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Table of Contents

Title Page
page 1

Editorial Board
page 2

Table of Contents
page 3

Preface
Christopher R. Binetti
page 5

Discussion
Christopher R. Binetti
page 5

Vulnerable Rural Communities and Inadequately Prepared Emergency Medical Services
Allison G. S. Knox
page 10

A Voice in the Progressive Wilderness- Left Liberalism as a Minority Ideology in the
Contemporary American Left
Christopher R. Binetti
page 32

Vouching for the Market: The History of a Concept in Medicare Reform
Jeremy Johnson & Daniel Ehlke
page 53

The Cold War as Tragedy & Farce: Graham Greene's *The Quiet American* & *Our Man in
Havana*, the Texts & Three Films
Thomas Lansburg
page 78

The Extraordinary Effects of Ordinary Politics: Constitutional Rights During War and Crisis-
Justin Wert
page 93

Hate Gets Under The Skin- Cohesive Identity and Stopping the Murders in Mesopotamia
Christopher R. Binetti
page 129

Looking at what is Ahead for NJ Paid Family Leave After Ten Years

John Saimbert
page161

Closing
Allison G.S. Knox
page 170

Preface

Christopher R. Binetti

This journal began as two distinct projects that merged together. The first was to fix a problem that I noticed as junior political scientist born and raised in the swamps and hills of New Jersey. New Jersey did not have a journal that had even as a secondary or tertiary focus, New Jersey politics. This, I saw, had real-world implications, in that New Jersey politicians had no academic scrutiny to fear. So, part of the first project was to have articles studying New Jerseyan politics. I always wished to showcase New Jerseyan junior political scientists like myself.

My second project was to ensure that there was a journal that dealt with history and politics in a scholarly fashion. This journal has combined the two projects into one comprehensive journal. Every issue, we will endeavor to do three things at least: include articles on state and local politics, often including New Jersey cases. We also hope to include public policy and political issues that will potentially affect New Jersey citizens, residents and other Americans across the country. The journal will include articles by scholars in New Jersey and beyond. This is the first journal of its kind, a general that explores and celebrates New Jersey as a distinct polity unlike any other.

I specifically want to thank the New Jersey State Library for the opportunity to allow New Jersey scholars the opportunity to collaborate and share their research and knowledge with each other and political science enthusiasts.

We hope you enjoy the first issue of the *New Jersey Journal of Politics*.

Discussion
Christopher R. Binetti

The first article in this journal is by Allison G. S. Knox entitled, “*Vulnerable Rural Communities and Inadequately Prepared Emergency Medical Services*” argues that rural communities are especially vulnerable to crises and emergencies. This can include traditional

emergency management concerns like terrorism or, as we all now realize, the primordial threat of epidemics. Knox looks at what the federal government is doing and not doing in terms of protecting rural communities from healthcare emergencies. She also draws our attention to matters of state and local politics. The truth is that in states where urban voters outnumber rural voters, like in New Jersey, there will be an inherent problem in ensuring adequate healthcare access to rural communities due demographics and a lack of representation for the impoverished rural voters. However, even in rural states, the emergency healthcare needs of rural communities are often underserved, partly because of the poverty of the states and regions involved, partly due to decreasing power of rural communities, and like everything else, partly due to political polarization.

Knox then looks at an attempt to fix the problem, the recent SIREN Act. While she is optimistic that the Act will help to some degree, she worries that rural emergency management has certain endemic practical and political problems that will not easily go away. Perhaps, her next area of research will look at this problem from the state level.

In our second article, “A Voice in the Progressive Wilderness, A Voice in the Progressive Wilderness- Left Liberalism as a Minority Ideology in the Contemporary American Left” Christopher Binetti argues that what we conventionally call the liberal mainstream is in fact no longer liberal, but its opposite, progressive. He argues that progressivism is a leftist ideology that illiberal and intolerant and fully distinct from classical American left liberalism, which traditionally kept the American left stable and non-radical. He argues that progressivism quietly hijacked the name of liberalism and has created a distinctly different, and in his opinion, less good, ideology than left liberal. An open left liberal, the author admits to having an ideological

interest in the subject matter, as he talks about how left liberalism and left liberals are in fact marginalized by progressivism.

He concludes his article by looking into the Wage Theft Act, a New Jersey law that combines criminal and civil law in a way that the author argues is an affront to the rule of law as well as liberal and republican principles. In the Wage Theft Act, if a business owner fails to pay one's employees three times in a period of six years by mistake, one will go to jail for up to 18 months in addition to very serious civil penalties. This, he argues, is what progressivism is really about, taking away the freedom of the opponents of progressivism and giving that freedom to the supporters of progressivism. Progressivism, he implies, is thus zero-sum, while left liberalism is at least largely sum positive.

In our third article, *Vouching for the Market: The History of a Concept in Medicare Reform*, Jeremy Johnson and Daniel Ehkle discusses the perennial, as he calls it, appeal of Medicare vouchers, particularly on the political right. They discuss this polarizing issue, which curdles the blood of many a leftist while make the hearts of many a rightist leap. They talk about the history of proposals to create a Medicare voucher system, which is less extreme form of Medicare privatization. It has never been terribly successful in terms of getting passed into law at the federal level, but the idea of the government giving money to people as part of their Medicare so that they can buy private insurance remains popular in certain corners of the political right.

Johnson and Ehlke's article is particularly important in that while the political left is demanding the elimination of private insurance to homogenize Medicare and the rest of the insurance industry, the Medicare voucher people are also trying to homogenize Medicare and the rest of the insurance market, just in the exact opposite direction. Johnson and Ehlke are showing

that while we view the first project as mainstream, we view the second and no-more radical idea of privatizing the market further to some alien idea from another age. In the end, Johnson and Ehlke's piece shows us that partisanship drives one's view of whether either, both, or neither of these proposals, Medicare for all, or Medicare vouchers/partial privatization of Medicare are indeed radical.

In our fourth article, we go from a more right-wing perspective to a solidly left-wing one. In "*The Cold War as Tragedy and Farce: Graham Greene's The Quiet American and Our Man in Havana, the Texts and Three Films*" Thomas Lansburg looks at Graham Greene's Cold War novels and the films that they spawned. Graham Greene was anything but a patriot during the Cold War, cynically attacking the whole reason for the United States' resistance to Soviet aggression. In many ways, Greene reads as very modern, with an unwillingness to adhere to nationalist ideals and with vague internationalist ideals that ultimately make resistance to evil impossible. Lansburg finds Greene to be fascinating, an author who subverts deep American values by arguing that those values are in fact unreal to begin with; he argues that Greene does not make a farce of the Cold War, that it was already a farce. Many people would disagree with this assessment, but it is a far more interesting take than we are used to in our normal lives.

Lansburg's radical take on the Cold War through literature shows us that history is always debatable, which is a valuable insight. Television, plays, and movies, as well as novels, all have the ability to distort to illuminate history. More importantly, Lansburg makes the important point that Greene's work, which is not studied by political scientists, is not just subtly political, but overtly so and that we political scientists are missing sources for political science research by ignoring literature. This is a major contribution to our field of study.

In our fifth article, “The Extraordinary Effects of Ordinary Politics: Constitutional Rights During War and Crisis” by Justin Wert could not be more pertinent to today. His argument is that the distinction between crisis or emergency ethics and politics and ordinary politics is a false one. Wert argues, persuasively, that constitutional protections should not simply vanish during a crisis. This seems especially apropos today, where constitutional rights are being eviscerated in the name of crisis politics during the Coronavirus Crisis. Wert shows us that we lose our constitutional rights if we cannot analyze crises with our ordinary understanding of politics.

In our sixth article, “Hate Gets Under The Skin- Cohesive Identity and Stopping the Murders in Mesopotamia”, Christopher Binetti argues that we can understand the modern conflict in Iraq and eastern Syria between Kurds, Shiites, and Sunnis by understanding ancient history. He finds, using quantitative analysis, that the core region of the Ur III empire of 4,000 years ago correlates very strongly with the modern homeland of Iraqi Shiites. What that means is that state formations of the Bronze Age affect today’s conflict. Areas that were in the core of Ur III became Shiite and Arab while those that were outside of that core became either Shiite or Arab or neither but not both. Also, areas that spoke a Semitic language in the Bronze Age tend to speak a Semitic language today while those that did not then tend not to do so now. That is an amazing fact. Essentially Kurds live in areas that were non-Semitic areas outside of the Ur III core. Sunni Arabs live in areas that were Semitic outside of the Ur III core, with a few exceptions that are Semitic-speaking Syriac Christian areas. Shiite Arabs live in the old Ur III core area. Even with the rare exception to these rules, the correlation is still incredible. Essentially old demographic and state-based factors have real demographic and political consequences today.

In our last article, John Saimbert, in “Looking at NJ Paid Family Leave After Ten Years ” does a deep dive in New Jersey’s Paid Family Leave law ten years after implementation. He finds that it was an easy transition for many businesses, even small businesses and does not view the recent (2019) revisions that applied the law to employers of 30 or more employees to be overly harsh. He argues that if anything, the law does not go far enough, which is probably controversial in our state.

When we look at all of the seven articles, we see that our goals at a journal were met in this issue. We have plenty of discussions of state and local politics, especially that of New Jersey, while embracing our role as a journal dealing with history and politics. This issue establishes us as a leading journal in New Jersey politics, state and local politics, and history politics.

Vulnerable Rural Communities and Inadequately Prepared Emergency Medical Services

Allison G. S. Knox

Abstract

Barbera, Macintyre and DeAtley (2001) wrote an article entitled, “Ambulances to Nowhere: America’s Critical Shortfall in Medical Preparedness for Catastrophic Terrorism.” The article highlighted the inadequacies of hospitals in urban settings showcasing just how vulnerable hospitals would be in a significant terrorist attack. Following a similar thread, this article focuses on some of the vulnerabilities in rural communities as it relates to Emergency Medical Services. This paper worked to expose just how serious and complicated an issue this is. Further, this article also argues that there is a critical need for further research to make better recommendations for legislation beyond the SIREN Act and to specifically understand the vulnerabilities many rural communities have when it comes to mass casualty disasters.

Introduction

Washington, D.C. - the heart of America's democracy - is a source of tremendous anguish and hope as new policies emerge to manage the various problems American society is experiencing. Matching what's happening within society, new policies emerge and fall creating a rather complicated conundrum. Policies leave a ripple effect that often impacts other aspects of society. Complicating matters, the ebb and flow of society and its changing demographics create a need for change requiring lawmakers to rethink current policy.

One of these policy initiatives is healthcare. Healthcare in the United States is a particularly complicated hot-button political issue and is impacted by so many facets that it is often difficult to fix any one part of it. A perfectly wicked problem, (Head, 2008) there isn't any real solution that would perfectly tighten and fix all of healthcare as a public policy initiative.

Barbera et al., (2001) wrote an article entitled, “Ambulances to Nowhere: America’s Critical Shortfall in Medical Preparedness for Catastrophic Terrorism.” The article highlights the serious pitfalls the United States has when it comes to acts of terrorism. Barbera et al., (2001) argue that urban area hospitals are not ready for a serious terrorist attack. Barbera et al., (2001) do not discuss rural communities or ambulances in their discussion about the weaknesses of the emergency medical system. Ambulances are a major component of the emergency system and managing a terrorist attack. Thus, if a major mass casualty disaster were to happen in any one of the rural communities across the United States, the country would be at a serious disadvantage - and one that would be potentially catastrophic.

Barbera et al., (2001) may not have included the issue with ambulances and rural communities in their article because of how seriously complicated this issue is. It is its own “wicked problem” complicated by so many different factors that it is ultimately difficult to pinpoint any part of any solution, (Head, 2008) - and it is complicated by decades of the same problems emerging from within society.

Despite this, a recent surge of discussion has brought rural communities and ambulances to the forefront of the policy arena. Recently, the discussions have centered around the notion that rural communities throughout the United States are experiencing a severe shortage in Emergency Medical Services personnel. This issue ultimately means that individuals suffering from medical and trauma emergencies will not receive the care that they desperately need. Some of the issues affecting Emergency Medical Services in rural communities includes items such as recruitment and retention problems highlighting numerous personnel shortages. Other issues include hospital closings, healthcare disparities and numerous training issues. The policy area is

further complicated by the fact that many hospitals have closed in rural communities making it vastly more complicated for patients to be effectively transferred from their medical or trauma emergency to a life-saving emergency department. As the issue of recruitment and retention does appear to be one of the more complicated, yet - perhaps solvable issues, an old piece of legislation was recently added to the legislative agenda in the United States Congress working to alleviate some of the pressure caused by preparedness inadequacies in America's rural communities. The SIREN Act was recently created and passed in an effort to help alleviate some of the issues in the rural communities throughout the country. A grant program with good intentions and focused on providing financial support specifically for providing equipment, recruitment and retention, the problem with ambulances in rural communities remains far too complicated and dire for any one grant program to solve. Thus, despite the best efforts of the policy architects of the SIREN Act, rural communities remain one of the most serious areas of concern and are completely vulnerable should a major catastrophe hit.

Critical Discussion of the Problem & Barbera article

After the attacks on September 11, 2001, it became particularly obvious how the United States had deficits in managing such large-scale emergencies. The Department of Homeland Security originated out of these attacks and the notion that it was clear that agencies would need to collaborate much more to effectively manage terrorist attacks and other large-scale emergencies. Waugh and Streib, (2006) write, "Collaboration is a necessary foundation for dealing with both natural and technological hazards and disasters and the consequences of terrorism," (Waugh and Streib, 2006).

While agency collaboration was particularly important to managing September 11, it became particularly important to also look at other areas of emergency management - particularly where patient care was concerned. Barbera et al., (2001), highlighted some of the pitfalls hospitals and emergency departments had when discussing whether they would be able to handle a terrorist threat. Barbera et al., (2001), argue that hospitals would not be able to manage a terrorist attack in an urban setting and highlight the numerous reasons why they believe this to be the case. They write, “incorrect assumptions are being made about existing medical capabilities to treat mass casualties,” (Barbera, Macintyre, and DeAtley, 2001, p. 2). These assumptions highlight the problems showing that we assume that hospitals would be able to manage a catastrophic influx of patients, as Barbera et al., (2001) point out - illuminating the possibility that rural communities may, in fact, be far more vulnerable than currently argued in the policy arena. Barbera et al. (2001) argue that urban communities are ill prepared, but do not elaborate about rural communities.

Despite the fact that the United States has experienced numerous issues with rural communities - particularly where Emergency Medical Services is concerned, it is rather surprising that Barbera et al., (2001) did not discuss how this would impact rural communities, nor did they explain how ambulances would be affected. The article focuses on hospitals - an important area, but also casts a shadow on a rather large issue brewing in rural communities. These “argument holes” are particularly important because rural communities have had trouble with personnel and equipment for decades. More importantly, the problems rural communities are experiencing today would create ample opportunity for a terrorist attack with catastrophic damages. While hospitals may not be prepared to handle a disaster, ambulance agencies in rural

communities throughout the country are certainly not able to manage such an emergency with their current state of their Emergency Medical Services system.

Literature Review

EMS, Rural Communities and the Complicated Problem

While Barbera et al., (2001) did not discuss the issues associated with rural communities in their article entitled, “Ambulances to Nowhere”, rural communities remain one of the most complicated issues for Emergency Medical Services. The issues for the American rural communities stem from a number of inadequacies including funding, personnel recruitment, personnel retention, hospital closings and a critical lack of Emergency Medical Services agencies. These problems are not only particularly problematic, but ultimately contribute to serious deficits in rural communities that could lead to tremendous emergency management problems if a major incident were to occur in these regions. Despite the argument Barbera et al., (2001) make about the inadequacies of the urban hospitals, they do not mention the inadequacies facing Emergency Medical Services or the inadequacies where rural communities are concerned. To understand the issues with Emergency Medical Services in rural communities is complex including factors such as personnel recruitment and retention, healthcare disparities, the influx of critical patients because of the opioid epidemic, funding, medevacs and the realities of hospital closings. The issues with rural communities is particularly complex and is a perfect example of a wicked problem.

Recruitment and Retention

Understanding the various components of the issue at hand is critical to understanding the complexities of rural communities and ambulances - and the current shortcomings this specific policy initiative is facing. Personnel issues are one of the large problematic pieces of the issue - and, for a number of reasons including recruitment and retention. An article published by *NBC News* in October of 2019 highlighted the serious inadequacies of EMS agencies throughout rural communities in the United States, (Edwards, 2019). Edwards, (2019) explained that “ambulance services are closing in record numbers putting 60 million Americans at risk of being stranded in a medical emergency,” (Edwards, 2019). This issue is certainly alarming because it demonstrates a serious lack of adequate emergency medicine during emergency situations - an issue that can leave patients without the appropriate medical they need that could lead to their death. Since emergencies happen in large scale to small scale scenarios and everything in between, the lack of agencies and adequate personnel is a serious matter of concern. Recruitment and retention issues have been at the forefront of the discussions because of the lack of personnel many EMS agencies are experiencing.

When it comes to the personnel issues Emergency Medical Services is experiencing, the issue of recruitment and retention is complicated by numerous components. One of these issues is the simple fact that there is a national shortage of Emergency Medical Technicians and Paramedics, (Faris, 2017). Understanding that this is already an issue across the country, some

areas are affected worse than others. As explained by Whitney et al., (2010), “In rural areas, these challenges are magnified by low wages, the necessity of covering broad geographic regions,” (Whitney et al., 2010, p. 160). Additionally, some EMS agencies have been able to staff their ambulances with volunteers, but with the volunteer positions require personal sacrifices required of its agency volunteers. “Many EMS providers are volunteers who must leave their jobs or families to get to the ambulance station, it is essential that all resources be available for dispatch in the first moments following an incident,” (Whitney et al., 2010, p. 160). Not everyone is ultimately willing to make those sacrifices - thus, some agencies are simply unable to staff their ambulances. Recruitment and retention remain only a piece of the overall rural community emergency medical services conundrum.

Training Issues

While there is clearly an issue with recruitment and retention for Emergency Medical Services across the country only made more complicated by the national shortage, another serious issue is training and maintaining EMS training. Whitney et al., (2010) note that there are few training opportunities available for rural EMTs and Paramedics - an issue that can create numerous unsafe practices during a patient’s medical or trauma emergency, (Whitney et al., 2010, p. 160). One of these unsafe practices are personnel who do not know how to manage patient emergencies - particularly those who “have complex and life-threatening medical needs,” (Emergency Medical Services in Rural America, 2007, p. 3). “In addition, some EMS personnel see few trauma patients per year, so they do not have the opportunity to utilize their skills on a

regular basis unlike their counterparts in urban areas. Many of the trauma patients they treat include neighbors, coworkers, loved ones, and family, an additional Stressor” (Whitney et al., 2010, p. 160). Further, now that the United States has an opioid epidemic, it is almost more important for Emergency Medical Services to continue to have extensive training - especially when rural communities is one of the areas that is seeing such an abundance of the opioid crisis.ous need to make sure that personnel understand how to handle these specific drug overdoses. “Specifically, the disproportionate impact of opioid overdose in rural communities highlights a need to strengthen prevention efforts. One such way is to strengthen and tailor naloxone-specific training among BLS providers to reflect the nuances faced in rural communities.” (Kilwein et al., 2010, p. 4). Training is always an important issue when it comes to anything emergency-related, but perhaps the training issues associated with rural communities is a serious and dire issue that is only compounded by recruitment and retention issues.

Healthcare Disparities

Healthcare disparities are a particularly complicated area of emergency medicine and is widely discussed in the public health literature. It is also particularly a complicated policy area. Healthcare disparities refers to the notion that Americans will not receive the same healthcare in communities across the country and in hospitals across the country. It is affected by income, socioeconomic status, geography and other factors a community may face, (Moy, Dayton and Clancy, 2005). Considering just how large an area healthcare disparities is in the literature and how complicated it is in its own policy initiative, for the purposes of this paper, only one aspect of healthcare disparities will be discussed in this paper for how it affects rural communities and Emergency Medical Services.

In terms of rural communities, healthcare disparities are not only complicated, but are particularly dangerous for patients suffering from serious medical and trauma emergencies. While healthcare disparities remain particularly complicated by numerous factors in a community, these same factors are magnified for rural communities. In rural communities, there have been issues with hospital closings and with individuals making it to a hospital because of EMS personnel shortages. As explained by Whitney et al., (2010), "Providing trauma care to the one-fifth of all Americans who live in rural areas is a constant challenge. Rural residents have more poverty, poorer health status, and fewer resources to call on in a time of need than urban Americans," (Whitney et al., 2010, p. 162). Where Emergency medicine is concerned, 'time is always of the essence' - but without the appropriate resources to manage patient care, medical and trauma emergencies become a far more dire matter of concern, (Whitney et al., 2010, p. 162). It can also mean longer transport times to hospitals that can manage the patient's medical care - also an issue that can compromise a patient's well-being (Whitney et al., 2010, p. 162). "In a desperate attempt to call attention to a problem that is festering nationwide, the California Medical Association declared in January that the state's emergency departments were in crisis," (Sorelle, 2001) - in 2001 highlighting that this is not a new issue. Healthcare disparities only complicate the issues with Emergency Medical Services in rural communities.

Hospital Closings

While healthcare disparities are an important policy area to consider, hospital closings also greatly complicate healthcare disparities and the issues affecting Emergency Medical

Services in rural communities throughout the United States. According to Sorelle, (2001), “50 emergency departments in the state have closed since 1990,”(Sorelle, 2001). While hospital closings are also an important area to consider when it comes to rural communities, the issues associated with hospital closings are not only particularly complicated but are vast in the literature. Thus, for the purposes of this paper, only a few aspects will be discussed as it relates to Emergency Medical Services.

One of the most important items to consider when it comes to hospital closings are the issues associated with fewer hospitals in a given region. This means that it may take ambulances much more time to reach a hospital if they have an emergency patient, (Zhaoxiang, 2019). It also means that in “rural environments, hospitals are often far away and difficult to access,” (Zhaoxiang, 2019, p. 1633). Additionally, there are other logistical issues associated with rural communities. Ambulances are often used for transferring patients to different hospital facilities. Thus, when hospitals are particularly far away or need critical care paramedics to transfer the patient to another facility, the lack of EMS agencies becomes particularly problematic, (Whitney et al., 2010, p. 161). It is also important that those making these interfacility transfers also have the appropriate training and critical care skills needed to be able to monitor the patient during a transfer, (Whitney et al., 2010, p. 161). For other types of emergency patients - particularly critical trauma patients, “Trauma is the silent killer in America’s rural and frontier areas. Rural Americans suffer a disproportionate number of deaths from trauma despite a decreasing population density in many rural areas” (Emergency Medical Services in Rural America, 2007, p. 2).

The opioid crisis is also said to be a matter of concern where a lack of personnel and hospital closings only complicate the situation. According to Kilwein et al., (2010), “The rate of opioid misuse and overdose continues to increase in rural areas of the U.S. In response, access to naloxone hydrochloride (“naloxone”), an opioid antagonist used to reverse opioid overdose, has increased among both first responders and laypeople,” (Kilwein et al., 2010, p. 1). This ultimately means that with fewer hospitals in rural settings, it becomes even more of a concern when ambulances are not staffed or have training problems. Medevacs, or air ambulances, are certainly also part of this equation, but - the literature is vast in this area and will not be discussed in this paper.

Finally, because of the issues associated with healthcare disparities, hospital closings and the personnel problems within Emergency Medical Services, rural communities face dire consequences when critical patients need emergency assistance. According to a report entitled, “Emergency Medical Services in Rural America” written by the National Conference on State Legislatures, (2007), “the relative risk of a rural victim dying in a motor vehicle crash is 15 times higher than in urban areas after adjusting for crash characteristics, age and gender,” (Emergency Medical Services in Rural America, 2007, p. 2). A far more frightening statistic is that “nearly 85 percent of U.S. residents can reach a level one or level two trauma center within an hour, but only 24 percent of residents in rural areas have access within that time frame,” (Emergency Medical Services in Rural America, 2007, p. 2). Ultimately, this is particularly life-threatening for patients in desperate need of medical care.

The issue with hospital closings and long transport times is another significant area of concern for Emergency Medical Services in rural areas. While these pieces are certainly important to the overall discussion of Emergency Medical Services, it should be noted that for the purposes of this paper, these sections are rather short and focused - but, the literature is far more vast when it comes to these issues. Ultimately, these issues have a direct effect on Emergency Medical Services and rural communities - particularly where critical patient care is concerned.

EMS Agencies and Tight Budgets

While healthcare disparities, hospital closings, personnel recruitment, and personnel retention are certainly important pieces to the overall ‘wicked problem’ of rural communities and Emergency Medical Services, the lack of funding available to Emergency Medical Services also greatly affects the issues at hand. Edwards (2019) explains that “because so many Emergency Medical Services agencies have been struggling financially, some states are stepping in with funding. But emergency medical experts say it’s not enough to cure the dire situation.” Of course, there is always a need for more funding for EMS agencies - and some argue that EMS is the place to financially invest, (Emergency Medical Services in Rural America, 2007, p. 10). Funding is a very important area of concern - but, also complicated by numerous policy issues at the local, state and federal levels of government. For the purposes of this paper, a discussion about funding considerations - while important, will not go into the depth of the policy initiatives to keep the paper focused around the current social crisis in rural communities. More

examination of budgetary considerations regarding specific local and state government budgets need more research in conjunction with the SIREN Act to highlight some of the areas of concern for how the legislation would affect Emergency Medical Services agencies in rural communities.

SIREN Act - A discussion of the legislation

Understanding the current crisis with rural communities and how this affects Emergency Medical Services, there has been a lot of recent discussion in support the SIREN Act. The National Association of Emergency Medical Technicians - a professional organization - has been actively asking members, (Emergency Medical Technicians and Paramedics), across the country to urge their members of congress to support the legislation. The National Association of Emergency Medical Technicians writes, “Last year, the SIREN Act was signed into law on December 20, 2018, as part of the Agriculture Improvement Act of 2018,” (Request Funding for the SIREN Act, 2019). They continue to write,” The law creates a grant program for public and non-profit EMS agencies in rural areas, many of which are at the forefront of the opioid epidemic—to support recruitment, retention, education, and equipment for EMS personnel specifically in rural areas,” (Request Funding for the SIREN Act, 2019). Certainly, the SIREN Act sounds like it would be a wonderful program to correct some of the deficiencies for rural communities throughout the United States. Funding specifically designed to help EMS agencies in terms of recruitment, retention, training and education are important cornerstones to the overall rural community crisis. While it would help in some respects, the legislation would not help to correct the deficiencies seen with EMS agencies in rural communities. If anything the legislation would be similar to putting a band-aid on a rapidly leaking dam. The issues with rural

communities is so complicated and vast that the SIREN Act really would not do much in the way of correcting the policy initiatives we're seeing throughout American rural communities.

The SIREN Act language includes items such as grant funds for training, recruitment and retention, (H.R. 5429, 2018) and is a "reauthorization of rural emergency medical services training and equipment assistance training program," (H.R. 5429, 2018). Certainly the program would help to provide some funding to fire departments that run EMS calls and EMS non-profit organizations, (H.R. 5429, 2018). It is also authorized for \$10,000,000.00, (H.R. 5429, 2018) - which is not enough money to even help to correct some of the issues seen with Emergency Medical Services in rural communities.

The SIREN Act is ultimately one of those "good on paper" policies - and one that gains the support of the people for the simple realities of what it supports. And, because it grants funding to areas that need assistance with recruitment and retention, the policy looks like it will be effective in helping to financially fund some of these rural communities in dire straits. Funding in these areas is certainly important, but it may prove to be inadequate where mass casualty situations are concerned. Further, the issues seen in rural communities are so vast and deep, that a grant program would not correct the inadequacies American rural communities are experiencing where Emergency Medical Services is concerned.

Research Question

The problem associated with Emergency Medical Services in rural communities is particularly complicated and similar to that of an intricate spider's web. The literature about rural communities is vast and has numerous facets that highlight the different factors that are affecting this policy area. More importantly, the problems highlight the inadequacies of community preparedness showing a serious vulnerability where rural communities are concerned. More research is needed to review policy frameworks for EMS preparedness in rural communities where mass casualty incidents are concerned to understand more of whether rural communities could face catastrophic consequences similar to what Barbera et al., (2001) argued in their article about hospitals in urban settings. It is particularly important to specifically understand more about whether far more serious emergency management vulnerabilities exist in rural communities because of the crisis that has emerged where Emergency Medical Services is concerned.

Limitations and Future Research

This paper is limited in a number of respects. First, the overall arguments of the paper needed to remain focused on rural communities and ambulances limiting the overall construction of the literature review. The issue with rural communities is particularly complex impacted by hospital disparities, personnel recruitment, retention and training issues, hospital closings, budgets and many other complicated issues. This paper's literature review could not encompass every single factor because of the vast literature associated with each section and ultimately, each section was only a small aspect of the crisis at hand. Future research could examine each section of the literature much more closely to specifically understand how hospital disparities are directly affecting Emergency Medical Services in rural communities. It could also examine

specifically how personnel recruitment is specifically affecting Emergency Medical Services in rural communities. As such, each section of this paper's literature review could be its own paper expanding and researching specifically how each factor contributes to this public safety crisis. In doing so, researchers would gain a far more accurate portrayal of just how complicated this issue is and just how vulnerable rural communities actually are when it comes to mass casualty incidents of catastrophic proportions.

Additionally, there were other factors that were not discussed in this paper because they did not really affect the issues mentioned in this paper, yet are clearly part of the overall crisis with Emergency Medical Services in rural communities and ambulance vulnerabilities and preparedness. Issues such as medevacs or air ambulances, EMS billing, insurance companies, drug shortages and the opioid crisis are also serious matters of concern that are also affected by rural communities and visa versa. For the purposes of this paper, these issues were not discussed to keep focused on some of the issues at hand affecting EMS in rural communities. But, these issues are very much a major component of the problem and cannot be ignored. More research is needed in this area to specifically understand just how these issue areas contribute to the complexities and vulnerabilities of rural communities and Emergency Medical Services.

More importantly, studies focusing on the specific vulnerabilities of rural communities as they relate to mass casualty disasters are particularly important to understand now. The literature focuses only on aspects of this conundrum, but not the overall picture of how these vulnerable communities could respond to a mass casualty disaster, or how these inadequacies could be changed to support mass casualty incidents. Without understanding this, it is difficult to make the appropriate changes. Thus, it is particularly important for local and state governments to specifically research how EMS agencies are specifically vulnerable in rural communities.

Ultimately, the issue at hand demonstrates that while the literature is vast regarding specific aspects of rural communities, healthcare disparities and other critical factors at this policy initiative, more research is needed to understand what recommendations can also be made when it comes to new policy recommendations. The SIREN Act is a good start, but more research is also needed to understand if the inadequacies of the legislation resides solely in the limited grant funding proposed by the legislation - or, if the wicked problem of rural communities requires more policies focused on various aspects of the crisis with rural communities and EMS agencies.

This paper has focused on a few of the factors regarding rural communities, but it has also highlighted the areas of the literature where more research is needed to gain a grasp of the issue at hand for better recommendations for emergency managers and policy architects.

Conclusion

Similar to the ebb and flow of society, policy initiatives are constantly being brought forth to Members of Congress with interest groups and constituents alike asking for assistance in securing legislation and funding - just to name a few. Similar to other policy initiatives, it has become particularly important for Congress to look at the issues of rural EMS agencies and how they're plagued with serious issues that are putting patients in life-threatening circumstances. The issue of rural communities, however, is particularly complicated for how healthcare disparities are affecting these communities, for how EMS agencies are having significant trouble recruiting, training and retaining personnel and for how hospitals are closing throughout the

country. These issues are particularly complicated and highlight just how desperate many rural communities are in the United States. Senator Durbin wrote in a recent press release, ““In many small towns and rural areas in Illinois and across the country, rural EMS agencies are the backbone of the community, and are on the front lines in delivering quality emergency response services and patient care,” (Durbin, 2018). Senator Durbin also explains that EMS agencies are under a significant amount of pressure trying to handle patient care when many EMS agencies are simply struggling from the issues associated with rural communities, (Durbin, 2018).

The realities of the situation are this: rural communities are particularly vulnerable in managing patient care for critical medical and trauma patients on an individual level of analysis. If this is difficult to manage on a micro level, then one can assume that at a macro level, the Emergency Medical Services system would be easily overwhelmed. Barbera et al., (2001) discussed just how vulnerable hospitals were to a terrorist attack when they're in an urban setting. The rural community literature, however, points to the notion that rural communities are perhaps far more vulnerable to a mass casualty incident with potentially catastrophic consequences. As highlighted in this paper, it will be particularly important for more research to be conducted looking at the specifics of this issue. In doing so, local and state emergency managers may be able to tighten the work of their offices to address these inadequacies before a major disaster happens. Ultimately, more research is critical to understanding the shortcomings of emergency management and recovery of major disasters in American rural communities.

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A Voice in the Progressive Wilderness- Left Liberalism as a Minority Ideology in the Contemporary American Left

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Abstract- **A Voice in the Progressive Wilderness- Left Liberalism as a Minority Ideology in the Contemporary American Left**

Liberalism, more properly left liberalism, was the dominant left-wing ideology in America for much of the 20th century and the beginning of the 21st century. However, it has been largely replaced as the primary ideology of the left by progressivism, a distinct ideology of the left that is usually conflated with liberalism by the American media and politicians. This article finally gives liberalism as a distinct ideology its due. This article defines the eight ideologies consistent with democracy, including the two democratic capitalist ideologies of the left- progressivism and left liberalism. The idea of liberalism itself, independent o the left-right spectrum, is also discussed. The importance of distinguishing between true left liberalism and progressivism will also be emphasized.

A Voice in the Progressive Wilderness- Left Liberalism as a Minority Ideology in the Contemporary American Left

Introduction- Progressivism is not Liberalism

In America today, the dominant ideology of the left is progressivism. Whereas even ten years ago, we might consider liberalism, understood as left liberalism, to be the dominant ideology on the left, today there is little doubt that progressivism is far stronger. It is not merely that that the term progressivism/progressive is used far more consistently by leftists themselves

than liberalism/liberal, nor even the fact that conservatives now use the term more than they used to do.

In truth, the policies have changed demonstrably, because regardless of the words used, progressivism and liberalism, including left liberalism, are simply different and even opposing ideologies. It is not merely a matter of “becoming more left”, as many within the leftist movement have argued, often calling liberals the often-pejorative term “moderate”. Left liberalism and progressivism are often quantitatively different (i.e. progressives tend to be more far left than liberals), however that is not the key distinction.

To understand the qualitative differences between progressivism and the leftist ideology that it has marginalized, left liberalism, we need to categorize all political ideologies that are compatible with democracy. We do not need to worry about authoritarian ideologies. In my categorical scheme, there are eight ideology types compatible with democracy, seven of which are relatively common in the Western world, with one being rare outside of India (Moore 1966, in its entirety).

The Fundamental Forces of Class-based Politics

I use class analysis to identify and categorize ideology types, but the class analysis that I use is based on classical Greek class analysis, mostly based on Aristotelian thought. In Aristotle, and other most other classical Greek thinkers on politics, class was the driver behind most political conflict. I take this assumption as mostly true, despite understanding that other perspectives, especially religion, ethnicity, and race are very important here, though they are rarely uncorrelated with class (Aristotle, Book III, Parts IX and X).

Classical Greek thinkers, in my view correctly, viewed politics as a constant struggle between two forces, which corresponded roughly to two classes, the poor and the rich. The poor were the uneducated masses who contributed greatly to the material wealth of the city-state but did not contribute much to the high culture of civilization. The rich on the other hand created much of cultural worth; but did not contribute to the wealth fairly and often sponged off the poor and middle classes (Aristotle, Book III, Parts XI-XIII and Book IV, Part III).

In between the two inevitable classes were a set of classes, often viewed as plural, the middle classes (as opposed to a simple, monolithic middle class). The middle classes were both essential for the wealth of the city-state and able to appreciate and contribute to the cultural wellbeing of the city-state (Book IV, Part XI and Book V, Part VI).

A slightly easier-to-understand way of phrasing the above in modern terms comes from the legendary left liberal singer-song-writer, Harry Chapin, who in his concerts, would stop his singing for a couple of minutes to talk about class politics in a way very similar to Aristotle, but more sympathetic to the poor. Chapin basically argued that the wealthy contributed little to society but took much, ultimately not caring about the welfare of other classes. This is largely supportive of Aristotle's view (Chapin, "Circle", 1988).

Chapin went on to explain in more sympathetic terms than Aristotle why the poor do not contribute to the cultural greatness of the political community. Chapin argued that they were too busy "struggling like Hell to make do", to do much more than survive. Aristotle might be less sympathetic in his word usage, but even an elitist like him would acknowledge Chapin's point by saying that the poor contributed much to the political community and that it would be unreasonable to expect them to contribute culturally to the political community due to their

socio-economic status. So here, there is no contradiction between the two great philosophers (Chapin, 1988).

When it comes to the middle classes, or as Chapin calls them “the people in the middle”, the two philosophers are again in firm agreement. Chapin argues that the preservation of society and the political community comes down essentially to a strong, politically active middle class (Chapin, 1988). Aristotle would heartily agree, adding only that the middle classes are more diverse than the singular use of the term would imply. I do not think that Chapin would disagree with that, since he often portrayed a variety of roles and socio-economic statuses amongst his “middle class” characters in his songs. For example, in “A Better Place to Be”, he extolls the virtues of a middle-class security guard and a lower-middle-class waitress in a small town (Chapin, “A Better Place to Be”, 1972).

What Aristotle shows, when elitist and classical Greek biases are corrected for by Chapin’s theory and works, is that two opposing forces exist, embodied by two opposing classes, with the middle classes forming a cohesive force that ties the two together and binds the state and political community together. When the middle classes are strong, the state is mostly peaceful, and the two opposing classes reluctantly cooperate in a manner that includes everyone in decision-making (Aristotle, Book IV, Part XI-XIII and Book V, Part VI).

However, when the middle classes are weak, politically uninterested, or few in number (and the worst-case scenario involves all three situations being the case), then disaster occurs. The decline of the middle classes leads to the two opposing forces running amok in the state because the political community becomes untethered from the moderating force of reason that is the middle classes. The forces of push and pull represented by the rich and poor respectively

create what we can easily recognize as political polarization (Aristotle, Book V, Part IV and Part VIII).

These two forces are easy to recognize as modern ideologies if we just take a minute to do so. The first force is the force of keeping the poor masses from power and maintaining the status quo for the rich. This force seeks to ensure that money equals power and that power is not given to those who possess little money but great numbers. This force, which motivated classical Greek oligarchies, is best known as conservatism today (Aristotle, Book V, Parts VII, VIII, and X).

On the other hand, there is a second force that seeks to use numbers to force public policy, without the need for reasoned debate. Money for these individuals should be given to them to even out power, but ultimately power should be in their hands and not in the hands of the socio-economically elite. The argument is that the many should rule because they are many. This force, which motivated direct democracy, is best known today as progressivism (Aristotle, Book V, Parts VII-X).

Republicanism, Representative Democracy, and Liberalism

The classic Greeks, like Aristotle, preferred a balance between classical oligarchy and classical direct democracy, which has largely come down to us as representative democracy. Aristotle is explicit in his endorsement of a system of government where everyone rules and is ruled in turn, where no citizen is left out of power due to having too much money or power or having little of them. He calls this system of checks and balances polity. The Romans would eventually call the polity, in English, the republic (Binetti 2019, 40-42).

Thus, from Aristotle and the Romans we get republicanism, the idea that government works best when interest groups and institutions check and balance each other in a non-violent manner. However, Aristotle also opens up the possibility for modern representative democracy when he talks of a specific type of polity (or republic) where there are no property requirements for voting or holding office, but elected officials represent the people rather than the people voting on all issues themselves. The first feature is classically democratic, the second feature classically oligarchical, meaning that the new form is a type of polity. However, despite Aristotle not naming it, it is clear that he is talking about representative democracy (Aristotle, Book IV, Parts VII-IX and Binetti 2019, 40-2).

So, Aristotle's class analysis gives a political theory of class and interest group conflict, a theory of domestic peace and civil war, a classification for regime types, and theories of both republics and representative democracies (Aristotle, Book IV, Part IX). That is a lot to go on for our purposes. America is a liberal representative democratic republic. Liberalism in its truest form evolved after Aristotle, yet I have argued elsewhere that it grows out of republicanism and is fully compatible with a slightly modernized Aristotelian worldview.

Republics have been described in depth by me elsewhere. Here are the essentials of republicanism. The norms, laws, values, and expectations that form the spirit of the rule of law are called in my theory simply republicanism, which is the name of the whole theory and the system itself. These cultural supports protect the institutional arrangements that are properly called the republic itself (Binetti 2019, 39-49).

A republic has four requirements. It needs to be a stable, functioning state obviously. It also must be one where no one interest group or individual is able to systematically deny the rule of law to other individuals or interest groups. Interest groups here are broad and can include

protected classes like racial, ethnic, and religious groups or currently insecure groups like ideology. Another major requirement of a republic is that most political contestation is non-violent, i.e. that riots are kept from being too frequent, too large, or too influential. Lastly, the political process needs to be replayable, which means that losers in an election or an issue are allowed to keep playing the political game without being punished (Binetti 2019, 44).

Thus, republicanism is about the values and institutions that create a politics of non-domination, which is a term that Philip Pettit has made famous in political theory. Republics are inherently minimally liberal but necessarily fully liberal. Also, republics do not need to be representative democracies or democracies at all, but in Aristotle's theory, it is easy to combine representative democracy with republicanism (Binetti 2019, 41 and 47, Pettit 1997, in its entirety, and Pettit 2012, entirety).

The Eight Ideologies Compatible with Democracy

All we need to add to get American liberal representative democratic republicanism is the liberal part. Our Constitution has evolved over time, but it always aspired to liberalism in the largest and broadest sense of the word. James Madison was a liberal who sought to expand Aristotle's framework to create a strong liberal and federal political community. Modern American liberalism in all of its various forms largely depends on his work in the Constitutional Convention, *the Federalist Papers*, and most especially in the Bill of Rights (Bill of Rights Institute 2019, "James Madison").

Liberalism in the broad sense of the word is a family of political ideologies dedicated to individual liberties and human freedom in general. Full liberalism also is clear that other people's rights demarcate our own rights and there is often, but not always, a concern, especially

in modern liberalism, for balancing out excesses in wealth and power. Full liberalism includes left liberalism, what Americans often simply call liberalism, but it also includes a few other related ideologies that will now be discussed.

Liberalism, for good or for ill, is hard to extract from capitalism. Rarely can one be a full on socialist and true liberal (even close to being both). Liberal socialism really only has even been strong in one country- India (Moore 1966, in its entirety).

In truth, in the West, capitalism is the only way to have permanent liberalism, as fragile as it may always be. Liberalism is not a phase of development, but sometimes it feels that way, especially as it retreats even in America. If we do not count liberal socialism, all forms of liberalism are inextricably tied to support for capitalism. However, capitalism can be just as destructive of liberalism as socialism. Capitalism is the only game in town for liberals in the West, but liberal capitalism is not the only capitalist game in town in the West.

Despite the traditional perception of Americans as liberalism being a left-wing ideology, international experts consistently agree that liberals in the broad sense can be left-wing, centrist, or even right-wing. There are two types of at least partially right-wing/conservative liberals. There are libertarians, who are zealously capitalist but very paranoid about government control. There are also more traditional conservatives who have a healthy respect for the inherent rights of others and believe in certain limits on government with respect to those rights. Let us just call them liberal conservatives.

Essentially, liberal conservatism is essentially a liberal-conservatism that is less socio-economically radical than libertarianism, but both are more liberal than illiberal conservatism, which we could simply call conservatism.

Just as the right-wing has liberal and illiberal types, so too does the left. We talked about the rare case of liberal socialism. In the West, we have three choices on the left. Leftists who adopt liberal tents are left liberals. Those that do not are progressives and socialists. However, even though these two ideologies are often intentionally confused by both left and right-wing persons and groups, they are themselves quite distinct.

The core difference between progressivism and socialism, in this illiberal democratic socialism, or for the sake simplicity, democratic socialism, is that progressivism, even if hesitantly or with many caveats, fundamentally supports capitalism, which socialism rejects capitalism.

While this distinction is vitally important, it is equally important to note that neither progressivism as probably understood nor democratic socialism are liberal ideologies. Left liberalism is the only liberal alternative on the left in the West.

What is left liberalism and what makes it different from being “moderate”, i.e. centrism? Centrism is inherently a liberal ideology that is neither right-wing/conservative nor left-wing. Leftism at its foundation is about fundamental views about two things capitalism and the inequalities (plural) that it creates. Progressivism, left liberalism, centrism, and all three forms of conservatism support capitalism, while among ideology types compatible with democracy, only democratic socialism and liberal socialism oppose capitalism on the fundamental level.

Yet amongst democratic capitalists, there is lot of ideological disagreement about the inequalities caused by capitalism. Libertarianism and illiberal conservatism are completely untroubled by these inequalities, of income, health, and power. Liberal conservatism and centrism view the inequalities of worthy of amelioration but support only limited amounts of the

redistribution of wealth, and especially redistribution of power. What makes centrism not right-wing or conservatism is that the balance of the political forces of progressivism and conservatism and the balance between the classes is essential to it, while a liberal conservative will always choose one's class and interests when pushed in an emergency.

In other words, in the right and center, the centrist is troubled by the excesses of capitalism and has a systemic commitment to balance, the liberal conservative is troubled by the excess as well but has no such systemic commitment, and illiberal conservatives and libertarians have neither commitment. Yet, for all of their concern for the poor and marginalized and their systemic commitment to power for all, centrists are definitely not leftists, unlike left liberals.

Left liberals belong the left-wing because they are not only troubled by the excesses of capitalism, but they worry about how capitalism itself creates inequalities in wealth, health and power. Like progressivism, and unlike socialism, that worry is severe but does not overturn the leftist's overall fundamental support for and commitment to capitalism. There is a strong tension but not necessarily a contradiction in being bothered by capitalism at a fundamental level, unlike the centrists, who are troubled by its excesses but sanguine about capitalism in general.

This tension does not have a good, common sense name in British English, to the author's knowledge. It does, however, have a perfect term for it in the American English dictionary, thanks to the contributions to the English language by Italian Americans. That term is *agita*. *Agita* literally means acid in Italian American English and it refers to the churning of stomach acid. It is not merely being nervous about something but being essentially bathed in acid and tossed around in it until the acid get in your pores and starts to drive you mad. Like I said, there was no good equivalent in English, so the adoption of *agita* is appropriate (Merriam-Webster Dictionary 2019, "Agita").

Ideological agita is different from a contradiction in terms. A contradiction means that the ideologue has two incompatible beliefs that cannot coexist with one another. However, political agita, is, as the origins of the word imply, much, much messier. The leftist with political agita has two fundamental beliefs, one in social justice and the other in capitalism and is fundamentally committed to both, if not equally. The political or ideological agita does not come from a reality that capitalism and social justice are incompatible, but the persistent, aching worry that they are. It also causes political agita when the leftist needs to defend the compatibility of fighting inequality caused by capitalism while supporting capitalism to those who do not support both ideals (Merriam-Webster Dictionary 2019).

So, progressivism and left liberalism are both capitalist ideologies compatible with some form of modern democracy that suffer from political agita caused by social justice concerns caused by capitalism. A leftist is one who is fundamentally worried about inequalities in wealth, health, and/or power caused by capitalism. There are also socialists, but here we have the two distinct leftist capitalist ideologies.

Again, we are left with understanding how every democratic ideology is different from each other, without exactly knowing what liberalism is, unrestrained by left-right ideological spectrum-based assumptions.

Table 1- The Eight Ideologies Compatible with Democracy

Ideology Type	Liberalism	Capitalism	Self-denial	Liberal capitalism	Leftist capitalism	Leftism

Left liberalism	Yes	Yes (partially)	Yes	Yes	Yes	Yes
Centrism	Yes	Yes	Yes	Yes	No	No
Liberal conservatism	Yes	Yes	No	Yes	No	No
Libertarianism	Yes (partially)	Yes	No	Yes	No	No
Progressivism	No	Yes (partially)	No	No	Yes	Yes
Democratic socialism	No	No	No	No	No	Yes
Illiberal conservatism	No	Yes	No	No	No	No
Liberal socialism	Yes	No	No	No	No	Yes

What is Liberalism Itself?

Rather than start at the most fundamental level and working to a more practical level, let us start with the practical level and fight down to the fundamental level. The most useful groups for an analysis of what liberalism is are the 1. the three conservativisms and 2. Progressivism and left liberalism (i.e. the leftist capitalisms). By understanding the differences between these groups, which share similar positions on the left-right ideological spectrum, we can understand what pure liberalism itself is.

The first and easiest element of liberalism is the demand that justice be constrained, most of the time, by fairness. Even if Rawls himself did not defend justice as fairness consistently, the justice-as-fairness theory is most associated with him. However, Rawls was specifically a left

liberal, so his specific view of justice-as-fairness needs broadening a little to include non-leftist forms of liberalism. Justice is simply how people should be treated by the powerful, particularly by the government under the law. Fairness means that everyone has certain rights and liberties that government must endeavor to protect equally (Wenar 2017).

Essentially, fairness in a broadly Rawlsian sense equates with equal protection, due process, and the rule of law. The most essential sub-element of this crucial first element of liberalism is that everyone deserves equality under the law. Not just the powerful oligarchs, not just the marginalized poor, not just the adorable white girl, not just the abused black man, but everybody. This includes due process for convicted sex offenders, for murderers, for neo-Nazis, and yes, even for pro-lifers (Wenar 2017).

The point is that fairness means due process, equal protection, and the rule of law, even your political opponents, perhaps especially your political opponents. If you cannot muster this fairly consistently, then you are not a liberal. This is the most basic element in liberalism and progressivism fails it right off the bat. Progressivism by its definition is the lack of basic fairness for its ideological “enemies” or opponents. In left liberalism, even one’s “enemies” deserve due process (Wenar 2017 and Binetti 2019, 42-43 and 47).

Illiberal conservatives and progressives both fail the first essential element of liberalism, while left liberals liberal conservatives, and libertarianism pass it. However, to illustrate the elements of liberalism, let us continue on with both of our ideological clusters. The second element of liberalism is compassion for all, which means that we must not merely respect the rights and liberties of others to be left alone, as libertarians preach, but we must also help others to be free from certain barriers and inequalities. Libertarianism fails this second crucial element of liberalism, because liberalism posits that we have an obligation to help others become freer.

However, liberal conservatives and left liberals both pass this element, since both support some form of redistribution of wealth and power to ensure that at least some of the excesses of capitalism are countered by public policy. The first two elements of liberalism are what I call ideological liberalism. Liberal conservatives are fully liberal ideologically but when pressed to the limit, as I showed earlier, they fail in their liberalism, while left liberals do not. Progressives also do not advocate for compassion for all, but only advocate for compassion for specific groups, which they label as marginalized, often ignoring some marginalized groups.

The third key element, and the one that differentiates ideological liberalism from political liberalism, like that of Rawls, is self-denial. Self-denial goes back to the classical Greek political-theoretical principles that we discussed earlier. It is the ability to defy one's faction's interests for the common good. Liberal conservatives cannot do this in the long run, because they are motivated by their own class interests too much. Progressives, whether the elite leaders of the faction or the poor masses, also cannot resist the urges to compromise the safety and security of the political community for factional gain. In sum, there is no institutional fidelity in liberal conservatism or progressivism, unlike in left liberalism (Wenar 1987 and Aristotle, Book IV, Part XIV and Book V, Parts I, IV, VI and VIII).

There is actually no such thing as political liberalism on the right-wing. Liberal conservatism is ideological conservatism, but it fails to have the institutional fidelity necessary to be truly politically liberal. Ultimately, any politically liberal system, including a Rawlsian left liberal one, is about preserving the institutions of the system perpetually. As Aristotle and the wise philosopher Chapin were noted above as teaching, neither of the two radical forces of progressivism and conservatism can ever preserve the delicate balance of

classes, forces, and interests necessary for modern liberal democracy (Aristotle, Book V, in its entirety and Chapin 1988).

On the other hand, there is one politically liberal alternative to left liberalism, not counting the rare liberal socialism- centrism. Centrism and left liberalism are not the same thing. There is such a thing as moderate (left) liberal, but this is different from being a liberal moderate. A moderate liberal means a dedicated left liberal who is relatively less left than other left liberals, but a moderate is a centrist, i.e. someone who rejects leftism and embraces centrism.

A left liberal has the motivating force of not just “liberal guilt”, which a centrist could have, but true “leftist agita” about the consequences of capitalism for the health, wealth, and power of the marginalized. While centrists seeks balance, as do left liberals, left liberals seek to alter that balance in favor of the marginalized to some degree, while preserving the rights of the powerful to a large extent. Centrists are much more sanguine about capitalism and much interested in maintaining the status quo than left liberals who fundamentally believe in liberal democracy but want to make it more compatible with social justice due to the motive force of political agita within them.

Table 2- The Elements of Liberalism

Ideology Type	Compassion for all	Self-denial	Fairness	Support for Capitalism	Agita about Capitalism
Left liberalism	Yes	Yes	Yes	Yes	Yes
Centrism	Yes	Yes	Yes	Yes	No
Liberal socialism	Yes	No	Yes	No	Yes

Liberal conservatism	Yes	No	Yes	Yes	No
Progressivism	No	No	No	Yes	Yes
Libertarianism	No	No	Yes	Yes	No
Democratic socialism	No	No	No	No	Yes
Illiberal conservatism	No	No	No	Yes	No

Table 3- The Spectrum of Closeness to Liberalism of Other Ideologies

Democratic socialism (1)	Progressivism (2)	Liberal socialism (3)	Left liberalism (5)	Centrism (4)	Liberal conservatism (3)	Libertarianism (2)	Illiberal Conservatism (1)
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Conclusion- An Example of Progressive Domination of the Left- the New Jersey Wage Theft Act

To demonstrate how dominant progressivism is in the American left today and to demonstrate the practical and hypothetical differences on key contemporary issues amongst the eight different ideology types, I illustrate my points with one specific issue, the criminalization of wage and hour violations. This issue is related to the perspective of New Jersey state politics, since the political community which I am most interested in is New Jersey, my home state.

New Jersey passed the Wage Theft Act this past summer and the lieutenant governor signed it into law. It essentially rebrands wage and hour violations by employers as “wage theft” and uses that reverse euphemism to morally justify criminal sanctions against employers who,

intentionally and unwittingly, fail to pay even a small amount of wages due their employees or independent contractors (N.J.S.A. 34:11-58.1-34:11-58.6. New Jersey P.L. 2019, Chapter 212).

This is a fairness issue, but fairness to whom? Illiberal conservatives would not support the idea of wage and hour laws in general as a government regulation to benefit the poor against the rich and powerful Libertarians would similarly oppose any wage and hour law. Liberal conservatives might support some kind of wage and hour law but would probably find New Jersey's old law too protective of workers' rights. Centrists would tend to support the current law but would stop short of endorsing an extension of the law, which also massively increases civil penalties for employers.

Socialists of both types would most likely support the law, showing the limitations of liberalism within even liberal socialism. After all, the wage and hour act is meant to be punitive against capitalists and could easily collapse capitalism in New Jersey. However, socialists did not write and push its bill, which goes in effect in early November. Progressives did.

Progressives created a highly punitive system of criminal sanctions against employers who intentionally or accidentally do not pay their employees every cent of their wages. Jail time starts at one violation, with each violation within a six-year period increasing the criminal sanctions. The first two violations come with small amounts of jail time but as they are disorderly persons offenses, they are few due process protections for the accused, such as no right to trial by jury and no grand jury. This may not have been a completely new feature of the law, but this feature was expanded in importance by other new features of the 2019 law. After a third offense, which can simply be missing three pay periods by accident or failing to pay a few dollars for three pay periods within six years, the employer, or anyone responsible for the "wage theft" does have a right to trial by jury and a grand jury, but can spend up to 18 months if

convicted, even if the conduct was entirely accidental. In certain situations, just two violations can lead to 3-5 years in prison, essentially the same time as serious violent offenses (N.J.S.A. 34:11-58.1-34:11-58.6, New Jersey P.L. 2019, Chapter 212, Tabakman 2019, Wilson 2019, Hurley Kellett, et al. 2019, and Lewis 2019).

Most New Jerseyans are unaware of this law. It is objectively unfair, since all employers are potentially viable, as well as many office managers. The law is meant to be so punitive as to change the power relations between employer and employed outside of what the law says, that it is meant to produce extralegal pressure for employers to cave into employee demands. There is a provision that says that if an employee complains of “wage theft”, the employer cannot fire that person or undertake any “adverse action” for 90 days. If the employer does so, the law, which in New Jersey rarely does this, assumes that the employer has retaliated against the complainant and has committed the offense. This presumption is rebuttable but with the extremely difficult legal standard of “clear and convincing evidence (N.J.S.A. 34:11-58.1-34:11-58.6, New Jersey P.L. 2019, Chapter 212, Tabakman 2019, Wilson 2019, Hurley Kellett, et al. 2019, and Lewis 2019).

Essentially, left liberals would reject this reckless and unfair law, but they are not very strong in the New Jersey Legislature. In sum, the Wage Theft Act eviscerates due process, equal protection, and the rule of law for employers, including small business owners in order to achieve the class interests of the poor and the political interests of the progressives and is thus illiberal and progressive, rather than a left liberal law.

In conclusion, left liberalism and progressivism are very much two distinct and often opposing ideologies. They are often conflated purposefully or unintentionally, by both the left and right. Most “liberal” elites are actually progressives. True liberals on the left exist, in all

spheres of society, but are in the political wilderness. I would argue that ideological diversity, where left liberals are let back into the leftist mainstream, would be a welcome turn of events.

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Vouching for the Market: The History of a Concept in Medicare Reform

Jeremy C. Johnson and Daniel Ehlke

Abstract

Despite their low public favorability ratings, scant evidence in support of their efficacy, and initial ambivalence on the part of insurers and other key stakeholders, voucher-type systems tend to be the perennial go-to reform for those looking to cure Medicare of its perceived ills. They keep returning to the fore for a variety of reasons, including political convenience, the strong symbolic salience of markets, and a lack of palatable alternatives. Our analysis has led us to three conclusions. We contend that Medicare vouchers are politically attractive because of: 1) expectations raised by political rhetoric, 2) failures of previous market experiments and other policy interventions to deliver desired results (particularly on health care costs) and the resultant search for a new ‘silver bullet’ and 3) their perceived power to resolve several political and policy conundrums for the contemporary Republican Party. This paper will illuminate and illustrate these points by focusing on three episodes in recent political history involving vouchers: the introduction of the first Medicare voucher plan by Representatives Stockman and Gephardt in 1980, the Breaux Commission exploring the future of Medicare in 1999, and now-Speaker Paul Ryan’s championing of the Medicare voucher ‘cause’ from 2009 forward. It will show that, though the voucherizing of Medicare started political life as a bipartisan phenomenon, it became an almost exclusively Republican proposal as the debate moved away from wholesale reform of the health care system generally, and the alliances comprising the two parties themselves were transformed with time.

Vouching for the Market: The History of a Concept in Medicare Reform

Former House Speaker Paul Ryan has, over the last decade, been a champion of the idea of converting Medicare from a guaranteed, universal benefit to a premium support (or voucher) program. There are several variations of such proposals in circulation; undergirding all of them is that Medicare recipients would receive fixed sums of money—vouchers—to purchase health insurance in the marketplace. The sequence of Ryan Plans to restructure Medicare, however, are only the most recent iterations of a long policy tradition rooted in the political struggles surrounding Medicare. The true progenitors of Medicare vouchers in Congress are not Ryan nor, for that matter, any of today's Republicans. That distinction belongs to Republican David Stockman of Michigan and Democrat Richard Gephardt of Missouri, in 1980. In subsequent years policymakers have pushed Medicare voucher proposals with relish, despite the persistence of skepticism from other quarters.

Despite the current partisan divide over Medicare vouchers, the concept for many years appealed to a certain segment of the Democratic Party, in addition to most Republicans. One can trace an arc stretching from the 1970s through the present, a period during which maximal bipartisanship on the issue gave way to its being championed by a few high-visibility Democratic legislators and left-of-center policy scholars in the late-1990s, to the present situation of near-universal shunning of vouchers on the part of Democrats. This evolution is the result of several factors, including the diminution and then near-collapse of the so-called Blue Dog wing of the Democratic Party, as well as a shift in the framing of vouchers, from being a part of a larger systemic overhaul of the American health care system, to its starring role in the narrower project of constraining Medicare spending and transforming the program in the process.

The American political universe of the late-1970s and 1980s contained constellations no longer populating the Washington firmament. The Republican and Democratic parties of that

distant era were both comprised of more progressive and conservative wings. Many of the more conservative ‘Blue Dog’ Democrats would eventually join ideological colleagues in the GOP. Less progressive Democrats like John Breaux of Louisiana and Bob Kerrey of Nebraska became far less common as the two parties polarized along ideological lines. Whereas conservative Democrats like Breaux and Kerrey could find common ground with Republican counterparts on a host of issues, including health care, such crossing of the aisle has today become nearly unheard of.

At the same time that the ideological distribution of Congress has changed, the framing of the issue of vouchers in Medicare (and across the health care system) has similarly been transformed. Vouchers were first presented in Congress as part of a larger national health reform plan put forward by Democrat Richard Gephardt and Republican David Stockman, among others. In addition to adding a voucher component to Medicare, the legislation sought to similarly voucherize Medicaid, and squeeze other cost savings out of the broader health care system. The next time vouchers came to the political fore, in the late-1990s, the two parties had recently clashed over proposed cuts to Medicare, specifically, and the National Commission on the Future of Medicare was, from the start, tasked with (potentially radically) redesigning the program. Though the Commission borrowed themes from the broader (failed) Clinton health reform plan of 1993-94, its work was effectively decoupled from the larger project of reordering the American health care system. Under such circumstances, it was easier to paint proposals to voucherize Medicare as a partisan attack on a program particularly cherished by Democratic politicians, rather than a cooperative effort to “fix” American health care.

From the collapse of the Bipartisan Commission on the Future of Medicare in 1999 to the present, positions on Medicare vouchers hardened, to the point where they have effectively

become proxies for party identification. The pressure among Democrats to oppose vouchers is significant. Though the GOP is today the sole political home of Medicare vouchers, support for such reform is hardly universal among Republicans. Through archival research, consultation with publicly available Congressional Research Service reports, evaluations of optional Medicare programs using market mechanisms, and secondary studies and analysis of Medicare we trace the politics of Medicare policy.

The larger purpose of this study is to evaluate the dynamics of the politics of policymaking in the contemporary hyper-partisan environment. The political trajectory of Medicare vouchers is a case study part of a larger milieu: partisan polarization makes policy consensus impossible with discourse never advancing beyond trite sloganeering. Only in recent years has policy literature focused on the patterns of how partisanship influences the programmatic evolution of policymaking (Johnson, 2016; Morone and Blumenthal, 2018). Our article contributes to this literature by identifying a mechanism which structures the debate over these programmatic proposals: symbolism. The policy analysis has not advanced in technical detail much over the course of decades. Rather politicians tend to anchor themselves in the safety of phrases and slogans such as “choice,” “market mechanisms” and “free enterprise.” Our analysis suggests that political scientists and policy historians must revisit the insights offered by the older literature on political symbols (e.g. Edelman 1964; Elder and Cobb 1983) to develop convincing explanations for the political trajectory of policymaking.

Early Voucher Proposals

The first serious proposals to voucherize Medicare entered policy discourse during, and particularly after, the failed attempt to control health care costs through a voluntary effort on the part of hospitals under the Carter administration. Though considered an ally of the

administration, Representative Richard Gephardt (D-Missouri) was instrumental in scuttling Carter's proposal for mandatory hospital cost controls, introducing a substitute bill that administration officials were swift to label little more than "a joke" (CQ Almanac, 1980). This substitute bill, passed by a wide margin in a November 1979 vote, relied on voluntary measures by the states to control hospital costs. Observers at the time pointed to the growing anti-regulatory mood in Washington, particularly among younger congressmen like Gephardt and his Republican colleague, rising star David Stockman (R-Michigan).

Gephardt and Stockman followed with their own proposal to dramatically transform the American health care system, including Medicare. Their National Health Care Reform Act, introduced in June 1980, offered Medicare beneficiaries the option of remaining in the traditional federal program, or accepting a voucher (equal to the average cost of plans in their region) with which to purchase private health insurance coverage (COTH Report, July 1980). Participating plans would, in turn, be obligated to provide benefits in excess of those offered under traditional Medicare, including outpatient drug coverage.

Ronald Reagan, who played a leading role in opposition to Medicare's implementation in 1965, deflected Jimmy Carter's criticisms about his record with charming disdain during the lone presidential debate in 1980 ('Carter-Reagan' 1980). The election of Reagan appeared to open new opportunities for broad deregulation and market-based reform of even the most cherished federal programs and institutions. During the presidential transition, Reagan's Health Policy Advisory Group suggested universal coverage for catastrophic coverage through a voucher system, including for Medicare (Rich 1980). Nonetheless, the specific outlines of a Reagan administration stance on health policy were, at first, unknown. In their absence, observers

looked to the ‘cue’ provided by the health reform legislation co-sponsored by Stockman, now elevated to the key position of director of the Office of Management and Budget.

Scholars such as health care ethicist John Arras recognized the widespread appeal of vouchers, asserting that “[F]or those on the medical left, the voucher strategy offers an approximation of the ‘right to health care...[For] those on the medical right, vouchers stand for freedom of choice and the virtues of the market” (Arras 1981). Presenting testimony before the House Ways and Means Committee in October, 1981, Congressional Budget Office (CBO) Director Alice Rivlin acknowledged that vouchers within the context of Medicare were “attractive in theory...a number of problems would hold down the number of people who would take advantage of such an opportunity.” Rivlin, moreover, expressed particular concern about the potential deleterious effects of adverse selection, resulting from a situation in which healthier Medicare beneficiaries opted for vouchers while the ‘traditional’ system was left with those who tended to be sicker (“Proposals to Stimulate Competition...”, 1981).

Representatives David Stockman (R-MI) and Richard Gephardt (D-MO) introduced a ‘voluntary’ voucher proposal with the express purpose of eventually terminating the Medicare program as part of the proposed National Health Care Reform Act of 1981. When an individual opted to take a ‘Medicare voucher’ to purchase a HMO or other managed care plan, the decision was irrevocable. The year after 50% of the eligible population had switched into the voucher system, the legislation required the abolishment of the entire ‘traditional’ Medicare program. Gephardt and Stockman gave qualified private plans wide latitude, leaving them no obligation to offer all benefits covered by conventional Medicare (Glenn 1983: 8; Davis and Rowland 1986: 77).

Reagan elevated Stockman to the position of Director of the Office of Management and Budget; a possible indication the new President was favorably inclined to radical reform for Medicare. The Secretary of Health and Human Services, Richard Schweiker, and Senator David Durenberger (R-MN) agreed that vouchers had the potential to restrain Medicare costs and make the program more efficient. Schweiker established a task force within the Department of Health and Human Services to work on options that could then be introduced in Congress (Oliver 1981: 472). The Reagan administration connected with congressional allies to develop legislation that could attract broad support (“RX” 1981; “Medicare Voucher Plan 1982”; Pear 1983).

Meanwhile, Gephardt teamed up with another Republican, Bill Gradison (R-OH), and introduced a tempered version of the prior Stockman-Gephardt proposal that attracted broader support. The revised voucher proposal was optional, safeguards for beneficiaries were added, and participants could opt back into conventional Medicare. A formula based on age, sex, residence, the consumer price index, and several additional factors would determine the value of a voucher for a recipient (Glenn 1983: 6). The Ways and Means Committee was receptive and the House of Representatives passed the voucher proposal; however, the Senate-House Conference Committee deleted the measure (“House Unit Votes” 1982: 2; Glenn 1983: 11). The Reagan Administration made another effort in 1983 and sent Congress a health care proposal that included a \$50 million voucher proposal for Medicare (“Vouchers” 1983). The political landscape soon seemed to shift decisively against voucher proposals.

Medicare vouchers, according to an aide to Durenberger, were “an issue with no real friends” when scrutinized as a concrete proposal (Iglehart 1981: 294). The American Medical Association (AMA), the American Association of Retired Persons (AARP), and organized labor all registered disapproval. The AMA feared that vouchers would threaten doctors’ incomes, the

AARP worried that the elderly would potentially not seek adequate care when using a voucher, and labor took the position that vouchers violated the social contract principle. The most remarkable source of opposition arose from the very private sector entities policymakers anticipated would run the plans. Linda S. Jenckes of the Health Insurance Association of America, representing over 300 insurance companies, complained that, “there is no way we can offer the same benefits as Medicare at the same price the Government is paying for them. (Pear 1983).

The Reagan administration compounded the problem when it searched for savings to pay for the optional Medicare competition program by proposing to reduce tax credits that provide employers an incentive to offer health insurance. In testimony before Ways and Means, the director of the Washington Business Group on health, representing 186 corporations, said “Let me be blunt: there is no significant support for federal legislation mandating a competition system” (Pear 1983). The Durenberger aide quoted the reaction from a representative of small business interests: “What the hell are you doing to us? I thought you were getting government off our backs. (Iglehart 1981: 294). Democrats concurred. Senator Max Baucus (D-MT) opined, “Medicare vouchers would add to the cost of the Medicare program and the size of the Federal bureaucracy.” Facing this withering criticism, the administration retreated. It conceded that the public would have to be persuaded to accept vouchers.¹ On the other hand, Congress attempted to reinvigorate the optional Medicare HMO program as the Medicare Risk program (Brown et. al. 1993: 1-5). Medicare vouchers were, by 1983, dead but hardly buried; they would figure prominently in the next episode of proposed reforms to the program in the late-1990s.

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The voucher experience of the early 1980s encapsulates subsequent dynamics in several ways. First, the political elite consensus assumed that vouchers would yield more efficiency than government-run Medicare. Hence, the administration had no qualms in agreeing to 95% reimbursement rate for vouchers. It was the special interests that readily conceded that they could not compete with the federal government on an even playing field (that is, even if offered a 100% reimbursement rate), as Jenckes stated. Vouchers remained an alien concept for most of the public and there was no enthusiasm or public pressure for the reforms.

The Breau Commission and Vouchers' Second Coming

The mid-1990s were a period of considerable churn in social policy generally, and health policy specifically. Oberlander has gone so far as to mark 1995 as the point at which a general bipartisan consensus over Medicare largely ceased to function, to be replaced by partisan polarization on the issue (and across so many others (Oberlander 2003)). When it comes to vouchers, the mid-1990s represented not so much a sharp turn, as a continuation of a debate that had begun, but had barely gotten off the ground, in the late-1970s and early 1980s.

In the wake of the failed health reform effort of 1994-'95, the Clinton administration found itself locked in protracted conflict with the newly-ascendant 'Republican Revolutionaries' in Congress, led by Newt Gingrich, Republican of Georgia, in the House. Gingrich and his colleagues pushed for substantial budget cuts, in an effort to reduce, if not fully eliminate, the federal deficit. Deficit politics quickly ensnared Medicare, which was targeted for particularly large funding cuts. By the end of April 1995, Gingrich announced his intention to seek the establishment of a voucher program within Medicare, while at the same time attempting to convince skeptics that such a project was not simply about erasing the overall federal deficit, but

‘saving’ the program itself (Rosenblatt 1995). Such skeptics questioned whether the pledge to keep Medicare out of larger efforts to reduce the overall deficit came as a result of a realization that Gingrich’s voucher plan would not actually save very much. “Mr. Gingrich’s voucher scheme will not work,” editorialized the *New York Times*—unless private insurers ceased charging dramatically higher premiums to the less healthy (otherwise known as community rating—a concept that would find new life in the Affordable Care Act years later) (“A Phony Medicare Maneuver”, 1995). The medical left no longer had use for Medicare vouchers: they understood voucher proposals in the vein of the *New York Times*—a retrenchment in a social welfare benefit.

In the end, Gingrich’s voucher proposal did not go far. The Medicare Preservation Act, introduced in September 1995, pleased few. For many Republicans and some Democrats, it was “remarkably timid,” a sign that the GOP had “given up on the idea of restructuring Medicare” (Pear, 1995). The larger battle over cuts to Medicare (and Medicaid) contributed to the government shutdown that came at the end of 1995. The government shutdown, in turn, placed Republicans in Congress squarely on the defense, and seemed to revitalize a flagging Clinton administration. Though Gingrich and his congressional colleagues suffered a tactical defeat, however, their message regarding the importance of controlling federal spending continued to resonate.

Indeed, just a little over a year later, Clinton signed off on the Balanced Budget Amendment of 1997. In addition to general spending cuts, it also mandated a commission to review options the future of Medicare. The Commission hoped to find new ways to direct beneficiaries into managed care organizations, in the process making Medicare more closely resemble the state of the private insurance market. The most expedient method outside of

compulsion was turning the program into a defined-contribution, or voucher, system. From the start of the proceedings, a bloc within the Commission (including its chair) championed the cause of voucherizing Medicare.

In addition to congressional figures from both sides of the aisle (Senators Jay Rockefeller (D-WV) and Bob Kerrey (R-NE), Representative Bill Thomas (R-CA) and Senator William Frist (R-TN), the Commission included two representatives of the health insurance industry, several scholars of health policy and health economics (Stuart Altman and Bruce Vladeck). Members were selected by President Clinton and the congressional leadership. Chairing the Commission was Senator John Breaux, a conservative Democrat from Louisiana, with Thomas serving as administrative chairman (effectively, Breaux's lieutenant). A young Bobby Jindal was named Executive Director.

Following an organizational meeting on April 6, 1998, the Commission officially opened proceedings on April 20. Relatively early in this first meeting, Senator Rockefeller, a liberal critic of efforts to introduce market mechanisms into Medicare, became the first member to utter the word 'voucher' on the record. Rockefeller was responding to testimony offered by Federal Reserve chairman Alan Greenspan pertaining to the future larger economic effects of a growing Medicare program. He specifically expressed skepticism as to the ability of any voucher offered to keep pace with rising health care costs, and the power of individual consumers to exercise significant leverage over the health insurance market generally (Commission, 4/20/98).

Combing the transcripts of Commission proceedings, it appears many members entered with a fairly open mind when it came to 'fixing' Medicare. Mentions of vouchers were relatively sparse in sessions from April to around July of 1998. Indeed, actual appearances of the word voucher were the exception throughout; the term of choice was instead premium support,

one originally proposed in the 1990s by health policy scholar Henry Aaron and Robert Reischauer and usually employed to denote a cash contribution that keeps pace with inflation. In August, however, voucher or premium support proposals took center stage, and support for such measures largely broke down along party or ideological lines. Premium support appears a full 42 times over the course of December 2 proceedings. Most Democrats on the Commission and many of the policy scholars expressed increasing opposition to a premium support model, while most Republicans (perhaps most prominently Bobby Jindal) signaled strong support. A swing vote appeared to be that of Laura D'Andrea Tyson, an academic economist who also advised Democratic administrations. At that same December 2 meeting, she voiced "...a lot of sympathy for the premium support approach[,]” but tempered such positive inclinations by noting that there existed "...a huge amount of uncertainty about how much money that will actually save” (Commission, 12/2/98).

In the new year, 1999, discussions were centered firmly on the concept of premium support, its design, and how it would fit vis a vis fee-for-service, or traditional, Medicare. ‘Premium Support’ appears 74 times in the proceedings of January 26, 1999. Also, increasingly prominent in the continuing conversation was the idea of introducing a prescription benefit into Medicare. Notably, Colleen Conway-Welch, Dean of Vanderbilt’s School of Nursing, suggested a trade-off between the two, expressing her belief that a drug benefit would be unaffordable without the simultaneous implementation of premium support within Medicare (Commission, 1/26/99). A somewhat bemused Tyson would note in a February session that she was portrayed as an economist in the press for supporting competition within Medicare, and a liberal for promoting prescription coverage (Commission, 2/24/99).

As the winter progressed, liberal support for premium support reform became intimately connected with prescription coverage, and particularly the perceived adequacy of the latter. In her final words before the Commission, Tyson thus expresses support for the concept of premium support, but swiftly rejects the shape of the plan the Commission was considering on the basis of the drug benefit's inadequacy (Commission, 3/16/99). Effectively, the proposed prescription drug benefit was not generous enough to push liberals on the Commission to support the premium support plan. Eleven votes were required for approval of any plan, and the final vote fell just short. In the end, therefore, no reform plan was submitted to the President and Congress.

Though there was no immediate legislative product to come out of the Breaux Commission, that did not mean voucherizing Medicare was no longer on the table—far from it. Congressional Republicans pushed for vouchers with renewed vigor in the wake of the proceedings. The proposed Breaux-Frist Medicare Preservation and Improvement Act of 1999 made the creation of vouchers its central plank. When George W. Bush adopted Breaux-Frist as a key part of his Medicare agenda during the 2000 campaign, vouchers had become Republican orthodoxy (McGinley 2001; Smith 2002; Oberlander 2003). Breaux and Kerrey were left as some of the last Democrats to push for vouchers. Their retirement soon after brought the bipartisan era of premium support to what seemed a definitive close.

Some observers at the time (and later) suggested that the Commission was simply designed to pay lip service to conservatives who had hoped for a bolder redesign of Medicare in the run-up to passage of the BBA. In their eyes, the group was designed to fail, and merely an exercise in letting off political steam. Others are more mixed in their assessment. If the Commission was purely an empty exercise, meant to fail, why did the Clinton administration

find it necessary to offer up its own Medicare reform plan, one which looked toward a significant role for managed care, but which steered clear of vouchers? As Smith (2002) notes, the plan was likely designed to foreclose the possibility that Congress would institute premium support upon the recommendation of the Commission. Clearly, some within the administration took this possibility (and the Commission's work) seriously. With the vote against recommending vouchers, hopes for immediate reform flickered. The real casualty arising from the episode, however, was bipartisan cooperation on any plan to voucherize Medicare.

While, overall, *The Journal* published more articles about Medicare from the 1990s onwards, articles about Medicare vouchers were uneven in appearance. None appeared, again, in 1996 before the numbers began increasing again during the late 1990s. Medicare vouchers were a beltway phenomenon only discussed when the tide of political events gave leading politicians the opportunity to promote them.

The Ryan Plans

The opportunity for dramatic Medicare reform seemed to next arise with the development of broader health reform plans under the auspices of the victorious presidential campaign of Barack Obama in 2008. Conservative commentators assumed this was the moment Democrats had been waiting for: as part of a broader campaign aimed at eliminating all traces of market mechanisms in government (Williamson 2008). Republicans, in turn, struggled to put their stamp on this latest round of health reform. They were led in this regard by an up-and-coming Wisconsin congressman, Paul Ryan. Beginning in 2008, Ryan offered successive Medicare reform plans—in addition to a (2009) “Patient Choice Act” that looked to reform the entire health care system along what he felt to be more market-friendly lines (Good 2012). These Ryan

Plans had as their centerpiece what was effectively a voucher scheme. Since vouchers were viewed negatively by most, however, he resurrected that term originally proposed by health policy scholar Henry Aaron and Robert Reischauer, premium support (Aaron and Reischauer 1995).

Ryan was right to semantically tread carefully; a 2010 Pew Research poll showed that 52% of Americans opposed “replacing Medicare with a voucher scheme,” with only 33% in favor, and 15% on the fence (Pew Research Company 2010). It is true that Aaron’s notion of a premium support system shared some important attributes with Ryan’s Plans—both envisioned an approved list of insurers from which beneficiaries could choose, with federal payments going to the selected plan. Crucially, however, Aaron’s premium support proposal would have indexed federal payments to prevailing health care prices. Ryan, in contrast, would have linked payments to general inflation. Since health care costs (generally) rise a good bit faster than inflation, this provision ensured a lower federal contribution over time, and far more ‘skin in the game’ on the part of the beneficiary.

While some variant of the Ryan formula remains the Medicare reform of choice, Democrats have been content to make fairly minor tweaks to Medicare Advantage—changes that serve to bolster, rather than weaken, the program. The most notable of these alterations is the gradual closing of the so-called “doughnut hole” that had limited federal exposure to high drug costs by cutting off funding of beneficiaries’ drugs at a certain level of spending—before resuming at a much higher level. As noted above, Democrats have effectively ceased any campaign to cut ‘overpayments’ to insurers under MA.

Discussion

The perennial appeal of vouchers, particularly on the political Right, is evidenced by the pattern of coverage to be found in the pages of the *Wall Street Journal*. One of the first articles to appear on the topic of vouchers in Medicare lent considerable weight to the prevailing suspicion of such policy innovations among doctors, exuding considerable skepticism of their efficacy (Waldholz 1981). Though *Journal* coverage of Medicare vouchers was intermittent during a fair portion of the 1980s, it (predictably) increased during the mid-1990s in the wake of the Republican ‘revolution’ of that decade, as noted above. During this time, reportage became substantially more positive in tone, with a 1995 editorial stating quite candidly, “we also like the idea of Medicare vouchers’ (“Medicare’s Gordian Knot”). Another flurry of coverage surrounded the work of the bipartisan Breaux commission in 1999. After another fallow period in the first decade of the twenty-first century, (generally positive) coverage again increased substantially with the political rise of Paul Ryan, and his plans to reform Medicare and, indeed, large swaths of the American social welfare system. Medicare vouchers have risen toward the top of the political agenda at least once every decade since their initial appearance in the 1980s.

Vouchers, proponents hoped, would save the federal government money by keeping benefits (per capita) within a set range, and leaving the difference to be covered by the beneficiary. Having money follow beneficiaries in this way would offer the appearance (and, in some cases, the reality) of increasing the amount of individual ‘skin in the game’. Beneficiaries would have a keener sense of just how much was being spent on health care on their behalf—and how much additional funding they had to contribute. The RAND study of the 1970s and ‘80s had shown that the insurers spent more on health care than those who paid out of pocket—increased out-of-pocket spending could thus be associated with lower consumption of care (RAND Health Insurance Experiment, 1986). Pro-market policymakers hoped beneficiaries

furnished with vouchers would at least be more conscious of the amount of money they were spending on care directly or indirectly, and thus opt for less expensive treatment when it was available.

Market mechanisms have a long history of being oversold and then underperforming, particularly in terms of limiting the growth of the Medicare budget. Pro-market politicians were faced with the conundrum of how to construct a market that was not wholly focused on the decisions of managed care organizations rather than individuals. Vouchers are a policy option premised on the exercise of choice on the part of individual beneficiaries. Such a course of action had the added appeal of making a dent in the top-down, command-and-control, one-size-fits-all quality of Medicare that continued to chafe among conservatives. Under the circumstances, vouchers came to seem a viable solution.

For a party increasingly dependent on older voters, the appearance of defending beloved benefit programs was absolutely crucial—even given the countervailing pressures to cut the federal budget down to size and limit the role of government in the lives of Americans generally. Far from ‘gutting’ Medicare, vouchers could be said to enhance the program, ensuring the continued flow of benefits, but also ensuring beneficiaries themselves could determine just how those benefits were spent. Vouchers came to seem a more active, promising policy tool than simply (rather passively) allowing a limited number of HMOs to cover a small proportion of beneficiaries—the pro-market policy that had failed in the past.

One early contender for the 2016 Republican presidential nomination, Rand Paul [R-KY], stated in reference to debates about immigration policy within his party, “we’ve been somewhat trapped by rhetoric and words . . . (Martin 2014).” Such a description can equally be applied to Medicare where the party has boxed itself into a policy corner. For many elected

politicians on the Right, market mechanisms have become the sole road forward on Medicare. Over time, vouchers have been pushed to the forefront because of the limited success of alternative forms of market mechanisms. The Republican nominee for the presidency in 2016, Donald Trump, is the exception that proves the rule. He vaulted to the nomination partly on the basis of thumbing his nose at Republican orthodoxy on a host of issues. His stance on Medicare was no exception; he has suggested leaving Medicare and the other entitlement programs alone, seeking savings through fraud reduction. Conservative observers, however, cannot quite bring themselves to believe he would abandon the drive for vouchers in practice. Citing his pragmatism and desire to always get the best deal, they theorize he will pivot to champion vouchers if elected (Meyer 2016). In an era in which consumerism has spread across many realms of policy Medicare vouchers continue to carry particular resonance.

Despite their appeal to Republicans, however, there is little reason to think Medicare vouchers would prove a resounding success. Indeed, despite decades of discussion no demonstration project featuring vouchers has (fully) run its course. Thus, they remain an article of faith rather than a proven policy success. A report published by RAND in the 1970s offered qualified optimism about the promise of increased out of pocket spending to bring overall spending under control has been eagerly embraced by many Republicans. The RAND study endorses the underlying dynamics upon which any voucher scheme must rely since they both replace government purchasing with more direct consumer participation in the market place (Newhouse 1993).² While the RAND report is still cited forty years later the CRS report highly critical about the prospects for vouchers in Medicare remains buried.

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As the aforementioned RAND report would seem to suggest, however, vouchers continue to hold real potential as money-savers. How, then, to reconcile their continued appeal to a GOP becoming ever more reliant on the senior demographic? The Ryan plans, specifically, have attempted to square the circle by simply delaying the onset of any voucher program for ten years or more, leaving the current generation of beneficiaries comfortably ensconced within ‘traditional’ Medicare. Additionally, however, vouchers represent cost-cutting by stealth, as dollars are saved over a number of years through the failure of any lump-sum payment to keep pace with health care inflation.

The political stakes involved in Medicare reform are evident from the semantic struggles. The Republican Part hopes to avoid blame for ending eroding Medicare benefits by implementing a voucher system. A partisan fact-checking organization, ‘Politifact.com,’ in 2011 deemed Democratic claims that Republicans “voted to end Medicare” as the “lie of the year.” (Adair and Holan 2011). In 2012, Politifact appeared to indicate that as long as Democrats state that the Ryan proposal would “end Medicare as we know it” the statement would pass muster (“U.S. Senator Sheldon Whitehouse”). Politifact has scored in most instances Republican

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politicians as more likely to trumpet deceits than their Democratic counterparts and probably hoped to achieve a partisan balance in fact-checking by highlighting a major policy controversy.

The debate about whether Medicare vouchers is a plan to “end Medicare” or end Medicare “as we know it” becomes clearer by removing the barbs of contemporary partisans. The CRS report analyzing Medicare vouchers authored by Glenn in 1983 considered various Medicare voucher proposals in circulation at the time. One was the Gradison-Gephardt plan that so closely resembled the Ryan plan. Glenn thought it obvious that a voucher plan meant ending Medicare, in complete contrast to politifact.com. (Glenn 1983: 8). He queried, “What kind of Medicare program, if any, should be preserved to meet the needs of certain very high-risk groups—e.g. the disabled, the renal populations—or be continued for those who do not elect private coverage” if a voucher plan replaced the established program (Glenn 1983: 8)?” The devolution of the entire issue into hyperbolic rhetoric concerning semantics is indicative that heated partisan politics is masquerading as a policy debate.

Medicare vouchers remain a popular policy option for reformers. Although numerous market-based programs aimed to revitalize Medicare have disappointed, politicians cling to voucherization—and the symbolization such proposals entail--as a panacea for Medicare. Members of Congress are constrained by their political rhetoric and vouchers remain an attractive option for those concerned about the long-term budgetary implications of the program. The proposals for voucherizing Medicare have not evolved much since the early 1980s—the Ryan proposal is similar to the Gradison-Gephardt plan. What has most changed is the amount of political debate about Medicare vouchers has increased in recent years. The increased quantity

of discussion has altered the fundamental dynamic that a partisan political battle is standing in for serious policy debate.

The politics of Medicare vouchers are a piece in the larger puzzle of understanding what motivates partisan politicians to support any specific policy reform. The symbolic value of policy ideas has kept many such proposals circulating for decades. Political scientists and policy historians must revisit the older symbolic literature to help generate theory for understanding important trends in American politics.

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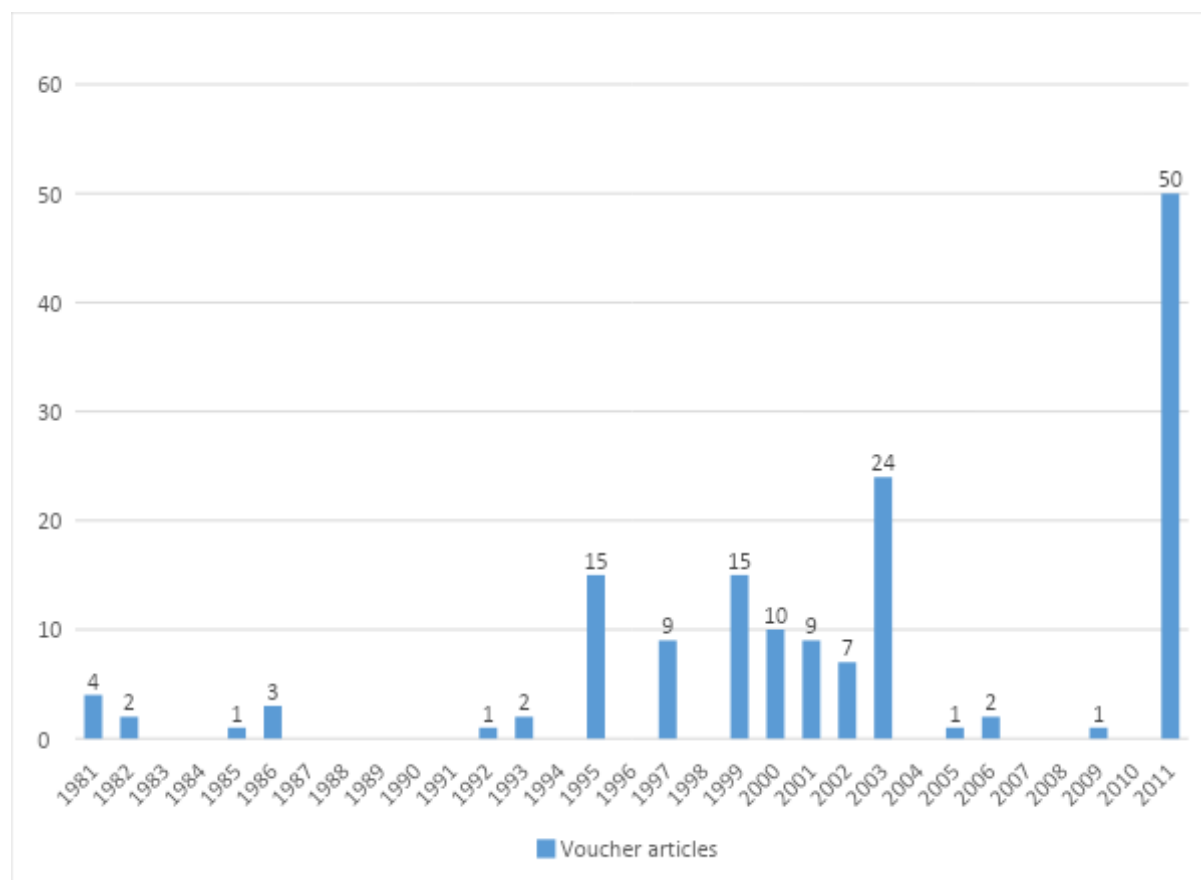
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FIGURE 1—Voucher articles by year, *Wall Street Journal*



The Cold War as Tragedy & Farce: Graham Greene's *The Quiet American* & *Our Man in Havana*, the Texts & Three Films

Thomas Lansburg

Abstract: *The Cold War as Tragedy and Farce: Graham Greene's *The Quiet American* and *Our Man in Havana*, the Texts and Three Films*

Greene, who served in Britain's WWII secret service, wrote a pair of novels that pilloried the assumptions, institutions & methods that drove the ideologically rationalized espionage that pitted agents from the democratic West v. the Communist East against one another during the post-WWII Cold War. Ethnocentric, culturally rooted hubris unfolds tragically in the eponymous "Quiet American's" struggle to win minds in Vietnam for the CIA without ever pausing to consider what the Vietnamese desire, need or have a reasonable expectation of achieving. In *Our Man* a farcical quest to steal data about a non-existent superweapon stems from the even more fatuous credulity of putatively professional British MI-6 officials who hasten to believe something they recognize as dubious because they relish the chance to outsmart their American "cousins." Here, too, tragedy becomes a cost of the Cold War competition.

The Cold War as Tragedy & Farce: Graham Greene's *The Quiet American* & *Our Man in Havana*, the Texts & Three Films

Tragedy and Farce

Commenting upon the *coup d'état* engineered by Louis Napoleon Bonaparte in 1851 to topple France's Second Republic, Karl Marx observed in *The Eighteenth Brumaire of Louis Napoleon* [1852] that historical events unfold twice, first as tragedy, then as farce. Graham Greene's Cold War novels *The Quiet American* [1955] and *Our Man in Havana* [1958], and the films based upon the novels, offer tragic and farcical commentaries on the Cold War that pitted the United States and its minions against the Soviet Union and its satellites from late 1945 until the Soviet state imploded in 1991.

Greene and the Espionage Genre

Greene produced an impressive *oeuvre* of autobiography, biography, criticism, fiction, and travel literature which included the screenplay for another Cold War piece, *The Third Man* [1949, Carol Reed film] and the 1978 Cold War novel *The Human Factor* [1979 Otto Preminger film], which offered an implicit apology for the behavior of Greene's WWII commander, the celebrated "Cambridge Five" Soviet double agent and defector H.A.R. "Kim" Philby whose conduct Greene had attempted to rationalize in an introduction to Philby's 1968 autobiography *My Secret War*.

Greene divided his novels into serious literary works and “entertainments.” *The Quiet American* fell within the first category, while Greene consigned *Our Man in Havana* to the second category. Both works, however, belong within the broad British tradition of espionage novels that date from the early 20th-century in works like Rudyard Kipling’s *Kim* [1901], Erskine Childers’ *The Riddle of the Sands* [1903], and Joseph Conrad’s *The Secret Agent, A Simple Tale* [1907]. Eric Ambler and W. Somerset Maugham joined Greene in writing important post-WWI additions to the genre, and after WWII Ian Fleming [*Casino Royale*, 1953] and John LeCarré [David John Moore Cornwell, *Call for the Dead*, 1961] became the most celebrated British practitioners of the genre. Greene, Maugham, LeCarré and Fleming also numbered among the most prominent of the many espionage writers who had served in Britain’s intelligence services.

Beginning with Kipling’s *Kim* [1901, initially released serially in *McClure’s Magazine*, 12/1900-10/1901] which popularized the idea of an Anglo-Russian “Great Game” [British East India Company Captain Arthur Connolly to another EIC operative in Kandahar, Afghanistan], to dominate Central Asia from Persia to Afghanistan, and continuing in works like Maugham’s *Ashenden or: The Secret Agent* [1928] or Greene’s *The Ministry of Fear* [1940], Britain’s espionage literature often meditated upon the nature of British imperial ambitions and the ruthlessness British agents embraced to fulfill their missions. *Ashenden* drew upon Maugham’s familiarity as a British agent during the Great War with Britain’s failed efforts to assassinate Virendranath Chattopadhyaya, a member of the Indian Independence Committee that agitated from Berlin during WWI for Indian independence from Great Britain.

Greene’s Travel Writing and His Vietnam and Cuba Novels

Greene’s novels benefited from his considerable experience as a travel writer. Four visits to Vietnam between 1951-55, and visits to Cuba enabled Greene to capture local color quite

effectively, especially in *The Quiet American* where geography figured critically in advancing the narrative because different competing indigenous political entities maintained strongholds in distinct regions. The verisimilitude of Greene's depiction of the parties to the struggle to sustain or topple French imperial control over Indochina, and of the locales where major events transpired, derived from Greene's having experienced ground and air combat where the events he described actually occurred.

In articles written for the *Sunday London Times* and *Paris Match* before the French defeat at Dien Bien Phu in May, 1954 sealed the fate of French imperialism in Indochina, Greene offered prescient observations about the futility of the American funded effort to thwart Ho Chi Minh's Viet Minh movement in Vietnam which then informed *The Quiet American*. He mocked the irony of the US supporting French imperialism in Indochina despite its "exaggeratedly distrustful" outlook about empires because France served America as a surrogate in America's global effort to contain Communism. Greene reckoned only a "revolutionary faith could combat a revolutionary movement," and that in Vietnam Ho, whom Greene likened to the benevolent public school master Arthur Chipping in James Hilton's 1934 novel *Good-bye Mr. Chips*, had won most of the populace with a brand of Communism that offered more than political theory. He derided the prevailing "domino theory" [President Dwight D. Eisenhower, April 7, 1954 news conference], and berated the Americans for not comprehending the Vietnamese wished only to have sufficient rice to subsist, no one shooting at them, and freedom from Caucasian overlords telling them what to do or think [see Graham Greene, "En Indochine", *Paris Match*, 12 July 1952, pp. 19–30].

Less than three months before the French garrison at Dien Bien Phu surrendered to Ho's forces led by the former University of Hanoi philosophy instructor General Vo Nguyen Giap,

Greene concluded France and the US had one card left to play if they wished to stint the hemorrhaging of blood and treasure and stabilize the area—granting full independence to Vietnam. Vietnamese nationalism, historically antithetical to Chinese domination, would then allow circumstances to evolve where a Ho ruled Vietnam could undertake accommodations with the West to assure its autonomy. The US eschewed this option after France capitulated. Nearly 60,000 Americans [58,209] and over 1.3 million Vietnamese [1,350,000] perished during the US phase of the Vietnam War because the US government did not learn any lessons from France’s failure in Vietnam, France’s subsequent failure in Algeria, or the multiple failures of the other European colonial powers who sought to restore or sustain their hegemony in places like India, Indonesian, Kenya, or Malaya after World War II ended and the “Revolution of Rising Expectations” fueled the global struggle against Western imperialism [see Barbara Ward, *Five Ideas That Change the World*, 1959 & Alexis de Tocqueville for the original use in print of the “Revolution of Rising Expectations” in *The Old Regime and the French Revolution*, 1856].

Similarly, his knowledge of the demimonde in Havana, and of both elite and pedestrian quotidian life in Cuba during the waning days of the Fulgencio Batista regime, enlivened and enhanced the effectiveness of *Our Man in Havana*. As he wrote in his 1980 memoir *Ways of Escape*, Havana, “where every vice was permissible and every trade possible,” Batista’s brutal gangsterism, the vice entrepreneurship of American gangsters, and the tentacles of corporate American greed which reached into most Cuban households, offered an appropriately debauched, cynical locus for a comedy about the “manners” of Cold War espionage where putative partners did not trust one another sufficiently to share information.

The Characters

Momentarily setting aside the Cold War ideological issues, quite different characters populate the two novels motivated by quite different goals. *The Quiet American* develops a love triangle between Thomas Fowler, an unhappily married, cynical, middle aged, opium smoking British reporter in Saigon whose wife resides in London, Alden Pyle, a much younger American CIA agent Cold Warrior “true believer” [Eric Hoffer, *The True Believer*, 1951] masquerading as part of an economic aid mission, and Phuong, a beautiful young Vietnamese woman who begins as Fowler’s mistress, but who shifts to Pyle because he can offer the wedlock beyond Fowler’s reach because his Catholic wife refuses to grant him a divorce. Phuong appears largely as a pawn in the amative quests of the two men. Neither suitor really seems to understand Phuong, making the two men’s relations with her microcosmic metaphors for the general inability of the West to plumb the Vietnamese *mentalité*, a failing which successively undid French and American imperialists in Vietnam.

Our Man in Havana follows the tragicomic trajectory of James Wormold, an expatriate Brit living in Havana, from a struggling vacuum salesman, to an inept tyro British spy targeted by the Communists for termination because he sells his prowess at espionage far more successfully than he ever moved vacuums. Wormold accedes to MI6’s importuning to serve Britain not because of patriotic impulses, but because he wants to amass sufficient funds to dispatch his nubile teenaged daughter Milly to a Swiss finishing school before she can yield to the carnal temptations of the accelerated sexual ripening associated with the tropics, with a few pounds left over for his retirement. Wormold’s penury and poor prospects permitted him neither the leisure nor the security to have or to act upon profound political convictions, until MI6 began augmenting his meager earnings he needed to confine his political convictions to the axiom “the customer is always right.”

The Novels

Both novels develop several interesting themes. Although Fowler trumpets his irreligion, Greene integrates Pietà imagery, and extols the role of Catholic clerics in selflessly seeking to serve Vietnam's Catholic peasantry whose devotion to Rome had withstood 19th-century efforts by Vietnam's monarchy to violently extirpate Catholicism. Implicit or explicit religious references meld with more secular existential musing heavily suffused by the tension between *Eros* and *Thanos*, between Fowler's rapturous regard for Phuong's charms and the nihilism and ennui that make him crave a death he lacks the will to embrace. Antonio Gramsci's insights about cultural and political hegemony [*The Prison Notebooks*, 1929-1935], Edward Said's *Orientalism* [1978 and its sequel *Culture and Imperialism*, 1993] David Cannadine's *Ornamentalism: How the British Saw Their Empire* [2001], all the usual suspects related to alien "Others" exploited but misapprehended by their oppressors, find their way into Greene's narrative about the catastrophically sanguinary misadventures that eventuate from hubris of the sort he saw animating American foreign policy. He actually differentiates the equally blinkered French from the Americans by allowing French *colons* understandably wished to retain their privileged status and property while nescient American strategists simply wished to impose Jeffersonian Democracy and Adam Smith's capitalism upon the Vietnamese from a misguided Kiplingesque sense of a "White Man's Burden" ["The White Man's Burden: The United States and the Philippine Islands," *The Times*, London, February 2, 1899] to uplift alien populations even if it meant doing so against their will and by disregarding the targeted population's expressed wishes.

The Uncle Sam knows best presumption of the *Pox Americana* appears in the epigraphs to the novel: The English poet Arthur Hugh Clough's admonition in his 1849 verse novel

Amours de Voyage: “...action, Is the Most terrible thing; I tremble for something factitious, Some practices of the heart and illegitimate process: we’re so prone to these things, with our terrible notions of duty.” And Lord Byron’s more famed observations in his 1819 satiric poem *Don Juan* which actually imagined the United States and the New World as pernicious influences upon the Old World:

This is the patent age of new inventions
For killing bodies, and saving souls,
All propagated with the best intentions.

In *The Quiet American* napalm and Melonite represented science harnessed to incinerate from the air or to dismember, maim and kill on the ground, devices of the pedagogy of power employed by the Americans, their didactic response to Ho’s radio broadcasts to educate Vietnam’s illiterate millions. American proselytism failed to win the “hearts and minds” [term coined in 1895 by France’s Gen. Louis Hubert Gonzalve Lyautey as a strategy for pacifying French Indochina] of the Vietnamese precisely, as Greene recognized in his novel and the reportage that preceded the novel, because the Americans never cared to inquire whether the Vietnamese wished to learn the lessons the apostles of Americanism came to Vietnam to teach—something Americans hunkered down in Baghdad’s Green Zone have also learned from hard experience. *The Ugly American* conjured by William Lederer and Eugene Burdick in their 1958 novel [1963 George Englund film] and realized with such chilling innocence by Greene’s Pyle, had an even more pox vexed countenance in the George W. Bush era and the present regime of Donald Trump.

While *The Quiet American* offers a grim cautionary tale about unenlightened crusades to impose an alien vision upon unreceptive audiences, *Our Man in Havana* lampoons the arcane world of espionage and pillories the supposed mandarins of organizations like Britain’s MI6 as

learned fools all too ready to yield to credulity when interesting supposed “secrets” became available.

However, before the eponymous vacuum salesman turned spy gets recruited Greene sets the tone for the times. “We none of us have a great expectation of life nowadays... We live in an atomic age. Push a button—piff, bang, where are we?... You should dream more Mr. Wormold. Reality in our century is not something to be faced.” [p. 9] The fact Wormold’s company has named its newest machine an “atomic pile” [p. 5] unit to capture a broader market share adds to the irony.

Henry Hawthorne, Wormold’s recruiter, immediately detonates any semblance of professionalism. He lacks any knowledge of the “lingo” in Cuba, his idea of security entails seeking microphones in men’s rooms, and his vetting of Wormold as a potential agent consists simply of verifying his attachment to Great Britain. Later, when the “Chief” queries Hawthorne about Wormold Hawthorne lets the Chief delude himself about Wormold as a “merchant prince” from “the Kipling age,” who “walked with kings” [pp. 47-48], transforming the marginally subsisting Wormold into someone like the British “Taipans” who marketed Smyrna or Indian opium to China to initiate great Hong Kong trading houses like Jardine Matteson. When Wormold seems to need an assistant the Chief orders a French speaking secretary to Spanish speaking Cuba since “It’s much the same. They’re both Latin languages.” [p. 50] Later still, when real jeopardy threatens Wormold MI6 fears contacting the CIA because the Klaus Fuchs atomic secrets betrayal has undermined the “special relationship” [term coined by British Prime Minister Winston Churchill in 1946] and because the Brits don’t really trust the Americans, whom the Chief suspects of being behind the weapon he believes Wormold’s “agent” Raul has

stumbled upon. He acknowledges that anti-Americanism would not do in Cuba, but really cooperating with the Americans also would not work [p. 46].

Our vacuum cleaner salesman turned espionage entrepreneur embarks innocently enough to fulfill his obligations to London by recruiting an agent who mistakenly believes he desires a pimp, not a subagent. Perplexed, Wormold proceeds to follow the advice of his friend the émigré German physician Dr. Hasselbacher to invent his secrets, since the men paying for them deserve nothing since the money they pay him they have extorted through taxes from men like Wormold. Hasselbacher assures Wormold he need not worry about his inventions being discerned since “if it’s secret enough, you alone know it. All you need is a little imagination.”[p. 57]

Wormold’s proceeds to invent agents with tragic and near tragic consequences for real people mistaken for Wormold’s fictive creations. Wormold’s endeavors and his daughter also cause his life to intersect with Captain Segura a nun trained Batista torturer known as “the Red Vulture” a “saturine” slayer of the regime’s enemies who lusts after the lovely Millie. [p. 87] Segura would like to make Wormold his father-in-law but he also alerts Wormold he knows about his new career in espionage since he tracks both sides’ agents in Cuba to serve Batista and himself since a successful revolution might make it prudent to flee to Miami. When Wormold cannot discern what either side desired in Cuba Segura shrewdly noted the surrounded Soviets coveted inroads in Cuba to strike at America from within the ring of encirclement—neatly anticipating the Russian gambit that later precipitated the October, 1962 Cuban Missile Crisis. Segura also enlightens Wormold about the niceties of torture which confine the practice to “the torturable classes,” [pp. 150-151] which exclude middle class Protestants like Wormold. Segura

allows the Communists have democratized torture by repudiating class distinctions, a development Segura very much detests.

When events close in upon Wormold a fortuitous stammer saves him from assassination but leads to the untimely demise of a dog and Dr. Hasselbach who had warned Wormold about his impending doom. At the luncheon where the opposition planned to assassinate him Wormold delivers a speech which might serve as a memo to the “Company” at Langley which compares the Cold War to corporate warfare wherein little difference exists between the antagonists “there would be no competition and no war if it wasn’t for the ambition of a few men in both firms.” [p. 177]

Later, when he learns Hasselbach has died because of him he resolves to avenge the doctor’s death, not for Britain, or capitalism, or even Communism or social democracy or the welfare state, but for friendship. Ideologies did not move him. Instead, he muses “[w]ould the world be in the mess it is if we were loyal to love and not to countries?” [pp. 189-190] Still, when the moment arrives he cannot kill, at least not until the man he spared tries to shoot him and the once again fortunate Wormold kills his nemesis. The dénouement: an abashed British intelligence service arranges to have Wormold awarded the OBE [Order of the British Empire] and given an instructor’s post with a nice pension in London. He also wins the hand of his secretary, a quite bemused Beatrice Severn, the French speaking secretary sent to Cuba whose first act there had entailed spraying Segura at a night club with a seltzer siphon. An odd couple united. Hurrah for Kismet and comedy.

Since Greene had minimized the terror and oppression perpetrated by Batista’s regime to focus upon the absurdity of the competing spies, thereby skirting the justice of the revolutionary aims realized when Fidel Castro took Havana on January 1, 1959, Castro’s regime has never

lionized Greene. When Greene did visit Castro's Cuba, he did not find a workers' paradise, but vice had fled elsewhere in the dashed dreams of gangsters like Meyer Lansky and deposed dictators like Batista.

The Films

These books have generated three films **and a stage play** [Clive Francis, 2007]. The Academy Award winning director Joseph L. Mankiewicz [*A Letter to Three Wives*, 1949 and *All About Eve*, 1950] filmed *The Quiet American* in 1958 and turned Fowler's conversion from a detached observer into an *engagé* determined to stop Pyle's murderous career into the jealousy driven betrayal of a man who had saved his life. The boyish looking WWII hero Audie Murphy played Pyle for Mankiewicz in a movie structured as a recruiting film for idealistic paladins of Henry Luce's "American Century" [February 17, 1941, *Life* magazine]. A miffed Greene mused he believed his novel would endure longer than "the treachery of Joseph Mankiewicz" in his "incoherent picture." [p. viii] Although clearly unintended by the director, Murphy had precisely the kind of "unused face" [p. 17] Greene had invoked as a perhaps conscious nod to Herman Melville's description of the Devil in his 1856 novel *The Confidence Man: His Masquerade*.

When Australian director Philip Noyce revisited *The Quiet American* in 2002 the Soviet Union no longer existed, Vietnam had experienced nearly three decades of Communist rule with Saigon renamed as Ho Chi Minh City, and containment referred either to efforts to eradicate Islamist extremists like *al-Qaeda* or to curtail the unilateralist adventurism of the "Vulcan" Neo-Conservative crowd around President George W. Bush. Consequently, Noyce's film very faithfully rendered Greene's vision of an arrogantly self-righteous American Innocent abroad whose star spangled myopia made him believe abetting the slaughter of innocents could actually

help usher Vietnam on to the path toward American style Democracy and the modernization theorists like the Texas economist Walt Rostow touted as the universal remedy for global problems [however, no one could characterize US Air Force Major General Edward G. Lansdale, who had a celebrated career conducting clandestine and psychological operations for the CIA during the Cold War, and who believed Greene had modeled Pyle on him, as a naïve Hofferesque “true believer”]. The Canadian actor Brendan Fraser admirably animates the well-intended ruthlessness of Greene’s Pyle, an unquestioning acolyte of a missionary Americanism that easily abstracted the casualties occasioned by his designs anticipating Secretary of Defense Robert McNamara’s utilitarian calculus for victory in Vietnam, the anonymous body count, or more poignantly the unreflective hubris behind an American briefing statement about needing to destroy a Vietnamese village to save it [actions and attitudes McNamara later bemoaned in Errol Morris’ Academy Award winning 2004 documentary about the Vietnam War, *The Fog of War*].

As Fowler, the two time Oscar winning British actor Michael Caine delivered an Academy Award nominated performance that fully realized the existential crisis of a self-indulgent, world weary, safely detached, opiate numbed voyeur who finds himself abandoning his practice of only observing and literally reporting quotidian events—“even an opinion is a kind of action” [p. 28] a personal and professional commitment he eschewed before meeting Pyle. Watching a Vietnamese peasant woman cradling her dead baby slain by plastic explosives Pyle had provided for the bomb maker, Fowler decides to reconnect to humanity by acting decisively to stop Pyle. Caine’s Fowler does not journey from detachment to decisiveness to experience a life affirming catharsis, his Fowler carries the burden of a felt betrayal intensified by the guilty knowledge that while he acted not from the jealousy suggested in the Mankiewicz

film, Pyle's murder allowed him to regain Phoung, a fact made more trenchant when news arrives from England that Fowler's wife has agreed to divorce him.

Carol Reed's largely faithful film *Our Man in Havana* adaptation offers multiple delights. Sir Alec Guinness's Wormold [Oscar for *The Bridge on the River Kwai*, 1957] numbers among his finest comedic turns. We watch him evolve from a guilt ridden novice spying not from duty but for funds, into a reasonably assured practitioner of the imaginative turn urged upon him by Hasselbach who manages to dissemble, even to emulate the casuistry his daughter practices upon him with his superiors in London and the subordinates London sends him, and finally into a not exactly determined avenger whom the gods protect and reward. The American folk singer and Academy Award winning actor Burl Ives [*The Big Country*, 1958] neatly conveys the hope embedded in his faith in science that lightens Hasselbach's angst respecting the blighted 20th-century and the modest joys his friendship with Wormold allows him amid his émigré loneliness. The physically miscast American comedian Ernie Kovacs casually captures scenes as Segura, melding a gauche unctuousness with a quietly conveyed menace. England's Noel Coward's Hawthorne reminds us how England acquired an empire "in an absence of mind" [Sir John R. Seeley, *The Expansion of England*, 1883] precisely because it produced generations of functionaries who prevailed over climes they generally did not bother to understand. Maureen O'Hara's Beatrice Segern offers a needed counterpoint as a genuinely professional civil servant thwarted by her new boss but who works earnestly to serve because she has signed on to serve. We can accept it when her admiration for Wormold becomes love because his tardy honesty and conviction touches her. The ensemble work makes virtually every frame a pleasure to view.

Coda

Greene's novels appeared as the sun had set or was setting on most of Great Britain's colonial empire, as its fellow European imperialists watched their overseas possessions revert to indigenous populations, but as Coca Cola imperialism was racing about the planet [see Billy Wilder's 1961 comedy *One, Two, Three* about Coca Cola in Cold War Berlin]. He detested the arrogance that made the *Ugly American* uglier than his German predecessor of the 19th-century that eventuated from a rude confidence in a mission only Americans seemed to understand and from a philistinism that seemed to pervade every aspect of what passed for "culture" among the Americans. Greene could pillory MI6 in *Our Man in Havana* because the fiasco of the 1956 Suez crisis illustrated that absent an American commitment to act in concert with England Great Britain would have to rely upon fictional figures like Ian Fleming's James Bond or LeCarré's George Smiley to celebrate Cold War era triumphs. The discovery of the treachery of the Cambridge Five spies during the early 1960s illustrated that even the hoped for continuation of clandestine, unpublicized intelligence victories might also elude Britain. Consequently, the dark admonitory humor of *Our Man in Havana* and the anti-American jeremiad in *The Quiet American* suited a transitional era when an insightful novelist sought first to avert further geopolitical tragedies and then to pillory the authors of the continuing calamities in his "comedy" about the tragedies unleashed by farcical intelligence operatives and the often inept or politically twisted agencies and governments they served.

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**The Extraordinary Effects of Ordinary Politics: Constitutional Rights During War and
Crisis**

Justin Wert

Abstract:

For decades, war time constitutionalism has been characterized by a misleading dichotomy between "ordinary" and "extraordinary" politics. This article, however, argues that the ordinary/extraordinary distinction surrounding analyses of war and crisis is potentially misleading in very important ways, the most important of which is the extent to which the persistence of important political and constitutional questions from preceding periods of "ordinary" politics continues to shape the politics of periods of war and crisis. Analyzing the preceding development of two salient Constitutional questions during war or crisis - the internment of Japanese-Americans during World War II and the current question of the indefinite detainment of terrorists suspects in the continuing "War on Terror" - I argue that we should understand the political development of these issues as processes that had already been unfolding, instead of ones that have been characterized as somehow different and "extraordinary" from "ordinary" politics.

The Extraordinary Effects of Ordinary Politics: Constitutional Rights During War and Crisis

One of the most important, if not the most theoretically challenging questions in the study of constitutional law and theory, was dramatically formulated by an American president one hundred and forty-nine years ago: "Is there, in all republics, this inherent, and fatal weakness? Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" Spoken within the crucible of civil war, Lincoln's question echoed Cicero's similarly perennial question, "Inter arma silent leges?" These questions strike at the core of constitutional government, as they force us to ponder the nature of constitutional regimes during war or times of acute crisis. Bound up within these questions is an almost universal assumption about the relationship between constitutional regimes and war more generally: There

is empirically, or should be normatively, a difference between the structure and operation of any constitutional regime during “normal” or peacetime periods as opposed to “extraordinary” periods of war or crisis. For Lincoln this was arguably true, as his answer to the above question was a resounding “no.” After suspending the writ of habeas corpus without Congressional authorization, he justified his action by formulating another question: “Are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?” Potentially unconstitutional actions were thus justified because the situation – war or crisis – necessitated the application of governmental power that was somehow different and distinct from the otherwise legitimate use of governmental power during ordinary periods of constitutional governance.

The reverse of this argument, which argues that liberty should never be sacrificed for security, still imagines a qualitatively different kind of war-time regime politics. This type of temporary regime, instantiated most often in the form courts, transforms into a super rights-protecting body in the face of rights deprivations from the political branches of the constitutional regime. This argument is aptly represented by Justice David Davis in *Ex parte Milligan*, who argued that the Constitution was “a law for rulers and people, equally in time of war and peace.” Most recently, Justice Anthony Kennedy seconded this argument, proclaiming that, “The laws and Constitution are designed to survive, and remain in force, in extraordinary times.”

This paper, however, argues that the ordinary/extraordinary dichotomy that characterizes analyses of war and crisis is potentially misleading in very important ways, the most important of which is the extent to which the persistence of important political and constitutional questions from preceding periods of “ordinary” politics continues to shape the politics of “extraordinary” periods of war and crisis. While there is no doubt that war can transform the political environment in important ways that can even re-shape substantive aspects of the state itself after

the conflict ends, the application or non-application of civil rights and liberties during war or crisis continues to be understood as something that happens in a qualitatively different kind of political environment than its preceding normal operation.

The two reigning theories of war-time constitutionalism (which will be referred to throughout this paper as the “Crisis Theory” and the “Milligan Theory”) have recently been challenged by political scientists. This is not to say that scholars (and, most importantly, political actors) have not debated the two approaches from a normative perspective centuries, for they have. But the foundations for these theories, particularly the role that the judicial branch has played during war, have only recently been tested with empirical rigor. The question of whether the judiciary has either elevated itself to a super rights-protecting branch or has instead relegated itself to a rights-deprecating role, has yielded an answer that supports neither of the two most salient, yet competing, theories of constitutionalism during war completely. Empirical judicial behavior scholars argue that war does not have a significant impact on war-related cases of civil rights and civil liberties. In partial support of the Crisis Model, however, war “does affect cases unrelated to the war.” Aside from showing that the Milligan Thesis is incorrect, this analysis of judicial decision-making during war lends only partial and qualified support to the Crisis Thesis: Justices will be more likely to curtail civil rights and liberties during war but only in cases not related to war; for those cases that are directly related to war, the Court moves from what these scholars argue is the Court’s normal ideologically, policy-preference based model of judicial decision-making to a process-based model where they defer to the elected branches and employ an “institutional-process perspective rather than a first-order balancing of security and liberty rights.” When the war or crisis that precipitated this change in the processes of judicial decision making is over, the Court simply defaults back to its normal operations.

These findings are quite significant, but like the traditional Crisis and Milligan theories, they raise as many questions as they purport to answer. First, if war does not affect cases directly related to the conflict, then how are we to understand the role war plays within the development of constitutionalism more generally, if at all? If these recent studies are correct, the judicial preferences of individual justices will not suffice. Nevertheless, war-time judicial decisions are extremely important to the development of constitutional law more generally, especially after the war or crisis subsides. Even if *Korematsu*, for example, was less about judicial preference and more about judicial deference, the fact remains that this case announced a doctrine of “strict scrutiny” for racial classifications in legislation, a topic that is no less important today than it was when *Korematsu* was decided during the extraordinary milieu of WWII. Thus while the case might be different because it was the product of “extraordinary” times, its announcement of strict scrutiny has had important effects on “normal” jurisprudential developments in equal protection cases only and especially after the crisis from which it was precipitated had ended. Moreover, there is also evidence to suggest that war actually increases rights, especially with respect to issues of racial egalitarianism. Can the most recent findings account for this rather counter-intuitive finding? Second, if these cases are not affected by judicial decision-making’s purported attitudinal basis, but instead are motivated by the Court’s desire to maintain and police the larger legitimacy of the “institutional process” during war or crisis, then how deeply should we look into judicial decisions when studying the constitution during war or crisis, if at all? Epstein et al. argue that their findings suggest that we should give less credence to war-time constitutional cases and their argumentative bases precisely because they are anomalous. Finally, and maybe most importantly, even with these significant findings, we are still left with a version of the Crisis Thesis. Indeed, Epstein, et al. suggest as much:

“majoritarian preferences are thereby left to prevail, often at the sacrifice of minority rights, when collective security appears most at risk.”

Thus when we come full circle, even the most recent scholarship simply replicates the conception of crisis jurisprudence within the Court and transfers it to the elected branches, still leaving us with an untested claim that extraordinary moments, such as war or crisis, produce political outcomes that are qualitatively different than political and judicial outcomes during “normal” times. For Epstein, et al., periods of war or crisis are so distinct and different from periods of peace that the Court will abandon their presumed ideological preferences in cases directly related to war and employ, seemingly en masse, a model of judicial decision making that is distinct to periods of war or crisis.

But is this the case? Does the polity – and the Supreme Court in particular -- take on a qualitatively different role during war-time that is significantly different than its so-called normal operations during periods of relative peace? Without an answer to this question we are still left to ponder the overall assumptions of the extant theories of rights and constitutionalism during extraordinary periods of war or crisis.

This paper begins to analyze these two approaches by asking and answering a simple, yet important question: Is there a difference between normal and extraordinary politics with respect to constitutional rights? If the Crisis Model is correct, then we should see developments during war or crisis where “normal” policies affecting civil rights and liberties cease to be protective of these rights. As a result, during extraordinary periods, political development stops a rights-protecting trajectory and temporarily restricts rights. If the Milligan thesis is correct, then during war or crisis we should see an increase in already existing modes of rights protection. If these

models are flawed, which I suggest is the case, what is the developmental trajectory that produces the particular character of rights protection during war or crisis?

The signal flaw in the assumptions of both extant models of crisis constitutionalism is a misleading and overstated dichotomy between “normal” and “extraordinary” politics. The Crisis Thesis and the Milligan Thesis both assume this distinction. Taking the opposite approach, I argue that while war and crisis certainly transform the political and constitutional landscape in which political decisions are made by executives, legislators, and courts, politics itself remains little changed by war. In fact, as I show in the historical case studies that follow, the preceding “normal” political environment shaped the “extraordinary” war-time political environment to a considerable extent. I then test this hypothesis by examining the war-time treatment of salient constitutional questions during two periods of “extraordinary” politics, WWII and the current War on Terror. By accounting for the development of constitutional issues in the periods before they became salient questions during war, we can better understand how war affects civil rights and civil liberties within the American constitutional order as a whole. Indeed, this recent scholarship has suggested that this is the direction in which scholarship should proceed, though no theory has yet been advanced. And, as will be discussed in the Conclusion, relaxing the ordinary/extraordinary perspective actually complements many of these extant studies.

The paper is divided into three parts. The first part details the persistence of the ordinary/extraordinary dichotomy. The article then proceeds with two case studies of the ordinary development of what would eventually become salient constitutional questions affecting specific civil rights and liberties during war or crisis. In the case of WWII, one of the most important constitutional questions was the internment of Japanese-Americans and aliens based on the assumption of their inability to assimilate and their questionable loyalty to the United

States. While the Supreme Court cases regarding Japanese internment are detailed, the developmental trajectory of the treatment of Japanese-Americans, and Asians more generally, in the decades leading up to these cases, is the focus. For the War on Terror, it can be argued that the most important constitutional question has, and continues to be, the indefinite detainment of individuals suspected of terrorism. This question has most often been litigated through the writ of habeas corpus. Thus the preceding development of the writ will be traced. Both historical case studies of the preceding “normal” political development show how, in large part, the normal development of these two important constitutional issues was already primed and that the extraordinary arguments were merely extensions of the preceding “ordinary” ones. The final section then details a possible research agenda that analyzes the constitution during war or crisis that incorporates more fully the political development of ordinary politics during extraordinary times.

The Persistence of the Ordinary/Extraordinary Dichotomy

The persistence of what I term the “ordinary/extraordinary” dichotomy was, of course, raised most recently as the result of the 9/11 attacks on the World Trade Center and the Pentagon, particularly in the Bush Administration’s characterization of the permanent nature of the “War on Terror.” Even critics of the Bush Administration replicate this rigid dichotomy. For example, David Cole, one of the country’s leading legal scholar-practitioners, has described journalistic accounts of the Bush Administration’s torture program as “showing how the drive to prevent the next attack led the administration’s highest officials to seek ways around the legal

restrictions on coercive interrogation of suspects,” suggesting that the prevention of future terrorist attacks alone explains the administrations questionable actions. But in many ways this question has characterized larger debates in emergency constitutional theory since the beginning of the twentieth century. The bevy of works re-examining the works of Carl Schmitt, for example, have sought to provide perspectives on the role that positive law and liberalism should (or even could) play in the face of war and crisis. And most recently, the critique of Carl Schmitt by Giorgio Agamben and others has further served to reinvigorate the debate over the potentially permanent nature of emergency constitutional powers in modern constitutional governments. Indeed, Agamben’s most recent work, *State of Exception*, is in part a critique of American attempts to theorize the ordinary/extraordinary dichotomy, particularly in the form of Clinton Rossiter’s classic formulation of war time constitutionalism, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*.

More broadly, though, the assumption that something different happens to law and politics, either as an empirical reality or a normative claim, is replete within studies of war-time constitutionalism. For those who subscribe to the “Crisis Theory,” this change is theorized either as a normative imperative or an empirical reality. The classic formulation of the “Crisis Thesis” is Clinton Rossiter’s *Constitutional Dictatorship: Crisis Government in the Modern Democracies* which analyzed and compared emergency governments in the Roman Republic, the “state of siege” following the French Revolution, crisis government under Article 48 of Weimar Germany, and emergency government in the United States (the Civil War, the Great Depression, and WWII). Rossiter’s introduction of the idea of “constitutional dictatorship” is based on an ordinary/extraordinary dichotomy between periods of normal constitutional governance during periods of relative peace, and constitutionalism (or the lack thereof) during periods of war or

emergency. His approbation of constitutional dictatorship during extraordinary periods is derived from the proposition that “the democratic, constitutional state is essentially designed to function under normal, peaceful conditions, and is often unequal to the exigencies of a great national crisis.” Therefore, normal constitutional government must be “temporarily altered” by a constitutional dictatorship whose only purpose is “to dispense with the crisis; when the crisis goes, it goes.” “Constitutional Dictatorship” was nothing new for Rossiter because its necessity is “coeval and coextensive with constitutional government itself.” These “dictatorships” were (and in the future should be) equipped to brush aside the normal protections of rights and liberties that constitutional governments normally provided in order to defend the state during a period an extraordinary period of emergency, only to return the state to its preceding rights-protecting constitutional structures.

The ordinary/extraordinary distinction is also evident in more recent scholarship both immediately before and after 9/11. John Yoo, for example, argues that because the traditional assumptions of war between nation-states is quickly being replaced by more persistent and insidious threats from trans-national terrorist organizations, a more “flexible” understanding of constitutional war powers is necessary. Moreover, extraordinary moments produced by war or crisis might, in fact, become the rule rather than the exception. In a similar vein, Richard Posner argues that the “scope of constitutional liberties is rightly less extensive at a time of serious terrorist threats ... than at a time of felt safety.”

Broadly representative of post-9/11 replications of the ordinary/extraordinary dichotomy are works by Bruce Ackerman and Eric Posner and Adrian Vermeule. Indeed, Bruce Ackerman unabashedly claims that the Roman model of constitutional dictatorship is the “inspiration” for what he terms the “Emergency Constitution.” For Ackerman, the wars and crises of the

twentieth century have resulted in an unacceptable increase in executive discretion that leaves in its wake judicial and political precedent for unilateral executive decision-making. Courts are too often thin and ineffective checks on presidential war power, and congress, with its slow decision-making processes, combined with its reliance on popular opinion that is almost always initially supportive of immediate presidential action in the wake of war or crisis, is no better. To thwart these seeming developments, Ackerman advocates a set of formal procedures that would allow for emergency executive action at the same time that it checks and limits these extraordinary powers. “If left to their own devices,” he argues, “presidents will predictably exploit future terrorist attacks by calling on us to sacrifice more and more of our freedom...But with an emergency constitution in place, collective anxiety can be channeled into more constructive forms.” His “emergency constitution” would not allow presidents to initiate this set of congressionally approved emergency procedures on their own (except during the first two weeks after an attack), and congressionally approved emergency powers would lapse after specified time intervals unless authorized by increasingly larger supermajorities of both houses of congress. Substantively, when authorized by the “emergency constitution,” presidents could authorize “short-term detentions” of suspected terrorists to prevent a second strike, though no one could be detained for more than forty-five days. Initially, suspects could be detained with a reduced evidentiary standard of “reasonable suspicion,” but further detention would require “higher evidentiary standards.”

In a slightly different way, but with a similar institutional payoff that leaves the executive with a great deal of wartime authority, Eric Posner and Adrian Vermeule argue that executives fail no more and no less than either legislators or judges in protecting rights and respecting constitutional limits in the face of emergencies or crises. What results from their critique of the

“Milligan thesis” is a now-familiar call for more deference by courts and legislators to executive decision making during crises. But their explicit baseline for making this argument replicates the ordinary/extraordinary dichotomy: “Our central claim is that government is better than courts or legislators at striking the correct balance between security and liberty during emergencies.

Against the baseline of normal times, government does no worse during emergencies, or at least its performance suffers less than that of courts and legislators” (emphasis mine).

On top of the renewed interest in Carl Schmitt, political theorists have also replicated the ordinary/extraordinary dichotomy, specifically with respect to works interpreting Locke’s prerogative power, with some arguing that Locke’s prerogative was extremely limited and others arguing that he had always recognized its potential power. The discussion of prerogative in §105 of Locke’s Second Treatise has recently been examined to inquire into past emergency conditions in the United States, particularly the actions of Lincoln during the Civil War. And even for those who have recently suggested that Locke’s theory of executive prerogative needs to be understood as primarily a political, and not a legal formulation, there is still an ordinary/extraordinary assumption within the political realm when prerogative is used: “In ... extraordinary political conditions, prerogative preserves the community and thus reenacts the original escape from the instability and violence of the state of nature.” Thus executive prerogative is mostly understood as a non-constitutional (as opposed to unconstitutional) use of raw political power justified primarily by extraordinary periods of war or crisis.

In a more general sense, too, scholarship surveying the institutional development of the American presidency has also replicated the ordinary/extraordinary dichotomy. For some, the increased powers of the presidency, especially in the twentieth century, have helped protect the American system of the separation of powers, as wartime crises have elevated executive power

more generally, allowing the constitutional system to deal adequately with emergency. Others, critical of increased executive power, argue that the executive has transformed from a “constitutional presidency” to an “imperial presidency” as a result of emergency periods, as executives have started to argue that extra-constitutional actions are now constitutional.

Even among those who support the “Milligan Thesis,” the extraordinary/ordinary dichotomy is an apparent reality. Writing mainly in the area of war-time jurisprudence concerning First Amendment free speech rights, Geoffrey Stone has argued that “although it is true that the Court must be careful not to overstep its bounds, it is also true that the Court has a long record of fulfilling its constitutional responsibility to protect individual liberties – even in wartime.” Although Stone seems to recognize the persistent effects of the preceding “normal” political developments that become salient during war, especially in the treatment of Japanese-Americans during WWII, he nevertheless advocates that the Court should use foresight during periods of peace to craft “constitutional doctrines that will provide firm and unequivocal guidance for later periods of stress.” Similarly, Harold Koh has argued that the recent terrorist attacks (and presumably any wartime crisis) do not justify extra-constitutional action within the political regime. In his estimation, rights deprivations are unnecessary during war because “we have developed an elaborate system of domestic and international laws, institutions, regimes, and decision-making procedures precisely so that they will be consulted and obeyed, not ignored, at a time like this.” Both of these supporting arguments, while sometimes acknowledging a place for the effects of normal politics, still imagine a qualitatively different political regime during extraordinary periods of war or crisis. In their account, though, it is the judiciary, combined with other institutions and doctrines created for extraordinary moments, that has to protect itself --

and, most importantly, the rights of individuals -- in the face of the changed political environment of emergency.

One possible explanation for the persistence of the ordinary/extraordinary dichotomy in the analysis of war and constitutionalism is the nature of war or crisis itself. Because war is such an exogenous shock, scholars – and political actors in particular – might have the understandable tendency to view war and crisis solely as a short-term causal processes. To be sure, there is much to study and learn from the short-term event of war, not least of which is the actual operation of Constitutional actors and offices which are enumerated in the Constitutional text itself, including, but certainly not limited to, the executive’s use of war powers and congressional declarations of war. But because war is such an exogenous shock, we should not assume that it creates a space in which the cumulative effects of preceding politics have no traction. In this sense, rights violations during war or crisis are more akin to what Paul Pierson calls “threshold effects,” whereby political and sociological change will be affected by “pressures [that] will often build up for sometime without generating immediate effects.” At some critical point – like war or crisis -- these “inertial” qualities of rights deprivations, or more generally the already developing trajectory of any discrete category of rights, will simply be magnified. Conceiving the political development of these issues as processes that had already been unfolding, instead of ones that have been characterized as somehow different and “extraordinary,” can help us better see them for what they truly are: Extremely salient, but nevertheless preexisting and always developing, political phenomena.

WWII and Loyalty

To what extent does the political landscape change during war or crisis with respect to civil rights and civil liberties? This section examines arguably the most important and contentious constitutional question to arise during WWII: The detainment of Japanese-Americans and aliens based on an asserted link between racial characteristics and loyalty. To the extent that war signaled a heightened state of emergency with respect to the physical protection of the United States and its interests, there is no argument. However, the salient constitutional question that arose during WWII was one that had a considerable history during so-called “normal” times of constitutional governance. Collapsing, or at least relaxing the ordinary/extraordinary dichotomy better helps us account for and explain the political and legal outcomes that affected our ability to protect rights and liberties during WWII.

Although certainly magnified by the exigencies of war, ascriptive notions of Asians generally, and Japanese particularly, characterized a significant part of American political development during the preceding decades leading up to WWII. The ascriptive racism that influenced America’s treatment of Japanese immigrants and citizens had initially begun as a reaction to the influx of Chinese during the middle of the eighteenth century. As Asian immigration rose in the late nineteenth century, American political institutions, interest groups, labor organizations, and public opinion more generically, became increasingly hostile to what they perceived were a threatening and menacing group, and an identifiable pattern of what Jacobus ten Broek has called, “anitforeignism,” began to take hold throughout the United States. For example, Asians were perceived to be willing to sell their labor in largely un-American ways, particularly through slavery (or the “Coolie Trade”), or by undercutting prevailing labor market wages. This is reflective in two major developments in American politics in the late nineteenth century, the Immigration Act of 1882 and the racial foundations of the American

labor movement. The Immigration Act of 1882, which provided almost complete federal control over immigration for the first time in United States history, also prohibited certain excludable classes of immigrants. But it was the Chinese Exclusion Act, passed during the same congress, that signaled the extent of anti-Chinese hostilities, as it prohibited the importation of Chinese laborers for ten years, mandated identification certificates for laborers already present in the United States, and prohibited naturalization. Anti-Asian sentiment during the Gilded Age was as much about labor and economic concerns as it was about the ability of the United States to define itself in terms of freedom and democracy for white Americans in the face of large-scale immigration.

This is seen quite markedly with respect to Japanese immigrants at the turn of the twentieth century. As Chinese workers had experienced discrimination in their quest to pursue fair wages, so too did the increasing numbers of Japanese laborers, especially those in the sugar beet fields of northern California. In response to a campaign by business interests in 1899 that had sought to undercut the ability of Japanese and Mexican farm workers to provide labor to farming interests, Japanese and Mexican laborers formed the Japanese-Mexican Labor Association (JMLA) in 1903. Initially, the JMLA was successful, as their first strike resulted in farmers accepting the labor terms. However, when the JMLA sought the further help of the American Federation of Labor, led by Samuel Gompers, they were summarily rebuffed. Gompers was willing to offer charter status only to the Mexican half of the JMLA. Gompers even supported amending the Chinese Exclusion Act of 1882 to include Japanese laborers. Based on his assumption that Japanese did not share with other ethnic laborers their “hopes, their ambitions, their love of this country,” the American Federationist, which was the main publication of the AFL, claimed that the Japanese could never be “assimilated.”

Discrimination towards Japanese would continue well into the twentieth century. Based partly on a desire for racially-based assimilation, in 1924 congress enacted immigration legislation that excluded those ineligible for citizenship. With the Chinese Exclusion Act still intact, it was obvious to many that the law was designed to prevent the further entry of Japanese to the United States. And making their loyalty and legal and social status even more questionable before WWII was the fact that of the roughly 126,000 people of Japanese ancestry in the United States in 1940, one-third were first-generation “Issei” Japanese, who were legally prevented from establishing naturalized citizenship. While their second-generation children, the “Nisei,” were able to become American citizens, suspicions had already been ingrained concerning the loyalty of Japanese in general.

We should not be surprised, then, that when war came to the United States in 1941, these same assumptions concerning Japanese loyalty and assimilation would continue to persist. Shortly after the bombing of Pearl Harbor, President Franklin D. Roosevelt signed Executive Order 9066 on February 19, 1942, which in part authorized military commanders to designate areas of exclusion. One of these orders, Civilian Exclusion Order No. 34, was issued by Lieutenant General John DeWitt, Commanding General of the Western Defense Command. This Exclusion Order, which became the subject of Fred Korematsu’s arrest, was ostensibly issued as a protective military order to prevent sabotage and espionage, particularly from the Japanese Empire. But DeWitt’s justification for exclusion was based on well-developed ascriptive assumptions about Asians more generally. His “Final Report” on “Japanese Evacuation from the West Coast” (1943) is extremely telling: “I don’t want any of them here. They are a dangerous element. There is no way to determine their loyalty ... It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not determine loyalty.”

DeWitt's insistence that all Japanese-Americans were potential saboteurs is further evidenced in his reply to questions about the lack of sabotage by Japanese-Americans: "The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken."

In the first Japanese internment case, *Hirabayashi v. United States* (1943), Gordon Hirabayashi, an American citizen, challenged curfew regulations as discriminating against Japanese solely because of their ancestry, thus asserting a violation of the due process clause of the Fifth Amendment. Writing for the Court, Justice Stone upheld the curfew orders and their distinction between persons based on ancestry. Although Stone's opinion is substantially based on the "extraordinary" threat of the imminent threat presented to the United States from the Japanese Empire, it nevertheless also partially defends the curfew order in terms of the preceding prejudices directed against Japanese Americans. In defending general DeWitt's curfew orders, Stone proclaimed: "There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population." The relative ability of certainly first-, but also second-generation Japanese to assimilate and become less likely to engage in espionage or sabotage, had already been a real concern for the majority white populations of the western American states well before the attack on Pearl Harbor. And although racial distinctions based simply on ancestry "are by their very nature odious to a free people," the Court nevertheless held that these distinctions during "the crisis of war" are "not wholly beyond the limits of the Constitution".

Korematsu v. United States is most famously noted for Justice Hugo Black's approbation of Fred Korematsu's arrest with his assertion that "hardships are a part of war, and war is an aggregation of hardships," and also for Justice Robert Jackson's dissenting warning that the decision "lies about like a loaded weapon ready for the hand of any authority." But Justice Murphy's dissenting opinion also lends help in understanding the political origins of what was already a political consensus regarding the potential liability of Japanese-Americans. In dissent, Murphy noted as much as he found the military's justification for evacuation unpersuasive. Instead of providing a "reasonable relation between the group characteristics of Japanese Americans and the dangers of invasion," the military's justifications, he asserted, were based on preceding prejudices:

The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices – the same people who have been among the foremost advocates of evacuation.

These "people" were, according to Justice Murphy, both hostile to Japanese Americans for economic and white supremacist reasons. In many ways, then, the rhetoric surrounding the immediate justification for Japanese internment, including arguments about perceived loyalty to the United States, their potential for assimilation, and ascriptive accounts of racial traits, had already been developing during the preceding decades. Justice Murphy then went on to note how special interest groups that had always been suspicious, if not outright hostile, towards Japanese, were the most supportive of exclusion measures taken during the war. He even

included in his Korematsu dissent congressional testimony from the Salinas Vegetable-Grower Shipper Association on Japanese exclusion:

We're charged with wanting to get rid of the Japs for selfish reasons ... We do. It's a question of whether the white man lives on the Pacific Coast or the brown men. They came into this valley to work, and they stayed to take over. . . . They undersell the white man in the markets. . . . They work their women and children while the white farmer has to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either

Thus even during the “extraordinary” time of war the persistence of the preceding political landscape of Japanese discrimination is evident, even to the point of shaping war-time military policy. And even if the Court did employ an “institutional process” method of adjudicating war-time cases, the influence that the preceding developmental trajectory of “normal” politics had on the political branches continued to shape the contours of “extraordinary” war time politics to a great extent. Indeed, *Korematsu* has never been overturned by the Supreme Court, and it took tremendous political pressure over forty years for the United State government to apologize for its actions, suggesting that the politics of so-called “normal” and peaceful periods may actually transcend the extraordinary periods as well.

Habeas Corpus and the War on Terror

The current prosecution of the “War on Terror” has so far been marked by many important and challenging constitutional questions, including warrantless wiretaps, domestic

spying, and the rendition of terrorist suspects to foreign countries that employ torture. However, the most contentious – and the most litigated – question has been the ability of the Executive branch to hold terrorist suspects indefinitely. When litigated, this question of detainment has most often been challenged through writs of habeas corpus – the so-called “Great Writ of Liberty” – which is one of the most important procedural instruments in the American legal system through which individuals incarcerated by the state can demand, receive, and challenge the reasons for their incarceration. In fact, the salient terrorist-related cases that have come before the Supreme Court since 9/11 have centered around the extent to which habeas access should be granted, including *Hamdi v. Rumsfeld*, *Rasul v. Bush*, *Hamdan v. Rumsfeld*, and *Boumediene v. United States*. Moreover, both the Executive and Congress have also weighed in on their respective conceptions over habeas access in the Detainee Treatment Act (DTA) and the Military Commissions Act (MCA), and President Bush’s Executive Orders concerning enemy combatants tried by military commissions.

Although there is much disagreement over habeas access for terrorist suspects, the substance of the debate surrounding the writ’s reach – even for terrorist suspects – is not new. In fact, arguments about meaningful access to the writ had been swelling for the past fifty years of “normal” constitutional and political development in the United States. Beginning with the Warren Court’s criminal procedure revolution, in which the Court specifically chose habeas corpus to enforce its “rights revolution” by enlarging access to the writ for state criminal defendants, the habeas debate as we have known it – and continue to know it – was born. Almost from the Warren Court’s first habeas decisions with respect to criminal process cases, scholars, legal practitioners, and politicians on the state and national levels began to criticize the Court for providing too many procedural rights to (seemingly) guilty criminals.

Two of the most influential critiques of the Warren Court's brand of habeas jurisprudence are worthy of consideration. Writing in the *Harvard Law Review* in 1962, Paul Bator emphasized the necessity of "finality" in the criminal procedure process so that matters that have been fully and fairly litigated and determined on one level (the state level) are not forced into redundancy at the cost of justice by another court (a federal one). Henry Friendly also wrote a prestigious and still influential article criticizing the Warren court's habeas developments. Friendly argued that for all the concern over due process in criminal procedure on the state level, the ultimate decision for granting or denying federal habeas corpus from state prisoners should be the "innocence" of the defendant. If mere technicalities violate perceived constitutional rights, they could be addressed by means other than freeing the guilty through habeas corpus. Increasingly, broad habeas access was challenged throughout the next three decades. Beginning with President Richard Nixon's "War on Crime," conservative political coalitions chose habeas as a principle tool to remake the criminal justice system in their image. The appointment of more conservative justices to the Supreme Court, particularly Warren Burger and William Rehnquist in the 1970's, and then Sandra Day O'Connor, Antonin Scalia, and Anthony Kennedy in the 1980's, further spurred this change. In cases such as *Stone v. Powell* (1976), the Court signaled that the preceding enlargement of habeas was coming to an end, as the Court ruled that Fourth Amendment claims could not be re-litigated through federal habeas courts if the state court in which the claim originated had already ruled on the admissibility of evidence. With the election of Ronald Reagan in 1980, a conservative ascendancy would further advance arguments to curtail habeas access, as the Justice Departments of William French Smith and Edwin Meese sought to implement legislation to carve away further meaningful access to habeas.

Although most of the Executive and Congressional proposals during the 1980's failed, they were nevertheless informed by the earlier arguments that too much federal habeas access skewed the criminal justice system towards defendants (who were most likely guilty). Moreover, the criminal justice system would be burdened by a flood of habeas petitions that, according to its critics, would not be meritorious, thus resulting in an abuse of the Great Writ. With the Republican congressional victories in the House and Senate in 1994, these habeas proposals were poised to make traction.

Just two years later, in fact, Congress passed the Anti-Terrorism and Effective Death Penalty Act (AEDPA) which became law on April 24, 1996 in the wake of the bombing of the Alfred. P. Murrah Federal Building in Oklahoma City. Although passed to help combat terrorism both at home and abroad, it instead represented a wish list of many habeas opponents since the mid 1960's. More importantly, it represented the codification of a more conservative, states' rights oriented political philosophy that had been developing since the 1960's. The Act was thus a product of the Republican regime's overall vision of constitutional governance through habeas, with its most specific roots in the suggestions for reform detailed by the Office of Legal Counsel (OLC) during the tenure of Edwin Meese.

In many ways, the AEDPA's provisions finalized the Republican-led habeas counter-revolution. It established a one year time limit for filing petitions from state to federal courts and eliminated the "successive petitions" rule. The AEDPA further provided that "A determination of a factual issue made by a State court shall be presumed correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." Striking at one of the writ's core features since the late nineteenth century, it modified the existing rules concerning exhaustion by allowing federal courts to deny a habeas petition from a state

defendant even if he had not exhausted his state's appellate processes. But the most controversial provision was the one governing the types of cases that federal courts could now entertain through the writ. Now there were only two types of circumstances under which habeas could issue. These were habeas petitions that either "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or a decision that "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." The AEDPA's habeas provisions surely reflected the regime's attempt to recreate habeas' function along the lines of the regime's vision of constitutional governance, but the circumstances surrounding the Bill's passage also show how habeas' extraordinary use during times of crisis – in this case the country's reaction to the Oklahoma City Bombing and the 1993 attacks on the World Trade Center – is informed more by the preceding period of normal politics than it is by the purported crisis.

The most direct link between the AEDPA and the preceding normal development of habeas is the fact that the Act's salient provisions were overwhelmingly designed to curtail the use of federal habeas for state prisoners. The legislative history of what eventually became the AEDPA is important here. Introduced as the "Effective Death Penalty Act" as part of the congressional Republicans' "Contract with America," this first iteration of the Bill received little movement in committee until the April 19, 1995 bombing. Soon after the attacks, Republicans amended the Bill and attached it to a Clinton Administration bill detailing antiterrorism measures. In this form, the Bill was renamed the "Antiterrorism and Effective Death Penalty Act." As James Liebman characterizes the Act's inauspicious development, it "was the product of the bizarre alignment of three ill-starred events: Timothy McVeigh's twisted patriotism and

disdain for ‘collateral damage,’ the Gingrich Revolution in its heyday, and the Clinton Presidency at the furthest point of its most rightward triangulation.” It is no surprise, then, that the Act’s original impetus stemmed from Gingrich’s Contract with America, which was in many ways a paean to the reinvigoration of states’ rights that Republican Party had been featuring in its party platforms since the 1960’s. And prominently featured in the OLC Report was the argument that most of the Report’s habeas reform proposals were based on “deference to adequate state processes.” The awkward justification of the Bill’s supporters for its necessity in combating terrorism and establishing more efficient and fair rules for its prosecution becomes even more obtuse when we consider the fact that both Timothy McVeigh and Ramzi Youseff were federal – not state -- prisoners whose jurisdictional status had never been questioned. Although conservatives had never actually proposed eliminating federal habeas access for state defendants, they had for years tried to limit habeas access. Central to their now-realized agenda was a few assumptions based on years of analysis. First, though federal habeas should be available, it should never be abused by successive petitions from state and federal defendants. Second, and maybe most importantly, the determinations of perceived rights violations argued through habeas that have already been litigated, should be given great deference and, to some, finality. Informed mostly by a reaction to increased rights of seemingly guilty defendants burdening and manipulating the justice system, habeas had by 1996 emerged with a concrete anti-defendant foundation.

When habeas was thus implicated as a serious challenge to the constitutionality of the Bush Administration’s detainment of terrorist suspects, we see again the persistence of the normal preceding development of politics. In *Hamdi v. Rumsfeld*, for example, habeas was used to challenge to detainment of Yasser Hamdi, a United States citizen, as an enemy combatant.

Captured on the battlefield in Afghanistan in November of 2001 by the Northern Alliance, Hamdi was initially transported to the United States Naval Base at Guantanamo Bay, Cuba. Upon learning of his U.S. citizenship, the military then transferred Hamdi to a naval brig in Charleston, S.C. Designated as an enemy combatant by Executive Order, Hamdi then challenged the President's authority, absent explicit Congressional authorization, to hold him. At the outset, this case was unequivocally one that asked the Court to make an "institutional process" judgment about Executive and Congressional war powers: Did the Executive, according to his Article II war powers, combined with Congress' Authorization for the Use of Military Force (AUMF), have the ability to detain and classify U.S. citizens as enemy combatants? Stopping our analysis at the level of "institutional" policing, however, does not help to explain the case – and the treatment of habeas -- completely. While the majority in Hamdi did not side with the extreme unilateral executive position of the Bush Administration, as it held that those classified and detained as enemy combatants could challenge this classification through habeas, the treatment of habeas on the Court, and by the Executive, reflected well-trodden ground. Though the Bush Administration did not argue that Hamdi was precluded from challenging his enemy combatant classification through habeas, they did argue that the president's and the military's evidence presented against Hamdi was enough to meet the requirements of a habeas petition. The Court's majority, however, went further, as they ruled that Hamdi had the right to challenge the evidence presented against as to why he should continue to be held as an enemy combatant. But the Court also ruled that the traditional procedural rules of the courtroom would necessarily have to be met. Hearsay, for example could be used as evidence against those held and the traditional notions of "burden of proof" could even be shifted to the defendant to prove that he or she should not be classified as such and held indefinitely. Consistent with the

preceding “normal” political development of habeas jurisprudence, defendants are to have access to the writ but cannot use it to frustrate, delay, or hide from justice. Thus while we could characterize Hamdi as a case in which the Court was shifting from a “first order balancing of rights” to a position that sought to “police” the separation of powers within the political branches during war, our understanding of the role of habeas during war would be lacking if we simply assumed that something other than a normal, but heightened, understanding of habeas was driving its application during “extraordinary” periods of war.

This understanding of habeas as a minimal constitutional necessity that should not serve to burden or undermine the pursuit of justice is further evident in the congressional and executive reactions that followed. The first Congressional response was the passage of the Detainee Treatment Act (DTA) 10 U.S.C. 801, which attempted to strip federal courts of habeas jurisdiction for non-citizen enemy combatants. Military Commissions, or Combatant Status Review Tribunals (CSRTs), would commence and although the DTA allowed one appeal of the decisions of tribunals or commissions, it gave “exclusive” jurisdiction to hear these appeals only to the Circuit Court of the District of Columbia. Following the Court’s decision in *Hamdan v. Rumsfeld* 126 S. Ct. 2749 (2006), Congress passed the Military Commissions Act (MCA) 120 Stat. 2600, which explicitly authorized the use of commissions and tribunals and, more importantly, still prohibited habeas petitions from aliens held outside the United States seeking to challenge their detainment. Extremely telling is the concern that the DTA’s Congressional sponsors had about the potential flood of habeas petitions to federal courts from non-citizens: Congress enacted the DTA to bring order to the chaos that resulted from the avalanche of anticipatory lawsuits under general statutes that were not suitably tailored to the circumstances. Allowing the current detainees--all of whom had pending actions when the DTA was enacted--to

continue to pursue those actions would utterly defeat the DTA's purpose. It would, moreover, defeat Congress's purpose of channeling cases through the military administrative process as a condition precedent to judicial review, as it would perpetuate the resolution of important legal issues without the benefit of concrete determinations by the military and Executive Branch on a properly developed record.

Considering the arguments about habeas access that had characterized the preceding decades, this argument about the role of habeas during war is not that different. Habeas access in general had already been limited in both statute and court precedent. Limiting habeas further for United States citizens classified as enemy combatants, and possibly denying it altogether for aliens held outside of the United States, then, was a move that required little extension beyond the “normal” preceding habeas jurisprudence.

Conclusion: Theorizing the Ordinary

The Crisis and Milligan theses, combined with recent understandings of executive prerogative and power, all assume that war and crisis create a qualitatively different and extraordinary political environment. But if particular political issues – such as the extent of loyalty of Japanese-Americans or arguments about the application of habeas corpus – are merely continuations of already developing processes that continue to develop during so-called “extraordinary” moments of politics, we miss a critical analytical point in our attempt to understand the relationship between constitutionalism and war by making such a rigid dichotomy. By relaxing the ordinary/extraordinary dichotomy, we can provide room for explanations of political phenomena in more robust ways.

One implication of this argument for the study of constitutionalism during war is that we should not discount the role of war-time Supreme Court cases, although we should not see them as a panacea, either. While it is certainly true that a case like *Korematsu* is an outlier in many ways because U.S. history has only provided us (hopefully) with one case of internment, we can still see in cases like this the persistence of the “normal” preceding political environment that gave it life. In this sense, even if justices are influenced solely by their own idiosyncratic policy preferences, or by the larger political regime, the evidence presented here suggests that these influences did not arise *de novo* – they had an identifiable developmental trajectory in the past that cannot be ignored or discounted. And even if the Court does engage in a heightened “policing” of the elected branches during war, this does not mean that these very branches transform into qualitatively different political institutions with no political memory of their pre-existing political agendas.

Another implication of relaxing the ordinary/extraordinary dichotomy is the realization that timing – and time itself – are important variables in wartime institutional development more generally. In the two examples above, for example, war or crisis, while certainly momentous events, simply served as vehicles to fuel or significantly activate developmental trajectories -- ascriptive racism and habeas corpus limitations – that were already in place.

Understanding rights during war in this way even compliments and provides more evidence for other extant studies on the effects of war and crisis after hostilities cease or the threat recedes. For example, Philip Klinkner and Rogers M. Smith’s argument that civil rights for African-Americans were significantly improved (only to be lost again) by war, is thus further buttressed by relaxing the ordinary/extraordinary dichotomy, as we can better account for the development of efforts to increase racial egalitarianism after war. Though war served as a

catalyst for improvements in race relations (at least on the national level), it did so by magnifying pre-existing inequalities, thus meriting increased federal enforcement. Racial inequalities existed before each crisis, were affected by each, and certainly continued to be a part of the American landscape after the crisis subsided. They indeed exhibit what Pierson refers to as “inertial” qualities.

Relaxing the ordinary/extraordinary dichotomy would also buttress the study of the relationship between war and the aggregate increase in executive power since the beginning of the twentieth century. While the exogenous shock of war or crisis would certainly be a catalyst for the use of extraordinary executive power (as it seemingly has in the United States since 2001), it is also probable that war-time policies and actions taken by executives are the result of already developing policies and initiatives. After all, Neo-Conservative proclivities for stronger and more secretive executive functions in the United States, especially those advanced by Vice President Dick Cheney, have been visible for over thirty years. Increases in executive power and discretion more generally, and theories of prerogative in particular, are thus just as ubiquitous during periods of peace as they are during periods of war or crisis. War or crisis might precipitate the necessity for executive action, but the empirical evidence suggests that this necessity often coincides with a considerable degree of “carry-over” from the immediately preceding development of normal politics.

Analyzing questions concerning the nature of constitutional politics during war or crisis should continue to be a significant project for scholars in public law, constitutional theory, public policy, and American politics more generally. However, attending to the persistent development of salient constitutional issues without the assumption that they are overwhelmingly different than their preceding development allows more possible explanations for political phenomena

during war or crisis. As scholars debate the normative merits of a host of current war-time constitutional questions from the role of executive/legislative interpretations of the Geneva Conventions to the rendition of terrorist suspects to foreign countries to domestic public policy and to initiatives such as the USA PATRIOT Act, they should also consider the extent to which the preceding “ordinary” development of so-called “extraordinary” politics affects political development during periods of war or crisis.

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Hate Gets Under The Skin- Cohesive Identity and Stopping the Murders in Mesopotamia

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Abstract- Hate Gets Under The Skin- Cohesive Identity and Stopping the Murders in Mesopotamia

Eastern Syria and Iraq are full of conflict today. The demographics of this region, modern Mesopotamia, are important to understand the current conflicts in the region. This article shows that the demographics of modern Mesopotamia can be predicted by the demographics of ancient Mesopotamia. In particular, Shiite Arab areas overlap almost perfectly with the core of the Ur III empire, which was defined by the institution of the bala tax. In other words, the Southern Mesopotamian cultural area in the Ur III period evolved almost perfectly into today's modern Shiite Arabs of Southern Iraq. This article also shows that areas that spoke a Semitic language in the Late Bronze Age tend to do so now, while those areas that spoke a non-Semitic language at the time tend to do so now. By studying different demographic and political trends in the Bronze Age, we can correctly predict today's demographic and political boundary lines on the modern Mesopotamian map. This article begins to try to understand the implications of this huge revelation.

Hate Gets Under The Skin- Cohesive Identity and Stopping the Murders in Mesopotamia

Hate Gets Under the Skin- An Introduction

Iraq and eastern Syria are referred even today as Mesopotamia, their ancient name as a region. The Shiite Arabs of Iraq are in essence the nationalistic heart of Iraq, while the other forces and factions in Iraq usually have little love for the concept of Iraq. There is a core region in Lower Mesopotamia (central to southern Iraq) that looks like a nation-state. How old is such a formation? Can we correlate Shiite Arabs in Mesopotamia to earlier peoples? Can we understand possible mechanisms of causation?

Obviously, the modern-day countries of Iraq and Syria are known for their extreme instability and tendency towards civil war and ethno-religious conflict. It is essential, therefore, to understand how the units of identity in places like Iraq and eastern Syria came to be. In this, article, an attempt is made to understand the historical origins of the divisions of identity in Iraq and to briefly propose an approach to fit the patterns of identity in Iraq. The goal is to stop the murders in Mesopotamia, particularly in modern-day Iraq.

Mesopotamia includes eastern Syria and a small part of Turkey in addition to Iraq. It is traditionally divided into two main parts- Upper Mesopotamia and Lower Mesopotamia. Upper Mesopotamia includes all of the Syrian and Turkish parts of Mesopotamia, as well as Iraqi Kurdistan, the Kirkuk area and the Nineveh Plains (essentially Northern Iraq). Lower Mesopotamia includes the Baghdad area to southern Iraq³.

If one looks at a map of ancient Mesopotamia, one notices immediately that Lower Mesopotamia roughly approximates the Shiite Arab zone in modern Iraq while Upper Mesopotamia is home to Sunni Arabs, Assyrian Christians, Shiite Turkmen, and Sunni Kurds. It becomes obvious that the Upper Mesopotamian region is much more diverse today than is the

Lower Mesopotamian region. Can we understand anything about how Upper Mesopotamia became this diverse, as well as understanding Lower Mesopotamia's relative homogeneity?

It turns out that only when one steps before the Late Bronze Age Collapse, does one's view of the origins of Shiism in Iraq become clear. The Assyria-Babylonia political split that is very largely correlated with the Upper Mesopotamia-Lower Mesopotamia regional split is largely a function of the Late Bronze Age. Assyria as a region-state originates from this period while Babylonia was consolidated into a nation-state of sorts in this period⁴.

The Four Hypotheses

My point of departure for this article is that the latest possible origin of the group identity of Shiite Arabs in Mesopotamia is the Late Bronze Age. In this period, the Middle Assyrian/Middle Babylonian Period, I hypothesize that the diverse peoples that fell to the Middle Assyrian Kingdom became the various peoples of modern-day eastern Syria, northern Iraq, and a small part of Turkey, while the Middle Babylonian Kingdom helped forge the people that now identify as Shiite Arabs.

At the same time, the Middle Assyrian/Middle Babylonian Period, Semitic-speakers were differentiated from non-Semitic speakers and these identities firmed up enough that areas that were Semitic-speaking then are today and those that were not Semitic-speaking are not today. This hypothesis does not differentiate between Kurdish and Turkish speakers in the non-Semitic group or Aramaic and Arabic-speakers in the Semitic group. These distinctions come later. What

4

it is worth testing is whether language identity and usage back then in the dichotomous sense of Semitic/non-Semitic is highly correlated to language identity and usage today in the same sense⁵.

Going even earlier than the Late Bronze Age is hard to do for accurate language data, but for political data, it is still viable. In the Middle Bronze Age, Upper Mesopotamia was unified for the first time under Shamshi-Adad, an Amorite ruler who was a great empire builder in Mesopotamia much like his fellow Amorite, Hammurabi of Babylon. Hammurabi is much more famous than Shamshi-Adad, but not necessarily more powerful or important than him. Shamshi-Adad was for a long time considered an Assyrian king, but he was actually a foreign ruler who conquered Assur, the city-state that became Assyria. His empire did have an effect on the middle Assyrians who did forge the first real Assyrian regional kingdom/empire. He was even placed in the Assyrian King list as an Assyrian king because of his contributions to Assyrian identity as well as the Assyrians' embarrassment at being conquered by him.

I hypothesize that Shamshi-Adad's empire, which matches up with the borders of Upper Mesopotamia in ancient times almost perfectly, has an inverse relationship with Shiite Arab identity. Just as Middle Babylonia forges Shiite Arab identity, Shamshi-Adad's Kingdom of Upper Mesopotamia stopped said identity from growing⁶.

Going backward even further one more time, I was curious about the last period of the Early Bronze Age in Mesopotamia, the Ur III period. Ur III does not have the dichotomous effect that the other states had, I hypothesize. Being in Ur III or outside of it does not have a strong effect. However, Ur III had three zones in its political structure, vassal states, outer provinces,

5

6

and inner or core provinces. The core provinces, or core Ur III were subject to a highly centralized administrative structure, bound together with an institution called the bala tax. The bala tax was essentially a levy on goods in kind from each core province (thus the actual goods levied differed from core province to core province). The core provinces were thus bound together into a highly centralized state, forging a strong and lasting identity.

The argument here is not that the exact identity of the people of Lower Mesopotamia/Babylonia was set in any of these periods, but that the cohesion of that identity group was formed before 1200 BC. In other words, when the identity group in the area changed identities over time (multiple times) the group did so together, until eventually the group became Shiite Arabs later on.

Those outside of this core area did not adopt this identity in Mesopotamia and the identity formed depended at least in large part on the languages used in the Late Bronze Age. Semitic areas then are Semitic areas now, for the most part, while non-Semitic areas then are non-Semitic areas now⁷.

I have four hypotheses to test. Hypothesis 1 is that areas under Middle Assyrian control in the Late Bronze Age around 1300 BC did not become Shiite Arab areas, while those areas under Middle Babylonian control in the same period did become Shiite Arab areas. Hypothesis 2 is that Semitic-speaking areas in the same period of Late Bronze Age are Semitic-speaking now while non-Semitic speaking areas back then are non-Semitic now. Hypothesis 3 is that areas under Shamshi-Adad's control became everything except Shiite Arabs while those areas outside of his control within Mesopotamia became Shiite Arab areas. Hypothesis 4 is that the core areas

7

of Ur III under the bala tax became Shiite Arab area while all other areas in Mesopotamia became something other than Shiite Arabs.

The Results in General Terms

Ancient Mesopotamia had a limited number of major sites, so I used all of the most important sites, 44 in all. Thus, my sampling is very close, at least, to the exact number of cases in the real world. Among the 44 major sites, 22 were in Upper Mesopotamia and 22 in Lower Mesopotamia, which corresponded exactly to the number of cases in Shamshi-Adad's empire and those outside of it (22 and 22). The core Shiite Arab area at the center of three of my four hypotheses accounted for 20 of the 22 Lower Mesopotamian cases.

To pinpoint the locations of my cases, I used the Geographic Names Database maintained by the National Geospatial Intelligence Agency. I then cross-referenced the coordinates with known modern names for the variety of ancient sites. I thus was able to match up at 44 sites with exact, official coordinates. Then I looked up where these coordinates were within the ancient periods in terms of their locations within ancient states. Lastly, I matched up the ancient sites with the demographics of today by using Dr. Izady's excellent *Gulf/2000 Project* data. This allowed me do the crosstabulations at the heart of this article⁸.

After doing the crosstabulations, I received the following results. All 20 Shiite Arab cases moved with each other in all four crosstabulations. In other words, they remained as a coherent group at all times. All 20 cases were in the core area of Ur III, all 20 were not part of Shamshi-Adad's empire, all 20 were part of Middle Babylonia, and all 20 were and are Semitic-speaking.

8

Of the two other Lower Mesopotamian cases, both moved differently both from this core group and each other. Sippar, a city northwest of Baghdad, spoke a Semitic language during Middle Babylonian times and does so now, but otherwise moves in the opposite direction as does the Shiite Arab group. Sippar in Sunni despite having been in the core Ur III group, the non-Shamshi-Adad group and the Middle Babylonian group. It turns out to be the only true outlier of the entire case set.

Der, the other outlier amongst the Lower Mesopotamian group, is very illuminating. It does not move with the core Shiite Arab group in the Semitic language hypothesis, unlike Sippar. It is also problematic, like Sippar, in the Middle Babylonian and Shamshi-Adad hypotheses. However, in the core Ur III hypothesis, it was correctly predicted. Der is a Shiite Kurd area, i.e. not Shiite Arab. Thus, it is not correctly predicted by Hypotheses 1 and 3, but is correctly hypothesized by Hypothesis 4. It our side of the core Ur III region and is not Shiite Arab. This is an important point of data to show the core Ur III hypothesis as the strongest predictor of the four hypotheses⁹.

In the Upper Mesopotamian group, none of the 22 cases were Shiite Arab areas. In Hypotheses 3 and 4, all of the Upper Mesopotamian cases were correctly predicted as being in category in the crosstabulation that were they were expected to be in. However, in Hypothesis 1, two of the Upper Mesopotamian cases were under Middle Babylonian control at the critical period and not Middle Assyrian control and yet did not become Shiite Arab. These results were not expected.

9

However, these two cases are outliers in important ways. Mari and Terqa are in eastern Syria and have long been between the border area between lower Mesopotamia and Upper Mesopotamia. While they are in Upper Mesopotamia, they have stronger ties to Lower Mesopotamia than the rest of Upper Mesopotamia. They were under Middle Babylonian control during much of the Late Bronze Age. Any middle Assyrian control would have come after when I was measuring, but more importantly, it would have been far less impactful and more transitory than the Middle Babylonian control. Al Terqa and Mari were under the control of Hammurabi soon after Shamshi-Adad controlled them. This is why I did not use the more famous Hammurabi as the measure for the Middle Bronze Age, because it would have simply replicated my Late Bronze Age results, while Shamshi-Adad's empire was different from Middle Assyria's borders. Terqa and Mari are to some extent outliers due to their intermediate cultural ties and geographical positioning¹⁰.

As for the other 20 cases, it is helpful to look at those in Syria and Turkey versus those in Northern Iraq. The three ancient sites with an Assyrian majority were in Northern Iraq as were the two Shiite Turkmen sites. There were no Shiite Arab or Shiite Kurd sites amongst these twenty cases. That leaves only Sunni Kurds and Sunni Arabs in the Syria and Turkey cases. My one Turkish case, Harran, was, surprisingly, Sunni Arab-majority. The Syrian cases, not including Terqa and Mari, included a fairly even mix of Sunni Arab and Sunni Kurd cases. They also had a mixture of places that were Semitic and non-Semitic in the Late Bronze Age. There was one case, Shubat-Enlil, that had been non-Semitic and was now non-Semitic (Sunni Kurd). There was one case, Taidu, that had been non-Semitic (Hurrian) and now was Semitic-speaking. In Northern Iraq, the only result that went against Hypothesis 2 was Qattara, which had been

10

Semitic was now non-Semitic (Sunni Kurdish). As for the other three hypotheses, this group of 20 cases always met the predictions for the hypothesis¹¹¹².

The Results in Statistical Terms

To put this all in statistical terms, all four hypotheses were both statistically significant and yielded significant results. Hypothesis 1, the hypothesis that Middle Babylonian sites then are Shiite Arab now and that Middle Assyrian sites and not Semitic now, was correct 40 out of 44 times in its prediction. This means that correctly predicted the dependent variable, being Shiite Arab or not, 90.9 percent of the time. However, to figure out what this really means, I did too things. First, I ran a traditional Phi-coefficient test and I also corrected for random chance in my own percentage-based results. The Phi-coefficient results were sometimes less extreme (less good) results, but often even a little better than by own corrected percentage results, but often were close.

To figure out how to correct my unmodified percentage results for hypothesis 1 and subsequent results, I had to figure out what a totally random distribution of the variables would look like. Since I had a simple 2-by-2 table, I placed 11 in each quadrant of the crosstabulation table. My hypothesis would predict 22 correct results if the result was entirely random, thus 22 correct results actually means that there is no correlation at all. Less than 22 correct results actually indicates a relationship opposite to that I predicted.

In Hypothesis 1's cross-tabulation, I had 40 correct results. This leaves (40-22) with 18 correct results over 22 results (subtracting 22 from both). This gave me a percentage (really a

11

12

percentile) of 81.80. That means that my results were 81.80 percent more correlated than had they been totally random and independent of each other. In this scale, 0/22 is 0 percent correlation and 22/22 is 100 percent. I thus can never have an effect size more than 100 percent. Since my result is in the 81.80th percentile between no correlation and full correlation, I can say that the effect size is 81.80 percent.

My Phi-coefficient value for Hypothesis 1 is actually stronger than my own corrected percentile value. My Phi coefficient is 0.955. I actually credit my own modified results over that of the Phi, whether it is lower or higher, but it is good to know that a traditional test of correlation shows the result to be strong. My statistical significance, which uses the Fisher's exact test, was extremely high. It was statistically significant at the 1 percent level and had a test statistic below 0.00001.

Table 1- Hypothesis 1 (n=44)	Middle Babylonian (24)	Middle Assyrian (20)
Not Shiite Arab (24)	4	20
Shiite Arab (20)	20	0

Hypothesis 2 is the hypothesis that a site that was Semitic-speaking in the Late Bronze Age is Semitic-speaking now. It correctly predicted 40 results out of 44, so it had an unmodified prediction rate of 90.9 percent. However, after subtracting 22 from both sides of the fraction, 40/44, we get 18/22, just like in Hypothesis 1 (but with a different set of outliers). This gives us the corrected percentile of 81.80. However, the Phi coefficient value was lower, at 0.729, so I rank this effect as less strong than that of Hypothesis 1. This result was also statistically

significant at the 1 percent level and had a Fisher's exact test statistic of 0, which is the perfect result in such tests.

Table 2- Hypothesis 2 (n=44)	Semitic Then (36)	Not Semitic Then (8)
Semitic Now (34)	33	1
Not Semitic Now (10)	3	7

Hypothesis 3 was the hypothesis that sites within Shamshi-Adad's empire are not Shiite Arab now, but those outside of it are Shiite Arab today. Hypothesis 3 correctly predicted 42 out of 44 cases. This means that it had an unmodified correction rate of 95.45 percent. Correcting for random chance, we get 20 out of 22 cases, or a corrected percentile of 90.9. The Phi coefficient value is 0.913, a little higher than own corrected percentile. It was also statistically significant at the 1 percent level and had a test statistic below 0.00001.

Table 3- Hypothesis 3 (n=44)	Shamsi Adad's Empire (Upper Mesopotamia) (22)	Not Shamsi Adad's (Lower Mesopotamia) Empire (22)
Not Shiite Arab (24)	22	2
Shiite Arab (20)	0	20

Hypothesis 4 was the hypothesis that sites in Mesopotamia that paid the bala tax in Ur III and thus were part of the core Ur III region are Shiite Arab now and that the rest of Mesopotamia would not be Shiite Arab now. This was my best result. 43 out of 44 cases were correctly predicted by the model. The Hypothesis had a 97.73 percent uncorrected prediction rate. When properly corrected, we get 21 out of 22 cases correctly predicted. This means that the corrected percentile of prediction is 95.46. The Phi coefficient is even a little higher at 0.955. It was also

statistically significant at the 1 percent level and had a test statistic below 0.00001. This is a very strong result.

Table 4- Hypothesis 4 (n=44)	Core Ur III (21)	Not Core Ur III (23)
Not Shiite Arab (24)	1	23
Shiite Arab (20)	20	0

All four of my hypotheses are quite strong, although hypothesis 2 is the weakest one and Hypothesis 4 is the strongest one. I next wanted to see how the three hypotheses about Shiite Arabs correlated with the hypothesis about Semitic-speaking areas in the Late Bronze Age and now. Would they match up in a way that both statistically and practically significant as well as easy to explain? So I create three crosstabulation tables in which the independent variables were combinations of the two independent variables and the dependent variable outcomes were specific demographic groups. So, for the combination of Hypotheses 1 and 2, I had only three categories on the independent variable side, since one category had no cases in it. This allowed to create a three-by-three table. In fact, all there became three-by-three tables for the same reason. I had on the top of the table three groups- those that were Middle Babylonian and Semitic-speaking in the Late Bronze Age, those that were Middle Assyrian and Semitic-speaking in the Late Bronze Age and, lastly, those that were Middle Assyrian and not Semitic-speaking during the Middle Bronze Age.

In the first comparative crosstabulation, Table 5, my dependent options were likewise divided into three groups. I had Shiite Arabs, as before, but I divided the group of those that were not Shiite Arabs into Non-Semitic and Non-Shiite Semitic. Non-Semitic included Shiite Kurds, Shiite Turkmen, and Sunni Kurds. Non-Shiite Semitic included both Sunni Arabs and Assyrian

Christians/Aramaics. I found that the scale of correction was changed by it being a three-by-three instead of a two-by-two table. Therefore, I need only to subtract 14 from both sides of the uncorrected fraction to get the corrected fraction. The model here predicts that all of the Middle Babylonian, Semitic then group will be Shiite Arabs, that all of the Middle Assyrian, Not Semitic Then group will be Non-Semitic now, and that the Middle Assyrian, Semitic Then group will be all non-Shiite Semitic now.

Table 5- Hypotheses 1 and 2- Combined Results (n=44)	Middle Babylonian, Semitic Then (24)	Middle Assyrian, Semitic Then (13)	Middle Assyrian, Not Semitic Then (7)
Semitic Non-Shiite (14)	3	11	0
Shiite Arab (20)	20	0	0
Non-Semitic (10)	1	2	7

Table 5 shows the results of the crosstabulation between Hypothesis 1 and Hypothesis 2's results. The crosstabulation had 38 observations that were as the model predicted out of 44 cases. I thus had 6 outliers, more than in the first part of the analysis, but still strong. My uncorrected percentage of prediction was only 86.36. However, the less harsh correction necessary here meant that the corrected percentile was still exactly 80 percent, which is close to the lowest such statistic in the first part of the analysis. For a 3-by-3 table, I use Cramer's V for effect size instead of the Phi coefficient (although they are similar) and I use the Fisher's Exact Probability test which is similar to but not identical with the Fisher's exact test statistic used for 2-by-2 table. The Cramer's V value for Table 5 is 0.794 and the Fisher's Exact Probability Test value is very small ($5.348832576392152e-12$). These results are statistically significant at the 1 percent level. Judging from the Fisher's Exact Probability Test.

Table 6- Hypotheses 2 and 3, Combines Results (n=44)	Shamshi-Adad, Semitic Then (15)	Shamshi-Adad, Not Semitic Then (7)	Not Shamshi-Adad, Semitic Then (22)
Semitic Non-Shiite (14)	13	0	1
Shiite Arab (20)	0	0	20
Non-Semitic (10)	2	7	1

Table 6 shows the results of the crosstabulation between Hypothesis 3 and Hypothesis 2's results. I use the same three dependent variable options. My independent variable options are Shamshi-Adad, Semitic Then, Shamshi-Adad, Not Semitic Then, and Not Shamshi-Adad, Semitic Then. My model is that Non-Semitic areas (from the data of the Late Bronze Age) within Shamshi-Adad's empire will produce Shiite Arabs, that areas within Shamshi'-Adad's empire that were Semitic in the Late Bronze Age will produce Non-Shiite Semitic people, and that the area outside of Shamshi-Adad's empire will produce Shiite Arabs. The uncorrected prediction percentage is 90.9. When corrected for random results, we get a percentile of 86.67. The Cramer's V is 0.851, which is very close to this percentile. The Fisher's Exact Probability test statistic is 2.173661911202216e-14, thus the result is statistically significant at the 1 percent level.

Table 7- Hypotheses 3 and 4, Combined Results (n=44)	Core Ur III, Semitic Then (21)	Not Core Ur III, Semitic Then (16)	Not Core Ur III, Not Semitic Then (7)
Semitic Non-Shiite (14)	1	13	0
Shiite Arab (20)	20	0	0
Non-Semitic (10)	0	3	7

Table 7 shows the results of the crosstabulation between Hypothesis 4 and Hypothesis 2. Once again, the same three dependent variable options are used. The three independent variable options/outcomes are Core Ur III, Semitic then, Not Core Ur III, Semitic Then, and Not Core Ur II, Not Semitic Then. The model predicts that areas that were Semitic by the Late Bronze Age but had been outside of the core of Ur III will produce non-Shiite Semitic people, that areas that were not Semitic during the Late Bronze Age and not in the core of our III will produce non-Semitic people, and that areas within the core of Ur III will produce Shiite Arabs. The uncorrected prediction percentage is 90.9. The corrected percentile is 86.67. Both results are the same as those of Table 6, although the datasets are different and have different outliers. However, the Cramer's V is slightly higher here, being 0.856. The Fisher's Exact Probability Test statistic is the lowest of the three crosstabulations of the second part of the analysis at $4.13451776116778e-15$. The result is statistically significant at 1 percent.

The third and final part of statistical analysis were just quick 2-by-2 correlations of various hypotheses. Hypotheses 1 and 4 and Hypotheses 3 and 4 were equally correlated at 86.36 percent (technically the 86.36th percentile) after correction. However, Hypotheses 1 and 4 were directly-related, while Hypotheses 3 and 4 were inversely-related. In others words, Core Ur III and Middle Babylonia/Middle Assyria varied together in the same direction, while Core Ur III and Shamshi-Adad varied together in the opposite direction. These two relationships were exactly equally strong but in different directions.

Hypotheses 2 and 3 did not have a significant relationship, but Hypothesis 2 and Hypothesis 4 did. They had a 77.27 percentile-correlated inverse relationship. Hypothesis 1 and 2 were also inversely related, at a correlation value of 63.64 percentile. Hypotheses 1 and 3 had an inverse relationship at a correlation value of 86.36 percentile.

Table 8- Summary of Four Hypotheses' Results	Prediction Percentage	Prediction Percentile	Phi
Core Ur III Hypothesis	97.73	95.46	0.955
Middle Babylonia/Middle Assyria Hypothesis	90.9	81.80	0.833
Shamsi-Adad Hypothesis	95.45	90.90	0.913
Semitic Then/Semitic Now Hypothesis	90.9	81.80	0.729
Core Ur III Hypothesis	97.5	95	0.951
Middle Babylonia/Middle Assyria Hypothesis	95	90	0.905
Shamsi-Adad Hypothesis	95	90	0.905
Semitic Then/Semitic Now Hypothesis	92.5	85	0.757

All of this data boils down to a few important conclusions. Firstly, most of my results were both statistically and practically significant. All four of my hypotheses met strict standards of practical and statistical significance. All four independent variables have a large effect on their relevant dependent variables. Hypothesis 4 is the strongest of the four hypotheses, which is especially significant because its effect is the longest-lasting, since the independent variable, Core Ur III, was so long ago. Hypothesis 3 was the next strongest hypothesis. Hypothesis 1, my original hypothesis, is the weakest of the three state-based hypotheses, but is still strong. Hypothesis 2 is the weakest Hypothesis overall, but not by much, and it still is strong enough to show that the language in an area in Mesopotamia in the Late Bronze Age has a large effect on the language of an area in modern eastern Syria, Iraq, and a small part of Turkey.

One would think that as we get closer in time period today, the correlation would go up, but here we have the exact opposite effect. The correlation is stronger in Ur III times and weakest in the Middle Babylonian/Middle Assyrian period. Both of the weaker hypotheses, Hypothesis 1 and Hypothesis 2, were from the latest of the periods chronologically. Having looked at even later periods, the correlation goes down relative to these hypotheses.

In other words, the Core Ur III hypothesis is the most predictive model of Shiite Arabs in modern Iraq. Also, the Shamshi-Adad and Core Ur III hypotheses roughly equally predict the three dependent variable groups. There are three main groups that I am trying to analyze- Shiite Arabs, Semitic Non-Shiites and Non-Semitic people. I am not trying to distinguish between Turkmen and Kurds, within Kurds, or between Sunni Arabs and Assyrian Christians. I am trying to know two things- the relationship between the ancient past and Shiite Arabs and how to differentiate between Semitic and Non-Semitic-speaking non-Shiites.

This broadly, but does not exactly, conform to the Sunni Arab, Shiite Arab, Kurd trichotomy. There is plenty of difference between the model I use and this trichotomy but the basic contours are similar. The important points here are that Shiite Arabs are very highly directly correlated with the people living in the core Ur III area, the area not ruled by Shamshi-Adad within Mesopotamia, and the core area of Middle Babylonia (though not all of it). One case, Sippar defies all of the models except for Hypothesis 2, but Der is explained by the Core Ur III model.

The Semitic Now-Semitic Then model works very well, though not as well as the core Ur III model. Getting more exact language data before the Late Bronze Age would have been nice, but the general theory has been supported. Semitic-speaking areas in the middle

Babylonian/middle Assyrian period are generally speaking still Semitic speaking now while those that were not Semitic-speaking then are generally not now.

If you were in Lower Mesopotamia, you usually became Shiite Arab. If you were in Upper Mesopotamia, what language you spoke mattered. Non-Semitic people in Upper Mesopotamia usually became Kurds or Turkmen while Semitic speakers in the same region became Sunni Arabs or Assyrian Christians. With immigration, it is impossible to know exactly how much these lines of ancestry hold true, but areas were non-Semitic seem to have not been emigrated to by Semites, with some exceptions.

Cohesive identities in the ancient world- a theory of causation

Correlation is all very nice and these correlations are very strong. However, causation is very hard to prove. The fact that later empires do not show these kinds of results (I did not have to prove this because the results can be analyzed just by looking at maps of periods like the Sassanid and Safavid periods) shows that no state actor was causing this effect, unless it was a state actor in the periods analyzed in this paper. Also, the actual conversion to Shiism is not the important event here, but the creation of an identity so strong that it was coherent enough to survive the transition between various identities.

In other words, Shia identity in Lower Mesopotamia, particularly Shia Arab identity is so strong because the vast majority of the already-coherent group became Shiite together. The cause of that cohesion was found in my data. Thus, the long-term cause of the rise of Shiite Arab identity in Lower Mesopotamia was, in part, the cohesion created in these periods.

The exact causation of this phenomenon is hard to pinpoint, but seems to have begun in the Ur III period, facilitated by the centralization of politics and identity caused by the institution

of the bala tax. In earlier periods, there was little cohesion in this region. After Ur III, this cohesion was not stable or even totally permanent, but changes in the level of cohesion of identity had begun. By Middle Babylonian times, this cohesion of identity had solidified to the point that Babylonian identity was so strong that it transformed into Shiite Arab identity with the cohesion of the identity group largely intact. The policies of Hammurabi and the Kassites during the Middle and Late Bronze Age periods respectively reaffirms and consolidated the identity first decisively forged during the Ur III period¹³.

The story of Upper Mesopotamia is obviously more complex, since it has always been, and still is, more diverse than Lower Mesopotamia. The cohesion of identity A (which became Babylonian and eventually Shiite Arab identity) never allowed it to spread to Upper Mesopotamia, even Terqa and Mari, which were often politically aligned with Babylonia in the Middle-to-Late Bronze Age. Thus, before Shamshi-Adad, there was no corresponding identity to identity A.

There is plenty of evidence that Shamshi-Adad helped in part to spread an identity B. He first created a large kingdom in Upper Mesopotamia that was distinctly Upper Mesopotamian, and which led directly to the organization and ideology of the Middle Assyrian Kingdom, which in turn gave rise to the Neo-Assyrian Empire. He produced something close to the Assyrian regional culture of later years, such as during the Middle Assyrian period. He supported the Semitic language of Akkadian¹⁴.

13

14

However, by the Middle Assyrian period, Upper Mesopotamia was split. Amorite speakers, Hurrian speakers, and Akkadian speakers were the three main groups. However Amorite speakers throughout Mesopotamia wrote in Akkadian. Hurrian speakers wrote in Hurrian as well as Akkadian. The Semitic-speaking world within Mesopotamia thus was unified by native written language, even if divided by native spoken language.

The Hurrians remained quite distinct throughout the Late Bronze Age and beyond, but it hard to know why their cities, which seem to have been Akkadian speaking in between, would become non-Semitic speaking once more. Most likely, the Semitic identity just was not as deeply consolidated as in cities that were Semitic-speaking in the Late Bronze Age.

Thus, Assyria develops in the Late Bronze Age and those areas that strongly Semitic then are strongly Semitic now and not Shiite. However, the areas within Assyria in the Late Bronze Age that were non-Semitic-speaking largely never were consolidated enough as Semitic-speakers to resist non-Semitic speakers later. Thus, Assyrian Semites became Sunni Arabs and Assyrian (Aramaic) Christians, while Assyrian non-Semites became Turkmen and Sunni Kurds¹⁵.

Thus, by looking at the formation of three main identity groups in the past, identity A, identity B, and identity C, we can understand our three main identity groups today, Shiite Arabs, non-Shiite Semitic-speakers, and Non-Semites. Identity C is Hurrian identity and led to Sunni Kurds and Shiite Turkmen. Identity B is Assyrian-Akkadian-writing identity and lead to Sunni Arabs and Aramaic-speaking Christians who call themselves Assyrian. Identity A led to Shiite Arabs, with Sippar becoming Sunni Arab and Der becoming Shiite, but Shiite Kurd¹⁶.

15

16

Conclusion- Stopping the Murders in Mesopotamia

Overall, the tripartite division of eastern Syria, a small part of Turkey, and Iraq into Shiite Arab, non-Shiite Semitic-speakers, and non-Semites can largely be explained through understanding two dimensions- Bronze Age states in ancient Mesopotamia and language identity groups in the late Bronze Age. This has huge consequences for the real world today. Upper Mesopotamia is diverse and hard to neatly divide into demographically-homogenous chunks of territory and people. Lower Mesopotamia, can be easily so divided.

Obviously, the national boundaries do not seem to make much sense either way. The Harran region of Turkey is more similar to neighboring areas of Iraq and eastern Syria and they are more similar to each other, than they tend to be with the areas around them within their respective countries. If we separate southeastern Syria from the rest of the group, this is especially true. Obviously, it does not look like Turkey or Syria are going to allow a union of Iraqi territories with their own, but this thought experiment does show the weakness of the border's impact on identity and demographics in this border region.

Within Iraq, Lower Mesopotamia is easily separable from Upper Mesopotamia (Northern Iraq). However, dividing these regions into independent countries does not seem practical or even desirable. Yet, this clear division shows the need for a decentralized, federal structure within Iraq. Right now, Iraq is not divided into federal regions in a symmetrical way. Instead, Iraqi Kurdistan itself is divided into lands directly ruled by a very centralized, unitary government in Baghdad and the Kurdistan Regional Government area. Shiite Arabs dominate the central government and have not yet agreed to create new federal regions in addition to the KRG. However, many Shiites want federalism for themselves. This of course makes sense, but only if federal regions are created throughout the country. There are many ways to do this, but the great

diversity of Northern Iraq needs to be respected. Aramaic-speaking, Assyrian Christians will require some sort of autonomous region and the Shiite Turkmen around Kirkuk will need something as well¹⁷.

17

Looking at what is Ahead for NJ Paid Family Leave After

Ten Years

John Saimbert

Abstract

This paper looks back at the controversial Paid Family Leave Bill that was enacted in New Jersey back in 2009. Since it now ten years, it's good to look at its pros and cons in conjunction with the proposed changes by current NJ Governor Phil Murphy, that will be elaborated on in this paper. The changes have implications on employees and employers from various walks of life.

Keywords: Paid Family Leave, New Jersey, FMLA

Looking at what is Ahead for NJ Paid Family Leave After

Ten Years

The NJ Paid Family Leave Law was enacted under former NJ Governor John Corzine to be effective on 1/1/09. The law was financed via a payroll tax. Even though the law was effective then, employees couldn't apply for the benefit until 7/1/09. The nuances of this law were fascinating for employers and employees. I will examine the aspects governed by this law. Then I will provide some perspective on this legislation and close with current NJ Governor Phil Murphy's latest revisions.

NJ Paid Leave Provisions

The NJ Paid Leave Law was passed after major hurdles got ironed out. Please note the amount of paid time given under this law is similar to NJ's temporary disability guidelines. However, paid family leave does not include any timeframe whereby benefits are paid under TDI if an employee cannot perform the normal scope of their position. Bear in mind that a seven-day waiting period applies before benefits are disbursed to eligible employees. I will then examine the key provisions and its implications for employees and employers.

Care for Family Member

You were allowed to take up to 6 weeks of paid time to care for a family member dealing with a serious health condition. Family members were defined included child, spouse, domestic partner, or parent.

Time with Child

An employee could utilize paid leave for time with a child after birth if the employee, domestic partner, or civil union partner was deemed the biological parent. This provision also applied to employees who were adopting a child. This provision provided an avenue for more bonding time with a child, especially for a new father that would have had to take vacation time or unpaid leave (depending on the circumstances).

Compliance with Provisions

This section will examine the compliance regulations that were paramount for employers and employees. Also, there were concerns about the relationship of this law to the federal Family and Medical Leave Act (FMLA). I will specifically look at its implications on an employee's job and compensation.

NJ Family Leave and FMLA Requirements

A key point to understand is that NJ Family Leave does not require an employer to maintain an employee's position within a specified timeframe. Plus, it does not provide protected time for an employee's own medical conditions or illness. Under FMLA, there are certain protections for this based on employer size. If you work for a big employer (employer that has more than 50 employees), the employer cannot legally replace your position or lower your job title within the designated leave period. That means employers must be very careful when deciding not to allow

an employee to return to their normal role. The NJ Family Leave law does not have this type of protection built in if an employee works for a small company. That is defined as having fewer than 50 employees. While the law states that it is not intended to create a reinstatement entitlement, it provides only a partial safe harbor for employers who fail to reinstate an employee. In this regard, the law provides that it does not intend to create any right for an employee to take action against an employer in tort, for breach of an implied employment agreement, or under common law. This safe-harbor only applies, however, to employers with fewer than 50 employees. There are additional concerns raised by the limited nature of the safe-harbor that ultimately may create claims against larger employers as well. This is where the paid leave legislation falls short. Employees in the Garden State that know the ins and outs of this law may not be inclined to work for a small employer. Consequentially, small employers could lose employees more easily. In terms of monetary benefits at the time of origin, employees were eligible to get 2/3 of their weekly compensation with a cap of \$524 a week for six weeks during a 12-month period. As of July 1, 2020, the maximum benefits rise to 85% of individual's average weekly wage up to the applicable cap (Wilson, 2019).

2018 NJ Paid Sick Leave Act

The NJ Paid Sick Leave Act, which became effective on 10/29/18, applies to all New Jersey businesses regardless of size or number of employees. This law is more stringent and offers plenty of protection since employees cannot be terminated for taking this leave. Exceptions apply to the following employee types: per diem hospital healthcare employees, construction workers employed pursuant to a collective bargaining agreement, and public employees who already have sick leave benefits by state law. Basically, the law mandates that employers grant an hour of sick

leave per every 30 hours worked. Carryover provisions allow for 40 hours of unused sick leave to carry to the following benefit year (Keng, 2018).

2019 Changes to NJ Family Leave Laws

This section examines key changes that are upcoming in the law, per Governor Murphy. So let's discuss these.

Applicability to Employers

“NJFLA currently applies to employers with 50 or more employees. The amendment reduces the employer size threshold to just 30 employees. Thus, beginning on June 30, 2019, employers with 30 or more employees (in total, anywhere) are required to provide those employees working in New Jersey with 12 weeks of job-protected family leave during each 24-month period” (Nacchio et al, 2019). Now there's a conflict with FLMA since that was applicable to employers with 50 or more employees. Furthermore, the seven-day waiting period has been eliminated on family leaves.

Child Care Placement

Previously, the law provided benefits for child birth or adoption. “The amendment also modifies the NJFLA to provide that family leave may be taken in connection with the placement of a child into foster care with the employee, which syncs up with FMLA” (2019).

Family Member Definitions

The definition of a family member has been changed in relation to taking care of relatives with major health conditions. “The amendment expands the definition of “family member” to include “parent-in-law,” “sibling,” “grandparent,” and “any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship” (2019). In addition, employees can utilize leave upon the birth, adoption or foster care placement of a child without the employer’s approval. Formerly, employees had to take such leave on a consecutive basis unless the employer agreed to allow the use of intermittent leave” (2019). Finally, the amendment also reduces the advance notice requirement from 30 days to 15 days when an employee requests intermittent leave to care for a family member with a serious health condition. For other leave requests, the advance notice requirement remains 30 days (2019). These definition changes are a no brainer, especially when family comes first.

Inside the Numbers

This area of the paper examines the number of employees utilizing the Paid Family Leave Insurance based on NJ DOL Report from 2017.

Summary on Claims and Rationale for Taking Paid Leave

The family leave numbers have steadily gone up. For comparative purposes, there were 32,171 eligible claims compared to 32,033 in 2015. Most of the claims (over 80%) were a to bond with a newborn while the remainder was to care for a family member with serious condition. The majority of claims were filed by females during childbearing years. The number of eligible claims

increased by 4.1% compared to 2012. The estimated average duration for FLI eligible claims was 5.2 weeks. (2017). Despite increases in FLI claims, there are many employees not taking advantage of the benefit. “According to NJ Time to Care, only 14% of New Jersey families who gave birth or adopted a child took advantage of the program in 2014. The overall participation rate among eligible workers in 2015, the group said was less than 1 %”(Pugliese, 2019). This is a byproduct of the strain of a reduced income for an extended period. Moreover, men are less likely to request paid family leave or intermittent leave. None of the men studied in workplaces by Sharon Lerner and Eileen Appelbaum took the full length of time they could access. None took more than six weeks and most took less...At that time, the benefit was capped at a little below \$600 and some men saw that income loss as prohibitive (Lerner, et al, 2014).

Conclusions Report Card

When one examines NJ Paid Family Leave, the benefits clearly outweigh the cons. Employee morale is high but not enough employees take advantage of it. A survey for the New Jersey Business and Industry Association found that small businesses had little difficulty adjusting to the law. That was quite surprising to this author. While the new guidelines give employees more opportunity to consider a small employer for employment purposes, some employers may opt to lay off employees to get below 30 employees or leave New Jersey entirely. That made this author think about a similar fate of layoffs due to the implementation of the Affordable Care Act. Before that law became effective, employers in various industries reduced the working hours of some staff so they would not reach 30 hours. Under ACA, a staff member that worked 30 hours was full-time and given benefits. Prior to the law, full-time for most employers was minimally between 35 and 40 hours. New Jersey is taking the leap of faith that Rhode Island did by “guaranteeing workers

reinstatement to their jobs and offering protection from workplace retaliation for taking paid leave” (National Partnership for Women & Families, 2018). Overall, I would give them a final grade of A- since there is more improvement in the legislation based on job protection. While this legislation is well-intentioned, I hope this legislation spurs more states to get on board with paid leave. Less than 10 states have developed this type of legislation with diverse parameters. Federal legislation needs to be passed so that the availability of leave is not reliant on employer type and job location.

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Closing

Allison G. S. Knox

One possibility that could reconcile appreciating the diversity of Iraq, especially Northern Iraq, as well as the need for a more thorough-going form of federalism is to have regions within regions. So for example, we could have three regions with defined powers and then regions within them (or sub-regions) to protect the local interests of minority groups et cetera. So we could keep the KRG, but make each province a sub-region, while providing minorities with sub-regions with the KRG of their own. We could divide up the Shiite homeland into sub-regions with the Shiite Region, and include a region for the Shiite Kurds around der for example. Lastly, the rest of Iraq, which includes Anbar Province and Northern Iraq outside of the KRG could have a central regional government and remain part of the Iraqi federation. While also having sub-regions to represent the various geographic and demographic identity groups within it. This kind of federalism is what it suggested by this research.

The articles included in this special, first edition of the proposed *New Jersey Journal of Politics* is an eclectic group of articles highlighting some of the important discussions in current public policy issues and in the current political science scholarly dialogue. We hope that these articles spur continued discussion among practitioners, scholars and students alike.