
VOLUME XX

2013-2014

Sound Politicks

Undergraduate Journal of Political Science



**POLITICAL
SCIENCE**

UNIVERSITY *of* PENNSYLVANIA

Letter from the Editor

First popularized by John Stuart Mill in his 1859 work *On Liberty*, and later by the Supreme Court of the United States, the “marketplace of ideas” refers to the idea that free expression and public discourse will lead to truth. “Wrong opinions and practices gradually yield to fact and argument,” Mill wrote. “But facts and arguments, to produce any effect on the mind, must be brought before it.” By presenting some of the works of undergraduate students at the University of Pennsylvania, this journal seeks to make but one small contribution to the marketplace of ideas.

The first paper, written by Michael-David Mangini, elucidates the ways in which efforts aimed at stemming global climate change provide insights into preventive warfare. Creatively rooted in both theory and data, it provides insights into the ways states anticipate and prepare for future challenges. The next, by Omar Kalouti, explores a perceived decline in unionism in the United Kingdom and the constitutional options available to the state. My paper follows with a partial account of the similarities and differences between the George H.W. Bush and Barack Obama administrations in relation to the changing balance of power between the two periods. Benjamin Feis’s paper then analyzes the changing interpretation and use of the Due Process Clause of the United States Constitution.

Some elements of these papers are controversial; many are not. Each author might agree in whole or in part with many of the arguments and assertions herein, and disagree with others, even with some of their own previous words. My viewpoints have certainly changed on many of the topics that my paper addresses. This journal presents the papers to the reader not as an endorsement of their views, but as just one contribution to the broader marketplace of ideas so that we may continue to debate and change our worldviews for the better.

Best,



JONATHAN A. MESSING

Editor-in-Chief

Sound Politicks is the official Undergraduate Journal of Political Science at the University of Pennsylvania. It is published annually and covers a wide range of political topics.

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SOUND POLITICKS

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

—Benjamin Franklin, 1749

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* Winner of the 2014 Sound Politicks Best Article Prize

What Global Warming Can Teach Us about Preventive War: An Analysis of International Strategies of Preventive Action

By **MICHAEL-DAVID MANGINI**

UNIVERSITY OF PENNSYLVANIA 2014

Majors INTERNATIONAL RELATIONS AND ECONOMICS

Abstract

Future threats such as global warming and climate change have similar consequences for the state, derive from similar initial conditions, and can be addressed through similar mechanisms. The objective of the analysis was to determine how states incorporate the seriousness of the threat when they decide whether or not to take preventive action against a perceived future threat. Two different kinds of decisions about future threats were investigated: global warming and the rise of an adversarial state. It is hypothesized that states process information about external future threats like global warming or rising adversaries through a political context before making a decision to take action. If a state is under significant threat from the consequences of global warming but does not react or reacts slowly to the threat, then aspects of the state's political system may have somehow caused the state to refrain from action. It might be possible to draw conclusions on two important questions. First, what magnitude and type of future threat is necessary to provoke a state to action in the current period? Second, what aspects of a state's political structure might influence how it perceives a future threat? The project will draw conclusions about preventive war through the study of global warming.

Introduction

Table 1:

Similarities between Global Warming and Preventive War

1. The concentration of CO₂ and the economy of a rising state both grow over time.
2. Both global warming and a rising adversary threaten to impose a periodic cost on the state.
3. There is a window of opportunity during which preventive action is effective.
4. The consequences of the future threat may only be apparent after the window of opportunity has closed.

5. States decide between using a preventive strategy or a reactionary strategy.
6. States decide between using a strategy of mitigation or a strategy of adaptation.
7. Uncertainty both encourages and discourages preventive action.
8. Action in the current period is limited by current capability, but action in the future period is limited by future capability. Therefore, a country's growth rate has profound effects on their strategy.
9. Resolving commitment problems helps to make the world safer.

States exist in the present but they must always think of the future. All predictions of the future are associated with a degree of uncertainty, but the best information states can have about the future are current trends quantified by rates of change. States always have some degree of ability to adapt to future problems.¹ This ability is tied very closely to the robustness of their economy.^{2,3} This can be seen in history. The states with the biggest economies are the states traditionally the best prepared for military conflict because they can translate their monetary power into military production.⁴ Just as there is a link between military spending and GDP, there is also probably a link between the potential to adapt to future threats and GDP. This economic power, although based in the private sector, is one powerful way of measuring a state's capacity for addressing problems. Economies grow over time, which means that the state's capacity to solve problems also grows over time.⁵

But states can also encounter problems which will grow over time. States sometimes might discover that the world is changing in a way that could be dangerous to their future. Preventive war is theoretically instigated by one such problem.⁶ If a state which has been predominant notices that there is a rival

state growing at a fast rate, the predominant state might reason that they should declare war on the weaker state in the current period before it becomes dangerous to the predominant states' interests during future periods.⁷ The problem of the growing state grows worse every period because the state grows in every period.⁸ Climate change is another such problem. Climate change is driven by the concentration of greenhouse gases in the atmosphere, and the problem intensifies as the concentration approaches a critical threshold concentration which could precipitate major changes in the climate.⁹ So a state might decide that instead of enduring the economic damage and the security threats posed by climate change, it might be advantageous to eliminate the problem of climate change in the current period. A state implicitly chooses between weathering the effects of climate change in the future and acting to prevent those effects from occurring in the present. The key problem for the state in both cases is that the perceived threat is growing at a faster rate than the state's capacity to address the threat.

The threat of global warming and rapidly growing adversaries can be thought of with a very similar framework although the actual consequences of both problems are very specific. Fearon in his landmark article "Rationalist Explanations of War" explains that states are not afraid that a growing adversary will eventually declare war.¹⁰ The state is motivated to declare preventive war not by the threat of being attacked in the future but rather by the nature of the peace they must accept if the rising state's growth is not curtailed. In Fearon's model after the growing state has matured it can demand a tribute from the surpassed state in exchange for security. To illustrate the point he argued that had Iraq conquered Kuwait and Saudi Arabia in 1991 it would not have invaded the United States next but instead would have used its monopoly on oil to wreak economic havoc in the US economy.¹¹

In the same way global warming exacts an annual economic cost on a state.¹² The effect of climate change can be thought of as an annual economic cost. Even though most modern models of climate change show it affects all states negatively, it need not affect all states evenly. In the cruel game of international politics as envisioned by the neorealist school one nation's gain is another's loss, and states can translate a smaller loss relative to an adversary into a competitive advantage.¹³ Thus global warming has consequences for the international security of at least some states. Most importantly, global warming and rising adversaries both potentially impose periodic economic costs.

Decisions about preventive war and global warming are time sensitive. In both global warming and preventive war there is a limited window of opportunity during which preventive action can be effective. Scientists might disagree about exactly what the threshold CO₂ concentration is before the most severe effects of climate change are 'locked-in' and unchangeable, but most agree that there is a threshold and that we are fast

approaching it.¹⁴ Efforts to contain the effects of global warming have the highest effectiveness before this threshold is reached.¹⁵ Preventive war is only effective if the rising state is attacked while it is still weak enough to be overtaken.¹⁶ Significantly it is possible for this window of opportunity to close entirely before any consequences are felt by the state.¹⁷ This means that these decisions must be made subject to some uncertainty. It would always be possible for a rising state to stop growing unexpectedly, as Japan did in the 1990s. Global warming might be worse or better than expected for a specific country in a specific region of the world. The effect of the uncertainty is to make a proportional response extremely difficult.

In a democratic regime there is the additional problem of information. Because the threat comes from a non-local source (from a far-flung adversary in the case of preventive war and from the planet itself in the case of global warming) constituents need to be educated about the danger in order to vote to address it. There might not be effects on their own lives to drive them to take preventive action because the symptoms of climate change might occur after the window of opportunity has closed. The process of educating the public is onerous and difficult to execute. Lobbying groups compete for the public's ear in the news media, in advertisements, and online. Advertising effectiveness is a function of funding, and it can be difficult to marshal sufficient funds to reach a large enough segment of the population.¹⁸

The state's options for addressing the problem of climate change or a rising adversary can also be analyzed in a similar way. When faced with the problem of global warming states have options that fall into three categories: 1) they can adapt to their changed situation in the future using their economic resources, 2) they can undertake measures in the current period to prepare for future changes, or 3) they can try to mitigate the problem by taking preventive action to stop the changes from occurring at all.¹⁹ Although Shalizi and Lecocq do not expand their framework to other future threats, it could be argued that states face the same three categories of options when they consider responding to all future threats. When thinking about the consequences of global warming, for example, a state might choose between deferring action until the problem becomes severe, creating legislation which prohibits construction in low lying areas which could be flooded by rising sea levels, or investing in clean energy to cut down on emissions. Similarly, a state considering its options for addressing a rising adversary might choose between deferring action until later, maintaining a larger military as a deterrent force, or declaring preventive war to eliminate the problem entirely. The primary tradeoffs between these three choices are temporal and agent-oriented, that is to say, whether action is taken in this period or a later period and whether action is designed to adapt to the problem or mitigate the problem.

It would be oversimplifying to say that the range of threats

posed by either global warming or a rising adversary can be addressed using all three of these different approaches.²⁰ Global warming and preventive war are complex issues which involve many different industries, regions, and issues. Climate change has potential to affect states at both a regional level and a global level. For example, flooding in coastal regions might be easier to address by moving people's homes away from low lying regions, but the increase in disease due to higher temperatures in a larger part of the world might only be able to be adequately addressed through mitigating the rise of temperatures in the first place. Analogously a rising state and an established state might be able to reach a bargain limiting the rising state's growth instead of fighting a preventive war.²¹ The specific strategies for addressing these problems will differ between global warming and preventive war because they pose different challenges to states. However, the decision process and the tradeoffs faced by states considering these two problems will be similar because the frameworks for analyzing these two problems are similar.

States must decide whether to act in the current period or a future period in part by examining the severity and the nature of the changes they expect.²² Uncertainty plays a double edged role in this analysis.²³ If the problem manifests as more severe than expectations and action is deferred, it may be too late to take any kind of action.²⁴ However, if the consequences are less severe than expected it might be easier to adjust to a changing world in the future. States cannot retroactively take action to prevent global warming or hamper a rising adversary after they have seen the future, which seems to indicate that prudence would dictate that states should prepare for the future by taking action in the current period. Also, some states have a different capacity for quick adaptation than others.²⁵ Threats to some industries or regions might be more difficult to adapt to once those problems have manifested. More time means that states have more of an opportunity to create an effective action plan. One disadvantage of acting later is that people must save to have enough funds to act later. A disadvantage of acting early is that waste is possible if the problem is not as severe as expected. For example, a state might decide to take a certain amount of preventive action in the year 2000 to prevent a problem they foresee in the year 2050. When the year 2050 arrives it might become evident that the problem was never serious enough to merit the amount of preventive action taken in 2000. If the state had decided to take no preventive action in 2000 and to save no funds for the problem in 2050, when the year 2050 arrives the state might be unprepared to address the problem.

Once a state has chosen to take preventive action in the current period the next tradeoff is between adapting and mitigating.²⁶ Adaptation means the state will act to improve its ability to adapt in the future, whereas mitigation means the state will act to prevent the threat from materializing. Not all preventive action is equivalent.²⁷ Different strategies might address different



Photo: Telegraph UK

aspects of either global warming or a rising adversary. However, the strategy of mitigation has the potential to be a panacea by completely eliminating the threat. It addresses the problem at its source. Mitigation addresses many aspects of the threat (though not necessarily all aspects) while preventive adaptation addresses merely a few aspects of the threat because preventive adaptation does not act on the source of the problem.²⁸ A state can limit a rising state's military power by buying bases near the rising state, but only preventive action can address the economic, social, political, and military threats posed by the rising state. In global warming it might be possible to limit the development of coastline communities as prophylaxis against rising sea levels, but only reducing emissions can address the problems of higher food prices, rising sea levels, increased disease transmission, and increased hurricanes and heat waves. Neither preventive adaptation nor mitigation is an all-or-nothing strategy. Both can be partially executed and they can also coexist as a portfolio of actions.²⁹

The relative cost of the two choices is related to the threats the state needs to address and the certainty that the chosen method will resolve the problem. Not all states have the same problems from global warming, and not all rising states pose the same problems to the existing order in the same way. A landlocked state would have nothing to fear from rising sea levels, but it might be vulnerable to a sudden and sustained rise in food prices. States need to minimize the cost of the response by choosing the most proportional response to the future threat.³⁰ Preventive adaptation might be more expensive than mitigation if the feared threat is so large in magnitude and so diverse in scope that addressing it through adaptation would mean implementing many different courses of action while all of the problems could be addressed through mitigation. There is no reason to believe that preventive adaptation and mitigation are perfect substitutes.³¹ It is entirely possible for there to be problems which cannot be addressed through adaptation but can be solved through mitigation. For example, global warming at sufficient temperatures is expected to damage agricultural yield by making currently arable land unusable.³² Countries which are

highly reliant on agriculture may simply not have the resources to prepare for the impacts, and may need to rely on mitigation to assuage their future problems.³³ The only time mitigation is no longer an effective solution is after the window of opportunity has closed.

Not all states have the same capability to execute any of these options, and this must be born in mind when analyzing their choices. In preventive war, the smaller a country's economy and military the less effective are their options of mitigation and adaptation. In global warming the states with the smallest growth rates are the most ill-suited to adaptation. A country's future GDP affects how it will be able to adapt in the future, while its current GDP affects how it will be able to take preventive actions to adjust to global warming. Countries with the best militaries are the best able to wage wars against rising adversaries, but the parallel does not exist in the problem of global warming. A small number of states currently contribute most of the carbon dioxide emissions, and most of those are among the most developed countries in the world.³⁴ However, developing countries have the highest marginal impact on the future of emissions since they are developing most of their infrastructure in the next decade, and if they build cleaner technology they can help reduce the growth rate in fossil fuel consumption.³⁵ Few individual countries can make a noticeable impact on global warming which means international cooperation is mandatory if states expect to address the problem.³⁶ In contrast, when a state is considering preventive war cooperation is merely optional. This absolutely has an effect on how states make decisions about the two problems.

Commitment problems in international relations are incredibly important for both preventive war and global warming, but they are important at different stages of the decision and have different impacts on the outcome. Fearon demonstrated that there is always a bargain more preferable than preventive war to both the rising state and the stronger state.³⁷ He reasons the only case under which preventive war is rational is if that

bargain is unenforceable under international law, at which point the stronger state might choose to go to war because it fears subjugation from the rising state once its power has matured.³⁸ In his model, the inability of a state to make a credible commitment to an international agreement actually makes preventive war (the action designed to mitigate) possible.³⁹ In global warming the situation resembles Hardin's "Tragedy of the Commons" much more closely. Global warming can only be addressed by groups of nations because no one state emits enough carbon dioxide to solve the problem alone.⁴⁰ If several states agree to limit their development by restricting their emissions but one state decides to ignore the accord and brazenly builds new fossil fuel power plants anyway, that state could gain an advantage over its neighbors, in the manner that Hardin explores in his article.⁴¹ Thus, the commitment problems faced at the international level inhibit action on climate change.

Both preventive war and global warming are heavily influenced by commitment problems. In one case commitment problems instigate preventive war while in the other they inhibit action on climate change. The reason for the disparate effects is that commitment problems affect states' decisions at different points. In the model for preventive war there are commitment problems between the rising state and the strong state, whereas in the climate change problems there are commitment problems between the states cooperating to act against climate change. The adversary in preventive war has the ability to negotiate, and cooperation between the rising state and the strong state might avert war.⁴² However, there is no negotiating with the feedback cycles which warm the planet. Instead, there are mandatory negotiations between the states which intend to take action against climate change.⁴³ But these negotiations never occurred in the scenario on preventive war because the strong state could act unilaterally. The multilateral precondition to action prevents states from taking action on climate change.⁴⁴

What constitutes preventive action varies between preventive war and global warming. War is a military action, whereas fixing the climate means manipulating the carbon dioxide levels. The mechanisms for accomplishing these two objectives are very different. However, in both cases states must transform economic wealth into a mechanism of action. If there will be war or some other preventive action against a rising state the state must mobilize the military and that means buying weapons and raising an army. For a state to reduce their emissions they must invest in new infrastructure. A state's course of action can be measured by where the government puts its money. However, there are other tools for gauging a government's commitment to a course of action. Despite the level of democracy, a state might attempt to convince its people to agree with its new course of action. Media campaigns might be one component of the state's decision to act.

The objective of this analysis is to discern whether or not a



Photo: Scientific American

state's preventive action is proportional to the future threat. The study will examine this question with regards to climate change, but the conclusions might be relevant for a preventive war. If states which are the least threatened by global warming are also the states which are most zealously acting to prevent it, then it might be possible for states which are not very threatened by a rising adversary to conclude they need to take preventive action against this adversary anyway. The study will attempt to investigate what types of threats are more likely to compel a state to act on global warming (for example, whether threats to different systems have more influence on a state's decision to take preventive action). It is possible that certain types of threats have characteristics which make them more important to a state in both a context of global warming and a context of preventive war.

Method

There are many sources which estimate how a specific area might be affected by global warming. Given the political sensitivity of the topic of global warming most of these sources are politically biased or unscientific. To minimize the risk of exposing the research to a given bias, the threat posed by global warming to any area was analyzed using data from the Fourth Assessment (2007) of the Intergovernmental Panel on Climate Change because they have grounded their analysis in academic literature from the fields of physical science. The IPCC has criteria for evaluating the threat to an area, but they do not use this as a basis for comparing the threats to different areas.⁴⁵ The first task was to use their criteria to rank their regions by the potential threat of global warming. The criteria identified by the IPCC included magnitude, timing (when the effects of the threat might be felt), confidence, potential for adaptation, and distribution (whether or not all segments of the population feel the effects of the threat equally).⁴⁶ The topics of water stress, food availability, coastal flooding, and health were evaluated according to these criteria. Continents were evaluated separately because the IPCC had divided their own research by continent. Within each continent the threat posed by global warming does vary, but many effects remain consistent within each individual continent (Asia is the notable exception). An overall threat ranking was extrapolated by ranking the regions according to the sum of the rankings of their subcategories (magnitude, timing, etc.). The regions were also ranked by each subcategory as well to explore whether any of them had significant influence over a region's policies.

Assessing how much a state has acted to prevent or adapt to global warming is a difficult problem. Different states might take different actions given their current endowment of resources. For example, China and many other developing countries refused to be identified as Annex I countries under the Kyoto Protocol, but not necessarily because they felt it was unreasonable to take action against global warming. They argue that it is



Photo:CCIS

unfair to ask developing nations to limit their growth by limiting their emissions when it was the developed countries who emitted the carbon dioxide which is currently causing global warming during their own periods of development.⁴⁷ It would be unreasonable to conclude that the developing world does not recognize the threat of global warming merely because they have not reduced their emissions.

Instead of using the emissions levels of countries to judge their action on global warming, this investigation decided to analyze the ratification of the Kyoto Protocol, as inspired by Fredriksson, Neumayer, and Ujhelyi (2007).⁴⁸ It is much easier for countries to ratify the Kyoto Protocol than to reduce their CO2 emissions because Kyoto does not establish binding requirements for emissions reductions for states which are not in Annex I. Thus, ratifying Kyoto is one way for states to make a political commitment to fighting global warming at low cost. The government needs to acknowledge the serious nature of global warming before taking serious action to prevent it, and ratifying the Kyoto Protocol is one way to make that commitment. The protocol opened for ratification on March 16, 1998.⁴⁹ States which ratified the protocol soon after it opened for ratification might reasonably be seen as enthusiastic about taking action against global warming. States which were laggards in ratifying the protocol might have had trouble convincing their political authorities that action was necessary.

Emissions reductions are not a proper metric for a states' enthusiasm for preventing climate change. States may reasonably fear that reducing emissions of greenhouse gases could have an adverse impact on growth. Therefore, it is conceivable that states may choose growth over emissions reductions, even if they have a commitment to prevent climate change.⁵⁰ Using the ratification delay as a metric for commitment to mitigating climate change is a more appropriate operationalization because the Kyoto Protocol does not impose binding requirements for emissions reductions on non-Annex I states.

The only state which has signed but not ratified the Kyoto

Protocol is the United States.⁵¹ The data reflect the US's tardiness by assigning the US the last ratification date in the sample. Somalia ratified the Kyoto Protocol on July 26, 2010, and the US shows the same date in the data to reflect its tardiness. It should also be noted that Canada is the only country to withdraw from the protocol, and it is also in North America.

The delay between when the Kyoto Protocol was opened for ratification and when the state actually ratified it is not a perfect gauge for how that state reacted to global warming. Many of the problems with using the Kyoto Protocol for this purpose are not as serious as they might appear. There are many reasons that a state might be delayed in ratifying the Kyoto Protocol. States might have different procedures for ratifying treaties, some of which might be lengthier and more time consuming than others. This problem introduces random variation into the sample, which is hopefully controlled for because there are so many states in the sample. Other states might have a changed leadership during the ratification period, and the new leaders might have had different priorities on global warming. It is possible that states in this category changed leadership in part because the new leader had a different stance on global warming, which could mean something interesting for how that state responds to future threats. States in the Annex I category might be more hesitant to ratify the treaty because they must be prepared to accept the binding commitment to reduce their carbon emissions. Neorealism, the dominant school in international relations theory, believes that international institutions like binding treaties are not enforceable because the international system is anarchic and there is no judicial authority which can effectively punish states for failing to fulfill their treaty obligations. Therefore, Annex I nations need not seriously fear the commitments entailed by ratifying the treaty. In fact, non-Annex I countries ratified the Kyoto Protocol after Annex I countries on average. There are some problems with using the ratification delay from the Kyoto Protocol which are not so easy to dismiss. For example, information about the threat posed by climate change is being discovered and revealed to these countries during the period of ratification. New information may cause a state to suddenly change its position.

An important potential problem is that a state which ratifies the Kyoto Protocol quickly might not necessarily take more significant action in the future. To make a real impact on global warming a state would need to allocate resources, either financial or otherwise, towards either mitigation or adaptation. Not all states are willing to contribute these resources to fighting global warming. However, all states can ratify the Kyoto Protocol with minimal cost. If states are going to act at all in the future to mitigate or adapt to global warming they must first acknowledge global warming as a problem. Ratifying the Kyoto Protocol is one way for a state to make this acknowledgement. If a state ratifies the Kyoto Protocol a comparatively short time after it opened for

ratification then it indicated that global warming is a problem that needs to be addressed more quickly than other states came to the same conclusion. Such a state is not dragging its feet.

In the same manner as Fredriksson, Neumayer, and Ujhelyi (2007),⁵² the number of days elapsed since the protocol opened for ratification was calculated. States were then placed into categories which reflected the geographic categories of the IPCC: Africa, Asia, Australia, Europe, Latin America, and North America (small island nations were excluded because their political systems face very different influences and challenges from larger continental nations). These regions were then ranked according to the decile containing their average ratification delay in days. The total range was taken from 185-4515, the range of the data for individual countries. Deciles therefore occur every 433 days. The ranking reflects the relative haste that countries felt to ratify the protocol, yet ensures that two regions with very close ratification periods are also ranked very close together.

At this point the rankings of the regions according to ratification delay were compared to the rankings of the countries according to threat level. The expectation was that regions would ratify the Kyoto Protocol in accordance with their threat level. For example, if a region were ranked third in overall threat they would also have the third lowest ratification delay. Overall threat was analyzed as well as each subcategory. The results were graphed and analyzed.

The results were graphed on a series of line graphs showing the ratification delay by decile rank on the dependent axis, and the subcategory of threat on the independent axis. A 45 degree line crosses the graph showing the expected ratification delay given a threat level. The expectation is that a region's threat level will be equal to its ratification delay rank. Regions below the line ratified earlier than was expected given their threat level while regions above the line ratified later than expected.

Results

Little relationship was found between the threat posed to the region and the ratification delay, except for water and food.

Data for Russia, New Zealand, and the Islands were omitted from the analysis. New Zealand distorted the results of Australia, which were considered more important given Australia's relative size. The Island nations are typically small in terms of both GDP and population. Russia was omitted because it could have

“Both preventive war and global warming are heavily influenced by commitment problems.”

belonged to two different regions, Europe and Asia.

Table 2:

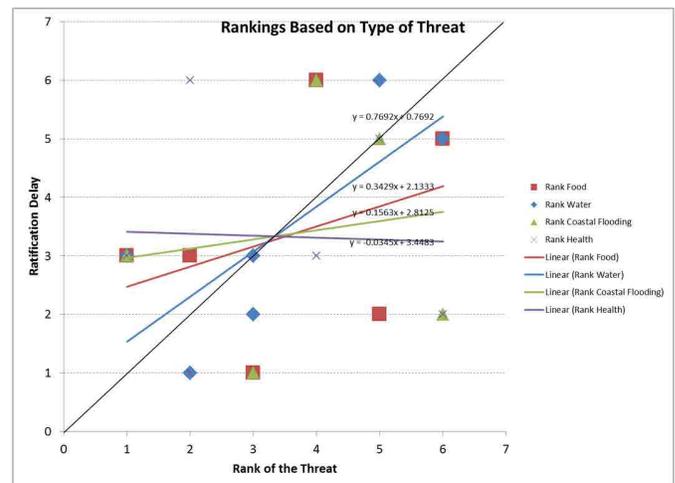
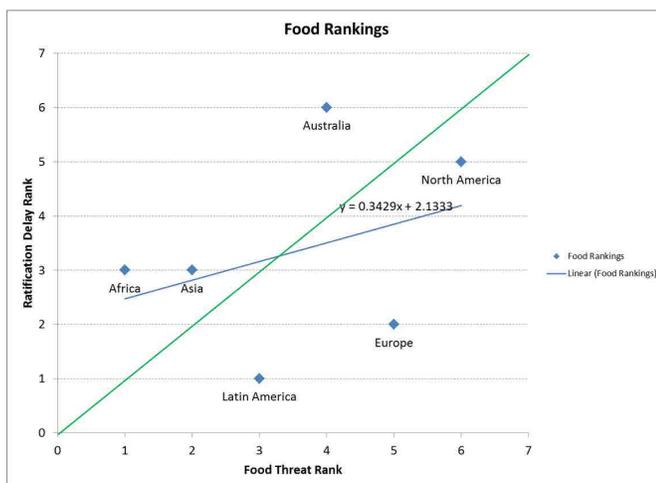
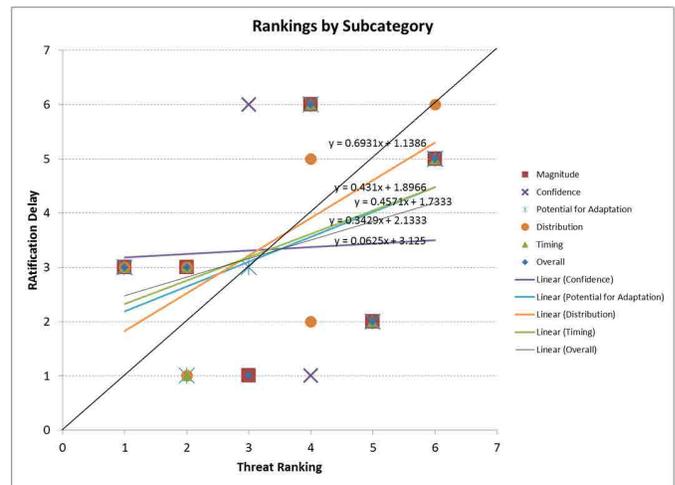
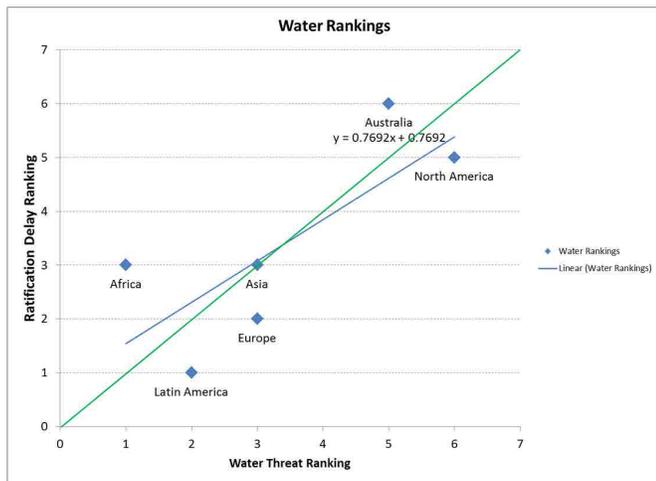
Most threatened region is ranked first.

	Mean	Decile of Ratification Delay*	Rankings based on Deciles	Ratification Rank (Mean)	Threat (Overall)	Threat (Magnitude)	Threat (Timing)	Threat (Confidence)	Threat (Potential for Adaptation)	Threat (Distribution)	Rank Water	Rank Food	Rank Coastal Flooding	Rank Health
Africa	2324.245	6	3	4	1	2	2	1	1	1	1	1	1	4
Asia	2190.378	6	3	3	2	1	1	1	3	2	3	2	1	1
Australia	3558	8	6	6	4	4	4	3	4	6	5	4	4	2
Europe	1918.619	5	2	2	5	5	5	5	5	4	3	5	6	6
Latin Ame	1162.737	3	1	1	3	3	2	4	2	2	2	3	3	2
North Am	3126	7	5	5	6	6	6	6	6	4	6	6	5	5

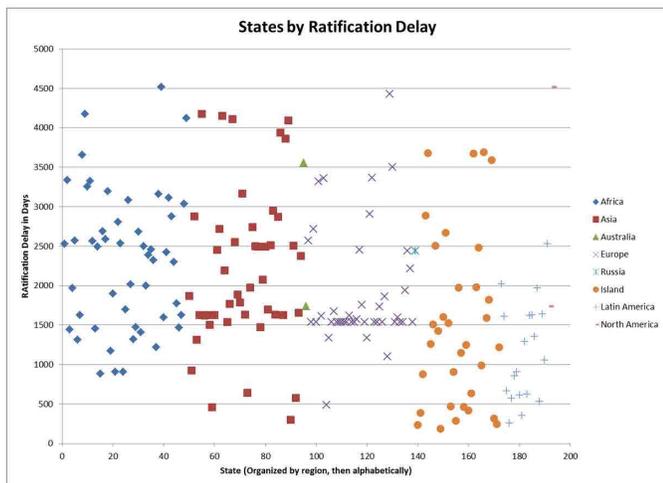
*(Range=185-4515 1st decile:0-433, 2nd decile:434-866...)

For the following charts the threat ranking for each region is plotted along the horizontal axis while the ratification delay ranking is plotted along the vertical axis. The blue line shows the expected ratification delay given the threat ranking (if a state has a threat ranking of 3 the expected ratification delay is also 3). Regions above the blue line ratified the Kyoto Protocol later than expected while states below the blue line ratified the Kyoto

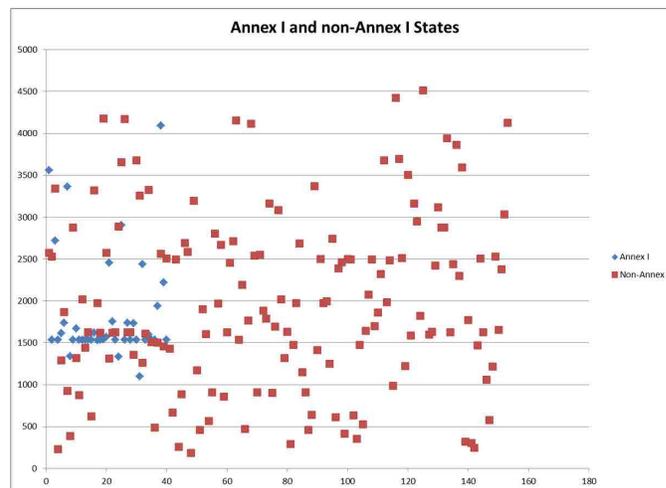
Protocol earlier than expected. The linear trend line's equation is reported in the form $y = \beta x + \alpha$. A trend line approaches the expectation as α approaches zero and β approaches one.



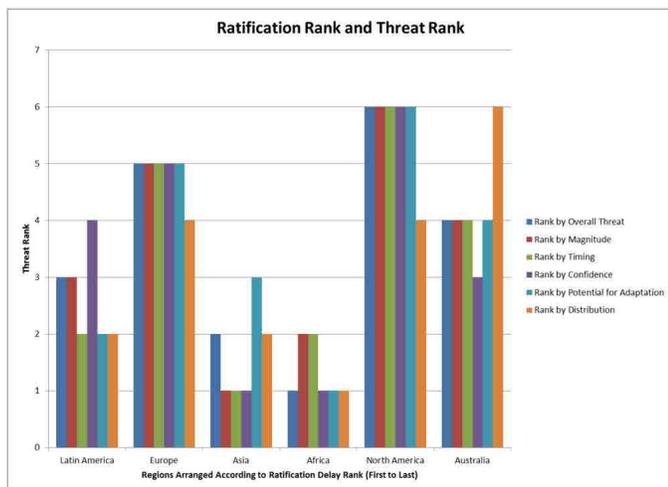
The following graph shows the ratification delay of individual states organized by region. The different points show the different regions. The horizontal axis shows the number assigned to each state for plotting purposes. The vertical axis shows the ratification delay in days.



This graph demonstrates that the Annex I countries did not ratify the Kyoto Protocol any earlier or later than the non-Annex I countries. The series in blue represents the Annex I countries while the series in red represents the non-Annex I countries.



The following graph is another representation of the relationship between threat and ratification delay. On the horizontal axis the different regions are ranked according to ratification delay (Latin America had the shortest ratification delay, Europe the second shortest, etc.). The threat ranking for each subcategory of threat is plotted as a bar. The height of the bar should be equal to the region. For example, Latin America had the shortest ratification delay, so their threat rankings would be expected to be equal to one. Asia and Africa's ratification delay was tied, so their expected threat rankings are both equal to three.



Specifically, Latin America and Europe ratified the protocol significantly earlier than what would have been expected given their level of threat according to the overall threat subcategory. By this measure, the regions that ratified after expected did not ratify significantly after the expectation except for Africa. Africa, Asia, and Australia all ratified significantly after the expected point given the level of threat. The difference in between the observed ratification delay and the expected ratification delay is more pronounced for the regions which ratified early than for the regions which ratified late.

Because the investigation ranked the regions a deviation from the expected ranking affects the results of the other regions. While this property does affect the interpretation of the results it does not invalidate the method. Because Europe and Latin America ratified earlier than expected, they increase the ranking of the regions which had expected rankings below the expected rankings of those two regions. For example, Latin America's descent from an expected ratification delay ranking of third to an actual ratification delay ranking of first automatically increases the expected rankings of Africa and Asia. Ranking the regions by their decile of ratification delay rather than strictly by their average ratification delay partially mitigates this issue by allowing for countries to have a tied ratification delay ranking. Nonetheless, it should be noted that Europe was expected to

“Countries which were more threatened by climate change did not necessarily ratify the Kyoto Protocol more quickly than states which were less threatened.”

ratify in the fifth position yet actually ratified three positions earlier, while Latin America was expected to ratify in the third position but actually ratified two positions earlier. Despite the fact that Asia and Africa were arbitrarily penalized for having an expected ratification delay lower than Europe and Latin America, they still did not ratify the treaty as quickly as could have been expected. This method does not reveal how much slower Africa and Asia ratified the treaty than expected, but it does reveal that they ratified the treaty slower than could have been expected.

Discussion

The data show that countries which were more threatened by climate change did not necessarily ratify the Kyoto Protocol more quickly than states which were less threatened by climate change. This finding indicates that states which are more threatened by climate change are not necessarily also the most anxious to acknowledge climate change as a serious problem. The data do not indicate that states indicate that states which are less threatened by climate change signed the Kyoto Protocol more promptly than states which are more threatened by climate change (counterexample would be North America).

The difference in the observed ratification delay from the expected ratification delay might be explained by the way that the political institutions in those regions interpreted the future threat of climate change. Democratic states have been shown to have more environmental initiatives.⁵³ Since action on climate change is dependent on popular opinion in some countries, the effect of the freedom of the press might have a significant impact on how early the Kyoto Protocol was signed. Also, it has been shown that the level of corruption in a given country was correlated with the country's ratification delay.⁵⁴ According to the Economist Intelligence Unit's Democracy Index, most states in Africa and many states in Asia have a very low level of democracy while states in Europe and Latin America have stronger democracies, which might partially explain why Latin America and Europe ratified Kyoto more quickly.⁵⁵ However, Australia and the United States have very high levels of democracy and they ratified the Kyoto Protocol either at the expected ranking or after. The role of lobbying is another important factor which might have an impact on the government's choices (a relationship which was partially explored by Fredriksson, Neumayer, and Ujhelyi 2007).⁵⁶

It is also possible that states react differently to different types of future threats. When the subcategories of different types of threats were compared to the expected ratification delay, certain types of threats were more highly predictive of the actual ratification delay than others. Water stress was the best indicator, with no region missing the expected ratification delay by more than one ranking. Water stress was the best predictor of the actual ratification delay of all other subcategories plotted. This might indicate that states are more concerned about water

shortages in the future than with other types of threats. Food was also a very close predictor of the actual ratification delay. Food and water collectively might constitute a need so basic and important that it drives states to attempt to mitigate future threats to those categories.

There are other reasons that food and water might have more influence over the state's decision about global warming. Food and water are natural resources and their availability is tied directly to the immediate geographic area. Disruptions in the supply of food and the supply of water might mean that states will have to increase food and water imports. Increasing imports is rarely an appealing prospect for taxpayers. From the point of view of international security it is difficult to justify increasing imports of goods as important as food and water. Significantly, the areas most affected by increased food and water stress also tend to be located in the developing world. The notable exception is that Europe faces significant challenges of water stress in the future, but usually in Southern or Eastern Europe which are not as developed. Without proper infrastructure it might not be possible to transport the imported food and water to remote communities, which have relied on the surrounding land for their food and water for centuries. A consequence might be migration from areas which are difficult to reach, which causes social unrest for the government.

In areas which routinely suffer from the types of environmental problems which global warming will exacerbate the population might be more anxious to prevent global warming. For example, public health does not seem to have much influence over the decision to act on global warming for states. Global warming often threatens to introduce new threats into areas which were previously not tropical. For example, it might expand the range of a tropical disease, or increase the likelihood of heat waves in areas which through history have not been prone to them. It might be more difficult for these governments and these populations to be convinced they need to prevent a problem from occurring which they have never suffered before. Conversely, most people and governments know the bite of rising food prices during times of drought, especially in the developing world but also in the developed world. Thus, the threat of volatile food prices might make more of an impression on countries which have faced droughts in the past.

Conclusions

How can the problem of global warming serve as a decision model for preventive war?

There is evidence that the states which face future threats do not necessarily attempt to prevent the threat from occurring. The mere existence of a future threat, whether manifested as a rising adversary or global warming, is not sufficiently compelling to motivate states to take preventive action. This research shows that if the states in one region are more threatened by global

warming than the states in another region, it is not necessarily true that the states in the more threatened region will be more anxious than the states in the less threatened region to prevent the problem. Similarly, it is possible that if states in one particular region are more threatened by a rising adversary than states in another region, the states in the more threatened region are not necessarily expected to take action before the states in the less threatened region.

To take preventive action a state must interpret the future as threatening. States can act on future threats once they have acknowledged the future problem. For that process to happen there must be institutions which can facilitate a forward looking political attitude. States might have institutions which inhibit or catalyze preventive action. States which have institutions which are reactionary rather than preventive will struggle to identify a future threat. The failure to acknowledge future threats will hamper the state's ability to address the threat. Thus, states that take preventive action need to have a political structure which acknowledges a real future threat. If the state has a political system adapted to respond to crises it might be more difficult for that state to take preventive action.

Some states might respond to different types of threats differently. Threats which are perceived to be permanent, threaten international security, or are similar to traditional problems which the population has suffered in the past might carry more weight when states decide to take preventive action. In global warming the states whose water and food supplies are threatened are more likely to sign the Kyoto Protocol. This might be because global warming threatens to change the agriculture and water availability in ways which make these states permanently vulnerable and force them to rely more on imports. It is possible that states were slower to act on the public health aspects of global warming because often global warming threatens to introduce new health problems which the population is unfamiliar with. In states where the existing problems are exacerbated it might be easier to convince the government to take preventive action.

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Scottish Nationalism: The End of Union?

By **OMAR KALOUTI**

COLLEGE OF ARTS AND SCIENCES, 2014

Majors ECONOMICS AND POLITICAL SCIENCE

Abstract

As Scotland readies for an independence referendum in September 2014, it is pertinent to ask: why did the people of the United Kingdom—widely considered one of the most established nation states—gradually stop thinking of themselves as a nation? As this paper will discuss, the decline of Unionism can be attributed to the evolution of its internal dynamic, as well as to changes in the UK’s external environment. The natural question, however, concerns what the future holds. Considering the various constitutional options that can address the Scottish question, this paper finds that independence is unlikely – but that further ‘devolution’ to Scotland is a desirable and likely scenario following the referendum.

Introduction

On October 15th 2012, the Prime Minister of the United Kingdom and the First Minister of Scotland struck a deal allowing a referendum on Scotland’s independence before the end of 2014. Along with the resurgence of Catalan separatism that year, the so-called Edinburgh Agreement was a stark reminder that the “nationalities question”—or the incongruence between state borders and territorial identities—persisted as a feature of Western European politics. Yet, that a nationalities question exists in the UK may confound the unseasoned observer: as Michael Keating, a long-time scholar of the Scottish question, explains, “something curious happened in the [UK] in the late 20th century: the people of what was widely regarded as one of the oldest and most established nation states stopped thinking of themselves as a nation.”¹

As Keating implies, the ideology and praxis of Unionism—a term denoting support for the continued political union of Great Britain and Northern Ireland—have withered in recent decades. On the institutional level, the empowerment of a Scottish legislature and its domination by the Scottish National Party has challenged the absolute sovereignty of the Westminster Parliament—a key tenet of traditional unionism. On the mass

level, surveys indicate that ‘British’ is now “very definitely a secondary identity [in Scotland],” and that the English public is “remarkably relaxed about the prospects of Scottish independence.”² Similarly, there is an elite-level consensus in major UK parties on the legitimacy and eventuality of constitutional change—even if short of Scottish secession.

The natural question arises: what befell this ‘most established’ United Kingdom? As will be discussed in the first part of the paper, the decline of Unionism can be attributed to the evolution of its internal praxis—as well as to changes in the external environment. Yet, this is not to say that Unionism will go down without a fight: “the British Government, supported by various intellectuals, has launched a comprehensive and ambitious plan to reassert [its value].”³ Therefore, in the context of competing conceptions of nation and state, many will ask: what does the future hold? The second part of the paper will identify and evaluate the constitutional options available to the United Kingdom.

On Scottish Disaffection with the Union

In 1707, Scotland’s elite accepted the Treaty of Union out of self-interest: bankrupted by an unsuccessful colonial enterprise in Central America and unable to compete with the hegemony of the day, merger with an increasingly powerful neighbour was the expedient option. Indeed, with the expansion of Empire, “upwardly mobile Scots...discovered the pleasures of an imperial metropole.” Access to imperial markets enabled Scotland’s heavy industry to thrive—meaning that its “industrial bourgeoisie was firmly wedded to the Empire and Union, source of its prosperity.”⁴ Similarly, Scots “made a disproportionate contribution to the ranks of imperial administrators, soldiers, teachers, doctors and missionaries.”

If one pillar of the Union was imperial partnership, the other pillar was domestic autonomy. Namely, Scotland “entered the UK with a distinct institutional trajectory of its own”—and the

Treaty of Union “specified that the [UK] Parliament would leave the structure of the Scottish aristocracy, church, universities and law intact.”⁶ And it did: while Glasgow specialised in heavy industry, Edinburgh harboured the institutions which had been protected by the Union—chiefly, the financial and legal professions, the Church of Scotland (or Kirk) and the universities.⁷ The preservation of a domestic public sphere, in turn, “reinforced Scottish ability to compete in imperial markets by fostering professional networks entirely composed of Scots and reducing ... London’s pulling power.”⁸ Overall, as Scottish academic Murray Pittock summarises:

*A significant proportion of Scottish self-image ... was bound up in the collectivist masculine pursuits of heavy industry, while the protected and autonomous professions and organisations of post-Union Scotland formed another significant dimension in Scottish identity.*⁹

As for the governance of Scotland, the status quo was characterized by ‘administrative devolution’—whereby a Westminster-funded Scottish Office “developed a threefold role: to manage matters that historically were organized separately in Scotland; to bend British policy to Scottish circumstances; and to lobby for Scotland in the Cabinet.”¹⁰ As Greer notes, each Scottish Office competency “created a closed but important Scottish policy arena in which insiders sought to modify or make policy.”¹¹

The two traditional ‘pillars’ of the Union were, however, severely weakened over the course of the twentieth century. Scotland’s industrial sector was hit hard by the Great Depression and declined alongside the Empire—undermining the pillar of imperial partnership. Furthermore, the centralizing tendency of post-war British policy eroded the pillar of domestic autonomy. The ‘60s and ‘70s saw the major erosion of the Scottish financial industry, while nationalisations “wiped out the independence of big coal, steel and industrial firms, taking with it the old Unionist business elite that ran them.” Similarly, the rise of the welfare state—especially the National Health Service (NHS)—diminished the influence of local charities and the Kirk. That said, the demise of imperial partnership and domestic autonomy did not mean that Scotland no longer had an interest in the Union. On the contrary, Scotland’s interests pointed toward the ‘new’ Union because its economy depended on Westminster for “help through tariff protection and subsidies.” As Keating notes, “leaders from politics, administration, and both sides of industry made the extraction of resources from the centre the mainstay of their political strategy.” Related to this is the role of the welfare state in underpinning the Union: having risen as part of the post-war consensus, it became “an expression of British-wide solidarity and redistribution in favour of poorer territories.”¹²

The post-war pillars of the Union were short-lived, however. Under Margaret Thatcher’s premiership, the redistribution of resources—whether via welfare mechanisms or development

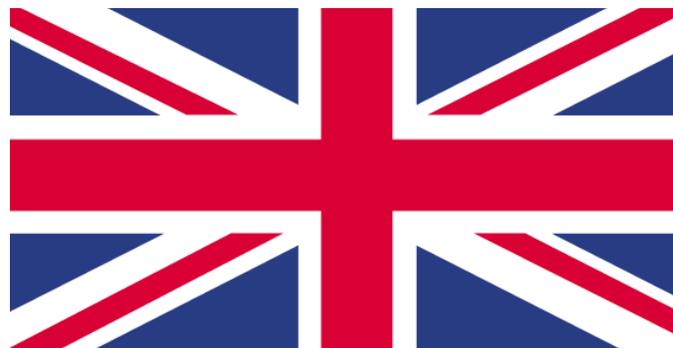


Photo: CIA

aid—came under concerted attack. As one civil servant quipped, “Thatcher put the Great back in Britain but took the United out of Kingdom.”¹³ During the 1980s, central policies—whether cuts in welfare provision or industrial restructuring—exact a heavy toll from Scotland. For instance, “all major industrial plants brought to Scotland under the earlier regional policies closed”—with predictable effects on employment.¹⁴ The deflationary effect of Thatcher’s policies was nevertheless a UK-wide phenomenon—meaning that Scottish frustration with Thatcherism was not a distinct territorial one. As Greer points out, however, this changed after 1987—when the central state began challenging “the autonomy and environmental stability of key Scottish regional organizations...by making policy inimical to their [preferences] without consulting them” as informal conventions would have prescribed. The most contested policy changes concerned health, education and local administration—areas traditionally seen as informally within the purview of the semi-autonomous Scottish policy arena—and provoked a visible backlash.¹⁵

The Tory assault on Scottish institutions marked a turning point for the Union in several respects. By destabilizing the environment of Scottish regional organizations, it nudged them decisively toward “supporting formal [regional] autonomy...that could adequately defend them against future centralizing governments.”¹⁶ This new orientation was catalyzed by the signing of the Claim of Right by prominent Scots in 1988, and the subsequent establishment of the Scottish Constitutional Convention a coalition of pro-autonomy political and civic groups. The Labour Party eventually decided to support greater autonomy—in part due to internal pressure, but also because it was a means of both pre-empting full Scottish independence and protecting Labour’s Scottish base from the next Tory onslaught. With New Labour’s victory in 1997, the ‘devolution’ settlement was signed into law, empowering Holyrood—metonym for the seat of Scottish politics—with a competent parliament.

Scottish alienation from Westminster during the Thatcher-Major era also fuelled a wider trend of ‘partisan’ divorce between England and Scotland. Margaret Thatcher did not govern with a majority of Scottish seats, while the Tories “misread Scotland’s political economy from the 1990s and failed in government to rebuild their social base [there].” This gave rise to

the perception that Scotland suffered from a democratic deficit: the Tories “had been able to run Scotland between 1979 and 1997 even though they failed to win a majority of the country’s parliamentary seats.”¹⁷ For many Scots, greater autonomy was the appropriate response. Moreover, there was an increasing politico-cultural divide: with the Tories increasingly identified with the south of England, the construction of Scottish nationalism has since then revolved around the theme of promoting collective welfare and social responsibility in opposition to “the perceived threat of English Conservatism.” Indeed, as Keating adds, “surveys in the 1990s consistently showed Scots somewhat more disposed to social egalitarianism than voters in England and Wales.”¹⁸

Finally, Thatcherism altered the position of Scottish Labour and the SNP toward the European project. Both “embraced Europe as a reaction to Thatcherism and in response to [European Commission President] Jacques Delors’ ‘social Europe.’” The slogan of “independence in Europe” has since been a recurring theme in Scottish nationalist discourse: perceived as an external support system for Scotland and having diminished Westminster’s role, the EU—compounded by globalization—has been a force for the loosening of the Union and has “disarmed unionists by undermining some of their classic arguments about the perils of independence.”¹⁹

In sum, Scotland’s position in the Union can be characterized by four phases. In the first, the Scottish public sphere is distinct and semi-autonomous—yet invested in the Union’s imperial endeavours. In the second, the original pillars of the Union are eroded, but Scotland remains oriented toward the Union due to its dependence on the centre for resources. In the third phase, the Tory-dominated centre assaults Scotland’s semi-autonomous institutional set-up and severs the links of dependency—igniting a re-assessment by Scots of their place in the Union. With the retrenchment of the British state, occurring alongside the advancement of regional and global integration, the fourth and current phase sees socio-economic issues being increasingly framed in a Scottish context and Scots more intent on setting their own terms of participation in the global and European market place.

Before moving on, however, it is useful to ask: why did the devolution settlement fail to stem the tide of Scottish nationalism—or, in Labour lingo, fail to “kill the Nats stone dead”? Among several reasons, two primary ones should be addressed.

First, there has been a failure to re-articulate a compelling ideology of Britishness. Despite thirteen years of Labour government, there has been no return to the post-war welfare settlement, whereby the state was a vehicle for expressing a British identity rooted in social solidarity. On the contrary, New Labour “sought to undermine the legitimacy of the state [as an expression of social solidarity] through anti-statist rhetoric and an insistence on the moral superiority of the private sector.”²⁰ As Keating observes: “when the state ceases to be the institutional



Photo: Destination 360

expression and foundation for national solidarity, state and nation not surprisingly fall apart.”²¹ New Labour has nevertheless attempted to rekindle a civic national consciousness “linked with democracy, fair play and the [NHS].” The foremost problem encountered by this approach, however, is that it confronts “not a Scottish identity built based on exclusion and ethnicity, but a revived Scottish national identity based on exactly the same values”—yet with locally rooted conceptions of social citizenship and a distinct European dimension to add.²² Therefore, though Scottishness has not necessarily become a hegemonic ideology, ‘modern’ Britishness has yet to provide the alternative.

Second, the current extent of devolution is insufficient given Scottish aspirations. Over the last decade, a consistent majority of Scots (circa 60%) has supported ‘devo max’—short for an arrangement whereby Holyrood has full authority over taxation and welfare benefits.²³ Currently, welfare benefits and social security are ‘reserved’ matters, while the Scottish Parliament raises about 15% of its budget—a figure that will increase to 35% once the Scotland Act of 2012 takes effect in 2015-2016.²⁴ The preference for full control of taxation and welfare is part of a larger desire among Scots that Scotland be the locus of “an economic and social project that can combine economic competitiveness with social cohesion”—one that the current devolution settlement fails to satisfy. As Keating underlines, taxation and welfare are two elements that are “crucial...in polity-building,” as they would shift attention toward Holyrood, raise the salience of Scottish elections and make the Scottish political arena “a real forum for social compromise and exchange” between interest groups.²⁵ Indeed, the pursuit of enhanced Scottish agency via



Photo: The Commentator

the empowerment of Holyrood can also be framed in the discourse of pride: Lord David Steel, a prominent Scottish Liberal Democrat, once complained that “no-self-respecting parliament should rely on handouts from another parliament” or “have to rely on the goodwill of another parliament for its very existence.”²⁶

Constitutional Options and Futures

Prior to his days as a Canadian politician, then-political scientist Stéphane Dion proposed a theoretical framework for secession. Secessionist movements, he suggested, were rooted in two perceptions: “the fear inspired by the union and the confidence inspired by secession”—where fear is the sense that a group’s situation will deteriorate within the union, and confidence is the sense that “a group can perform better on its own and that secession is not too risky.” For Dion, secession is likely to take place only if “fear toward the union and confidence in the secession are both at high level.”²⁷ Where does the Scottish question fit into Dion’s framework?

It would be difficult to argue that Scots harbour a fear of being in the Union. They are undifferentiated citizens of the UK, and can participate fully in British economic, social and political life, even if they retain a distinct Scottish identity. Though the English ‘centre’ may be dominant, it does not seek to disenfranchise Scots or acculturate them into English society. On the contrary, as historians Brendan Bradshaw and Peter Roberts explain, the “genius” of Britishness was originally its ability “to buttress the self-esteem of each of [Britain’s] constituent nationalities—apart significantly from that of the Irish—while at the same time subsuming these identities under a more comprehensive category of nationality.”²⁸ New Labour’s attempt to re-articulate a civic, overarching Britishness is derived from this legacy. Though Scots are no longer satisfied with this formula for the reasons discussed, it is conceptually distinct to say they fear it—and difficult to see why they would. Granted, the possibility of a centralizing Tory administration with no Scottish base may elicit some form of ‘fear’ among Scots. Yet, given David Cameron’s commitment to local autonomy in general as part of the ‘Big

Society,’ and his acquiescence to more devolution if Scots reject full independence, the chances of Tory governance à la Thatcher seem remote.²⁹

What about the confidence factor? As noted, Dion identifies two factors that affect confidence: the riskiness or cost of secession itself, and the sense that a regional group will be better off on its own. With regard to the former, it is almost certain that Scottish secession would proceed smoothly. The Scottish question is distinguished by the absence of ethnic exclusivism and territorial dispute—two elements that make secession-related violence more likely. Furthermore, unlike many other secession cases, such as Biafra or the antebellum American South, there is agreement among the main unionist parties that secession is legitimate and possible. Calling the Union a “free partnership,” David Cameron is clear that it is “right...that the choice over independence should be for the Scottish people to make.”³⁰ This was echoed by Labour leader Ed Miliband, who was “quite clear” that Scotland “could leave the United Kingdom” but cautioned against it because “we would all be worse off as a result.”³¹ Overall, unionist rhetoric in the Scottish case is about convincing Scots to stay in the UK, rather than proclaiming the precedence of a higher principle such as ‘indivisibility’ or ‘the constitution’ over Scottish popular will. In this context, therefore, the cost of secession itself will not deter Scots from pursuing independence.

On the other hand, the question over whether Scotland would be better off as an independent state is more complicated. The debate is by and large an economic one, inevitably leaving cost-benefit calculations open to contestation. It is possible, however, to broadly discern whether there is an economic rationale for Scottish secession. First, the independence of Scotland would not be the case of a wealthier region seceding from a poorer hinterland, as was the case with Slovene secession, for example. Using labour productivity, business birth rate and onshore per-capita GDP (i.e. excluding offshore oil) as indicators, Scotland is the UK’s third ‘wealthiest’ region—and slightly below the UK average.³² Scotland also appears to be a net beneficiary of uneven regional spending, and enjoys higher per-capita public spending than the UK average, meaning that there is little credence to the hypothesis that the ‘centre’ extracts Scottish value-added to Scots’ disadvantage.³³ As far as Scotland’s onshore economy is concerned, therefore, there is no visible reason for high ‘confidence’ in Scottish secession.

The primary economic driver of Scottish nationalism, however, has been an offshore one—namely, oil reserves in the North Sea. In the debate over independence, it is no question that secessionist camp uses the prospect of an oil bonanza to bolster the case for Scottish independence. While the idea of ‘being like Norway’ may inspire the Scottish imagination, the picture is not so bright as to warrant high levels of confidence in secession. In the 1980s, Scotland would have run large budget surpluses had North Sea oil rents been allocated on a geographical basis—and a



Photo: Wikipedia

small deficit in the case of a population-based allocation. In the 1990s, due to a slump in oil prices, the effect of a geographical allocation vis-à-vis a population-based one becomes negligible—with both allocations resulting in a budget deficit. Today, if oil revenues were allocated based on a population share, Scottish public finances would be in deficit—and weaker than UK-wide public finances by approximately 5-7% of GDP. They roughly break even under a geographical allocation, outperforming UK-wide public finances by a slight margin.³⁴ These figures suggest that Scottish ownership of North Sea oil will merely put current patterns of taxation and spending on a sustainable footing—a far cry from Alex Salmond’s claim that it would “deliver similar benefits [to those] Norway has secured.”³⁵

In the short-term, therefore, it would appear an independent Scotland would be better off economically only in the sense that Scots’ current standard of living can be maintained without recourse to deficit spending. In the longer term, however, North Sea oil provides no reason for secessionist optimism—even if one disregards the possibility of a resource curse. Currently, oil revenues can compensate for the fact that Scotland has above average per-capita spending on public services despite tax revenues that are slightly below average. Yet, as a report by the Institute of Fiscal Studies concludes:

*This balance may not be sustainable in the face of volatile and, over the long run, probably diminishing North Sea revenues. That, alongside the same sort of demographic pressures that are affecting the UK and most other European countries, will force some [difficult] choices on an independent Scotland.*³⁶

Ultimately, it would seem that the long-term economic success of an independent Scotland is less about the allocation of North Sea oil, and more about how Scotland would use the policy tools at its disposal to transform its onshore economy—the latter being more difficult to predict. To be sure, economic forecasts should always be taken with a grain of salt; in Keating’s words, “the calculations and the assumptions [underpinning these forecasts] are so contested that the arguments appear to cancel each other out.” Indeed, it is possible that the argument

set forth above is based on contestable assumptions or imperfect data. The point, however, is that there is no clear-cut economic case in favour of Scottish independence—and that Scots will be very much exposed to the arguments against it in the lead up to the referendum. Returning to Dion’s framework, this means that—even taking North Sea oil into account—the economic case for secession is not compelling enough for Scots to feel ‘high confidence’ in it.

In sum, it therefore appears that Scots’ fear toward the Union is low—and that their confidence in secession is not particularly high. Under these circumstances, Dion’s framework would predict that Scottish secession is unlikely. Is this the case? According to the 2012 Scottish Social Attitudes Survey, the percentage of Scots supporting independence is currently at 23%—having hit a high of 35% in 2005.³⁷ Given that secession lacks the prerequisite of majority support among Scots, it is highly unlikely that it will come to pass in the near future. The debate does not end here, however. As mentioned, a majority of Scots believe the Union can work if more powers are granted to Holyrood—a possibility that Westminster has accepted as an alternative to independence. The natural question arises, what is the constitutional future of the Union?

Some propose the establishment of a symmetrically federal United Kingdom—that is, an arrangement in which different regions are constitutionally granted the same levels of autonomy. For John McGarry, however, such a proposal suffers from several flaws. A federation based on the four constituent nations would lack the multipolar balance of power that is “generally seen as conducive to federal stability”—as the English parliament, representing over 80% of the UK’s population would “be a serious rival of the [federal] parliament and well-placed to win... any competition for resources [with] its Scottish, Welsh and Northern Irish counterparts.” One remedy would be to break up England into different regions. In this case, however, symmetry would be “equating communities that do not see themselves as nations with those that do”—either giving English regions more autonomy than they want, or the nationalities less than they want.³⁸ Finally, while the English are “relaxed about extensive home rule for Scotland,” they would be unwilling to accept Scottish constraints on the will of the British majority—a key element of federalism. That is to say, the English would prefer Scottish secession to a federal arrangement whereby Holyrood has a disproportionate say in federal matters.³⁹

For McGarry, the foundations of a better Union are rather found within the existing framework of asymmetric federalism, whereby different constituent regions enjoy different levels of autonomy. This does not mean, however, that the current constitutional set-up cannot be fine-tuned. Should Scots reject independence in 2014, Westminster has signalled its willingness to move positively in one respect—namely, acceding to Scots’ majority demand for further devolution.⁴⁰ Another way to

improve the status quo would be to address the West Lothian Question (WLQ), which concerns the fact that Scottish MPs can vote on English-only matters, but not vice-versa. The WLQ concerns a trade-off at the heart of the Scottish question—that between autonomy and influence in Westminster. The WLQ is an important area where this trade-off has not been fully resolved, engendering resentment of Scottish influence on English policy. To address the WLQ, McGarry proposes that Scottish MPs abstain on English matters. Acknowledging the possibility that a Westminster government could lose its majority when dealing with matters applying only to England, he points out that no problem will arise as long as the government “adopts a convention of winning majority support in [England] on matters that are exclusive to it.” Finally, he also suggests a means of mitigating the ‘territorialisation’ of the UK partisan cleavage: proportional representation in Westminster. Such an electoral system would alter the Tories’ image as an ‘English’ party by reducing their dominance in England and enhancing their representation in Scotland—in addition to modifying their incentive structure in the latter.⁴¹

Ultimately, there is no ready-made formula for the Union – and the UK’s constitutional future will likely cut across various power-sharing typologies to form a distinct model. Perhaps ironically, the right formula for the ‘new’ Union will be characterized by the genius of the ‘old’ one: it will convince the English they live in a unitary state where the majority reigns untrammelled and the Scots that they are an autonomous nation in a multinational partnership.

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The State of American Foreign Policy: Opportunities and Challenges in the Changing Post-Cold War World

By JONATHAN MESSING

COLLEGE OF ARTS AND SCIENCES, MAY 2014

Major ECONOMICS

Abstract

This paper examines some of the foreign policy challenges that the United States currently faces in light of the opportunities the country saw in the aftermath of the Cold War. It uses the Barack Obama and George H.W. Bush administrations as case studies. The paper first analyzes the ideological and material realities that characterized the two administrations and then highlights these differences by comparing Obama's handling of the recent and ongoing crises in Libya and Syria to Bush's management of the Gulf War and the famine in Somalia. Ultimately, this paper argues that the observable differences are partly due to the shifting balance of power in the international system and not only the worldviews of the presidents.

Introduction

Casualty estimates ran high in the lead-up to the 1991 Gulf War. With British sources predicting 15 percent wounded—120,000 casualties assuming a force of 800,000 allied troops¹—and others estimating 35,000 U.S. casualties and 10,000 U.S. fatalities, the prospects for a resounding victory looked bleak.² Iraq boasted the fourth largest army in the world with a standing force of approximately 1.6 million soldiers and the ability to mobilize an additional 2.7 million men between the ages of 18 and 45 as reinforcements.³ Moreover, the Iran-Iraq war that spanned most of the preceding decade demonstrated that the Iraqi forces were, to quote the Department of Defense's Final Report to Congress, "formidable and battle-tested."⁴ Iraq was thought to have state-of-the-art tanks, fighter planes, and artillery, and had demonstrated its willingness to use chemical and biological weapons.⁵ The George H.W. Bush administration planned for almost every contingency aside from one—an easy and decisive victory.⁶ Yet the war proved to be just that. After a 42-day air campaign and only 100 hours of ground fighting the United States and its allies ended the war.⁷ At the same time that 80 warplanes soared over

the 800,000 people flooding the National Mall for a military parade in June 1991, President Bush declared, "There is a new and wonderful feeling in America."⁸

The war illustrated just how powerful the United States had become. Indeed the events of the preceding two years were a great departure from those of the preceding four decades. The scenes of young people storming the Berlin Wall, the United States-Russian cooperation in the lead-up to the Gulf War, and the decisive victory in that war, to name just three, signaled the start of a new period in international politics. The future looked bright. Even before the formal close of the 1991 Gulf War, President Bush confidently proclaimed before Congress, "The indomitable spirit that is contributing to this victory for world peace and justice is the same spirit that gives us the power and the potential to meet our toughest challenges at home.... If anyone tells you that America's best days are behind her, they're looking the wrong way."⁹ Pursuing this optimistic line of thought, President Bush added, "We have within our reach the promise of a renewed America."¹⁰ Significantly, President Bush made it clear that people's hopes for a better, more just and peaceful world were not just pipe dreams—these hopes were within the nation's grasp.

Less than two decades later, the United States is in a very different place. Despite suffering 6,612 fatalities and spending \$1.4 trillion over the course of eleven years, the United States has found itself unable to confidently declare victory in Afghanistan or Iraq.¹¹ These conflicts have contributed to a pessimistic view of the future. Commenting on the notions of just wars and peace, in 2009 President Obama flatly stated that "we must begin by acknowledging the hard truth: We will not eradicate violent conflict in our lifetimes."¹² This is not to say that it seemed very likely that mankind would be able to completely eliminate armed conflict in the years after the end of the Cold War, but the contrast in outlook is striking nonetheless. Whereas President Bush

was able to speak in grandiose terms of entering a “new world of hope,”¹³ and of meeting an “opportunity to forge for ourselves and for future generations a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations,”¹⁴ President Obama has spoken of “this moment of challenge” for the United States.¹⁵ Whereas President Bush proclaimed that “when we are successful, and we will be, we have a real chance at this new world order,” President Obama has stated that “oppression will always be with us” and that “there will be war.” The immediate post-Cold War years were ones filled with a sense of opportunity and hope; the current ones are filled with a sense of challenge and resignation.

Quite simply, today’s world has fallen short of the vision many had two decades ago. Beyond the rhetorical differences noted above, this reality has manifested itself in the United States’ approach to the recent and ongoing crises in Libya and Syria, respectively. President Obama’s responses to the two situations have showcased the United States’ diminished ability to implement its post-Cold War vision. In particular, the situation in Libya exhibited the current challenges facing the United States with respect to carrying out missions abroad for purely humanitarian goals, and the crisis in Syria has demonstrated the United States’ diminished influence when strategic interests are involved. Some have argued that these changes can be attributed to the Presidents’ differing worldviews over the years. This paper will show that this is not entirely true. By comparing the crises President Obama has faced in Libya and Syria to those President Bush faced in Somalia and Iraq, this paper will argue that unanticipated structural changes, and not only presidential doctrines, have limited the United States’ capabilities on the world stage. By exploring the challenges the United States currently faces in light of the opportunities that the nation saw after the fall of the Berlin Wall, this paper will show that the United States is constrained not only by the worldview of its President but also by the structure of the international system.

Similar Worldviews, Different Worlds:

Presidents Bush and Obama harbored similar worldviews during their terms in office but faced vastly different worlds. Personal statements have touched on the two presidents’ similar foreign policy outlooks. Some have stated this view quite explicitly. Rahm Emanuel, Obama’s former chief of staff, put it thus: “Everyone always breaks it down between idealist and realist. If you had to put him in a category, he’s more realpolitik, like Bush 41.”¹⁸ The two have also both been on the receiving end of accusations of being too willing to deal with dictators. In the 1992 campaign Bill Clinton accused President Bush of “coddling dictators from Baghdad to Beijing.”¹⁹ In the 2008 campaign another Clinton, this time Hillary, similarly rebuked President Obama for his openness to meet with dictators without preconditions.²⁰ To quote President Obama himself on the subject: “I

have enormous sympathy for the foreign policy of George H.W. Bush.”²¹ At a town hall meeting he similarly explained, “The truth is that my foreign policy is actually a return to the traditional, bipartisan, realistic foreign policy of George Bush’s father, John F. Kennedy, of in some ways Ronald Reagan.”²²

The similarities also extend beyond these public pronouncements. A close look at the two Presidents’ political appointees tells the same story. Both Presidents have given great weight to the views of Brent Scowcroft. President Bush appointed Scowcroft to be his National Security Advisor, a position he held for the entirety of the administration.²³ Obama did not appoint Scowcroft to a position in his administration, but he did defer to many of Scowcroft’s opinions when forming his team during the transition period after his victory in the 2008 election. Scowcroft’s influence was particularly visible when he recommended the appointment of former Marine Corps Commandant James Jones to the position of National Security Advisor. Obama acquiesced despite barely knowing Jones.²⁴ President Obama’s decision to keep Robert Gates as his Secretary of Defense is similarly telling. Gates was one of the only members of the George W. Bush administration to retain his position in the Obama administration. He was also a protégé of Scowcroft. Gates had served as Scowcroft’s deputy in the George H.W. Bush administration, during which time they worked together on the invasion of Panama and Operation Desert Storm.²⁵ Scowcroft had later endorsed Gates for the position of Director of Central Intelligence, which he assumed during the last year of the George H.W. Bush administration.²⁶ Scowcroft’s influence over the president has been so extensive that Denis McDonough, President Obama’s Deputy National Security Advisor, stated, “Scowcroft is someone the president really admires.”²⁷

Despite their shared sympathy for the views of Scowcroft, both presidents are also similar in that they spurned some of his strictly realist tendencies in embracing missions abroad for humanitarian reasons. President Bush’s decision to use military force in Somalia was justified solely on humanitarian grounds.²⁸ Briefing the nation on his decision, President Bush stated, “Let me be very clear: Our mission is humanitarian...we will not tolerate armed gangs ripping off their own people, condemning them to death by starvation.”²⁹ The rest of the short address was narrowly focused on the suffering of the Somali people and contained statements of moral and religious conviction. President Bush closed by saying, “To every sailor, soldier, airman, and marine who is involved in this mission...you’re doing God’s work. We will not fail.”³⁰ This moral departure from the more calculating views of Brent Scowcroft and other realists was not confined to areas of no strategic importance to the United States. Despite the many strategic interests that contributed to the decision to go to war against Iraq in 1991, President Bush took a moment to make a more general point about American humanitarianism in his January, 29, 1991 State of the Union Address that was largely

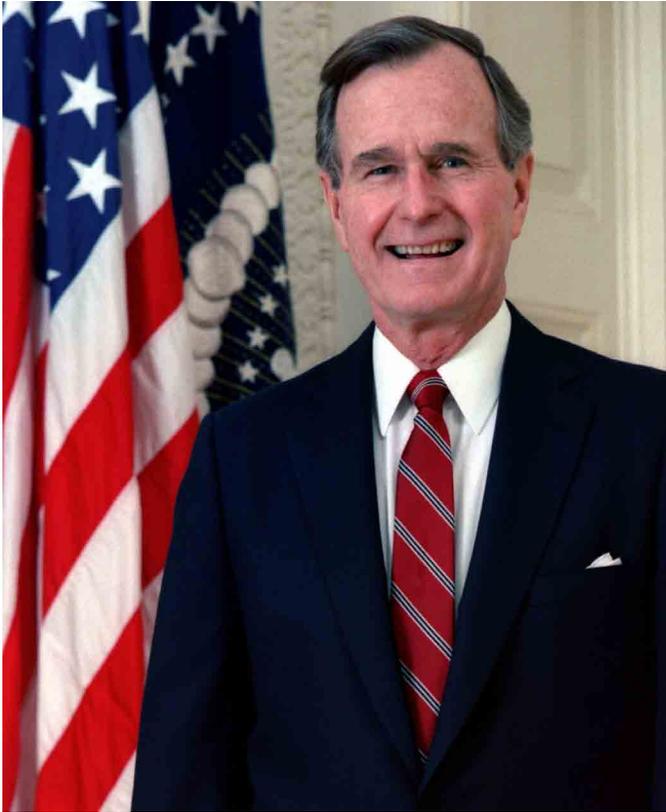


Photo: Wikipedia

devoted to the subject of that war. “As Americans,” he said, “we know that there are times when we must step forward and accept our responsibility to lead the world away from the dark chaos of dictators, toward the brighter promise of a better day.”³¹ His description of the U.S.-led coalition as the “forces of peace”³² similarly demonstrates that President Bush viewed foreign policy as more than just a game of strategic interests.

Confronting the crisis in Libya, President Obama showed a similar deviation from the realist school of thought. In launching a military operation to protect the Libyan people from Muammar Gaddafi, President Obama defied the vehement opposition of his Secretary of Defense, Robert Gates, who even articulated his view in his testimony at a congressional hearing.³³ In this way, Gates’ advice to Obama was very similar to that of Scowcroft, James Baker, and Colin Powell to Bush years earlier—that foreign policy should be based on national interest, not values. In the days prior to the intervention, Tom Donilon and Dennis McDonough, the sitting National Security Advisor and Deputy National Security Advisor, respectively, offered similar advice to Gates while still others pressured Obama to act.³⁴ Despite facing conflicting advice, when it came time to act Obama sided strongly with the interventionists. He said: “To brush aside America’s responsibility as a leader and—more profoundly—our responsibilities to our fellow human beings under such circumstances would have been a betrayal of who we are. Some nations may be able to turn a blind eye to atrocities in other countries. The

United States of America is different. And as President, I refused to wait for the images of slaughter and mass graves before taking action.”³⁵ Like President Bush, President Obama gave great credence to realists but was sometimes willing to depart from that ideology to embrace humanitarianism. It is worth noting, however, that both were only willing to do so in a multilateral fashion and with the backing of the United Nations.

While these two presidents’ worldviews may be similar, the material realities surrounding their administrations have differed quite drastically. Despite the fact that the average real 2005 GDP share of the United States was 26.53% during the four years of the George H.W. Bush administration (1989-1992) and 25.62% for the first four years of the Obama administration (2009-2012), as well as the fact that average annual growth rates over the two administrations fell only from -0.2% (1989-1992) to -0.87% (2009-2012),³⁶ the United States’ economic power is on the decline. These GDP statistics obscure the large and continuing gains of geopolitical competitors, and the growth rate statistics largely reflect the fact that both Presidents oversaw recessions. There was great uncertainty about the future during both periods. But the uncertainty during the Bush administration was about how bright the future would be—with some arguing that it would not be as good as expected—while the uncertainty during the Obama administration is about how bleak the country’s future looks, with some only arguing that it will be better than expected. In essence, the outlooks are opposites.

There was no immediate consensus regarding the structure of the post-Cold War world during the Bush administration, but there was also no doubt that the future looked bright for America. To quote Richard Haass, who served in George H.W. Bush administration (and later George W. Bush’s), “A sure sign that experts are encountering difficulty with figuring something out is their use of “post-“ as a prefix. Such a label reveals that people know only where they have been, not where they are now, much less where they are heading.”³⁷ Many theories were advanced, but the world proved to be a unipolar one. “There is but one first-rate power and no prospect in the immediate future of any power to rival it” declared Charles Krauthammer.³⁸ Citing the fact that the United States “is the only country with the military, diplomatic, political and economic assets to be a decisive player in any conflict in whatever part of the world it chooses to involve itself,” he explained that the world had entered an era of unipolarity with the United States as the sole, unchallenged superpower.³⁹

The United States’ hegemony in the post-Cold War years can be clearly seen by looking at military figures. Describing the United States’ power in the contemporary era, historian Paul Kennedy remarked, “Nothing has ever existed like this disparity of power; nothing...I have returned to all of the comparative defense spending and military personnel statistics over the past 500 years that I compiled in “The Rise and Fall of the Great

Powers”, and no other nation comes close.”⁴⁰ According to estimates as recent as 2006, the United States’ military might is indeed unrivaled. The United States spent \$528.6 billion on defense. The next highest spender was Great Britain with a mere \$59.2 billion spent. Perhaps even more strikingly, the United States accounted for 65.6% of the great powers’ defense expenditures⁴¹ and 46% of the world’s defense expenditures. The world’s defense R&D expenditure estimates only highlight this disparity: the United States accounted for 75.5% of the spending. Taken together, these figures suggest that the United States now likely spends more on defense than the rest of the world combined.⁴² Most impressively, the United States currently has the greatest share of world power a state has ever had since the beginning of the state system.⁴³

Economic figures tell a similar story. As late as 2006 the United States’ GDP of \$13,245 billion accounted for 46.1% of the great powers’ and 27.5% of the total world’s GDP (with purchasing power parity). Japan, Germany, China, and Britain rounded out the top five, each contributing 15.2%, 10.1%, 9.2%, and 8.3% of the world’s GDP respectively.⁴⁴ This degree of economic domination has never been seen before in modern history, unless one counts the United States’ relative power in the early years after World War II.⁴⁵ Similarly, science and technology indicators show that the United States was the source of 39% of the world’s high tech production in 2003—the next largest contributor was China at 12%.⁴⁶

Yet America’s future looks different today. While the country’s independent figures have not changed much, they must be considered in light of global trends. China’s share of global GDP grew from an average of 1.86% during the Bush administration to an average of 7.76% during Obama’s first term. Counted together, emerging markets’ share grew from an average of 14.28% to an average of 22.77%.⁴⁷ Emerging markets’ average annual growth rate similarly grew from 0.02% to 3.58%. These drastic changes are even more apparent when one considers projected figures. In 2030, the United States is projected to account for only 22.11% of the world’s GDP while China will account for 16.83% of the total. These same projected data tell us that the United States should have an annual growth rate of about 2.60% in 2030 while the Chinese economy will grow at a rate of about 7.00%. The following table helps capture these trends.⁴⁸

Average Annual GDP Growth Percent change (y/y)	Real GDP 2005 US\$		
	Pre-Crisis Trend (1997–2007)	Crisis Years (2007–2009)	Projections (2009–2050)
Argentina	2.6	2.0	4.1
Australia	3.6	1.5	2.9
Brazil	2.8	2.2	4.1
Canada	3.3	-1.0	2.6
China	9.6	8.8	5.6
France	2.4	-1.0	2.1
Germany	1.6	-2.1	1.4
India	7.0	6.3	5.9
Indonesia	2.7	5.0	4.8
Italy	1.5	-3.1	1.3
Japan	1.1	-3.1	1.1
Korea	4.3	0.6	2.5
Mexico	3.3	-3.1	4.3
Russia	5.7	-1.2	3.3
Saudi Arabia	3.2	1.7	4.8
South Africa	3.7	0.4	4.3
Turkey	4.0	-2.9	4.4
United Kingdom	2.9	-1.9	2.1
United States	3.0	-1.2	2.7
	2009	2030	2050
	223	527	1267
	787	1501	2257
	1011	2440	6020
	1171	2083	3154
	3335	21479	46265
	2203	3323	4528
	2833	3593	4535
	1065	5328	15384
	354	1073	2975
	1732	2197	2580
	4467	5786	6216
	945	2122	2812
	866	2397	5709
	869	2487	4297
	348	896	2419
	271	791	1919
	509	1437	3536
	2320	3597	4997
	12949	22258	38646

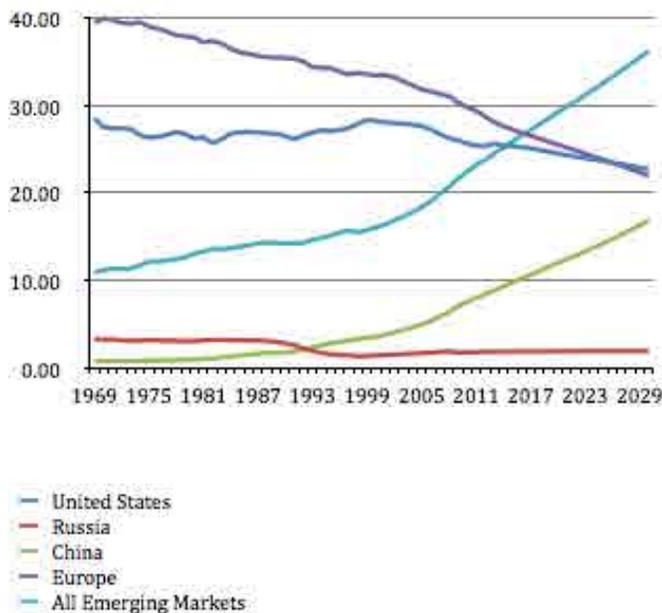
There are, nevertheless, counterarguments to the current declinist mood. Some cite the fact that such worries have been a recurring theme in modern American history.⁴⁹ Fears of decline surfaced when the Soviet Union acquired the atomic bomb and the Communist Party came to power in China in the 1940s as well as when the Soviets successfully launched the Sputnik satellite in the 1950s. They also appeared during the Vietnam War of the 1960s, the oil shocks of the 1970s, and Japan’s rapid economic growth in the 1980s.⁵⁰ In fact, this theme is not limited to modern American history. As early as 1788 Patrick Henry lamented the United States’ decline from the times when “the American spirit was in its youth.”⁵¹ In light of the fact that those fears ultimately proved to be unwarranted, some optimists are today portraying any individual who is sounding the alarm as a sort of “boy who cried wolf.” But an important part of that story is the fact that the wolf eventually came. The fact that such fears of decline may have been reactive and premature in the past should not prejudice the outcome of the ongoing debate about decline that exists today.

Yet there are also some more concrete reasons for optimism. Some have cited the fact that the United States suffered large economic crises in the 1890s, 1930s, and 1970s, but rebounded in the decade following each. The nation even ended up in stronger positions relative to other countries. Current arguments for America’s relative decline would hold more water, some argue, if it were not for the fact that most of them were first raised in reaction to the 2008 financial crisis.⁵² Here again, however, it pays to take a closer look at the figures in the table above. The data account for the financial crisis and still portend a bleaker future for the United States. China’s pre-financial crisis average annual GDP growth rate of 9.6% only dropped to 8.8% during the crisis years and is projected to average out at around 5.6% for the years 2009-2050. The United States’ growth rate, on the other hand, fell from 3.0% to -1.2% during the crisis and is projected to be 2.7% looking to 2050. The GDP trends are no less worrying. The United States’ Real GDP (2005 US\$) was 388% the size of China’s in 2009 but is projected to be only 84% the size of China’s in 2050. India’s GDP is also expected to grow from 8% to

“The United States currently has the greatest share of world power a state has ever had since the beginning of the state system.”

40% of that of the United States from 2009 to 2050. While it may be foolish to assert with any certainty what the world will look

Figure 1:
% Share of Global Real 2005 GDP from 1969-2030⁵³



like in 2050, it may be even more foolish to ignore these worrying, persistent trends.

There are reasons to hope, but the future is full of uncertainty at the very best. If the United States cannot solve its fiscal crisis, social conflicts, and political gridlock, the country could face significant problems down the road, regardless of the trajectories of other nations. For all its flaws, the United States political system has proved itself able to adapt and recover, but, once again, a history of success does not always translate to a future of success.⁵⁴ Given the recent political awakening of much of the world, as well as the dispersal of global power, the world is more likely to resist a global hegemon.⁵⁵ It may be true that the United States still has the largest economy in the world, the best colleges and universities, abundant resources, and a populace prone to innovation. But it is also true that this administration has found it more necessary than any other to frequently assert and defend the idea that the United States is not in decline.⁵⁶ Whatever conclusion one comes to regarding the future of American hegemony, the fact that there is even a debate concerning this future reflects the fact that the world President Obama faces today is drastically different from that which President Bush faced at the end of the Cold War.

Opportunities and Challenges:

During the Cold War, the UN was paralyzed by the competition



Photo: Wikipedia

between the United States and the Soviet Union. The de facto response to any humanitarian issue that fell within either of the two nations’ spheres of influence might be properly deemed the “he-may-be-a-son-of-a-bitch-but-he’s-our-son-of-a-bitch” syndrome.⁵⁷ Almost every attempt to deal with crises was met with a Security Council veto as the U.S. and U.S.S.R. strived to protect their interests.⁵⁸ This behavior extended beyond the United Nations as well. When 120,000 Iraqi troops and 2,000 tanks invaded Kuwait on August 2, 1990, the UN, and the international community in a more general sense, was poised to face a test of whether this behavior would continue in the post-Cold War world.⁵⁹ It did not. Twenty years later, however, the United States is facing a relatively uncooperative world. This changing reality has manifested itself in differences between the United States’ ability to deal with the crises in Iraq and Somalia under Bush, and those in Syria and Libya under Obama. Both in areas where strategic interests are involved—Iraq and Syria—and those where primarily humanitarian ones were at stake—Somalia and Libya—President Obama has been more constrained than President Bush was. Given the similarities between the worldviews and multilateral preferences of the two presidents, the differences stem from structural changes and not personal ones.

After the conclusion of the Cold War, the Bush administration was able to capitalize on its unprecedented global standing

at the United Nations. The same day that Iraq first crossed the border into Kuwait, the United Nations Security Council passed Resolution 660, which condemned the invasion and called on Iraq to withdraw all of its forces.⁶⁰ Four days later, on August 6, the UNSC passed Resolution 661, imposing economic sanctions on Iraq, and thus increasing the pressure on Iraq, and thus increased the pressure on Saddam.⁶¹ After several additional resolutions, on November 29 the UNSC passed Resolution 678, authorizing member states to use “all necessary means” to ensure the full withdrawal of all Iraqi forces.⁶² Significantly, these were Security Council resolutions and not non-binding General Assembly ones. The Security Council was so effective in the Gulf War that the conflict turned it into the natural first stop for building a coalition.⁶³

The Security Council’s current response to the crisis in Syria stands in stark contrast to the quick and decisive action taken in 1990-1991. Since March 2011, over 70,000 people have been killed.⁶⁴ In many instances, the Syrian government’s actions have even amounted to crimes against humanity.⁶⁵ Russia and China have repeatedly blocked UNSC resolutions seeking to address the conflict. Most recently, in July 2012, Russia and China vetoed a British-sponsored resolution that would have penalized the Syrian government with economic sanctions if it continued to disregard a peace plan proposed by Kofi Annan.⁶⁶ (The peace plan involved only 300 United Nations monitors and did not even include any consequences for non-compliance.)⁶⁷ The vetoed resolution relied on Chapter 7 of the United Nations charter to threaten economic sanctions against Bashar al-Assad if he continued to defy the international community in 10 days time.⁶⁸ It is worth noting that the United States and its allies were not able to secure Russian and Chinese cooperation over a year after the start of Assad’s crackdown on civilian protesters, in sharp contrast to the immediate cooperation in 1990. This, despite the more limited aims of the resolutions. Russia and China voted in favor of 11 of the 12 resolutions concerning Iraq between August 2, 1990 and November 29, 1990. The only one of the 12 that did not have their full support was Resolution 678, which authorized the use of military force (Russia voted in favor and China abstained). Today Russia and China are actively vetoing resolutions that would merely authorize economic sanctions.

Despite its relatively limited aims, Russia and China defended their stance against the July resolution concerning Syria on the grounds that Chapter 7 of the UN Charter allows for military interventions to enforce Security Council resolutions.⁶⁹ The two countries argued that they were trying to avoid a repetition of the events in Libya, when a UN-authorized NATO campaign ultimately aided the rebels in overthrowing Muammar Gaddafi. Yet Russia and China’s previous actions prove that this is not the full story. Less than a year before, in October 2011, the two countries vetoed a European Union-backed resolution that, having been watered down three times, did not even use the word “sanctions”

let alone authorize military force to enforce its measures.⁷⁰ The October resolution threatened only that the Security Council would “consider its options, including measures under Article 41 of the Charter of the United Nations.”⁷¹ Unlike Chapter 7, Article 41 allows only non-military measures like economic and diplomatic sanctions.⁷² It is only under Article 42 that the Security Council “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”⁷³ Coupled with their UN Ambassadors’ statements that they do not support the Assad regime or the violence, Russia and China’s reluctance to pass any resolution whatsoever is oddly reminiscent of the Cold War’s “he-may-be-a-son-of-a-bitch-but-he’s-our-son-of-a-bitch” syndrome discussed above. At the very least, the current gridlock at the Security Council is a far cry from the glimpse of a functioning United Nations that the world saw in the immediate aftermath of the Cold War.

Nevertheless, some have argued that there is a key difference between the cases of Iraq and Syria—namely that the former involved an interstate conflict and the latter an intrastate one. The crux of the argument is that interstate conflicts clearly fall within the purview of the United Nations while intrastate conflicts are legally complicated at the very best. Many argue that the principle of non-intervention, first established by the Treaty of Westphalia in 1648, still applies today.⁷⁴ They also cite Article 2.7 of the UN Charter to argue that intervention in a state’s internal affairs is still prohibited. Article 2.7 states: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”⁷⁵ This statement stands despite the fact that the United Nations was founded in 1948 to “save succeeding generations from the scourge of war” and “to reaffirm faith in fundamental human rights” and “in the dignity and worth of the human person.”⁷⁶ Such defendants of the non-interventionist norm seem to believe that the mission of the United Nations ends at the borders of a state. As such, the military action in Iraq was permissible; military action against Syria is not.

This argument ignores what happened after the initial operation to liberate Kuwait. What was an interstate conflict quickly became an intrastate humanitarian crisis. With troops still on the ground and the coalition forces still carrying out air raids in the 1991 Gulf War, President Bush called on the “Iraqi military and the Iraqi people to take matters into their own hands and force Saddam Hussein, the dictator, to step aside.”⁷⁷ Encouraged by this perceived support and the Iraqi army’s defeat, the Kurds and Shia did indeed revolt. As the rebels seized control of 14 of Iraq’s 18 provinces, Saddam carried out a brutal crackdown.⁷⁸ It is estimated that his government killed between 100,000-180,000 people and displaced over 10% of the country’s population.⁷⁹ Even more disturbing is the manner in which this occurred. In one instance, as civilians and rebels fled Karbala, Saddam’s helicopters poured kerosene on the refugees and then



Photo: INPEC

set them on fire. In Basra, some civilians were tied to tanks and used as human shields.⁸⁰

A massive humanitarian crisis continued to unfold as hundreds of thousands of Kurdish civilians fled their homes in the north.⁸¹ 1,000 people were dying with each day that passed.⁸² Relaying to the President the sight that one companion likened to Dante's circles of hell, Secretary of State Baker said, "You have no idea of the human nightmare here...People are dying every day. We've got to do something and do it now. If we don't literally thousands of people are going to die."⁸³ Within a week of Secretary Baker's desperate call for action, the George H.W. Bush administration put together an assistance package for the suffering masses in northern Iraq.⁸⁴ The United States did not stop there. The government announced the start of Operation Provide Comfort, a U.S. military effort involving 20,000 American troops. The U.S. military was to create "safe havens" around key Kurdish towns in northern Iraq that would be administered by the United Nations.⁸⁵ As the U.S. imposed a "no fly zone" north of the Thirty-Sixth Parallel in Iraq, effectively depriving Saddam of the capability to exercise control over a large part of his country, the United Nations passed a resolution that declared Saddam's internal repression to be a threat to international peace and security.⁸⁶ Significantly, this was both the first humanitarian military effort in the post-Cold War era and the first time in history that the United Nations declared a country's internal affairs to be a threat to the international system.⁸⁷ Even more impressively, Russia and China were willing participants in an effort to lessen Saddam's internal crackdown. The distinction between internal and external violence did not stop the Security Council from acting. If anything, the internal situation in Syria today is even more of a threat to the international system as refugee flows have spilled into Jordan, Lebanon, and Turkey, and missiles have landed in or near Israeli and Turkish territory.⁸⁸

Additionally, purported strategic interests did not limit the United States' ability to organize a coalition for the 1991 Gulf War in the same way that it has constrained the international community today. While President Bush often framed the conflict in the context of progressing towards his vision of a New World Order,

his administration was also motivated by material interests.⁸⁹ Declassified White House documents show that access to oil was a primary motivation for confronting Iraq.⁹⁰ At the time of the Iraqi invasion of Kuwait, an unnamed senior American official was reported as saying that "we are talking about oil. Got it? Oil, vital American interests." This unnamed official was presumed to be Secretary of State James Baker.⁹¹ President Bush, for his part, stated that "we must make sure that control of the world's oil resources does not fall into [Saddam's] hands, only to finance further aggression."⁹² Coupled with the fact that Iraq conquered a U.S. ally, Kuwait, and threatened another, Saudi Arabia, the United States had more to lose in the conflict than any other great power. Yet, as mentioned above, Russia and China voted in favor of almost every resolution concerning Iraq.

Despite its apparent disregard for strategic interests in the Gulf War, Russia has cited several such concerns as reasons for its continued opposition to even diplomatic measures against Syria. In particular, the country seems to have five major concerns. Militarily, Russia is worried about losing the millions of dollars that it currently makes each year in arms sales to Syria, access to the port at Tartus, and its last ally in the Middle East.⁹³ It also wants to avoid the emergence of an Islamic regime on its border. Lastly, Russia's overarching concern is that western opposition to the Assad regime stems from a desire to weaken Iran after the more recent Iraq War strengthened it, and that this will come at the expense of Russian interests. Vitaly Churkin, Russia's ambassador to the UN, has confirmed this last point.⁹⁴ In short, President Obama's multilateral approach to the issues has been similar to that of President Bush's years before, but the international players have changed.

The discrepancy between the United States' post-Cold War vision and today's realities is also evident in the rhetoric surrounding the military intervention in Libya. While some might compare Operation Odyssey Dawn in Libya to Operation Provide Comfort in Iraq—both established no fly zones, Libya's actually being more extensive—the comparison is not valid. As previously discussed, vital interests were at stake in Iraq. In Libya, in contrast, national interests played a much smaller role than humanitarian ones. As a result, a better point of comparison is President Bush's humanitarian intervention in Somalia, which he justified on purely humanitarian grounds. While the two presidents had similar aims in the two humanitarian interventions, the changing nature of the international system forced them to contextualize them differently. Whereas President Bush freely framed the intervention in Somalia as a purely humanitarian one, President Obama had to justify the intervention in Libya more extensively.

After sending thousands of troops to the collapsed state of Somalia, President Bush took his last Oval Office address as an opportunity to articulate the role of morality in foreign policy. "Anarchy prevails," he said, "[and] the people of Somalia, especially the children of Somalia, need our help. We're able

to ease their suffering. We must help them live. We must give them hope. America must act.”⁹⁵ For President Bush, the equation was simple and did not include any reference to material interests or costs. There were masses suffering in Somalia, and America had the ability to help them. Therefore, America had to help them. By focusing on the Somali children’s suffering, and not realist concerns, President Bush demonstrated the dramatic shift in thinking that the Cold War’s end had enabled. The fact that there was no longer any fear of war among the world’s most powerful and developed states allowed for this transition.⁹⁶ The United States could engage in a purely humanitarian effort without regard to balance of power politics.

President Obama’s rhetoric on the recent intervention in Libya reflected the decline of the United States relative to its greater position of power during the Somalia intervention. Nevertheless, it is worth noting that he framed this particular intervention, in part, in language very similar to that of President Bush: “In this particular country—Libya—at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence.” He later added that “to brush aside America’s responsibility as a leader and—more profoundly—our responsibilities to our fellow human beings under such circumstances would have been a betrayal of who we are.” Similar to President Bush, President Obama believed that the United States’ ability to stymie humanitarian crises contributes to its responsibility to do so. Unlike President Bush, however, President Obama cited other conditions that have to be present for the crisis to compel the United States to act. The United States had a “unique ability to stop the violence” in Libya not only because of its power, but because of an “international mandate for action, a broad coalition prepared to join [the U.S.], the support of Arab countries, and a plea for help from the Libyan people themselves.”⁹⁷ While both Presidents cited humanitarianism as the reason they wanted to act, President Obama’s justification demonstrates a heightened awareness of the United States’ perceived constraints.

The difference between the United States’ limits in the two periods is also evident in the two Presidents’ comments about what each mission signified for American foreign policy more generally. Discussing the mission in Somalia, President Bush conveyed the idea that American leadership is essential to confronting the world’s wrongs and that the United States will sometimes have to act first and expect others to join in only later. “American action is often necessary as a catalyst for broader involvement of the community of nations,” he explained.⁹⁸ Discussing scenarios in which America’s “safety is not directly threatened, but [its] interests and values are,” President Obama more recently stated that the United States “should not be afraid to act—but the burden of action should not be America’s alone. As we have in Libya, our task is instead to mobilize the international community for collective action.”⁹⁹ Similar to President Bush, President



Photo: Wikipedia

Obama articulated his preference for multilateral responses to crises. Unlike President Bush, however, President Obama stated that the United States has to mobilize others before acting as opposed to using its own action as a catalyst for others’ involvement. This change is significant in that it demonstrates that the United States no longer expects other nations to get involved later. Quite tellingly, the United Nations Security Council unanimously approved a resolution authorizing the U.S. to lead a coalition to get the food to the people of Somalia.¹⁰⁰ In contrast, Russia and China abstained from the vote authorizing the Libya mission, along with more dependable allies like Germany, India, and Brazil.¹⁰¹ The fact that the Responsibility to Protect is now an established United Nations doctrine and an emerging international norm while it was not during the Bush administration makes the shift in the United States’ reasonable expectations of others all the more alarming.¹⁰² While both Presidents embraced humanitarianism as a valid justification for military action, the growing constraints of the international system caused each to view the United States role in such missions differently.

Conclusion

This paper has argued that the United States faces a bleaker future than it did at the conclusion of the Cold War, and that these differing material realities have influenced the United States’ perceived abilities on the world stage. Whereas President Bush was able to build multilateral coalitions relatively easily, President Obama has faced more resistance. And whereas President Bush was able to extol the virtues and necessities of American leadership on humanitarian issues, President Obama has preferred to explain the necessity of mobilizing others before acting in today’s world. Since the two Presidents harbored similar worldviews, the changes we see between the two periods are not entirely due to the presidents’ personalities or ideologies.

Nevertheless, while structural shifts are a significant cause of the differences between the Bush and Obama foreign policies, personalities and individual differences also play a role. Future research must be conducted in this area. This paper analyzed the Presidents’ actions given that they had espoused particular

foreign policy objectives. It did not address the role of personality in determining what policy objectives were chosen. It did not, for example, answer the question of why President Bush chose to intervene in Somalia but not in the Balkans, or why President Obama chose to intervene in Libya but not in the Democratic Republic of Congo. Further research must be done to tease out the extent to which such decisions are the result of individual differences as opposed to strategic or structural ones.

Nevertheless, even if one takes the potential influences of individual differences into account, the balance of power between states in the international system matters a great deal. This reality is especially true for a country such as the United States, since it has known great power. There is a maxim that says, “When you have a hammer, all problems start to look like nails.”¹⁰³ Significantly, the opposite is true too. As Robert Kagan has stated, “When you don’t have a hammer, you don’t want anything to look like a nail.”¹⁰⁴ In essence, this proverb conveys the idea that an individual’s, or a country’s, perception is greatly influenced by its capabilities. Its material reality—its possession of a hammer or lack thereof—shapes how it behaves. For many years the United States operated in a world in which it had the tools to confront many challenges. The continuing preeminence of the United States’ military ensures that this reality persists today. The economic forecasts of the United States, however, show that this might not be the case for much longer. The test of American leadership today, then, is in how the country will behave given that it still has the tools to lead but is afraid that it will lose them in the future.

NOTES

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2. Sarah E. Kreps, *Coalitions of Convenience: United States Military Interventions After the Cold War* (New York: Oxford University Press, 2011), 59.
3. Kreps, 58.
4. *Conduct of the Persian Gulf War: Final Report to Congress* (Washington, DC: Department of Defense, 1992), Chapter 2, “The Response to Aggression.”
5. Kreps, *Coalitions of Convenience*, 58.
6. Derek Chollet and James Goldgeier, *America Between the Wars: The Misunderstood Years Between the Fall of the Berlin Wall and the Start of the War on Terror* (New York: Public Affairs, 2008), 14.
7. Chollet and Goldgeier, 4.
8. Chollet and Goldgeier, 26.
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10. *Ibid.*
11. “Iraq and Afghanistan,” Congressional Budget Office, <http://www.cbo.gov/latest/national-security/iraq-and-afghanistan>
12. “Obama’s Nobel Remarks,” *New York Times*, December 11, 2009. <http://www.nytimes.com/2009/12/11/world/europe/11prexy.text.html?pagewanted=all&r=0>
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25. *Ibid.*
26. *Ibid.*
27. *Ibid.*, 166.
28. Von Hippel, Karin. *Democracy by Force: US Military Intervention in the Post-Cold War World* (Cambridge: Cambridge University Press, 2000), 55.
29. George H.W. Bush, “Address on Somalia,” December 4, 1992.
30. *Ibid.*
31. George H.W. Bush, “Address Before a Joint Session of the Congress on the State of the Union.”
32. *Ibid.*
33. Mann, 288.
34. *Ibid.*, 288–289.
35. Barack Obama, “Remarks by the President in Address to the Nation on Libya,” National Defense University, Washington, D.C., March 28, 2011.
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37. Richard Haass, *The Reluctant Sheriff* (Washington, DC: Brookings Institution Press, 1997), 21.
38. Charles Krauthammer, “The Unipolar Moment,” *Foreign Affairs* 70, no. 1: 24.
39. *Ibid.*, 23–24.
40. G. John Ikenberry, Michael Mastanduno, and William C. Wohlforth, “Unipolarity, State Behavior, and Systematic Consequences,” in *Essential Readings in World Politics* (4th edition), ed. Karen A. Mingst and Jack L. Snyder, 117. New York: W.W. Norton & Company, 2011.
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46. *Ibid.*, 115.
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50. *Ibid.*, 104.
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52. *Ibid.*, 104.
53. The numbers used to create this graph are from the United States Department of Agriculture Economic Research Service. See <http://www.ers.usda.gov/data-products/international-macroeconomic-data-set.aspx>.
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56. Mann, 343.
57. *Ibid.*, 21.
58. *Ibid.*
59. Nancy Soderberg, *The Superpower Myth: The Use and Misuse of American Might* (New Jersey: Wiley, 2005), 201.
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61. United Nations Security Council Resolution 661.
62. United Nations Security Council Resolution, 678.
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 82. Ibid.
 83. Ibid.
 84. Ibid.
 85. Ibid., 5.
 86. Ibid.
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 89. Kreps, *Coalitions of Convenience*, 62.
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 94. Ibid.
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 97. Obama, "Remarks by the President in Address to the Nation on Libya."
 98. George H.W. Bush, "Address on Somalia."
 99. Obama, "Remarks by the President in Address to the Nation on Libya."
 100. George H.W. Bush, "Address on Somalia."
 101. United Nations Security Council Resolution 1973.
 102. The "Responsibility to Protect" is, to quote the Report of the International Commission on Intervention and State Sovereignty, "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states." (ICISS Report, pp. viii.)
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Economic Substantive Due Process and Freedom of Contract in the Age of *Lochner*

By **BENJAMIN FEIS**

COLLEGE OF ARTS AND SCIENCES, 2016

Major PHILOSOPHY, POLITICS & ECONOMICS

Abstract

During the Lochner era at the turn of the 20th century, the U.S. Supreme Court was challenged with balancing private contract rights against the states' interests in promoting the public good via their police powers. In developing the legal concept of "freedom of contract," the Court struck down dozens of pieces of state legislation designed to improve the working conditions, wages, and bargaining power of workers. Those who oppose this so-called period of "judicial activism" argue that judges created artificial, plenary economic rights under the pretense of the Fourteenth Amendment's Due Process Clause. But in determining an appropriate baseline of government regulation, the Court took a different stance. According to Lochner era jurisprudence, any attempt to enhance the standing of traditionally disadvantaged social classes by the redistribution of wealth and power was, on purely legal grounds, a violation of the Fourteenth Amendment's protection of freedom of contract. As such, the Court's rulings during this period should be seen not as particularly "activist," but rather as a check on the states and a return to a baseline standard of government inaction in the free market.

Introduction

"When contemporary commentators decry the abuse of judicial power or the evils of 'judicial activism,'" writes Howard Gillman, "the historical examples that most readily come to mind are drawn from Supreme Court decision making around the turn of the century, a period often referred to as the 'Lochner era.'"¹ During the period between the 1880s and mid-1930s, in fact, the U.S. Supreme Court struck down dozens of pieces of state legislation designed to improve the working conditions, wages, and bargaining power of workers. According to common wisdom

expressed by progressive scholars, the likes of whom include American legal historian Roscoe Pound, judges during this period vastly overstepped the proper boundaries of their authority in order to "search out and destroy 'social legislation' that was inconsistent with their personal belief in laissez-faire economics and social Darwinism."²

In general, judges were seen as overly conservative and harboring of contempt for all efforts to redistribute wealth or disturb the private marketplace. And to justify their legal reasoning, the argument goes, they often bent the law however they felt most appropriate. As Matthew Lindsay writes in the Harvard Law Review, "In order to mask this fit of legally unjustified, intellectually dishonest judicial activism, the progressive interpretation runs, judges invented novel economic 'rights'—most notably 'substantive due process' and 'liberty of contract'—that they grafted upon the Due Process Clause of the Fourteenth Amendment." But in the Court's view, these rights were not unsubstantiated inventions at all. Rather, they amounted to a reasonable exercise of judicial power that placed a check on overreaching regulation by the states. As such, the Court's jurisprudence during this period should be seen not as particularly "activist," but instead as a return to a baseline standard of government inaction in the free market.

Early Origins of Freedom of Contract

The Due Process Clause, of course, reads: "[No State shall] deprive any person of life, liberty, or property, without due process of law." While the Clause was always interpreted as a protection of procedural due process, its novel use as an instrument to protect broadly defined "economic substantive due process" rights did not come about until the late 19th century. How,

then, was the “freedom of contract” doctrine derived from this seemingly artificial protection of substantive due process? In fact, contracts per se are only mentioned explicitly in the Constitution under Article I, Section 10. The so-called Contract Clause reads simply: “No State shall... [Pass any] law impairing the Obligation of Contracts.” While this clause theoretically had the potential to form the foundation of a general right to freedom of contract, the Supreme Court had ruled in *Ogden v. Saunders* (1827) that the clause applied only to retroactive limitations on existing contracts, not to regulation affecting future contracts.⁴ Instead, and as early as 1873, the Court turned to the Fifth and Fourteenth Amendments as offering protection over the freedom of contract.

Before proceeding any further, however, it seems an appropriate time to address the Court’s major obstacle to ensuring the right to freedom of contract via economic substantive due process: the state police powers. The Tenth Amendment to the Constitution explicitly guarantees: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This, over time, came to encompass the authority, granted to the states, to preserve and protect the “safety, health, welfare, and morals of the community.” States could do so by enacting laws and regulations, or by delegating these powers to subsidiary counties, cities, towns, etc. On the surface, these so-called police powers may seem a bit plenary in nature. How are “welfare” and “morals” defined, exactly? Critical to note is that the police powers during the late 19th and early 20th centuries were frequently used by the states as a proxy for enacting purely “social legislation.” As Charles McCurdy writes, “In the ‘liberty of contract’ era, constitutional challenges to ‘social legislation’—those measures which are intended for the relief and elevation of the less favored classes of the community—turned on the scope of police power rather than on the type of statute at issue.”⁵ The Court’s major challenge in the age of *Lochner*, then, was balancing private contract rights against the state’s interest in promoting the public good via its police powers.

The earliest origins of freedom of contract, in fact, may be traced to Justice Field’s and, to a greater extent, Justice Bradley’s dissenting opinions in the *Slaughterhouse Cases* (1873). The state of Louisiana had created a partial monopoly of the slaughtering business, and subsequently had given this monopoly to one company. While Justice Field relied solely on the Fourteenth Amendment’s Privileges and Immunities Clause in his justification of an individual’s right to offer his labor in whatever capacity he so chooses, Justice Bradley relied additionally on the Due Process Clause. His opinion reads, in part, “A law which prohibits a large class of citizens from adopting a lawful employment... does deprive them of liberty as well as property, without due process of law. Their right of choice is a portion of their liberty; their occupation is their property.” Moreover, Bradley

explained, by compelling one company to perform certain tasks, the state of Louisiana had reached beyond the extent of its valid police powers. He writes, “[The law] has none of the qualities of a police regulation... That portion which allows no one but the favored company to build, own, or have slaughter-houses is not a police regulation, and has not the faintest semblance of one.”

Additional cases prior to *Lochner* itself similarly alluded to the notion of economic substantive due process and the general freedom of contract. In the New York State case of *In re Jacobs* (1885), the Court of Appeals provided its support for due process as a safeguard for economic rights. Addressing a law that prevented Jacobs from manufacturing cigars in his tenement apartment, Justice Robert Earl wrote in his opinion, “It is therefore plain that this law arbitrarily deprives [Jacobs] of his property and of some portion of his personal liberty... In the assumed exercise of the police power in the interest of the health, the welfare, or the safety of the public, every right of the citizen might be invaded and every constitutional barrier swept away... It is plain that this is not a health law...” Likewise, the seminal case of *Allgeyer v. Louisiana* (1897) firmly established freedom of contract as falling within the Fourteenth Amendment’s Due Process Clause. In his opinion, Justice Rufus Peckham explained, “[An individual] has the right to be free in the enjoyment of all his faculties; to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper or necessary to carrying out [the above purposes].” While Peckham acknowledged that the State may “enact such legislation in the legitimate exercise of its police powers,” he also emphasized that “care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution.”

No case, however, more fully captured the essence of the conflict between the freedom of contract and the state’s interest in promoting the public good via its police powers than the era’s namesake case, *Lochner v. New York* (1905). In the case, the state of New York had enacted a statute preventing bakers from working more than sixty hours per week, or ten hours per day. The main question of law, of course, was whether or not the New York law violated the employer and employee’s liberty protected by the Fourteenth Amendment’s Due Process Clause. In his highly influential majority opinion, Justice Peckham wrote: “There is a limit to the valid exercise of the police power by the State... Otherwise the Fourteenth Amendment would have no efficacy and legislatures of the State would have unbounded power... The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint.” Most importantly, in his opinion Peckham clearly articulated the single question the Court was forced to grapple with in all such cases regarding the balance between private freedom of contract and the public good:

14th Amendment

Section 1: No state may abridge the privileges and immunities of any of its citizens, or deny them due process of law or equal protection of the laws.

Section 2: When any state denies the right to vote at any election to any of its male citizens of voting age, its representation in elections for national offices will be reduced in the same proportion.

Photo: El Civics

Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?

In the case of *Lochner*, the answer was clear. The Court first quickly determined that setting a maximum hours law for bakers was entirely unrelated to the safety, morals, or welfare of the public. The question, then, was one of health. By working more than ten hours per day, was the health of bakers placed in jeopardy? Based on scientific, empirical evidence, the Court determined that working more than ten hours per day did not, in fact, negatively affect the health of workers. Peckham wrote, “We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law.”

Determining An Appropriate Baseline Of Regulating In Accordance With The *Lochner* Precedent

While *Lochner* was not the first case to allude to the right to economic substantive due process and freedom of contract, it did set an important precedent that no case had done previously. Whereas prior case opinions wrestled loosely with vague concepts of due process rights and “public welfare” and applied these on a piecemeal basis, *Lochner* implemented a more uniform standard—a single question, in fact—that would be applied to all relevant cases thereafter. The broader issue, though, was determining an appropriate baseline for government action versus inaction in regulating the private interactions between people and businesses. In essence, what role should government play when social injustice or inequality occurs naturally in the

free market? Cass Sunstein, writing for the *Columbia Law Review*, stands opposed to progressives who view *Lochner* era jurisprudence as an aggressive abuse of judicial power. He writes, “For the *Lochner* Court, neutrality was a constitutional requirement... Government intervention was constitutionally troublesome, whereas inaction was not; and both neutrality and inaction were defined as respect for the behavior of private actors pursuant to the common law.”⁶ Taken this way, the Court during the *Lochner* era was not exerting its own biased agenda over labor laws and other related legislation, but rather adopting a policy of neutrality by keeping the states in check and preventing them from overextending their influence in the free market. The baseline, therefore, was defined as government inaction in the face of private contracts.

According to Sunstein, “Efforts to redistribute resources and paternalistic measures were both constitutionally out of bounds. They did not fall within the ‘police power’; the employer had committed no common law wrong, and regulatory power was largely limited to the redress of harms recognized at common law.”⁷ This analysis certainly seems fair. Take the case of *Adkins v. Children’s Hospital* (1923) as an example. In 1918, Congress enacted a law that guaranteed a minimum wage to women and children employed in the District of Columbia. While the Court conceded that the freedom of contract might be curtailed in the face of “exceptional circumstances,” in this case the Court found that Congress had simply enacted a price-fixing law without sufficient reason. Referring to the minimum wage law generally, Justice Sutherland wrote in his opinion, “The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden.” In effect, a minimum wage law—as

representative of government regulation of the free market—is legally unjustified insofar as it amounts to an arbitrary redistribution of wealth from one party to another. This cannot possibly be construed as falling within the boundaries of the state’s police power to preserve the “safety” or “health” of the people, a much more narrowly defined right.

The Court faced similar questions regarding proper government intervention in the cases of *Adair v. United States* (1908) and *Coppage v. Kansas* (1915), both of which were concerned with labor unions and so-called “yellow dog contracts.” In both cases, a law was passed that made it illegal for employers to fire employees on the basis of their participation in labor unions. In essence, this made “yellow dog” contracts—agreements between an employer and an employee in which the employee agrees, as a condition of his employment, not to join any labor union—illegal. In his opinion in *Adair*, Justice Harlan explained the importance of preserving the balance of freedoms between employers and employees: “The right of a person to sell his labor upon such terms as he deems proper is, in essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it.” The Court found, in this case as well as *Coppage*, that the law violated the employer and employee’s liberties by compelling them to accept stipulated conditions in the purchasing and selling of labor. By my analysis, these rulings make sense. Private parties should indeed be able to determine their own terms of contract, free of government intervention. If an employer requires that all of its employees must accept certain conditions of employment in the case of *Adair* and *Coppage*, then any potential employee can freely choose to either accept those terms or find somewhere else to work.

While government’s attempts to enhance the standing and bargaining power of traditionally disadvantaged classes perhaps seem desirable from an economic and sociological standpoint, these attempts are not justified on legal grounds when they extend beyond the authority of state police powers. As Lindsay writes, “The *Lochner* era is best understood not as a politically motivated binge of judicial activism, but rather as a sincere and principled effort to maintain one of the central distinctions in nineteenth-century constitutional law – the distinction between valid economic regulation calculated to serve the general good and invalid ‘class’ legislation designed to extend special privileges to a favored class of beneficiaries.”⁸ According to *Lochner* era jurisprudence, any minimum wage, maximum hour law, or legal protection of labor unions justified *solely on the grounds of redistributing wealth or aiding less privileged members of society* is a legal violation of the Fourteenth Amendment’s protection to economic substantive due process, i.e. the freedom of contract.

What, then, does constitute an appropriate baseline for government regulation over the free market? Most importantly, it is my opinion that the state’s police power rights to ensure

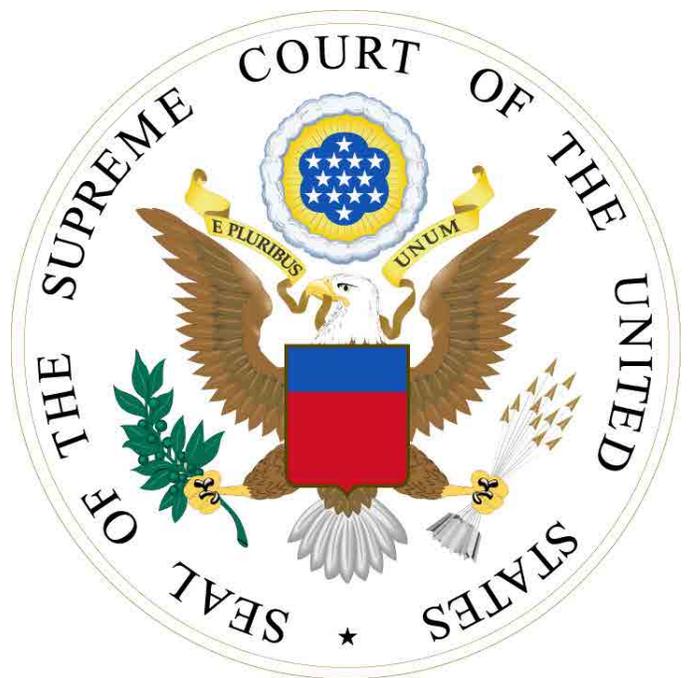


Photo: Wikipedia

“health and safety” within the labor context take priority above all. Moreover, it must be shown through concrete, empirical evidence that the vocation is necessarily harmful, dangerous and/or unhealthy. As in the *Lochner* decision, for example, it was shown that there were little harmful effects to bakers when working more than ten hours per day. Here the state police powers could not be justly applied. But take the cases of *Holden v. Hardy* (1898) and *Muller v. Oregon* (1908), in which the Court upheld state regulations and rejected freedom of contract. In *Holden*, Justice Henry Billings Brown determined that a Utah state law limiting the number of work hours for miners and smelters amounted to a legitimate exercise of the police power. But this was due to the particularly dangerous nature of this type of work. Brown wrote, “The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of employees... [Such occupations] are so far detrimental to the health of employees as to demand special precautions for their well-being and protection.” Likewise, in *Muller* the Court upheld an Oregon law that limited women employed in factories and laundries to ten hours of work per day. According to Justice Brewer, albeit articulated using rather sexist logic from a modern perspective, the two sexes “differ in structure of body” and “physical strength” such that “this difference justifies a difference in legislation.” Whether or not this reasoning would stand today is irrelevant. What matters is that at the time, all scientific evidence pointed to a difference in men and women’s physical abilities—a difference that warranted differential treatment under the law.



Photo: Orable

There is, admittedly, a somewhat compelling counterargument to the points I have just made. When referring to legislation with the intent of redistributing wealth or aiding underprivileged classes, I made it clear that private parties should be free to determine their own terms of a contract. So if, for example, an employer requires that all of its employees sign a yellow-dog contract before accepting employment, then any potential employee can either accept those terms as they stand or look for another job. But what happens if a job is inherently unsafe or harmful to one's health? By my previous logic, I have implied that any potential employee armed with this knowledge can simply choose not to work there and instead find a safer occupation. This is true, but in the collective society, someone will necessarily have to perform that job. Moreover, the person who accepts the unsafe job is likely to be desperate and have little bargaining power; in effect, he will be forced to take the job out of unfortunate personal circumstances. And whereas it is acceptable in the eyes of the law for someone to take a job where they will earn very little wages or work long hours every day, it is not acceptable for any individual to effectively be forced into putting their health or even life at risk. In this case, the state's police power right to protect the health and safety of its constituents cannot be challenged.

As for the states' rights to protect the "morals" of the community, this provision seems arbitrary and unclear, to say the least. Who is to say what is moral? And even if a hard-and-fast rule on morality did exist, why should this be the government's concern? The case of *Mugler v. Kansas* (1887) raises several interesting questions related to this issue. The Court considered whether a Kansas law prohibiting the manufacture and sale of liquor violated the Due Process Clause. In contrast to several other decisions during this period, the Court struck down the freedom of contract and ruled that no, prohibition did not violate the Fourteenth Amendment. In his opinion, Chief Justice Harlan wrote, "If such manufacture [of alcoholic beverages] does prejudicially affect the rights and interests of the community, it

follows... that society has the power to protect itself, by legislation, against the injurious consequences of that business." He continued, "We cannot shut out of view the fact... that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks; nor the fact established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country, are, in some degree at least, traceable to this evil." If the Court was able to determine through empirical evidence that alcohol threatened the health and safety of third parties exposed to its effects, then this decision seems entirely appropriate. If, however, the Court relied primarily on a moral justification in its reasoning, then the decision no longer seems appropriate. While government should certainly be in the business of protecting its citizens against dangers to their health and safety that are outside their control—negative externalities, per se—it has no business of regulating public behavior on moral grounds.

The Demise of *Lochner* Era Jurisprudence

The so-called *Lochner* era came to a close during the Great Depression with the Court's ruling in *West Coast Hotel v. Parrish* (1937). In a nearly identical case to *Adkins v. Children's Hospital* that came before the Court fourteen years earlier, the state of Washington set a minimum wage law that applied exclusively to women. The question of law was the same as it had always been, but the Court's interpretation was wildly different. Chief Justice Charles Evans Hughes wrote, "[The] exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare costs of living must be met... The community is not bound to provide what is in effect a subsidy for unconscionable employers." Whereas the Court had previously seen minimum wage laws as representative of a "taking" from the employer to the employee, it now viewed the lack of a minimum wage law effectively as a taking from the poor to the rich. In light of economic conditions during the Depression, the Court felt that it was not unreasonable for a state legislature to attempt to guarantee female workers a living wage. *West Coast Hotel*, then, amounted to a complete reversal of *Adkins*. In its opinion, the Court insisted that it was merely returning to the legal reasoning of *Holden* and *Muller*, not rejecting the protection of freedom of contract altogether. In any case, the Court continued to side more favorably with labor laws and regulations in the years and decades after *West Coast Hotel*. While the freedom of contract had not been entirely abandoned, the Court frequently upheld the state's expanded police power rights to protect the public welfare, particularly as a direct result of President Roosevelt's New Deal legislation.



Photo: Wikipedia

Conclusion

As Lindsay notes, “The critical duty of *Lochner*-era courts, as the guardians of state neutrality, was thus to distinguish between the vast majority of police regulations that were legitimately directed toward the public health and welfare and the illegitimate minority that were calculated to serve the interests of a narrow class.”⁹ By the mid-1930s, these interests were not of a narrow class, but of a rather enormous class of Americans struggling to find work and put food on the table. Whether or not the Court’s interpretation of the law should reflect economic realities or set an economic agenda, of course, is up to debate. But during the *Lochner*-era itself, the Court’s protections of substantive economic due process and the freedom of contract appear, by and large, to be justified on legal grounds. With the exception of ensuring the public’s health and safety, the federal and state governments should not be in the business of interfering with the freedom of contract for the sole purpose of redistributing wealth. As such, it is of my belief that the Court rightly struck down such overreaching state regulations and restored government to a baseline standard of inaction in the free market.

NOTES

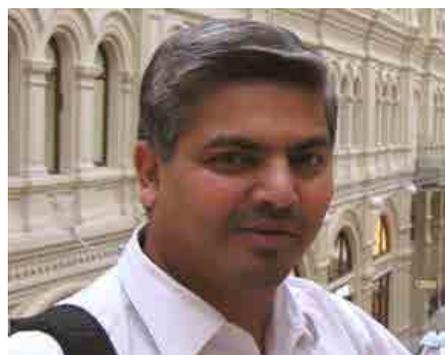
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6. Cass R. Sunstein, “Lochner’s Legacy,” *The Columbia Law Review*, 87 (1987): 874.
7. Sunstein, “Lochner’s Legacy,” 877.
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Interview with Professor Sil

Conducted By JONATHAN MESSING



Dr. Rudra Sil is a Professor of Political Science and a Faculty Director of the Huntsman Program in International Studies & Business at the University of Pennsylvania. Professor Sil, the recipient of two teaching awards from the School of Arts & Sciences, regularly teaches courses on Russian politics, “Third World” politics, and comparative politics. Professor Sil’s research interests include post-communist transitions, Asian studies, development theory, and comparative labor politics, as well as qualitative comparative methods and the philosophy of the social sciences. He is the author of *Managing ‘Modernity’: Work, Community, and Authority in Late-Industrializing Japan and Russia* and, more recently, the co-author of *Beyond Paradigms: Analytic Eclecticism in the Study of World Politics*. Professor Sil has also co-edited four books and authored several articles. He is currently working on an article, “Last BRIC Standing? Russia’s Developmental Prospects at 2050,” and a new book, *Pathways of the Post-Communist Proletariat: The Evolution of Labor Politics in Russia, Central Europe, China and Vietnam*.

Given your work on research methods, could you share some insights into the future direction of political science investigation, which questions the field will be able to answer, and which questions it still struggles to answer?

I think the field still struggles to answer pretty much all questions, partly because there is no unity within the field as to how to identify and frame questions. Often there are people debating issues and not realizing they are actually asking different questions. Some of the big debates are about which questions are the most important, and at what level of generality those questions should be formulated. The discipline of political science has been trying for decades to bring it all together, but at some level it becomes a matter of trying to mix apples and oranges.

My personal contribution from the very beginning, from the time of my graduate studies, has been a bit unusual. While I have always been pluralistic, my approach does not fit into any of the established practices, or even the present norm of multi-method research (which typically combines statistical work with case studies and sometimes formal models). I’ve always thought that my value-added has been in demonstrating the value—and trade-offs—of qualitative comparative historical work, which I think is

the biggest hole in the field in terms of areas we are not investing enough. It is a mode of analysis that I think could help navigate between the different approaches and methods that are currently the subject of debates in the field.

Recent weeks’ events are, in some ways, at odds with many political theorists’ appraisal of the post-Cold War World. Could you place the crisis in Ukraine in the historical context of Russia’s relationship with the West?

I do think the present atmosphere is one where we are seeing the very serious blurring of the lines between official pronouncements and independent critical analysis. Here, let me just focus on the U.S. side for a minute: there is far too much uniformity across our government’s official statements, journalists’ interpretation of events, and even the views of many scholars who are sounding more and more like activists. There seems to be a serious convergence on all three fronts into a sort of typical war-time coverage of events. This is what happened in the Vietnam War when there was very little skepticism about what was coming out of Washington at the time, and it took a while for people to calm down, to understand the complexity on the ground, and look at things with more nuance. When you

are either in war, or on the verge of war, or worry about a war, things begin to look black and white very quickly. The reality, which is almost always gray, gets pulled in two different directions. We see it here, we saw it happen in [the 2008 crisis in] Georgia. So in terms of Russia's relations with the West, we are either not getting it or are not willing to get it. I think one of the two. In either case, whatever one thinks of Russia's behavior in the post-Cold War world, it is clear that we have not done a good job of trying to figure out the range of motivations and concerns that drive the perspectives of different groups in Russia.

Some of it is very long term, going back to Peter the Great. Where does Russia belong? In Europe? In Asia? How seriously should it be taken? The desire to be treated with respect, to gain honor in international relations, is something that has been going on before, during, and after the Soviet era. Russia is in search of its place in the world. That is the long-term historical perspective that I think we need to keep in the backs of our heads.

Now, in the more recent past, we need to remember that the Soviet Union did transform what was largely an agrarian empire with 90% of its population being peasants, with very little prospect for rapid progress, and had gone through various hellish experiences—Stalinism, terror, mass executions, World War II, which left 20 million Russians dead. Out of all that came a nuclear power, a space-age power, an urban-industrial power, and basically the other pole of a bipolar world—the other superpower. So when that superpower breaks up and Russia becomes almost a post-colonial country in that it is just sitting there waiting to develop, talking to international actors—the IMF, the U.S., France, Germany—for a decade or so, there is a period of a sharp decline accompanied by real disquiet. What happened to that story of Russia becoming a powerful country, becoming an empire, becoming a superpower? Where did it go? Now they seem to be taking handouts, everyone seems to be telling them what to do. It was a decade of serious marginalization in international affairs. I think that the crisis in Kosovo—that is, the NATO bombing of Serbs over the Kosovo crisis—really put an exclamation point on what had happened to Russia. It had gone from being a superpower to being completely on the sidelines when a population it cared about, fellow Slavs in Serbia, was basically being bombed by its former opponents, NATO, without any multilateral authorization, such as UN backing or anything. That was the start of a whole reaction within the Russian international relations community.

This is not just a Putin problem. Putin is simply an expression of a much larger feeling throughout the Russian elite establishment that Russia needs to figure out how to prevent future Kosovos from happening, especially in its own backyard. Ukraine is as “backyard” as it gets. Russia is basically in a position where it can

be perceived as destabilizing things, but I think they see it as Russia trying to stabilize its borderlands. If we can just switch the roles around a little bit, maybe we can see that this [Ukraine crisis] is not a revival of the Cold War, and not an opportunity for a dictator like Hitler ready to march again across Europe, which are both very provocative images that obfuscate more than they clarify. Such imagery reflects a complete lack of any interest in trying to figure out what Putin has said in the past, what he has done in the past, how these things might be consistent, and if there is a framework that keeps it all coherent for him.

There is a framework underlying the way Putin has been handling international affairs: neorealism—balance of power politics. Putin has made it very clear that that is the reason the Soviet breakup was a big catastrophe in the twentieth century. Of course, this is a statement everyone keeps quoting over and over as evidence of Putin's alleged desire to resurrect the USSR: “he believes the breakup of the USSR was the greatest geopolitical...” That is the key word! Geopolitical. It wasn't a catastrophe for Russians but for the balance of power in the world. This does not suggest that he wants to rebuild the Soviet Union. What he does want to do is balance against what he perceives to be a runaway American foreign policy that is trying to reshape world order in its own terms everywhere. In fact, during the 1990s, we ourselves were debating whether we had reached a “unipolar” world with the end of the Cold War. Putin's answer was yes, and he saw this is a problem. So, for him, this is much more about playing that classic balance-of-power game, not necessarily the Cold War-specific game. It is not about capitalism versus communism. Russia feels it has size, resources, and a long rich history that it wants to be proud of and leverage in trying to influence world affairs. I think if we see it in those terms, we have a chance to figure out ways to see what might bring Putin to the table and what kinds of deals can be struck. Demonizing Russia only reaffirms the tendency among other world powers, particularly the United States, to only deal with a Russia that is weak and subservient.

The resolution of this crisis in the Ukraine would require us to be more nuanced than we have been. If we see this in the broader historical context—whether it is two hundred years or a hundred years, or the last twenty years or ten years—we can see that there is something going on that the Russians are reacting to. And that, in turn, can help us figure out an approach where every new newflash doesn't become about whether the big, bad Russians are stirring up trouble. And this is all without even going into the reality on the ground in Eastern Ukraine, which has a large number of people who have every reason to be anxious about the current composition of the interim government in Kiev (which is almost entirely from the western half of the country

and includes not a single leader from the eastern regions, not a single deputy linked to the party that captured by far the most seats in the last parliamentary elections).

Much of your work concerns development and institutional change. Given the success of democratic movements in some countries and the rise or perseverance of dictators in others, what do you think is the direction of the ideological tide of liberalism?

I think liberalism had its moment in the sun in the 1990s and may have overplayed its hand a little bit. It was a time when you had simultaneous movements towards more liberal, more pluralistic forms of political organizations alongside market reforms in the economic realm, but I think what we have seen since 2000 is a bit of a shift in that. By liberalism I assume we are talking about pluralism in the political realm and a much more market-friendly, less regulated, economic approach with a diminished role for the state. I believe that that combination was temporarily sustainable right at the end of the Cold War, but it was a brief moment because we also realized that pushing through costly market reforms would have a devastating effect on certain groups that might vote out leaders pursuing economic liberalization. In other words, pushing market reforms required a strong hand—Chile being one classic illustration of this point. It is not like we were pushing the most pluralistic forms of government out there. It was sort of a democracy that would leave a strong executive in control. We were always a little bit hesitant about loosening the reins.

Russia is a perfect example. We didn't mind when Yeltsin pulled some stunts to weaken parliament and strengthen his own hand in the Kremlin in the constitution he pushed through quickly back in 1993. This was partly because we needed that to make sure that the shock-therapy driven economic reforms would go through without backlash from other political actors. It was always a dangerous situation, to try to simultaneously push market reforms and political liberalization. Only in certain places did it seem to really work. Maybe Poland is a good example, maybe the Czech Republic, The first few countries to join the EU from central Europe seem to have found some sort of pluralism in the political arena that coexists with a fairly market-driven economy now. But in most of the world what we see is either a stepping back from pluralism or a stepping back from the economics—and in some cases, both!

I think that, with the end of the Cold War now behind us by over a quarter century, we may have come to a new era where we need to reevaluate things. There is a lot more discussion now about the direction of poverty and inequality and the West. Beyond the West, we are at a point where people are beginning to rethink the Washington Consensus. People are looking for alternatives in a way that was not possible when Francis

Fukuyama coined the phrase “The End of History,” suggesting that alternative models are exhausted, that the only game is here—liberal capitalist democracy with minor variations within that framework but nothing major. I think we are now beyond that boundary of minor variations. I think people are beginning to take seriously more significant variation in either the political realm or the economic realm, or sometimes both. What some people are calling the “China model” has made possible wider discussions about ways to push growth. Brazil's social policies are drawing attention in places as far away as South Africa. India is launching challenges to the World Trade Organization by defending its food security bill and pushing for greater access to medications patented by Western pharmaceuticals. And, for Russia, energy exports will continue to be a key factor even if Europe finds other suppliers—because the biggest source of growing global demand for energy will be in Asia and Africa. The next decades are going to be very interesting for those examining political and economic development.

Something that the Obama administration has discussed a lot is the so-called “Pivot to Asia.” But the more the administration seems to talk about it, the more political events seem to pull it back to regions from which it is presumably pivoting away. What do you think of this strategy or idea of pivoting to Asia? Do you think it is realistic and do you think it can be successful?

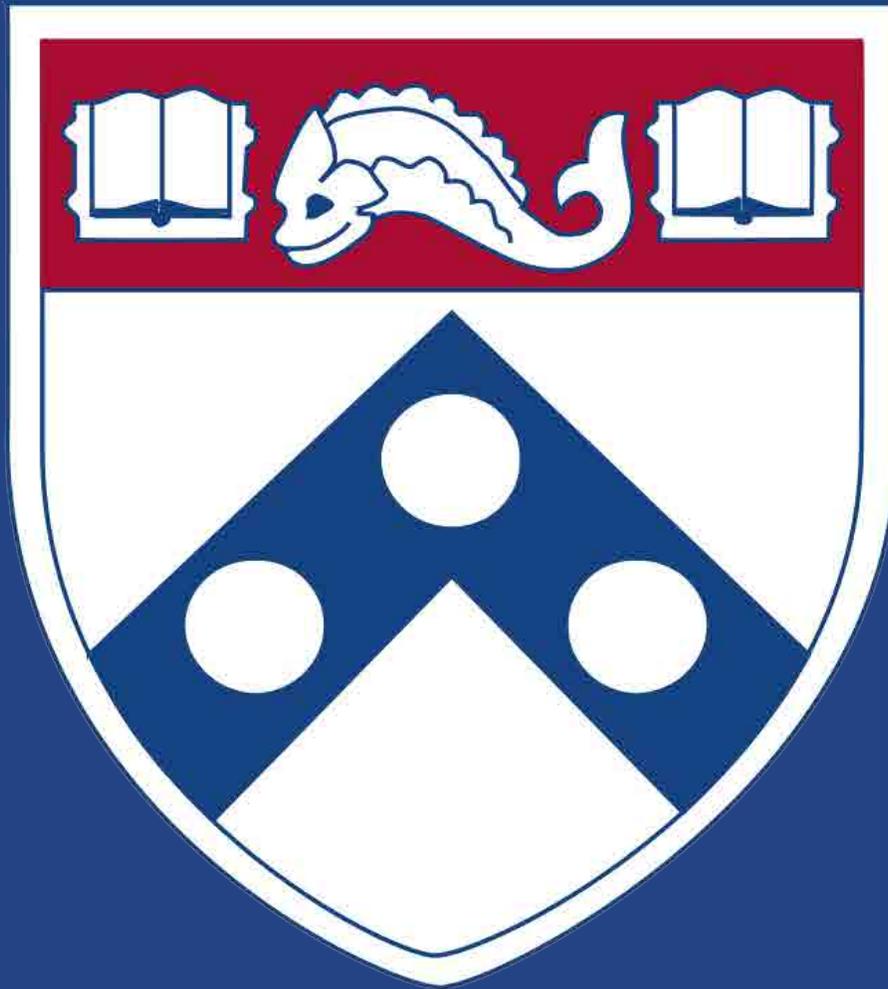
I have been frustrated with Obama's foreign policy in general. I think they have come up with nice labels—“Russia Reset,” “Pivot to Asia”—but I have a feeling that Obama came into the presidency at a time of massive domestic challenges, and so he put all of his thought, resources, and best people into dealing with the economic crisis, creating the stimulus package, and pushing Obamacare. These are such big issues that I think he didn't pay enough attention to what was going on in his State Department and Defense Department.

The Pivot to Asia is not new in the sense that we have been worrying about China for a long time. The Russia Reset was new. Unfortunately I think the Russia Reset exploded long before Ukraine. I think it exploded with the UN's Libya resolution. Putin was hoping Obama was different from Bush, but the Libya resolution, which Russia supported to protect civilian populations and enforce a no-fly zone, but which was then used to cover an all-out NATO campaign to push the rebels in power, convinced Putin that Obama is not that different from Bush when it comes to pushing American foreign policy without much worry for multilateralism or partnership. In the case of the Pivot to Asia, I think, ironically, the way that we are putting pressure on Russia, Russia is the one that is pivoting to Asia. Obama just went out to Asia. There were some nice speeches, some reassurances to Japan, some lecturing to North Koreans, but we've heard all of

that before. I'm not hearing anything brand new coming out of the Pivot to Asia. I did hear something new, initially, about Russia with the "Russia Reset," but that basically went up in smoke with the Libya situation, and we can see the repercussions of that in terms of cooperation on Syria, in terms of what is happening in Ukraine. It is Russia now that is feeling the pressure coming from the West and saying, well, fine, then we will pivot to Asia.

I think we are seeing nice phrases, but no fundamental changes. Overall, for me, the Obama administration might have done a better job on foreign policy. I can understand how the domestic challenges were so great that there wasn't enough attention paid to it, but I think we are now seeing the results of all of that. There are a lot of gigantic foreign policy problems that could have been headed off with a little bit more foresight, a bit more careful planning. The kind of thoughtful, clever planning that was used to deal with the economic crisis could have headed off some of the foreign policy crises that we are still now dealing with.

This is not a left-right issue for me, not a Democrat-Republican issue. In general, when you are the most powerful country in the world, you tend to have blind spots, regardless of which party is in control. You see things from such a vantage point way up above, and inevitably, there are parts that you cannot see without a lot of effort. I haven't seen that kind of effort, or any kind of visionary foreign policy thinking, since the end of the Cold War. I think since 1989 we've gotten too comfortable as the country that shaped "The End of History," that emerged standing triumphant from the Cold War, and that was in a position to help other countries reformulate their economic policies and programs and adopt more capitalist economies and more democratic leaning institutions. I think we got too comfortable in that role of teaching the rest of the world how to be more like us and less attentive to understanding the rest of the world, and I think the Obama administration has just not been special in this regard. I would hope that the current crop of college graduates, when they start to provide new leadership in another couple of decades, will end up doing better—or maybe that's just wishful thinking!



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