

TRANSPARENT RATIONALITY: A THEORY OF THE EVOLUTION OF WAR
POWERS

By

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Thesis under the direction of Professor Marc Joseph Hetherington

This paper discusses the Imperial Presidency Theory and the role of the U.S. Congress in this theoretical evolution of executive power. That is, are the Legislative and Judicial branches and the citizenry victims or enablers of this theoretical empowerment of the Executive? I specifically consider this question as it relates to foreign policy. I utilize a case study methodology that is composed of historical cases that are often cited in this literature as examples of this evolution. These studies include early executive, legislative, and judicial administrations and conclude with a study of the current executive and legislative branches. I identify a common characteristic in the political environment that is present in these cases and examine the way in which this characteristic might influence the progression of executive powers. This paper is unique in that it utilizes Expected Utility foreign policy decision-making theory in concert with Democratic Peace Theory. I use these theories to explain a general pattern that

seems to be characteristic of each case study. That is, in each of these cases there is a threat to national security. These theories offer an explanation of what might enable this characteristic of the political environment to alter foreign policy powers of the executive branch. In addition, this paper is unique in that it discusses the role of the governmental branches viewed as victims of the increasingly “imperialistic” foreign policy powers of the executive branch and provides a new perspective to this topic. Finally, I discuss possible implications of this perspective.

Approved:

Professor James Lee Ray

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To those whose opinions matter most to me

“First of all, let me assert my firm belief that the only thing we have to fear is fear itself - nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance.”

--Franklin D. Roosevelt, *First Inaugural Address, Mar. 4, 1933*

Introduction

Roosevelt’s assessment that fear is the greatest enemy of a democratic polity, seems especially appropriate in a post 9-11 United States. Maybe it suggests that terror is, in fact, the greatest enemy and that it must be squelched by policies which provide a greater sense of security for American citizens. There are those who fear, however, that the greater problem is that the *executive* is using these perilous times as an excuse to *usurp* and *rob* the powers that the U.S. Constitution grants to Congress. They might argue that this is another chapter in the history of an Imperial Presidency. In contrast, I test my hypothesis that the executive and legislative branches are sensitive to public opinion and during crises the public favors concentration of decision-making authority. Therefore, Congress is willing to cede authority to the Executive when the American public perceives a crisis which threatens national security.

This essay discusses the Imperial Presidency Theory and the role of the U.S. Congress in this theoretical evolution of executive power. That is, are the Legislative and Judicial branches of U.S. government victims or enablers of this theoretical empowerment of the Executive and when might Executive powers be more likely to increase?¹ I specifically consider this question as it relates to foreign policy. I find a

¹ See also Hinckley, Barbara. 1994. *Less Than Meets the Eye: Foreign Policy Making and the Myth of Assertive Congress*. Chicago, IL: University of Chicago Press.

unique assessment of the evolving powers of the citizenry and of the legislative, judiciary, and executive branches. This paper discusses the role of the governmental branches that are viewed as victims of the increasingly “imperialistic” foreign policy powers of the executive branch and provides a new perspective to this topic. First I provide a literature review and a discussion of my theory. Next, in order to test my hypothesis empirically, I utilize a case study methodology that is composed of six historical cases that are often cited in this theoretical literature as examples of this evolutionary progression. These brief studies include early executive, legislative, and judicial administrations and conclude with a more in depth discussion of the current executive and legislative branches. Finally, I identify a common characteristic in the political environment that is present in these cases and examine the way in which this characteristic might spur or stunt the progression of executive powers.

Decisive Ambiguity

“The congress shall have power to....Declare war” (U.S. Constitution, 1787; Art. I, 8). This wording was one the first victories in the evolution of executive power. The Founding Fathers originally planned to provide for Congress to “*make war*,” but upon the suggestion of Madison and Gerry a vote was cast and this phrase was changed to invest in Congress the power to “*Declare war*.” This change allowed Congress to initiate war, but reserved for the executive the authority to repel attacks without the authorization from Congress (Mann 1990, 37). In addition, the authors of the Constitution determined that “the president shall be Commander in Chief of the Army and Navy of the United States....He shall have power...to make Treaties....[And] he shall take Care that the

Laws be faithfully executed” (U.S. Constitution, 1787; II, 2 and 4). These words designate foreign policy powers of the Legislative and Executive branches respectively. They are meant to define the foreign affairs roles of these players. Yet, the definition and the articulation of their decisive intentions seem to be clouded by ambiguity.

John Locke, an Enlightenment philosopher, is one whose ideas were highly relied upon to conceive of a new American nation-state. His *Second Treatise on Government* helped to shape executive foreign policy powers. In part, his ideas led to an American government which limits executive powers and favors the use of law over the use of executive powers. The Founding Fathers shared a general consensus that the executive powers ought to be limited. Hamilton, one of those who argued most intensely for the strength of executive powers, also agreed that the Senate ought to have “‘the sole power of declaring war’ with the executive to have the ‘direction of war when authorized or begun’” (Qtd. In Schlesinger 1973, 3). Thus, the authors of the Constitution defined a division of powers that does not entirely centralize nor diffuse those powers.

Tocqueville, in contrast, believed that legislatures and mass public opinion could never be a steady source of foreign policy authority because of their diffused nature (Hill 1970, 7; Schlesinger 1973, 279; Alterman 1998; Nelson 2004, 149). The Founding Fathers argue that Tocqueville would be correct in his assumption *only* in times of great exigency. Thus, they do attempt to define executive parameters. Still, even Hamilton’s parameters are ambiguous and there is much room for broad interpretation of executive foreign policy powers. Perhaps this ambiguity is a slight recognition of Tocqueville’s assertion. That is, while Hamilton makes his opinion clear that the government must have the authority to do whatever must be done to defend the public in times of crisis, he

does not specify how those powers might be distributed during those times (Schlesinger 1973, 5). This Constitutional silence leaves room for executive interpretation when necessary, while providing some boundaries on that interpretive prerogative. They certainly did not intend to have an American King. Nonetheless, like Locke, they also recognized that there are times of great urgency in which an issue must be treated with expedience and decisiveness. He argues that at times such as these, a more centralized figure is needed.

Like Tocqueville, Locke argued that the diffusion within a legislature would slow the policy process down when time is of the utmost importance. Thus, Locke says that in times of emergency “ ‘the laws themselves should...give way to the executive power, or rather to this fundamental law of nature and government, viz., that, as much as may be, all the members of society are to be preserved’ ” (Qtd. In Schlesinger 1973, 8). This argument is based upon his idea of self-preservation in that it suggests that executives have the prerogative to act according to their own wills when these actions are intended for the public good and the law is silent. The Founding Fathers did not directly codify this idea of “emergency prerogative” in the Constitution. The sole exception might be *habeas corpus* which provides for the temporary suspension of law in emergency situations, but even this provision does not directly give this authority to the executive (Schlesinger 1973, 9). Nonetheless, Locke’s theory of emergency prerogative would greatly influence the foreign policy powers of the executive as they were rooted in precedent that may be traced to this theory (Schlesinger 1973, 9; Milkis and Nelson 1999, 66; Fatovic 2004). The dialogue that led to the Constitution did not end the debate on Executive powers. This idea of emergency prerogative and the general vagueness of

Constitutional foreign policy power distribution continued to thrive amongst the Founding Fathers and would persist throughout American political history beginning with the foreign policy initiatives of the first presidential administration.

Our studies reveal that Congress often allows the executive to increase foreign policy powers. With the possible exception of the Washington administration, Congress seems to be more of an enabler rather than a victim (Nelson 2004). Why might Congress be so willing to yield its powers to the executive? We will explore the way in which public opinion might help to explain this phenomenon in two steps. First, we will consider public opinion as it relates to foreign policy matters. Second, we will utilize two basic presumptions. A benefit of using these is that they are both explanatory and predictive. The benefit of applying the Rational Actor Model in an analysis of these cases is that while it is mainly explanatory, the implications of these explanations may help to predict “what is to be done” and how an action sequence might be manageable (Allison and Zelikow 9). This shapes our first presumption that the first preference of elected leaders is to remain in power. Second, liberal democracies are characterized by transparency. We will employ these concepts in order to explain a theoretical relationship amongst major players in the American democratic foreign policy decision-making process and how they might influence two aspects of the polity. First, they have influence on the short-term policies. Second, they also affect power distribution within the democratic polity.

In 1949, Lester Markel expressed his idea that public opinion is imperative to the *formulation* of foreign policy. Markel stated that there are two reasons why executives rely upon the Department of State when making major foreign policy decisions. The first

he identifies is “intelligence,” or the appraisal of relevant public opinion. The second is the cultivation of public opinion which he entitles “information (propaganda)” (Markel 1949, 29). Although this book is outdated now, its central points are not. The author stresses the need for this public opinion cultivation in order for executives to have support behind their policies, otherwise they may not even be fulfilled. Clearly this discussion has not yet faded and some continue to express similar arguments to Markel’s (Nelson 2004). Others, however, maintain that it might be the reverse and that policy is the driving factor for public opinion (Western 2005).

Western, for example, describes a model in which a triggering event acts as the initial condition which results in the formulation of preferences by advocacy communities (his independent variable). He identifies two intervening variables as information advantages and latent public opinion. His model’s dependent variable is the decision either for or against war (Western 2005, 24). Few would argue that there is a relationship between public opinion and foreign policy decisions. Instead, the debate is more focused on the direction of that relationship. This is something that no regression analysis can truly resolve. Rather, it is a theoretical question. Thus, my study allows me to reexamine these theories and then to explain how public opinion might theoretically be related to foreign policy decisions in an “imperial presidency.”

Public opinion is often fickle and opinion on foreign policy is no exception. Prospect Theorists argue that persons choices and opinions may be dramatically altered by “seemingly inconsequential changes in the formulation of choice problems” (Tversky and Kahneman 1981; Kahneman and Tversky 1979, 1984; Levy 2000; McDermott 2001). Iyengar and Kinder suggest that this framing effect explains why public foreign policy

opinion might shift so quickly. They state that citizen's judgments are not capricious, but the information that they receive is determined by circumstance. Individuals cognate their opinions based upon the most salient and recent information that they obtained (Iyengar and Kinder 1987; Zaller 1992). Thus, when persons receive new information, they may reframe their position and alter their opinions (Iyengar and Kinder 1987, 65; Western 2005, 224).

In *The Nature and Origins of Mass Opinion*, Zaller suggests that "hawks" and "doves" do not entirely formulate their opinions from their value predispositions. His study finds that "hawks" and "doves" opinions are more polar when they are given more context in order to formulate their opinions. Thus, while they may have value predispositions, their differences are more clearly defined as they are given more information (Zaller 1992, 25). Zaller labels this the "Resistance Axiom." This axiom states that "People tend to resist arguments that are inconsistent with their political predispositions, but they do so only to the extent that they possess the contextual information necessary to perceive a relationship between the message and their predispositions" (Zaller 1992, 58). Furthermore, individuals base their opinions upon information that is most accessible and which they obtained most recently. That is, people utilize a heuristic when they determine their opinions. They tend to make their decisions based upon "top-of-the-head" information (Converse 1964; Achen 1975; Dean and Moran 1977; Erikson 1979; Judd and Milburn 1980; Judd, Millburn, and Krosnick 1981; Feldman 1989; Zaller 1990, 1992).

Therefore, public opinion remains steady when information flow remains steady. When information flow shifts its balance and it is no longer steady the public shifts its

opinion based upon the direction of the information (Zaller 1992, 64-5). The public that once expressed a decisive desire to war with the enemy and its accomplices, now expresses a strong opinion of dissatisfaction with the results of the war. At the outset of the war vehicles were decorated with “support our troops” magnets and young persons swarmed to armed forces recruitment offices. Freedom for all is an Enlightenment ideal that is a conceptual cornerstone of American government. The general public initially regarded support for “Operation Iraqi Freedom” as the “right” thing and as a moral obligation for citizens of a democratic polity. After all, wasn’t this the idea that drove General George Washington and his loyal soldiers to victory in spite of great costs? When the weary soldiers of the Continental Army continued marching their frostbitten feet through the snow at Valley Forge, it surely must have been those idealistic motivations for liberty, justice and equality that led them to “stay the course” until their eventual victory (Ellis 2000).

If these ideals were sufficient to lead the “underdog” to defeat the British, then they must be enough to maintain the support of the public in a super-power American nation-state to remain loyal to the cause until every American troop makes his homecoming. Yet, public opinion seems to blow with the wind and many who once supported an Iraqi invasion because it was the right thing, now declare that it was unnecessary and that the costs outweigh the benefits.

Scholars might question how it is that Revolutionary ideals were enough to push soldiers and colonial supporters to overcome the odds and defeat the British super-power, when public opinion within the contemporary American super-power so quickly wanes. One credible man offers his own opinion on how a phenomenon such as this might occur.

Men may speculate as they will, they may draw examples from ancient story, of great achievements performed by its influence; but whoever builds upon it, as sufficient basis for conducting a long and bloody War, will find themselves deceived in the end....For a time, it may, of itself, be enough to push Men to Action; to bear much, to encounter difficulties; but it will not endure unassisted by Interest (George Washington qtd. In Ellis 2002, 131-132).

Thus, the extent to which persons are willing to make *self-sacrifices* often is related to their *self-interests*.

The colonists certainly battled to secure “liberty and justice for all” in part because it was the “right thing.” Still, their diligence was not just a result of their desire to augment the common good. These men had families, homes, and businesses and the security of each of things was threatened by an over-imposing British tyrant. General George Washington argues from his own experience. He was responsible to inspire the troops to march on and to willingly take up arms and lay down their lives (Ellis 2000). Yet, it was this very experience that led him to observe that these noble men made these great sacrifices for the augmentation of the common good *and* for their own self-interests. Washington, as a realist, understood that these two are never really exclusive. The collective good may appear to be an obstacle to the achievement of *perceived* self-interest, but the common good necessarily includes the *true* good of the individual.

In each of the cases that we study, citizens are in situations in which their security was or was perceived as being in a state of great threat. Perhaps one could argue that executive actions place the citizenry in this position. Still, if we grant that these actions may at times further jeopardize sense of security by internal or external threat, it seems that we must still consider the role of public opinion prior to executive actions in the formulation of and fulfillment of foreign policy.

In addition, Ducat and Dudley argue that Federal Courts rulings tend to authorize greater powers to the executive in times of national security (1989). These scholars argue that federal judges are becoming more susceptible to public opinion and that, as a result, in times that the public feels a great security threat, justices are more likely to increase executive powers. For example, in the *United States v. Curtiss Wright Export Corp.* the justices augmented the theory of “the two presidencies” when they declared the executive’s right to “persuade” in domestic policies, but to “command” in foreign affairs (Ducat and Dudley 1989; Nelson 2004). Therefore, I utilize two presumptions to explain my theory. First, that elected officials’ primary preference is to stay in power. Second, liberal democracies are characterized by transparency. Thus, when the public is insecure, the legislative and judicial branches are more likely to cede power to the executive in order to appease their constituents. Next, I test my hypothesis through a series of case studies and find a different assessment of the evolving powers of the citizenry and of the legislative, judiciary, and executive branches.

George Washington (1789-97)

George Washington was the acclaimed “Father” of a new nation. Many viewed him then as many do still, as the incarnation of American values in the virtue of a man. Paradoxically, his reputable character that won him praise also won him admonition. The “Father” was also entitled “King” (Ellis 2002, 127). Washington was the first in a line of president’s to be accused of overstepping his boundaries as executive. “To whom much is given, much is expected” and the executive who is given praise is expected to prove to the public that that praise is merited.

Washington was well aware that his actions would be closely monitored by the public. As the first executive, his actions would set precedent and articulate executive powers in ways that the Constitution did not (Richardson 1897; Milkis and Nelson 1999, 66-7). At the onset of his presidency, Washington intended to comply with the Constitutional “advise and consent” clause. In his first visit to Congress Washington planned to consult with the Senate before he negotiated treaties. However, Washington “found his dignity so profoundly affronted that he allegedly said he ‘would be damned if he ever went there again’” (qtd. In Alterman 1998, 32). The first major catalyst to the ensuing debate was Washington’s promulgation of the “Neutrality Proclamation of 1793.” The French Revolution, which began in 1789, had sparked controversy between Federalists and Republicans. This dialogue is particularly clear as it existed between Hamilton and Madison (Nelson 2004). As a Federalist, Hamilton supported England. As Republicans, Jefferson and Madison’s sympathies rested with the French revolutionists. Thus, the question that followed asked what the American role ought to be in this conflict. With this weight upon his shoulders, Washington determined that a policy of “neutrality” was the preferred American course. As a result, he introduced the “Neutrality Proclamation of 1793.” Even before he had made his decision, Hamilton and Jefferson had made their respective opinions clear to Washington (Schlesinger 1973, 18-20 and 98; Mann 1990, 37-8).

Jefferson argued that there were two reasons why the US ought to support the French cause. First, he stated that a unilateral presidential action would be unconstitutional. If Washington were to declare war then he would be infringing upon the Congressional war powers. Second, he argued that the US must keep its commitment

to support France as agreed upon in the 1778 treaty. In opposition, Hamilton argued that the executive has power to enact neutrality when Congress fails to issue a war declaration. Furthermore, he expressed his opinion that the very nature of the French Revolution which had gotten so out of hand required a neutral American position (Ellis 2000, 134-5; Schlesinger 1973; Milkis and Nelson 1999, 77-8). Washington's decision chose to accept the Hamiltonian argument rather than the Jeffersonian. Hence, rather than tempering this raging debate, his unilateral action only further enflamed the issue.

This debate would continue via letters by Hamilton and Madison who used assumed names. Hamilton argued that Washington's action was constitutional because of a phrase which was included in Article I of the Constitution, but not in Article II. He suggested that executive power resided solely in the president because the powers invested in Congress were "*herein granted*" but executive powers were not "granted." Madison made the opposing argument that granting such exclusive foreign policy powers and even legislative powers to an executive was both unconstitutional and tyrannical (Mann 1990, 36; Milkis and Nelson 1999, 78-9). Nonetheless, the Hamiltonian argument for a broad interpretation of executive foreign policy powers enabled Washington's action to set a precedent that helped to determine the future role of executives in foreign policy.

Andrew Jackson (1829-37)

President Jackson, whom the Whigs christened "King Andrew the First," helped to progress further executive powers by following in Washington's steps and setting precedent (Binkley 1947). In Jackson's case, similar to Washington's, he seized the

powers through his conception of constitutional powers. Jackson and his followers believed that the democratic idea of equality was one which transferred to the branches of government. He argued that ““must each for itself be guided by its opinion of the Constitution”” and that relying solely upon the federal courts to interpret the Constitution placed too much power in the Judicial branch (qtd. In Milkis and Nelson 1999, 121). The irony is that his argument for equal distribution of powers led him to significantly alter the relationship between the executive and legislative branches. Prior to his administration, there were only a total of 9 vetoes that had been enacted in executive history. In his two terms, Jackson successfully issued 12 vetoes and was the first to enact a “pocket veto” (Schlesinger 1973, 242; Nelson 2004). On July 10, 1832 he issued his most notorious veto. Jackson argued that the Bank of the United States Act was unconstitutional. As a result, he vetoed its passage. Jackson’s action expressed his opinion that his powers were not any more restrained by judicial decisions than there were by Congressional acts (Schlesinger 1973; Milkis and Nelson 1999, 121). Thus, while his act did not directly alter foreign policy, its effects set precedent for executive prerogative that would carry on into future presidencies and their foreign policies.

Abraham Lincoln (1861-65)

Lincoln also continued this legacy during a time of great urgency. The threat was not from a foreign power. Rather, he increased presidential powers during the American Civil War. Lincoln even conceded that his own actions were extra-Constitutional. For the first three months of the war, Congress was in recess and every Union act in opposition to the Confederacy was a presidential one without legislative authorization.

Lincoln waged the first “presidential war” (Schlesinger 1973; Milkis and Nelson 1999; Relyea 2001). However, the Supreme Court’s decision in the *Prize Cases* justified Lincoln’s actions prior to that point. Lincoln’s following suspension of *habeas corpus* and his establishment of marshal law further established his extra-Constitutional use of powers. After the war concluded the Court checked these powers in their ruling of *Ex Parte Milligan* of 1866, in which they limited the use of military tribunals (Schlesinger 1973, 69). Still, he declared that his unilateral executive actions were necessary for national security and the augmentation of the Republic and that they were only temporary (Schlesinger 1973; Mann 1990, 7; Relyea 2001). Few would argue otherwise, and Lincoln’s legacy is beyond laudable. Nonetheless, even if his actions were necessary in a time of peril, it is worth noting the way in which he helped to further the evolution of executive war powers (Randall 1947; Binkley 1951; Milkis and Nelson 1999; Relyea 2001;).

Woodrow Wilson (1913-1921) and Franklin D. Roosevelt (1933-45)

In 1885 Woodrow Wilson wrote that the Senate’s “irresponsible exertion of...semi-executive powers in regard to the foreign policy of the government” threatened presidential authority (qtd. In Milkis and Nelson 1999, 210). At the time Wilson stated this, the future president was a political scientist. As his book indicates, his studies eventually led him to determine that Congress intervened in foreign policy too often (Wilson 1907). Perhaps this statement was indication of what was to come. America’s entrance into World War I was the first “total war” that it engaged in. As such, Congress awarded President Wilson unprecedented powers to help him to ensure a

victory for America and its allies. The Lever Food and Fuel Control Act of 1917 granted Wilson the power “to regulate by license the importation, manufacture, storage, mining or distribution of necessities” (Milkis and Nelson 1999, 234). While the legislature did make its own assertion when it failed to support Wilson’s League of Nations, his extension of powers is worth noting as well.

Like Wilson, Franklin D. Roosevelt’s administration was also granted much more power by Congress and the Supreme Court in a time when American security was under serious threat. Prior to 1937, the Supreme Court issued a series of judgments that limited presidential powers. The two decisions which disturbed him most were in the cases of *Humphrey’s Executor v. United States* and *Schechter Poultry Corp. v. United States*. These Court rulings ruled that presidential removal of appointees from independent regulatory commissions and Roosevelt’s requested and Congressionally authorized discretionary powers over the New Deal’s National Recovery Administration were both unconstitutional (Milkis and Nelson 1999).

In 1937, Roosevelt responded by his “Court-packing” Bill which enabled him to dismiss any justices who did not retire within 6 months of their 70th birthday. This enabled Roosevelt to remove six of nine justices and then appoint others to fill their places. As the tension mounted in anticipation of World War II, an insecure nation desired a strong central figure. Roosevelt broke the tradition set by Washington and was elected for a third term in 1940. In 1944, Roosevelt won his 4th election term as the war neared its completion (Milkis and Nelson 1999, 272-6). His increasing powers were not only evidenced in his precedent breaking consecutive number of terms in office, but his replacement of his judicial foes returned a substantial pay-off. In 1936, the Supreme

Court ruling in the case of *United States v. Curtiss-Wright Export Corporation* decided that the president's constitutional powers in domestic and foreign issues are different. Justice Sutherland stated the Court's opinion that the understanding that the president is only authorized to those powers which are enumerated in the Constitution only applies to domestic affairs (Mann 1990, 40-1; Nelson 2004). In foreign affairs he declared that the president is the "sole organ" and is not dependant upon any authorization of powers from Congress or the Constitution (Milkis and Nelson 1999, 275). Both Wilson and Roosevelt were willing to "take a bath in public opinion" (Lincoln qtd. In Schlesinger 1973, 213). In time of war and threat to national security, the executive continued to develop its powers through the use of public opinion (Markel 1949; Schlesinger 1973). Thus, a study of the Wilson and Roosevelt administrations are examples of dramatic strengthening of presidential power during times of great security threat.

Harry S. Truman (1945-53) and John F. Kennedy (1961-65)

Similarly, the Cold War era was a time of great insecurity and uncertainty amongst the American public. President Truman's administration was in power at the commencement of the Cold War. Truman found little support for his domestic policies as a Democrat working with a Republican majority Congress. Yet, Truman had little opposition to his Marshall Plan. While there was partisanship in domestic politics, Truman had great bipartisan support for his foreign policies. Truman had little trouble gaining support from Congress, because he understood that public opinion could influence Congressional support for foreign policies (Mueller 1970; Kernell 1976; Coffey 1985). However, he was able to do this upon his acceptance of Senator Vandenberg's

advice. Truman had to “scare hell out of the country” in order to ensure Congressional support (Schlesinger 1973, 128). Once again, the public’s fear and uncertainty allowed for the advancement of executive powers. It was Truman who decided to utilize atomic weapons against Japan at the end of World War II. Furthermore, Truman’s Korean intervention made him the first commander-in-chief to deploy soldiers to a war without Congressional declaration. In response to his critics, Truman replied that ““the congressional power to declare war has fallen into abeyance because wars are no longer declared in advance”” (qtd. In Milkis and Nelson 1999, 281). The Supreme Court did restrain his powers when it decided in the case of *Youngstown Sheet and Tube Company v. Sawyer* that Truman must return all steel mills that he had seized on April 8 (Schlesinger 1973, 513).

In return, however, Truman’s Reorganization Plan No. 8 of 1950 returned some executive power which the Supreme Court had seized in its *Humphrey’s Executor v. United States* ruling (Bettelheim 2002). In addition, Congress helped to yield increasing power to Truman by passing a series of acts which helped to further institutionalize the presidency at a much more rapid rate (Milkis and Nelson 1999, 284-5). Overall, Congressional and public support for foreign policy initiatives continued throughout the Kennedy administration and the first part of the Johnson administration (Schlesinger 1973). Kennedy’s success in personalizing the presidency to the public, ironically made future executives more vulnerable. Thus, Johnson’s commitment of troops to Vietnam without a Congressional declaration of war and only armed with the Gulf of Tonkin Resolution left Johnson to seem more culpable to the public who saw the tragic results of the Vietnam War. Following Vietnam and Nixon’s later “Watergate Scandal,” the

American public became more attentive and skeptical of the executive (Hill 1970, 67; Zaller 1992; Milkis and Nelson 1999; Western 2005). The security threat of the Cold War seemed much more distant (Miller 1974a; Citrin 1974; Lipset and Schneider 1982; Mann 1990; Zaller 1992). Executive power was rapidly increasing and Congress was allowing it, until this shift in public opinion. The public became more politically sophisticated. As a result, government officials who desired to stay in power were more accountable to the public (Mann 1990, 176; Zaller 1992, 300-3). Thus, the shift in public opinion led to a shift in policy and in the relationship between Congress and the Executive. Congress responded by passing the War Powers Resolution of 1973 and the National Emergencies Act of 1974 (Schlesinger 1973; Mann 1990, 18-20; Reylea 2001). This Congressional reassertion developed as America began to lose trust in their Executive.² After the passage of these Acts the Executive would not attempt to go to war without Congressional consent, until 2001 (Murray and Spinosa 2004).

George W. Bush (2001-present)

The Cold War issued in an era of insecurity within the American public in general. Nuclear proliferation did not eliminate citizen fears within the polity as some citizens built their own bomb shelters and the schools drilled children to ready them to duck under their desk in the case of a nuclear attack. The public became more than willing to tolerate executive secrecy if it might ensure national security. They were willing to “trust the President because only he knows the facts” (Schlesinger 1973, 331). While the Cold War environment inevitably influenced public opinion on foreign

² Several authors discuss further the relationship of political trust and public policy (Miller 1947a; Miller 1947b; Moore 2002; Hetherington 1998, Hetherington 2005).

policy in general and on the release of relevant information in particular, this idea was not a novel one.

It may seem more likely that Machiavelli would argue for emergency prerogative before John Locke would be willing to do so. After all, if the basis of Locke's theory is that humans desire to ensure their own security, then it seems logical that they would wish to secure their liberties. However, Social Contract Theorists such as Locke or Rousseau might argue that security is so basic and primarily essential to the human existence, that in emergencies the person willingly trades certain liberties in order to secure his "property." This is the basis of Social Contract Theory. Even Mill, the great proponent of individual liberty as the good to be obtained, supported the idea that those liberties may be infringed upon by an authority in order to preserve security of those liberties. This may initially seem contradictory but Mill, like his fellow Social Contract Theorists, qualified this emergency prerogative as only just to the citizen when it is temporary and is enacted to preserve penultimate liberties (Schlesinger 1973, 320-23).

President Bush's 2001 executive order that overturned the legislative requirement for all executive documents to be opened within twelve years, led many to question the Constitutionality of such initiatives (Holsti 2004, 316). Furthermore, the passage of the Patriot Act caused some to question whether their liberties were being sacrificed for their security. In order to address public concerns that the administration was monopolizing vital foreign policy information and sacrificing basic rights of American citizens in the name of secrecy, U.S. Attorney General John Ashcroft made the following statement:

The mission of the Department of Justice has been transformed from a focus on prosecution of illegal acts to a focus on the prevention of terrorist acts....Like many Americans, I am concerned about the expansion of

preventative law enforcement. That is why we...[are] mindful that we seek to secure liberty, not trade liberty for security (qtd. In Bettelheim 2002, 5).

It seems that Ashcroft might be arguing similarly to Locke in that he acknowledges the way in which self-interest for security of one's properties may cause a person to trade certain liberties. Ashcroft's statement primarily confronted those who feared that the executive began to infringe upon citizens' rights. He argues that he, as the Attorney General within the Bush administration, intended first and foremost to protect these rights.

Ashcroft's promise that he would ensure that liberty was not traded for security suggests the powerful nature of security and the way in which it might inform foreign policy. In fact, some scholars of political tolerance argue that persons are much more willing to subordinate their personal liberties in exchange for security (Sullivan, Piereson, and Marcus 1982; Bobo and Licari 1989; Marcus et al. 1995; Gibson 1998; Davis and Silver 2004). For this reason, in late September 2001 Justice Sandra Day O'Connor warned citizens that "We're likely to experience more restrictions on our personal freedom than has ever been the case in our country....It will cause us to re-examine some of our laws pertaining to criminal surveillance, wiretapping, immigration and so on" (qtd. In Davis and Silver 2004).

This paper does not attempt to evaluate the success of Attorney General Ashcroft's stated intention, rather it will use this only to demonstrate one point within its larger argument. That point is that security founded upon perceived self-interest might motivate persons to freely surrender certain liberties. As George Washington previously suggested, it is unrealistic to think that a war which disregards the self-interests and

securities of its citizenry in order to secure the liberties of others will not maintain a favorable public opinion as war continues. Ashcroft seems to be nodding towards Washington through an acknowledgement that it is vital to foreign policy efforts that the public's self-interest is not divorced from the collective good. Ashcroft's acknowledgement suggests that there is a relationship between the public's self-interest in personal security and American foreign policy. If this is true and security is a primary source of public opinion on foreign policy issues, than it seems that there might be important policy implications and results that might be explained in part by two theories. This paper will examine this possibility by first looking at how the Expected Utility Theory might apply to the question that I attempt to address. Next, I will describe how this dialogue might also be informed further by Democratic Peace Theory.

After the attacks on the World Trade Center on September 11, 2001, a major security crisis confronted the American public. By October of the same year, Bush administration officials began to publicly connect Al-Qaeda to Iraq (Western 1995). President Bush suggested that Iraq might equip these terrorists with nuclear arms (weapons of mass destruction). These claims led the public to feel increasingly insecure both domestically and as members of a state actor in the international system whose dominant status was in being challenged. Bush affirmed these feelings when he declared that “ ‘facing clear evidence of peril, we cannot wait for the final proof, the smoking gun that could come in the form of a mushroom cloud’ ” (qtd. In Western 1995, 209). Shortly thereafter, the Pew Research Center for the People and the Press found that two-thirds of Americans believed that Hussein was involved in the 9-11 terrorist attacks. The surveys

also found that 79% of Americans believed that Hussein either possessed or was near to possessing nuclear weapons (Western 1995, 210).

For the first time since Congress reasserted itself in foreign policy matters with the War Powers Resolution of 1973, controversy ensued as to whether or not Bush could wage a war to remove Hussein from power without Congressional approval. In fact, a 2002 Gallup poll found that 37% of respondents would still favor an invasion Iraq if Congress opposed it (Murray and Spinoso 2004, 105). While this is not a large number, it is worth noting that an estimated one-third of Americans were willing to enter into an extra-Constitutional war if the Congress did not “declare war.” As White House officials continued to release reports that they had clear evidence that required immediate action in the name of national security, the public opinion increasingly expressed alarm. A CNN/USA Today/ Gallup Poll in February of 2002 found that 87% of participants believed that Iraq had direct ties to Al Qaeda (Western 1995, 214). Western argues that this shift in public opinion in support of a war on Iraq was due to the increasingly unbalanced information flow that the media provided to Americans (1995, 232). A shift in information, such as this, causes individuals to reframe their perception of their security within their political environment (Converse 1964; Achen 1975; Dean and Moran 1977; Erikson 1979; Judd and Milburn 1980; Judd, Millburn, and Krosnick 1981; Feldman 1989; Zaller 1990, 1992; Western 1995).

In 2002 Congress did approve Bush’s initiative to invade Iraq. The amount of bipartisan support amongst Congresspersons is rather interesting when we consider the partisanship of public opinion. In early 2003, a Gallup Organization poll found that 93% of Republicans favored an invasion, but only 53% of Democrats did. Congress members

did debate this issue heavily prior to the vote. Senate Majority Leader Tom Daschle (D-S.D.) was one who deliberated before casting his vote, but when he did cast a favorable vote for the invasion, he simply said “The bottom line is...we want to move on” (Qtd. In Lindsay 2004, 184). House Minority Leader Dick Gephardt (D-Mo.) diverged from his party on an issue which the House was split on when he defended legislation which would allocate money for an invasion.

In defense of his support for the Iraq Resolution of 2002, Gephardt said that ““We had to go through this, putting politics aside, so we have a chance to get a consensus”” (qtd. In Fisher 2004, 167). Others such as Senator Robert Byrd (D-W.Va), however, responded bitterly at the way in which Congress was giving its war powers to the executive when he asked “How have we gotten to this low point in the history of Congress? Are we too feeble to resist the demand of a president who is determined to bend the collective will of Congress to his will?” (qtd. In Lindsay 2004, 184). Nonetheless, the initiative did eventually pass. While there was great partisanship over this issue within the public, 73% overall favored an invasion (Holsti 2004, 230). It seems, then, that this is another example of a time in which the public overall perceived a grave security threat and Congress responded in a bipartisan manner to the wishes of the public as a whole (Nelson 2004, 150).

Prior to the terrorist attacks, American citizens and their overall opinion towards their new President Bush was relatively low. The 2000 elections showed a nearly even distribution of support between Bush and Gore. This partisanship only grew with the aftermath of the elections and the allegations of a possible scandal. The nation was politically split. After the terrorists attacks, however, Americans felt grave threat

looming over them in a way which was new. The threat was not in some political or economic interest across an ocean, but rather it was at home. For a short time, persons no longer took for granted that a large plane flying overhead was simply a transportation vehicle for travelers, but would be reminded of those planes which transported death, destruction, and disaster. At a time such as this the public desires a central figure to renew their security and to help them return to the lives they once knew (Alterman 1998; Iyengar and Kinder 1987; Zaller 1992; Nelson 2004). Americans' self-interests were for their security and they needed an individual that they could hold accountable to ensure their safety.

Gilens argues, however, that individuals do not determine their policy opinions by their self-interests. Instead, he says that Americans ask "which policy is best," not which policy "is best for me" (Gilens 1999, 213). Gilens refers to a CNN/ *New York Times* poll of Americans conducted in 1997. This poll showed that Americans perceived that the most important problems facing the country were social political issues such as crime, unemployment, and education. Foreign policy issues ranked low in this poll (Gilens 1999). Although Gilens suggests that Americans do not frame their policy opinions from their self-interests, it may be that his conclusions are dependant upon the political environment at the time of his research. Once again, however, this research is conducted in a time of relatively low threat to American security. In October 2001, a poll conducted by the Pew Research Center for People and the Press found that 93% of respondents stated that their top preference for foreign policy was for protection from terrorist attacks (2001). Shortly after the terrorist attacks, two of every three Americans named terrorism, war, or national security as their biggest concerns for the nation (Lindsay 2004, 190).

Many of these persons placed their trust in the executive. As a result, Bush's low position in public opinion polls leaped to 90% approval ratings where they lingered (Nelson 2004, 150; Western 2005, 194).

Yet, when American citizens began to doubt that the war on Iraq was truly in their best interests and that their security was ever really even in jeopardy, the public opinion began to shift and support for President Bush began its rapid decline. Upon its commencement, the Bush administration stated its strategic orientation. Condoleezza Rice, said "I am a realist," and the President asserted that "a President must be a clear-eyed realist" (qtd. In Mazarr 2003, 503). Mazarr argues, however, that Bush is actually an idealist who appeals to the public for foreign policy support through presenting normative phrases such as "the axis of evil" (2003). It seems plausible that if Bush's foreign policies are explained to the public in idealistic terms, Bush may still be a realist as a politician. When Bush deployed forces into Iraq, he did so with a majority of Americans in support of this move. Thus, while he presented it in idealistic terms, Bush may still have acted in a way which acknowledged that the American public would hold him accountable. This presumption seems to be corroborated in that public opinion declined so significantly upon the eventual release of information and when the war continued much longer than many expected that it would.

Through the application of the Rational Actor or Expected Utility model we may begin to explain this. This model presumes that actors are rational and that they maintain an ordered set of preferences or goals (Gellar and Singer 1998). These interests and values equate to a "payoff" function. To each possible course of action there is a corresponding set of alternatives. Each of these alternative courses of actions has its own

set of consequences. The rational actor, according to this model, will choose the alternative whose consequences rank highest in the “payoff” or “utility” function. Thus, in this model “rationality refers to consistent, value-maximizing choice within specifies constraints” (Allison and Zelikow 1999, 18).

We begin with the model’s presumption that the first preference of all elected officials is to remain in power (Allison and Zelikow 1999, 298). Thus, it seems that public opinion is a central player in foreign policy decision making and the powers that the executive might be given in order to formulate and fulfill these policies. Certainly, elected officials generally acknowledge this idea. Executives are generally aware that the public will return a “pay-off” to the president during the next election if war is successful, and if it is not than he will receive a “loss” instead. As a result, executives tend to make their foreign policy decisions with this in mind and closely monitor public opinion on these issues (Markel 1949, 76-7; Hill 1970; Zaller 1992; Stimson, Mackuen, and Erikson 1994,1995; Foyle 1999; Holsti 2004; Nelson 2004).

If this is true, we might further explain this phenomenon through the Democratic Peace Theory. The major law of this theory is that democracies do not go to war with other democracies. Some speculate that if this is true, then it follows that as the number of democracies increases within the international system, it must follow that there is a decrease in war at the system level (Gaddis 1997). This notion began with Kant who argued that citizens within a liberal democracy are more pacifistic. According to Kant, democracies have a “transparency” characteristic which allows citizens to hold foreign policy decision makers accountable for their actions. Pacifistic citizens will convey their support for pacifistic strategies. Thus, he suggests that democracies foreign policies will

be pacifistic on the whole regardless of the regime-types that their policies are relevant to (Kant 1795). Ironically, this is the “idealist” understanding of the theory that might also be associated with Wilson’s foreign policy strategies (Ray 1995, 7-8). However, more contemporary literature on this theory utilizes a more “realistic” understanding of this theory.

Many contemporary theorists argue that there truly is a democratic peace within like dyads, but that democracies are no less likely to war against other regime-types (Maoz and Russett 1993; Ray 1995; Russett and Starr 2000; Bueno de Mesquita and Lalman 1992). However, these rational actor arguments suggest that leaders of democracies do not choose to engage in war with other democracies they have no “political incentive” to do so (Mintz and Geva 1993). In liberal democracies, leaders are more accountable to the will of the public. If we accept that citizens are rational actors who act by their own set of preferences, then it seems logical that security must be among their top choices. Therefore, in times of security threat, public officials might be more likely to heed to public opinion at any long-term costs. For instance, some argue that House Minority Leader Gephardt deviated from his party’s position because he planned to run in the upcoming presidential elections (Bettelheim 2002). The public has access to the flow of information and through elections they hold their officials accountable for the choices they make. If the first preference among elected leaders is to stay in power, as Expected-Utility Theory suggests, and we presume that “transparency” is a characteristic of the liberal democracy then it follows that these leaders will heed to the perceived public opinion as they formulate their foreign policies (Markel 1949; Hill 1970; Russett and Starr 2000).

Presidents Washington and Jackson both recognized the power of public opinion. While at this relatively young stage in the development of the Republic, it seems that the growth of executive powers was more executive driven rather than it being spurred by public opinion (Markel 1949). Washington was well aware that he was being watched closely by the public and thus he was more deliberate about his executive actions. Jackson was the first executive to “translate ‘White House decisions into forceful language and announcing them with persuasive eloquence to the American people” (Remini qtd. In Milkis and Nelson 1999, 126). We might notice a pattern in the development of the American presidency. At the time of the 1860 elections, only 40% of public opinion supported Lincoln. We see a pattern in public opinion during the Bush administration, although Bush’s approval changed much more dramatically both before the war and in its later stages. In the 1864 elections, however, Lincoln’s support had been boosted to 55% due to the success of the war even amidst all the controversy and divisiveness that still characterized the public (Milkis and Nelson 1999, 147 and 157). If we agree with the Rational Actor Model, that the first preference of an elected official is to stay in power and we agree with Democratic Peace Theory that “transparency” within the democracy ensures executive accountability, then we conclude that these imperative imply executive power to increase authority in times of security threat (Neustadt 1990; Kernell 1997; Murray and Spinoza 2004; Wittkopf and McCormick 2004).

Scholars such as Hrach Gregorian, however, argue that the three branches of government have shifted throughout history, but overall remain balanced (Koenig 1981; Gregorian 1984). Yet, it is worth noting that much of this literature was written in the Post-Cold War era or the years immediately preceding its conclusion or that the studies

which these authors draw their conclusions from look more at the years following the decline of Soviet threat and ending before the increase in the terrorism threat (McCormick and Black 1983; Lindsay 1992-3; Lindsay and Ripley 1992; Canes-Wrone and Shotts 2004). That is many of these studies, which suggest that Congress is not influenced heavily by public opinion in foreign policy matters, only look at cases in which domestic security from foreign forces was not threatened as much as it was during the early years of the Cold War and after September 11, 2001.

Jeffrey Rosen, a law professor at George Washington University, declared that Congress and the courts asserted their authorities in the months before the invasion of Iraq and that ““of all the lessons about America’s strength that have emerged since the attacks, this is one of the most reassuring”” (qtd. In Bettelheim 2002, 7). Others argue, however, that while Congress has stepped forward and played a visible role in the deliberation, it also produced a new precedent in executive-congressional relations, which would ultimately further empower the executive (Bettelheim 2002; Greenstein 2004). These scholars argue that rather than the president seizing powers that were not his to take, Congress *gave* President Bush unprecedented Executive powers when they authorized him to launch military strikes without advanced notice. Therefore, it seems that great boosts in public opinion for expedient and decisive executive action, lead Congress to yield their powers to the executive (Trimble 1989; Gibson 1994). If a Congress member prefers primarily to stay in power then he will act as a representative rather than a steward in a transparent polity (Gregorian 1984; Wang 1996; Nelson 2004; Canes-Wrone and Shotts 2004). Wang (1996) employs the Rational Choice Theory to describe the way in which domestic and foreign policy are related. Nonetheless, scholars

note that he primarily focuses on economic variables (Peake 2001; Canes-Wrone and Marchi 2002).

These authors tend to support Tocqueville's theory that citizens of a democracy do not have the political sophistication required for foreign policy decisions. Rather, they argue that these persons are more aware and concerned about domestic issues. Perhaps the executive does tend to have more authority in domestic affairs, but it seems that his authority might be particularly strong when both domestic *and* international security is in jeopardy. America has only been threatened on its own soil by foreign forces a few times in its history. Thus, it seems that when the domestic security is threatened and the international status quo is threatened simultaneously, there is potential for much greater executive empowerment (Mayer 1999).

Conclusion

In 1787, the co-authors of the Constitution of the United States ratified a document that solidified the birth of a new democracy. Yet, in spite of their many hours of deliberation, we continue to debate their intentions for the powers of the executive. Perhaps they simply failed to articulate their intent for this integral role within a representative democracy. Or perhaps their inability to come to a consensus on this is to blame. Yet, it is difficult to believe that men who deliberated for so long to articulate their intentions simply neglected this fundamental role within the young nation-state. Rather, it seems plausible that their true intent on this matter was ambiguity itself. Maybe they determined that this new democracy would develop, in part, by its own trial and error. Perhaps they simply decided that it is best to leave this vital role in the

democracy to be defined by “the people.” Still, the escalation of executive powers may be reason to fear that democracy is being victimized by an increasingly powerful executive.

An imperial presidency seems to be one which robs powers from the legislative and judicial branches. However, a discussion of administrations in which the executive’s foreign policy powers increased, seems to suggest that the executive does not rob these powers. Rather, it seems that these powers are being freely given (Trimble 1989; Sorensen 1994; Fisher 2004, 168-9). Executive authority on foreign policy issues is increasing. Yet, the very word “authority” implies that the authors of these powers entrust them or authorize them to another. A Democratic Peace theorist might suggest that climactic evolution of executive foreign policy authority does not necessarily imply that there is a decline in liberal democratic values. Instead, it may be that the transparent democratic characteristic is increasing. Public opinion may be playing a greater role in the dispersion of foreign policy powers. Perhaps Cronin is right to conclude that the cyclical nature of the relationship between Congress and the executive is now in a negative linear regression that is irreversible (1980).

Expected Utility theorists argue that elected officials’ may have altruistic ambitions, but their first priority is to stay in power. Thus, they might suggest that representatives in a more transparent democracy are more inclined to heed to public opinion. Appointed judiciary members, whose positions are not in jeopardy, might be less likely to adhere to public opinion than elected legislative members. Therefore, the great paradox may be that in an increasingly transparent democracy elected representatives progressively bestow foreign policy authority to the executive in

acquiescence to the demands of the public. Perhaps scholars such as Tocqville, Lipmann, and Almond are correct and the public is not rational enough and is too diffused to make foreign policy decisions (Alterman 1998, 10). Or, maybe citizens are informed about foreign affairs and hold stable preferences (Goren 2004). Still, my case study analysis suggests that whether or not their influence is beneficial, the American public does influence foreign policy decision-makers. When citizens perceive that their personal security is in jeopardy, they may be more willing to bequeath more authority to a centralized executive figure (Alterman 1998; Iyengar and Kinder 1987; Zaller 1992). Perhaps, then, Franklin D. Roosevelt was correct when he declared that the only thing that “we the people” “have to fear is fear itself” (*First Inaugural Address, 1933*).

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