls.

I do think that you can do things with negative advertising. For example, Mitt Romney is spending tremendous amounts of money on negative advertising and it has certainly helped him in these states, as he has beaten down a lot of his opponents. Anecdotally, it seems to have worked well for him, but turnout is very difficult to understand. One of the difficult things in my job, in projecting races for the network, is that often times you will see media outlets look at exit polls before the polls close and they will say that turnout is either high or low. The exit polls have no ability to tell you what turnout is. People completely misunderstand this and professional reporters do not understand that you cannot say anything about turnout with those exit polls. The only way you can tell turnout is when you actually start seeing the vote. One of the other things that I do when I do projections is that I use the real vote as it is flowing in, and as I see patterns in certain counties, I can tell you pretty early on what is happening. I can look at key places and make comparisons between what's going on now and what went on in the last election. And if I get enough of those comparisons, I can do an extrapolation and use models to determine what we think turnout will be.

DO YOU EXPECT AN INCREASE OR DECREASE IN THE NUMBER OF COLLEGE-AGE VOTERS IN THIS ELECTION AS COMPARED TO THE 2008 ELECTION? WHAT ABOUT AN INCREASE OR DECREASE IN THEIR IMPACT ON THE OUTCOME OF THE ELECTION?

Let's start with the impact—because there's no question that the young vote is going to be extremely important. One of the things that we've seen in the 2012 Republican primaries and caucuses is that there are really very few young people participating. In 2008, on the Democratic side, that young group was extremely important. There's no question that it is harmful for Democrats, all the way from President Obama down the ticket, if the young vote doesn't turn out. There's a lot at stake here in the sense of whether these voters turn out or not. The big question is: will they? Nobody knows the answer to that yet. Anybody who is making inferences about what turnout will be like in the fall has no idea what they're talking about in the sense that it's not possible to know yet. We don't even know who the Republican nominee will be yet. It's probably going to be Romney because he has such a huge delegate lead, but we don't know yet because he's not there. It's going to depend a little bit on who the Republican candidate is and it's certainly going to depend on whether President Obama can have the same sort of GOTV efforts in 2012 as in 2008, and that's an open question. I think that there's going to be a huge push and he's going to put a tremendous amount of money into those efforts. You're going to see a presence on campus here and on campuses elsewhere. If the past informs us of the future, my guess is that he's going to have a pretty good organization to do that, but we can't be sure because his polling numbers have not been as good as they were for a while—we will see.

YOU'VE DONE WORK ON THE EFFECTS OF RACE IN POLICY CONTESTS. DO YOU FEEL THAT RACE HAS BECOME MORE OR LESS OF AN ISSUE IN PRESIDENT OBAMA'S SECOND BID FOR THE PRESIDENCY?

I think that the emphasis will be different this time. Last time was historic because President Obama is the first African American president. What was epic in the 2008 campaign was that, if a Democrat were to win the general election, we knew that it was either going to be an African American or a woman. A lot of interesting conversations took place in the primaries about gender and race. The question now is different—I might have answered this question differently if you asked me a couple of weeks ago instead of today. With the death of Trayvon Martin, race has been brought back front and center. Right now, it's kind of early to say exactly how this is going to play out, but this particular incident is going to linger for a while and bring up a lot of conversations. I think that it's also going to matter who wins the Republican nomination. There is a lot of variation in how this can play out, so this question can go either way. The one thing I do think will be the case is that Obama will still be able to count on some strong support from the African American vote. I've said that we can't say a lot about turnout, but my guess is that communities such as churches will lead a strong effort to turn out the African American vote. If I were a betting person, which I'm not, I would say that probably that would work because Obama already has networks in place that haven't gone away, but again, we'll have to see.

DO YOU THINK THE PARTY PRIMARY PROCESS LEADS TO MORE IDEOLOGICALLY EXTREME CANDIDATES?

One interesting phenomenon that could lead to polarization—this is more focused on the congressional level—is when you have events in which very small percentages of the electorate participate. Often times these very small percentages have very extreme opinions. If you have extremes participating, you are going to get extreme candidates. For example, we can see right now that caucuses are events in which only a few hundred people participate because it is very difficult to participate. These caucuses require that people spend a lot of time participating. A caucus can be a several hour affair if not longer.

One of the things that we are seeing right now on the Republican side—we can easily imagine it turning out differently on the Democratic side—is that every single incumbent Republican is fearful of a challenge from a Tea Partier. What I mean by a Tea Partier is someone ideologically more conservative and more extreme than the incumbent. That is where a lot of the action is right now in congressional races. People talk about the incumbency advantage and it may be the case that if the incumbent survives a primary challenge that they have a high probability of winning, but winning is conditional on that happening. There's not that many moderates in Congress anymore, but the few that are there are fearful. A lot of the Republicans who are going to be challenged are certainly not liberals. Orrin Hatch is not a liberal—anybody who thinks that is sadly mistaken. He's pretty well positioned ideologically in his state. Nobody is thinking Ted Kennedy when they think Orrin Hatch. The system is structured in a way that can lead to more extreme candidates. Now what can you do to correct for that? For example, at the

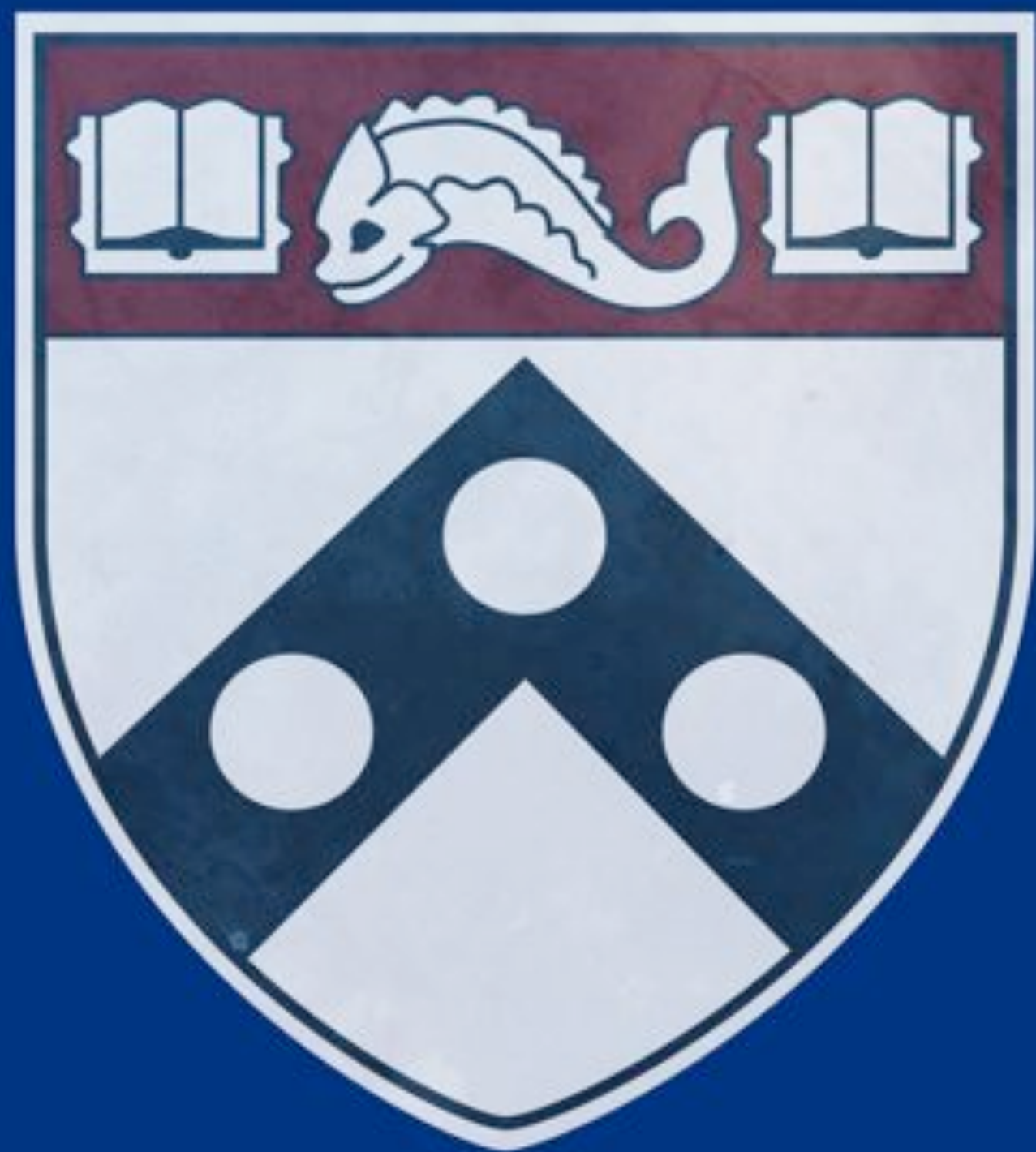
presidential level, you could get rid of caucuses and have a primary system where it's easier to participate. That would lead to a different dynamic. Some of the caucuses are very difficult to understand and have multiple layers. These rules matter and are consequential. When you have rules that influence outcomes, the way you get around that is to change the rules. Often times the rules can be changed. I think what you are going to see in 2016—this is me completely speculating—is that some states that are not happy with the caucus process could switch to primaries. I don't think Iowa would change their caucus system, but I don't think that they were particularly happy that they had two different winners on two different nights. There have been other states that have had other problems running their caucuses smoothly. I can see some of these caucus states changing to primaries.

A LOT HAS BEEN SAID RECENTLY ABOUT THE LACK OF BIPARTISANSHIP, THE INCREASING POLARIZATION (SINCE THE 1950S), AND THE RISE IN LEGISLATIVE GRIDLOCK IN CONGRESS. HOW SIGNIFICANT ARE THESE PROBLEMS WHEN YOU TAKE A LONG TERM HISTORICAL VIEW OF CONGRESS? ARE TODAY'S CONGRESSIONAL PROBLEMS SIGNIFICANT EVEN WHEN YOU LOOK AT ALL OF AMERICAN HISTORY, OR ARE THEY RELATIVELY INSIGNIFICANT IN COMPARISON TO ORGANIZATIONAL PROBLEMS THAT EARLIER CONGRESSES FACED?

First of all, some of the work that I'm doing now shows that there has always been polarization on domestic issues—not at this extreme level that exists today, but there has always been some level of polarization between the two parties. Historical students of Congress, and I consider myself to be one of them, find

that there were *extreme* levels of polarization in Congress. In the 1890s, for example, Congress experienced some of the highest polarization that this country has ever seen, but this polarization was sectionally based. It was polarization in that some people favored gold instead of silver or had strong positions on tariffs. These were all issues with very material consequences for different regions of the country. You saw a different, economically oriented type of polarization.

If you were to go back and look at the years following World War II, the coalitions were that were passing landmark laws were almost all bipartisan. You never saw a major piece of legislation pass without a serious bipartisan coalition. This lasted certainly through the 1970s and into the 1980s in a pretty substantial way. That said, when you look at the 111<sup>th</sup> Congress, you see a Congress that has accomplished a lot without that bipartisanship. You can look at the Affordable Care Act, which was not bipartisan but was certainly a landmark law. From the long-term perspective, Congress has indeed changed, but is still getting things done. Still, Congress pays a price for polarization. Congress has never been revered as an institution. If you were to look at Congress historically, the Senate in the 1890s was thought of as a millionaire's club and fared poorly in public opinion polls. Today, it is hard to escape noticing that Congress is being rated in the single digits—it's pretty sad and pathetic. ■



*Sound Politicks*

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