## CONTENTS

**School Resources and Student Outcomes in Kentucky Public High Schools**  
Martin Battle & James Clinger  

**The Fragility of Persistently Economically Distressed Counties in Central Appalachia and the Promise of Public Leadership**  
Christine Emerich, Stephen Lange, Blake Bedingfield,  
Roman Fraley, Justin May, Trey Rezzer & Kyle Varetsky  

**War Powers in the American Constitutional Scheme: A Legal-Historical Inquiry**  
Max Guergis  

**Power, Interdependence, and Conflict: What IR Theories Tell Us About China’s Rise**  
James R. Masterson  

**Student Papers**

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Abdul Ripai Award Winning Paper: Roger Sherman and Federalism: The Transition from the Articles of Confederation to the U.S. Constitution</td>
<td>106</td>
</tr>
<tr>
<td>Federalism and Administrative Law: Regulatory Power and the U.S. Constitution</td>
<td>118</td>
</tr>
</tbody>
</table>

**Ashley Ruggiero**
School Resources and Student Outcomes in Kentucky Public High Schools

Martin Battle
Murray State University
martin.battle@murraystate.edu

James C. Clinger
Murray State University
jclinger@murraystate.edu

This paper examines the effect of various input measures upon student outcomes within Kentucky public high schools from 2001 to 2004, using a pooled, cross-sectional time series research design with panel-corrected standard errors (PCSE). The results indicate mixed support for the proposition that school resources are related to desired school outcomes. Overall school spending seems to have no systematic impact. Schools that seem to perform well have few indigent students, many teachers with master’s degrees, and fairly high numbers of volunteers. The authors offer some conjectures about the significance and meaning of these findings, especially in light of different findings in other extant research. It is likely that many of the differences in results are attributable to the choice of school-level measures rather than individual student-level indicators.

Key Words: Student outcomes, Kentucky, Education Policy

For most of the last forty years, education research has been characterized by a never-ending debate about the role of school inputs on student learning. While many practitioners in the field of public education have assumed as a matter of faith that more money, more teachers, more highly-credentialed personnel, better facilities, more access to technology would all lead to greater learning by students, the empirical research on the subject is mixed. Many researchers (most notably Eric Hanushek, 1986; 1989) have claimed that the level of resources used in schools is not nearly as important as the incentives affecting the way those resources are allocated. Other scholars, (e.g., Chubb and Moe, 1990) have claimed that constraints imposed on public schools are

1 An earlier version of this paper was presented at the annual meeting of the 2009 meeting of the Kentucky Political Science Association in Louisville, KY. The authors would like to thank Jordan Lauer for his research assistance.
significantly more important in accomplishing learning goals than are levels of resources.

This paper will describe one effort to study the effect of school resources on student outcomes in one state, the Commonwealth of Kentucky. The paper begins with a brief review of the literature on the effect of resources on important student outcomes. The subsequent section reports on an analysis of the effect of school inputs on student performance in writing, arts and humanities, science, social studies, and mathematics in Kentucky public high schools. The final section discusses those findings and considers future research.

**RESOURCES, PRODUCTION FUNCTIONS, AND SCHOOL OUTCOMES**

One of the primary justifications for the increased federal role of public education in the United States was the belief that schools financed entirely by local and state tax sources would not be adequate to provide adequate, quality education to American children. To demonstrate the relationship between school resources, the federal government commissioned research by James C. Coleman in the 1960s that examined the impact that per pupil spending, class sizes, instructor certification, teacher salaries, and other input measures might have on student learning. Coleman's research was one of the most ambitious and extensive social science research projects ever conducted up to that time.

The expectation was that Coleman's study would find a strong link between school resources and student performance in a number of academic areas. The establishment of such a finding would, it was believed, constitute a strong political justification for increased spending on school resources. The resulting report (Coleman, et al, 1966) was much different from what its governmental sponsors expected to find. School resources did not appear to have much impact upon student learning. Characteristics of the students' families and those of their classmates seemed much more important in determining academic outcomes.

Coleman's research and that of other empirical researchers failed to settle the matter. The "Coleman Report" was attacked by some observers and ignored by others. A number of practitioners and some researchers continued to argue that input variables could have a dramatic, positive effect upon desired outcomes, such as higher graduation rates, lower dropout rates, and improved scores on standardized tests. For example, Chune (1994), Alexander and Salmon (2007), and Collins (2004), among others, contend that funding is often inadequate to provide sufficient resources to enable students to reach state educational standards and more general academic goals. Some scholars claim that differences in revenues between rich and poor school districts have led to huge disparities in expenditures, which in turn lead to differential student access to services and programs, some of which may affect the propensity of a student to do well in school or even to remain in school.

These arguments were accepted by many state courts in decisions regarding equity (or sometimes "adequacy") in public school finance. More resources for some, if not all school districts, were deemed to be necessary to accomplish the schools' mission. Such was the premise of a number of court decisions, including the holding of the Kentucky Supreme Court in Raw v. Council for Better Education (1989) (790 S.W.2d 186, Ky. Law Rep. 1289) (Chune 1994). It was also the basis for a great deal of new litigation and programmatic change, including the Kentucky Education Reform Act of 1990, which provided for much more state funding for education as well as new forms of governance and new accountability mechanisms. Much of the new emphasis upon accountability included reliance upon student testing as a measure of student learning and, indirectly, of school performance.

The legal briefs advocating greater and more equitable school funding were premised on empirical arguments drawn from a basic production function theory of education outcomes. Production function theory contends that productivity is a function of a variety of input variables, such as labor, capital, and technology. In the case of education production functions, the usual variables examined are teacher/student ratios, teacher salaries, average class sizes, school percentage of certified teachers, and dollars spent per pupil. Nevertheless, the relationship between educational inputs and outcomes has never been fully understood even though determining the level of resources required to produce the desired level of achievement remains highly important to policymakers and a concerned public (see Hanushek, 2003; cf. Hedges, et al., 1994). In fact, some summaries of empirical research as well as generalizations made in the popular press indicate that there is no consistent relationship between inputs and desired outcomes at all (see, e.g., Hanushek, 2003; Jacques and Bronstein, 2002; Tae Ho and Soeh-Hwan, 2014; Haverback, 2014; cf. Jimenez-Castellanos, 2010; Jackson, Johnson, and Penico, 2014). This does not necessarily mean that resources do not matter. It may mean that the way resources are used matters more, and adequate incentives to make use of resources matters most of all. Other scholars (e.g., Chubb and Moe, 1990) contend that public schools operate in an environment of administrative and political constraints that prevent effective use of the resources that are available. Unless the constraints change, increases in resources may not have much effect.

In the research reported here, we examine some desired student outcomes from the public schools of one state, the Commonwealth of Kentucky. Single state studies suffer from some disadvantages, particularly regarding generalizability of results. However, the data from a single state should be relatively uniform in quality and consistent in the use of variable definitions. Other factors that could vary from state-to-state could be held constant in a single state sample, which may aid inferences about a few key variables.
DATA AND METHODS

The method of analysis that was used here was a pooled, cross-sectional time series analysis. The years of data used are 2001-2004 for all public high schools in Kentucky. This research examines various kinds of student outcomes, including standardized test scores that are used as part of the Commonwealth Accountability Testing System (CATS), which includes scores from the Kentucky Core Content Test and the Comprehensive Test of Basic Skills. The CATS scores examined here measure 11th grade student performance in writing, arts and humanities, science, social studies, and mathematics. The study only covers the years 2001-2004, since the subsequent years have missing data for most schools and the earlier years are not reported at all. The data are derived from the school and district report card data sets compiled by the Kentucky Department of Education (KDE). Per pupil expenditures, converted to constant dollar figures, are calculated using the KDE data set. Several other specific measures that represent school level inputs (normally requiring expenditures) are included, as well as some measures of teacher and school resources. These include pupil to teacher ratios, students-to-computer ratios, percentage of classrooms with connections to the Internet, percentage of teachers certified for the grade or subject that they teach, percentage of teachers having a major or minor in the subjects that they teach, percentage of teachers with a master's degree, average teacher experience (measured in years), and the per student parent-volunteer hours (number of hours donated divided by the school enrollment). The models also include school enrollment as a measure of school size, as well as the reported attendance rate (i.e., average daily attendance divided by enrollment). The district level measure for the percentage of students receiving a free or reduced price lunch is included as a measure of student socioeconomic status. The district level measure was included because the school level measure was not found. For the time series analysis we controlled for autocorrelation using the Wooldridge (2000) test, which is especially designed for panel data.

Overall, each of the models is statistically significant, with R² values ranging from 0.25 to 0.6. The models seem to do a better job explaining writing, science, and math scores than social sciences, and arts and humanities outcomes. While there is some variation across the models there is much agreement in the effect of certain variables, which should give us some more confidence in their effects on student outcomes.

Table 1: Eleventh Grade Outcomes, Kentucky 2001-2004

<table>
<thead>
<tr>
<th>Variables</th>
<th>Writing</th>
<th>Arts and Humanities</th>
<th>Science</th>
<th>Social Science</th>
<th>Social Science</th>
<th>Mathematics</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Constant)</td>
<td>-97.128</td>
<td>-170</td>
<td>-101.80</td>
<td>-182.812</td>
<td>-147.246</td>
<td></td>
</tr>
<tr>
<td>Per Pupil Spending ($1000)</td>
<td>0.2</td>
<td>0.385</td>
<td>0.687</td>
<td>0.33</td>
<td>0.3</td>
<td>-3</td>
</tr>
<tr>
<td>Student to Computer Ratio</td>
<td>0.06</td>
<td>0.779</td>
<td>0.842</td>
<td>0.752</td>
<td>0.885</td>
<td>0.26</td>
</tr>
<tr>
<td>Percentage of Classrooms with Internet Access</td>
<td>0.007</td>
<td>0.077</td>
<td>0.018</td>
<td>0.036</td>
<td>0.053</td>
<td></td>
</tr>
<tr>
<td>Pupil to Teacher Ratio</td>
<td>0.267</td>
<td>0.496</td>
<td>-0.366</td>
<td>-0.499</td>
<td>0.366</td>
<td></td>
</tr>
<tr>
<td>Percentage of Teachers Certified for Subject and Grade Level</td>
<td>0.183</td>
<td>0.357</td>
<td>0.139</td>
<td>0.209</td>
<td>0.182</td>
<td></td>
</tr>
<tr>
<td>Percentage of Classes Taught by Teachers in a Major/Minor in the Subject Taught</td>
<td>0.297</td>
<td>0.172</td>
<td>0.198</td>
<td>0.229</td>
<td>0.314</td>
<td></td>
</tr>
<tr>
<td>Percentage of Teachers with Masters</td>
<td>0.037</td>
<td>0.132</td>
<td>0.108</td>
<td>0.13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Teaching Experience</td>
<td>0.016</td>
<td>0.026</td>
<td>0.027</td>
<td>0.062</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Per Student Volunteer Hours</td>
<td>0.006</td>
<td>0.653</td>
<td>0.505</td>
<td>0.682</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free and Reduced Lunches</td>
<td>-0.28</td>
<td>-0.253</td>
<td>-0.125</td>
<td>-0.45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Enrollment</td>
<td>0.056</td>
<td>0.087</td>
<td>0.062</td>
<td>0.089</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Daily Attendance/Enrollment</td>
<td>1.152</td>
<td>2.246</td>
<td>1.702</td>
<td>2.046</td>
<td>2.016</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.449</td>
<td>0.338</td>
<td>0.35</td>
<td>0.311</td>
<td>0.177</td>
<td></td>
</tr>
<tr>
<td>Wald χ²</td>
<td>335.41</td>
<td>101.48</td>
<td>70.02</td>
<td>92.09</td>
<td>109.30</td>
<td></td>
</tr>
<tr>
<td>Number of Observations</td>
<td>895</td>
<td>895</td>
<td>895</td>
<td>895</td>
<td>895</td>
<td></td>
</tr>
</tbody>
</table>

*p<.05
What may be most notable are the variables that are not significantly related to the outcome measures. Overall per pupil spending has no significant effect upon most scores implying that what the money is spent for may be more important than how much in total is spent. Of course this does not mean there is no effect, but that we cannot be confident of an effect. In one instance, in the equation estimating student science scores, the impact of spending is negative and statistically significant. The variables dealing with teacher characteristics (aside from the percentage of teachers with a master’s degree) do not have a clearly discernible effect. Possession of a master’s degree appears to be important in affecting science, social studies, and mathematics scores, but not writing or arts and humanities. Characteristics that are much discussed by educators, such as student-to-teacher ratios and teacher experience, do not appear significantly related to these outcomes. The student-to-computer ratio, ironically, has a positive effect upon scores in writing and mathematics.

The coefficients for free and reduced price lunch are, as expected, negative and significant across all models. This is an aggregate measure, so we should not read this as students from poor backgrounds are not achieving, but rather that students in poor districts are not achieving. The attendance variable is positive and significant, suggesting that more attendance at school may increase student learning, at least in the areas examined here. Hours of volunteer work is significantly and positively significant on all scores except writing. In short, it appears that schools with few indigent students, a large proportion of students attending classes, and a good number of parents who are willing to volunteer are performing well.

CONCLUSION

Many of the findings from this research resemble results found by other researchers. The general absence of a consistent effect for school inputs is not surprising to scholars familiar with the empirical research on education production functions, although it may be a shock to the general public. The findings of inconsistent impacts for school inputs are at least somewhat different from those of an LRC research report (2006) that used largely the same data and similar model specifications. That is a puzzle that we cannot explain fully. However, the earlier LRC research did not include per pupil expenditure as an independent variable in either its individual student-level analyses or its school level analyses. Instead, the LRC report includes the input variables examined here without including the overall measure of funding.

The usually positive effect of teacher master’s degrees found in this analysis is at odds with some recent research (e.g., Clotfelter, Ladd, and Vigdor, 2006; Goldhaber and Brewer, 1997), although many of those studies used individual students as the unit of analysis. In this study, which examines more
REFERENCES


The Fragility of Persistently Economically Distressed Counties in Central Appalachia and the Promise of Public Leadership

Christine Emrich, Stephen Lange, Blake Bedingfield, Bonita Friley, Justin May, Trey Rosser & Kyle Yarawsky

Morehead State University
c.emrich@moreheadstate.edu
s.lange@moreheadstate.edu

Appalachia has long experienced economic distress, but significant progress has been made since the establishment of the Appalachian Regional Commission (ARC) in the 1960s. However, many counties in central Appalachia continue to experience persistent economic distress despite several advantages that are normally conducive to progress. This study examines Rowan County, Kentucky in comparison to four other rural Kentucky counties with varying degrees of economic progress. Quantitative comparisons were made on the basis of out-migration, educational attainment, and industrial diversity. Qualitative data was then gathered through interviews to understand decisive events that affected progress as well as long-term causes of change over time. Findings indicate that rural counties that experience persistent economic distress are comparatively fragile. Single events, such as a general economic downturn or departure of a company, can be devastating and long-lasting. At the same time, interviews showed that political and community leadership can be decisive. This includes deliberate long-term planning, communication and cooperation between local governments, business, and community leaders; enthusiastic fostering of small business and local entrepreneurship; and a willingness to revise local policies and regulations (e.g., zoning, alcohol sales, and property taxes) in order to attract business and improve quality of life.

Key Words: Appalachia, Kentucky, economic distress, public leadership, strategic planning

Appalachia has long experienced economic distress, but these issues came to national prominence in the 1960s. The extreme poverty of the region had

---

1 This research was conducted by Dr. Christine Emrich and Dr. Stephen Lange, together with the students of RAPP 300 Seminar in Regional Issues I at Morehead State University. The authors gratefully acknowledge funding from the Appalachian Regional Commission’s Appalachian Teaching Project in support of this project.
began to receive some attention in the media already in the 1950s, but John F. Kennedy's campaign for the Democratic presidential nomination in 1960 focused the nation's attention on central Appalachia, especially West Virginia and Kentucky. The television coverage that this brought to the region, together with literary accounts, such as Henry Cassill's "Night Comes to the Cumberlands" (published in 1962), portrayed the hardships facing the Appalachian people in a way that stunned most Americans. In response to this disturbing and growing awareness, Congress established the Appalachian Regional Commission (ARC) in 1965 following passage of the Appalachian Redevelopment Act, which was heavily influenced by Kennedy's President's Appalachian Regional Commission (PARC) report just two years earlier.

Since then, the ARC has led federal development efforts in the region. The ARC's mandate is to promote sustainable communities and help improve the economy of the Appalachian region. In particular, the Commission focuses on developing and improving infrastructure, completing the Appalachian Development Highway System, increasing employment opportunities and income levels, enhancing human capital (health and education), and fostering local markets that can compete regionally and globally. Currently, the ARC-defined Appalachian region consists of 425 counties spanning thirteen states.

The ARC has been successful in helping to alleviate poverty in the region overall. "Appalachia has come a long way in the past five decades: its poverty rate, 33 percent in 1960, was 16.6 percent over the 2008-2012 period." The ARC has also successfully promoted economic development in the region in several areas. "The number of high-poverty counties in the Region (those with poverty rates more than 1.5 times the U.S. average) declined from 295 in 1960 to 107 over the 2008-2012 period." Most notable is the improvement and expansion of the region's transportation infrastructure via the Appalachian Development Highway System. This infrastructure has been a vital component of the economic success for some communities in Appalachia. Despite these improvements, however, many counties have experienced persistent economic distress compared to the rest of the region and the country. A comparison of counties in the Appalachian region shows that those in central Appalachia have made the least progress since 1960. In particular, eastern Kentucky contains the largest cluster of economically distressed counties in the Appalachian region (Figure 1). Furthermore, even rural communities in central Appalachia with many seeming advantages (e.g., major educational institutions, major medical facilities, manufacturing, major retail stores, and good transportation access) have not made much economic progress since 1965. This limited

---

6 "The Appalachian Region."
compared to other rural Kentucky counties with varying levels of economic progress. Two basic questions were investigated:

1. What factors may have contributed to Rowan County's persistent economic distress?
2. How does Rowan County's community development and economic history compare with other rural counties in Kentucky?

BACKGROUND

The ARC's Distressed Counties Program

The ARC created a Distressed Counties Program in 1983 to address unmet needs of the poorest counties in Appalachia. Under pre-1983 guidelines, these counties were too poor to qualify for federal aid to build public facilities. In 1983, the ARC began providing special funds to these counties focusing on providing water and wastewater facilities and literacy training. Annual ARC budgets aim to give half of all (non-highway) grant aid to distressed counties.4

Since 1983 the ARC has used different approaches to identify economically distressed counties and its programs have focused on various strategies to decrease poverty in these areas. Until 2006, the Commission's approach generally involved (a) comparing a county's per capita market income, poverty, and three-year unemployment rates to national averages and (b) determining if the resulting ratios met or exceeded predetermined thresholds. In this approach, distressed counties were defined as those whose poverty and three-year unemployment rates were at least 150 percent of the national averages, and whose per capita market income was less than 67 percent of the national average. Alternatively, counties were also considered distressed if they met the threshold on either the unemployment or income indicator and had poverty rates that were at least twice the national average. Counties not classified as distressed were placed into one of three additional categories (transitional, competitive, or attainment) using different threshold values.

Since 2006, the ARC has modified this framework and applied it nationally. Values of per capita market income, poverty, and three-year unemployment for each of the 3,104 counties in the U.S. are compared to national averages, put in rank order, and then placed into one of five categories: distressed, at-risk, transitional, competitive, or attainment. The worst 10 percent of all U.S. counties are labeled distressed; many of these counties


17 ECONOMIC DISTRESS, FRAILTY AND LEADERSHIP

are found in central Appalachia. The ARC's distressed counties map series highlights the persistent clustering of distressed counties in eastern Kentucky over the past fifty years. The only counties in Kentucky to achieve anything but distressed or at-risk status are generally found adjacent to metropolitan areas. The most rural counties remain the most impoverished.

Factors affecting economic growth: economic diversity, outmigration, education, health care, and social capital

What factors may account for the observed patterns of economic and community progress in Appalachia? Ideas and strategies from many fields have contributed to an understanding of the characteristics of well-developed communities and some consensus as to how to measure such development.

Public officials and leaders have long sought to develop and maintain a diversity of industrial activities and occupational opportunities in their communities as a means of reducing the impact of economic shocks (e.g., resulting from major changes in the employer base). Many studies have demonstrated that higher levels of economic diversity are associated with greater economic stability. For example, Dissart's comprehensive literature review notes that "...the greater the variety of industries in a region...the less likely a region is to suffer severe...economic decline." However, the relationship between economic diversity and economic growth is less clear and may depend on how economic diversity is measured (e.g., industrial diversity or occupational diversity), on county character (e.g., urban or rural) or economic status (e.g., distressed or competitive), and regional context.

In addition to economic diversity, a second factor is out-migration. As late as the 1990s, there has been a long-term trend of a net movement of people away from rural areas to more metropolitan areas. As emphasized in Tickamyer and Duncan, rural communities have long struggled with unemployment; rural residents have coped with this in a number of ways including holding down multiple jobs and seeking better opportunities in urban areas. The decline of small rural communities is often attributed to such outmigration. Long


reported that rural workers generally earn less than urban workers due to the higher proportion of older, less educated, and often more disabled workers present in rural areas. Similarly, Mils and Hatzidakis suggest that weak job prospects in non-metropolitan areas are a major factor contributing to increasing outmigration of highly educated youths from these areas. This trend, coupled with an aging labor force, makes it difficult for non-metropolitan areas to maintain a strong and competitive labor force. Obermiller and Howell demonstrate that migrants to Appalachia were not only less educated than those leaving the region, but also held less-skilled jobs that paid low wages. Renkow found that "roughly one-third of new rural jobs are filled by (non-residents) in-commuters," while Tickamyer and Duncan note that new industries in rural areas sometimes import their own highly skilled laborers. As a result, outmigration of more educated and skilled labor, in-migration of less educated and unskilled labor, and in-commuting of highly-skilled labor from outside areas all contribute to high rates of unemployment and poverty in rural Appalachia.

Third, while empirical evidence suggests a strong overall correlation between educational attainment and prosperity, there is a lack of consensus regarding relationships between specific educational attainment levels and specific levels of socioeconomic success. And, although it is recognized that more education generally leads to higher-level employment post-secondary education is not a guarantee of economic prosperity. For example, Parkansky and Reeves point out that the substantial increase in college graduates in Appalachia between 1970 and 1990 did not result in increases in family income.

Although post-secondary educational attainment may not guarantee economic growth or community prosperity, the literature does suggest a strong relationship between educational attainment and socioeconomic status. For example, Glaeser and Portin report that economically distressed counties are generally characterized by both low education rates and skilled labor shortages. A study by Ziliak found a strong relationship between low levels of education and low wages in Appalachia. However, Killian and Parker identified factors other than educational attainment that may be important in fueling a region's economic growth. For example, they note local industrial diversity as being one of these key factors, underscoring the idea that community economic development is a multi-faceted process.

Fourth, many scholars argue that an unhealthy populace will not be able to participate fully and productively in the work force, thus hindering economic growth. Doeksen and Schott conclude that a viable health sector is a key component of a rural community's infrastructure and development. The attraction of new firms to provide jobs and economic growth in a community can be extremely difficult if quality medical services are lacking. Three main problems adversely affect the quality and availability of health care in many areas of Appalachia. These are, "(a) the accessibility of health-care services to all citizens within the region, (b) the education of health professionals, and (3) the cost and quality of health services."

---

12 Mills and Hatzidakis, "Migration of Young Adults," 329.
the importance of providing culturally sensitive health-care services.\textsuperscript{44} As Baldwin notes, "rural residents must often travel hours to consult specialists, and many rural communities lack even primary care physicians."\textsuperscript{45}

And fifth, there is a growing body of research showing significant associations between "social capital" variables and economic outcomes. The literature suggests that community planners who actively engage local citizens in planning generate more economic development than those who employ a more bureaucratic process. For example, Kosten observes that "[o]ne of the numerous weaknesses of centrally designed programs is that planners proceed as if they were writing on a clean slate and possessing all the knowledge relevant to improving community life."\textsuperscript{46} Moreover, corporate decentralization may be weakening local civic leadership.\textsuperscript{47} An emerging approach is that of bottom-up development, where community input is sought and existing community assets are built upon.\textsuperscript{48} In other words, communities generally fare better when not only leaders and business owners, but also residents themselves, have a personal stake in community outcomes.

Knack and Keefer found that social capital positively influenced the performance of national market economies.\textsuperscript{49} Similarly, Olferting found that strong cooperative norms and civic involvement begat regional partnerships and that regional economic development strategies are effective and on the rise.\textsuperscript{50} Finally, Mencken, Bader, and Polson demonstrated a number of positive economic effects (e.g., increased earnings and employment) associated with community engagement in Appalachia, particularly in civic-oriented religious organizations.\textsuperscript{51}


Overall, the factors affecting economic growth are numerous, complex, and interrelated. The diversity of the economy, out-migration/in-migration, commuting of a skilled and educated labor force, levels of educational attainment, health care availability and quality, and a community's social capital all combine to influence economic and community development. How each of these factors contributes to and what degree is not clear, however, and likely varies significantly from community to community. As a result, individual case studies and subsequent comparisons may be useful in determining the complex interplay of these factors in persistently distressed counties in central Appalachia.

**Research Hypothesis**

The literature review suggests that economic status is associated with economic diversity, out-migration, educational attainment, health care, and social capital. However, due to data availability constraints, the scope of this study was limited to examining only three of these important variables: level of out-migration, level of educational attainment, and level of industrial diversity. In order to help understand what may have contributed to Rowan County's lack of economic progress so far, the first research hypothesis posed was:

**Persisted economic distress in Rowan County, KY between 1970 and 2000 was associated with**

(a) out-migration, (b) lower levels of educational attainment, and (c) lower industrial diversity when compared to non-Appalachian Kentucky and the U.S.

This addresses the first question posed earlier: What factors may have contributed to Rowan County's persistent economic distress? The second question, "How does Rowan County's community development and economic history compare with other counties in Kentucky?" is addressed by the second research hypothesis:

Three of the key factors responsible for Rowan County's persistent economic distress between 1970 and 2000 (out-migration, lower levels of educational attainment, and lower industrial diversity, as well as its economic history, are similar to other persistently distressed counties in Kentucky), average counties that have prospered beyond distressed have successfully overcome these obstacles and will show a different economic history.

**Methods**

This study combined qualitative and quantitative methods to compare and contrast historical economic trends for a carefully selected set of five rural counties in Kentucky that have been both more and less economically successful since 1960: Bath, Boyle, Fleming, Rowan, and Washington. The selection of all Kentucky counties helped to control for differences in state budgets, laws, and regulations. Quantitative analysis of primary indicators was supplemented with historical case studies for each of these five counties in
central and eastern Kentucky. This comparative case study approach aimed to "...reassess generalizations about an underlying commonality..." specifically, factors that have contributed to stimulating and sustaining greater economic growth in some rural counties over others. As described below, five county cases were chosen to represent the cross-section of economic growth trajectories and socio-demographic conditions found in rural central/eastern Kentucky.

Selecting the study counties

Selecting the study counties involved five steps. First, a modified version of the ARC’s 2006 distressed counties classification methodology was utilized to determine the economic status (i.e., distressed, at-risk, transitional, competitive, attainment) for each of Kentucky’s 120 counties in 1960, 1970, 1980, 1990, and 2000. (The ARC’s 2006 classification approach was utilized in this study as opposed to the post-2006 approach due to the lack of information on all U.S. counties needed to employ the latter approach.) The ARC’s 2006 classification scheme is based on the three-year unemployment rate, poverty rate, and per capita market income. This was modified due to data constraints in this project, such that classifications were made on the basis of one-year unemployment rate, poverty rate, and per capita income variables obtained from the U.S. Census and SocialExplorer.com websites. A very close correspondence was found between the ARC’s and this project’s economic status classification results for the Appalachian Kentucky counties in each period (results not shown). ESRI’s ArcGIS Geographic Information Systems (GIS) mapping software was used to generate five economic status maps using the modified approach, each showing the economic status for every Kentucky county in 1960, 1970, 1980, 1990, and 2000 (Figure 2).

The second step in selecting counties for this project involved filtering the list of all Kentucky counties using the U.S. Department of Agriculture’s (USDA) 2003 Rural-Urban Continuum Codes.38 Counties with a code of 5, 7, 8, or 9 (Table 1) were retained and all other counties were deleted from the analysis. In the third step, the economic status for each of the remaining counties was examined over the 1960 to 2000 period in order to identify counties that had experienced some change in status over this period; counties that did not (e.g., those that were classified as distressed in all five periods) were removed from further analysis.


Table 1. Rural-Urban Continuum Codes used in this study (USDA)

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metro counties:</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Counties in metro areas of 1 million population or more</td>
</tr>
<tr>
<td>2</td>
<td>Counties in metro areas of 250,000 to 1 million population</td>
</tr>
<tr>
<td>3</td>
<td>Counties in metro areas of fewer than 250,000 population</td>
</tr>
<tr>
<td>Non-metro counties:</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Urban population of 20,000 or more, adjacent to a metro area</td>
</tr>
<tr>
<td>5</td>
<td>Urban population of 20,000 or more, not adjacent to a metro area</td>
</tr>
<tr>
<td>6</td>
<td>Urban population of 2,500 to 19,999, adjacent to a metro area</td>
</tr>
<tr>
<td>7</td>
<td>Urban population of 2,500 to 19,999, not adjacent to a metro area</td>
</tr>
<tr>
<td>8</td>
<td>Completely rural or less than 2,500 urban population, adjacent to a metro area</td>
</tr>
<tr>
<td>9</td>
<td>Completely rural or less than 2,500 urban population, not adjacent to a metro area</td>
</tr>
</tbody>
</table>

The fourth step involved scrutinizing the economic status 'trend' for each of the remaining 29 counties. Each county on this list was categorized as having experienced: (a) constant improvement (14 counties); (b) constant decline (1 county); (c) mixed improvement (14 counties). Constant improvement counties showed steady improvement in economic status between 1960 and 2000. Constant decline counties exhibited a steady decrease in status over this period. Mixed improvement counties ended the study period at a higher economic status level than where they began, but they had experienced one or more periods of decline between these two points. Those counties experiencing constant decline were eliminated from the list.

Finally, the fifth step reduced the list of remaining counties to the final five primarily on the basis of geographical proximity. Counties more than two hours distant from Rowan County were eliminated. However, special attention was given to selecting a number of counties from each of the two economic status 'improvement' categories (i.e., constant improvement and mixed improvement). Table 2 shows the economic status (as determined by this project) and the USDA Rural-Urban Continuum Code for each county in this final group.

Table 2. Economic status* and Rural-Urban Continuum Code** for the final set of five counties (1960-2000).

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bath</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>AR</td>
<td>8</td>
</tr>
<tr>
<td>Boyle</td>
<td>AR</td>
<td>AR</td>
<td>T</td>
<td>AR</td>
<td>C</td>
<td>7</td>
</tr>
<tr>
<td>Fleming</td>
<td>D</td>
<td>AR</td>
<td>AR</td>
<td>AR</td>
<td>AR</td>
<td>7</td>
</tr>
<tr>
<td>Rowan</td>
<td>D</td>
<td>D</td>
<td>AR</td>
<td>D</td>
<td>AR</td>
<td>7</td>
</tr>
<tr>
<td>Washington</td>
<td>AR</td>
<td>D</td>
<td>T</td>
<td>D</td>
<td>T</td>
<td>8</td>
</tr>
</tbody>
</table>

*D = distressed; AR = At-Risk; T = Transitional; C = Competitive

**See Table 1 for code descriptions.

Quantitative data and analysis

Data for the key indicator variables examined in Hypotheses 1 and 2 (out-migration, educational attainment, and industrial diversity) were obtained for all 120 counties in Kentucky as well as average values of these variables for the United States. Specifically, decennial census data were downloaded for the period 1970-2000 (1960 data were not used in this analysis since the ARC was not founded until 1965) from the U.S. Census, Social Explorer.com, and ARC Online Resource Center websites. These data were then compiled into a master spreadsheet in Microsoft Excel prior to further processing and analysis.

Changes in the total population of each county were examined for evidence of out-migration. Educational attainment data were placed into four categories (reflecting the terminal level of education): less than high school, high school, some college, and bachelor's degree or higher. The standard industrial sector classifications were aggregated into seven sectors that were expected to reflect the major employment trends in Kentucky over the 1970-2000 period: goods and services, education, manufacturing, medical, agriculture and mining, construction, and professional.

Qualitative data and analysis

There is no substitute for actually speaking with local public officials when attempting to understand the complex set of circumstances that have contributed to a community's economic progress (or lack thereof) over time. Therefore, a structured open-ended interview technique was used to collect information on historical economic conditions from elected and other public officials in each of the five study counties, such as the mayor, city manager, county judge-executive, Chamber of Commerce executive director, and economic/industrial development council executive director. This approach was utilized in order to obtain background, contextual, and historical
information for each county, which helped to explain the causal events behind the results from the quantitative analysis of key indicators.

Up to five officials in each county were contacted via telephone to request appointments for in-person interviews. Three to five officials from each county were then interviewed using a fixed list of primary questions and follow-up questions (Table 3). Information from each of the 20 interviews was typed into a document on a laptop by at least one interviewer.

Table 3. List of interview questions.

<table>
<thead>
<tr>
<th>Primary Interview Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the county followed a strategic economic development plan?</td>
</tr>
<tr>
<td>a. If yes, since when?</td>
</tr>
<tr>
<td>b. If yes, how would you characterize your strategic plan?</td>
</tr>
<tr>
<td>2. In the past, what initiatives have been used in the county to create economic development?</td>
</tr>
<tr>
<td>a. Were those initiatives successful/did they make a difference?</td>
</tr>
<tr>
<td>3. What events have had the biggest economic impact within the county since 1970?</td>
</tr>
<tr>
<td>a. Which event do you think had the greatest impact?</td>
</tr>
<tr>
<td>4. What have been the biggest economic setbacks within the county since 1970?</td>
</tr>
<tr>
<td>a. Which event do you think had the greatest impact?</td>
</tr>
<tr>
<td>5. What is the best approach for moving the county forward economically? In the short-term? In the long-term?</td>
</tr>
<tr>
<td>6. What are the obstacles to economic development within the county?</td>
</tr>
<tr>
<td>7. Are there any public policy/issue/issue/ordinance that are in place that may hinder economic development? Local? State? Federal?</td>
</tr>
<tr>
<td>8. Has the county received any federal or state economic aid that has contributed to economic growth?</td>
</tr>
<tr>
<td>9. Is there a strong connection between residents and local leaders?</td>
</tr>
<tr>
<td>a. How do citizens provide input to local leaders?</td>
</tr>
<tr>
<td>10. How closely do city council and county government work together?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Possible Follow-Up Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does local government work with ___ to foster economic development? How closely and in what way?</td>
</tr>
<tr>
<td>a. School board</td>
</tr>
<tr>
<td>b. Health care</td>
</tr>
<tr>
<td>c. Business</td>
</tr>
<tr>
<td>d. Property owners, etc.</td>
</tr>
</tbody>
</table>

A basic thematic analysis approach was used to evaluate the set of interviews for each county, from which a county summary was compiled. This analysis involved identifying the major themes responsible for economic progress or setbacks that emerged across all of the interviews for an individual county (e.g., city-county collaboration, strategic planning, and infrastructure development). Next, a 'master' summary was compiled using all five county-level summaries in an attempt to identify common strategies, policies, and procedures that had positively or negatively contributed to economic growth.

RESULTS AND DISCUSSION

By combining qualitative and quantitative analyses this study was able to identify five major themes that appear to be critical to stimulating and sustaining economic growth in the study counties: (1) Leadership, (2) Infrastructure, (3) Education, (4) Financial Resources, and (5) Quality of Life. A discussion of these themes follows the presentation of the qualitative results for individual counties. Results are presented first for Rowan County, and then for the comparison counties: Bath, Boyle, Fleming, and Washington. These results will help address the questions (and corresponding research hypotheses) posed earlier, namely 'What factors may have contributed to Rowan County's persistent economic distress?' and 'How does Rowan County's community development and economic history compare with other counties in Kentucky?'

Rowan County

Figures 5 and 4 present quantitative results comparing Rowan County to non-Appalachian Kentucky and the United States, as per Hypothesis 1. (While Appalachian eastern Kentucky is not explicitly part of the hypothesis, it is shown for context.) There was no out-migration in Rowan County between 1970 and 2000 (results not shown). As shown in Figure 3, Rowan County had a higher percentage of people with a Bachelor's degree or higher compared to the other regions. Moreover, Rowan County followed the common trend of decreasing numbers of people with less than a high school education.
However, approximately three out of five people in Rowan County still had not attained greater than a high school degree by 2000.

Figure 3. Educational attainment levels for Rowan County compared to average values for Appalachian eastern Kentucky counties (EKY), non-Appalachian Kentucky counties (Other KY), and all U.S. counties.

With regard to industrial diversity, the economy of Rowan County appeared to be dominated by the ‘education’ and ‘goods and services’ industrial sectors (Figure 4), which together comprise approximately 60% of the available jobs. Manufacturing has historically been lower in Rowan County than in other regions, though there was a small increase between 1990 and 2000. There was also small, but steady, growth in the medical field.

Figure 4. Industrial diversity for Rowan County compared to average values for Appalachian eastern Kentucky counties (EKY), non-Appalachian Kentucky counties (Other KY), and all U.S. counties.

These results only partially support the first research hypothesis. Compared to non-Appalachian Kentucky and the United States, Rowan County did have somewhat lower levels of industrial diversity and overall educational attainment. However, there was no out-migration from Rowan County during the study period. As a result, two of the three factors suspected of contributing to Rowan County’s persistent economic distress do appear to be relevant—industrial diversity and educational attainment; however, it is not likely that they are solely responsible. Also, Rowan County’s lack of a net out-migration tends to be an advantage to economic growth as indicated in the literature review, which means that there are likely to be additional factors at play that account for the county’s persistent distress.

County comparisons:
The same three variables that were examined for Hypothesis 1, out-migration, educational attainment, and industrial diversity were also analyzed to investigate Hypothesis 2. Results (not shown) indicated that there was no out-

---

34 Each of the seven industrial sectors shown above represents an aggregation of more detailed sector information. These seven aggregated sectors were created in order to simplify and focus the analysis. Results for the ‘agriculture and mining’ and ‘professional’ sectors are not shown here – please see Figure 6.
migration in Fleming, Boyle, and Rowan counties over the study period; however, minor out-migration occurred in Bath and Washington counties between 1980 and 1990 (less than 540 people per county).

Not surprisingly, more people living in Rowan County received a bachelor’s degree or higher compared to any other county during the study period (Figure 5). This is most likely due to the combination of university faculty and St. Clare Regional Medical Center personnel. However, Boyle County (home to Centre College and a hospital) had nearly caught up to Rowan County’s numbers by 2000. The number of people whose education ended after high school graduation in Rowan County was generally lower than the figures for the other counties, likely as a result of its higher four-year college graduation rate. High school dropout numbers (Less than High School) for Rowan County fell in between those of Bath and Fleming counties (which were higher), and Boyle and Washington counties (which were lower). The numbers of people who attended some college, but who had not received a bachelor’s degree, were fairly similar among all counties, reflecting the close proximity of Kentucky Community and Technical College System (KCTCS), vocational, college, and university campuses. It is important to note that this category of (terminal) educational attainment includes people that may have received an associate’s degree or other professional degree or certificate.

Figure 5. Educational attainment results for Rowan County compared to Bath, Boyle, Fleming, and Washington counties.*

---

* Each category represents the terminal level of educational attainment.

---

Figure 6. Industrial diversity results for Rowan County compared to Bath, Boyle, Fleming, and Washington counties.*

---

* Each of the seven industrial sectors shown above represents an aggregation of more detailed sector information. These seven aggregated sectors were created in order to simplify and focus the analysis.
Industrial diversity in Rowan County was somewhat smaller than that in the other counties examined in that such a high proportion of jobs were found in the education sector (Figure 6). While this proportion steadily declined after 1980, employment in this sector remained above 20% in 2000. Employment in the education sector showed modest growth between 1970 and 2000 in Boyle and Washington counties, while it had leveled off in Bath and Fleming counties by 1990. Between 1970 and 2000, Rowan County had a much smaller manufacturing base compared to Bath, Boyle, Fleming, and Washington counties, though Rowan did see a slight increase between 1990 and 2000. Along with Boyle County, Rowan County had the highest percentage of jobs in the goods and services sector over time, although employment in this sector had nearly converged in all five counties by 2000. Boyle and Rowan counties had the lowest employment in agriculture and mining over time but, by 2000, the proportion of jobs in this sector had so dramatically declined in Bath, Fleming, and Washington counties that it nearly equaled the values for Rowan and Boyle counties. There was a steady rise in employment in the medical sector between 1980 and 2000 in all five counties, while jobs in the professional sector declined or leveled off. Finally, employment in the construction sector exhibited modest growth in Bath, Fleming, and Washington counties between 1990 and 2000; construction jobs in Boyle remained flat over the study period, while a small increase was seen in Rowan County between 1990 and 2000.

On the basis of these results, the second hypothesis is only partly supported. Out-migration did not account for the differences between Rowan and Boyle counties, the latter being the most economically successful county. With regard to educational attainment, the small difference in the proportion of the population with a bachelor's degree or higher between Rowan and Boyle would seem to indicate that this was not a factor that accounts for the economic differences. Lower high school drop-out rates, however, did seem to be noticeably different between the county showing the most economic progress (Boyle) and the other counties, weakly supporting the second hypothesis. With regard to industrial diversity, no clear pattern emerged that separated the more successful counties (Boyle and Washington) from the more persistently troubled counties (Bath, Fleming, and Rowan), so the second hypothesis is not supported here either. Once again, these three variables did not appear to account for differences in economic progress of these five counties and there are likely to be additional factors at work that account for Rowan County's persistent lack of economic progress. To investigate the second hypothesis further, then, the qualitative data from the case study interviews must be considered.

Case study interviews: major themes

Five major themes emerged from the 'master' thematic analysis of the combined five-county interview dataset: (1) Leadership, (2) Infrastructure, (3) Education, (4) Financial Resources, and (5) Quality of Life. The results suggest that leadership, the first major theme, appears to be the key attribute making it possible for a community to work, as strategically as possible, towards the remaining four themes: enhancing infrastructure, expanding educational assets, obtaining vital financial resources, and improving quality of life. The main characteristics of good leadership that were identified in this study on the basis of the interviews were a positive attitude, a long-term vision, a personal commitment to growth in the community, dissatisfaction with the status quo and 'how it's always been done', a willingness to reach out across the community and collaborate with others, being open to and actively seeking out new ideas and opportunities, a willingness to work longer hours and take more personal and political risks, and a tendency to be more connected and responsive to local residents. Counties whose leadership has been characterized by all or most of these traits have generally made the most economic progress since 1970. A large part of this growth was attributed to collaborative strategic planning efforts undertaken by these energetic and forward-thinking leaders — the more sophisticated the efforts, and the longer they had been going on, the more economic progress has been made.

This type of leadership also lead more often to collaboration between city and county governments, as well as partnerships between local government entities and industry, business, educational institutions, state government agencies, and neighboring counties, all of which were seen as critical components in creating economic success. This type of teamwork facilitated and optimized communication, resource utilization, and grant writing efforts within each county and between counties over time. In addition, city and county planning and zoning activities were more successful when key stakeholders were brought to the same table, which these leaders were able to do.

Improving and extending infrastructure was a high priority in all five of the study counties. In particular, officials spoke about the importance of having high-quality water and sewer services available to support business and industrial recruitment efforts as well as local residents throughout the county. Additionally, the presence of one or more industrial parks was seen as a major community asset, especially if it had water and sewer infrastructure in the ground and one or more buildings already in place that were available for lease or minor renovation. While some of the industrial parks had one or more vacancies (some were nearly empty), local leaders were almost unanimous in their view that these sites were foundational to their ability to attract new businesses and to become a vital regional hub. Other essential infrastructure that was widely viewed as critical to making solid economic progress included...
sufficient available land and reasonable property values as well as good access to road, rail, and water transportation networks. For example, the lack of a nearby interstate or major highway was frequently noted as a major impediment to economic growth.

Good access to higher education, particularly vocational and community college, was found to be an important component in all five communities’ formulas for attracting and retaining business and industrial employers. In fact, a number of the counties had actively and successfully petitioned for a new KCTCS campus to be built in their community. Moreover, three of the counties were home to a four-year college or university. These two- and four-year institutions were viewed primarily as vital training grounds for the local and regional workforce. However, they were also seen as places that could produce a more educated and involved local citizenry and, consequently, local leadership and innovative, forward-looking ideas.

Every county in this study had obtained significant funding from state and federal agencies, primarily in support of infrastructure enhancement. Major funding in this realm went to projects for extending water and sewer lines, upgrading sewage treatment plants, developing industrial parks and regional airports, providing tax incentives for new businesses, and extending and improving roads and highways. Other areas of support included the creation of KCTCS campuses, the redevelopment or enhancement of downtown areas, building regional medical facilities, job training programs, and strategic planning initiatives. Officials in each county stressed the crucial role that such state and federal aid has played over time in helping their community become more competitive in attracting and retaining new businesses and industry, as well as in improving the general quality of life for residents and visitors.

The last of the five major themes, quality of life, was strongly influenced by each of the first four themes: leadership, infrastructure, education, and funding resources. First, strong, collaborative, and visionary leadership was viewed as foundational to creating a thriving and sustainable community, as well as one capable of minimizing the effects of economic downturns. Second, local officials noted that widespread access to water and sewer services was an important goal since it was expected to contribute to improved public health and sanitation conditions. Third, the presence of institutions of higher education in the community was seen by county leaders as a key component in improving employment opportunities for residents, educating future leaders and other professionals, and helping to minimize the ‘brain drain’ phenomenon that every county experiences. And fourth, grant and other aid from state and federal agencies has been a primary mechanism that well-led counties have utilized to improve the functionality and appearance of their communities—ranging from better access to medical care to new businesses to enhanced educational opportunities to downtown redevelopment to the beautification of roadways, parks, and trails. In addition to these four themes, officials observed that the prohibition status of their city and/or county has had a major influence on the quality of life in their community in a number of ways. In purely economic terms, the inability of a city or county to sell or serve alcohol has hindered business recruitment efforts—not only restaurants but also industrial manufacturers—and thwarted efforts aimed at attracting new residents.

All of this, in turn, limits local governments’ revenues through business taxes, food and alcohol sales taxes, and local employment taxes. Both in itself and through this lost revenue, the quality of life of the community is diminished in many people’s view.

CONCLUSIONS AND RECOMMENDATIONS

The interviews showed that relatively small rural counties experiencing persistent economic distress are very fragile. Due to their fragility, there are not large, consistent patterns such that if a county does ‘x’, then ‘y’ will result. Rather, single good events, such as effective leadership or planning or grant success, can lead to quite significant positive improvements; but similarly single bad events, such as one company leaving, can be devastating. For these reasons, such counties cannot absorb economic downturns as well as larger and more developed counties because they do not have the breadth and the depth in the community and economy. They can be slower to rebound as well, since they may not have the leadership or resources to take quick advantage of new opportunities. As a result, one significant change in such counties can make a large difference, which may be what lies behind the difficulty in identifying generalized trends.

This having been acknowledged, the major common themes identified above on the basis of our county interviews allow for some recommendations to be presented here that aim to help Rowan County and similar rural communities improve their current economic status and future prospects. It is hoped that these strategies and suggestions will be a source of encouragement and guidance for local leaders and citizens as they work together to create more successful and sustainable communities.

Results from this study suggest that deliberate, long-term strategic planning plays a critical role in driving community success. Such planning forces communities to set carefully considered and attainable goals, to think about their long-term vision for their community, to come together and produce common goals that have broad stakeholder input and buy-in, to examine available and potential resources (financial and other), and to develop and enhance infrastructure (water, sewer, etc.) systematically and deliberately. Such strategic planning also causes local leaders and the community to look on themselves as part of a region, and hence to break down traditional county barriers and work collaboratively to develop the workforce, improve the quality of life, and attract businesses. It is also important to recognize, though, that it takes time, perhaps a decade or two, for this type of planning to bear fruit in a
particular community. As a result, some communities will catch-up only gradually with their neighbors who already have strategic plans in place or who are further along in developing such plans.

The extent to which strategic planning efforts are successful is largely a function of the degree to which local government and other community leaders and citizens genuinely and effectively cooperate and collaborate with one another – both in the planning process and in the implementation phase. Open lines of communication and a clear understanding of the respective roles and responsibilities of all parties involved are vital to this process. Not only is it essential for city and county governments to work closely together in many areas, but they should also be looking to collaborate with neighboring cities and counties in order to develop strategic plans for the larger multi-county region; and thereby increase efficiencies in service delivery (e.g., emergency response and utilities), take advantage of multi-partner grant opportunities, promote regional tourism, and recruit and retain major manufacturing and industrial businesses.

Welcoming, accommodating, and partnering with local and regional institutions of higher education appears to be another important component to building more successful rural communities. For example, students who attend college or university in a community that supports that institution and openly welcomes them may be more likely to remain in the community after graduation, or to return to live and work (and retire) in the area at a later date. In addition, counties wishing to enhance workforce training opportunities and programs may consider aggressively recruiting a KCTCS or vocational school campus for their community or region (in partnership with neighboring counties).

Promoting local entrepreneurship may offer additional opportunities for struggling rural counties to become more economically viable. Counties that focus on encouraging and supporting local small businesses can take advantage of local skills, knowledge, and resources. Small businesses can help retain local residents as employees and customers, keeping people more connected to their community. Small businesses can also help build a strong and more diverse local economic foundation that is less dependent on outside (especially large) businesses that may come and go – and hence provide a ‘buffer’ against hard economic times.

Counties might also consider focusing on a ‘high road’ rather than a ‘low road’ economic development strategy as they seek to recruit new businesses to their area. Among other things, this means seeking to build economic prosperity and competitiveness on the basis of local resources and attributes, as opposed to merely competing for new businesses by offering cheap land, labor, and energy as well as large tax breaks. Such ‘low road’ development strategies force neighboring counties to compete with one another in a ‘race to the bottom’ while it takes years to recover the initial investment. As acknowledged above, though, heroic efforts are undertaken to attract one major manufacturer through substantial investment and concessions precisely because it can make a dramatic difference in these fragile communities.

On a related note, while many rural counties have concentrated on developing industrial parks as the centerpiece of their economic development plans, having a primary focus on increasing manufacturing jobs may not be a viable long-term solution to increasing employment and promoting economic growth. This is not to say that industrial parks should not be an important element of a county’s strategic plan, since some (particularly regional) parks have proved fairly successful ventures, but results from this study show that they are clearly not a guarantee of future prosperity in and of themselves – as officials in many counties appear to believe. In certain ways they can prove to be a liability in so far as they require a large investment to create and the quick departure of a large manufacturer can devastate a community.

Finally, implementing and/or revising a number of policies and regulations (e.g., zoning, alcohol sales laws, and property taxes) may also help counties attract new businesses and improve quality of life. For example, developing zoning regulations for areas in the community that are currently not zoned, or are not sufficiently zoned, could reassure current and prospective owners that their property values are protected. Moreover, since most U.S. counties are ‘wet’ (allow alcohol sales/service), the ‘dry’ prohibition status that characterizes so many rural Kentucky counties often serves as just one more barrier to attracting new businesses and increasing local tax revenues.

It is suggested that future work should focus on collecting and analyzing other key variables indicated in the literature review as contributing to economic progress in rural areas (e.g., health care accessibility and community involvement). In addition, expanding the county interviews to include both more Kentucky counties with a variety of economic histories as well as counties in other areas of Appalachia would provide a richer qualitative dataset from which to refine this analysis and add to the recommendations offered above.


War Powers in the American Constitutional Scheme: A Legal-Historical Inquiry

Max Guirgis
Shepherd University
mguirgis@shepherd.edu

Since World War II, there has been a significant shift in the balance of war-making power between the executive and legislative branches. Although the Constitution reserves the formal power of declaring war exclusively for Congress, modern presidents have increasingly marginalised Congress in times of international tension or conflict by acting unilaterally without congressional authorization. Congress has lent impetus to this problematic trend by failing to take decisive action whenever its war-making power is usurped by the executive. The War Powers Act of 1973 has not been successful in curbing the exercise and expansion of executive war-making power because Congress gave little or no attention to presidential violations of the Act, thereby undermining its own constitutional role and shifting the power equation in favor of the executive. This paper attempts to delineate the roles that the Framers expected the two political branches to play in regard to war-making and to demonstrate that only Congress has the power to authorize the use of military force.

Key Words: Congress, Commander-in-Chief, Authorization, Military Force, War-making, Declare War Clause, War Powers Act, Quasi War Cases

Since its inception, the United States has engaged in scores of military conflicts, interventions, and operations, though Congress has issued formal declarations of war pursuant to its enumerated powers under Article I, Section 8 on only five occasions, the last of which was World War II.1 The reason being, many presidents have not requested that Congress declare war prior to taking military action in their capacity as commander-in-chief. As Congress avoided confrontation over the decision to use force, presidents have increasingly sidelined Congress in times of international conflict. Thus Congress has culpably condoned, if not promoted, this disposition by its passive acquiescence, symbolic rebukes, and hollow attempts to keep presidential war powers in check. One notable consequence of congressional inaction is a considerable blurring in the boundaries of institutional powers. At present, there is little agreement and much contention and uncertainty about the respective powers of the executive and legislative branches in making war.

The purpose of this paper is to examine the executive-congressional interaction in the context of war-making in an attempt to dispel some of the widespread confusion surrounding this critical area of constitutional law. The paper proceeds as follows. I begin by briefly furnishing the historical background and the constitutional foundation for the war powers. Second, I provide an overview of how modern presidents came to exercise their war powers as a result of decades of congressional silence. Here I also discuss how Congress has attempted to regain its power over war-making. Third, I present the pro-president and pro-Congress arguments, drawing on scholarly discourse and historical documents and writings of importance. Finally, I review some relevant Supreme Court decisions that clarify the roles and responsibilities of the two political branches of the federal government in times of international tension and armed conflict. But while giving equal weight to the two sides of the argument, the paper leans toward the view that the president lacks the constitutional authority to move the country to a state of war without congressional input. It also demonstrates, contrary to White House statements, that any kinetic attack by armed force against an enemy target constitutes an act of war inasmuch as such an attack, by definition, is carried out to destroy or incapacitate the target, and subsequent retaliation and escalation are always likely. Against this factual and analytical backdrop, the paper asserts that it is Congress that has diminished its own authority over war-making by its general reluctance to take adverse action against intransigent presidents who committed military assets abroad without congressional backing.

1 See Michael J. Lotstein, John David Wilks, and Christopher T. Yew, "Reshaping Warfare: How Does the Integration of Space and Cyber Forces Impact a Conventional Commander's Air-Sea Battle Concept?" High Frontier 6, no. 4, (2010): 37. The authors explain that "the threshold for when a hostile action constitutes war is driven by intent and effect. If the intent of an actor is to render military forces incapable of carrying out a defense or to destroy critical infrastructure, military, and coastal networks, or is accompanied by kinetic attacks, then the act constitutes a core Plus." This logical argument is consistent with original constitutional intent and judicial decisions, as will be demonstrated in this paper.
HISTORICAL AND PHILOSOPHICAL ROOTS OF CONSTITUTIONAL WAR POWERS

From the times of antiquity through much of the eighteenth century, monarchies ruled with absolute or near-absolute authority. Even in the Late Middle Ages, when the doctrine of divine right lost its popularity and sway, kings continued to wield extensive influence over their military and naval forces. Once consolidated in power, kings would wage war at their caprice to enhance their wealth, strengthen their states, or expand their dominion. Many kings personally led their armies in combat and fought alongside their subjects, and when they reposed their confidence in able commanders to win battles for them, they still retained the sole right to declare war and continued to assert full control over their military establishments.9

It was not until the politically transformative notions of popular sovereignty and civic republicanism began to take hold in Europe in the mid-seventeenth to mid-eighteenth centuries, and monarchs were dispossessed of governing power and relegated to nominal political roles, that the resolution to make war became the province of democratically constituted assemblies, which were more responsive to the will of the people. Showing no desire in surrendering their newfound power, people asserted their sovereign rights and demanded greater transparency and accountability from their governments.

After all, it was the common people who bore the full brunt of war, as the tradition of warrior-kings ended and the elite political functionaries and their family members became safely distant from the bloody battlefields, and insulated from the direct consequences of their belligerent policies.4

As students of history, the architects of the American Republic were keenly aware of the dangers of unchecked power. They were equally cognizant of the costs of weak and ineffective central authority to a nation. It is an intricate and delicate balance that they labored long and hard to strike, as evident from the animated debates in the Federalist Papers. In Federalist No. 51, for instance, James Madison warned of the tyranny that ensues when unbridled power is exercised over men: “if angels were to govern men, neither external nor internal controls on government would be necessary.”9

Alexander Hamilton, on the other hand, was the Philadelphia Convention’s foremost proponent of broad executive powers. He warned in Federalist No. 70 of the perils of a “feeble executive” and lauded the “energetic executive” as a vital ingredient to the recipe for good governance, and one that is “best calculated to conciliate the confidence of the people and to secure their privileges and interests.”6

Upsetting the balance between power and control would have had drastic effects on the democratic republic the Framers were founding, and they seemed to understand the perils of missing the mark quite well.7 To resolve this contradictory dynamic and avoid the failures of the Articles of Confederation, they sought to create a limited government of checks and balances. Moreover, they followed the separation of powers doctrine, whereby political power is shared and central functions are divided among three fundamental branches of government reinforcing, monitoring, and cooperating with one another. The tripartite structure at the core of the American constitutional system was to prevent any single branch of government, especially the executive, from dominating the other two, or exercising arbitrary power, with the ultimate goals of strengthening the union and preserving public liberty.

With respect to war-making, as the most consequential undertaking a nation can embark upon, the Framers were prudently reluctant to centralize so critical a power in one government branch. A workable balance between legislative and executive influence over war-making could not be correctly achieved without subjecting presidential decision-making to legislative review, thereby limiting the president’s ability to act alone in the name of national

---

9 John Mahy, The Conduct of American Foreign Relations (New York: The Century Co., 1922), 294 (observing that “[]n most centuries, the power to declare war was lodged in the executive”).

9 The American experience was no different. As will be elaborated throughout this study, the Framers “were establishing a representative form of government, hence they deemed it better that the power of waging war, which so profoundly affects the lives and fortresses of the mass of the people, should be in the hands of that branch of the Government which was conceived to be most broadly representative, namely, Congress.” Id.


6 Alexander Hamilton, “Federalist No. 70,” in The Federalist Papers, Gary Willis, ed. (New York: Bantam Books, 1982), 355. Hamilton was influenced in part by the seventeenth-century philosopher John Locke who advocated a strong executive vested with ample parens patriae powers “to do many things of choice, which the Laws do not prescribe.” Locke’s contention that “the Laws themselves should in some cases give way to the Executive Power” was premised on two assumptions: first, “a strict and rigid observation of the Laws may do harm,” and second, “the Law-making Power is not always in being, and is usually too numerous, and so too slow, for the dispatch requisite to Execution.” See John Locke, “The Second Treatise,” in Two Treatises of Government, Peter Laslett, ed. (New York: Cambridge University Press, 1992), 375.

7 The dilemma, as Kenneth Mayer succinctly described it, was that “[t]he executive that is too strong would re-create monarchy; a weak executive would prove unable to stop the government from tumbling into chaos and paralysis.” See Kenneth Mayer, With the Stroke of a Few Executive Orders and Presidential Power (Princeton, NJ: Princeton University Press, 2005), 216.

security, for it was the sovereign who had historically played the ascendant, if not exclusive, role in military affairs. The framers thus divided war-making powers between the two political branches of government to prevent military action unless the executive and legislature are united in a common cause. They assigned the president (per Article II, Section 2) the role of commander-in-chief of the armed forces, putting him personally in charge of protecting and defending the nation, yet reserved the momentous decision of declaring war for Congress so that the president may not take unilateral action or have plenary power over military matters. The congressional power of the purse, in the words of James Madison, would serve as another "effectual weapon" with which the "immediate representatives of the people" could further delay military action if needed, and hence rein in or exact the cooperation of an executive eagerly bent upon the use of force without the requisite level of domestic (or international diplomatic) support.

**WAR-MAKING AND THE POST-WWII PRESIDENCY**

Most presidents until mid-twentieth century had no qualms with the idea that the constitutional power of war-declaration resided in Congress rather than the executive, and were cautious not to engage the country in war without

1 Louis Fisher of the Constitution Project opines that the drafters of the Constitution "placed in Congress the authority to initiate war because they believed that executives, in their search for fame and personal glory, had a natural appetite for war and military initiatives, all of which inflated heavy costs on the interests and liberties of their people." See Chris Edelson, "Obama and the Power to Go to War: The Constitution is Clear: The President Must Make His Case to Congress," Los Angeles Times, August 30, 2013, http://www.latimes.com/opinion/commentary/la-oe-edelson-obama-syria-military-action-20130830,0,2055346.story (accessed April 25, 2014).

2 Precisely stated, the Constitution designates the President as "Commander in Chief of the Army and Navy of the United States," since these were the existing branches of the national military establishment at the time. The phrase "Army and Navy" is thus used in the document as a means of describing all the armed forces of the United States.

3 Madison’s main argument in support of the congressional power of the purse, which is also relevant in the context of war-making, is that it can be a "powerful instrument" by which Congress can reduce "all the overgrown prerogatives of the other branches of the government." James Madison, "Federalist No. 58," in The Federalist Papers, Gary Wills, ed. (New York: Bantam Books, 1982), 296-297.

4 A prominent historical example that the framers were probably familiar with was that of King Charles II (reigned 1660-1685), whose military options were sharply restricted by a parliament that kept a tight hold on the purse strings to exert greater control over the army. See John Childs, *Army of Charles II* (London: Routledge, 2013), 228-229.

5 Congress enacted the War Powers Act in 1973, which has been applied

6 This understanding also guided their conduct of international affairs, as a backdrop over which the president, as head of state, has more direct control than Congress. The turning point, however, seems to have been the Korean War (1950-53), where President Harry Truman sidestepped Congress, calling the U.S. intervention a "police action" in an attempt to explain why he did not need the approval of Congress. Treading the same path, President Lyndon Johnson expanded the U.S. role in Vietnam and fought a protracted war involving some 500,000 combat troops without an actual declaration of war. In 1968, Richard Nixon won a close race, promising to withdraw with honor from Vietnam. Once elected, however, he expanded the war to the neighboring countries of Laos and Cambodia, provoking his critics to joke that he was "widening down the war." After nearly a decade of operating in a "constitutional twilight zone," Congress enacted the War Powers Act in 1973, which has been applied

7 James M. Lindauer, "Cowards, Beliefs, and Scapegoats: Congress and the Use of Force," in *The Use of Force after the Cold War*, eds. H. W. Brands, Darren J. Petrov, and Reynolds S. Kiefer (College Station, TX: Texas A&M University, 2003), 140.

8 Louis Fisher, "The Korean War: On What Legal Basis Did Truman Act?" *American Journal of International Law* 89 (1995): 23. Truman also claimed that he was authorized to take military action without congressional approval pursuant to UN Security Council Resolution 82, which demanded the immediate withdrawal of North Korea. Four decades later, President George Bush Sr. made the same argument for invading Iraqi forces out of Kuwait, but Congress eventually authorized Operation Desert Storm.


10 The Gulf of Tonkin Resolution (passed August 7, 1960), which became the subject of great controversy, was at best a limited political endorsement for President Johnson to repel future attacks or prevent further communist aggression on South Vietnam, but not a congressional decision to wage an all-out, protracted war. In fact, President Richard Nixon continued to broaden the Vietnam War and invaded the neighboring country of Laos in February 1971, even after Congress had twice repealed the Gulf of Tonkin Resolution (in May 1970 and January 1971). See Sam Wilkinson, "From the Gulf of Tonkin to Syria: The Limits of Legislative Enforcement in MUMPs," *Vanderbilt Journal of Transnational Law*, September 27, 2013, http://www.vanderbilt.edu/ijt/2013/09/from-the-gulf-of-tonkin-to-syria-the-limits-of-legislative-enforcement-in-mumps (accessed April 25, 2014).


13 Also known as Public Law 93-148 and War Powers Resolution, which is codified in the United States Code (USC) in Title 50, Chapter 33, Sections 1541-48.
described as the "high-water mark of congressional reassertion in national security affairs." Passed on November 7, 1973 as the Vietnam War was escalating, the Act was designed to sharpen the contours of congressional-presidential war powers, and hence prevent history from repeating itself should the United States be drawn into another international conflict. Against the vehement objections of President Nixon, this piece of legislation was introduced to regulate the conduct of war and establish procedures whereby the president must seek congressional approval to engage in war. More specifically, Section 3 of the Act requires the president to consult with Congress in "every possible instance" before introducing U.S. forces into hostilities (or imminent hostilities). These consultations are to continue as long as the troops remain in deployment, which under Section 5 is limited to 60 days. The deadline can only be postponed if the president notified Congress that 30 additional days are needed to effect a safe and orderly withdrawal of the troops. In spite of these strict limitations, the Act is flexible enough to allow the president to take immediate action without the prior consent of Congress if an urgent situation necessitates, and report to Congress within 48 hours of the commitment of the troops. In any case, the president must remove the troops from hostilities within 90 days absent an affirmative congressional authorization extending the military deployment.

President Nixon unsuccessfully vetoed the War Powers Act because it was widely supported in Congress. In his veto statement, he attacked the 60-day clock in particular, arguing it was an improbable restriction on the operation of the president's commander-in-chief authority, and one that also circumvents the usual bicameral procedure, "with each member taking the responsibility of casting a yes or no vote." Nixon's sentiment was echoed by his predecessors from both parties, as every president has since signed, or at least denounced, the Act — and yet Congress has not undertaken to enforce it despite a pattern of executive defiance.

The first president to violate the War Powers Act was Gerald Ford, who had voted against it as a congressman from Michigan before his appointment as Nixon's Vice President on December 6, 1973. Although Ford was merely reacting to the seizure of the American cargo ship SS Mayaguez by the Cambodian Khmer Rouge navy, he neglected to consult Congress before ordering a military rescue operation. "To set himself apart from Ford, Jimmy Carter supported the Act when he was running for president in 1976," but did not adhere to it either despite boasting of being "the first American president in 50 years who has never sent troops into combat." He too authorized a military rescue mission without a congressional resolution. The failed covert mission (Operation Eagle Claw) was an attempt to free the 52 American embassy workers held hostage in Iran.

Ronald Reagan was the first president to commit multiple violations of the War Powers Act. In addition to sending a peace-keeping force to Lebanon in 1982 without consulting Congress, he invaded Grenada in 1983 (Operation Urgent Fury) with 7,000 American troops to forestall the installation of a Cuban-backed communist government, and ordered the aerial bombing of Libya in April 1986 (Operation El Dorado Canyon) in retaliation to the bombing of a Berlin nightclub by Libyan terrorists. Reagan's Vice President, George H. W. Bush, did not comply with the Act either when he assumed the powers of the presidency. His violation was carrying out an unauthorized offensive in Panama in December 1989 (Operation Just Cause) with a military force of 14,000. The stated mission was to topple the regime of General Manuel Noriega, who was also believed to preside over an international criminal syndicate dealing in illicit drugs. A few years after leaving office, President Bush sent a letter to Rep. Hyde applauding him for "opposing the War Powers Resolution as an unconstitutional infringement on the authority of the president.'

President Bill Clinton also failed to check with Congress before sending some 20,000 armed forces to Haiti in September 1994 (Operation Uphold Democracy) to oust the military junta and restore President Jean-Bertrand Aristide to power. It was not until U.S. military personnel had landed in Haiti that both houses of Congress passed resolutions supporting the president and the troops without an outright endorsement of the deployment decision. Clinton committed yet another violation of the Act by intervening in the
Kosovo War in March 1999 (Operation Allied Force) with a bombing campaign that lasted until June.28 His successor, President George W. Bush stands out as the only president who did not violate the War Powers Act, though he expressed strong reservations against it. A self-described “War president,” Bush sought and obtained an authorization to use military force for the Iraq war, but insisted that his “request for congressional support” was not so be construed as sanctioning the constitutionality of the Act.29 Even when he later informed Congress of the launch of the military operations in Iraq, President Bush stated that his actions were based on the constitutional powers of the president rather than a congressional authorization.30

Most of the presidents who disregarded the Act reported to Congress after the fact. In response to the congressional clamor, they offered a variety of pragmatic reasons for their unilateral actions, including strong public support, the low level of or absence of casualties, the promotion of democratic ideals, the potential human and moral costs of inaction, and acting as part of UN-sanctioned multinational effort. No president was self-justifying, but some were more self-justifying than others. President Clinton, for instance, maintained that his military activities in Bosnia fell within the boundaries of the law because Congress had supposedly approved the mission by funding it.31 An effort Congress reacts to the violations with the same surplin indifference it had exhibited before passing the Act, and failed to reassert the political will to take any president to task. The initial flurry of reactions quickly subsided and fizzled into stasis. Virtually nothing substantive followed the usual rhetorical parties and theatrical condemnations.32 So have modern presidents come to believe that consulting with Congress prior to minor military engagements was an option rather than an obligation, even in absence of a direct national security threat.

Following the precedent set by several of his predecessors, President Barack Obama utilized his commander-in-chief powers to launch an air war against the Libyan regime of Muammar Gaddafi in March 2011. Without seeking a congressional vote, he ordered U.S. military forces to commence fly zone operations and provide air cover for the rebels, although he had ample time and opportunity to consult and consult with Congress in advance.33

28 This NATO-led operation of 1999 was preceded by earlier violations. Clinton’s 1994 air strikes against the Serbian militia were not authorized, nor was his deployment of 20,000 troops to Bosnia in 1995. Prior to the troops’ deployment, the then-Senate Majority Leader Bob Dole said to the press that “No doubt about it, whether Congress agrees or not, troops will go to Bosnia.” In so reacting to the president’s plan, Congress gave him tacit permission to wage war at his free will and made itself irrelevant as a branch of government. See John M. Broder and Elisabeth Shogren, "Clinton Says U.S. Values Require Troops for Bosnia," Los Angeles Times, November 28, 1995, http://articles.latimes.com/1995-11-28/news/mn-7024_1_world-war-ii (accessed April 25, 2014).


30 As he signed House H.J.Res. 77 into law, President Bush made the following statement: “As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President’s constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution.” See U.S. Library of Congress, Congressional Research Service, Declarations of War and Authorizations for the Use of Military Forces: Historical Background and Legal Implications, by Jennifer K. Elliott and Matthew C. Weed, CRS Report RL31133 (Washington, DC: Office of Congressional Information and Publishing, January 11, 2013), 13.


32 This was a change of heart for Barack Obama who had expressed quite an opposite view in 2007 as a presidential candidate. In a Boston Globe interview, then-Senator Obama unequivocally said that the “President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.” See Charles Savage, “ Obama’s Q&A,” Boston Globe, December 20, 2007, http://www.boston.com/news/politics/2008/specials/obamaQA/ObamaQA (accessed April 25, 2014).
if the president was pressed for time, he could have invoked the Extraordinary Occasions Clause of Article II, Section 3 and called Congress into special session at once, but he did not. About three months later, the Republican-led House of Representatives, in a gesture of indignation, voted 295-123 against authorizing a war that was already underway.33

The air combat mission was admittedly a success, as was the NATO-backed Libyan Revolution, but the administration was unapologetic that it did not involve Congress. Its position, as articulated by State Department legal adviser Harold H. Koh, was that “the limited nature of this particular mission is not the kind of ‘hostilities’ envisioned by the War Powers Resolution.”34 Again, Congress was largely passive, partly because the entities were conducted under the umbrella of NATO with the blessing of the United Nations, and partly because congressional leaders held an overwhelmingly negative view of the embattled Libyan ruler and were happy enough to see him gone.

A bipartisan group of ten congressmen led by Rep. Dennis Kucinich took a bold step and sued President Obama in federal court. Filed on June 15, 2011, the suit sought injunctive and declaratory relief “to protect the Plaintiffs and the country from a stated policy of Defendant Barack Obama, President of the United States, whereby a president may unilaterally go to war in Libya and other countries without the declaration of war from Congress required by Article I, Section 8, Clause 11 of the U.S. Constitution.”35 The same relief was also sought with respect to the War Powers Act. A federal judge dismissed the lawsuit on October 20, 2011 in a strongly worded ruling, noting its “dismay” at the plaintiffs’ attempt to “settle questions of law...to achieve what appear to be purely political ends.”36

---

35 The full text of the brief is available on the International Action Center website at http://www.iacenter.org/activists/libya/usa-powerbrief. Despite an unsuccessful 1999 lawsuit against President Clinton, Rep. Dennis Kucinich ventured to sue the Obama Administration for allegedly violating the Declare War Clause and the War Powers Act. It was not clear how this case was any different from Campbell v. Clause, which was dismissed by two courts due to the availability of legislative remedies. See supra n. 25.
two parties moved farther away from the center toward the ends of political spectrum.\textsuperscript{38} That presidents and their loyal staff should oppose legislation that circumscribes their power is hardly a cause for surprise. For this inquiry to be meaningful, therefore, we ought to look beyond the rhetoric of self-interested parties who have a personal or political stake in the matter. The debate, for our purpose, is solely about the allocation of power between Congress and the president in the constitutional scheme.

It is well recognized that there is an assertion implicit in the commander-in-chief title: the president commands the armed forces and dictates military actions in times of war. A number of contemporary scholars, however, seem to subscribe to the view that the president holds the initiative not only in the conduct of war, but also in starting military hostilities. Perhaps the most salient and intellectual scholarly proponent of the principle of executive supremacy in war-making is John Yoo, a professor of law at University of California, Berkeley, and a former official in the Justice Department’s Office of Legal Counsel (OLC) during the Bush presidency. Although a one-time political appointee, John Yoo is principled rather than partisan in his views, as appears from the fact that he continued to express them after leaving office in support of a Democratic president, Barack Obama. An exposition of his views and methods can help bring into focus the complex constitutional relationship between the two political branches from a pro-executive perspective.\textsuperscript{42}

Like virtually all originalists, Professor Yoo decries the fact that many scholars nowadays, particularly on the left, commit the sin of interpreting the Constitution apart from its historical context.\textsuperscript{43} To him, this historical context is best revealed and understood by exploring what the Framers meant when they employed specific language. Accordingly, he sets out to ascertain the original meaning of key constitutional terms and phrases in order to make his case. Before entering into the technical arguments, one might note at the outset that Yoo proceeds with the broad assertion that, at the time of framing the Constitution, “executive power was understood to include the war, treaty, and other general foreign affairs powers.”\textsuperscript{44} The British constitution, which strongly influenced American constitutional thought, granted the Crown “the powers over war and peace, negotiation and communication with foreign nations, and control of the military.”\textsuperscript{45} Yet the powers of the British parliament were limited to the purse and raising armies. This should lead to the conclusion that the Framers understood Article II, Section 1 to continue the “tradition of locating the foreign affairs power generally in the executive branch.”\textsuperscript{46}

Turning to the more concrete discussions, Yoo contends that, while Article 1, Section 8 of the Constitution delegates Congress the power to “declare war,” it is erroneous to suppose that “declare” is synonymous with “start,” “authorize,” or “commence.”\textsuperscript{47} He bases his contention on Article 1, Section 10, which, among other things, bars the states from going to war independently: “No State shall, without the Consent of Congress…engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.” With precision the Framers articulated this principle using language different from that used in Article 1, Section 8, thus indicating they meant two different things altogether. It stands to reason, Yoo argues, that the Framers would have used “declare” in both places if it were to mean the same thing—initiate hostilities.\textsuperscript{48} It follows that the Framers set congressional consent as a condition for war-initiation only with respect to the states but not the president. Had the Framers sought to impose the same restriction on the commander-in-chief, a more elaborate and more precise Declare War Clause would have rather read: “The President shall not, without the Consent of Congress, engage the United States in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”\textsuperscript{49}

Professor Yoo looks to early American documents for further evidence against the view that Congress alone can begin military hostilities. He focuses on the 1781 Articles of Confederation as a document of particular import.
having laid the original framework of American government and served as the young nation’s guiding compass until the ratification of a new Constitution in 1789. Article IX of the Articles of Confederation vests in Congress “the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article,” which specifically provides that “No State shall engage in any war without the consent of the United States in Congress assembled.” Yet when the Framers drafted the U.S. Constitution six years later, they decided to use more succinct and less emphatic language, limiting the role of Congress to declaring war.48 Such being the case, Yoo concludes that the Framers did not intend to grant Congress the absolute authority to take the country to war, or they would have remained the words “sole and exclusive” that appeared in the Articles of Confederation.

In another vein, Professor Yoo argues that, as a matter of practicality and common sense, it is the president who should play the leading role in the area of national security for two reasons. First, the country during wartime cannot afford to follow the slow-moving procedures of peacetime, where the president proposes and Congress disposes.49 In support of this position, he relies on Alexander Hamilton’s argument in Federalist No. 74 that presidents are better suited to conduct war because, unlike legislative bodies, they possess the varied and apt qualities of “decision, activity, secrecy, and dispatch.” Secondly, Congress should not monopolize the authority to make war because it lacks both the agility and incentive to make the sort of swift life-and-death decisions that war demands. Members of Congress, who are always preoccupied with their reelection bids and personal political gains, tend to avoid controversial issues. But even when they have the desire to act, Congress as an institution is ill-equipped to act quickly in urgent situations because of its sheer size and complexity.50 In addition, excessive congressional interference with military decisions could curtail the president’s ability to protect the national interest by entering into conflicts before they escalate and spread.51 All this puts the commander-in-chief in a better position to take decisive action on behalf of the nation.

Finally, Professor Yoo postulates that the Framers deliberately refrained from establishing clear and specific procedures for war-making comparable to the treaty-making or appointment-making process because they meant for Congress and the president to wrangle over it and come to a decision through the political process.52 In other words, the lack of clear constitutional guidelines may be interpreted as an open door for genuine and meaningful dialogue between Congress and the president. This raises a question as to what sort of leverage Congress wields in this contentious interaction. Stated differently, if the determination to use force rests with the president, what can Congress do to check on presidential war powers?

Yoo asserts in conclusion that the Constitution assigns to Congress two viable checks: the power to raise the military and the power of the purse. The first check allows Congress to “discourage presidential initiative in war” by reducing the size of the military force, or develop one that is “less offensive-minded.”53 The second check, which Yoo views as the primary one, allows Congress to cut off the funding for war, thereby leaving the president with no choice but to terminate the military operations and remove the forces from combat. The reverse is also true. If Congress created and powered a formidable war machine, the president can be expected to use it at will, as Yoo believes that he should, because the “executive branch needs flexibility” to devise terrorist attacks and strike rogue nations while the window of opportunity is still open.54

**The Pro-Congress Perspective**

Proponents of congressional control over war-initiation, in the same manner as their scholarly opponents, rely on original intent and founding-era documents to support their position. As stated earlier, the concentration of power in a single governing body was one thing that the Framers were particularly wary of and actively tried to avoid. Nowhere is this more apparent than in the domain of foreign affairs, where the Framers granted Congress, in the words of Professor David Grey Adler, “senior status in a partnership with the president for the purpose of formulating, managing, and conducting America’s foreign policy.”55

The constitutional scheme of checks and balances empowers Congress to regulate foreign commerce, ratify treaties, and concord to the president’s

50 Id.
51 Yoo views World War II as a good example, as it seems quite obvious with the benefit of hindsight that President Roosevelt should have resisted to military force sooner, if not for a reluctant Congress. See John Yoo, “A President Can Pull the Trigger,” Los Angeles Times, December 20, 2005, http://articles.latimes.com/2005/dec/20/opinion/ce-yoo20 (accessed April 25, 2014).
52 Yoo, I Like it or not.
53 Id.
54 Id.
appointment of ambassadors and consuls. Further, with respect to military matters, Congress holds the powers to "provide for the common Defense," "declare War," "grant Letters of Marque and Reprisal," "raise and support Armies," "provide and maintain a Navy," and "make rules for the Government and Regulation of the land and naval forces." As such, one could argue that the Constitution establishes not only partnership, but also equilibrium between the legislative and executive branches in this policy sector, having granted Congress a host of powers, checks, and regulatory responsibilities relating to foreign affairs while assigning the president the two shared powers of making treaties and receiving ambassadors, besides the title of "commander-in-chief."

Evidently, the constitutional role of commander-in-chief of the armed forces puts the president in charge of military and strategic decisions. (This designation is often cited as the basis for the inference that the president can engage in hostilities without approval from Congress.) Yet congressional power advocates would insist that these decisions, however diverse or well-intentioned they may be, do not include the decision to take unilateral military action, unless the country or its citizens are under actual or impending attack.

And as will be elaborated below, the reason behind the use of the term "declare" in Article 1, Section 8, contrary to Professor Yoo's contentions, was to give the executive the latitude to repel external threats to the nation rather than place the power of war-making in the hands of the executive.

It serves us to remember that throughout British history, with which the nation's founders were most acquainted, the executive was the dominant branch that had long wielded the war power. This was seen an outdated model that needed to be dismantled, which is why the Articles of Confederation, the country's first attempt at self-governance, gave Congress rather than the executive "the sole and exclusive right and power of determining on peace and war." The executive branch was altogether left out of the governing document and its powers were vested in a unicameral congress. Even when the confederation experiment failed and a new constitution had to be promulgated, the Framers were still loath to grant the executive such power because they envisioned a system different from the one they had recently gained their independence from, so far as can be judged from founding-era documents. In fact, few concerns were more important to the Framers, and few received as much attention in their debates and writings, than an aggregated executive branch that operates unfettered.

The debates at the Constitutional Convention of 1787, which bring us as close as we can get to the Framers' intentions, substantiate the hypothesis that the Framers were determined to circumscribe the executive's authority to use the armed forces. Early in the Convention, James Madison kept a journal of the proceedings of each meeting, "moved to insert "declare," striking out


"make" war, leaving to the Executive the power to repel sudden attacks." Successfully adopted, this amendment modified an initial draft of the Constitution in which Congress alone had the power to "make war." The express purpose of Madison's amendment was to give the president the authority he needs to respond swiftly to hostile actions initiated against the United States, rather than to initiate an act of war against another country. It bears attention that Madison's view prevailed with the support of other notable delegates such as Roger Sherman of Connecticut, Ebenezer Gerry of Massachusetts, and George Mason of Virginia, who issued statements of their own confirming this understanding. Moreover, when the distinguished Pennsylvania lawyer James Wilson made a motion proposing "that the Executive consist of a single person," the South Carolina John Rutledge agreed to the proposal, but with the caveat that "he was not for giving him the power of war and peace."
The writings of the Founders, both personal and official, lend further credence to the assertion that the framers sought to create an executive with limited war powers. Well after the adoption of the Constitution, prominent members continued to express and defend the same pro-Congress arguments advanced in the Convention. Of particular note is a 1798 letter to Thomas Jefferson from James Madison in which he wrote, "The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the Legislature." Some three decades later, in a correspondence to fellow-Virginian and anti-federalist James Monroe, Madison unequivocally stated that the "only case in which the Executive can enter on a war, undeclared by Congress, is when a state of war has been actually produced by the conduct of another power, and then it ought to be made known as soon as possible to the department charged with the war power." These personal observations, which amplify the ideas that shaped the Convention's deliberations, make it abundantly clear that the "chief architect of the Constitution" deemed the executive department dispossessed of the constitutional authority to make offensive war. Of course, this was not a view unique to Madison. Had it not been popular among his ilk, the Constitution would have been considerably more deferential to the executive in all matters relating to war. Most notably, George Washington, who presided over the Convention and played a central founding role as the first president, acknowledged the authority of Congress over war as a fundamental constitutional tenant: "The Constitution vests the power of declaring war in Congress; therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure." Though a commander-in-chief with an illustrious military past, Washington did not feel unduly constrained by Congress but left war decisions to the "people's branch" as a matter of settled constitutional principle.

Even Alexander Hamilton who called for presidential primacy in foreign policy was unusually reserved when it came to the power of war and peace, and found himself in accord with Madison's ideas. In the Pacificus-Hamilton debates of 1793-1794, Hamilton and Madison agreed on the division of war powers under the Constitution, although they generally differed on the role of the president vis-a-vis Congress in foreign affairs. Expressing the same view on the power to authorize war, Hamilton asserted that: "[t]he executive indeed cannot control the exercise of that power." The fact that these two towering political figures saw eye to eye on this one point while having antagonistic positions on a host of other issues is further indication that Madison's restrictive reading of executive power was the accepted interpretation of the Constitution at the time.

Pro-executive scholars like John Yoo, as mentioned earlier, point to the power of the purse as the primary means by which Congress can prevent the president from entering into hostilities. They contend that Congress can use its budget authority, not only positively to fund, but also negatively to defund,
and hence curb the exercise of executive discretion. In practice, however, the power of the purse has rarely been successfully employed to end ongoing wars and combat missions, for it is often not practically possible for Congress to up the budgetary pressure on the Pentagon in the midst of conflict without abandoning the troops in the field. Such was the case with the Iraq war, even as public support for the war rapidly eroded. The House of Representatives passed a supplemental war budget in March 2007 that included a timeline to remove American troops from Iraq by August 2008, but the bill did not clear Congress. Another good and more recent example is the aforementioned Libya campaign, where House efforts to restrict war funding unsurprisingly failed in summer 2011. It cannot be reasonably argued that so important a legislative device, and one that bars the troops at risk, was intended as the primary means by which Congress can constrain the power of the commander-in-chief. The inefficacy of this approach was no more obvious than during the Vietnam War, which led Congress to enact the War Powers Act, with much public support, to restore its lost constitutional authority over war making.93

**The Supreme Court's Earliest Case Law**

We finally turn to the U.S. Supreme Court's case law from the early years of the Republic for further guidance and analysis. In reviewing the earliest Supreme Court decisions relating to war, it becomes readily apparent that the Court's original jurisprudence conforms to the understanding propounded by the Founders in their public and private statements, as outlined above. In the war-related cases that the High Court heard at the dawn of the nineteenth century, it consistently took the position that a congressional declaration of war was necessary before the president could bring military force to bear in an international conflict. We consider three seminal cases and their significance in careful detail. Commonly referred to as the "Quasi War Cases," the three cases arose during the low-grade hostilities between the United States and France at the end of the eighteenth century.94

The Supreme Court considered for the first time the question of whether the Constitution requires Congress to permit the use of force in advance in the 1803 case of *Jus. v. Dung.* In addressing this question, the Court had to first determine when a hostile engagement constitutes war in a constitutional sense. The case unfolded against a backdrop of tensions between the United States and France after the latter had captured several American vessels. In response, Congress enacted a body of statutes in 1798 and 1799, which, among other things, allowed for the payment of rewards to American shipowners who could reclaim "from the enemy" any of the taken vessels. The recipients were to be compensated directly by the ship owners based on the value of the vessel. Respondent Tingy was a captain who had successfully recovered a ship from the French, only to be denied the statutory prize by petitioner Bas, the ship owner. In support of his claim that respondent was ineligible for the prize, petitioner asserted the statute did not apply in this situation because France

---

93 The Foreign Assistance Act of 1974 is sometimes cited as an example of the successful use of power of the purse in military affairs, but it cannot be said that it is an effective tool if the war in Vietnam dragged on for ten long years. Neither were the funding restrictions imposed on President Reagan as instrumental in the withdrawal of the Marines from Lebanon in the 1983 suicidal bombing of their barracks that sapped public support for the dubious mission.


95 Whenever Congress attempts to use the budget weapon, Presidents take their case to public opinion to reverse the pressure on Congress—a common political tactic that has often worked. In response to the congressional budget threats, President Bush admonished Democrats in a November 2007 press conference to approve a move to fund the Iraq war in order to provide "our men and women in uniform...with what they need to succeed in their missions." See Aaron Appley, "War Budget Gridlock Could Affect Civilian Jobs at Home," Desert Dispatch, November 29, 2007, http://www.desertdispatch.com/articles/army-2078-war-budget.html (accessed April 25, 2014).


97 Stanley Roker, "Another Blow to America's Constitution," in *NAITO's Empty Victory: A Postmortem on the Balkan War,* ed. Ted Galen Carperstick (Washington, D.C.: Cato Institute, 2000), 99-100 (arguing that "[t]o swing the balance the other way would mean that Congress's power to declare war would be reduced to stopping war only by cutting off supplies to troops already fighting in the field, thereby placing them in jeopardy.

98 This Franco-American maritime conflict is often referred to as "the Quasi-War (1798-1800)" because it involved the use of naval forces yet without a declaration of war by Congress. See Silik, J. Gregory, "The Quasi War Cases—and Their Relevance to Whether "Letters of Marque and Reprisal" Constrain Presidential War Powers," *Harvard Journal of Law & Public Policy* 26, no. 2 (2005).

99 7 U.S. 37 (1800).

100 The 1799 law allowed the recipients to receive 1/8 the full value of the vessel, while the 1799 law authorized the payment of 1/2 the salvage value of the vessel. Id. at 37.
was not an enemy state, but rather a "nation in amity with the United States." Besides, Congress had not declared war on France.

The Supreme Court dismissed these arguments, reasoning that the various measures adopted by Congress in 1798 and 1799 had authorized an "imperfect war" against France, making it an enemy within the meaning of the statute in question, even in absence of a declaration of war. In so holding, the Court conclusively settled the question of fact between the two parties. It could have stopped there, but the Court utilized this simple monetary dispute to develop three important principles that are particularly relevant to our inquiry. First, it established that even limited hostilities constitute a state of war, thus rendering vacuous the modern distinction between small- and large-scale military operations. Second, the Court recognized the power of Congress to authorize hostilities as opposed to declare war, which established that formal congressional action, for constitutional purposes, could take either form. Put differently, the Court established that an authorization to use force is the legal equivalent of a declaration of war, and hence is a proper means by which Congress can effectuate its constitutional power to declare war. Finally, and perhaps most significantly, it established that any "state of hostility," be it an "imperfect war or a war," must be authorized by Congress as "the constitutional authority of our country." The practical effect of this construction is that executive acts of war, at any level of conflict, are prohibited without either a declaration of war or an authorization to use force by Congress.

The second case, Talbot v. Seaman, came to the Supreme Court a year later in 1801. The facts bear close resemblance to those involved in the preceding case. On September 15, 1799, the USS Constitution, an American combat ship captained by Silas Talbot, captured a British ship called the Amelia while sailing from the British-controlled port of Calcutta. Arriving in the port of New York on October 12, the Amelia had cargo estimated at $200,000. Although the ship was owned by a merchant company in the city of Hamburg, which was a neutral party in the ongoing naval conflict, Captain Talbot filed a claim in the District Court of New York seeking the statutorily authorized award for capturing the ship. Haos Frederick Seeman, an agent for the company, countered that the vessel should be released free from claims for the salvage award because Talbot had no right under international law to interfere with the navigation of a neutral foreign vessel. The District Court held for Talbot but the Circuit Court reversed, whereupon Talbot sought the review of the U.S. Supreme Court.

A unanimous Supreme Court held per Chief Justice John Marshall that Talbot was entitled to his prize. The Court began by reasoning that for Talbot to prevail, the seizure of the ship must be lawful in the first place. Because Talbot had "probable cause to believe the vessel met with at sea is in the condition of one liable to capture," that is, a French ship, the Court was satisfied that Talbot acted within the laws that Congress had enacted. Still, it must be established that Talbot had saved the ship from danger to receive a reward for his service, since the owner was a neutral party. Marshall went on to conclude that Talbot had rendered "an essential service" because the danger of forfeiture was "real and imminent," as the laws and decrees of France did not protect the rights of such neutral parties.

That Captain Talbot collected a handsome reward for his service is not the primary significance of this case. Rather, Marshall's opinion in the case is most remembered for the following key statement: "The whole powers of war lying by the Constitution of the United States vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry." So emphatic an assertion can only be construed to mean that, apart from limited defensive actions, the president lacks the constitutional authority to initiate or engage in war without a congressional mandate. Moreover, it should not escape our notice that when the Talbot Court set out "to determine the real situation of America in regard to France," it "inspected" the "acts of Congress" to the exclusion of any presidential actions, instructions, or proclamations. Upon examining the relevant measures adopted by Congress, the Court characterized the maritime conflict as a "partial war," the fact that justified reliance on probable cause to seize the Hamburg vessel. This ruling was reinforced in the subsequent Quasi-War case.
Little v. Barron" is another important early precedent concerning limitations on the president’s commander-in-chief authority. In February 1799, Congress passed an act canceling the treaties of alliance and commerce with France. To enforce the commercial embargo on France, Congress authorized the U.S. Navy to intercept American ships “bound or sailing to any port or place within the territory of the French Republic or her dependencies.” President John Adams, however, exceeded the congressional mandate and directed the navy to seize American ships bound to or from French ports. In compliance with the executive directive, the frigate USS Boston under the command of Captain George Little seized a Danish-owned ship on December 2, 1799. The owner of the Danish ship, the Flying Fish, sued Captain Little for damages. The lower court ruled for the plaintiff on the premise that the Flying Fish was sailing from a French-controlled port, and hence not subject to capture even if it had been an American vessel. Captain Little appealed the adverse ruling to the Supreme Court.

The issue was a judgment of $5,504 against a commanding officer for the wrongful capture of a foreign-owned ship on the high seas. Once again, however, the Supreme Court used an otherwise undistinguished case that could have easily disappeared in the dim recesses of history to consider an issue of momentous consequence, and carve out a constitutional arrangement for the conduct of war. The Court went beyond the immediate question of fact regarding the money damages to ponder two important questions of federalism. The larger underlying question of law was whether an Act of Congress takes precedence over an executive decree, even in the conduct of war. A narrower question also pertaining to the division of war-making powers was whether Congress could place statutory limits on the president’s authority over the armed forces. Speaking for a unanimous Court, Chief Justice Marshall held that while the president has the discretion to deal with crisis situations as they occur, he is no longer at liberty to follow his discretion once Congress has spoken. In other words, executive discretion over the use of the armed forces is circumscribed by congressional legislation. It follows that when Congress regulates the exercise of military power, it is performing a legitimate constitutional function rather than usurping power from the executive branch.

It is especially noteworthy that the Court emphasized that the president lacked “any special authority” to empower “the officers commanding the armed vessels of the United States” to seize ships coming from French ports. In holding that the president could not escape the restrictions imposed by Congress on the military, the Court effectively negated an oft-cited argument that the president’s inherent powers as commander-in-chief allow him to undertake military actions without congressional authorization. It also laid to rest the notion that Congress cannot interfere with actions of the president when he is acting as commander-in-chief. And if commander-in-chief actions are subject to legislative modification and nullification, one could even conclude that the Marshall Court interpreted the Constitution as granting Congress concurrent power in the conduct of warfare. This only goes to show how far modern presidential rhetoric has drifted away from the original understanding of war powers in the American constitutional scheme.

**Some Final Thoughts**

Justice Alexander George Sutherland is credited with, or blamed for, formulating the so-called “sole organ” doctrine in United States v. Curtiss-Wright Export Corp., which defined presidential power very broadly in the realm of foreign affairs. The thrust of Sutherland’s argument is captured in his frequently quoted statement that the president is “the sole organ of the nation in its external relations, and its sole representative with foreign nations.” This position of Sutherland’s opinion has garnered considerable criticism over the years, but even if we accept his expansive view of the president’s power as head of state, there is no textual, historical, or doctrinal support for the presumption that this “plenary and exclusive power” carries over into the realm of war-making. Moreover, if we join the pro-executive camp in recognizing Curtiss-Wright as a basis for the assertion of sweeping inherent powers in foreign affairs, it is patentely obvious that war-making cannot be deemed an inherent power of the executive when Article I specifically assigns Congress the power to declare war.

---

80 Id. at 170 (1804).
81 Id. at 171.
Max Guigno

The question then becomes whether the power to declare war is indeed the power to initiate hostilities, and whether this constitutional grant relates to all military actions or only major conflicts. As discussed above, it is permissible for, even incumbent upon, the president as commander-in-chief to ward off military aggression and impending threats to the nation's security. In absence of congressional acquiescence, however, the president can only engage in hostilities reactively rather than proactively, as the evidence presented amply demonstrates. Based on the legal and factual considerations described at length in this essay, against which Professor Yoo's speculative and conjectural arguments fade, it would strain credulity to suggest that "the president has the sole authority to engage in war, followed only by Congress' latent approval via its power of the purse."169 Justice William Paterson could not have been more explicit in United States v. Smith,170 a case contemporary with the Quasi-War Cases: "It is the exclusive province of Congress to change a state of peace into a state of war..."171 And while there has been a pattern of presidents exercising military power independently of Congress for over half a century, it stands to reason and principle that "the existence of a practice does not establish it as a constitutional right."172

Ironically, it was Congress that helped create the permissive environment in which the constitutional violations occurred by its own passivity and flaccidity. Time and again, congressional leaders stood by idle as one administration after another siphoned off power from the legislative branch. The resort to court injunctions by some lawmakers is only indicative of the failure of Congress as an institution to act in a bipartisan fashion, even in the face of executive overreach. So while modern presidents have not been blameless in their use of the armed forces, it is Congress that seems to have delegated, if not abdicated, too much of its responsibility to the executive branch. The Supreme Court, for its part, has taken a rather permissive approach to delegation.173 The trucking attitude of Congress and the Court toward the president has led to a broad expansion in executive power, which is not limited to but is particularly pronounced in the areas of national security and international affairs. In contrast to the fears once expressed by Alexander Hamilton, the executive has become increasingly powerful at the expense of Congress and the courts.

In light of judicial and congressional deference to presidential judgments in matters of war, the most visible check on the abuse of commander-in-chief authority currently exists outside the formal constitutional machinery, represented in the democratic principle of electoral responsibility. But while public opinion may set limits to executive war power, it tends to be a less effective deterrent to presidents in their second term, since they would not be facing the electorate again. It is true that executive indiscretion could lead to a protest vote against the president's party in the next midterm or general election, yet voters in a two-party system are inclined, if not compelled, to be forgiving, given the lack of political choice and the desire to avoid one-party rule. As such, there appears to be no alternative to congressional action to restrict the exercise of the president's war power.

A question might be raised as to whether executive ascendency poses a real problem for American democracy, or is rather an abstract public policy issue devoid of practical significance. There are two practical implications that should be highlighted here. First, the structure of American government, as intended by the Framers and prescribed by the Constitution, presupposes three coequal branches. If one branch gains supremacy over the other two, the governmental system of checks and balances would cease to function effectively, amplifying the potential for abuse of power and office. It has been argued as a counterpoint that "legislative-executive relationships are not zero-sum games," so that "[i]f one branch gains power, the other does not necessarily lose it."174 Of course it is sometimes true that an expansion in the power of the executive branch may be accompanied by a corresponding expansion in congressional power. Such was the case during the Marshall Court, New Deal, and Great Society era, when the scope of federal power in general grew in relation to the states. It should be noted, however, that the powers of the two branches simultaneously grew during these periods due to cooperative governance, which makes this countermovement irrelevant in the present context where one branch is high-handed and overreaching while the other has all but waived its right to exercise its constitutional authority. It is

give-away (accessed April 25, 2014) noting that the case of A.L.A. Scheuer Publty Corp. v. United States, 235 U.S. 495 (1915) "marks the last time the Court held a statute unconstitutional under Article I, Section 1," and lamenting that the "Court has since moved toward an entirely hands-off approach to delegation."

highly unlikely that this trend will reverse unless Congress ends its fragmented culture, or at least changes its business-as-usual demeanor toward usurpations of its authority.

The second problematic implication of executive dominance in warming is that it constitutes an attack on the rule of law itself. The presidential oath of Article II, Section 1 binds the president to "by Oath or Affirmation" to "preserve, protect and defend the Constitution of the United States." The Faithful Execution Clause of Article II, Section 3 instructs the president to "take Care that the Laws be faithfully executed." The laws must be comprehensively enforced, just as the Constitution must be fully respected, if the president is to function within the rule of law. Selective implementation of the law is not within the rights of the president. A president who believes the War Powers Act is a severe encroachment on his commander-in-chief authority may challenge it but does not have the option of ignoring it.106

This is a matter of great importance because the president, as the nation's figurehead, models and demonstrates good citizenship. The president's role, be it positive or negative, in shaping national political culture is paramount. In this regard, it is fitting to recall the timeless words of Justice Louis Brandeis, dissenting in Schenck v. United States: "Our Government is the potent, the omnipotent teacher. For good or for ill, it teaches the whole people by its example. ... If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."107

106 As Representative Steve Scalise (R-La), put it, "The president does not have the option of choosing which laws he will follow and which laws he can ignore." See William G. Howell, Thinking about the Presidency: The Primacy of Power (Princeton, NJ: Princeton University Press, 2013), 41.

107 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

REFERENCES


---

**Power, Interdependence and Conflict:**

What IR theories tell us about China’s rise

James R. Masterson

Morehead State University
j.masterson@moreheadstate.edu

This study examines the effects that economic interdependence (ED) has on political relations between China and its major trading partners. Five IR theories derived from the international relations literature are tested using data from King’s 10 MDS Dyal collection of political interaction along with economic data from the IMF and control variable data from Polity IV, COW CING, among other sources. Though a significant amount of literature addresses the effects trade has on conflict at the systemic level, few address it at the dyadic level and even fewer test the pacification of trade on non-Western states. This research examines economic, political, institutional, geographical and political relations data from 1990 to 2004 to test two neoliberal hypotheses that posit interdependence is associated with cooperative political relations between states. Furthermore, this research tests the neoliberal institutionalist hypothesis that joint-institutional membership helps to increase political cooperation. Two neoliberal theories are tested. The first hypothesis states that the unequal distribution of trade benefits leads to a deterioration of political relations. The second states that relative power increases lead to a deterioration of political relations.

Findings generally support neoliberal hypotheses. However, neoliberal contentions that relative power increases do not necessarily lead to conflict when international economic influences are taken into consideration are supported.

Key Words: interdependence, conflict, liberal peace, foreign direct investment, international trade, Chinese foreign policy

The rise of China is one of the most hotly debated topics in international relations today. IR scholars and policy makers alike have divergent views about the timeframe of a rising China 20 to 50, and the impact a rising China will have on world politics. On one hand, some scholars and policymakers argue that China’s rise is likely to bring it into conflict with the West in general and the

---

1 The author would like to thank the Center for Research and Sponsor Programs at MSU for financial support to make the immense data collection for this project possible, as well as the School of Public Affairs, MSU for release time to pursue this research.
United States in particular. This is principally a result of significant relative power gains by a rising China that are likely to culminate in a clash with the US over influence in Asia. On the other hand, there are those that argue that conflict with the US is not inevitable for a rising China. Institutions, interdependence and gradual democratization can triangulate peace in the region. The goal of this research is to shed some light on Chinese foreign relations since 1990 to better understand which theoretical approach to the study of international relations best explains China’s interstate behavior. Specifically, this paper will empirically test hypotheses extending from the relevant literature against political, economic and military data on China and its trading partners.

**Brief Literature Review**

Neo-realism and Neoliberalism are the two dominant theoretical approaches to the study of international relations, each with different and varying prospects for China’s rise. While not all scholars agree on all aspects of the approach within it, scholars within one particular approach generally share agreement on core assumptions, which tend to differ between the approaches. The core assumptions are questions about what the main actors are in international relations, what the characteristics of the nature of the international system are and what the “national” interest is and from what is it derived. Below I briefly review the literature with respect to the two approaches as they relate to research on China’s rise.

**Neo-realism**

Realism is the dominant approach in international relations scholarship. Early realist thinkers, such as Hans Morgenthau, argued that what drives state behavior is a function of human behavior. These human nature realists argued that the root of international conflict lay within man’s innate lust for power common to all men, “the avaricious dominated, the desire for power.” For Morgenthau, political success rests on a state’s ability to maintain, increase, or demonstrate its power over others. Therefore, power is a political end, not a means, for states. Thus, as each great power vies for greater power, seeking the maintenance or overthrow of the status quo, the result is a balance of power. Thus, human nature realists have what is generally termed, a pessimistic view of international relations.

Neo-realists generally accept many of the core assumptions of human nature realists, except the origin of what drives states to seek more power. For neo-realists states are driven to increase power relations as a result of anarchy in the international system, and not, as human nature realists believe, because man is hard-wired to seek to dominate others, or at least avoid being dominated by others. It is in this way that anarchy takes the place of human nature, yet has similar effects on state behavior. However, for neo-realists, power is not an end, but rather a means. It is a means to security for states, the ultimate goal.

Neo-realism gained prominence by attacking failed liberal policies crafted after WW1 and 2 on the grounds that these policies did not accurately assess state behavior. Realists argued that the policies were based on what states ought to do or should do, but not on how states actually behave and act in international politics. Among these failed policies was the belief in institutional constraints to state power. According to realists, institutions such as the League of Nations (along with less tangible institutions such as international laws, treaties, and norms), crafted after WW1 to maintain peace in Europe, are prone to failure because there is no higher authority than states to compel them to fulfill their obligations within the institution.

For realists, states are the main actors in international relations and they use institutions to pursue their interests and bypass them once their interests are no longer reflected in the institution. The political philosopher, Niccolò Machiavelli, said as much when he said “a prudent ruler ought not to keep faith when by so doing it would be against his interests, and when the reasons which made him bind himself no longer exist.” Modern realists maintain international institutions are a false promise, merely a reflection of the underlying distribution of power in the international system, based on the self-interested calculations of states and have no independent effect on state behavior. Realists come to this pessimistic view of international institutions as a result of the structure of the international system. Since there is no higher authority above state actors, states struggle to survive in an anarchic international environment. The state of anarchy creates an intense security competition

---

among the actors where states can never fully be certain of other states' intentions. Therefore, states seek to close their security gap and maximize their chances of survival, principally through increasing power capabilities. However, increases in capabilities by one actor reduce the security of other actors and in turn, these states will seek to close their security gap by increasing their power capabilities; leading to what is referred to as a security dilemma.

For some realists, particularly neorealists, security competition in an anarchic environment drives states to be concerned not with what their capabilities are in and of themselves, but what their capabilities are relative to other states. Kenneth Waltz describes this concern:

When faced with the possibility of cooperating for mutual gain, states that feel insecure must ask how the gains will be divided. They are compelled to ask not "Will both of us gain?" but "Who will gain more?" If an expected gain is to be divided, say, in the ratio of two to one, one state may use its disproportionate gain to implement a policy intended to damage or destroy the other. Even the prospect of large absolute gains for both parties does not elicit their cooperation so long as each fears how the other will use its increased capabilities.11

Thus, cooperation under anarchy is difficult to achieve since states, even within institutional arrangements, seek gains equal to or greater than others for fear of other states gaining more than them. Greco suggests "the fundamental goal of states in any relationship is to prevent others from achieving advances in their relative capabilities."12 Furthermore, the relative gains argument applies to economic considerations as well as security concerns. Economic might can be translated into military power, "so that in the long run, security and economies are inseparable."13 Powell argues that concerns about relative gains inhibit cooperation when the utility of military force is high but not when it is low.14

For neorealists, then, interstate commerce has the potential to create tensions between trading states. If one state gains more than the other, particularly over a long period of time, then this asymmetry becomes a source of insecurity for the other state. The state becoming relatively weaker can solve this imbalance through several mechanisms. It could try reducing consumption from the other state provided that imported goods are not

14 Baldwin, Neoliberalism and Neorealism: The Contemporary Debate pg. 6.

strategically important. This is difficult to do because it results in increased prices for those same goods since they would be consumed from a less efficient market. The state could institute trade barriers to make imports from the other state more expensive, for which it can expect barriers to be raised on its exports to that state. This policy is certainly likely to initiate a trade war where each side begins retaliating against the other, perhaps with off-setting tariffs and non-tariff barriers. Additionally, this raises costs to the economy as a result of purchasing those goods from a less efficient provider. The state could attempt to reduce this imbalance through negotiation, either in bilateral or multilateral forums. However, the other state does not have much incentive to cooperate.15 Its preferred outcome is to continue to gain relative to the other state. Therefore if the imbalance is not restored at some point, the declining state is likely to solve this problem through the use of force, believing that it is stronger today than tomorrow relative to the growing state, and thus more likely than tomorrow to be victorious in a military conflict against the other state.

Neoliberalism

Like realism, liberalism is a theoretical approach that contains several variants. Particularly relevant to understanding how China is likely to rise are three of these variants: institutional liberalism, political liberalism and economic liberalism. Neoliberalism, as these are often referred to, adopts some of the same assumptions as neoliberalism. Both approaches share the assumption that states are the main actors in international politics. However, neoliberal believe that other actors, such as institutions and non-governmental organizations, matter. Additionally, neoliberals agree with neorealists that the international system is anarchic. However, neoliberals diverge from their neorealism counterparts on the nature of the effects that anarchy has on states. Neoliberal scholars show support for the idea that the effects of anarchy on interstate behavior can be mitigated. Lastly, both approaches agree that relative gains matter, but neoliberals stress that where there are common interests, states seek to maximize their absolute gains.16

Institutional liberalism (also referred to as neoliberal institutionalism) rests on the tenet that international institutions and regimes can help mitigate the effects of anarchy in the international system. Anarchy leaves states, according to Hobbes, in a constant struggle of "every man against every man" because states are uncertain of other states' intentions and there is no "night
watchman" to come to their aid should trouble abound. Institutions, according to neoliberal institutionalists, can mitigate the effects of anarchy by increasing transparency about what the rules of acceptable behavior are for states and offer them an outlet to settle their grievances through dispute mechanisms, reducing, not eliminating, the need for states to resort to the use of force to solve their problems. Additionally, these institutions reduce uncertainty by creating and sharing information amongst the actors and provide confidence building measures thereby increasing the likelihood that states will cooperate on other issue areas. And lastly, the most successful of these institutions tend to take on a life of their own. Strong institutions can begin to change state interests and identity, creating a common identity among the actors. Therefore, neoliberal institutionalists show that international institutions have a pacifying effect on interstate behavior.

There are two strands of political liberalism, of which only one is relevant to an analysis of China's rise. The first and more widely accepted strand is sometimes referred to as the liberal democratic peace theory. Simply stated, this theory says that democracies don't fight other democracies. It does not connote that democracies do not fight non-democracies less frequently than non-democracies fight other non-democracies; rather, only that democracies refrain from fighting one another. This theory was made famous in Immanuel Kant's *Perpetual Peace*. The reasons for this peace are that in liberal democracies the citizens demand popular rights, i.e. freedom of expression, freedom to assemble and universal suffrage. They view liberal democratic regimes as more legitimate than other forms of government and thus "sooth to impose a foreign regime on a democratic state by force. Thus, an inhibition on war missing from other international relationships is introduced when two democracies face each other."

The liberal democratic peace theory does not apply well to the case of China since China is not a democracy. Therefore, it is not subject to the forces that create a sense of legitimacy among the public when fighting another democracy that exists in republican forms of government. However, there is a second strand of political liberalism that is relevant to China's rise. This argument states that democracies fight less than authoritarian regimes. In democratic forms of government, the citizens have a greater influence on what their government does compared to an authoritarian government. Citizens are hesitant to support war since they pay the bloody cost of it. Because the citizens in a democratic society can hold their government accountable for war, they are less likely to go to war than compared to an authoritarian regime where there is no such governmental accountability to create this hesitation.

Neorealists counter these liberal claims for two principal reasons. First, with respect to the last argument, it is not possible to sustain the claim that authoritarian regimes fight more often than democracies. According to Meeseheimer, "the historical evidence shows that democracies are every bit as likely to fight wars as are authoritarian states, though admittedly, thus far, not with other democracies." Secondly, a world full of democracies cannot bring about an end to war nor does it eliminate the effects anarchy has on the system. This is because there are no guarantees that a state will always remain a democracy. Therefore, states will continue to be concerned with relative gains to secure itself from possible attacks from other states, which may not be democratic in the future.

A clear example of the uncertainty for a future democracy is the Weimar Republic in Germany. The German government in the interwar period had a democratically-elected constitutional assembly where all citizens enjoyed the right to vote and basic human rights. Both the parliament and president were directly elected. Vote shares for the National Socialist party began to increase throughout the Great Depression, and in 1933 Hitler was appointed Chancellor by the elected president Von Hindenburg. After the death of the president, the Nazi regime seized power and eliminated opposition groups. Democracy took a back seat to a new authoritarian regime of the "Third Reich." Under Hitler's orders, the German military machine would go on to conquer nearly two-thirds of continental Europe, including liberal-democratic France.

Economic liberalism (also referred to as interdependence theory) focuses on the economic interactions between states. This theory claims that economic interdependence reduces conflict primarily by increasing the costs of war. Interdependent economies must restructure and adjust to new trading patterns as well as rules and regulations when a disruption of trade between two interdependent economies occurs. The resulting increase in costs serves as an additional deterrent for a state to engage against another state with which it is interdependent. A variant of this situation is the relative cost argument that Rosecrance put forth. As the benefits of trade increase, the relative gains from war decrease, changing the incentive structure of the state.

The theory of comparative advantage holds that nations should produce and export those goods and services for which they hold a comparative advantage and import those items that other nations can produce at lower costs.

19 "We, Why Will We Soon Miss the Cold War," The Atlantic, (August 1990), pp. 35-50.


opportunity costs. States will choose what to manufacture based on their factors of production and will trade according to their comparative advantage to maximize the state's welfare. Therefore, a disruption of trade can lead to a direct reduction in the state's welfare.13

The links between economic and political conflict have roots in the political writings of Montesquieu, Smith, Stuart-Mill and Marx among others. For economic liberals, trade policies motivated by self-interest may lead to peaceful relations among actors because states are motivated by trade benefits when conflict is restrained (which otherwise would bring about a loss of gains from decreased trade) and instead attempt to resolve issues in a more peaceful manner. More recently, there has been a plethora of empirical tests demonstrating the pacifying effects of international trade.14 Work by Keohane and Nye shows that when states reach a level of complex interdependence there are multiple channels of contacts between the societies, there is no clear hierarchy of agenda issues between the states and the use of military force to solve an interstate dispute is not an option.15 Furthermore, Rosencranz shows that as interdependence grows, states can more efficiently gain needed goods through trade rather than war; therefore, "states would rather trade than invade."16 Conversely, barriers to trade stimulate conflict.17

13 For example, during the 1973-1974 oil crises, the cost of gasoline increased 44 percent over a 13-month period, while the New York Stock Exchange shares lost $77 billion in six weeks. During 1974, the United States experienced its second largest economic contraction over the 39 years since 1970 to the present. The year prior, the United States experienced a 5.8 percent growth rate (Source: World Bank World Development Indicators). A more recent example shows the cost to the disruption of trade with China shortly after the Tiananmen Square incident. China's growth rate fell by 63 percent following sanctions by the US and other G8 countries. China's GDP grew by 12 percent in 1990 over the previous year and grew by 1.4 percent in 1999, representing a significant decline in the growth rate (source: World Bank World Development Indicators, adjusted to 2000 base).


While trade interdependence may be a primary factor in creating a change in the incentive structure of conflict, it is not the lone factor. Financial interdependence is important to consider where there are flows of FDI and portfolio investment across state boundaries. These investments are intended to establish a permanent flow of income or supply in the host country and often lead to long lasting economic and political relations.18 Furthermore, states manage aggregate supply and demand through fiscal and monetary policies. These policies produce externalities "that are transmitted to foreign economies through trade and exchange rates."19 State-induced economic disruptions to the financial sector of a target economy can demonstrate an actor's resolve toward a particular outcome.20 The withdrawing of funds (or selling off stocks and bonds) or withholding of foreign direct investment (or foreign aid) can produce costly effects on the target state's economy, potentially leading to runs on banks, devaluation of currency or inflation.21 Furthermore, a state may seize the foreign direct investments under its control should that state become the target of a military conflict with an adversary. This situation creates restraint on the adversary from choosing the military option by once again increasing the costs associated with the impending conflict. Lastly, conflict increases uncertainty and risk to any capital investment and reduces risk-adjusted rates of return.22 These financial restructuring costs, immediate losses of investment and long-term effects of inflation and currency devaluation add to the opportunity costs of war, which in turn lead to a reduction in hostility and the probability of war when, as noted, states have higher levels of financial interdependence. Foreign investment comes in several forms, including portfolio and direct investment. Portfolio investments have increased across borders as regulatory measures have become more lax.23 While portfolio investment has increased greatly over the last 20 years, FDI makes up a much larger proportion of


21 Citing the massive withdrawal of funds by Britain and France from Germany during the Agadir crisis nearly leading to the solvency of the German currency, Gurrre et al. (2001) demonstrated the signaling effects that financial sensitivity provides to show a state's resolve reducing the need to resort to violent conflict to achieve a particular outcome (402-403).


investment. Foreign direct investment is strategically important to interstate relations because FDI often cannot be easily removed from the host state. Once conflict breaks out, the recipient of the foreign direct investment may seize the assets from the belligerent and use them at its discretion. Therefore, states sharing the benefits of foreign direct investment are less likely to engage in conflict.

Economic liberalism is particularly relevant to explaining China’s relations with its trading partners as China has "energetically cultivated a ‘friendly neighborhood’ policy, especially in the aftermath of the Tiananmen crackdown."

Currently, security for China rests in its ability to maintain domestic stability, which is best accomplished through economic growth and international trade. However, neorealists counter the claims of economic liberals along general lines. Neorealists argue that economic liberalism suggests that states are primarily motivated by economic, not security concerns. While states are operating in both the international security and the international economic realm, neorealists contend it is the former, not the latter that dominates when the two systems are at odds. This is because every state’s top goal is survival; if it cannot survive, it cannot pursue any other goal. The second reason that the economic liberal argument is flawed, according to neorealists, is that it ignores the effects of anarchy on the system. When security is scarce, states are more concerned with relative gains than absolute gains. This makes cooperation difficult, unless the "pie can be finely sliced to reflect, and thus not disturb, the current balance of power."

Specifically, neorealists turn to two periods in European history where economic interdependence was high, but did not restrain conflict. In the run-up to the First Great War, European trade was at an all-time high relative to GDP. However, the trade in strategic goods created vulnerabilities among the states and led to eventual war. During the Cold War relative peace in Western Europe correlates with high levels of interdependence but was not caused by these commercial relations. Instead, neorealists argue, the common Soviet threat faced by Western Europe drove them away from relative gains calculations between one another to focus instead on relative gains calculations between the two principal blocks of the Cold War: NATO and the Warsaw Pact. So long as the pie continued to grow for NATO nations, relative concerns were not an issue among them. This is a result, so the argument

36 Neustheimer, "Why We Will Soon Miss the Cold War," pp. 35-50.
37 Ibid.

PERSPECTIVES ON CHINA’S RISE

Some international relations scholars believe that with the end of the Cold War, Asia, and East Asia specifically, is "ripe for rivalry," that is, there will be strong threats for competition in the early part of the 21st century. Citing great elevations in military and economic power between the states, fudging democracies, weak international institutionalization and balance of power politics in the region, Friedberg concludes that a curtain of fog exists and creates much uncertainty for the prospect of peace in East Asia. Power balancing against China appears to be taking place. Through the 2007 Joint Statement on the U.S.-Japan Security Consultative Committee, both Japan and the United States sought to enhance security cooperation with both Australia and India. Similarly, in 2009 South Korea and Australia issued a joint-security statement. Indonesia, a founder of the non-aligned movement, that for long refused to align itself with any other country, recently signed an agreement with Australia to provide consultation in the event of challenges to their common security. Through both parties deny that China was the reason for this agreement, Garver professes that the "context and time of the agreement, however, suggest that this indeed was the case." Additionally, following a Sino-Filipino clash over the Mischief Reef, Manila sought and got a memorandum of understanding from the British defense secretaries in January 1996, calling for joint military exercises, exchanges of information and cooperation in other security matters. For itself, China has solidified relations with Pakistan, Myanmar and Iran. China has invested US $70 billion in Iranian oil fields and concluded agreements with Pakistan and Myanmar to finance and build ports guaranteeing safe passage for energy supplies to China and allowing access to Chinese submarines. Just as the U.S. and states in Asia strengthen their ties to balance against China, China has responded by securing its access to oil and encircling a rival, India.

38 Ibid.
41 Garver Farewell, p. 10.
Contrary to Friedberg's contention, David Kang offers an alternative finding: that Asian nations are indeed bandwagoning with China, not balancing against it. There are various causes for the onset of conflict between China and its neighbors, all political or strategic in nature, rather than economic. Citing a lack of arms races in the region's post-Cold War era, realism's pessimistic predictions of conflict in Asia have failed to materialize.

Despite extensive literature on the relationship between conflict and interdependence, there is very little that examines China specifically. Work by Feaver examines China's territorial concessions in terms of off-setting instability within the domestic political system.44 He finds that China has made uneven territorial concessions, in spite of relative power increases, to reduce conflict on its borders and concentrate on stabilizing efforts internally to stave off domestic conflict. In his work on exploring Sino-Japanese relations, Busuyuki finds that while economic interdependence between China and Japan does contribute to more cooperative political relations, alone, it is not sufficient to provide regional security due to the salient historical rivalry between the two East Asian powers.45 Along similar grounds, Michael Yahuda agrees that economic interdependence is not sufficient to provide stability in Sino-Japanese relations due to strong anti-Japanese attitudes in China. He suggests that without a continuous security dialogue and stronger social and political interactions, the full pacific benefits to economic interdependence will likely not be realized. Masterson finds that Chinese economic interdependence with its neighbors is associated with increases in political cooperation; however, relative power increases have a deteriorating effect on these relations as well. One glaring exception to this trend is Japan.46 China's participation with Japan in multilateral institutions is a strong first step towards a continuous dialogue and frequent political interaction. Kit. He suggests that, to this end, the "dragon's teeth" may be softened by deep economic integration in a region where institutional balancing and constrained competition are a feature of future Asian security.47 He finds that after China's initial reluctance to join multilateral institutions, upon its membership to the Asia-Pacific Economic Cooperation (APEC) group, China has become a member in a number of Asian institutions, setting institutional diplomacy as one of the cornerstones of its foreign policy.

"From the brief survey of Chinese foreign relations, we see that there is no consensus about what China's rise will be like. Do neorealist or neoliberal theoretical perspectives best characterize Chinese foreign relations? This paper seeks to provide clarity to this question by testing various hypotheses drawn from the existing literature as they relate to China's rise.

HYPOTHESES:

From the brief literature presented over neorealism and neoliberalism, several hypotheses can be drawn with respect to China's foreign relations with the world. Neoliberal arguments are particularly relevant to understanding China's rise since it has grown to be one of the top three largest economies in the world, largely reliant on foreign trade and investment to do this.

Hypothesis One (Trade-Interdependence Hypothesis): as China's trade interdependence increases with its trading partners its political relations improve.

China's reliance on international trade as a source of employment and revenue through the assembly of imported products for export has grown dramatically over the last two decades. In 1990 China's total trade represented 22 percent of its GDP and by 2006 it grew to 84%, far greater than other large continental powers.48 According to the trade interdependence hypothesis, we should expect to see high levels of interdependence associated with positive political relations for China and its trading partners. Neorealists, however, contend that increases in interdependence lead to increases in conflict.49

Hypothesis Two (Financial-Interdependence Hypothesis): as China's financial-interdependence with the other states increases its political relations improve.

As noted above, recent research by Rosencrance and Thompson highlights the growing impact that foreign direct investment flows are creating.50 Rosencrance and Thompson show foreign direct investments have increased 800 percent since 1970, while trade levels have increased by half that. For China's part, in 2002, it surpassed the United States as the world leading


50 Trade statistics from the IMF: Direction of Trade Statistics.
51 Waltz, Theory of International Politics.
52 Rosencrance and Thompson, 2003, p. 365.
destination for foreign direct investment. FDI flows into China have increased from $33 billion in 1994 to $63 billion by 2006.

**Hypothesis Three** (Relative Gains Hypothesis): as trade asymmetries grow between China and its trading partners negative political relations are more likely.

In the anarchic international system where security is scarce and states must fend for themselves, realists expect that states are primarily concerned with relative gains. Therefore, as the gap between Chinese imports and exports increases for states, neorealism suggests this will lead to friction between the two. As the gap narrows or becomes virtually zero political relations are not likely to be effected by the trade symmetry.

**Hypothesis Four** (Institutionalist Hypothesis): as China participates in a greater number of international institutions with other states its political relations improve.

The benefits that participation in international institutions can provide states are discussed above. Traditionally, China kept an arm’s length away from entanglements in institutions. However, since reforms to open up its economy China has seen these institutions in a different light. These institutions can be seen as a restraint on American hegemony in East Asia, rather than as constraints on Chinese policy. Therefore, China has worked assiduously to gain entrance into some of the region’s and the world’s most influential institutions. China has been a part of regional forums such as APEC, API, and ARF since the 1990’s and has developed closer ties with Central Asian states and Russia through the SCO founded in 1996. Furthermore, China gained admission into the WTO in 2001.

**Hypothesis Five** (Relative Power Hypothesis): as China’s power increases relative to other states in the international system, states are more likely to experience negative political relations with China.

According to neorealists, states can never be certain of each other’s intentions. Chinese military might is likely to become a source of tension with other states. The larger the power disparity, particularly among other great powers, the more likely there is to be negative political relations with these states. It was not until 1989 that China announced several large increases in the People’s Liberation Army’s (PLA) budget during peacetime. The PLA’s budget had been kept relatively low in the 1980’s as domestic economic development was the priority. In the three years prior to 1989 China’s military budget grew annually by an average of 4.9 percent. In the three years after and including 1989, China’s military budget grew by an average of 14.8 percent per annum. By 2006, China’s military expenditure ranking among the largest in the world (behind that of the US), with some scholars estimating it at $400 billion range once adjusted for “the reality that a billion dollars can buy a lot more ‘bang’ in China than in the US.” Other more modest figures estimate Chinese military expenditures at around $100 150 billion.

Military expenditures do not translate to an absolute advantage. Over time, however, China’s military capabilities may have marginally increased relative to major players in East Asia. China has expanded its power projection capabilities within Asia and has improved its air and sea-lift abilities. Despite these relative increases in capabilities, PLA modernization still has a long way to go. Estimates vary from 2020 to 2050 as to when China may “catch up” to the modernization of the US military, which is a main supplier to the South Korean and Japanese forces, with some scholars arguing that U.S. developments have actually outstripped Chinese efforts.

**RESEARCH DESIGN**

The five hypotheses listed above are tested using quantitative data from a variety of sources compiled into a single database. To test the hypotheses, I estimate the influence that economic interdependence (defined in terms of both trade and FDI), asymmetrical trade, international institutions and relative power capabilities have on political relations between China and other states. The unit of analysis is the dyad-year for pairs of states with whom China has trade relations. Overall, there are 153 states paired with China in the sample.

---

53 Author’s calculations from figures in Drifte, (2003, p. 42).
55 SIPRI and US Department of Defense estimates, respectively.
frame from 1990-2004. The sample size for the tests ranges from 278 to 687. The period 1990-2004 is examined because events data on China is limited. However, the beginning of the time frame is roughly a decade after China opened up at the Third Plenum of the Eleventh Central Committee in December of 1978. Since then, China has averaged between 9-12 percent annual GDP growth rates and has now risen to the second largest economy in the world.

**Dependent Variables**

The dependent variable for the study is some political relations between China and other states in the international system. Data for political relations is derived from King and Lowe's '10 Million International Dyadic Events.' Dyadic political events are captured using automated content analysis of Reuters Business Briefing for actors throughout the world. This research uses events in which China is either a source or a target for the event with some other state actor. The event code listed in the King and Lowe database is then weighted according to the Goldstein ontology. The result is a scale between 1.0 and 8.3 for political actions where negative values represent varying degrees of political conflict and positive values represent varying degrees of political cooperation. Averages are calculated for each dyad-year to represent mean political relations between China and the other states in the sample.

**Independent Variables**

There are five independent variables of particular interest to this study. The first is economic interdependence. Early measurements of economic interdependence are drawn from international trade statistics. These empirical studies use international trade as the sole measurement of economic interdependence. This measurement is used because interstate trade creates benefits to both states, whereas the transaction would not occur. A state's objective through interstate trade is the improvement of national welfare and

60 There were two states eliminated because they did not exist for a majority of the time: USSR, Yugoslavia, and Czechoslovakia. 50 other states were eliminated from the sample because they did not have sufficient dependent variable data.


64 Rosecrance, *The Rise of the Trading State.*


66 Results for partner-trade interdependence shown not differences with results based on economy-trade interdependence.

67 Trade data for this research comes from the IMF 'Direction of Trade Statistics.' GDP data comes from World Bank *World Development Indicators* adjusted to 2000 base for all states except N. Korea. North Korean estimates come from Bank of Korea.

two scores.69 The 1st state’s partner dependence value is the first term in the numerator and the 2nd state’s partner dependence value is the second term in the numerator.

Dyadic economy-trade interdependence is measured using the following formula in equation one:

\[ I_{ij,t} = \frac{M_{ij,t} + X_{ij,t}}{GDP_{ij,t}} \times \frac{M_{ji,t} + X_{ji,t}}{GDP_{ji,t}} \]

where \( M_{ij} \) is the 1st state’s imports from the 2nd state and \( X_{ij} \) is 1st exports to 2nd. \( GDP_{ij} \) is 1st gross domestic product. Absolute value is used in the denominator so that the effect of any asymmetries within a dyad produces a consistent, non-reducing effect regardless of the direction of the asymmetry. For instance, without the use of absolute value, if 1st dependence on 2nd is less than 2nd dependence on 1st then the denominator will have a multiplier effect on the numerator. If 1st dependence on 2nd is greater than 2nd dependence on 1st then the denominator will have a reducing effect on the numerator. Since the designation of which actor is 1st and which is 2nd is arbitrary, a uniform direction is necessary for all dyads. Adopting the absolute value in the denominator will create a consistent reducing effect across all dyads.

A second variable of interest to this study is the asymmetry of trade. Asymmetry of trade is calculated as the amount a state is dependent on China as a trading partner and vice versa. Here I borrow Barbieri’s operationalization for trade asymmetry.70 Each state’s dependence on the other as a source of international trade is calculated as dyadic trade over total trade. Then dyadic asymmetry between state 1st and 2nd, during year 2nd, is calculated as one minus the absolute value of the difference of these two dependence scores as described in equation two below:

\[ Asymmetry_{ij,t} = 1 - \left| \frac{M_{ij,t} + X_{ij,t}}{W_{ij,t}} - \frac{M_{ji,t} + X_{ji,t}}{W_{ji,t}} \right| \]

69 Oneil et al. “The Liberal Peace, Interdependence, Democracy and International Conflict, 1950-1985,” do not use absolute value, but instead order the terms from high value to low value to avoid a negative difference in the denominator.


where \( M_{ij} \) plus \( X_{ij} \) is total trade between \( i \) and \( j \). \( GDP_{ij} \) is \( i \)’s gross domestic product. Absolute value is used so that the effect of any asymmetries within a dyad produces a consistent effect regardless of the direction of the asymmetry. The reason for this is theoretically driven. There is likely to be conflict when the asymmetry increases since one state is not dependent on the other. When both states are nearly equally dependent on one another, the theory holds, there is less likely to be conflict. This situation is reflected in values close to one, while asymmetrical relationships are found as the value approaches zero.

A third indicator of economic interdependence particularly relevant to China is financial interdependence. Financial interdependence is measured by examining inflows of FDI from each state into China.71

Specifically, financial interdependence is measured by:

\[ F_{ij,t} = \frac{FDI_{ij,t}}{GDP_{ij,t}} \times \frac{FDI_{ji,t}}{GDP_{ji,t}} \]

where, during time \( t \), \( GDP_{ij} \) is the level of inflow of foreign direct investment from country \( i \) to country \( j \), China. \( GDP_{ij} \) is \( i \)’s gross domestic product.72

Admittedly, these are no perfect indicators of trade and financial interdependence since they say nothing about the qualitative aspects of the trade and investment. A state that imports vital raw materials for industrialization may have greater vulnerability than these measures may indicate. However, to the extent that international prices reflect the real values of goods traded, the trade-to-GDP ratio will accurately describe a state’s dependence on its trading partner.73

The fourth independent variable of interest is joint membership in international institutions. “Membership” is measured by instances that China is in an international institution with another state for a given year. Data for joint membership in international institutions comes from COW International Governmental Organization dataset version 2.3.74

And lastly, the fifth independent variable of importance to this study is relative power capabilities. This study operationalizes relative power by

71 FDI data used in this research comes from China Statistical Yearbook (Beijing: China Statistical Publishing House, various years).
72 Formula adapted from Thorngarth, “Foreign Direct Investment and War,” 52.
evaluating relative capabilities available to each state in a given dyad. The COW Composite Index of National Capabilities scores are used to measure each state's share of the interstate system's total military, industrial and demographic resources. RELPWR is the log of the ratio of the stronger state's capability index to that of the weaker member in each dyad.

Control Variables

A number of important political, economic, military and geographic factors that may affect trade, institutional membership, relative power and political relations are controlled for in the study. Economic development is controlled for in this study by using per capita GDP from the COW CINC dataset to indicate levels of successful economies. States enjoying successful economies are less apt to fight for fear of disrupting current economic trends. Furthermore, regimes may have an incentive to distract attention from a declining economy. The average GDP per capita growth is calculated for each state in the sample and China.

Empirical research showing that democracies refrain from war with one another is strong. Since China is not a democracy, there would be no use in employing a joint-democratic indicator. Less observed are the pacific relations of democracies toward non-democracies. Some studies have found that the more libertarian a state is the less it experiences foreign violence. As such, this study controls for the effects of a state's level of democracy on its interstate relations with China. This study uses the Institutional Democracy Index and the Autocracy Index from the Polity IV dataset to create an ordinal variable, with range [11,11], for overall level of democracy for each state in a dyad with China, and for each year to control for the effects democracy may have on interstate relations. The democracy and autocracy scores measure each government's openness to citizen participation, competitiveness to participation and recruitment and the degree of institutional checks available on the exercise of power within the state in a given year. Each state's autocracy score is

subtracted from its democracy score for an overall measurement of democracy. The ordinal variable takes on a value of one when the dyad is separated by a land or river border, two when the dyad is separated by 12 miles of water or less, a three when separated by 24 miles of water or less (but more than 12 miles), a four when separated by 150 miles of water or less (but more than 24 miles) and a five when separated by 400 miles of water or less (but more than 150 miles). A control variable called peace years is created to reflect the number of years a dyad has remained at peace with one another. The number of consecutive years a dyad maintains a positive value for mean political conflict should be positively related to cooperation according to the logic that the larger number of years a dyad is at peace the more likely it is to remain at peace.

Lastly, a variable measuring the partner state's military expenditure relative to its GDP averaged with China's relative military expenditure is created. High levels of military expenditure may indicate a hostile environment and increase the likelihood of conflict within the dyad. Data for military expenditure was obtained from the Stockholm International Peace Research Institute (SIPRI).

Independent variables are lagged one year so that states in a given year are not affected by changes in political relations. Economic and military variables are lagged to normalize the data. Additionally, continuous independent variables are standardized to eliminate problems associated with multicollinearity.

EMPirical Results

Nine OLS regressions were conducted to test the five hypotheses listed above. The first five models regress political relations against each of the five independent variables separately but include the five control variables along with a one-year lag of political relations. The next three models regress the
three economic variables separately while controlling for the influence of joint institutional membership and relative military power along with the control variables. Last, the final model includes all independent and control variables.

All models are based on a two-tailed test where the significance threshold is p≤.05. A two-tailed test is used because it is unclear from previous research the direction of the effect the various independent variables have on political relations. For instance, with regards to interdependence, neoliberal content that higher levels improve political relations while neo-realist contend that it increases political conflict. Adopting a high threshold for the confidence interval, p≤.05, puts an additional burden on the researcher to show significant relationships between the independent variables and political relations compared to the not yet conventional, but often used threshold of p≤.10.

All nine models are statistically significant, meaning that the model is a better predictor of the dependent variable than the mean values (P≤.001). The adjusted R² values for the models range between .089 and .323. These are generally considered low values. However, it is not the scope of this research to explain China's political relations for αi, rather to understand if certain factors influence China's political relations. Therefore, it is not necessary that the models have high explanatory power.

### Table 1. Independent Influences on Chinese Political Relations

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade-Interdependence</td>
<td>-1.54 (1.09)**</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Financial-Interdependence</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Trade-Symmetry</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Joint Institutional Power</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Relative Power</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Per Capita GDP Growth</td>
<td>.007 (.005)</td>
<td>.007 (.007)</td>
<td>.011 (.044)</td>
<td>.009 (.036)</td>
<td>.010 (.054)</td>
</tr>
<tr>
<td>Mean Per Capita Income</td>
<td>.007 (.004)</td>
<td>.014 (.044)</td>
<td>.013 (.044)</td>
<td>.014 (.044)</td>
<td>.014 (.044)</td>
</tr>
<tr>
<td>Democratic Index</td>
<td>-111 (.049)**</td>
<td>-92 (.047)</td>
<td>-115 (.031)**</td>
<td>-100 (.050)</td>
<td>-131 (.054)**</td>
</tr>
<tr>
<td>Contiguity</td>
<td>.031 (.048)</td>
<td>.045 (.048)</td>
<td>.051 (.030)</td>
<td>.052 (.030)</td>
<td>.051 (.030)</td>
</tr>
<tr>
<td>Peace Years</td>
<td>.270 (.030)**</td>
<td>.246 (.037)**</td>
<td>.251 (.030)**</td>
<td>.260 (.030)**</td>
<td>.251 (.030)**</td>
</tr>
<tr>
<td>Log Political Institutions</td>
<td>-105 (.036)</td>
<td>-72 (.034)</td>
<td>-121 (.034)</td>
<td>-100 (.034)</td>
<td>-91 (.030)</td>
</tr>
<tr>
<td>Constant</td>
<td>.009 (.030)</td>
<td>.034 (.043)</td>
<td>.017 (.043)</td>
<td>.122 (.047)**</td>
<td>.129 (.047)**</td>
</tr>
<tr>
<td>R²</td>
<td>.088</td>
<td>.390</td>
<td>.086</td>
<td>.086</td>
<td>.086</td>
</tr>
</tbody>
</table>

[Note: Standard errors are in parentheses. *p<.05; **p<.01; ***p<.001, two-tailed test.]

### Testing Hypothesis One

Model 1, shown in Table 1 above, measures the influence that trade-interdependence has on political relations between China and its trading partners while simultaneously controlling for various economic, political, military and geographical factors, along with the previous year's level of political relations.

From Model 1, we see that trade-interdependence is significantly related (p≤.001) to China's political relations, but not in the expected neoliberal direction. The coefficient for trade-interdependence is -1.54, indicating that increases in trade-interdependence decrease political relations between China and its trading partners. Additionally, the trade-interdependence hypothesis can be assessed in Models 6 and 9, found in Table 2, shown on the next page. Model 6 measures the influence of trade-interdependence on China's political relations while also controlling for joint membership in international institutions and relative power. Here again, the coefficient is significant and negative (-1.32, p≤.01). Furthermore, in Model 9, the full model, the influence of trade-interdependence is measured while controlling for all other factors in

```
the study. In this model, trade-interdependence is not found to be significantly related to China's political relations.

In all, trade-interdependence is not found to significantly improve political relations between China and its neighbors. In fact, the opposite was found; trade-interdependence is related to deteriorations in political relations. The neoliberal hypothesis is not supported, while neorealist claims are.

**Testing Hypothesis Two**

Model 2, in Table 1, shows the influence of financial-interdependence on China's political relations. While financial-interdependence is shown to significantly relate to Chinese political relations, it does so counterc to the neoliberal claim. Rather than being related to improvements of Chinese political relations, higher levels of financial-interdependence are associated with a deterioration of political relations. The coefficient for financial-interdependence is -.209 (p<.001), indicating that increases in financial-interdependence are related to decreases in political relations. Additionally, Models 7 and 9, found in Table 2, also measure the influence of financial-interdependence. Model 7 shows the influence of financial-interdependence while controlling for joint institutional membership and relative power. Here again, financial interdependence is found to be significantly related to decreases in political relations. The coefficient for financial-interdependence is -.158 (p<.001). Lastly, in Model 9 where the influence of financial-interdependence is measured controlling for all other factors in the study, financial-interdependence is not found to be significantly related to China's political relations.

Support for the neoliberal hypothesis that increases in financial-interdependence are associated with increased political relations is not found. Rather, similar to trade-interdependence, financial-interdependence appears to be associated with a deterioration of political relations.

**Testing Hypothesis Three**

Model 3, in Table 1, shows the influence of trade-symmetry on political relations. The neorealist contention is that the size of trade asymmetries increase, political relations deteriorate. Values of one indicate perfect symmetry and values of zero indicate perfect dependence of one state on the other. Therefore, neorealists would predict this variable to be directly proportional to political relations. The coefficient for trade-symmetry is .193 (p<.001). This indicates that as trade relationships go from being symmetrical to asymmetrical, political relations deteriorate between China and its trade partners.

Models 8 and 9, found in Table 2, also assess the influence that trade-symmetry has on China's political relations. In Model 8 the influence of trade-symmetry is measured while simultaneously controlling for joint institutionalism and relative power. Trade-symmetry is found to be significantly related to improved political relations. The coefficient for trade-symmetry is .217 (p<.001). Additionally, in Model 9, where all factors are considered, trade-symmetry is again found to significantly relate to improved political relations. The coefficient is .345 (p<.001).

All three models for measuring the influence of trade-symmetry on China's political relations indicate that as trading relations become more asymmetrical, political relations improve. Conversely, as trading relations become asymmetrical, political relations deteriorate. The direction of this

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 6 Trade-Interdependence</th>
<th>Model 7 Financial-Interdependence</th>
<th>Model 8 Trade-Symmetry</th>
<th>Model 9 Full Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Interdependence</td>
<td>-.132 (.042)**</td>
<td>-</td>
<td>-.020 (.086)</td>
<td></td>
</tr>
<tr>
<td>Financial Interdependence</td>
<td>-</td>
<td>-.158 (.041)**</td>
<td>-</td>
<td>-.090 (.048)</td>
</tr>
<tr>
<td>Trade Symmetry</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Joint Institutionalism</td>
<td>-.177 (.064)**</td>
<td>-.244 (.070)**</td>
<td>-.181 (.062)**</td>
<td>-.161 (.075)**</td>
</tr>
<tr>
<td>Relative Power</td>
<td>-.585 (.170)**</td>
<td>-.526 (.247)**</td>
<td>-.203 (.133)**</td>
<td>1.084 (.339)**</td>
</tr>
<tr>
<td>Per Capita GDP Growth</td>
<td>-.106 (.256)</td>
<td>-.122 (.243)</td>
<td>-.111 (.243)</td>
<td>-.174 (.253)</td>
</tr>
<tr>
<td>Mean Per Capita ME</td>
<td>-.095 (.047)</td>
<td>-.087 (.083)</td>
<td>-.025 (.047)</td>
<td>.058 (.082)</td>
</tr>
<tr>
<td>Democratic Index</td>
<td>-.016 (.012)</td>
<td>-.042 (.054)</td>
<td>-.026 (.049)</td>
<td>.260 (.082)</td>
</tr>
<tr>
<td>Contiguity</td>
<td>-.042 (.039)</td>
<td>-.042 (.039)</td>
<td>-.045 (.023)</td>
<td>-.065 (.037)</td>
</tr>
<tr>
<td>Peace Years</td>
<td>-.104 (.041)**</td>
<td>.164 (.041)**</td>
<td>-.402 (.048)**</td>
<td>-.377 (.048)**</td>
</tr>
<tr>
<td>Log Political Relations</td>
<td>-.024 (.043)</td>
<td>-.022 (.043)</td>
<td>-.025 (.040)</td>
<td>-.029 (.047)</td>
</tr>
<tr>
<td>Constant</td>
<td>.023 (.055)</td>
<td>.042 (.078)</td>
<td>.076 (.050)</td>
<td>.395 (.099)**</td>
</tr>
<tr>
<td>R²</td>
<td>.560</td>
<td>.278</td>
<td>.585</td>
<td>.278</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.542</td>
<td>.219</td>
<td>.183</td>
<td>.929</td>
</tr>
</tbody>
</table>

(Note: Standard errors are in parentheses. *p<.05; **p<.01; ***p<.001 two tailed test.)

Table 2. Independent and Control Variable Influences on
relationship is consistent in all three models and is significant (p<0.001). Neorealists predictions about the relationship between trade symmetry and political relations are supported.

**Testing Hypothesis Four**

Neorealists contend that as joint-membership in international institutions increases between states, political relations improve. Neorealists contend that international institutions are used for political ends and do not improve interstate relations consistently. Model 4, in Table 1, tests the influence that joint membership in international institutions has on political relations. In this model, joint institutional membership is not found to be significantly related to China's political relations. The influence of institutions is also measured in models 6 through 9, in Table 2. In all four of these models joint institutional membership is found to be both statistically significant and associated with a decrease in political relations. The coefficients range from -0.101 to -0.107 and are all significant at the p<0.05 level. Contrary to the neoliberal hypothesis, joint membership in international institutions is related to a deterioration of Chinese political relations.

**Testing Hypothesis Five**

Model 5, in Table 1, tests for the influence that relative power has on Chinese political relations, while considering the influences of the five control factors. Increases in relative power are associated with a deterioration of political relations. The coefficient for relative power is -0.689 and is significant at the p<0.001 level. The influence of relative power on Chinese political relations is also assessed in models 6 through 9, found in Table 2. The results here are mixed. In Models 6 and 7, relative power is inversely related to political relations and is found to be significant at the p<0.05 level. The coefficient for relative power in these models is -0.385 and -0.320 respectively. Increases in relative power by China relate to decreases in political relations. In Model 8, where the effects of trade-symmetry are considered, relative power is not found to be significant. Lastly, in model 9 where all factors are simultaneously considered, relative power is positively related directly proportional to political relations. Increases in relative power by one state in the dyad appear to be related to increases in political relations. The coefficient for relative power in model 9 is 1.084 (p<0.01 level).

While in 3 of the models increases in relative power are significantly related to declining political relations, in the full model, Model 9, it is associated with improved Chinese interstate relations. Since states must confront the realities associated with trade- and financial-interdependencies and trade asymmetries simultaneously with considerations of relative power and institutional membership, Model 9 best captures dyadic relations. There is a "feeding the beast" feeling among states when trade is asymmetrical and relative power is increasing for the less dependent state. Model 9 shows that relative power considerations do not have to have a deleterious effect on political relations so long as trade remains fairly symmetrical, when the influences of trade- and financial-interdependences are considered. However, this relationship is not found in Model 8, when the influences of those two variables are not considered, though relative power does not reach statistical significance in this model.

Several other interesting findings are worth noting. First, peace years is found to be significant in all models (p<0.001 level) and points in a consistent positive direction. Positive political relations between China and its trading partners tend to lead to further positive relations. However, the converse is not necessarily true. Lag political relations are not found to be significant in any model. The influence that democracy has on China's political relations with these states is measured in all models. However, only in models 1, 3 and 5 where the influences of trade-interdependence, trade-symmetry and relative power are separately considered is it found to be significant. In these models, higher levels of democracy are associated with a worsening of political relations with China.

In considering all five hypotheses, neorealism best describes China's interstate political relations. When assessing trade- and financial-interdependence, both are associated with a decline in China's interstate political relations. When assessing relative gains, large disparities in trade are associated with a worsening of China's interstate political relations. Additionally, joint membership in international institutions is not found to have any significant positive influence on China's political relations, while relative power increases are generally associated with a deterioration of political relations. Furthermore, where joint institutional membership is found to be significant, it is associated with decreases in political relations.

**Policy Implications**

The findings from this research have several policy implications for China's rise. Trade- and financial-interdependence with China does not necessarily lead to a deterioration of political relations so long as trade flows remain relatively symmetrical (Model 9). As trade flows become imbalanced, a worsening of political relations is likely to result (Models 3, 8 & 9). This issue is an important concern for Sino-American relations. The US currently runs a trade deficit with China on the order of $315 billion per annum. This is nearly five times larger the deficit the US had with Japan, the country with whom it runs its second largest deficit. These findings imply that for political relations...
to improve between the two countries there should be constructive steps between the two states to reduce the trade imbalance.

Relative power gains by China are associated with a deterioration of political relations with its trading partners. Models 5-7 indicate this. However, when all international economic factors are simultaneously considered, relative power increases have the opposite effect on political relations. This supports the neoliberal contention that relative power concerns are not always the paramount concern among states. International economic factors can mitigate the effects of relative power gains by not only reducing it, but actually changing it from a negative effect on political relations to a positive effect. This is important to note as China continues its military modernization efforts. So long as trade imbalances can be minimized, Chinese relative power increases are not likely to lead to a deterioration in political relations.

As the Chinese continue to develop its blue water naval capabilities to project power far from its shores, and improve and ship missile technology, the US should seek economic policies that begin to reduce the trade deficit. Reducing the trade deficit requires either increased consumption of American goods by the Chinese or decreased consumption of Chinese goods by Americans. Current efforts by US Treasury officials to negotiate a strengthening of Chinese currency have not been overly successful. However, the Chinese government has strengthened the RMB by nearly 23% since 2005. Despite this increase in the value of the RMB, US consumption of Chinese goods continues to outpace US exports to China. However, a clear consequence to American demands of a strengthening of Chinese RMB is a reduction or stoppage of Chinese purchases of US treasury notes. China is currently the largest creditor nation to the US. Such slow down or stoppage would mean that it will become more expensive for the US to borrow money, and thus, will cause an increase in interest rates. However, would only go to aid in reducing the trade deficit since, as a result of credit becoming more expensive, Americans would purchase less goods, much of which would come from China.

Last, all things equal, positive political relations with China, once fostered can help sustain continuous positive relations in the long term. Interestingly, institutionalization does not seem to be the driver of cooperation for China. In fact, the opposite results have been found. Institutional membership with China is related to a decrease in political relations.

CONCLUSION

This research set out to test five hypotheses drawn from neoliberal and neorealist approaches to the study of international relations and applied to the case of China. The empirical findings generally do not support neoliberal claims that economic interdependence leads to cooperation among states. Nor do the findings support the neoliberal institutionalist claims that international institutions increase cooperation. When it comes to China's political relations, these factors may actually reduce political cooperation.

Neorealist claims that economic interdependence increases tensions among states are supported by the empirical results. For both trade- and financial-interdependence a negative relationship with political relations was found. Furthermore, neorealist claims centering around relative gains concerns are supported in these empirical findings. As trade relations become imbalanced, China's political relations generally worsen, all things equal.

There exists a bridge between the neorealist and neoliberal perspective. In all the models where significant, except for Model 9, relative power increases are associated with a deterioration of political relations. However, in Model 9, when international economic factors are simultaneously controlled for, relative power increases are related to improvements in interstate relations. This suggests that neoliberal claims which state that international economic activity can change state priorities so that power gains are not the dominant priority for states to consider are correct. Relative power has a positive influence on interstate relations when controlling for major international economic activity.

---

82 Though the variable is operationalized as a ratio of capabilities of the larger power to that of the smaller one, China was the larger power in all cases except five; US 1991-1995.
Roger Sherman and Federalism: The Transition from the Articles of Confederation to the U.S. Constitution

Autumn Baker
Morehead State University
AutumnBly@yahoo.com

This study examines the religiosity, political career, and political thought of Roger Sherman. Sherman had a profound impact on the American Republic and American Federalism. The study concludes that as a Puritan descendant and devout Congregationalist, Roger Sherman's religious convictions explain his political principles.

Key Words: Roger Sherman, Founding Father, U.S. Constitution, Federalism, Constitutional Convention, Congregationalism

Considered by many historians and political scientists to be one of the forgotten founders, Roger Sherman was the only founder to either debate, sign, or author almost all of the greatest documents that structure and record the history of the American Republic: the Articles of Association, the Olive Branch Petition, the Declaration of Independence, the Articles of Confederation, the United States Constitution, and the Bill of Rights. Furthermore, his invaluable service as a statesman in Connecticut and as a delegate to the Constitutional Convention of 1787 helped to ensure the success of the American experiment. Roger Sherman was an integral leader during the American founding and colonial Connecticut politics, the annals of history would have unfolded differently in the absence of his honest contributions to his nation and the firmness of his principles.

This research addresses his numerous accomplishments and steadfast endeavors, from his political beginnings as a dedicated servant to the state of Connecticut, to his voice of opposition during the creation of the federal Bill of Rights. The focus of this research is to understand the causes behind the great effect Roger Sherman had on the American founding and Federalism. The study concludes that Sherman's dedication to his religion exerted a profound impact on this political thought and statesmanship. As a Puritan descendant and devout Congregationalist, Roger Sherman's religious convictions explain his political principles.

HUMBLE BEGINNINGS

And that ye study to be quiet, and to do your own business, and to work with your own hands, as we have commanded you.
1 Thessalonians 4:11

Although Roger Sherman received an honorary Master of Arts degree from Yale College, he had very little formal education. Born in Newton, Massachusetts, to William and Mehitable Sherman, he grew under the direction of his father and a local minister, Reverend Samuel Dunbar. Reverend Dunbar was a Harvard graduate who instilled not only a love of God and a love of education in his son, but a love a country in the young Sherman. Dunbar was a conservative Calvinist who believed in the sovereignty of God and the sinfulness of man, while simultaneously instilling a belief in liberty and human rights. Dunbar composed over 8,000 sermons in his long career and served as a chaplain during the Revolutionary War, a cause he took both to the battlefield and pulpit. He was even referred to as the “Son of Thunder” for his dedication to the Patriot cause.1 M.E. Bradford writes that it was Dunbar who “inspired him [Sherman] to read widely in theology, history, law, and politics.” According to the Puritan tradition, an enlightened church membership

1 This paper won the Abdul Rifai award for outstanding undergraduate paper at the 2013 KPAA, held at the University of Kentucky in Lexington, KY.
2 The author would like to thank Dr. Michael Hail and the Department of Government faculty at Morehead State University. “This research would not have been possible without the support and guidance of my advisor. I would like to express my gratitude to Dr. Hail and the School of Public Affairs for providing me with the opportunity to serve as an Undergraduate Research Fellow. I would also like to thank my parents, Duke and Tammy Baker, for always encouraging me to be a servant unto others.”
3 In addition to my readings on Roger Sherman, the history of our founding, and Congregationalism, I am also relying on my own understanding of Protestant Christianity. Many of the Bible verses used are of my own volition and if they are a direct quote from Roger Sherman, a Founding Father, or other theologians, they will be cited.
required an education; Dunbar thus ensured that his son would be well versed in scripture and theology as well as the liberal arts.6

James H. Hutson has noted that “many founders were recognized as religious specialists,” but “no one, perhaps, eclipsed Roger Sherman.”7 A lay theologian and New Light Congregationalist, Sherman’s life was a perfect illustration of Puritan New England. Sherman exemplified the virtues of a rational Puritan community: self-reliance, morality, and hard work. As a young man of meager beginnings, he relied on manual labor. He was both a farmer and cobbler. He learned the cordwainer trade from his father and eventually set up shop with his brother in Connecticut. Julian P. Boyd refers to Sherman as a “true Puritan,” instilled with “a hatred of selfishness.”8 Sherman continued to work as a cobbler and store owner for many years. Perhaps too ambitious though for a lifetime career in the workshop or field, he looked to his studies “for building a better fortune.”9 He would eventually read law with William Samuel Johnson, earning membership into the Litchfield Bar in 1754. As a brilliant young mathematician, he was appointed surveyor for New Haven and Litchfield in his early twenties. The “father of Litchfield surveying” and an inspiration to surveying’s “formal teaching in America,” Sherman left not only his political signature for history but an educational print as well.10

Sherman taught himself advanced mathematics, writing to his readers in his Almanac, “I have for several years past for my own amusement spent some of my leisure hours in the study of Mathematics.”11 His annual and biannual Almanac writings included: astronomical tables, calendars of events, advice on farming, poems, and aphorisms. Throughout Sherman’s Almanacs, readers are privy to his views on politics, morality, and the economy. The following excerpt from the month of September, included in his Almanac of 1753, provides insight into his incessant morality.

Most brave Commanders both by Land and Sea,
Most valiant Soldiers, crown’d with Victory;
Good Art, rich Swell, much Wealth, extensive Trade,
By pure Religion, yet most happy made:

10 Ibid., 8.

In addition to employing praise to the Father, Sherman writes of the liberties of America, agriculture opportunities and economic prosperity, in particular. The economy and commerce form a firm base for his political positions. As a voice of Federalism, Roger Sherman wanted to “see a government that could promote American commerce, collect taxes, retire the debt, establish a sound currency, make treaties, raise and supply an army, and preclude the robbery of one state by another by means of duties.”12

**THE VOICE OF FEDERALISM**

He that hath knowledge sparingly uses it; and a man of understanding is of an excellent spirit.

Pensaeles 17.27

In an attempt to resolve the problems produced under the Articles of Confederation, a Convention was called. In this Convention were the outspoken ideologies of Alexander Hamilton and Luther Martin. There were extremes in both Federal and Antifederal encumbrments, but it was men like Roger Sherman who understood the need for a resolution, while displaying willingness for compromise. Although considered to be a moderate Federalist, Sherman promoted states’ rights. This principle was possibly influenced by his experience with the structure of the Congregationalist churches. As described by Reverend Charles Jefferson in the mid 1930s, “Congregationalism is Democracy in Religion.”13 The root of Congregationalism is congregation. Each congregation is at liberty to direct its own affairs. There is little, if no, central authority among Congregational churches. Congregations elect their own ministers and clergy. This concept may have contributed to his states’ rights position; Sherman believed that “each state like each individual had its peculiar habits, usages and manners, which constituted its happiness.”14

Sherman did not journey to Philadelphia to expand and centralize the powers of a national government, but to create an effective government.15 One of the most outspoken members of the Great Convention, he was a man of wise words. He was described by Thomas Jefferson, as “a man who never said
a foolish thing in his life.”17 Recorded as speaking 138 times during the Constitutional Convention, his words were direct and precise. Julian P. Boyd writes that Sherman's words "were tools of great importance, to be chosen deliberately, used sparingly, and sent forth upon their mission soberly."18

Considered to be some of his most wise and remembered words, the Connecticut Compromise, America's constitutionalized Federalism, settled the disagreement of representation in the legislature. Sherman would later serve his beloved state of Connecticut in both houses of the legislature.19

STATESMAN FROM CONNECTICUT

For all have sinned, and come short of the glory of God.
Romans 3:23

After moving from Massachusetts to the more dynamic and opportunistically state of Connecticut, Roger Sherman became involved in local politics. Sherman regularly attended town meetings and was appointed to his first position in a civil office as grand jurymen of New Milford. This appointment began his lifelong career in politics. He would hold a local, state, or national civil office for the rest of his life. A table listing Sherman's local, state, and national positions is below, on the next page.20

Sherman was a man of great experience. His experience in law, the courtroom, and as a member of the clergy was sure to guide him through the Constitutional Convention.21 In all of his positions he was well respected, honest, and responsible, as "one of the most highly regarded men in Connecticut."22 During his service as a statesman of Connecticut, Sherman, along with Richard Law, codified and rewrote the state statutes and served as an Associate Judge.

Table 1. Roger Sherman's career as a public official

<table>
<thead>
<tr>
<th>Position</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Haven County Sheriff</td>
<td>1744-1746</td>
</tr>
<tr>
<td>Eastford County Sheriff</td>
<td>1746-1749</td>
</tr>
<tr>
<td>Grand Jurymen</td>
<td>1749-1753</td>
</tr>
<tr>
<td>Judge</td>
<td>1753-1755</td>
</tr>
<tr>
<td>Sheriff</td>
<td>1755-1757</td>
</tr>
<tr>
<td>Judge</td>
<td>1755-1759</td>
</tr>
<tr>
<td>New Milford Rep. in General Assembly</td>
<td>1759-1762</td>
</tr>
<tr>
<td>Town Clerk</td>
<td>1759-1763</td>
</tr>
<tr>
<td>Commissioner for Connecticut Towns</td>
<td>1760-1763</td>
</tr>
<tr>
<td>Master of Connecticut Court</td>
<td>1763-1766</td>
</tr>
<tr>
<td>Master of Connecticut General Court</td>
<td>1766-1768</td>
</tr>
<tr>
<td>Master of Connecticut General Court</td>
<td>1768-1772</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1772-1779</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1779-1781</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1781-1783</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1783-1784</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1784-1785</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1785-1786</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1786-1787</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1787-1788</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1788-1789</td>
</tr>
<tr>
<td>Chmn, Rep. in Congress under the Articles</td>
<td>1789-1790</td>
</tr>
</tbody>
</table>

While serving as a judge Sherman interpreted the laws with a "clear rule of the Word of God."23 The word of God served as the voice of authority to the Puritan politician. He would never lose sight of God in his judgments and in keeping with the essence of Puritan government; he answered public questions by asking what would promote the general welfare best.

Sherman continued his position as an Associate Judge until elected to the House of Representatives.24 Although the judgship was viewed by his peers as a higher honor, Sherman accepted his position as a congressman and relinquished his title as judge. Sherman was dedicated to the creation of an effective system of government and wanted to ensure the authority of a national Congress. Sherman recognized that the states must support the

18 Ibid., 221.
20The chart included Sherman's positions within his local church, for church involvement and leadership coincided with political influence.
21Sherman was one of the oldest delegates to the Convention, exceeded only by Benjamin Franklin.
national government, letting “harmony prevail rather than contention.” He would support this precedent by taking his seat in the national legislature. As both a judge and legislator, Sherman often appealed directly to scripture when defining political decisions. He defended the land rights of Indians by paraphrasing Acts 17:26, “That God hath made of one blood, all nations of the earth, and hath determined the bounds of their habitation.” He opposed an increase in the number of laws allowed for disciplinary action in the military by citing Deuteronomy 25:3, “Forty stripes he may give him and not exceedest, if he should exceed, and beat him above these with many stripes, then thy brother should seem vile unto thee.” His faith had a resounding voice in his politics.

Sherman’s convictions of the absolute sovereignty of God and the futility of man contributed to his ideas on self-governance. Influenced by Congregationalist preaching of the wicked character of men, Sherman opposed direct democracy. In 1789, Sherman composed A Short Sermon on the Duty of Self Examination, Preparatory to Receiving the Lord’s Supper. He declared men to be in a “state of depravity, guilt and misery” and “by nature prone to evil and adverse to good, and unable to deliver ourselves.” Sherman sincerely believed that the people were incapable of autonomous self-governance, but that the integrity of the states would protect personal liberties. Sherman argued that the people “immediately should have as little to do as may be about the [national] government.” Later espoused by Christopher Collier, “popular government implies representation by population—an end to equality of the states.” As a states’ rights Federalist, Sherman maintained that through the election of state legislatures, the people would be practicing their right to participation.

**INTEGRITY AND MORALITY**

*Be careful for nothing, but in everything by prayer and supplication with thanksgiving let your requests be made known unto God.* Philippians 4:6

The protection of personal liberties belonged to the states. In adherence to this philosophy, Sherman argued against the need to draft a Bill of Rights during the Philadelphia Convention. The Constitution was a list of enumerated powers, and as a fellow Federalist contended, “why declare that things shall not be done which there is no power to do?” Devoted to protecting the integrity of the states, he repeatedly opposed the construction of a Bill of Rights, stating: “The State Declarations of Rights are not repealed by this Constitution, and being in force are sufficient.”

Many of the states had established a written Bill of Rights, with the Virginia Declaration of Rights being the most famous. Connecticut was one of the few remaining states without a written declaration, accompanied by South Carolina, New Jersey, New York, and Rhode Island. Roger Sherman would become the voice of opposition during the debates on a national Bill of Rights. Eventually though, the man of compromise came to sit on the committee to craft the Bill of Rights and voted in favor of the final draft. And interestingly, the only remaining original draft is in his handwriting.

Sherman was in particular opposition to the First Amendment despite being a proponent of religious liberty. Defending his inclusion of “Quaker meetings” and the Church of England’s days of observation in his early Almanacs, he writes that, “neither do I suppose the observation of these necessary, but as I take liberty in these matters to judge myself, so I think it is reasonable that others should have the same liberty.” The teachings of Congregationalism held that an individual had a right to work out his own spiritual destiny with the Lord.

His argument against the inclusion of the First Amendment was to protect the integrity of the many states, not an argument against religious toleration. Sherman, a devout Protestant, advocated religious toleration, even of Roman Catholics. Nevertheless, to Christian denominations were to be tolerated, for in his faith, Christianity is necessary for political prosperity. 

25 Ibid., 242.
29 Ibid., 240.
With an “admiration of those who esteem such virtues in public officers as honesty, courage, and intellectual responsibility,” Sherman valued the promotion of men of character within the state. This position was illustrated in Sherman’s opposition of Gouverneur Morris’s appointment as minister to France because he was of an “irreligious nature.” While writing the preamble for a statute protecting religious liberty, as a legislator in Connecticut, Sherman was committed to the encouragement of religion and morality, writing, “and the good Order of Civil Society, essentially depend upon Piety, Religion and Morality, it is the Duty of the Civil Authority to provide for the Support and Encouragement thereof.”

Congregationalist communities sought to promote moral leadership, setting the highest standards of purity and holiness. A pious politician, Sherman encouraged a society that promotes Christian morality. The national government had “limited powers to legislate in matters of religion,” but “could encourage religious practices.” During the Constitutional Convention, Sherman seconded a motion by Benjamin Franklin to begin the days with prayer, for prayer could answer their “public petitions.” Sherman also sat on a committee, while serving in the House to propose a day of “fasting, humiliation, and prayer,” to “improve the sovereign Lord of Heaven and Earth to remember mercy in his judgments; to make us sincerely penitent for our transgressions, ... to banish vice and irreligion from among us, and establish virtue and piety by his divine grace.”

Conclusion

For, brethren, ye have been called unto liberty: only use not liberty for an occasion to the flesh, but by love serve one another.

Galatians 5:13

This research looks at Puritan and Congregationalist roots as the foundation for Roger Sherman’s effect on American Federalism. Sherman was divinely commanded to work with his hands and did so ardently; he studied passionately; he promoted the common good, and he sought guidance from the Lord in everything. His Congregationalist foundation encouraged devotion and diligence, education, and liberty. A system of Federalism was crafted over 200 years ago by the men we call our Founding Fathers. Roger Sherman is not often remembered as one of these brilliant fathers, but perhaps his intent was not to be remembered as a father, not the “father of the House,” the father of surveilling, or a Founding Father, but that of a servant; a servant to his community, his church, his state, his country, and most importantly his Lord. For even of himself he signed his name: “Your very humble servant, Roger Sherman.”

Roger Sherman, a devout Christian, lived according to the virtues of humility and hard work. As a state’s rights Federalist, Sherman made a substantial contribution to the construction of the American system of government. In particular, through his authorship of the Connecticut Compromise and his delegation to the Constitutional Convention, he is a craftsman of American Federalism.

40 Ibid., 268.
REFERENCES


Federalism and Administrative Law: Regulatory Power and the U.S. Constitution

Ashley Ruggiero
Morehead State University
aruggiero@moreheadstate.edu

This paper examines the Administrative Procedure Act (APA) and its impact on state authority and regulatory federalism. It contends that the Administrative Procedure Act of 1946 transformed traditional ideals of federalism and paved the way for the more centralized administrative process we know today. The paper begins by providing a brief history and breakdown of the act and proceeds to consider key Supreme Court cases. It concludes with an assessment of the Administrative Procedure Act’s impact on the American political system, especially as it pertains to federalism, checks and balances, and the potential for fraud and corruption in vast federal programs subject to very minimal oversight.

Key Words: Administrative Procedure Act, Administrative Law, Regulatory Federalism, Separation of Powers.

The two most important structural features of American government—its federal design and the separation of powers—were intended to prevent tyranny in the new nation and ensure the government remains accountable to the people. However, since the American founding, the U.S. Constitution has been interpreted in ways that have allowed the framers’ original intention to be ignored. In today’s society, there is no longer a strong respect for federalism, as there had been in 1776. What is more, the executive branch has amassed a startling degree of power thanks to the rise of an expansive administrative apparatus. The federal bureaucracy, in turn, has amassed rule-making power that has further eroded state’s authority to legislate in their traditional spheres of authority.

The problems that attend these developments are especially evident through an examination of the Administrative Procedure Act (APA). The APA was passed in 1946 under the Truman administration; its intention was to standardize lawmaking and adjudication amongst the federal agencies.

1 This paper, sponsored by Dr. Michael Hall, was presented at an undergraduate panel at the 2013 meeting of the KPSA.
2 S. U.S.C.A., §500

However, in so doing, the APA created a powerful fourth branch of government that is essentially uncontrollable by the other two branches: the administrative agencies. Today, powerful government agencies, overseen by unelected bureaucrats and in-house administrative law judges, create, uphold, and enforce administrative rules. Often, administrative law even supplants or distorts legislation duly passed by Congress and by state legislatures—the popular institutions authorized the people have authorized to make laws.

This paper contends that the Administrative Procedure Act of 1946 transformed traditional ideals of federalism and paved the way for the administrative process we know today. It begins by providing a brief history and breakdown of the act, while considering the impact of the APA on federalism. The paper concludes with a discussion of accountability in the federal system, in particular, the respects in which administrative centralization can undermine representation in a republican system of government. In addition to the obvious lack of oversight by elected officials, the increased agency authority was created opportunities for outright deception and fraud.

HISTORY

While the Administrative Procedure Act was enacted in 1946, the story of the legislation began in May of 1933 when the American Bar Association implemented the Special Committee on Administrative Law. Throughout six years and multiple leadership changes, the committee reviewed the processes and practices of administrative bodies. Within these years, the Committee made various recommendations for improving the administrative process. Among these recommendations were the introduction of a separate tribunal, the creation of an administrative court system, and the establishment of a separate review board for each agency.

After six years of review, Attorney General Murphy created the Committee on Administrative Procedure at the request of President Franklin D. Roosevelt. It was tasked with examining administrative function and procedural reform in the rapidly expanding federal bureaucracy. After a prolonged study period, the Committee’s final report on Administrative Procedure was released. It set the precedent for the Administrative Procedure Act of 1946. The Final Report reviewed 51 agencies, 35 of which had been created by statute during President Franklin D. Roosevelt’s New Deal. The Final Report highlighted the need to standardize rule-making and adjudicatory proceedings amongst the federal agencies.


World War II delayed enactment of the APA itself. The Administrative Procedure Act was finally brought before the Senate on March 12, 1946 by Senator McCarran and faced little no opposition. It again faced no opposition in the House and was signed by President Harry Truman on June 11th, 1946.

THE APA: ESTABLISHMENT AND THE EXPANSION OF FEDERAL REGULATORY POWER

The Administrative Procedure Act sets forth unified standards for rulemaking and adjudication for the federal agencies. To help the public understand the purpose of the Administrative Procedure Act, the Department of Justice issued the Attorney General's Manual on the Administrative Procedure Act in 1947. The Manual explains the basic purposes of the APA: to require that agencies keep the public informed of their organization, procedures, and rules; to provide for public participation in the rulemaking process; to prescribe uniform standards for the conduct of formal rule making and adjudicative hearings; and to restate the law of judicial review. Furthermore, administrative functions are broken down into two standards: rulemaking and adjudication. 6

Under Section 5 of the Administrative Procedure Act, rulemaking is defined as "agency process for formulating, amending, or repealing a rule." 7 Agencies tend to take place in "notice and comment" rulemaking, which requires the announcement of the contents of a proposed rule at least 30 days in advance. 8 Additionally, the public must have the opportunity to comment on the propositions. Notice and comment rulemaking, comprising the majority of rulemaking, is a minimum requirement and is considered informal. On the contrary, agencies can also be forced to follow more rigorous requirements where rulemaking is considered formal. 9 This process is similar to that of creating a legislative law.

Adjudication is defined as "agency process for the formulation of an order." 10 Adjudication occurs through hearings similar to judicial trials, as they are open to the public and can proceed in the same manner. However, they also tend to vary greatly. For example, adjudication hearings can occur without attorneys and are informally conducted by hearing officers with little to no legal training. Secondly, adjudication hearings tend to formulate policy more often than judicial hearings, requiring hearing officers to consider public interest rather than their personal ones. Furthermore, agencies have the capability to prosecute their cases. Experts amongst agencies typically carry out the responsibilities of trial examiners or agency chiefs. An "order" is the decision stemming from the adjudication. 11

Judicial review is granted by the Administrative Procedure Act to consider agency action and appeals. This is an important aspect to the act because, "without judicial review, administrative action and discretion would be limited only by agency self-discipline, executive direction, or legislative and public pressure." 12 Judicial review is granted on a case by case basis and questions the legitimacy of administrative orders and rules. However, courts tend to defer judicial review to the administrative agency. Deference is granted according to a series of rules, explained by Ernest Geilborn, author of Administrative Law and Procedure in a Nutshell.

First, an agency's finding of "fact"-basic or raw facts- will be upheld if supported by substantial evidence on the whole record. Second, inferences or ultimate fact findings will withstand judicial scrutiny if they have a "rational basis." Finally, only questions of law- the agency's authority the meaning of a statutory term, its application to the facts- procedural requirements are reviewed de novo; a court is theoretically free to determine for itself the correctness of the agency's legal judgments. However, even then the agency's interpretations are often entitled to great weight. 13

The most frequently cited case in Administrative law deals with judicial review of administrative agencies. Chevron U.S.A., Inc v National Resources Defense Council, Inc. (1984), referred to as Chevron from this point forward, held that the decisions of administrative agencies are entitled to judicial deference. 14 In other words, the process of judicial review under the Administrative Procedure Act, which the Court upheld in Chevron, leaves the agency responsible for the creation of a given law the last word regarding its legitimacy. Chevron questioned an amendment to the Clean Air Act of 1977, which created requirements for states that did not meet air quality standards endorsed by the Environmental Protection Agency. In effect, a federal administrative unit was creating rules that impacted states, in an area long believed to be a purview of the states, in ways only Congressional legislation had to that point. 15

---

8 Ibid. Pg 262.
The Supreme Court ruled that the courts must respect the rule-making authority of regulatory agencies. What is more, the Court called for deference to agencies under two conditions. First, where the intention of Congress is clear, and the agency is not in flagrant violation of the lawmaking body’s guiding aim or purpose, the Court ruled that broad deference to the judgment of administrators is appropriate. Second, where Congress’ intent is not clear, the Court ruled that deference to agency judgment is also appropriate as long as the agency’s interpretation of the authorizing statute appears to be reasonable or permissible.

Chermak was the first case fully to establish the precedent of broad respect for agency regulation. While recognizing that administrative agencies bring significant expertise to the rule-making process, it is also important to critically evaluate the impact of too much deference to unelected officials. The Supreme Court has, essentially, granted agencies the power to create, enforce, and uphold rules and orders. These three powers are intentionally spread out by the Founding Fathers between the three branches of government. However, the Chermak decision granted the non-elected body of administrative agencies all these powers simultaneously.

**Impact on States**

To fully understand the impact of the Administrative Procedure Act, it is important to consider the time period when it was adopted. As stated earlier, President Truman signed the APA in 1946, one year after he assumed the presidency from Roosevelt. President Roosevelt and his progressive interpretation of the Constitution are often credited with pulling the country out of the worst economic depression the United States has ever seen. In order to do so, Roosevelt interpreted the Constitution differently than any presidents had before him. As John Yoo, author of *Critique and Command*, helpfully explains,

FDR invoked the Great Depression by treating it as a domestic emergency that called for the centralization of power in the federal government and the Presidency. But he could not act alone because the Constitution gives Congress the authority to regulate the economy and create federal agencies. Under Roosevelt’s direction, Congress enacted sweeping legislation vesting almost complete power over industry and agriculture in the executive branch, which repeatedly sought to centralize power over the plethora of New Deal agencies in the Presidency.

Roosevelt transformed the way the three branches of government and the bureaucracies operated throughout his time in the executive office. However, if Roosevelt was expanding the powers of the federal government, from what institutions was he taking power away? While some of the powers made available to the federal government were entirely new, Roosevelt’s new interpretation of national power transformed American federalism. He effectively took away instruments of sovereignty from the fifty states.

Prior to the Great Depression and New Deal, a consistent pattern of dual federalism was present for the majority of American history. Under dual federalism, the state and national governments each had clearly defined powers and responsibilities. The broadminded interpretation of the Constitution moved the country into a period of Cooperative Federalism where responsibilities and powers of the state and national government began to overlap. This is illustrated by the later exploitation of federal funding to state-run programs. Cooperative federalism effectively holds the states accountable to the federal government, by way of the strings and mandates attached to federal money, on matters that were initially reserved to state control. Accountability was provided by the administrative agencies provided for in the constitution, which states had to adhere. Indeed, many of the cases brought before the Supreme Court regarding administrative law, such as the Chermak case, deal with onerous requirements set by administrative agencies, many of which are designed to change the behavior of state governments.

It is evident the Administrative Procedure Act helped to pave the way into the period of cooperative federalism. Even though the states could see they were losing sovereignty as a result of the APA, they were not opposed to regulating the administrative process at the state level. Between the years of 1941 and 1946, all 50 states adopted their own State Level Administrative Procedure Act. The fifty state level APAs are by no means identical; however, most address administrative rule-making, adjudication, and some form of judicial review. Patty D. Renfrow and David J. Houston examined 49 state APAs and discovered common trends among them. They found that six states deal only with adjudication, while 43 constrain both adjudication and rulemaking. “Twenty-three states require a summary of the proposed rule to appear in the notice of rulemaking and 43 also specify the means by which interested persons may participate in rulemaking proceedings.” Insofar as states’ Administrative Procedure Acts are modeled on the federal Administrative Act, it is not surprising that there are many evident similarities. The growth of administrative procedure highlighted the need to reform and standardize rule-making and adjudicatory procedures at both the federal and state levels.

---


---

Ashley figueredo

The New Deal is credited with accelerating the creation of agencies at both the federal and state levels. Scholars such as McCubbins, Noll and Weingast argue that due to the conditions under which the Administrative Procedure Act was adopted, it is evident the Act was created to lock in New Deal policies under the possibility of a change in leadership. The federal APA was adopted by a Democratic Congress and supported by a Democratic President. It also was enacted during a period where the norm of federalism was disrupted and major political changes were occurring across the United States. Furthermore, "one of the critical political motivations for placing administrative procedural requirements on agency decision making is to cement the status quo, and to that end, the New Deal Democrats were able to use procedures as a method of preventing future Republican lawmakers from reversing what had taken place in the previous decades."

Rai J.P. de Figueredo and Richard G. Vanden Bergh sought to determine whether the states followed a similar pattern when they adopted state level administrative procedure acts. Though analysts of the state level APAs and the conditions surrounding their adoption, the authors discovered prominent trends. "First, when Democrats have a supremacy in the legislature, they adopt an APA when facing a Republic governor." Second, state-level APAs are also most likely to be passed "when Democratic governments (executive and legislative) are fearful of losing control over public authority in the future." The authors found Democrats are more likely than Republicans to use APAs as a means of constraint. This supports the claim by McCubbins, Noll, and Weingast that the APA was adopted to lock in New Deal policies during a threat of leadership change and extends it to the states a well and further extends this method of adoption to the states.

Intergovernmental Issues Arising from the APA

Through an examination of the Administrative Procedure Act, it is evident that the act does not fall neatly into one of the three organizational branches of American government, although it is primarily an Executive Branch function. For this reason, many scholars have questioned the constitutional justification for the legislation insofar as it allows agencies to embody elements of all three.

15 De Figueredo, Rai J.P., Jr, and Richard G. Vanden Bergh, Protecting the Weak: Why Small (and Weak) States Adopt an Administrative Procedure Act, 2001: P 4
16 Ibid. P 22
17 Ibid. P 24

branches. However, the APA has been defended on the grounds of Article I, Section 1 and 8 of the United States Constitution.15 Article I, § 1 of the United States Constitution states, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."16 When writing the Constitution, the Founders also delegated executive power to the President, and judicial power to the Supreme Court (and smaller courts at the discretion of Congress). Power was clearly divided into three branches; however, the use of power did not remain so evenly distributed. Additionally, the "necessary and proper" clause of Article I, Section 8, has been used to substantiate the APA, but furthering the discretion of Congress.17 The need for specialization and expertise in agency regulation was considered necessary to help carry out the responsibilities of the government, and therefore, proper. Ernest Galliorn argues that

The legislature is the most 'competent' law-making body of government and has basic responsibilities for seeing the law... However, the Constitution is not an organization chart. When the legislature determines that an administrative agency constitutes the best means of regulating an industry, it is not checked by governmental theories current in 1798.18

Compliance to the Separation of Powers doctrine is nonetheless an issue for many administrative law experts. This doctrine was intended to prevent tyranny in the United States, yet seems to be ignored throughout the administrative process. When defining the three branches of power in the Constitution, there is no mention to the words administrator and administration. However, many scholars argue this does not discredit administrative agencies, as the founders intended the field to coincide with the executive branch.19 The issue of Separation of Powers is illustrated through the functions of Administrative Law Judges. Administrative law judges are responsible for a variety of functions, including making findings of fact that are not dependent on evidence. Additionally, "they make important decisions regarding statutory law and agency policy; they write opinions that marshal the facts and frame the issues in a comprehensive fashion; and they conduct proceedings so as to

18 U.S.C. Art I § 1, 8
19 U.S.C. Art I § 1
20 U.S.C. Art I § 8
assure a full and informative record.” As the agencies of the federal government have expanded, a need for more and more administrative law judges (ALJs) has arisen. However, the position of these judges in the administrative process raises due process and checks and balances concerns.

First, individuals appointed to the ALJ position are typically less qualified than their judicial counterparts. Justice Antonin Scalia finds the point system responsible for appointment of ALJs inequitable. This system is broken down into 60 points for experience and 40 points from written evaluations from superiors. A potential ALJ may also gain or lose up to five points on decision-making ability during an interview. Applicants generally have little to no judicial decision-making experience, and often come from various other fields. Scalia finds this an inept way to compare individuals who will be placed into this lifelong position. He argues that

the appropriate question is, therefore, whether any law firm would regularly fill its partnership vacancies in such a fashion—by conducting a nation-wide competition among lawyers who have practice a specialty other than that for which the vacancy exists, ranking those lawyers in a strict numerical order on the basis of a paper record of experience and third party evaluations, and selecting one of the top three.

Put in these terms, the selection of administrative law judges sounds completely irrational. An evaluation responsible for producing lifelong judges should require first hand evaluation of performance, and expertise gained from a similar position. Though there has been some reform and alteration of application process, the essential structure concerns remain.

Justice Scalia stresses the importance of a multi-grade system for ALJs, especially when it comes to promotion. Because of the current system, there is very little to no possibility of promotion in the field and ALJs are responsible for various levels of cases regardless of experience or expertise. The conditions once appointed leaves additional room for concern. The multi-grade system is defended in Rumsfeld v. Federal Trial Examiners Conference, but its precedent has essentially been ignored. This case permits multiple positions within an agency to have various salary grades. Adoption of the multi-grade system would also be beneficial to the American government by saving millions of dollars each year. Allowing judges to specialize according to their capabilities and expertise, and opening a possibility for promotion, would nearly increase productivity in the field as well as ensure the best-qualified individuals are carrying out administrative law responsibilities.

Furthermore, agency heads or agency review boards are granted deference when it comes to reviewing the decisions administrative law judges make. This leaves the agencies with an additional responsibility yet; all told, they are responsible for investigation, advice giving, enforcement, and the development of legislative initiatives— together with the training, budgetary, and supervisory responsibilities that all of this activity entails. Therefore, almost all the agencies try to hire ALJs from their own prosecutorial staff. In doing so, agencies are privileging their mission over fair adjudication and due process. Given the dearth of regulations over the agencies themselves, the possibility of fraud and deception are very likely, as demonstrated in Eastern Kentucky in a recent, 2013, case.

On February 20th, 2013 the Lexington Herald-Leader released a story entitled “Disability Fraud Alleged in E. Ky.” This article illustrates a large inadequacy within the federal administrative system that is responsible for exerting the government for millions of dollars. Eric C. Conn, a social security SCI lawyer, in collaboration with administrative law judge David B. Daugherty, exerted the federal government for $3.8 million in the year 2010 alone. Daugherty manipulated the courts dockers in order to hear cases by Conn, and granted lifetime disability payments to thousands of individuals who were not entitled to this money. The lack of oversight within the administrative process led to an investigation by a most unlikely agency, the FBI, which is presently conducting a criminal investigation. Surely there are better ways— more effective and more efficient, to hold administrative law judges accountable.

This example illustrates the ongoing concern for public ethics and good government arising from the APA Article I Courts. Where checks and balances are scarce, abuses are more likely.

**CONCLUSION**

Administrative law is a function of the executive branch that seems to escape the traditional checks and balances found in the judicial branch and Article III courts. The growth of these courts and agencies increases the likelihood of deception and fraud, as demonstrated in Eastern Kentucky. A lack of regulation of Article I courts increases the prospect for deeper abuse of
the administrative system. The administrative law judge problem is fundamentally an issue of accountability under federalism. 34


REFERENCES


Ashley Ruggiero 130


IN THE NEXT ISSUE OF THE COMMONWEALTH REVIEW
PAPERS ON KENTUCKY POLITICS
MORE KPSA AWARD WINNING PAPERS

PLEASE JOIN THE KPSA AT FUTURE MEETINGS

Somerset Community College
March 6 & 7, 2015

Murray State University
March 4 & 5, 2016

VISIT us on the web at http://www.kpsa.us/