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EDITOR'S PREFACE

Preparing this year's journal has definitely been a learning experience that has been both interesting and challenging. Because of my inexperience as an editor, I ask you, the reader, to overlook the mistakes in the journal. Please do not allow them to detract from the fine ideas presented in these student papers. They are excellent papers.

I would like to thank Eric and Joanne Giordano for their help in editing the papers. Also, Kendra Henderson deserves my gratitude for not only editing a paper but for helping with the technical problems of getting the journal written out on Wordperfect. I give special thanks to Joel Flake of University Press for answering my many questions. I am also grateful for the professors who willingly gave of their time and effort to judge the writing contest. Finally, I give thanks to my wife, Michelle, for her help in typing up this journal and supporting me in this project.

KEITH D. BENNETT

PROPAGANDA AND REVOLUTIONARY PARTIES: THE AMERICAN PROPAGANDA WAR IN EUROPE

JESSIE S. CURTIS

Public support and legitimacy with the population are essential elements of any successful revolution. In 1989, the failure of the Contra movement in Nicaragua and the successes of FMLN forces in El Salvador clearly demonstrate the importance of popularity and legitimacy of revolutionary organizations among local populations.

Throughout the twentieth century, a long series of Marxist, Maoist and other revolutions have been carried out by revolutionary organizations. Most organizations have been popularly supported. The theories of Lenin, Mao and other revolutionary organizers imply that the general population must be educated by the revolutionary party about the benefits the revolution will bring. Propaganda is a major tool in the education of local populations.

DEFINITION OF PROPAGANDA

As the battle lines of the Cold War solidified in the 1950s, propaganda acquired a decidedly negative connotation: any news, books or broadcasts harmful to the reigning state regime. However, Philip Davidson provides a better definition of propaganda:

> Propaganda is simply an attempt to control the actions of people indirectly by controlling their attitudes,...its primary purpose is to obtain public support for a particular idea or course of action (Davidson 1941, Intro. 13).

In this sense, propaganda is any information, publication or broadcast used by a group, government-sponsored or otherwise, to promote its own cause or point of view. This definition of propaganda better serves the purpose of examining the relationship between the use of propaganda by a revolutionary party and that party's successful attainment of its goal.

PROPAGANDA AND REVOLUTIONARY PARTIES

USE OF PROPAGANDA NETWORKS

The revolutionary organization is generally a small, conspiratorial group working subversively at first and becoming more open as support increases. The organization uses propaganda to define ideology and party objectives for its members, and subsequently it presents that ideology to the population. Propaganda is a means to increase sympathy for the movement while at the same time foster discontent and dissatisfaction with the established governmental structure among local populations.

The effectiveness of revolutionary propaganda is directly related to its degree of organization. Of primary importance is a network to disseminate rumors, ideology and information to the target population. The party can set up a network among its own supporters first, and as the party becomes more prominent, a ready-made network of information dispersal is available.

A network provides for "the propagation of any revolutionary symbolism which takes the form of what Lenin called 'propaganda' in the narrow sense, which is the inculcation of central catchwords and their supporting justifications" (Lasswell 1977, 244).

Lenin implies in his writings that conflicts which occur during social turmoil can be used to bring the party gradually into the open if the energy of the conflicts is turned to support the revolutionary cause. Harold Lasswell makes this comment about Lenin's ideas:

> The propagation of any revolutionary symbolism must take the form of what Lenin called..."agitation", or the use of passing events for the turning of protest in revolutionary directions (Lasswell, 244).

The tool to direct the energy of conflict is propaganda. Once the revolutionary party is established, the party educates the public through propaganda. The network is the instrument used to disperse the views of the party to the target population. By redirecting the actions of the population, revolutionaries can turn opinion in favor of the revolutionary cause.

PROPAGANDA AND PARTY POPULARITY

The party uses the network to distribute rumors, ideology, and revolutionary publications, but it is

also used as a feedback mechanism from the population. Waltruad Q. Morales, in her critique of various theories of revolution, refers to Ted Gurr regarding the importance of communication with the population:

> As Gurr would argue, the propaganda must have some legitimacy "to the extent that [the propaganda] makes sense to the discontented people in terms of their specific deprivations and their past experiences" (Morales 1973, 25-6).

Once the party begins to propagate the ideology, mobilize the public, redirect discontent and otherwise "educate the public" through propaganda, it must be aware of the response the propaganda is getting. At that point, the party must decide which segments of society are most receptive to their cause, "select the most suitable appeals, those most likely to influence the groups in mind, and present them as effectively as possible" (Davidson, 103).

PROPAGANDA AND THE PARTY GOAL

The party must keep informed about the effectiveness of various

propaganda methods used. Lasswell comments that,

> The problem of the revolutionist is to propagate his alternative symbol and his revolutionary way of life in competition with every other conceivable symbol and practice (Lasswell, 239).

If the party is not aware of public opinion or of competing propaganda groups, including the government, party propaganda will probably fail to generate support. The network must be used for dual purposes: as a means of information dissemination and as an information retrieval source. Future propaganda material can also be found in feedback coming from the population.

If the party is sufficiently organized and receptive to the situation of competing groups, the use of propaganda will effectively destabilize the society. Again Morales refers to Gurr:

> The greater the discontent of members of a society, the greater is their susceptibility "to new ideologies, and less complex beliefs, that assert the righteousness and usefulness of political violence" (Morales, 25).

At this point, the party can

direct the discontent of the population towards the party objective--change in society and government.

THE AMERICAN PROPAGANDA CAMPAIGN IN EUROPE

During the social upheavals of the eighteenth and nineteenth centuries, revolutionary parties were out-of-favor with the government and operated underground. Nevertheless, many revolutionary groups--Robespierre, the Jacobins, and Napoleon in France; the trade unionists in Germany; the Whigs of England and America--were very effective in disseminating information and at instituting social and structural reforms. Among the many revolutionary parties of that period, the American founding fathers successfully gained control of the state and effected change in society. Considering this, the American use of propaganda to aid in achieving their goal should be examined.

PROPAGANDA AND AMERICAN NEEDS IN EUROPE

The American propaganda campaign

in Europe was waged by some of the most resourceful leaders of the American revolutionary movement. "The majority of [revolutionaries] came from that fairly well-to-do element in colonial society which...was in virtual control of the internal affairs of the colonies" (Davidson, 31).

In 1775 when the first shots of the American Revolution were fired, revolutionary propaganda efforts in the colonies were already well-organized and had been very effective in turning the population of the colonies against the English King. However, when the colonies turned to Europe for military and monetary aid, they met with difficulty; European governments were hesitant to become involved in a domestic conflict of the British Empire. Revolutionary leaders urged the Continental Congress to declare independence from Great Britain in order to more easily secure European aid.

After the Americans declared themselves separate from the British Empire, American propaganda revolutionaries found themselves in a climate relatively favorable to their task. They quickly began their campaign to weaken British credibility and secure aid from the rest of Europe.

PROPAGANDA AND REVOLUTIONARY PARTIES

AMERICAN NETWORKS IN EUROPE

Lenin and Mao realized that propaganda was an powerful method of communication among revolutionaries. They saw that with effective communication and propaganda among their various supporters, the revolutionaries could unify support. When the Americans arrived in Europe in 1775, they began to establish these types of subversive, underground networks. They sought out prominent, wealthy, liberal citizens of the country and presented the American case. Most of the time this led to a new friend in the nation who knew a printer or publisher willing to print American news stories and propaganda. These efforts enabled the Americans to set up the necessary information dispersal networks in Europe.

Benjamin Franklin and John Adams were especially effective in enlisting the aid of European nobility and professionals in the American cause. Early in 1777, Franklin persuaded the duc de La Rochefoucald d'Enville of France, a wealthy, young aristocrat, to translate and publish the constitutions of the thirteen American states (Berger 1976, 167).

Through the aid of Charles Dumas, John Adams met Hendrik Calkoen, Baron

Jan Derck van der Capellen and several Dutch newspaper publishers in the Netherlands. The correspondence Adams had with both Calkoen and van der Capellen led to the printing of some of the most inflammatory, anti-British tracts that were published during the whole course of the war.

Adams' letters to Calkoen, a prominent Amsterdam judge, were later printed in the Netherlands as a series of pamphlets which detailed the American government, social and economic systems and denigrated British attempts to destroy the American system. Van der Capellen, a vehemently anti-British politician, at one point in 1781 covertly published a pamphlet entitled To the People of the Netherlands, which directly attacked the Dutch government "collaborators" as well as British authorities in Holland. The tract was so militant in tone that the Dutch government offered a reward of $2,500 for the arrest of the author. Van der Capellen was never exposed (Berger, 184).

These underground networks expanded rapidly and European populations were exposed to American propaganda. Dissatisfaction with the pro-British status quo began to germinate.

PROPAGANDA AND REVOLUTIONARY PARTIES

AMERICAN PROPAGANDA AND PUBLIC OPINION

Many European nations were defeated by the British during the Seven-years war. Benjamin Franklin and the American propagandists constantly played upon feelings of revenge to agitate the European population against the British. The news reports of American victories at Saratoga and Trenton had tremendous impact in changing European public opinion about America. In a report to the Continental Congress in early 1778, the Americans noted that the news had "occasioned as much general joy in France as if it had been a victory of their own troops over their own enemies" (Berger 173). This tactic of attacking sore spots was especially effective in France. From the outset of the American Revolution, the French were anxious to aid the Americans in order to avenge the French defeat of a few years before and perhaps regain some of the territory they had conceded to the British. In Holland, the feelings of revenge were not as strong, but playing upon the anti-British sentiments of the Dutch merchants did succeed in providing a loan to the Americans later in the war (Berger 185).

AMERICAN PROPAGANDA IN ENGLAND

Benjamin Franklin, like Lenin and Mao after him, realized the importance of attacking the enemy government on home territory. Before the outbreak of war, Franklin travelled to England and came into contact with David Williams, Thomas Bundle, John Hone Toke and many other anti-monarch intellectuals of England. These men organized subversive societies notably, The Society of 13 or Deistic Society of 1774, to actively destroy the influence and control of the English King.

When Franklin returned to Europe in 1777, the members of the society willingly provided Franklin with numerous propaganda channels into English society. Regular correspondence between these men kept the latest American propaganda in several English papers and sometimes it even worked its way into Parliament (Berger 187).

When Franklin turned his efforts to publicizing the raids of John Paul Jones along the English coastline, his English friends were able to cause panic in the coastal towns of Scotland. Irish separatists were also stirred up. Irish dissent became so widespread that in 1779, King George III was forced to make

numerous commercial and religious concessions to avert an additional conflict closer to home (Berger 175).

By fomenting domestic dissent through these efforts, the American propagandists began to turn European public opinion towards support for American interests.

GENERATING EUROPEAN INTEREST ABOUT AMERICA

As the American propagandists began to use French, Dutch and English dispersal networks, letters arrived from many areas of Europe requesting some sort of news or information about America and the American war. This information was published in many European newspapers and scholarly journals (Berger 168). These letters provided Franklin, Adams and the others with some idea of how far their information travelled, how the European populations received it, and also what effects British propaganda had on the Europeans.

Centrally located in France and Holland, Benjamin Franklin, John Adams, and Charles William Dumas could now use the networks of old friends and new acquaintances in England, France, the Netherlands and Germany to more effectively

distribute news about the American war and provide focused information about the emerging nation to European populations. The correspondence from editors gave the American propagandists some idea of what types of information were producing the desired results. Factual reports of American military victories and anti-British "black" propaganda proved to be the most effective items for the Americans in changing the attitudes of neutral European populations.

RESULTS OF AMERICAN PROPAGANDA

The American propaganda campaign began to bear fruit as European countries joined in the conflict. Benjamin Franklin's propaganda efforts in England were successful in frightening the English and Scottish costal populations. His letter to a Connecticut friend reflected on the success:

> we have occasioned a good deal of terror and bustle in many of the coastal towns], as they imagined our Commodore Jones had four thousand troops with him for descents (Berger 177).

From the outset of the war, the French had been generally pro-

American. They provided the Americans with an initial base of operations to wage propaganda campaigns. French acceptance of America also established credibility with the other nations of Europe. The combination of Benjamin Franklin's diplomatic and propaganda efforts ultimately produced the valuable Franco-American alliance which gave the American colonies badly needed monetary and military aid.

The results in Holland were probably the most successful. At the beginning of the Revolution, the Dutch wanted to avoid a war with England and assumed a pro-British policy. Through the efforts of Charles Dumas and John Adams, Dutch opinion was changed. Carl Berger believes that the 1780 Dutch decision to join the Armed Neutrality, led by Russia, was significantly influenced by the combination of British naval harassment and American propaganda (Berger, 185). However, the decision to join with Russia was aborted by an English declaration of war on The Hague.

John Adams seemed particularly pleased with the Dutch entrance into the war on the American side. In a 1782 letter to America, he quoted the compliments of the Spanish minister in The Hague which summarized the efforts of the Americans in Europe:

> Sir, you have struck the greatest blow of all Europe. It is the greatest blow that has been struck in the American cause, and the most decisive. It is you who have filled this nation with enthusiasm; it is you who have turned all their heads (Berger, 185).

CONCLUSION

The key to successfully achieving a revolutionary change of society lies with the support of the population. Propaganda is the tool used to build the unity and popular support which are essential to achieving party goals. It is the means by which supporters of the party communicate. Like Lenin and Mao after them, Benjamin Franklin and the Americans understood this concept. The American revolutionaries set up information networks to spread propaganda to the populations of Europe.

The American propaganda campaign in Europe was a major factor in turning European public opinion in favor of the American cause. The information dispersal networks established by Franklin, Adams and others were effective tools for

informing Europeans and increasing support for America. The correspondence between the Americans and the European publishers and editors provided a gauge of popularity and effectiveness as well as a feedback source about rival groups and allowed the Americans to focus and tune continuing propaganda campaigns.

The effective use of propaganda networks and methods ultimately served to accomplish the American goal--to create support for the revolution.

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CAMPAIGN FINANCING IN ARIZONA LEGISLATIVE ELECTIONS

JANNA BROWN

In 1962 Representative Jack A. Brown spent approximately $350 getting elected to the Arizona State House of Representatives where he served for 6 terms, or 12 years, before he was defeated. In 1986, a little less than 25 years after he had first run for the legislature, Mr. Brown spent in excess of $30,000 to successfully unseat an incumbent. Even controlling for the effects of inflation, this illustration represents the fact that there has been an obvious increase in the amount of money necessary to run for public office. In recent years the average cost of a legislative seat has doubled or tripled in almost every state for which there are records (Jones 1984, 175). Why the large increase? What factors contribute to these rising costs? More importantly, what measures are being taken to control them?

These questions are not easily answered, but the present political climate in Arizona provides a perfect opportunity to examine campaign spending and reform, and provides insight as to possible answers to such questions. Before looking at the Arizona experience specifically,

however, I will briefly examine the broader base of campaign spending and reform.

Brief History of Campaign Finance Laws

Not only has campaign spending risen dramatically at the state level, but at the national level as well. Costs of congressional campaigns have skyrocketed in the last decade, with the average House open seat campaign running close to $430,000 (Nelson and Magleby 1989, 35). Senate races are even more expensive, due in part to a six-year rather than a two-year term. An average campaign for an open Senate seat costs over $3 million (Nelson and Magleby 1989, 36).

Before 1972 it was much more difficult to determine exactly how much money was spent on national races because there existed only piecemeal legislation regulating campaigns. The Federal Election Campaign Act of 1971 (FECA) established more stringent regulations and required fuller disclosure of political funding than ever before (Alexander 1980, 29).

Watergate caused increasing concern over the role of money in corrupting U.S. elections, which

brought about the passage of the 1974 Amendments to the FECA. These Amendments placed overall limits on how much could be spent on campaigning, provided public financing for presidential campaigns, and established political action committees (PACs). The 1974 Amendments also created the Federal Election Commission (FEC) to administer and enforce the new laws.

In 1976, portions of the 1974 FECA Amendments were ruled unconstitutional by the Supreme Court in the case Buckley v. Valeo. Limitations on expenditures were struck down as violations of free speech guaranteed by the First Amendment. The Court determined, however, that limitations could be imposed on candidates who accept public funding. Contribution limits and public disclosure measures were left intact (Alexander 1980, 34). Additional Amendments were made to the FECA in 1979. Essentially, the bill simplified record keeping and public reporting requirements and refined the procedural requirements of the enforcement process (Alexander 1980, 37). As Edwin Epstein observed, "Few developments during the past decade have been more important to American electoral politics than the virtual revolution in campaign financing that occurred in the 1970s" (Epstein 1980, 356).

Accompanying this onslaught of campaign finance at the federal level were a number of "post-Watergate" reforms in many states. From 1972 to 1976, 49 states made some type of revision to laws regulating political money (Alexander 1980, 15). These laws were largely experimental and covered a wide range of reform tactics--from strict aggregate spending ceilings to tight limits on individual contributions. After 1976, however, many states were forced to change their laws in order to comply with the ruling of Buckley v. Valeo (Alexander 1980, 127).

Today, state campaign financing remains governed by state law, so any attempt to compare costs across states is complicated by having to consider 50 different sets of campaign funding regulations (Jones 1984, 172). States' campaign finance laws differ in many aspects: definitions of "expenditure" and "contribution"; allowances for public funding; types, time periods, and publication of disclosure reports.

The Role of State Legislatures

In the 1980s, state legislatures play an increasingly important regulatory and policy making role (Sabato 1984, 118). Reagan's "new

federalism" put far more responsibility into the hands of the states (Singer 1989, 1). Frank Sorauf asserts that "the diminution of congressional responsibility in areas such as social welfare during the Reagan years may raise the stakes in state legislative politics. If policy-making power flows to the states, so will money seeking to pick candidates with congenial policy goals" (Sorauf 1988, 261). This, as Sorauf observed, indicates that money is playing a larger role at the state level than ever before.

State legislatures also control congressional and legislative redistricting every decennium. Because this affects a party's fate for an entire decade, the party in control of a state legislature tries to draw these lines to obtain the maximum number of congressional seats possible. Thus the state legislatures are the primary determinants of the party balance in the U.S. House of Representatives. Given this important task, increasing financial emphasis is likely to be placed on state legislative races by individuals and groups especially concerned about influencing the party control of the U.S. House.

This is especially likely to occur in the election cycles prior to reapportionment. The Republican National Committee (RNC) realized

this in the 1960s and 1970s and strengthened their state and local organizations. By the late 1970s, the RNC had instituted a program designed to influence the outcome of state legislative races. John Bibby reports that "the RNC gave direct financial and technical support to legislative candidates at an unprecedented level during the 1978 and 1980 campaigns" (1983, 128).

When considering the growing importance of states' legislative functions, it is not surprising that the number of members who consider themselves "careerists" is increasing. According to State Legislator's Occupations: A Decade of Change, a publication by the National Conference of State Legislatures, the number of legislators who consider the legislature to be their sole profession rose from approximately 9 percent in 1976 to possibly as high as 20 percent in 1986 (Singer 1989, 1). NCSL's Legislative Management Program Director Sandra Singer observed that "it is becoming a full-time job and a long-term career, and as might be expected, re-election has become the first goal on many legislators' agendas" (1988, 1).

Since a seat in a state legislature has become more attractive than ever, the influence of money at the state level is also

multiplying. It follows, then, that increasing attention is being given to legislation governing the financing of state elections. A 1989 NCSL survey of priority issues for state legislatures reported that campaign finance was rated as the highest priority issue area in the State Government Issues Category. Of primary concern to most state legislatures, it seems, is working to see that their electoral systems do not enable only the well-to-do to seek public office.

Campaign Finance in Arizona: A Case Study

Prior to 1986, Arizona had very little legislation governing campaign finance. The only significant requirements were disclosure before and after the election. Corporate and labor union contributions were also prohibited. These regulations were too permissive to effectively control campaign spending in Arizona elections.

Individuals worried by the excessive financial influence of various interest groups drafted an initiative to be placed on the ballot in the 1986 election. Proposition 200, the so-called "Clean Government Initiative" was designed to "limit

campaign contributions so as to prevent improper influence over state and local elected officials and to foster public confidence in the integrity of government" (Anderson 1988, A17). Evidently, voters were concerned about the issue, because Proposition 200 passed by an overwhelming 2-1 margin.

The Facts About Proposition 200

Proposition 200 places strict limits on the amounts PACs and individuals can contribute to candidates. Under the new law individuals are prohibited from contributing more than $200 to local/legislative candidates and more than $500 to statewide candidates. As indicated by Table 1, PACs are bound by the same limits, unless they are certified by the Secretary of State as having received funds from at least 500 individuals in amounts of $10 or more in the one year period preceding the last closing report date. This type of PAC may contribute $1000 to a local candidate or $2500 for a statewide candidate. The most stringent limit is the aggregate limit of $5000 from all PACs (local candidates) or $50,000 (statewide candidates). All limits

apply cumulatively to the primary and general election.

As prescribed by Proposition 200, these campaign limits are to be adjusted annually for inflation. For instance, the new 1989 aggregate PAC limit for local races has been raised to $5,500 rather than $5,000, and the new individual/PAC limit for local candidates is now $220 rather than $200.

Other provisions of the new law prohibite the practice of collecting checks or funds for the purpose of passing them onto a candidate--commonly called "bundling", "earmarking", which is the process of sending a check to a PAC or other committee with the specific objective of passing the contribution on to a selected candidate, and the transfer of funds from one candidate to another. In compliance with previous Arizona law, corporate funds are not allowed to be contributed to candidate elections. While the Federal Tax credit was abolished as of January 1, 1987, Arizona still allows tax deductions for political contributions for state tax purposes. Individuals can contribute a maximum of $2000 to all political action committees and statewide and local candidates in Arizona in a calendar year. Contributions to political parties are exempt from this $2000 limit.

There are no limitations on the amount of money a candidate may contribute to his or her own campaign. However, there are some rules governing such contributions: If a candidate contributes more than $10,000 to a local campaign, or $100,000 to a statewide campaign, he or she must give written notice of that contribution within 24 hours to the Secretary of State and all other candidates for that office. At that point, contribution limits do not apply to the other candidates in that race until they exceed the $10,000 or $100,000 contribution levels. According to an opinion by Attorney General Bob Corbin, this apparently means that until the $10,000/$100,00 limit is met, opponents could accept contributions from PACs and individuals in excess of the $200 or $500 limits of Proposition 200 (United For Arizona 1988a, 1).

Proposition 200 is to be enforced by the County Attorney or Attorney General who investigate complaints filed by any qualified voter. Violations will be dealt with as Class One Misdemeanors, with knowing violations resulting in up to 6 months in jail and up to $1,000 in fines, and unknowing violations resulting in civic penalty and up to three times the amount of the illegal contribution.

After the passage of Proposition

200, there was a great deal of speculation as to just what its effects would be. Public interest groups such as Arizona Common Cause praised the new law, saying it would reduce the flow of special interest money into political campaigns and put an end to the big money individual contributor (Anderson 1988, A17). Other players, such as incumbent legislators, were understandably less than thrilled over the passage of "200".

Because legislators are interested in their own electoral success, it is no wonder that they are opposed to strict regulations such as those enacted by Proposition 200. Dana Larsen, director of Arizona Common Cause, observed that "most people there [in the legislature] do not find great comfort and joy in Proposition 200. I think it's probably the most unloved piece of work that's in the statutes right now" (Van De Voorde 1988, 10). But, Larsen maintains, it is their own fault legislators are not happy with the new law, because "it was their own inaction on the issue of campaign finance reform that brought them this" (Van De Voorde 1988, 10).

Asking self-interested legislators to create the rules governing the method by which they and their challengers are elected is

not the most logical mode of creating legislation. Yet submitting a long, complex proposal to a simple yes-or-no decision by oftentimes apathetic or unknowledgeable voters seems equally inefficient (Broder 1976, 320). Whether the public should be using the initiative process on such complex issues as campaign finance reform is one of the central questions in the debate over Proposition 200.

The Results of Proposition 200

Although views differ on the merit of Proposition 200, an analysis of 1986 and 1988 contributions and expenditures data allows conclusions to be drawn as to the results of the new law. The most obvious result of the tough new campaign laws enacted by the 1986 passage of Proposition 200 was a marked decrease in contributions from PACs, as depicted in Figure 1. In 1986, PACs contributed $1.1 million to Arizona candidates. In 1988 the amount of PAC contributions decreased 65 percent--to $388,136 (Harris 1989, A1). The most drastic individual example is House Minority Leader Art Hamilton, who dropped from $43,269 in PAC

contributions in 1986 to $4,834 in 1988, a reduction of nearly 90 percent. Total contributions also decreased in 1988--from a 1986 total of $2.4 million to $1.8 million, a decrease of 25 percent. For the first time since 1974, total expenditures decreased from the previous year's totals. 1988 candidates spent a total of $1.8 million, down from $2.2 million in 1986, a 20 percent decrease. As shown in Figure 2, the average winning candidate for the state legislature spent $19,565, as compared to $24,420 in 1986. This represents a total dollar reduction of $4,855 per race, and a percentage reduction of 20 percent.

These figures provide a remarkable contrast to previous contributions and expenditures. Common Cause of Arizona has been tracking campaign spending and PAC contributions in Arizona since 1974, where they have observed a steady escalation of PAC involvement and expenditures by candidates (it should be noted that these percentages are not in constant dollars and do not account for the effects of inflation). Between 1984 and 1986, campaign spending increased by 54 percent. In 1986, for the first time in Arizona's history, winning candidates spent over $2 million for seats in the legislature.

Also for the first time, PACs contributed over $1 million to those races for an average of over $12,500 per race--the first time this figure topped $10,000. In light of these figures, the 1988 data provide a remarkable contrast to previous year's data. In sum, Proposition 200 decreased the amount of money raised and spent by the winning candidates for the Legislature.

The Role of PACs

The role political action committees play in our electoral system is a topic surrounded by much debate. Though PACs have been extremely influential in congressional elections for several years now, their rise at the state level has been more recent. As Larry Sabato observed, "There is little question that PACs contribute a growing proportion of campaign money in states and localities, particularly in races for the state legislature" (1984, 117). For example, between 1974 and 1982, the number of registered PACs in Arizona increased by more than five times (Sorauf 1988, 269).

Larry Sabato terms the establishment of many national PACs at the state level the "new

federalism" of PACs (1984, 120). In 1981-82, more than four in ten of the federal multicandidate PACs also contributed to state and local candidates. Sabato observed that "even if the U.S. Congress were still the center of a group's attention, it had good reason to look to the state capitals: most recent congressmen first served as state legislators, and a contribution made early in their careers was likely to be well remembered" (Sabato 1984, 118).

The most detailed study on PAC influence at the state legislative level was conducted in California. Its results are synonymous with those in Arizona--campaign costs are rising dramatically, PACs are extremely influential, PAC support is necessary for a successful campaign, and incumbents are widening their fund raising advantage over challengers (California Commission on Campaign Financing 1985, 3). Ruth Jones, an expert in the field of state legislative campaign finance, found that not all PACs exert equal influence. Recent state PAC growth has been disproportionate among business and professional interests (Jones 1984, 188).

There is little consensus among the key players of the system as to the degree of influence exerted by PACs. Obviously, many people are concerned that PAC money buys

influence. Alan Rosenthal, director of the Eagleton Institute of Politics at Rutgers University, says that PAC influence "gives an unseemly appearance because it looks like people are buying influence. . . Legislators are aware and concerned about contributors. I don't know what that buys but certainly it buys a sympathetic ear" (Singer 1988, 25).

Other observers feel that because the public is not extremely aware of the activities of their state legislature, corruption is more likely to occur at the state level than in Congress, where the members are subject to almost constant scrutiny. In comparing PAC influence in the Missouri legislature to PAC influence in the U.S. Congress, Jerry Brekke summarized: "At the national level, the great publicity and concern expressed over PAC activity may, to some extent, be a restriction on possible abuses. Since the Missouri legislature and many state legislatures are not subject to such public scrutiny, PACs may present more serious problems than they do at the national level (Brekke 1988, 103)."

The foremost issue in the Proposition 200 debate is centered around PACs and how much influence they should have. An interesting argument explaining the emergence of PACs in recent years is proposed by

Lee Ann Elliott. She claims that the PAC movement is a natural and healthy addition to the American political process. Elliott compares the development of PACs to overall social changes currently taking place, claiming that the biggest change in our political behavior has grown out of the increasing mobility of our society. We used to associate as neighborhood groups, but this is no longer the case. Improved communication and transportation have caused us to broaden our associations. This change has had an effect on political behavior because political activity no longer revolves around precinct, or neighborhood politics. We are not influenced by neighborhood leaders, but rather by occupational or socio-economic leaders. Thus, asserts Elliott, the rise of PACs is merely a response to these developing behavioral changes. These socio-economic organizations have developed as a substitute for geographic or neighborhood associations (Elliott 1980, 540-1).

If examined in terms of Elliott's argument, strict limits on the ability of PACs to contribute to candidates are an invasion on the right of individuals to associate in groups, whether those groups are geographical or socio-economic. A related argument is proposed by Robert L'Ecuyer, a Phoenix attorney,

lobbyist, and campaign consultant. He asserts that the central problem of Proposition 200 is that it severely handicaps groups of two to 500 people (1988, A16). Because these groups do not meet the "Super-PAC" requirement of 500 contributors, they are limited to donations of $200--the same amount an individual is able to give. This is a much tighter requirement than the federal statute--where only 50 rather than 500 people can gain "Super-PAC" status, and thus have higher limits on how much they may contribute.

L'Ecuyer further argues that the founders of the U.S. Constitution understood that an individual alone is no match for big power or influence, and expected that groups would be formed in order to promote government attention to their needs and concerns. This is why freedom of association is included in the Bill of Rights.

L'Ecuyer cites a hypothetical example to illustrate his point: 50 people in a neighborhood upset by a zoning decision decide to form a committee and to support a candidate for mayor. Each person can spare $10, which they realize is a small amount, so they pool their money and send $500 to the candidate. Under Proposition 200, this is illegal because the group cannot contribute over $200. The zoning problem was

created by a rich neighbor. He and his wife can each give $200, a total of $400, to the opposing candidate. Furthermore, the big corporation planning to build on the rich man's land can run an "independent expenditure campaign" through its PAC and spend an unlimited amount. How can the neighborhood be expected to compete if it cannot pool its resources?

This is a valid argument. Small groups should not be discouraged from attempting to make an impact on politics by contribution limits that are too restrictive. In L'Ecuyer's words, "The change in law [Proposition 200] was intended to limit PACs set up by big labor and corporations. Instead, it strangles every small and medium-sized group trying to give the little guy a voice" (L'Ecuyer 1988b, A16).

Another controversy associated with PACs is that they disproportionately favor incumbents. Incumbency is a very strong factor in determining the outcome of elections. Nationally, 98 percent of congressional officeholders won re-election in 1988. The numbers at the state level are lower, but still significant. Around 80 percent of state lawmakers seeking re-election are returned to office (Hansen 1988, 14). William T. Pound, executive director of the National Conference

of State Legislatures, believes that because of sophisticated redistricting, superior fundraising abilities, and power of incumbency there are "very few state legislative seats that are competitive" (Hansen 1988, 16).

One of the constants in PAC behavior is that PAC spending favors incumbents (Sorauf 1988, 266). The reason is simple: PACs favor incumbents because incumbents are more likely to win. In most circumstances, it does not benefit a PAC to give to a losing candidate. For this reason, nearly 99 percent of PAC money at the state legislative level goes to incumbents (Singer 1988, 25). Gary Jacobson has concluded that because incumbents are generally better known, they need less campaign money but are able to raise more. Challengers, however, need more money but have trouble raising it (Jacobson 1980). This paradox is one of the fundamental problems of the current campaign finance system. The Arizona data clearly show that incumbents receive more PAC funds than challengers. In 1986, the average non-incumbent brought in about $5,000 less than the average House of Representatives incumbent. Only three of the non-incumbent candidates raised more than $10,000 in PAC money, while 31 incumbents in the House raised more

than $10,000. No challengers accumulated over $20,000 of PAC dollars, yet seven House incumbents topped $20,000.

Interpretations Of Proposition 200--Strengths and Weaknesses

There is no dispute that Proposition 200 decreased PAC contributions tremendously. Also, the candidates' disclosure reports revealed that less money was received and spent in legislative races than ever before. Does this mean, as Common Cause asserts, that candidates "took less money and fewer obligations from the PACs?" (Arizona Common Cause 1989, 1) Not necessarily. Not everyone perceived Proposition 200 as such a panacea. Robert L'Ecuyer is perhaps the most vocal opponent. He said of the new laws, "After 18 months of detailed study of campaign finance statutes and cases from all 50 states and the federal government, I have concluded that Arizona's campaign finance statutes are among the four or five worst in the U.S." (L'Ecuyer 1988a). Conclusions about the overall utility of Proposition 200 can be reached by examining these opposing viewpoints. However, this is a difficult task and is largely speculative considering

the new law has only been in effect for one election cycle.

Proponents of Proposition 200 cite the decrease in PAC contributions as the primary benefit of the new law. This is expected to have the long-term effect of forcing candidates to rely more heavily on smaller contributions from individuals. This is especially true for incumbents who are, as former Common Cause director John Anderson claimed, "going to have to broaden their appeal beyond the relatively narrow circle of traditional special interest contributors" (1988, A17).

Related to the limitation of PAC contributions will be an increase of competitiveness, with a rise in the number of serious challengers. Again, incumbents are likely to be hurt by the increased ability of challengers to raise enough funds to mount a respectable campaign.

Another anticipated result of Proposition 200 is the strengthening of the political parties. Political parties are exempt from the $2000 limit that individuals can give to candidates and PACs. This is expected to encourage individuals to contribute to the parties and let the parties distribute those funds to the candidates they desire.

Proposition 200 prohibits the transfer of campaign funds from one candidate to another. This prohibits

members of the House and Senate from giving money to other members to acquire legislative influence. Some claim this is undue influence, while others argue that fundraising is a tool that the leaders need since many traditional leadership methods have eroded in recent years. Thus, it is argued that transfers strengthen the parties by making individual legislators more accountable to leadership (Singer 1988, 27). The prohibition of these transfers, however, as in Proposition 200, keeps the legislative leadership from raising large sums of money and doling it out to loyal incumbents or recruiting challengers to defeat uncooperative incumbents.

While Proposition 200 may have its strengths, it is not without its weaknesses. Various "loopholes" exist that allow PACs and corporations to donate funds to influence elections in ways that are not included in the candidates' reported expenditures and contributions. For example, unlimited independent expenditures are allowed under Proposition 200. Independent expenditures are funds spent by an individual or organization for or against a candidate but without any coordination with the candidate. They offer a legal, effective means of influencing a campaign since they

are not prohibited by state or federal statutes. Independent expenditure campaigns (IECs) have traditionally been run for congressional candidates, though with the passage of strict limitations on PAC contributions such as those imposed by Proposition 200, IECs are turning up at the state level as well. Ninety-five percent of the business PACs in Arizona do not meet the Super Pac requirement of 500 contributors, so they are able to donate only $200 per candidate. PAC funds, then, are still multiplying, while the number of candidates able to accept funds has decreased rapidly. Thus, IECs present a way for PACs to legally exert influence on desired races. United for Arizona, a nonprofit trust that has helped set up most of Arizona's business PACs, sponsored a poll designed to measure public opinion of political campaigns run independently of candidates. The study concluded that the public is generally favorable toward such campaigns, and therefore United recommended that IECs for Arizona races provide a visible alternative to direct candidate support and can be successfully run with only a slight degree of risk involved (United for Arizona 1988b, 4-5).

Another "loophole", or alternative method of PAC

contributions to candidates occurs in the "constituent communications" provision. Attorney General Bob Corbin issued an opinion stating that money raised for newsletters does not fall under Proposition 200 and does not have to be reported as long as the publications are paid for sixty days prior to an election (Van De Voorde 1988, 10). This appears to allow PACs and corporations to donate unlimited amounts of money to a candidate, as long as it is used for a newsletter. But since legislators are not required to make any public accounting of these funds, no one knows who contributes how much to whom or how the money is actually spent.

One reason PACs and corporations are turning to these alternatives is because they have more funds available than there are candidates available to accept them, because of Proposition 200's $5,000 aggregate PAC contributions limit. Because of this limit, legislators are likely to begin their campaigns earlier and earlier in the election cycle (United for Arizona 1988c, 1). PAC managers are realizing that many legislators will "max out" at the allowable $5,000 months before they actively start campaigning. As United for Arizona complains, "Our problem with Proposition 200 is it forces PACs into a ridiculous race to see which

25 can "beat" the others in making contributions before the $5,000 aggregate is reached." In light of this problem, it is no wonder that PACs and corporations are searching for other viable options of supporting candidates.

The enforcement provisions of Proposition 200 are very ambiguous. Supposedly the County Attorney or the Attorney General will investigate claims filed by voters. Not only is the wording of the provision vague, there is no automatic method of oversight--only complaints are investigated. It seems that the responsibility of enforcement ought to be entrusted either to the Secretary of State or to some type of independent agency similar to the Federal Election Commission at the national level.

A problem related to the lack of an enforcement agency lies in the disclosure laws. Though the public disclosure of contributions and expenditures has been a large step forward in decreasing the amount of illegal money involved in elections, there is still room for improvement. At the present time, the Secretary of State houses the disclosure information but publishes no type of compilation or report. The rationale behind public disclosure is that it will in itself police candidates into complying with campaign finance laws.

If disclosure reports were published in a timely manner, they would be much more likely to impact candidates' behavior.

Conclusion

It is clear that there are differing opinions regarding the effectiveness of Proposition 200. As previously stated, it is difficult to draw conclusions about how well Proposition 200 will work after just one election cycle has elapsed. The most visible effect in the 1988 election was the reduced amount of contributions from PACs. Legislators, PACs, public interest groups such as Common Cause, the media, and the general public all have differing opinions as to what aspects of Proposition 200, if any, should be revised. In general, legislators favor raising PAC limits. Common Cause advocates leaving the limits as strict as they are presently, plus eliminating apparent loopholes in Proposition 200. Reaching a compromise between these groups with competing interests will not be easily accomplished. A joint legislative committee is currently considering revising the campaign finance statutes. For the most part, the proposed changes will relax the

present contribution limits and structure Arizona's campaign finance system-more like the federal system.

Clearly, these proposals will not satisfy all of the players involved, nor are they likely to solve all of the existing problems. Likewise, Proposition 200 did not solve every problem nor satisfy every participant. Nonetheless, I would argue that both attempts are beneficial in helping to solve the complex problems associated with campaign financing in Arizona legislative elections.

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MARONITE CONFLICTS AND THE RISE OF BASHIR GEMAYEL

EZRA T. CLARK

The outbreak of the second Lebanese Civil War in 1975 and the collapse of the Lebanese state transformed Lebanon from a model Middle Eastern democracy into a notorious example of anarchy, factionalism, and repression. Most often the Lebanese conundrum is explained in terms of religious animosity between Muslims and Christians and as a political struggle between the Left and Right. Undoubtedly these have been the most ostensible causes of the fourteen year civil war. What is less known, however, is the extent to which the Muslims and Maronites have been ripped apart by competing internal factions. Within the Maronite community, the struggle for power at the beginning of the Civil War exacerbated long-standing feuds that had existed since the creation of the National Pact in 1943. One curious phenomenon of the Civil War was that once the shooting began, intra-religious killing also became more prevalent. In fact, the free-for-all mentality of the Civil War, it appears, gave Bashir Gemayel the opportunity to consolidate his power and eliminate his rivals for the 1982 presidential election.

Outbreak of Civil War

In order to understand the changes that occurred within the Maronite community, it is important to understand the drastic changes that took place in Lebanon as a whole. Before 1975, Lebanon was considered the business, cultural, and democratic center of the Arab world. However, the Lebanese Civil War changed all this.

By most accounts, the Lebanese Civil War began at Ain Rummaneh, a Christian suburb of East Beirut on April 13, 1975. At a Sunday gathering, unknown assailants fired on Pierre Gemayel, leader of the Maronite Phalanges and killed two of his bodyguards. Hours later, Phalange militiamen ambushed a bus full of Muslim political activists. Twenty-eight passengers were massacred (see Khalidi 1979, 47). Throughout the country, clashes broke-out between maronite military groups and members of the Muslim-dominated National Movement.

The fighting gradually snowballed. By September 1975, two chief belligerents emerged: the predominantly Christian Lebanese Front and the Nationalist Movement, comprised of Druzes, Shiites, Sunnis and Lebanese Communists. In December of the same year, the Palestine

Liberation Organization (PLO) officially entered the war. The reason the PLO hesitated for over seven months was most likely a result of wanting to avoid overt war with the Maronites. In the first year of the war, nearly 50,000 Lebanese were killed (McDowall 1983, 50).

Internal Maronite Conflicts

A significant source of friction between the Lebanese Christians and non-Christians was the National Pact of 1943, an agreement between President Bishara al-Khouri and Prime Minister Ryad al-Sulh requiring that the major government positions be divided among Lebanon's largest religious sects. As the largest religious faction in Lebanon, the Maronites, with 52 percent of population (according to the 1932 census--the only official census in Lebanese history), were guaranteed the presidency (see McDowall 1983, 11). The institutionalization of government positions created stability for over thirty years among the Muslims, Christians, and later the Palestinians; however, in the short run, a fracturing effect occurred within the Maronite community.

The Maronite community, perhaps the most politically visible religious group in Lebanon, historically has been plagued by inveterate family and presidential rivalries. In fact, in the typical Middle Eastern pattern of patriarchal leadership, the major factions within the Maronite community coalesced around a political strongman who, in most cases, was either a former president of the Lebanese Republic or a prominent politician with presidential aspirations. Indeed, the presidency was the crowning jewel in any Maronite family's treasure chest. With the presidency came the prestige of international recognition, the ability to solidify political alliances, and the means to dispense patronage. In fact, in order to understand the effects of the institutionalized presidency, it is important to understand the history of rivalry between the major Maronite factions and the changes that took place in Lebanese society. A combination of these factors as well as the 1975 Civil War account for Bashir Gemayel's rise to power.

Chamoun's National Liberal Party

Following World War II, the most influential Maronite leader was Camille Chamoun, the president and

founder of the National Liberal Party. With his British connections and his pro-Arab positions, he was respected by Arabs and Maronites alike. In fact, Chamoun's strong Arab views helped him defeat his political rival Hamid Franjieh in 1952 after President Bishara al-Khouri resigned (see Deeb 1980, 25).

However, during Chamoun's presidency his relationship with the muslim community declined. According to Marius Deeb, "(Chamoun) did not have a stable working partnership (between 1952 and 1956) with a strong Muslim leader as prime minister" (Deed 1980, 26). Also, Chamoun exploited Maronite fears that Nasserism was undermining the independence of Lebanon. As part of his plan to protect Lebanon from the pervasive influence of Nasserism and Pan-Arabism, Chamoun announced his acceptance of the Eisenhower Doctrine in 1957.

By accepting the Eisenhower Doctrine (which enabled U.S. allies to request military help from the United States) Chamoun placed Lebanon in open opposition with Egypt and Syria. Consequently, Chamoun disillusioned his Sunni Muslim allies and atomized Maronite political unity. Conservative Maronites, such as Raymond Iddi, Pierre Gemayel and Charles Malik supported Chamoun's new

stand, However, prominent Christian leaders like Hamid Franjieh, Henri Far'un, and Charles Hilu openly criticized him for placing the government on a collision course with Egypt and Syria (see Cobban 1985, 86).

The Shihabist Party

The U.S. Marines landed in Beirut in July 1958. Arguing for Lebanese domestic stability, the United States pressured Chamoun not to run for an unprecedented second term. With U.S. support, General Fuad Shihab reluctantly agreed to run for the presidency. In the 1958 election, Shihab received nearly seven times the votes of his opponent Raymond Iddi.

The Shihabist era covered both Shihab's own term (1958-64) and that of his successor and disciple Charles Hilu (1964-70). The primary concern of the Shihabist governments was the economic development of Lebanon. During this period the Lebanese Christians took advantage of their tradition of commercial and financial expertise. Vast amounts of fugitive Arab capital flowed into Beirut--the bastion of stability in the tumultuous Middle East. The Shihabist governments catered to the

merchant classes by lifting foreign-exchange controls and enacting banking secrecy laws.

Undoubtedly, Lebanon during the Shihabist era experienced great economic gains. However, a small portion of the populace reaped inordinate economic benefits. For example, during the 1960s, 4 percent of the population disposed of 32 percent of the GNP. The bottom 50 percent accounted for only 18 percent of GNP (McDowall 1986, 13).

Also, the Lebanese geo-political landscape changed considerably. From 1930 to 1980, Beirut increased in population by tenfold. By 1977, only 39 percent of Lebanon's population was rural. Consequently, the infamous "Belt of Misery" encircled prosperous Beirut (and also Tyre, Tripoli, and Sidon) in a ring of slum and squatter areas.

The Maronites, like every group in Lebanon during the 1960s, struggled to adapt politically to the significant political changes. Increasingly, many Christians and most non-Christians viewed the Shihabists as the party of the jet-set Beirut socialites (see Cobban 1985, 95). The Maronite Community became more visibly divided between the mountain and the city. The poorer, non-urban Maronites became identified with the more militant

Phalange and Franjieh parties, Urban Maronites, especially the merchant and professional classes, advocated tolerant Arabic policies. Conversely, the less educated, rural residents of Northern and Central Lebanon favored a less tolerant attitude towards the Arab World and strongly advocated Lebanese nationalism.

In fact, the gap separating the Maronite community was widening so rapidly during the late 1960s and early 1970s, it seems that only an event as threatening as the Civil War could have re-united the Maronite community.

The Franjieh Family

Another Maronite political leader at the time of the Civil War was Sulayman Franjieh who replaced his brother, Hamin, as party leader in the late 1950s. Sulayman Franjieh's 1970 election win over Shihabist presidential candidate Ilyas Sarkis was something of a surprise. Franjieh's election was, in part, a result of the non-urban Maronites' political mobilization.

However, Franjeih's election augured a disturbing trend within the Maronite community. Because Franjieh had only a regional political

following near Zgharta, his clan's headquarters, he naturally had difficulty inspiring his fellow countrymen and co-religionists. As tensions mounted in the early 1970's, Maronite paramilitary groups began to act individually on behalf of the state (see Stoakes 1975, 221). In short, Franjieh's inexperience and manipulability created a vacuum that Bashir Gemayel and his Phalangist military were eager to fill.

The Phalange Party

The rise of the Phalange Party, led by the Gemayel family, was, perhaps, the most interesting development within the Maronite community since the creation of the National Pact, Before the Phalange Party's emergence, the schisms within the Maronite community stemmed, as already mentioned primarily from familial, geographic, and socio-economic differences. The Phalange changed the political battle into a military war.

The Phalange party was organized in 1936 by Pierre Gemayel, a pharmacist. Gemayel patterned the party organization after the Sokol youth groups he observed while visiting Germany for the 1936 Olympic Games. During the first years of its

existence, the party was essentially an apolitical youth athletic club.

However, the 1958 Civil War politicized the party and increased Phalangist clout. From mid-September to mid-October 1958, the Phalanges kidnapped travellers, killed and tortured people found in the "wrong areas," and participated in some of the bloodiest events of the 1958 Civil War (see Cabban 1985, 91).

Also, the Phalanges were able to successfully call for mass strikes in certain parts of Greater Beirut in order to challenge the authority of the new Shihabist regime. Before the end of October 1958, Shihab decided to placate the Phalanges by including them for the first time ever in Lebanese government. According to historian Samir Khalaf the 1958 war "enlarged the political constituency of the party and transformed it from a paramilitary youth movement into a disciplined and highly organized mass party" (89).

Interestingly, Phalangist military prowess in both the first and second civil wars propelled the Phalangists into power. In fact, it seems that the Phalange has excelled the most politically during times of civil war. For example, some experts believe that without the first or second civil wars, the Phalange would not have had a realistic chance at the presidency (Haddad 1983, 118).

THE RISE OF BASHIR GEMAYEL

During the late 1960's and early 1970s the Phalangists relied more heavily on their military prestige and anti-Palestinian rhetoric. Reflecting the party's anti-Palestinian viewpoint, Bashir Gemayel, in a 1979 interview said, "I am in favor of any solution which would relieve us of 600,000 Palestinians...We gave them all the necessary facilities. The result of their ingratitude was the war of '75" (Gemayel 1979, 58).

It appears that a combination of anti-Palestinianism and the reckless leadership of President Franjieh led many Phalangists, especially the younger, more radical faction of the party, to believe the Lebanese state was incapable of dealing with the PLO challenge and Muslim calls for a redistribution of power. Consequently, the party became more willing to use its military prowess to enforce Maronite hegemony in Lebanon. In other words, the Phalangists became, by self-definition, "the supervigilantes...builder, surrogate, and defender of the state" (Rabinovich 1984, 63).

Rise of Bashir Gemayel

Without question, the new militaristic emphases in Phalangist policies detailed nicely with Bashir Gemayel's prescription for Lebanon's ills. In 1975, Bashir Gemayel, at age 27, was a major player in the Phalange Party. On August 30, 1976, Bashir was elected commander of the Joint Command Council of the Lebanese Forces (Snider 1984, 8). Bashir succeeded William Hawi, who was killed while inspecting his troops at Tal Zaatar on July 13, 1975. Hawi's death was so fortunate for Bashir's career, that many Lebanese were convinced that he was responsible (see Randal 1980, 115). Considering Bashir's proclivity for temerarious behavior, it is not surprising that the party elders, including Pierre Gemayel, only hesitatingly endorsed him in his new position as the commander of the Lebanese Defense Forces (Randal 1983, 115).

However, if the party elders feared Bashir would usurp power from them, they were mistaken. Bashir, it would appear, had no intention of taking over the party that his father had built; instead, with his military power, Bashir built his own organization. According to Jonathan Randal the men who comprised the Lebanese Forces "were Bashir's men

and not those of his father's and his brother's party' (Randal 1983, 118).

This is important because Bashir knew he could count on his own men to consolidate power and eliminate his political and military rivals. In fact, on at least two occasions, Bashir massacred those whom he felt stood between himself and the presidency.

For example, in June 1978 about one-hundred of Bashir's men attacked the Franjieh house in Zgharta and killed Tony Franjieh, commander of the Marada Brigade. Bashir excused his actions as a legitimate mistake. However, the fact that Tony Franjieh was the heir to the Franjieh political dynasty and Bashir's chief Maronite military rival makes Bashir's claim seem almost ridiculous.

The bloodiest of Bashir's consolidating efforts occurred on July 7, 1980, when troops under his command simultaneously attacked the barracks, offices, and storehouses of Camille Chamoun's Tiger militia, killing approximately 500 Christians.

Despite the immediate outrage from the majority of Christian Lebanese, Bashir's ruthless tactics appeared to pay off in the long run. The remnants of the Tiger militia were absorbed into the Lebanese Defense Forces, and, for the first

time, the Maronites of central Lebanon were united by a single organization. According to Lewis Snider, "With the elimination of the Chamounist militia, the autonomous existence of the original militias came to an end. This meant that the political groups comprising the Lebanese forces no longer had any independent military structures of their own" (Snider 1984, 10).

Despite his ruthless military tactics, Bashir displayed political advantage. In less than 6 years, Bashir built an organization that threatened the existence of the Lebanese state. Under his leadership, the Lebanese Defense Forces became more than just a loose amalgamation of family militias. By 1982, the LDF had its own foreign affairs department with representation in major world capitals and a public services department with civilian popular committees in villages and areas controlled by LDF Forces. These committees provided a wide range of public services: police protection, public transportation, and water, telephone, and electricity services; moreover, under the aegis of the LDF, there were agencies responsible for the regulation of consumer prices as well as a radio and television network (see Barakat 1988, 309-10).

Bashir was hated by the majority

of his countrymen; but he was loved and lionized by those who benefited from his patronage. Perhaps his considerable accomplishments within the Phalangist community caused the leadership-starved Lebanese to flock around him--even after his controversial election.

Within days after his election Bashir began to feel confident enough in his new role as president-elect to distance himself from his Israeli military allies. Also, according to David McDowall, Bashir began to realize that if Lebanon were to be re-united, he must forsake his bullying techniques and become more moderate (see McDowall 1983, 17)

Lessons From Bashir Gemayel

Whether Bashir could have successfully ended the civil war had he lived is a matter of conjecture. Most likely he would have failed. Although popular among the masses of Lebanese Christians, Gemayel, as his assassination proved, had powerful political enemies. The Chamoun and Franjieh factions, whose support Bashir would have needed, detested him for the slaughter of their family and party members. Moreover, the Israeli and Syrian presence in Lebanon made it virtually impossible

for anyone to have anything more than regional control of the country. Also, it was planned to use Gemayel as a surrogate in ousting the PLO from Beirut.

Of course, it is purely speculative to discuss what might have happened if Bashir had lived. However, such speculation can be important in understanding what is, perhaps, the heart of the Lebanon's problem: The Maronites feel that they are losing control of the state which they claim they almost single-handedly created. In fact, Maronites often justify their destructive, belligerent behavior in words similar to the following: "We made Lebanon, we can destroy it."

Symbol of the Presidency

The Maronites have historically been suspicious of Muslim loyalty to the Republic of Lebanon. In fact, according to Kamal Salibi, before the Republic of Lebanon was created in 1926, "the Sunnites had pronounced pan-Arab sympathies, and their leaders clamored for union with Syria, which was predominantly Sunnite" (1976, 9).

Therefore, from a historical perspective, it is understandable why the Maronites view the presidency as

a symbol of the state that belongs, historically, to them. In this way, the presidency has been both a source of unity and division for the Maronite community.

The presidency has had a fracturing effect on the Maronite community in another way. As the formulator of foreign policy, the president must make decisions vis a vis the Arab world that could exacerbate existing divisions inside the Maronite political community. This became clear shortly before Bashir Gemayel's death as doubts about the long-standing alliance with Israel became a source of conflict. Some Maronite leaders favored the alliance while the majority did not. According to Raymond Helmick, the "whole issue (was) made dangerous through the reaction of a third group, which is bitter about the alliance and ready to purge those most associated with Israel" (Barakat 1988, 316).

The presidency has appeared to divide the Maronites in still one other important way. Any Maronite president who wants to truly be the president of Lebanon must ultimately decide whether he wishes to be a Maronite politician or a statesman for all Lebanese. This is a serious dilemma because, according to Raymond Helmick, "there is no consensus on

whether or not to trust Muslims sufficiently to try to build a joint society. For many leaders it is still a matter of ambivalence; they haven't decided" (Barakat 1988, 315). This ambivalence prefaces the question that gets to the heart of the Lebanese presidential dilemma: Is the president the leader of all Lebanese? Or is the presidency an institutionalized mechanism meant to preserve the power and prerogatives of the Maronite community? In other words, the Maronites must ask themselves how committed they are to the idea of a pluralistic society.

The test of Lebanon's viability will continue to be whether or not the Maronites will view themselves first as Lebanese and second as Maronites. After the 1975 Civil War began, one of the first to try reconciliation with the Muslim community (after he ruthlessly consolidated his power within the Maronite community) was Bashir Gemayel, Whether Bashir's attempts to mend relations with the Muslim Lebanese led to his assassination is still a matter of conjecture. However, killing politicians who favor reconciliation between the confessional groups is a familiar phenomenon in Lebanese politics. Both Bashir Gemayel and Rene Moawad's assassinations seem to confirm this.

In conclusion, the symbol and

quest for presidential power has magnified existing tensions within the Maronite community. Before 1975, the presidency was very much a boon for the Maronite community. However, after the Civil War began, bullets rather than ballots determined Maronite leadership. Consequently, Maronite political rivalries became more treacherous. Bashir Gemayel took advantage of the donnybrook mentality of the Civil War and used the LDF's military prowess to solve the problem of Maronite leadership succession. In short, an understanding of the divisions within the Maronite community help diagnose what might be considered Lebanon's disease: the subordination of the nation's good for the amelioration on factional well-being.

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MARBURY V. MADISON: A CASE STUDY IN JUDICIAL REVIEW

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Judicial review currently stands at the heart of a heated controversy. That controversy involves several issues, including the proper role of a Supreme Court justice, the separation of powers, and constitutional interpretation. Difficult as it is to separate these issues from each other--they naturally overlap--I will focus on the institution of judicial review in this paper. My thesis is that understanding judicial review as the Founders did may provide a key to solving the current controversy surrounding that institution. To understand judicial review as the Founders did, as well as contemporary criticisms of that understanding, I will review a variety of sources both primary and secondary. Because Justice Marshall's opinion in Marbury v. Madison established judicial review as a political institution, that is where I begin.

Marbury v. Madison

Marshall begins his opinion by posing the following questions: (1)

Does Marbury have a right to the commission he demands? (2) "If he has a right, and that right has been violated, do the laws of his country afford him a remedy?" (3) "If they do afford him a remedy, is it a mandamus issuing from this court?"[2] Each question deserves individual attention to fill out Marshall's reasoning. Because Marshall establishes judicial review in answer to the final question, it will be examined most carefully.

Marshall argues that if Marbury has a right to the commission he demands, then he must have been legally appointed before President Jefferson entered office. Marshall first ascertains that President Adams duly appointed Marbury and that the Senate approved Marbury's nomination. From there the issue becomes more intricate. For once the President has nominated and the Senate has approved a judicial nominee, a commission must be signed by the President and sealed by the Secretary of State with the great seal of the United States. Marshall concludes that since the commission was signed by the President and sealed by the Secretary of State, Marbury's appointment was legally binding. Madison's counsel argues that the commission must be delivered to be legally binding, comparing a mandamus to a deed. Marshall refuses to

accept this analogy because the appointment would remain legal if the commission were lost or stolen. In such a case a copy of the commission would be readily made. The salient question, then, according to Marshall, is whether the appointment is legally binding once the great seal has been affixed to the commission. Marshall asserts that this is the case and concludes that Marbury has the right to the commission he demands.

Marshall then asks whether the laws of the United States afford Marbury a remedy from the right that has been violated. He affirms this and says that Madison's refusal to deliver Marbury's commission violates Marbury's legal right. And as in any case where a legal right is violated, Madison's refusal to deliver Marbury's commission violates Marbury's right, "for which the laws of his country afford [Marbury] a remedy."[3]

Marshall finally addresses the question of whether or not a writ of mandamus is the appropriate remedy in Marbury's case. He says that the answer to this question depends on three elements: (4) "the nature of the writ applied for," (5) "the power of this court" (6) "the nature of the writ."[4] The first question is easily answered. A writ of mandamus commands "the performance of a

particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived."[5] Based on the facts of the case, Marshall reasons that the nature of a mandamus makes it an appropriate remedy for Marbury.

In review, Marbury has a right to the commission he demands, Madison's violation of his right to that commission may be remedied by law, and a writ of mandamus is the appropriate remedy. Every point has been conceded to Marbury except one: the power of the Supreme Court to grant a writ of mandamus in his case.

Marshall agrees that the Judiciary Act of 1789 grants the Supreme Court "power to issue . . . writs of mandamus, in cases warranted by the principle and usages of law, to any . . . persons holding office under the authority of the United States."[6] However, Marshall argues that this statutory power is repugnant to the Constitution. He reaches this conclusion by inquiring whether a writ of mandamus is a power issuing from original or appellate jurisdiction. (Marshall assumes that the statute confers original jurisdiction--that assumption reads "original" into the statute.)

The principle of jurisdiction is

important here because it is the "Power and authority of a court to hear and determine a judicial proceeding"[7] or, as Marshall puts it, "to say what the law is."[8] And the Constitution clearly spells out the Supreme Court's original jurisdiction, while leaving the Court's appellate jurisdiction to be determined by congressional statute.[9] On this distinction Marshall rests his argument against the power of the Supreme Court to issue a writ of mandamus to Madison. For if a mandamus is directly related to original jurisdiction, and if the Court lacks original jurisdiction in Marbury's case, then the Court lacks the power to issue a writ of mandamus to Madison. But to say this implies the power of judicial review.

Marshall's reasoning is crucial here. Marshall says that the language in the Judiciary Act of 1789, which authorizes the Supreme Court to issue writs of mandamus, contradicts the Constitution. He rests this conclusion on three grounds: (1) the Supremacy Clause; (2) the nature of a written, limited constitution; and (3) the nature of judicial power.

The Supremacy Clause of the Constitution reads, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties

made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."[10] This clearly gives precedence to the Constitution and to laws "made in Pursuance thereof." But when an act of Congress directly contradicts the Constitution, which of them should prevail?

Marshall answers this by referring to the nature of a written, limited Constitution. He notes that "The powers of the legislature [Congress] are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written."[11] Because the Constitution is one of enumerated powers, Marshall reasons that congressional power is limited. And one of those limits is on Congress's power to alter the Supreme Court's original jurisdiction. For though the Constitution gives Congress the power to determine the Supreme Court's appellate jurisdiction, it does not grant Congress the power to determine the Court's original jurisdiction. Therefore Congress cannot alter what the Constitution specifically enumerates and leaves outside the congressional sphere.

Marshall answers the final question by referring to the nature of judicial power. As I have already noted, he affirms the right of the Court "to say what the law is."[12] He

further argues that the jurisdiction of the Court to decide the case implies the power to decide which of two conflicting laws ought to prevail. Moreover, because the Constitution is the fundamental law, it "controls any legislative act repugnant to it."[13]

On these grounds, Marshall decides that Marbury may not receive his remedy. Marbury certainly deserves the commission he demands. The laws clearly offer him a remedy for the right Madison violates by refusing to deliver Marbury's commission. And a mandamus is the appropriate remedy in his case. But because the Constitution has clearly enumerated the scope of the Supreme Court's original jurisdiction, because a mandamus belongs within that scope, and because the Court's original jurisdiction does not extend to a case such as Marbury's, the Court lacks the power to issue a writ of mandamus in Marbury's case.

Criticism of Marbury

Marshall's reasoning in Marbury has come under considerable attack. Christopher Wolfe has made the useful distinction between criticism grounded in the case itself and criticism grounded in Marshall's

constitutional interpretation.[14] Under the first heading is the objection raised by Jefferson, who contended that Marshall spoke at great length on the merits of the case before saying that the Court lacked jurisdiction.[15] Under the second is the broader objection raised by those who disagree with Marshall's defense of judicial review.

Jefferson's objection rests on a sound legal foundation. Legal opinions are economical. If a court lacks jurisdiction or the case lacks justiciability, the opinion generally says so directly without referring to the merits of the case. To do otherwise may violate the spirit of judicial power, which is limited to deciding specific cases. For if the case cannot be heard on its merits for whatever reason, the court has the duty to say that and nothing else. Such is the convention.

The circumstances surrounding Marbury suggest why Marshall departed from such a convention. The nation was eleven years old. The first major transfer of power from one party to another had just occurred. Although the Federalists had every constitutional right to appoint "midnight judges," the Jeffersonians resented the appointments and sought to counter them. One of those methods was unconstitutional:

refusing to deliver the remaining judicial commissions. There was even some talk among the Jeffersonians that Federalist judges, including Supreme Court justices, ought to be impeached. It was in this atmosphere of novelty and acrimony that Marshall fashioned the Marbury opinion. Given these circumstances, it is easy to see why Marshall did not limit his opinion to the question of jurisdiction. He wanted the Jeffersonians to know that the judiciary would not be controlled by its political opponents.[16]

The grounds for criticizing Marshall's defense of judicial review are broader and more complex. Perhaps the most wounding indictment of judicial review was leveled by Alexander Bickel, who noted the "counter-majoritarian difficulty" of defending judicial review in a democratic society.[17] Bickel argues that a democratic society rests on the principles of consent and representation. The legislature, because it is elected to represent certain segments of "the people," epitomizes these principles. Bickel extends this reasoning and finds that judicial review violates these principles. Though he admits that Hamilton defends judicial review in Federalist 78 along the same lines that Marshall does in Marbury, he, nevertheless, asserts that a panel of

justices cannot invalidate a statute without thereby subverting the principles of consent and representation. Federal justices are not elected; they are appointed to terms of "good behavior," which amounts to lifetime tenure. This insulates them from the kind of political pressure that ostensibly keeps other political offices, such as the Presidency and the Congress, close to the people. The "counter-majoritarian difficulty" occurs when the legislature passes a measure that the Court rules unconstitutional. If the legislature, which is elected and representative, determines a policy that it judges to be in the public interest, what right has the judiciary, which is appointed and nonrepresentative, to invalidate that policy? The most notable answer to this question is provided in Federalist 78 by Alexander Hamilton.[18]

Federalist 78

Hamilton defends the principle of an independent judiciary in Federalist 78. Since the mode of appointment is previously discussed, he does not repeat those arguments here. Instead, he concentrates on the reasoning behind an independent judiciary. Tenure during "good

behavior" is the first principle of an independent judiciary. Such tenure is, as Hamilton says, "[an] excellent barrier to the encroachments and oppressions of the representative body."[19] He proceeds to characterize the judiciary as the "least dangerous" branch of government, because it lacks the legislative power of the purse or the executive power of the sword.[20] It is in this context that Hamilton defends judicial review. And it is here that the connection between Hamilton's reasoning in Federalist 78 and Marshall's reasoning in Marbury becomes apparent.

Like Marshall, Hamilton grounds his defense of judicial review on the connections between the necessity of an independent judiciary; the nature of a written, limited constitution; and the nature of judicial power.[21] Hamilton's argument is similar enough to Marshall's to largely avoid repeating it.[22] But Hamilton differs from Marshall on two important points. Hamilton emphasizes an aspect of judicial power that Marshall does not when he observes that "the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority."[23] And he notes an important qualification on judicial

power that Marshall does not emphasize: "Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."[24] So Hamilton provides three primary reasons why judicial review is defensible in a popular regime. (1) An independent judiciary provides an important check on the excesses of the legislature. (2) The judiciary poses less danger than the other branches of government, so long as it remains separate from them. (3) The judiciary has the duty of deciding what the law is. Because the Constitution is the fundamental law, this duty implies the power of settling conflicts between the Constitution and a statute (which power is another name for judicial review).

Reply to Bickel

In light of Hamilton's reasoning, we can answer Bickel's "counter-majoritarian difficulty." The legislature is the majoritarian power in our republic. As such, it has great power. Given unlimited power, it could prove as tyrannical as the eighteenth-century British parliament. The Constitution specifically limits that power by

proscribing ex-post-facto laws, bills of attainder, and the like. It also limits legislative power by placing the judiciary between it and the people. Thus judicial review is counter-majoritarian only in the sense that it does not allow the legislature unlimited power to pass laws that may alter the Constitution. Some suggest that such judicial power is dangerous. Hamilton's answer to this objection is clear: keep the judiciary from uniting with the other branches of government. In other words, so long as the judiciary does not exercise legislative or executive powers, it will remain "the least dangerous branch."

Additional Criticism and Plausible Answers

Bickel's objection to judicial review is perhaps the strongest, but others have posed objections that also deserve some attention. They may be grouped under the following categories. (1) Lacking precedent or textual justification, Marshall invented judicial review in Marbury. (2) The Founders disagreed over the nature of judicial review enough that we may hesitate when characterizing Marshall and Hamilton's reasoning as authoritative. Precedent must

always be seen in light of historical context. The United States was fourteen years old when Marshall wrote Marbury. Thus there was little precedent for Marshall to rely on, especially when we remember that the Founders emphasized the novel nature of the American Constitution.[25] Wolfe notes, however, that the Court had already entertained the question of constitutionality in Hylton v. United States nearly a decade before Marbury.[26] Though Hylton was decided without raising the question of constitutionality, there was some precedent for entertaining the question itself when the Court was confronted with Marbury. Given this perspective, the objection that Marshall did not pay deference to stare decisis is unpersuasive.

Textual justification is harder to come by. Nowhere in the Constitution does it read, "Any act by another branch of government, which is repugnant to the Constitution, shall be invalidated by the judiciary."

However, Marshall was not altogether without textual evidence for judicial review. The Constitution provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their

Authority."[27] This provision certainly allowed Marshall to take cognizance of Marbury. But it is the combination of this provision, the Supremacy Clause, and the "case or controversy" requirement of article III that provides Marshall with the textual basis for his defense of judicial review in Marbury. Each provision depends on the other. Together they define judicial power so as to include judicial review. Article III, section 1 grants "the judicial Power of the United States" to supreme and inferior courts. Section 2 of the same article says that those courts have jurisdiction over certain cases and controversies. The Supremacy Clause (article VI, section 2) defines the relationship between state and federal laws. Judicial review includes such a relationship by textual enumeration. That it also encompasses the relationship between congressional statutes and the Constitution is evident from the Court's power to hear cases "arising under this Constitution."[28] As Marshall points out, it would be absurd to acknowledge this power without acknowledging the Court's corresponding power to invalidate a law which contradicts the Constitution.[29] And this, of course, is another way of expressing judicial review.

An answer to the second objection must understandably be brief. Some argue that the Founders disagreed over judicial review enough to make one hesitate in accepting Marshall and Hamilton's position as authoritative. This argument ignores the important relationship, which the Founders acknowledged, between judicial review and the separation of powers. Hamilton's defense of judicial review in Federalist 78 has already been shown in context: a defense of an independent judiciary. Madison may be considered an advocate for the party opposite Hamilton. But on this question the two agree. As Madison says, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny."[30] And he points to the same source for this threat as Hamilton does: unlimited legislative power.[31] In response to those who suggest that judicial review belongs with Congress, John Adams suggests that Congress would be ill-suited to judicial power because it is "too numerous, too slow, and too little skilled in the laws."[32] The Founders evidently agreed on the necessity for the separation of powers, the primary threat of the legislature to that separation, and the impropriety of granting judicial review to the legislature. Some

disagreement between the Founders over political policies may be freely admitted, but they apparently agreed with Marshall and Hamilton over what judicial review should be. They also agreed that judicial power is designed to check legislative power, a fact seemingly ignored by Bickel and others.

Conclusion

The controversy over judicial review is complex but not insolvable. Understanding judicial review as the Founders--a means of checking legislative power and upholding the Constitution as the fundamental law--leads us to conclude that judicial review works best when it pursues those ends for which it was created. An important qualification on judicial review is that judges cannot exercise legislative or executive power without thereby endangering liberty.[33]

Such a conception of judicial review is neither simple nor dismissible. No simple rule will ever govern the interpretation of law, especially if that law purports to be fundamental like the Constitution. It is difficult to interpret current statutes in light of a text written over two-hundred

years ago. Yet we cannot escape this difficulty by dismissing judicial review. Its history predates the Constitution, and sound reasoning supports its preservation. However, it does present us with a dilemma that was best expressed by Tocqueville, who wrote "Judges seem to intervene in public affairs only by chance, but that chance recurs daily."[34] Though judges cannot initiate public policy as the other branches of government do, they nevertheless "intervene in public affairs" almost daily. The dilemma is to so intervene without crossing the line between judicial and legislative power.

MARBURY V. MADISON

NOTES

1.The facts of Marbury illuminate Marshall's reasoning. I therefore include a brief recitation of those facts here, for which I am indebted to the following: Craig R. Ducat and Harold W. Chase, Constitutional Interpretation, 4th ed., (St. Paul, Minn.: West, 1988), 16-17.

In the election of 1800 the Jeffersonians won control of the Presidency and both houses of Congress. To keep what political power they could, the Federalists under President John Adams appointed a series of federal judges. When Thomas Jefferson entered the Presidency four judicial commissions remained undelivered. One of these undelivered commissions belonged to William Marbury, who had been appointed justice of the peace for the District of Columbia. Under the direction of President Jefferson, Secretary of State James Madison refused to deliver the remaining commissions. Consequently, Marbury sued Madison before the Supreme Court. Pursuant to section 13 of the Judiciary Act of 1789, Marbury requested that the Court issue a writ of mandamus directing Madison to deliver the commission. Because Congress suspended the Court's 1802 session, the Court did not decide

Marbury's case until 1803. The opinion of the Court was written by Chief Justice Marshall.

2.Marbury v. Madison, 5 U.S. (1 Cranch) 155 (1803).

3.Id., 168

4.Ibid.

5.Black's Law Dictionary, 5th ed., s.v. "Mandamus."

6.Judiciary Act, sec. 13 (1789).

7.Black's Law Dictionary, 5th ed., s.v. "jurisdiction."

8.Marbury v. Madison, 5 U.S. (1 Cranch) 177 (1803).

9.Constitution, art. III, sec. 2.

10.Constitution, art. VI, sec. 2.

11.Marbury v. Madison, 5 U.S. (1 Cranch) 176 (1803).

12.Id., 177.

13.Ibid.

14.Christopher Wolfe, The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law (New York, N.Y.: Basic Books, 1986), 84.

15.Ibid., 87.

16.Id.

17.Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics. 2d ed. (New Haven, Conn.: Yale University Press, 1986), 16-23.

18.It is helpful to remember the conditions under which The Federalist was written. It is a series of articles written to persuade the people of New York to ratify the Constitution. But, as Martin Diamond suggests, "It seems clear that its authors also looked beyond the immediate struggle and wrote with a view to influencing later generations by making their work the authoritative commentary on the

meaning of the Constitution." (Martin Diamond, "The Federalist," in History of Political Philosophy, ed. Leo Strauss and Joseph Cropsey, 3d ed., [Chicago, Ill: University of Chicago Press, 1987], 659, emphasis added).

19.Alexander Hamilton, John Jay, and James Madison, Jr., The Federalist, ed. Michael Loyd Chadwick (Springfield, Va.: Global Affairs, 1987), 421. I will hereafter refer to the number and paragraph of the Federalist, instead of edition and page number. For instance, this reference would be cited simply as Federalist 78.6.

20.Federalist 78.7-8.

21.Hamilton's argument on the first two points is so cogent and concise that I take the liberty of reproducing it here. "The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for

instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing" (Federalist 78.9).

22.To compare the two arguments, see especially Marbury v. Madison, 5 U.S. (1 Cranch) 176-80; and Federalist 78.9-22.

23.Federalist 78.12, emphasis added.

24.Federalist 78.8, emphasis added.

25.Federalist 1.2.

26.Christopher Wolfe, The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law (New York, N.Y.: Basic Books, 1986), 80.

27.Constitution, art. III, sec. 2.

28.Constitution, art. III, sec. 2.

29.Marbury v. Madison, 5 U.S. (1 Cranch) 178 (1803).

30.Federalist 47.3.

31.See Federalist 48.3.

32.John Adams to George Wythe, January 1776, "The Constitution Papers," Electronic Text Corporation, Orem, Utah.

33.Federalist 78.8.

34.Alexis de Tocqueville, Democracy in America, trans. George Lawrence, ed. J.P. Mayer (Garden City, N.Y.: Harper & Row, 1969), 99.