The Students of the Philosophy, Politics & Economics Program Present

SPICE

Student Perspectives on Institutions, Choices, & Ethics

Volume 7 | Spring 2012
University of Pennsylvania
College of Arts & Sciences
EDITORIAL BOARD

Editor-In-Chief
Antonio Luis Vázquez

Managing Editors
Isabelle Sun
Abby Tran

Associate Editors
Jeffrey Chen
Robert Gianchetti
Amanda Johnson
Megan McGlynn
Kaitlin Schaeffer

Directors of PPE
Dr. Cristina Bicchieri
Dr. Ryan Muldoon

Associate Director of PPE
Dr. Sumantra Sen

Advising Faculty
Dr. Jason Dana, Associate Professor of Psychology
Dr. Tulia G. Falleti, Associate Professor of Political Science
Dr. Rogers Smith, Distinguished Professor of Political Science
Dr. Jeff Weintraub, Lecturer of Philosophy, Politics & Economics

Website
www.sas.upenn.edu/ppe/Students/journal.html
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>04</td>
<td>Letter From the Editor</td>
<td>Antonio Luis Vázquez</td>
</tr>
<tr>
<td>07</td>
<td>A Study on Sustainable Behavior Inducement:</td>
<td>Douglas J. Miller, Jr.</td>
</tr>
<tr>
<td></td>
<td>The Role of Information and Feedback</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Deliberative Citizenship:</td>
<td>David Kanter</td>
</tr>
<tr>
<td></td>
<td>The Deliberate Democrats’ Response to the Hegemony of Classical Liberalism</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Institutional Trust:</td>
<td>Lorenzo Felipe Lagos</td>
</tr>
<tr>
<td></td>
<td>The Case Study of Mexican State Institutions</td>
<td></td>
</tr>
<tr>
<td>115</td>
<td>Veering Off the Abolitionist Path in America:</td>
<td>Avinash Samarth</td>
</tr>
<tr>
<td></td>
<td>The Influence of the Ambiguously Written Constitution</td>
<td></td>
</tr>
</tbody>
</table>
LETTER FROM THE EDITOR

The students of the Philosophy, Politics, and Economics Program at the University of Pennsylvania are fortunate to receive comprehensive instruction in the social sciences. This year’s issue of SPICE, like prior publications, showcases the remarkable achievements that can emerge from this interdisciplinary education.

A Study of Sustainable Behavior Inducement utilizes statistical methods to examine the role of color and written eco-labels in environmental impact reduction. It is followed by Deliberative Citizenship, an intense philosophical reflection challenging the hegemony of classical liberalism in the public discourse, presenting an alternative way of thinking about the social world by arguing for the complexity of human behavior and thought, as advocated by the deliberate democrats. Institutional Trust is a study about democratic life, delving into the relationship between structural reforms and trust in state institutions, emphasizing context over generalizability by employing a case-study methodology that focuses on Mexican institutions. And, to conclude, Veering off the Abolitionist Path in America offers an intriguing historical, political, and legal approach to understanding why the U.S. might be the only country in the Western world to retain the death penalty in its justice system.

I am proud to present each of these papers as they illustrate one or more of the Five Themes of Study that students may currently pursue. PPE students focus their coursework around the study of Choice & Behavior, Ethics & the Professions, Distributive Justice, Public Policy & Governance, or Globalization.

We reviewed many outstanding papers and we are appreciative of all those who submitted their work for consideration. This journal would not be possible without the exemplary effort of its contributors, authors, and editors. I applaud their enthusiasm for the Program, as well as their expressed commitment to research and scholarship, in general, and in the PPE disciplines, in particular.
On behalf of the Board, I extend my appreciation to Dr. Sumantra Sen for his invaluable guidance and support. Professor Sen deserves our gratitude as a mentor during our years at Penn; he is also an avid supporter of interdisciplinary studies and was paramount in the establishment of this journal.

I trust that the level of scholarship presented in the pages that follow inspires thought, reflection, and healthy debate. More importantly, it is my hope that it encourages action. While scholarship for its own sake is always a worthy use of intellect, it is my contention that scholarship should be most admired when it helps to solve the problems we face in the world. As students of philosophy we learn how to think deeply and logically about issues; as students of political science we learn the value and inner-workings of human institutions; and as students of economics we learn how to analyze the production, distribution, and consumption of goods and services. I thus urge the students of PPE to capitalize on their ability to understand issues through these multiple lenses as they go into the world and tackle its many challenges – all with an outlook towards making a rich contribution and powerful impact.

To the students, parents, faculty, alumni, and friends of the PPE Program at Penn, the Editorial Board and I hope that you enjoy this year’s issue and continue to advocate for an interdisciplinary education.

Sincerely,

[Signature]

Antonio Luis Vázquez
Editor-In-Chief
A Study on Sustainable Behavior Inducement: The Role of Information and Feedback

Douglas J. Miller, Jr.

Abstract

This study develops a further understanding of the role of information availability – in either detailed or color cue feedback form – in inducing sustainable behavior. The hypothesis was that the Color Cue Feedback Group would be more likely to make sustainable decisions on the whole since color cues should invoke System I cognitive processes. A survey-based experiment including 364 participants was conducted at the University of Oxford. First, it was found that information availability in general appears to increase sustainable decision-making, and the hypothesis that color cue feedback (moral suasion) is the most effective for invoking sustainable choices was generally, though not conclusively, confirmed. Second, color cues (moral suasion) may be preferable for quick decisions and detailed information (information provision) may be preferable for decisions that take more time to develop. Third, the presence of undesirable social norms regarding sustainable behavior could mean that the desirable (sustainable) behavior is most often not adopted. Fourth, individuals may aspire to and find value in sustainable practices, but are less likely to actually engage in this behavior when the opportunity to do so arises. Lastly, the data suggest that while information availability will affect decision-making, for the greatest impact it must also be accompanied by supportive policies or campaigns that simultaneously reduce barriers for sustainable behavior and increase the barriers for unsustainable behavior.

Introduction

Significance

The span and scope of emerging environmental issues is intimidating. Environmental issues are unique in that they are entwined with essentially every component of life, ranging from the necessities to luxuries available in the modern day. We can expect these issues to undermine various facets pertaining to our quality of life and therefore we require not only bold but also a complex range of solutions.

This study addresses one element fueling environmental problems that requires a solution: individual behavior. Changes in individual behavior will certainly not be enough on its own to enhance the sustainability of modern life. There must also, for example, be sweeping improvements in numerous technologies. But behavioral change is nonetheless essential, especially when
A Study on Sustainable Behavior Inducement

considering the increasing demand for the planet’s resources as developing countries improve their standard of living and several billion more people will be added to the human population by mid-century.

A comparison between the effectiveness of two (related) categories of environmental solutions is made in this study regarding their likelihood to induce behavioral change. The two categories being compared include information provision and moral suasion. Both items fall within a general taxonomy of state intervention for addressing environmental issues that ranges from the free market at one end to nationalized delivery at the other and are situated in the portion of the spectrum closest to free market (Hepburn 121). Information provision can be described as a situation in which “government assumes the role of aggregating and disseminating information on externalities and their shadow prices, but nothing more,” and moral suasion as government providing and possibly seeking to “persuade people and firms to change their preferences and objectives” (Hepburn 121). For the sake of simplicity – and since both information provision and moral suasion involve making information available in one form or another – the term information availability (and related phrasing) will convey a reference to both terms.

Objective

The main purpose of this study was to further understand the role of information availability – in either detailed or color cue feedback form – in inducing sustainable behavior. The term detailed form falls under the information provision category and refers to information about the environmental impact of a decision issued in either written text or as an eco-label. The term color cue feedback, on the other hand, falls under the moral suasion category and refers to environmental impact information given in the form of colors. The colors range on a spectrum from red to green, with red signifying a high (detrimental) environmental impact and green denoting a low (positive) impact on the environment. The detailed form of information availability provides more information than color cue feedback does; the former illustrates various aspects of the impact of a decision on the environment, while the latter solely offers a color as feedback to an individual’s choices. These two forms of information thus offer individuals two different ways to learn about the environmental impact of their decisions.

In order to determine which format is preferable for achieving more sustainable decision-making, this study addresses the research question “Is information about the environmental impact of a decision made available in detailed or color cue feedback form more effective in its ability to induce sustainable behavior?” Furthermore, the study also aims to gain insight as to whether offering either form of information at all makes a difference compared to the status quo, in which limited or zero environmentally-related
information is readily available for the decisions that individuals make.

Related Work
During the past few years our knowledge of how information availability, in various forms, impacts individual behavior has increased. In particular, there have been interesting discoveries relating to moral suasion. Excitement over this category of environmental solutions is that moral suasion “can lead to low cost, low pain ways of ‘nudging’ [individuals] into new ways of acting by going with the grain of how we think and act. This is an important idea at any time, but is especially relevant in a period of fiscal constraint” (Dolan 7). By employing research on behavioral theory, incentives and information availability can be designed more effectively. Research by Dolan, et al. offers the following set of the nine most robust (non-coercive) influences on behavior as a checklist for making effective policies. The list can be remembered by a simple mnemonic: MINDSPACE (Dolan 8).

<table>
<thead>
<tr>
<th>Messenger</th>
<th>We are heavily influenced by who communicates information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incentives</td>
<td>Our responses to incentives are shaped by predictable mental shortcuts such as strongly avoiding losses</td>
</tr>
<tr>
<td>Norms</td>
<td>We are strongly influenced by what others do</td>
</tr>
<tr>
<td>Defaults</td>
<td>We ‘go with the flow’ of pre-set options</td>
</tr>
<tr>
<td>Salience</td>
<td>Our attention is drawn to what is novel and seems relevant to us</td>
</tr>
<tr>
<td>Priming</td>
<td>Our acts are often influenced by sub-conscious cues</td>
</tr>
<tr>
<td>Affect</td>
<td>Our emotional associations can powerfully shape our actions</td>
</tr>
<tr>
<td>Commitments</td>
<td>We seek to be consistent with our public promises and reciprocate acts</td>
</tr>
<tr>
<td>Ego</td>
<td>We act in ways that make us feel better about ourselves</td>
</tr>
</tbody>
</table>

The factors that affect the way in which individual decisions are made can be used as tools to nudge individuals (non-coercively) toward making preferable choices. Moreover, they serve as the core tools of policy pertaining to behavioral change. The work by Dolan, et al. notes that the tools offered by MINDSPACE provide a pathway to implement behavioral change and...
should be applied within a larger framework to Enable, Encourage, Engage, and Exemplify behavioral change (Dolan 9). In addition to these ‘4Es’, “MINDSPACE requires two supporting actions: Explore, which takes place before policies are implemented, and Evaluate, which judges the success of the policy” (Dolan 9). In practice, MINDSPACE “powerfully complements and improves conventional policy tools, rather than acting as a replacement for them” and may also “help identify any barriers are currently preventing changes in behavior” (Dolan 10).

![MINDSPACE Diagram](image)

In a related work titled *Nudge*, Richard Thaler and Cass Sunstein discuss how choice architecture affects individual decision-making. They argue that utilizing liberal paternalism – via nudges – encourages individuals in a non-coercive manner to make decisions that are in their own best interest because they are in society’s best interest. More specifically, a *nudge* “is any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives” (Thaler 6). Furthermore, an intervention must be easy and cheap to avoid in order to be considered a nudge because they are not mandates;
they are preferable and perhaps more politically admissible to outright bans. By utilizing research on framing, priming, and default options, policymakers can encourage behavior that improves the health of individuals and the environment. In terms of energy conservation, for example, a campaign framed as helping people not lose money will be more effective than helping people save money (Thaler 37). Publishing information in a neighborhood about how much energy each household uses will compel people to reduce their energy use. Similarly, people will be “more likely to recycle if they learn that lots of people are recycling” (Thaler 67). In the following example, which served as one of the primary reasons for investigating the role of color cue feedback in inducing behavioral change, the use by a California energy utility of the Ambient Orb – a ball that provides feedback by glowing red when a customer is using lots of energy but green when energy use is modest – led to 40% energy reductions (Thaler 196).

Other similar products have been developed to provide feedback to individuals: The iPed is a piece of jewelry, such as a lapel pin, “that would change color depending on [people’s] carbon footprint” (Thaler 257). This would encourage people to reduce their footprint, since this information would be publicly displayed. Smart/energy meters, since they offer constant feedback to consumers, have been shown to encourage people to reduce their energy use. For instance, there is a power cord that lights up and intensifies depending on how long an appliance has been switched on. By the same token, a device that makes a beeping noise after every half gallon of water that is used while taking a shower should reduce water use.

The findings presented in both MINDSPACE and Nudge about the impact of behavioral theory on decision-making lie behind the rationale for the primary hypothesis described later in this paper.

A secondary, related hypothesis for the survey data is based on previous research about social norms. Research on social norms indicates that behavior is driven by the expectations (or beliefs) individuals hold, not only about themselves, but also about others. It has been found in numerous studies that what other people do or are expected/believed to do plays a major, though underappreciated, role in individual behavior. Thus, similar to nudges, social norms play a larger (often subconscious) role in determining individuals’ behavior than they realize.

In terms of the effect of social norms on sustainable behavior, there have been correlational and experimental findings. It was found that self-reported contributions to prevent climate change (by using public transportation instead of driving) were “strongly correlated with normative beliefs about what other people did (r = .77)” (Göckeritz 515). In another study, it was found that the strongest predictor of energy conservation was “the belief that other people are doing it (r = .45, p < .01),” even though participants “did not detect the influence of these messages” about these
A Study on Sustainable Behavior Inducement

descriptive normative beliefs on their behavior, rating them as the least motivating reason to engage in energy conservation (Nolan 916, 920). Furthermore, it was found that participants with very low recycling rates “recycled more after they had received information about the actual (higher) recycling rates of other residents in the community” (Nolan 914). Thus, people are not only much more likely to adopt sustainable behaviors based on what other people do but are also quite unlikely to know how the behavior of other people affects their own behavior.

Experiment

Survey Design

The research question for this study was addressed with an online survey-based experiment. The survey was divided into eight sections to find if the type of situation plays a role in determining which form of information availability is more effective. In other words, perhaps written form is more effective for policy views while color cue feedback offers greater potential for more sustainable purchasing decisions. The eight sections included reusable (tote) bags, energy use, land development, grocery store purchases, clothing store purchases, recycling, and companies.

Each section asked participants to rate their level of agreement with a set of statements using a 1-7 scale. On the scale, selecting “1” indicated low agreement with a statement, while selecting “7” indicated high agreement with the statement.

The statements spanned various categories of behavior. The statements addressed participants’ viewpoints, likelihood of engaging in a behavior or in supporting a certain decision, expectations, and other statements pertaining more specifically to the section at hand. Participants were also asked to rate other people’s viewpoints, likelihood of engaging in a behavior or in supporting a certain decision, and expectations. The purpose of this was to determine whether there is a difference between how individuals rate statements and how they think others would rate the same statements. Thus, these statements were intended to help detect if undesirable social norms (those that inhibit the widespread adoption of sustainable behavior) are present. To note, the statements within each section were randomly sorted in order to minimize the effects of priming on participants.

Participants in each of the three survey groups rated their level of agreement for the same statements. The only difference among the three groups was the way in which information – limited information, color cue feedback, or detailed information – was offered to them. The three survey groups included the following:

The Control Group (Survey Group 1) was offered limited information about products, behavior, and policy in order to represent the
domain in which most individuals make decisions today: with limited or zero information about the environmental impact of their choices.

The Color Cue Feedback Group (Survey Group 2) was given information about the environmental impact of a decision via colors. A color spectrum from red to green (or green to red) was displayed above the statements that participants were asked to rate. The color spectrum was divided into seven parts so that it would correspond to the 1-7 rating scale. Participants could thereby receive quick feedback on the environmental impact of their decision by comparing their rating on the 1-7 rating scale to the corresponding number on the color scale. Due to the connotation of color with positive (green) or detrimental (red) environmental impacts, the color scale may invoke injunctive norms – what is approved or disapproved of – since a green rating implies ‘good’ behavior and a red rating implies ‘bad’ behavior.

The Information Group (Survey Group 3) was given information in either the form of written text or eco-labels. The written text offered very detailed information about the benefits and/or detriments of a certain product, practice, or policy. The eco-labels came in two forms. The label used for grocery store products was slightly less detailed, since it gave products a rating on a scale of one to five stars (five being the most environmentally-friendly). The label used for clothing store products was more detailed and was modeled after Nutrition Facts label used for food and drinks in the United States. To note, this was the label that I presented at The Economist magazine’s Carbon Economy Summit in November 2009 (with slight modifications).

Setting and Participants

The experiment was conducted at the University of Oxford in Nuffield College’s Centre for Experimental Social Sciences (CESS). It took place over the first two weeks of July 2011.

An electronic message was sent from CESS to a participant pool including students and non-students in the surrounding Oxford community. The pool of participant recruits included individuals who had previously agreed to receive messages about CESS experiments. Email addresses were randomly sorted into one of the three survey groups. 500 electronic messages were sent for each survey group and thus 1,500 total electronic messages were sent. Participants completed the survey on their own time and in a place of their choosing.

There were 364 completed surveys, which is a response rate of 24.3%. 141 participants completed Survey 1, 120 participants completed Survey 2, and 103 participants completed Survey 3. There were a handful of individuals who began the survey but did not complete it. Of the 36 individuals that started but failed to complete the survey, 13 were from the Survey 1 Group, 12 were from the Survey 2 Group, and 11 were from the Survey 3 Group.
Information was collected regarding the gender, age, and student/non-student status of participants. Sixty percent of the participants were female and forty percent were male. About half of the population was between ages 18-24, about one-quarter was between age 25-34, and the remaining one-quarter included participants age 35 or above. Lastly, there was an even split between participants who were students at the University of Oxford and those that were not; the survey population thus is more representative of the younger segment of the adult UK population. The results may thereby provide more information about future trends in this realm since most participants have not yet reached middle age.

Because the population included members of the Oxford, UK community, the participants were expected to be in the middle-range of viewpoints regarding sustainability related issues held by individuals in developed nations. Oxford is a small city bordering rural and industrial areas, yet is also only about an hour-long drive from London. Generalizations about the viewpoints regarding sustainability issues held by British individuals compelled the expectation that the participant pool would tend to have less environmentally-friendly views than people from nations like Sweden or Germany, but perhaps more environmentally-friendly views than those from a nation such as the United States.

Procedure

Participants were sent an electronic message from CESS requesting them to participate in a study on Consumer Preferences. The message did not refer to the sustainability aspect of the study in order to reduce or avoid bias in the participants that agreed to take the survey. Individuals could choose to participate at their leisure over the course of the study period in early July 2011. They were told in the electronic message that the survey would remain open until a sufficient number of surveys were completed. Participants selected the link given at the bottom of the electronic message to begin the survey, which directed them to one of the three surveys. The survey generally took participants 15 to 20 minutes to complete.

The three online surveys were each designed using SurveyMonkey®. As participants completed their respective surveys, SurveyMonkey® collected the data and provided a general analysis of the results. In order to complete a more detailed statistical analysis, the data was exported to Excel and then converted for use on the program JMP 8. Mean difference tests and other related significant difference tests of the results were completed using JMP 8.

As an incentive for individuals to participate in this study on Consumer Preferences, they were told that ten participants who completed the survey would be randomly selected to win a £30 (about $50) reward. In order to enter their names into the reward lottery, participants had to enter their email address after the final survey question.
Once ten participants were randomly selected to win the reward, a message was sent notifying them about their selection. The message also included an offer for an additional £10 (about $16) if they agreed to participate in a brief ten-minute interview when they came to CESS to collect their reward. Nine of the ten participants collected the £30 reward and eight of the ten participants participated in the brief interview for the additional £10. To note, the participant that collected the reward but did not participate in the interview was out of town and had a friend come to CESS to collect the £30 reward; an interview could therefore not be offered to this person. One participant did not respond about collecting the £30 reward.

The interview on Consumer Preferences was used to ask related follow-up questions. These questions aimed at gaining further insight into the perspectives that individuals maintain in this realm and to see if – with the presence of another individual who would hear the individual’s responses – there would be any notable trends when compared to the survey results. The number of interviews was certainly very small – a total of eight – but nonetheless was another opportunity to learn about individual decision-making.

The interviews took place in the CESS seminar room and lasted between five to ten minutes. Participants were asked 33 questions that addressed the subjects of energy conservation, purchasing habits, recycling, and views of sustainable business practices. The majority of the questions requested yes/no responses. Participants were asked to elaborate when they appeared to want to say more, provided a restrained response, or if the response was vague (for the questions that were not in the yes/no format).

Hypothesis

The objective of this experiment, as already stated, was to determine which method of making environmental impact information available would be more effective for inducing sustainable behavior. Furthermore, the experiment also addressed whether information availability in either form has an impact on decision-making at all, or whether making information available – for a lack of better terms – is a waste of time and effort. My hypothesis was that the Color Cue Feedback Group on the whole would be more likely to make sustainable decisions. This may appear to be a less intuitive hypothesis than selecting the Information Group; one might expect people with detailed information to make preferable ('greener') choices than those simply receiving color feedback. The reasoning behind the hypothesis is that colors will invoke System 1 cognition – automatic, fast, easy, effortless mental processes – since people may have a (positive or negative) 'gut' reaction to whether the color feedback is green or red. People may want to make decisions that are closer to green on the spectrum than they would otherwise make without such color feedback being provided; they may
compare where they originally stood on the color spectrum and modify their choices. Color may thus imply rather subtly whether a decision is acceptable or not. Individuals in the Information Group, on the other hand, would likely need to utilize System 2 cognition – effortful, time-consuming, slow mental processes – since it will require effort to interpret what the detailed environmentally related information states about the product or practice. Since individuals shy away from utilizing System 2 processes whenever possible due to related high (cognitive) costs, the Information Group was expected to be less effective overall than the Color Cue Group in adopting sustainable behavior.

A secondary hypothesis related to the statements in the survey pertain to expectations. In this study, it was expected that the results would illustrate the presence of undesirable social norms that may in fact inhibit the widespread adoption of sustainable behavior. That is, it was expected that there would be a difference between empirical (what an individual expects others to do) and normative (what an individual thinks that other people expect him or her to do) expectations. Individuals were thought to be more likely to expect (or believe) others would engage in sustainable behavior than what individuals believed others would expect of them. In other words, empirical expectations were seen likely to be higher than normative expectations. Furthermore, individuals would also probably think that their own desire to engage in, their actual engagement in, and their approval of sustainable behavior is greater than their descriptive normative beliefs (what they expect others to do in a particular situation) and their injunctive normative beliefs (what an individual expects others to approve or disapprove of) (Göckeritz 515). These gaps in expectations, if found to be true, would support the notion that undesirable norms – that inhibit the more widespread adoption of sustainable behavior – are present.

**Analysis by Section**

The results of this study are based on the ratings that participants provided for the 76 statements distributed among the eight sections of the survey. The following analysis is based on two items. First, comparisons were made between the mean rating that each survey group offered for each of the 76 statements with the actual responses. The purpose of these comparisons was to determine if information had an effect and, if it did, which form of information was most likely to induce sustainable decision-making. Second, comparisons were made between related statements based on their overall mean rating. To note, these comparisons are referred to as ‘inter-statement’ comparisons. The overall mean rating for each statement was simply the mean of the entire participant population – combining the results from each of the three survey groups – for that statement. The aim of these comparisons was to look for more general trends in the data and, in particular, to examine
questions pertaining to social norms.

In terms of overall results, the Color Cue Group possessed the more sustainable rating for 32 of the statements, the Information Group for 28 of the statements, the Control Group for 16 of the statements. It appears that information – in either form – makes a difference compared to zero or limited information in terms of inducing more sustainable choices. Thus, as hypothesized, the color cue feedback overall appears to induce more sustainable decisions than the other types of information. Offering colors instead of more detailed, text-based information therefore appears, in general, to be more likely than the others to induce sustainable behavior if it becomes utilized in the real world. However, as will be addressed in the more detailed analyses below comparing the groups, whether it is the Color Cue or Information Group that compels the more sustainable response for a given statement appears to be related to the situation. Moreover, it seems that color cues are preferable for situations in which decisions are made more quickly – such as shopping – while information in written form may be preferable for situations in which decisions typically take slightly more time to develop – such as policy viewpoints.

To note, one of the main reasons the Control Group had as many (16) top ratings as it did is due to the questions pertaining to the acceptability and necessity of eco-labeling. More on this can be found later in this section.

A detailed analysis of the eight sections of the survey is provided below. To note, Alpha=0.05 was used as the level to achieve statistical significance for all mean difference tests.

Reusable Bags

Disposable bags are a visible source of waste that people see everyday. When people have take away from restaurants or make a purchase at a store, they most often leave not only with their purchase but also with a disposable bag. These bags are a modern day icon of waste: despite the amount of energy and material that goes into making these bags, their lifespan is quite short – lasting merely from when an individual leaves the store until the arrival at home – before being thrown away or left as litter on the street. It would seem like a small shift in behavior for individuals to remember to keep a reusable bag with them in order to eliminate the need of disposable bags. Yet in practice this is more difficult than might be expected.

In the Reusable Bags section, the Information Group had the more sustainable rating for seven of the nine statements. The Color Cue and Control groups split the other two statements. There was only one instance of inter-statement group differences reaching statistical significance: the Information Group held a significantly greater view of a restaurant or store charge for disposable (paper or plastic bags) than the Control Group. The survey population as a whole, however, seems relatively lukewarm to the
use of reusable bags; none of the groups for any of the statements had a mean rating greater than 5.85 (out of 7). Also, it is interesting to note that in this section the Color Cue Group scored worse than it does for any other section; it had the least sustainable rating for six of the nine statements.

Comparisons were made between the overall mean ratings (the mean of the entire participant population) of various statements. Five of these inter-statement comparisons achieved a statistical significance level of $\alpha=0.05$: individuals find themselves more likely to hold a favorable view of reusable bags, be more likely to use reusable bags, and feel better about using reusable bags than other people. A restaurant or store charge for disposable bags is looked upon more favorably than an outright ban of disposable bags. Lastly, and perhaps the most interesting results from this section, people’s favorable view of reusable bags is significantly higher than their likelihood of actually using the bags. This point illustrates perhaps a lack of commitment and/or incentive to use reusable bags. Were a commitment device or incentive developed, the gap between beliefs and action might be bridged.
Energy Use

To meet future energy demands, energy conservation is not an option but a requirement. Yet like so many efforts related to sustainability, encouraging individuals to reduce energy use is onerous. Part of the problem is that for many individuals, especially in the United States, reducing energy use seems to imply a diminishing standard of living. There are two aspects that must be considered in formulating a solution to energy-related issues. One is technological and the other, which is addressed in this paper, is behavioral. Determining the most effective ways to address energy conservation in behavioral terms is an emerging area of interest across the globe. The questions pertaining to energy in the survey focused more on what form of information would enhance viewpoints toward policy for energy conservation.

In the Energy Use section, the Information Group possessed the more sustainable ratings for all five statements. The Color Cue Group was second in line for four of the five statements. The Information Group made a significantly more sustainable rating than the Control Group in terms of its overall views of a (policy) mandate to reduce energy use and its view that the mandate is necessary and will not impose burdensome costs. Overall, none of the three groups view an energy reduction mandate highly since the ratings all fell between 3.82 and 5.37.
Two inter-statement mean differences achieved statistical significance. Individuals have a more favorable view of an energy mandate than they think others possess. They also believe that the argument for an energy mandate is better when it is for the purpose of reducing energy use rather than for reducing dependence on foreign oil.

Land Development
Many environmental problems are directly linked to land use decisions. Roads and highways, for example, increase runoff and erosion rates, contribute to the heat island effect, divide and destroy natural habitats, and foster activities that pollute both air and water. Likewise, coastal development destroys or disrupts wetlands (that both absorb pollution before it reaches water sources and reduces the impact of storm surges) and natural habitat. People may not consider the environmental impact of land use decisions, and the aim of the section was to determine which form of information induces more sustainable decisions in this regard.

In the Land Development section, the Information Group once again selected the more sustainable rating for each of the (four) statements. In fact, the choices the Information Group made were significantly more sustainable than both the Color Cue and Information Group for all four statements. There was also a significant difference between how individuals view the decision to not approve a coastal development project and how they think others will view the decision.
A Study on Sustainable Behavior Inducement

<table>
<thead>
<tr>
<th>Land Development</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement</td>
<td>Greenest Rank</td>
<td>(1) Control Group Average</td>
<td>(2) Color Cue Group Average</td>
<td>(3) Information Group Average</td>
<td>Overall Average</td>
<td>1 vs 2</td>
<td>1 vs 3</td>
<td>2 vs 3</td>
<td>Viewpoint Difference</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. How you would rate the plan's rejection</td>
<td>7</td>
<td>4.5</td>
<td>6.85</td>
<td>5.71</td>
<td>4.89</td>
<td>x</td>
<td>x</td>
<td>Statements 15 vs 16 are significantly different from each other</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. How other people would rate the plan's rejection</td>
<td>7</td>
<td>3.95</td>
<td>4.04</td>
<td>4.56</td>
<td>4.15</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Critics of the council's decision to reject the development plan argue that this will restrict economic growth in the area. The development project should therefore be approved.</td>
<td>1</td>
<td>2.6</td>
<td>2.77</td>
<td>2.39</td>
<td>3.37</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. The decision of the city council is ok because it will preserve the coastline's natural beauty</td>
<td>7</td>
<td>4.95</td>
<td>4.86</td>
<td>5.46</td>
<td>5.06</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grocery Store Purchases – Eco Label

Going to the grocery store is a frequent activity. It is also a necessity for most people in order to purchase the food one needs. Food production, transportation, and the disposal of food containers are also some of the major sources of water and energy use, waste production, and air and water pollution. Encouraging more sustainable food choices is thus an opportunity to reduce the impact a person makes on the environment since these decisions are made on such a frequent basis. It will, however, probably be one of the more difficult behavioral changes to invoke.

In the Grocery Store Purchases – Eco Label section, the Color Cue and Control groups both selected the more sustainable rating for seven statements, while the Information Group made the more sustainable choice for two statements. Only one statement had a statistically significant difference between two groups: the Color Cue Group was less likely than the Information Group to think that other people would continue to purchase the same products if other people learned that these products have a detrimental impact on the environment but cost much less than sustainable products.

Inter-statement mean differences achieved statistical significance in six comparisons that were made. Individuals think they are more likely to look at and use an eco-label than other people. They believe they are less likely to continue to buy the products they normally buy (that receive poor scores on the eco-label) than other people if the products that receive good scores are either more expensive or cost the same as products receiving poor scores. Individuals think that both they and other people will change the products they normally buy (that receive poor scores on the eco-label) when products receiving good scores on the eco-label cost about the same compared to when products receiving good scores are more expensive. People also find it more acceptable to offer environmental impact information so that they
know the impact of their own purchases than for the purpose of informing other people about the impact of other people’s purchases.

It is worth noting that while the Control Group selected more sustainable choices for seven statements, five of these statements pertained to the acceptability of eco-labels and how likely people would be to use them. Though these differences did not reach statistical significance, the Control Group generally finds it to be more acceptable to publish eco-labels, that without eco-labels it is not possible to determine the environmental impact of products, and that people would use the labels. In other words, once individuals were shown an actual eco-label – in the form of text or color cues – they appear somewhat less accepting, less likely to find the value in, and less likely to intend on using the eco-label.
A Study on Sustainable Behavior Inducement

Recycling
Douglas J. Miller, Jr.
### A Study on Sustainable Behavior Inducement

<table>
<thead>
<tr>
<th>Question</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
</tr>
</thead>
<tbody>
<tr>
<td>23. It is ok to provide a label with information about the environmental impact of products you purchase so that you are aware of the impact of your purchases on the environment.</td>
<td>7</td>
<td>6.67</td>
<td>6.15</td>
<td>6.06</td>
<td>6.09</td>
</tr>
<tr>
<td>24. Without an environmental impact label, there is no way for you to figure out the impact of your purchases on the environment.</td>
<td>7</td>
<td>4.72</td>
<td>4.61</td>
<td>4.5</td>
<td>4.62</td>
</tr>
<tr>
<td>25. A label of this kind would impose an unnecessary burden on businesses to collect and publish the required information.</td>
<td>1</td>
<td>2.71</td>
<td>2.77</td>
<td>2.92</td>
<td>2.79</td>
</tr>
<tr>
<td>26. You would look at this eco-label and make a decision based on what it says about the product.</td>
<td>7</td>
<td>4.6</td>
<td>5.05</td>
<td>4.8</td>
<td>4.88</td>
</tr>
<tr>
<td>27. After learning of the poor scores, others would still purchase the products they typically buy.</td>
<td>1</td>
<td>4.45</td>
<td>4.38</td>
<td>4.55</td>
<td>4.48</td>
</tr>
<tr>
<td>28. After learning of the poor scores, others would still want to purchase the products they typically buy but will not do so.</td>
<td>7</td>
<td>3.76</td>
<td>3.56</td>
<td>3.72</td>
<td>3.68</td>
</tr>
<tr>
<td>29. If the products others typically buy receive poor scores on the eco-label and they cost considerably less than products with good scores, others would still purchase the products they typically buy.</td>
<td>1</td>
<td>5.04</td>
<td>4.9</td>
<td>5.36</td>
<td>5.08</td>
</tr>
<tr>
<td>30. If products with poor and good scores on this eco-label cost about the same, others would still purchase the products they typically buy.</td>
<td>1</td>
<td>3.62</td>
<td>3.74</td>
<td>3.6</td>
<td>3.65</td>
</tr>
<tr>
<td>31. It is ok to provide a label with information about the environmental impact of products others purchase so that they are aware of the impact of their purchases on the environment.</td>
<td>7</td>
<td>5.92</td>
<td>5.82</td>
<td>5.79</td>
<td>5.85</td>
</tr>
<tr>
<td>32. Without an environmental impact label, there is no way for others to figure out the impact of their purchases on the environment.</td>
<td>7</td>
<td>4.65</td>
<td>4.54</td>
<td>4.64</td>
<td>4.61</td>
</tr>
</tbody>
</table>
Recycling is an effective way to reduce the amount of waste going to landfills and to extend the lifespan of raw materials. It enables materials to be utilized more than once, which reduces the amount of energy and material required to acquire new material. Were more products designed with a notion of recycling in mind, more products could be recycled and reutilized rather than being thrown away after a one-time use. Recycling represents a very simple – though once again surprisingly difficult – behavioral change that would reap many benefits. All it takes is putting disposable material into one bin instead of another, yet individuals are often not only forgetful but also defiant about recycling.

In the Recycling section, the Color Cue Group made the more sustainable choice for five of the eight statements. The Information and Control groups made the more sustainable selection twice and once, respectively. The Color Cue Group was significantly more likely than the Control Group to find recycling important (and think that everyone should do it) and to see recycling as not being burdensome.

There were four inter-statement mean differences that achieved statistical significance. Individuals believe they are more likely to recycle than other people. They are more likely to expect other people to recycle than they think other people expect them to recycle. People think they are more likely to recycle than others, and believe they will recycle more frequently than others expect them to. Most importantly, there is a significant difference between how important people find recycling and how likely they are to actually recycle, the former being more likely than the latter.
A Study on Sustainable Behavior Inducement

Similar to food, clothing production, transportation, and the disposal of related byproducts are a major source of water and energy use, waste production, and air and water pollution. Encouraging more sustainable clothing purchases is thus an opportunity to reduce the impact a person makes on the environment. While there will be challenges with encouraging more sustainable purchasing habits for items like clothing, it will, however, probably be easier to invoke changes in this category that it would be in the food category. Clothing is purchased much less frequently than food and is less of an established habit. There is also more flexibility in clothing choices. Choosing between a new shirt versus a different shirt or not buying a new shirt because of its detrimental environmental impact is one thing; choosing between bread, vegetables, or meat versus a replacement or none at all because of their detrimental environmental impact is another.

In the Clothing Store Purchases – Eco Label section, the Color Cue Group selected the more sustainable rating seven times, the Information Group four times, and the Control Group three times. Statistical significance was reached between groups for two statements. Both the Color Cue and Control groups were more likely to buy a shirt if it received a good score on an eco-label than the Information Group. The Color Cue Group was also much less likely than the Information Group to think that other people would continue to buy a product that receives a poor score on the eco-label.
There were seven inter-statement mean differences that reached a level of statistical significance. Individuals believe they are less likely than others to buy a shirt that receives a poor score on the eco-label and that they are more likely than others to buy a shirt that receives a good score. Individuals are more likely to buy a shirt that receives a good score than a poor score on an eco-label and believe that other people are likely to do the same. They believe they are less likely than others to purchase a shirt that received a poor score when other shirts in the store received poor scores or when other shirts received good scores. Moreover, individuals are less likely to buy a shirt that received a poor score on the eco-label if other shirts in a store received good scores than if other shirts received poor scores.

Interestingly, two of the three times the Control Group selected the more sustainable choice once again occurred with the statements relating to the acceptability of using eco-labels. This group finds it more acceptable to provide eco-labels to illustrate for individuals the environmental impact of their own and other’s decisions. However, unlike the label used for Grocery Store Purchases, this (more detailed) label that resembles the Nutrition Facts Label in the United States compelled the Information Group to believe more than the other groups that without the eco-label they could not find out the information on their own. Furthermore, members of the Color Cue Group were the least likely to believe an eco-label would impose burdensome costs.

Toxics - Fertilizers
A Study on Sustainable Behavior Inducement
<table>
<thead>
<tr>
<th>Statement</th>
<th>Greenest Rank</th>
<th>(1) Control Group Average</th>
<th>(2) Color Cue Group Average</th>
<th>(3) Information Group Average</th>
<th>Overall Average</th>
<th>1 vs 2</th>
<th>1 vs 3</th>
<th>2 vs 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>43. You would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4.21</td>
<td>4.13</td>
<td>4.07</td>
<td>4.14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>44. You would still buy this shirt if it received a good score on the eco-label.</td>
<td>7</td>
<td>6.12</td>
<td>6.24</td>
<td>5.79</td>
<td>6.07</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>45. Other shirts at the store received poor scores. You would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4.3</td>
<td>4.23</td>
<td>4.19</td>
<td>4.25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>46. Other shirts at the store received good scores. You would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4</td>
<td>3.77</td>
<td>3.84</td>
<td>3.88</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47. It is ok to provide a label with information about the environmental impact of products you purchase so that you are aware of the impact of your purchases on the environment.</td>
<td>7</td>
<td>6.04</td>
<td>5.99</td>
<td>5.89</td>
<td>5.98</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>48. Without an environmental impact label, there is no way for you to figure out the impact of your purchases on the environment.</td>
<td>7</td>
<td>4.75</td>
<td>4.61</td>
<td>4.98</td>
<td>4.77</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49. A label of this kind would impose an unnecessary burden on businesses to collect and publish the required information.</td>
<td>1</td>
<td>2.82</td>
<td>2.75</td>
<td>3.19</td>
<td>2.90</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50. Others would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4.81</td>
<td>4.66</td>
<td>4.83</td>
<td>4.77</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>51. Others would still buy this shirt if it received a good score on the eco-label.</td>
<td>7</td>
<td>5.81</td>
<td>5.76</td>
<td>5.53</td>
<td>5.71</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52. Other shirts at the store received good scores. Other people would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4.59</td>
<td>4.46</td>
<td>4.89</td>
<td>4.62</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53. Other shirts at the store received poor scores. Other people would still buy this shirt if it received a poor score on the eco-label.</td>
<td>1</td>
<td>4.95</td>
<td>4.83</td>
<td>4.97</td>
<td>4.92</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54. It is ok to provide a label with information about the environmental impact of products others purchase so that they are aware of the impact of their purchases on the environment.</td>
<td>7</td>
<td>6.09</td>
<td>5.90</td>
<td>5.86</td>
<td>5.90</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55. Without an environmental impact label, there is no way for other people to figure out the impact of their purchases on the environment.</td>
<td>7</td>
<td>4.91</td>
<td>4.77</td>
<td>5.62</td>
<td>4.88</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>56. A label of this kind would impose an unnecessary burden on businesses to collect and publish the required information.</td>
<td>1</td>
<td>2.89</td>
<td>2.88</td>
<td>3.23</td>
<td>2.98</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Fertilizer is an example of a toxic material that individuals regularly use and that imposes various costs on the environment. In particular, as fertilizer is carried to water resources due to rainfall, it reduces water quality and can lead to massive fish kills and/or ‘dead zones.’ While it may be more difficult to encourage the agricultural industry at the present moment to reduce or eliminate fertilizer use, it should be less difficult to reduce or eliminate fertilizer use on residential and commercial lawns.

In the Toxics – Fertilizers section, the Color Cue Group made the more sustainable decision in response to four of the seven statements. The Information and Control groups selected the more sustainable choice twice and once, respectively. Statistical significance was achieved between survey groups in two questions. The Information Group was significantly less likely to use fertilizer than the Control Group. The Color Cue Group was significantly less likely than the Control Group to think that it is acceptable to use fertilizer on one’s lawn or cropland.

There were five inter-statement mean differences that achieved significance. Individuals believe themselves to be less likely to use fertilizer than other people. Individuals think they are less likely to use fertilizer than others, and believe they will use it less than others expect them to. People are less likely to believe that others expect them to use fertilizer than individuals are to expect others to use fertilizer. Lastly, individuals find it more acceptable for government to mandate either a reduction in the concentration of or types of nutrients in fertilizer than a ‘polluter pays’ principle in which an extra charge on fertilizer would be levied to pay for the environmental damage resulting from the use of the fertilizer.
Companies

Many companies – ranging from small businesses to major corporations – are adopting sustainable business practices and investing in other ways to reduce their impact on the environment. Companies are also a driving force behind many environmental problems and, as a result, are in a position where they are expected by the public to make changes. There are a number of benefits companies can realize by adopting sustainability into their business practices, including but not limited to cost savings, competitive advantage, and enhanced risk management. There are opportunities for sustainability in every business sector, though some are larger than others. The difficulty is convincing businesses to adopt the changes, despite the clear short- and long-term gains that are within any business’ grasp.

In the Companies section, the Color Cue Group made the more sustainable choice in eight of the statements, while the Control Group did so for three statements and the Information Group for two statements. Statistical significance was achieved between survey groups for one statement: the Color Cue Group was less likely than either the Control or Information groups to believe that products made from sustainable companies are too expensive to buy.

There were four inter-statement means difference tests that reached significance. Individuals believe they are more likely than other people to prefer sustainable companies, expect companies to adopt sustainable practices, and to make a conscious effort to buy from sustainable companies. However, individuals are significantly less likely to make a conscious effort to buy from sustainable companies than the (supposed) necessity they claim for companies to adopt sustainable practices. This point demonstrates why it may appear to companies that there is a lack of demand for sustainability,
since the market signals consumers give do not match their beliefs or expectations regarding sustainable business practices.

It is also worth noting that while it did not quite reach a significance level of $\text{Alpha} = 0.05$, individuals appear to be more likely to expect other people to buy from sustainable companies than they think other people expect them to buy from sustainable companies. In other words, individuals may find they have higher expectations for other people than other people have for them in terms of buying sustainable products.

**Interviews**
<table>
<thead>
<tr>
<th>Statement</th>
<th>Greenest Rank</th>
<th>Control Group Average</th>
<th>Color Cue Group Average</th>
<th>Information Group Average</th>
<th>Overall Average</th>
<th>1 vs 2</th>
<th>1 vs 3</th>
<th>2 vs 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>54. You prefer ‘sustainable’ companies</td>
<td>7</td>
<td>5.41</td>
<td>5.00</td>
<td>5.51</td>
<td>5.52</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55. Others prefer ‘sustainable’ companies</td>
<td>7</td>
<td>4.7</td>
<td>4.62</td>
<td>4.47</td>
<td>4.61</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>56. You prefer ‘sustainable’ companies, but their products or services are too expensive for you to buy</td>
<td>1</td>
<td>4.77</td>
<td>3.98</td>
<td>4.83</td>
<td>4.52</td>
<td><strong>X</strong></td>
<td></td>
<td><strong>X</strong></td>
</tr>
<tr>
<td>57. Companies cause many environmental problems</td>
<td>7</td>
<td>5.68</td>
<td>5.61</td>
<td>5.66</td>
<td>5.65</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>58. Companies can help solve many environmental problems</td>
<td>7</td>
<td>4.98</td>
<td>5.34</td>
<td>5.37</td>
<td>5.21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>59. It is necessary for all companies to become ‘sustainable’</td>
<td>7</td>
<td>4.98</td>
<td>5.34</td>
<td>5.37</td>
<td>5.21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>60. It is illogical for any companies to become ‘sustainable’</td>
<td>1</td>
<td>2.48</td>
<td>2.14</td>
<td>2.51</td>
<td>2.36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>61. You make a conscious effort to buy from ‘sustainable’ companies</td>
<td>7</td>
<td>4.47</td>
<td>4.47</td>
<td>4.5</td>
<td>4.48</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>62. Others make a conscious effort to buy from ‘sustainable’ companies</td>
<td>7</td>
<td>4.27</td>
<td>4.21</td>
<td>4.06</td>
<td>4.19</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>63. You expect companies to adopt ‘sustainable’ practices</td>
<td>7</td>
<td>5.31</td>
<td>5.57</td>
<td>5.38</td>
<td>5.42</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>64. Other people expect companies to adopt ‘sustainable’ practices</td>
<td>7</td>
<td>4.83</td>
<td>4.94</td>
<td>4.83</td>
<td>4.87</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>65. Other people expect you to buy from ‘sustainable’ companies</td>
<td>7</td>
<td>4.35</td>
<td>4.4</td>
<td>4.2</td>
<td>4.32</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>66. You expect other people to buy from ‘sustainable’ companies</td>
<td>7</td>
<td>4.35</td>
<td>4.59</td>
<td>4.45</td>
<td>4.46</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Eight interviews were conducted at the CESS lab with participants that completed the survey. As previously stated, these interviews were optional for the ten participants selected by lottery to win a £30 reward and would reward participants an additional £10 for engaging in the interview.

The interviews addressed four issues: energy, purchasing habits, recycling, and companies. Interviewees were told, similar to the survey, that the interview would address consumer preferences. The responses from the interviews were more qualitative than the responses from the survey. Responses ranged from yes/no answers to short sentences elaborating a participants’ viewpoints.

In general, the results of the interviews point to several items. First, while the acceptance and importance placed on the sustainability-related issues addressed in these four sections was consistently high, participants confirmed the survey results in that beliefs and actual behavior do not tend to match. Second, individuals have an inflated view of the size of the environmental benefits associated with the (very little) sustainable behavior they actually engage in. This leads them to feel content with the amount of effort they exert to protect the environment. For example, individuals seem to believe they are successful in reducing energy if they remember to turn off the lights and that this is sufficient for reducing their home’s energy use. While turning off lights not in use does reduce energy use, this is by no means enough for the scale of what has to be achieved at the household level to reduce energy use. Third, individuals do not have a clear sense of how frequently other people engage in sustainable behavior. For example, beliefs about the percentage of other people that recycle ranged from less than 20% to 75%. Fourth, as expected, a major barrier that is keeping people from making more sustainable choices is (monetary) costs and perceptions about these costs. Fifth, it was agreed upon that there are no legal (except for a few notes about the carbon trading scheme in the EU) or social repercussions for not engaging in sustainable behavior. There are thus no (or few) barriers inhibiting unsustainable behavior.

Discussion

Interpretation of Results

In this section, a more detailed analysis of the meaning of the survey results is provided. There were five notable trends in the results. First and foremost, information availability – in either form – appears to make a difference in inducing more sustainable decision-making. While people may have a less favorable view of this information after it transitions from hypothetical to reality, both treatment groups nonetheless offered indications that information availability may invoke modifications towards more sustainable behavior. Furthermore, the primary hypothesis that the
Color Cue Group would be most effective in inducing sustainable behavior generally appears to be supported by the results. It did not separate itself as much from the other two groups in some situations, which leads to the second notable finding.

In order to increase the effectiveness of information availability, the form of information offered to individuals should depend on the type of decision that is involved in a given situation. That is, situations that involve quick decisions should utilize color cue feedback and those that involve situations in which decisions take more time to develop should instead provide information in written form. For example, color cue feedback may be preferable for shopping and recycling, while information in written form may be preferable for developing policy preferences.

Third, the secondary hypothesis about the presence of undesirable social norms regarding sustainable behavior was supported by the survey results. Statistical significance was achieved for nearly all of the comparisons between both an individual’s own and an individual’s thoughts about other people’s expectations or beliefs. Individuals believe they are more likely than others to aspire to and actually engage in sustainable behavior; they expect others to adopt sustainable behavior but do not think other people expect the same of them. These findings may indicate the presence of undesirable social norms relating to multiple sources of environmental problems. Individuals want to use reusable bags, support sustainable energy and land use policy, make ‘greener’ purchases, recycle, use fewer toxic chemicals, and support sustainable companies but expect that others hold different views. This has implications in determining whether or not people actually make sustainable choices. If the individual does not expect others to engage in a certain behavior and the individual does not think that others expect the same of the individual, then the individual will not (or at least be less likely to) engage in that behavior. Thus, the desirable (sustainable) behavior is most often not adopted.

These undesirable social norms may be sustained by pluralistic ignorance: individuals think that other people engage in behavior for different reasons than they themselves do. An individual may choose not to use a reusable bag, recycle, buy ‘greener’ products, support sustainable companies, stop using toxic chemicals at home, and support sustainable policies because they do not think that other people do. And an individual’s thoughts about others are supported by the fact that other people’s revealed actions match their expectations; other people do not appear to engage in sustainable behavior. But an individual does not consider that other people’s reason for not engaging in sustainable behavior is the same reason as their own, that other people do not engage in this behavior because they do not expect others to. Were everyone to learn that the majority of individuals want to engage in sustainable behavior, pluralistic ignorance would be diminished,
A Study on Sustainable Behavior Inducement

and beneficial behavioral modifications may then ensue.

The concept of self-fulfilling prophecies may also play a role in the continued presence of these undesirable social norms. In particular, perceptual confirmation may be a key driver of such norms. Perceptual confirmation is the notion that an individual’s perception of another’s behavior confirms the expectations that the individual holds. Selective attention, weighting, memory, and interpretation – and thereby the disregard of information that might indicate differing conclusions – thus may affect how an individual perceives the behavior of others and thereby confirms the initial expectations he or she possessed. By focusing individuals’ attention on the various examples of sustainability-related changes in behavior that many people are adopting and clarifying how it should be interpreted, it may be possible to modify the expectations that individuals hold about others.

The fourth and perhaps most disappointing trend in the results is the gap between individuals’ beliefs and their actual behavior. People support sustainable companies and think that all companies should adopt sustainable practices, yet they are less likely to make a conscious effort to buy from such companies. Likewise, people do not match the apparent importance of recycling or using reusable bags with the related behavioral change. Solutions to address these findings should address removing barriers associated with the beneficial behavior and increasing the barriers associated with the detrimental behavior.

For example, there are several methods that would likely increase recycling rates. First and foremost, there should be more recycling bins available in public places than at present and in theory there should be more recycling bins overall than trashcans. Second, on side-by-side trash and recycling receptacles, placing a lid or covering of some sort on trashcans but no such covering on recycling bins would make it easier to put disposable items into recycling bins than trashcans. Moreover, perhaps something as simple as placing a trashcan behind recycling bins (arranged perpendicular to a wall) rather than side-by-side (arranged parallel to a wall) would increase recycling by requiring more effort to physically reach the trashcan.

In addition, there are ways to reduce disposable bag usage and to increase the use of reusable bags. First, and the most obvious solution of them all, is an outright ban of disposable bags. This, however, is not popular. A close second-best, as well as more popular, option is for stores and restaurants to charge a small fee for their disposable bags. If a store or restaurant does not want to go so far as charging customers for a disposable bag, a very simple solution is to change the disposable bag ‘default’. Instead of automatically giving customers a product in a bag or asking customers if they would like a bag, no disposable bag should be given or offered to customers unless the customers requests one. In addition, merely giving customers that request a disposable bag a stamp with a frowning face may also be sufficient to invoke
behavioral change.

Fifth, the section in the survey of much interest – the Companies section – delivered interesting findings. Individuals are equally (and very) likely to find companies as both the source and the solution to many environmental problems. It is thus not only seen as a duty and necessity of companies to adopt sustainable practices, but more importantly it is expected of them. In order to meet the expectations of customers, companies therefore need to adopt the changes that will lead them to reduce their impact on the environment. Arguments against sustainable practices may not be in a company’s best interest, as individuals largely disagree with the notion that sustainable practices are illogical or impractical. Marketing for companies should focus on the environmental efforts that the company has achieved – though be careful not to overstate the accomplishments – and strive to inform consumers about the environmental benefits associated with the production and delivery of the company’s products versus its competitors.

For companies that have already made accomplishments in adopting sustainable business practices and those that will soon be utilizing such practices, there are clear opportunities at present for developing a competitive advantage. First, these companies should support the development of eco-labels – particularly in the form of color cue feedback – either within the company, within the industry, or at the policymaking level. The reason for this is that color cue feedback appears to increase the expectation for companies to adopt sustainable practices. Color cue feedback also appears to increase how much individuals expect others to buy from sustainable companies. Thus, a color cue feedback label may lead to increases in consumer expectations (and demands) for certain sustainability criteria that a sustainable company already meets and its competitors do not. Additionally, the color cue feedback label may increase the amount of sustainable products people buy and therefore the products that are made by sustainable companies.

It is a prime moment for taking a first-mover advantage in this emerging sustainability space in order to be known as the market leader in sustainability before competitors adopt similar practices. Consumers are beginning to demand sustainability as a component of products that they buy and this trend should continue to grow in the future. It will most likely reach similar importance (or will be seen as equivalent) to product quality and product safety. Similar to the advantage Japanese carmakers – particularly Toyota – gained after capturing the automobile market due to their reputation for quality and safety, the race is now on for determining who will be the winners in sustainability. Those that win this race will not only reap the benefits of being a market leader but will also serve as the example others will aspire to model.
A Study on Sustainable Behavior Inducement

Relation to Affiliated Research

Behavioral research suggests “a more complex, less idealized, view” about how people make decisions than the focus on information and price derived from traditional economic models of rational choice (Allcott 1204). Individual decision-making is affected by, though not limited to, peripheral (subconscious) factors, procrastination, default options, wandering attention, and lack of commitment. Actions with clear long-term benefits are resisted “if they are unpleasant in the short-run” (Allcott 1204). Moreover, small changes in context – nudges – “can affect behavior as much large price changes” (Allcott 1204).

The results of the experiment on sustainable behavior inducement – similar to other research on the impact of “social approval, consumption feedback, goal setting, commitments, and other mechanisms” on decision-making – point to the potential role of non-price-based behavioral interventions (Allcott 1204). Such interventions may be less expensive to establish than regulatory-, price-, or technology-based interventions.

Similarly, interventions that utilize the power of social norms may also be effective. Beliefs about what other people do, as has been stated, play a major role in determining an individual’s behavior. By demonstrating to individuals the sustainable behavior that other people engage in, coupled with the injunctive normative beliefs (approval) of that behavior, more people would adopt sustainable behavior. In other words, believing that other people engage “in a highly approved behavior therefore increases the likelihood of engaging in that behavior” (Göckeritz 520). Providing (normative) information about what other people do may alleviate the consistent finding about social dilemmas “that individuals are less likely to cooperate and act in ways that benefit the group (typically requiring self sacrifice) in the absence of evidence that others in the group are also cooperating” and thereby foster more cooperative, sustainable behavior (Göckeritz 521).

Norms can be successfully utilized to induce sustainable behavior. For example, Arizona’s Petrified Forest National Park found itself in a situation in which about one ton of wood per month was stolen from the park. By changing the sign encouraging visitors to not steal wood from focusing on the descriptive norm (what is being done in a given situation) to the injunctive norm (what is approved or disapproved of in a given situation), theft rates were decreased from 7.92% to 1.67% (Cialdini 107). In other words, posting signs stating the disapproval of theft in the park instead of signs that describe how many people steal wood from the park sharply reduces the undesirable behavior. Thus, when an environmental problem stems from the pervasiveness in which individuals contribute to that problem, information should focus on what is approved or disapproved of rather than on how many people contribute to the problem. Injunctive norms have been, in fact, found to be “the most widely applicable in their ability to encourage specific
behaviors across a variety of situations and target populations” (Bator 536).

Commitment devices may help bridge the gap between the intention that individuals have to engage in sustainable behavior and the importance they place on this behavior. It has been found that commitment “is the catalyst that drives individuals to experience an internal conviction for both a new identity and the corresponding behavior” (Bator 537). Once an individual internalizes the related conviction, the associated “identity and behavior can continue even beyond the duration of commitment” (Bator 537). Commitment devices can range from small household signs or car bumper stickers declaring support for an issue, to wearing t-shirts with an issue-based message, to signing a non-binding agreement to join a cause.

Conclusion

Noteworthy Findings

There were five main findings associated with this study. These findings summarize the results found within the eight sections of the survey. First, information availability in general appears to increase sustainable decision-making. Moreover, the hypothesis that color cue feedback is the most effective in its ability to invoke sustainable choices was generally, though not conclusively, confirmed. This leads us to the next point. Second, the form of information availability should rely on the type of decision involved with the related situation. Color cues (moral suasion) may be preferable for quick decisions and detailed information (information provision) may be preferable for decisions that take more time to develop. Third, the presence of undesirable social norms regarding sustainable behavior was supported by the data. Individuals believe they are more likely than others to aspire to and actually engage in sustainable behavior; they expect others to adopt sustainable behavior but do not think other people expect the same of them. Individuals want to use reusable bags, support sustainable energy and land use policy, make ‘greener’ purchases, recycle, use fewer toxic chemicals, and support sustainable companies but expect that others hold different views. This has implications in determining whether or not people actually adopt sustainable behavior. Thus, the desirable (sustainable) behavior is most often not adopted. Fourth, there is a gap between an individual’s aims and his or her actual behavior. An individual may aspire to and find value in sustainable practices, but is less likely to actually engage in this behavior when the opportunity to do so is presented. Lastly, companies are believed to be both a major source and solution to environmental problems. It is seen as a necessity and an expectation for companies to adopt sustainable practices. Arguments against sustainability made by companies will work against a company’s favor. Furthermore, making information available, particularly as color cue feedback, is in the best interest of companies that are already or will
soon be utilizing sustainable practices to gain a competitive advantage now. Since there are various costs (barriers) associated with adopting sustainable practices and likewise a lack of barriers associated with preventing unsustainable behavior, there is little to no perceived reason for individuals to change their habits. Solutions for inducing sustainable behavior must, in order to be successful, remove barriers (or costs) for sustainable – desirable – behavior and increase barriers (or costs) for unsustainable – undesirable – behavior. There are various ways in which these barriers might be formulated, including a mix of economic, social, and/or cognitive components. Solutions must – however they are formulated – focus on how to foster desirable behavior and inhibit undesirable behavior. Otherwise it will remain too easy to avoid changing habits.

Moving Forward

It is necessary to describe the limitations of the findings in this study. The results – while interesting and some of which achieved statistical significance – are based on survey data. It is possible that the results of the survey offer an accurate portrayal of the effects of information on decision-making, but it cannot be confirmed unless it is examined in a real-world setting. An opportunity is therefore present for expanding this area of research by examining the effects of information availability – in both forms – with field experiments. Such experiments may indicate that information has a smaller (or possibly a shorter-term) effect on decision-making than the survey results would imply. On the other hand, it may be that field experiments would illustrate the contrary, that information availability – in one form or the other – has a larger impact on decision-making than this survey indicates.

The feasibility of a field experiment to address the effectiveness of information availability may, however, be impractical. It would require acquiring all of the necessary information, publishing it, putting it on display, and educating consumers about the information’s meaning. A field experiment would thus call for the same amount of time and effort it would take to actually publish the ‘real’ information. Survey data may therefore be the most practical method for determining if environmentally-related information availability would induce sustainable behavior.

Based on the results of this study, it is recommended that information be made available for individuals with the aim of encouraging more sustainable decision-making. The form of the information given should depend on the type of decision it involves: situations that involve quick decisions should utilize color cue feedback (moral suasion), while those that involve decisions that take more time to develop should provide more detailed information (information provision). If sustainable habits are to be developed and if sustainability-related norms are to be formulated,
then environmentally-related information must become available because without information in any form, such changes will not be possible.

The data from the study suggests that while information availability will affect decision-making, it must also be accompanied with supportive policies or campaigns that simultaneously reduce barriers for sustainable behavior and increase the barriers for unsustainable behavior. These supportive policies or campaigns would help bridge the gap between beliefs about the importance of sustainable behavior and the actualization of behavioral change. To achieve this aim, they could take advantage of economic, social, and/or cognitive components in order to create the incentives, peer pressure, nudges, commitment devices, and the like that will further compel behavioral change. For example, an information campaign could take advantage of insight from research on the impact of expectations in shaping social norms. Even better, more accurate pricing (by including environmental costs) could be established.

Besides the need for supportive policies or campaigns, information availability has hurdles of its own before it can be provided for the general public. There currently exists and will most likely continue to be resistance by various entities to prevent environmentally-related information from becoming available. This will make information provision difficult to offer in reality and is largely related to how information will reveal the shortcomings and detrimental impact of not only companies but also the decisions people make every day.

Furthermore, information availability alone will be insufficient to solve environmental problems; changes in technology, investments, and other policy will also need to change. But without information and the potential changes in habits, viewpoints, and norms it could reap, a culture of sustainability – and the beneficial related changes in demand for certain technology, investments, and policy – will be less likely to emerge. Information availability, in one form or another, is thereby one of the prerequisites for sustainability. It will be a major contributor to the foundation on which a sustainable society can be built.
A Study on Sustainable Behavior Inducement

References


Deliberative Citizenship: The Deliberate Democrats’ Response to the Hegemony of Classical Liberalism

David Kanter

Abstract

Classical liberalism’s hegemony in the public discourse seems to be based on the fact that it demands and expects so little. Its guiding assumption tell us that people are the same, always and everywhere, and we can get the best by assuming the worst. Let’s just assume humans are simple automatons, it seems to say, and then we can arrive at elegant and simple conclusions about how society works and, more importantly, should work. Humans, then, are rationally self-interested and to get the best outcomes we should let these simple automatons interact in the market. The central point that comes from the deliberative democrats—and that they might do better to elaborate more explicitly—is that to assume simple rational self-interest and thus the impossibility of genuine democratic decision-making is really to miss the point. If we take a more realistic and complex view of human motivation, the deliberative democrats tell us, we recognize that individuals act in all sorts of different ways and are capable of developing and refining new and complex motivations. If the deliberative democrats are willing to acknowledge this important space for conflict and disagreement, what they have recovered from Tocqueville and Mill is an alternative program to Smith’s classical liberalism. What that program needs now are public champions willing and able to present this alternative way of thinking about the social world to members of society. What is needed is a revolution in ideas.

Introduction

In contemporary Western society, most notably in the United States, what one might call the “classical liberal project” has achieved a certain ideological hegemony. If not hegemony, then that project has at least achieved ideological predominance. That is, though those participating in public discourse generally do not appeal to the rigorous classical liberal formulations worked out in Adam Smith’s *The Wealth of Nations*, nor even to cruder, less rigorous formulations, like those advanced in Milton Friedman’s *Capitalism and Freedom*, the values, beliefs, and assumptions of the classical liberal tradition predominate in elite and lay circles alike: society can be understood...
Deliberative Citizenship

as a collection of atomistic individuals, each engaged in a rational pursuit of maximum utility. Such egoistic behavior, as Smith so eloquently argued, promotes a better, more satisfactory outcome for all.

When the core assumptions of classical liberalism are stated in such stark terms, perhaps we should not be surprised if many people deny subscribing to such notions. After all, those assumptions portray the individual as quite cold and heartless; even if “rationally maximizing utility” can be twisted to mean “engaging in social or altruistic acts,” do those assumptions really describe why one might be motivated to engage in such acts, or describe how each individual relates to every other individual in society? Despite this somewhat unsettling feeling one might get upon facing up to classical liberalism’s key assumptions, that tradition has achieved ideological hegemony precisely because those key assumptions are taken for granted in our discourse and, outside of certain academic circles, are rarely challenged or called into question. We accept, almost without question, the notion of “human capital”—that individuals can be valued in terms of the market returns they can be expected to earn; we accept, almost without question, the notion of incentive-based pay—that better and more committed performance is contingent upon increased wages and benefits; we accept, almost without question, the right to unlimited material accumulation. If one steps back from those notions for a moment, one will see that undergirding them all are certain assumptions about the individual and society—the assumptions of the classical liberal tradition.

Western society, however, also maintains a commitment to democracy—the notion that public questions should be resolved through some process of collective decision-making. Market-oriented classical liberalism, however, exists in fundamental tension with the conscious, collective decision-making of democracy. market outcomes are so bountiful, Smith argued, precisely because they are not consciously controlled; it is the activity of the self-interested, rationally-calculating individual in interplay with the activity of every other self-interested, rationally-calculating individual that promotes the best possible collective outcome. Nearly any attempt to distort such individual activity through conscious, collective decision-making, so the classical liberal argument goes, will prevent the optimal social outcome from being achieved.

How should society deal with this fundamental tension? Smith’s answer in the 18th century is echoed by many contemporary classical liberals: give the market the greatest scope possible and let the sovereign state power deal with any issues that the market cannot resolve. For these Smithian classical liberals, democracy is not a real alternative because they assume that all individuals, always and everywhere, are rationally self-interested. When individuals can only be expected to pursue self-interested ends, democratic decision-making inevitably culminates in chaos. Politics for them
then necessarily implies coercion, whereas the market place is the realm of freedom. Given this pessimistic view of political possibility, classical liberals insist on maximizing the scope of market activity.

Another strain in classical liberalism, however, holds that some sort of democratic decision-making is possible. This sort of thinking comes out most clearly in the work of Anthony Downs. Yet the notion of democracy promoted by Downs simply takes the basic assumption of rational self-interest and applies it to the political sphere: Politicians simply do whatever it takes to win elections and voters simply vote for those politicians whom they expect to secure them the biggest payoffs. Though Downs calls the political sphere “democratic,” Downsian democracy is really just an extension of the market.

Both the Smithian denial of democratic decision-making and the narrow, limited, and circumscribed notion of Downsian democratic decision-making exist in direct contrast, however, to the dominant strain in contemporary democratic theory—deliberative democracy. The deliberative democrats—notably Amy Gutmann and Dennis Thompson, John Rawls, and Joshua Cohen—promote an active, engaged citizenry committed to the resolution of a whole host of public issues. Most simply, they envision citizens and political elites alike engaged in a give-and-take of reasons and arguments concerning public affairs. Ultimately, some sort of binding vote must follow deliberation, but the alternatives supported by the most compelling reasons should win out.

The development of this strain of democratic theory is highly promising. The emphasis on active, engaged citizens working together to resolve a whole range of public issues revives the notion prevalent in John Stuart Mill and Alexis de Tocqueville that challenges the central supposition of Smithian classical liberalism: Conscious, collective decision-making ensures more optimal outcomes than those provided by the market. That is, bottom-up control over public issues is a genuine possibility and is our best recourse for resolving those issues. Additionally, the real possibility of a process of deliberative reason-giving calls into question the Downsian notion of democracy as a mere political marketplace.

The central notion that the deliberative democrats recover from Mill and Tocqueville is that the simple assumption of humans as rational maximizers with immutable preferences and opinions is simply misguided. A more realistic and complex understanding of human motivation forces us to admit that deliberation is necessary either for the discovery of previously non-existent preferences and opinions, or, alternatively, for the sharpening and amendment of previously held preferences and opinions. This discovery, sharpening, and changing of preferences and opinions is an essential step in the arrival to optimal collective outcomes. Given this more complex and realistic understanding of human nature, the deliberative democrats also
importantly borrow from Tocqueville and Mill in recognizing that consequential deliberation can change the values and commitments of individuals; since human motivation is dynamic, the very practice of deliberation can transform human motivation, inculcating the very orientation necessary for successful deliberation. The deliberative democrats thus hold that the successful resolution of public issues cannot come about from throwing together individual preferences and hoping that a market mechanism spits out satisfactory outcomes. Citizens actually have to consciously think about what is in their best interest and pursue the goals that they decide upon.

The deliberative democrats, however, are quite worried about the possibility that deliberative decision-making could devolve into chaos, as the Smithians would expect to be the inevitable outcome of deliberative decision-making. To prevent the breakdown of democratic deliberation, the deliberative democrats limit both the scope of democratic decision-making—what issues are up for debate—and the form of democratic decision-making—what sorts of reasons and arguments can be utilized. Yet putting artificial limits on the scope and form of deliberation in order to stifle conflict and disagreement defeats the entire purpose of the deliberative project. That is, to foster genuine solidarity among citizens, they must be allowed to work through genuine conflict and disagreement. Acknowledging that conflict and disagreement are essential to developing a commitment to democratic decision-making also implies that non-deliberative forms of political activity founded in conflict and disagreement are critically important; non-deliberative activities can promote solidarity, pave the way for further deliberation, and settle scores once deliberation has been exhausted.

The Classical Liberal Project

Most fundamentally, classical liberalism holds that the narrow pursuit of material self-interest by each individual gives the optimal collective outcome. That is, the individual pursuit of self-interested ends ensures, in the words of Adam Smith, “that universal opulence which extends itself to the lowest ranks of the people.” Part of what makes Smith’s formulation of this central principle of the classical liberal framework so jarring is that it goes against intuition. It is more intuitive to argue that conscious effort towards the achievement of the common good is what is actually necessary to bring about the socially optimal outcome. But such conscious effort towards the achievement of the common good is precisely what Smith—and the classical liberal tradition that grew out of his work—fears. Everyone in society, from the lowest laborer to the mightiest capitalist, Smith argues, would be worse off if we began with intentions of maximizing the common good.

Undergirding this entire framework, as might be apparent by now,
are a few simple assumptions about human nature. Smith and the classical liberals assume that humans are self-interested rational maximizers. That is, each individual essentially does whatever he can to “better his condition.” When making decisions, then, the individual generally weighs the costs and benefits of the various alternatives and, in turn, pursues the alternative that gives him the highest expected payoff. Given this assumption that humans are more or less self-interested creatures, they tend to have a propensity to exchange various goods and services. This self-interested impulse towards exchange in turn encourages specialization in the production of goods and services; specialization allows individuals and firms to produce better goods and services at lower costs. Specialization, however, begets ever-more specialization because each producer needs to produce a better and cheaper product than all his competitors, and this increase in quality and decrease in cost will only come about via greater specialization. The market is the impersonal, self-regulating system that promotes increasing specialization in production. What is really fundamental in Smith’s argument is that each producer produces for any given consumer willing to buy, and the consumer rationally makes his buying decision based solely on an evaluation of the good’s quality and price. In the marketplace, according to the classical liberal argument, traditions, customs, manners, and mores do not and should not interfere; each individual can be reduced to a self-interested, completely rational buyer and seller of goods and services.

The impersonal mechanism that regulates this entire system of completely rational buying and selling is price. Smith defines the natural price of any good or service as the sum of the various wages paid to the laborers in the productive process, the profit extracted by the capitalist who owns the means of production, and the rent demanded by the landlord. Contemporary economists would probably call Smith’s notion of “natural price” the equilibrium price in the market, as Smith argues that the market price—the price actually paid by the consumer for the good or service—will tend to gravitate around the natural price. This equilibrium price emerges in the market in a completely impersonal manner. That is, all producers are forced to sell at that price because if they sold at a higher price nobody would buy their product—consumers would simply buy from a competitor selling at the equilibrium price—and if they sold at a lower price they would be losing money—their costs would be greater than their revenues—and they would be forced out of business.

Any attempt to interfere with the price mechanism would cause the entire system to ‘short circuit’; with conscious interference in a system of rational self-interest, producers would no longer feel the pressure to produce better and cheaper goods and services, productivity would slacken, and society would fail to realize the optimal outcome. That is, with any active interference in the market, market discipline would break down resources.
would be inefficiently allocated, and the consequences would reverberate throughout society. The capitalists who own the productive resources and the wage-laborers who work on their behalf would both be left worse off, in general, in a situation of market interference.

If optimal collective outcomes are dependent upon an impersonal, self-regulating market system guided by price signals, what space might be left for conscious, collective decision-making? Smithian classical liberals reply that no space at all should be left for conscious decision-making. Given the assumption of rational self-interest, the Smithians contend that any attempt at conscious decision-making would culminate in chaotic violence. Milton Friedman, a Smithian classical liberal writing in the second half of the 20th century, contends that deliberation “tends toward ineffectiveness and fragmentation...If it goes so far as to touch an issue on which men feel deeply yet differently, it may well disrupt the society.” Smithian classical liberals, like Friedman, thus hold that democratic decision-making is dangerous precisely because it might result in disagreement. The next logical step from disagreement is violence. As Friedman puts it, “The religious and civil wars of history are a bloody testament to this judgment.”

Given that democratic decision-making inevitably culminates in chaotic violence, Smithian classical liberals think there are only two possible ways to structure society. As Friedman puts it, “One is central direction involving the use of coercion...The other is voluntary co-operation of individuals—the technique of the market place.” Politics for the classical liberals is thus inevitably top-down coercion. To the extent that we are going to have politics and avoid chaotic violence, it must involve coercion. Freedom, then, cannot be achieved in the political sphere. Freedom, for the classical liberals, increases to the extent that politics is avoided and decisions are made impersonally in the market place. For the classical liberals, freedom increases the more we move to the market not so much because the market promises to settle disagreements, but rather because the market mechanism simply ignores those very conflicts and disagreements. As Friedman puts it, “The wider the range of activities covered by the market, the fewer are the issues on which explicitly political decisions are required.” Fewer “explicitly political decisions” are required not because the market promises to satisfactorily settle disagreements, but precisely because the market tends to ignore those disagreements or give an outcome that is “impersonal” and thus supposedly “just.”

What duties, then, do Smith and Friedman believe should be left to a sovereign state entity? Simply those things that the market cannot adequately address. Smith identifies only three duties that fit this description: Protection from external attack, internal security, and the provision of public goods. Tolerable security—the protection of property from both external and internal attack—thus emerges in the Smithian argument as a necessary and
fundamental precondition for the entire market system. As Smith puts it, “It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security.” Friedman likewise envisions some sort of state security apparatus to undergird the whole functioning of the market system. Friedman expects the government to simply be a “rule-maker and umpire.” That is, members of society can agree on the rules governing private property rights, and then the state is responsible for interpreting those rules and for enforcing “compliance with the rules on the part of those few who would otherwise not play the game.”

The necessity of a state security apparatus comes out when we consider Thomas Hobbes’ argument from *Leviathan*. Hobbes makes essentially the same assumptions about human nature as Smith and Friedman—humans are self-interested, rational maximizers—but, beginning from these assumptions, his vision of society is quite different than theirs. Hobbes concludes that a rationally self-interested individual would attack and steal from every other individual, resulting in a typical life that he calls “solitary, poore, nasty, brutish, and short.” Why do Smith and Friedman, if they begin with the same assumptions, argue that rather than “solitary and poor,” self-interested man’s life has the opportunity to be optimal? It is because their whole market system depends on a precondition of security—that there will be some state entity around to enforce property rights and enforce the fulfillment of contracts. While arguing that the market system gives the best possible outcomes for everyone in society, Smith is still cognizant of the fact that these outcomes will still be vastly unequal. In order to prevent the vast mass of people from simply ransacking those that derive the greatest benefits from the market system, there needs to be a security apparatus in place to ensure that property rights are respected and contracts are enforced.

In addition to providing the security that is a necessary precondition for the whole market system, Smith and Friedman identify one other primary duty for the state entity. That duty is the provision of public goods or, as Smith puts it, “The duty of erecting and maintaining certain publick works and certain publick institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain.” The sorts of goods that Smith and Friedman have in mind here are those goods—like national defense or transportation infrastructure—that, once provided, are open to every member of society’s use and enjoyment. Since every member of society will be able to make use of those goods, regardless of whether or not each member of society pays his fair share for the production of those goods, no private entity would ever have any incentive to provide those goods. In these textbook instances of “market breakdown” and only in these instances, Smith and Friedman argue, government should step in and provide the good. But so long as there are no market breakdowns—so
long as producers have a self-interested incentive to sell high and consumers have a self-interested incentive to buy low—then the sovereign state entity should defer to the market place (or, at the very least, only provide the security that permits market activity).

Certain thinkers in the classical liberal tradition, however, are willing to acknowledge democracy as an alternative to either the market place (backed up by a sovereign state apparatus) or complete top-down sovereignty. Nevertheless, this strain in the classical liberal tradition maintains the same fundamental assumption as the rest of the classical liberal tradition: Individuals are rationally self-interested maximizers. It takes that simple assumption, however, and applies it to the political sphere, depicting democratic decision-making as just another sphere for the pursuit of rational self-interest. This strain of classical liberalism comes out most clearly in Anthony Downs’ influential book *An Economic Theory of Democracy*. Downs tells us that his rational man, much like Smith and Friedman’s, confronts all the various choice alternatives, ranks each of those alternatives, and then chooses that alternative that he ranks the highest. In Downs, unlike in Smith or Friedman, these choices can be political choices, with “choice” being equated to “vote.” The voter, then, can be equated to the consumer in Smith’s model, while the politician (or political party) can simply be equated to the producer. Each of these parties has already decided what it wants before any interaction between the two takes place: The voter simply wants to vote in those politicians that will maximize his welfare, while the politician simply wants to receive as many votes as possible in order to win election. The mechanism here that enforces market discipline is the election: Each individual has one vote to cast in the election, so politicians should adjust their behavior in order to win as many of those votes as possible. Joseph Schumpeter, though a skeptic (like Smith and Friedman) of the very possibility of any form of democratic decision-making, gives a polemical description of the Downsian model:

Politically speaking, the man is still in the nursery who has not absorbed, so as never to forget, the saying attributed to one of the most successful politicians that ever lived: “What businessmen do not understand is that exactly as they are dealing in oil so I am dealing in votes.”

Schumpeter’s summation of the Downsian argument is helpful because it makes clear the motivation that is assumed to be at the base of democratic decision-making: Politicians pursue votes in the same way that businessmen pursue profits; voters pursue utility from the political market place in the same way that consumers pursue utility in the market place of goods and services.
The Deliberative Democrats: Reviving the Classical Promise of Democracy

The deliberative democrats—notably Rawls, Cohen, and Gutmann and Thompson—would find common ground with two of the classical theorists of democracy, John Stuart Mill and Alexis de Tocqueville, in the identification of the fundamental flaw in the classical liberal argument, in both in its Smithian and Downsian versions. The classical liberals, as we have seen, simply assume that individuals are rational maximizers with immutable preferences for every possible choice situation. Yet what the deliberative democrats want to signal is much what Tocqueville and Mill signal about individual preferences and opinions: they are often non-existent, and therefore depend on deliberation for their discovery. And even when they do exist, deliberation is essential in the process of sharpening and revising those previously held preferences and opinions. Given this more realistic and complex understanding of human motivation, both the classical theorists of democracy and the deliberative democrats want to argue that we cannot simply expect to arrive to optimal outcomes through the interplay of immutable preferences and opinions in a market place. Deliberation is a necessary first step in the development and revision of opinions and preferences and, consequently, cannot simply be separated from the arrival to collective outcomes. The classical liberals—and those engaged in the public discourse that increasingly clings to its basic assumptions—simply abstract away from the very real complexity that is involved in the resolution of real public issues and therefore miss out on what is really essential. Downs, somewhat surprisingly, seems to be aware of this central problem in his tradition’s approach: “Even though psychological considerations have a legitimate and significant place in both economics and political science, we by-pass them entirely.”

Mill, in his classic work Considerations on Representative Government, importantly recognizes that human nature is complex and fickle. He tells us, “It is what men think, that determines how they act...” Rather than just simply assuming that men, always and everywhere, are rational maximizers with immutable preferences and opinions, he emphasizes that the individual’s motivations are contingent on the influences that he receives from the social world around him. That is, by changing those very social influences, man’s motivations—his values, his beliefs, his orientations—change in turn. Mill continues:

And though the persuasions and convictions of average men are in a much greater degree determined by their personal position than by reason, no little power is exercised over them by the persuasions and convictions of those whose personal opinion is different, and by the united authority of the instructed.
What Mill is getting at here is precisely what the deliberative democrats insist upon, and importantly reintroduce into democratic theory against the creeping predominance of the classical liberal perspective. Mill is explaining that one extremely important element in the formation of the individual’s values, preferences, and opinions is the sum of the various arguments and ideas to which he is exposed. Deliberation, by forcing the individual to engage with “persuasions and convictions” that differ from his own, compels the individual to clarify, sharpen, or amend his own views. Mill emphasizes the very real influence that contrary beliefs and ideas can have over previously settled preferences when he tells us, “Opinion is itself one of the greatest active social forces.” What Mill seems to want to get across is that we cannot really say that a person holds a genuine preference or opinion until he has been exposed to a whole range of preferences or opinions. The formation of the individual’s preferences and opinions, then, depends on engagement in a deliberative context. The classical liberals, by making simple assumptions that take them to elegant conclusions, miss out on this realistic but fundamental complexity.

The deliberative democrats pick up on this same sentiment, insisting on the complexity of human nature. This complexity, they argue, makes deliberation—a give-and-take of reasons and arguments concerning a given public issue—a necessary part of most successfully dealing with any given public issue. Gutmann and Thompson are quite direct in their refutation of the simple assumptions at the core of the classical liberal project:

Citizens and officials sometimes—even often—act on self-interest, but there is no warrant for assuming, as a theoretical postulate, that they always, or even generally, act on this basis. Self-interested behavior is not in any nonvacio us sense presumptively rational. We should not regard the assumption of self-interest as the default position of deliberative democracy.

Part of their argument here is that to simply assume rational self-interest rejects what mere observation can tells us: people often engage in acts that are altruistic or, at least, do not have any clear connection to what we might call self-interest. If the classical liberal responds that those altruistic or other-serving acts were themselves ultimately, in one way or another, “self-interested actions,” then the notion of self-interest “loses its critical content...” The notion of self-interest, in that case, would be reduced to a mere tautology.

Additionally, a more fundamental part of their refutation of the simple assumption of rational self-interest has to do with their conviction, like in Mill, that preferences and opinions are contingent on deliberation itself. They argue that deliberation has the “capacity to encourage citizens and
officials to change their minds...” Much the same comes out in Rawls when he contends that citizens must have “a capacity to form, follow, and revise their individual doctrines of the good.” By engaging in constructive debate about a public issue, Gutmann, Thompson, and Rawls want to say that the somewhat hazy preferences and opinions of an individual can be given full shape; or, if the individual brings firmly held preferences and opinions to the deliberative forum, engagement with a whole host of alternative views and perspectives undoubtedly holds out the hope of modifying those preferences and opinions. According to this complex understanding of human nature, we cannot really talk about genuine preferences and opinions until individuals are engaged in deliberation with one another.

This notion of mutable preferences and opinions, revived among the deliberative democrats, comes out most clearly in Cohen. He insists that being forced to air one’s previously held preferences and opinions in a deliberative forum can result in the discovery that there are no good reasons to support those preferences and opinions. As a result, those preferences and opinions must be abandoned. Cohen proceeds to argue that the best preferences and opinions are those that survive a deliberative process oriented around the common good:

The relevant conceptions of the common good are not comprised simply of interests and preferences that are antecedent to deliberation. Instead, the interests, aims and ideals that comprise the common good are those that survive deliberation, interests that, on public reflection, we think it legitimate to appeal to in making claims on social resources.

The sentiment here seems to be that once people in the deliberative forum are thinking in terms of alternatives that best promote the common good, the preferences and opinions that are most compelling after deliberation has taken place are the ones that command the most support. What is really fundamental here—and not brought out so clearly in Gutmann, Thompson, and Rawls—is that Cohen is insisting that often the best, most convincing preferences and opinions might not even exist prior to deliberation—they are not “antecedent to deliberation.” That is, to arrive at the best outcomes—to arrive at the most convincing and compelling reasons—we need deliberation. We cannot simply assume that all the possible preferences and opinions are already out there. Deliberation, Cohen insists, plays a fundamental role in either bringing out previously non-existent preferences or opinions, or at least clarifying ones that had only been developed in a partial and incomplete form in the minds of individual persons.

The Deliberative Democrats: Reviving Tocqueville and Mill’s Notion of Citizenship

The deliberative democrats’ argument—their refutation of the classical liberal project and promotion of a deliberative decision-making
process—goes even deeper, however. At this point, the classical liberals might retort that Cohen’s argument considered above depends on an orientation around the common good. How can we simply assume that participants in deliberation will be committed to achieving the common good? The response from the deliberative democrats—reviving central notions in Tocqueville and Mill—would be that such a counter-argument is valid, to a point. That is, they would agree that we cannot simply assume or expect a commitment to the common good, in the same way that we cannot simply assume or expect rational self-interest. That being said, like Tocqueville and Mill and like I have signaled above, the deliberative democrats are committed to a more complex and realistic understanding of human nature: Human nature is mutable and depends on the individual’s interactions with his or her social context. The deliberative democrats, then, believe that genuine citizenship—a genuine willingness and ability to commit to a process of collective decision-making oriented around the common good—is possible. Participation in deliberation itself—active engagement in the deliberative process that culminates in consequential decisions that affect people’s life outcomes—allows individuals to develop a commitment to the common good and a skill set that makes them better able to delineate and arrive at that common good. By reviving this notion of active citizenship from Tocqueville and Mill, the deliberative democrats are promoting the notion that not only can meaningful deliberation help the individual identify, sharpen, or amend preferences and opinions concerning particular issues, but also, and more importantly, they are promoting that such deliberation is central to the cultivation of a certain orientation: a commitment to deliberative, democratic procedure oriented around the common good. When such an orientation is possible, the entire edifice undergirding the classical liberal framework crumbles away; outcomes arrived at “impersonally” in the market are no longer satisfactory to genuine citizens. A fundamental part of what is involved in arriving to the optimal outcome is consciously thinking about and deciding upon that outcome.

To understand the possibility of genuine citizenship it will be helpful to begin with an examination of the notion of citizenship in two of the classical theorists of democracy, Tocqueville and Mill. By getting a sense of what these two theorists mean by “citizenship” and what they think is necessary to bring it about, it will be easier to recognize a revival of this same notion among the contemporary deliberative democrats.

Tocqueville contends that the cultivation of genuine citizenship—the development of what he would call the mores of citizenship—is a genuine possibility, but not a possibility that we can simply assume or expect. Citizenship, for Tocqueville, is something that must be actively cultivated and maintained. Taking this complex, realistic view of human motivation, Tocqueville acknowledges that another certain orientation that
approximates what the classical liberals would call rational self-interest is a very real possibility. Tocqueville denotes this orientation—this way of approaching the social world—“individualism,” and defines it as “a calm and considered feeling which disposes each citizen to isolate himself from the mass of his fellows and withdraw into the circle of family and friends.”

Though individualism is not the same as rational self-interest—Tocqueville, after all, distinguishes individualism from mere egoism—the two are similar understandings of human motivation: They both describe individuals who are primarily concerned with private affairs and outcomes who neglect to participate in cooperative social endeavors. It is important to note, however, that Tocqueville does not simply assume individualism in the way that classical liberals simply assume rational self-interest. Understanding human nature as mutable and fickle, Tocqueville recognizes that the development of individualism, like the development of all other forms of human motivation, is dependent upon the individual’s social context.

Tocqueville sees the development of individualism fundamentally as the result of the breakdown of the aristocratic social order. In the aristocratic age, individuals felt an obligation to work cooperatively—though not necessarily democratically—with other members of their same class since each class formed “a little fatherland for all its members.” There were certain social norms and expectations that demanded, for instance, that peasants in the same village provide communal support to each other. Additionally, there were ties among unequals that linked “everybody, from peasant to king, in one long chain.” The growing social, political, and economic equality in the modern age, according to Tocqueville, has largely erased differences in rank and class, concurrently erasing these horizontal and vertical ties that at one time pulled people out of isolation and demanded communal activity. The resulting individualistic orientation—the resulting orientation that emphasizes private self-interest instead of communal activity—is itself self-reinforcing. A big part of what Tocqueville is saying is that if people are isolated and self-interested—if they really have come to approximate the atomized rational maximizers that the classical liberals envision—it is precisely because they have been left to be isolated and self-interested. If they are not pulled out of isolation, if they are not forced to work with those outside of their small circle of family and friends, the values and commitments that undergird isolated self-interest become solidified and entrenched. As Tocqueville puts it, “They form the habit of thinking of themselves in isolation and imagine that their whole destiny is in their own hands.”

But, Tocqueville contends, individualism or rational self-interest or any other framework of human motivation is subject to transformation. That is, even if we observe atomized, self-interested individuals—even if we concede that during a given moment in time individuals are
rational maximizers—that does not have to be the fate to which they are consigned. Observing individualism or rational self-interest does not mean that we should simply assume that people, always and everywhere, fit those motivational categories. What is subject to change, then, is what Tocqueville calls “mores,” or “the whole moral and intellectual state of a people.” That is, people’s values and orientations can be transformed. If individuals are currently solely concerned with narrow self-interest, they can undergo a process that changes their fundamental values, orientations, and commitments, compelling them to look beyond self-interest towards the common good.

This transformation process is far from easy. At root in this process of transformation is active, engaged participation in political and social institutions that demand individuals to concern themselves with issues that are not merely private or personal and that force individuals to listen to and respond to the concerns, opinions, and ideas of others. What is involved in the cultivation and refinement of the mores of citizenship is participation in the very process of democratic deliberation that culminates in binding decisions that have real effects on other people’s life outcomes. That is, the very way to inculcate the spirit of the citizen is to not permit that the market simply give us outcomes, but rather to insist that people engage and deliberate with others in the process of resolving public decisions and coming to collective outcomes. When individuals are given real power—the ability to affect lives other than their own in powerful and meaningful ways—they are forced to learn the art and necessity of listening to various and divergent perspectives and opinions, of appealing to the interests of other people, of trying to find consensus or common ground. At the very least, when individuals are forced to advance arguments in deliberative forums, they come to learn the necessity of thinking about the interests of others and appealing to those very interests if they are to have their own perspectives taken seriously. Being forced to think about the interests of others in turn carries out the promise that individuals will come to acknowledge their shared interests and concerns. What is involved, then, in the development of the mores of citizenship is not only an increased commitment to the process of conscious decision-making, but also an increased skepticism about outcomes that are simply “spit out” by an impersonal market. The sharing of divergent perspectives and opinions can make clear to citizens that market outcomes are not satisfactory and that conscious decision-making provides more favorable outcomes. Deliberative engagement, then, can inculcate a commitment to the common good and a greater capacity to recognize what that common good might actually be.

The development of this orientation—this transformation in mores—only comes about, then, when there are certain institutional frameworks in place that force individuals to work cooperatively together. One good example that Tocqueville examines at length is the institution of the jury trial. The
jury trial provides the proper institutional framework for the development of the mores of citizenship because “it puts the real control of affairs into the hands of the ruled...” By “real control” Tocqueville means that the results of the deliberation that goes on among the members of the jury have real, meaningful consequences in the life of someone else. The members of the jury, then, are authentically exercising power: Their deliberation has genuine and meaningful consequences, and they know it. By providing the framework for a meaningful, consequential give-and-take of reasons and arguments—by giving the framework for what the deliberative democrats would hold as an ideal process of deliberation—jury trials have a peculiar affect on the commitments and values of jurors. Tocqueville elaborates:

Juries invest each citizen with a sort of magisterial office; they make all men feel that they have duties toward society and that they take a share in its government. By making men pay attention to things other than their own affairs, they combat that individual selfishness which is like rust in society.

By being given the opportunity to deliberate over the fate of another living, breathing human being—the opportunity to deliberate and then cast a consequential vote—individuals are compelled, or even forced, to take seriously interests and concerns outside of their own immediate interests and concerns. They are molded and shaped to think about the common good and to take it seriously. Contra the classical liberals, Tocqueville knows that human nature is dynamic. If given the proper institutional framework, certain values, commitments, and orientations can undoubtedly be brought out.

Mill, like Tocqueville, regards the classical liberal assumption of rational self-interest, always and everywhere, as naively simple. He recognizes that we cannot simply assume rational self-interest because he knows that any sort of human motivation is dependent on particular social experiences. Thus when Mill tells us that “it is what men think, that determines how they act,” he is not just telling us that participation in processes of deliberative decision-making can change or sharpen our preferences and opinions on particular issues, but, more importantly, he is telling us that deliberation can change mores—our moral and intellectual values and commitments. Thus Mill, like Tocqueville, recognizes that particular social experiences have the potential to develop and reinforce a motivational disposition that approximates the classical liberals’ notion of rational self-interest. If individuals solely concern themselves with private interests and concerns,
Deliberative Citizenship

if they are not forced out of isolation, he tells us that “good government is impossible.”36 That is, if individuals do develop the values and orientations of classical liberalism, individuals do develop the values and orientations of classical liberalism, then deliberative decision-making is really impossible. Allowing such individuals to engage in processes of self-determination would actually result in the chaos that Hobbes predicts and Smith and Friedman fear.

Yet Mill, like Tocqueville, understands that human motivation is dynamic: If individuals are given the proper institutional framework then the mores of citizenship can be developed and refined. Mill describes the powerful effect that participation in a jury or fulfilling a role in local government can have on the participant:

He is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good...37

When individuals are forced to consider the conflicting claims and arguments of others, they cannot help but begin to orient their whole approach to their social world—their whole way of thinking and acting—around the good of the collectivity. As in Tocqueville, Mill emphasizes that this whole transformation in mores can only come about if the deliberation culminates in a binding decision that has real ramifications in the lives of others. That is why Mill insists that even though political discussion—deliberation, that is—is essential to the development of a commitment to the good of the collectivity, “political discussions fly over the heads of those who have no votes...Their position, in comparison with the electors, is that of the audience in a court of justice, compared with the twelve men in the jury-box.”38 Mill is emphasizing here precisely what Tocqueville emphasizes: Deliberation is well and good, but it can only have a transformative impact on mores if the deliberation culminates in binding decisions that have real effects on other people’s lives. That is, those who merely listen to deliberation as a mere pastime—those in society unable to vote or those in the court audience, for instance—will come to feel neither a real responsibility to take divergent perspectives and opinions seriously nor a real responsibility to appeal to the interests of the group. The development of this responsibility—the development of this commitment to the good of the greater community—only comes when the individual knows that deliberation will have real consequences. By providing the institutional framework that demands responsible deliberation, Mill, like Tocqueville, insists that human motivation can change. Individuals can come to feel a real commitment to the common good, fundamentally rejecting the simple
assumption guiding the entire classical liberal project.

The contemporary deliberative democrats recover the notion from Tocqueville and Mill that genuine citizenship is a real possibility. Like the classical theorists of democracy, they insist that the proper institutional framework can help foment a commitment to the deliberative resolution of public issues oriented around the common good. Because they revive this important notion of citizenship, they reject the classical liberal project in both its Smithian and Downsian forms. Contra Smith, the recognition that the spirit of the citizen is a real possibility provides a real and preferable alternative to a simple decision between either the marketplace or centralized, top-down sovereignty: Conscious, collective decision-making carried out by genuine citizens can assure us more optimal and more equitable outcomes than either an impersonal market or a centralized sovereign. Contra Downs, a classical liberal who at least acknowledges the possibility of some form of democratic decision-making, the deliberative democrats argue that applying the assumption of rational self-interest in the political sphere would lead us to outcomes that might actually be unsatisfactory to most or all of the participants involved; preferences and opinions require deliberation among citizens in order to be discovered, refined, and amended. The deliberative democrats insist that a deliberative process that changes specific preferences and opinions and, more importantly, inculcates entirely new commitments and values is a necessary step before we can even consider the aggregation of votes.

Rawls, Cohen, Gutmann, and Thompson all, in one form or another, recover Tocqueville and Mill’s notion of genuine citizenship in the face of the growing predominance of the classical liberal project. Rawls, however, assumes too much. In the same way that we question classical liberalism because of its naive assumptions, perhaps we can also charge Rawls with likewise making simple assumptions about the prevalence of the mores of citizenship. In any case, it will still be helpful to note the presence of genuine citizenship in his deliberative account. Gutmann Thompson, and Cohen do a better job of more clearly bringing out the fundamental relationship between process and mores. They recognize that forcing citizens to engage in consequential deliberation is what is essential to actually bringing out a commitment to the common good. Recognizing this possibility of genuine citizenship, they promote a much more realistic and complex alternative to the naively simple classical liberal project.

Rawls’ account of democratic deliberation hinges on a notion that is also central in Gutmann Thompson, and Cohen—the notion of reciprocity. Reciprocity demands that when citizens advance reasons and arguments, they should endeavor to appeal to the interests, values, and beliefs of their fellow citizens. As Rawls puts it, “They should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might
endorse as consistent with their freedom and equality.” That is, the process of deliberation should always be based in taking divergent preferences and opinions seriously. Citizens should try their best to reach consensus and find common ground in the resolution of public issues. This approach, after all, is what is involved in “understanding how to conduct oneself as a democratic citizen.” Rawls, then, recognizes the possibility of genuine citizenship: it involves a commitment to the conscious, collective resolution of public issues. While importantly recovering the notion of democratic citizenship from Tocqueville and Mill, Rawls unfortunately glosses over the real complexity involved in inculcating the mores of citizenship. In the same way that Smith, Friedman, and Downs take rational self-interest as their theoretical starting point and build up a picture of society based on that simple assumption, Rawls can be faulted for similarly naive analytical shortcuts; in both his accounts of distributive justice and democratic decision-making, he simply assumes that we already have “democratic citizens” and does not really delve into working out the necessity of consequential deliberation for actually bringing out the spirit of the citizen. Nevertheless, we importantly do see in Rawls the notion of genuine citizenship—the insistence that market discipline or simple rational aggregation in a political marketplace are inadequate and insufficient processes for the resolution of public issues.

Gutmann, Thompson, and Cohen provide a more complex and realistic picture of how citizenship is developed and refined. For Gutmann and Thompson, as for Rawls and Cohen, the principle of “reciprocity” is a central component of genuine citizenship: “The principle expresses a sense of mutuality that citizens and their representatives should bring to the public forum.” That is, if citizens are fulfilling the principle of reciprocity it means that they have certain commitments and values; it means that they have the mores of citizenship. As Gutmann and Thompson put it, “Mutual respect orients the deliberations of citizens and public officials toward a view of the common good—a common good that is compatible with continuing moral disagreement.” When citizens are taking various and conflicting interests, ideas, perspectives, and opinions seriously, they are committed to resolving issues in line with the good of the collectivity. They are genuine citizens, as Tocqueville and Mill have already described for us.

Gutmann and Thompson, however, recognize that they cannot simply take for granted the values and commitments of genuine citizenship. Following Tocqueville and Mill, they recognize that human motivation is mutable. Directly referencing Mill, they contend that “citizens and their representatives are more likely to take a broader view of issues, and to consider the claims of more of their fellow citizens, in a process in which moral arguments are taken seriously.” We can only expect the principle of reciprocity in the deliberative forum to hold, then, if citizens are given the actual opportunity to engage in deliberation. It is in the very practice
of deliberation that atomistic, self-interested subjects are able to become citizens committed to conscious, collective decision-making oriented around the common good. Impersonal market outcomes come to be seen as unsatisfactory and deficient precisely because individuals are forced to hear the interests and concerns of others and are thus forced to recognize that many of these interests and concerns are not satisfied by market outcomes.

Reciprocity, however, is not merely assumed/taken for granted; it is an orientation that is developed and refined. The deliberation necessary to develop the mores of citizenship does not even need to occur in an explicitly political context. As Tocqueville emphasizes, any associational context—whether it be religious, recreational, social, or political—that forces individuals to hear contrary opinions and preferences and forces individuals to appeal to the interests of others can go a long way in developing and refining a commitment to the common good and the capacity to recognize that the common good is often not satisfied by the market. The same sentiment comes out in Gutmann and Thompson when they emphasize the importance of “a civil society that provides rehearsal space for political deliberation.” By “rehearsal space” they seem to mean the sort of associations that are not explicitly political, but still demand deliberation for the purpose of reaching binding, meaningful decisions. Such associations have the potential, then, to inculcate the very orientation and commitments necessary for collective deliberation. Gutmann and Thompson, however, insist that “rehearsal” should not mean “meaningless”:

The deliberative process is not like a talk show or an academic seminar. The participants do not argue for argument’s sake...They intend their discussion to influence a decision the government will make, or a process that will affect how future decisions are made.

Drawing on Tocqueville and Mill, Gutmann and Thompson know that for deliberation to work—for deliberation to endow its participants with the commitments necessary to make it work—it must culminate in consequential, binding decisions. If deliberation were not meaningful in this way, its influence, as Mill has already told us, would simply “fly over the heads” of its participants.

The Tocquevillean and Millian notion of active citizenship comes out even more clearly in Cohen. Cohen channels Tocqueville and Mill when he emphasizes that the orientation necessary for democratic deliberation cannot simply be taken for granted: “Neither the commitment to nor the capacity for arriving at deliberative decisions is something that we can simply assume to obtain independent from the proper ordering of institutions.” Cohen recognizes that the mores of citizenship only come about when individuals
are provided the proper deliberative institutions—religious, recreational, and social associations, local self-government, political parties, juries, etc.—that demand that they work in concert with their fellow citizens in the resolution of common concerns. As Cohen makes clear, forcing individuals to engage in deliberation inculcates a commitment to the process of deliberative decision-making and “the capacity for arriving at deliberative decisions.” This “capacity” is exactly what Tocqueville, Mill, and Gutmann and Thompson are getting at when they indicate that hearing the interests and concerns of others causes the citizen to recognize that many citizens are not satisfied with impersonal market outcomes. This capacity, then, is the shift in thinking that acknowledges that arriving to the optimal collective outcome requires conscious thought about what that optimal outcome might entail. Cohen continues: “Democratic politics...shakes the identity and interests of citizens in ways that contribute to the formation of a public conception of common good.” 48 That is, engagement with the interests of others forces the citizen to acknowledge that he cannot describe the common good—he cannot determine what might be the optimal resolution—until he has thought about it and heard what his fellow citizens think.

A Smithian classical liberal, skeptical of the possibility of an alternative to the market or top-down sovereignty, or a Downsian classical liberal, skeptical of any understanding of democracy that does not treat democratic decision-making as a political market place, might contend that individuals will only pretend to provide reasons and arguments advancing the common good. In actuality, these skeptics would maintain, individuals are simply disguising self-interest as the common interest. Cohen considers this very counter-argument, 49 contending that it does not take seriously “the effects of deliberation on the motivations of deliberators.” 50 That is, to argue that deliberators will disguise private interest as the common interest misses the entire point that the deliberative democrats are trying to make: being forced to hear the interests, opinions, preferences, and ideas of others compels deliberative participants to develop a real commitment to the interests and wellbeing of others. When citizens have this orientation they simply will not be satisfied with the outcomes given by an impersonal market. They know that conscious decision-making promises better, more satisfactory outcomes for all.

In reviving the notion of genuine citizenship from Tocqueville and Mill, the deliberative democrats are fundamentally calling into question the whole basis of the classical liberal project. To just assume rational self-interest, always and everywhere, is analytically naive. Such an assumption does not take seriously the realistic complexity of human motivation. The form that it takes depends on the unique, mutable social experiences in which the individual is engaged. Tocqueville and Mill have made clear that active engagement in consequential deliberative forums can inculcate
a commitment to collectively resolving public issues oriented around
the common good. Rawls, Cohen, Gutmann, and Thompson importantly
recover this notion of active citizenship, and the mores that undergird it, in
contemporary democratic theory. With a complex, realistic approach to social
type that does not simply abstract away from all of the complicating
features of social life, we are left with a much more complete, realistic, and
optimistic picture of human possibility. The deliberative democrats, by
recovering what is really central in Tocqueville and Mill, importantly draw
us this picture in the face of classical liberalism’s hegemony.

**Deliberation’s Limits**

Yet the deliberative democrats are quite worried about the possibility
of democratic deliberation breaking down into chaos and violence, the very
outcome that Smith and Friedman expect from any process of deliberative
decision-making. The deliberative democrats’ concern seems to be that if
deliberation becomes too contentious, the commitment that participants
have to the process of deliberative decision-making will break down,
and the various parties to deliberation will resort to violence to get what
they want. The fear, then, that the deliberative democrats have is that if
deliberation is too conflict-ridden, then we really might get the Hobbesian
outcome—a war of all against all. The way the deliberative democrats deal
with this threat is to narrow both the scope of deliberation and the type of
“comprehensive religious, moral, and philosophical doctrines” that can be
used in deliberation. That is, to ensure that deliberative participants do not
abandon deliberation, the deliberative democrats decide contentious public
issues before deliberation takes place and rule out the use of “controversial”
reasons and arguments.

Although the deliberative democrats are responding to a real
concern, their response to this problem is misguided. What the deliberative
democrats lose sight of is that narrowing the scope of deliberation to non-
controversial issues and preventing the use of controversial reasons and
arguments would not serve to prevent a breakdown of the commitment
to the deliberative process. Rather conflict and disagreement—which
come about when controversial issues are debated and controversial
arguments are made—are essential to the very process by which individuals
develop the mores of citizenship. That is, deliberation only holds out the
hope of inculcating solidarity among citizens if there is real conflict and
disagreement among the deliberators. Deliberators only come to value the
process of deliberation when they are exposed to divisive and conflicting
interests and opinions. To limit the scope of deliberation and the forms that
that deliberation can take, then, is not a solution to the specter of chaos and
violence. Rather, it is a recipe for not allowing the mores of citizenship to
develop. Citizens will only agree upon the types of substantive outcomes that the deliberative democrats hope for and will refrain from making the sorts of controversial arguments that the deliberative democrats fear only if they are allowed to work through conflict and disagreement. Given, then, that conflict and disagreement are essential to the development of the mores of citizenship, the deliberative democrats too narrowly limit the activities that can inculcate a commitment to the common good and processes of collective decision-making. A whole host of antagonistic, non-deliberative activities, like protesting, marching, and striking, can likewise reinforce a commitment to democratic decision-making, expand the scope of issues up for deliberation, and resolve differences once deliberative channels have been exhausted.

In their deliberative accounts, Rawls, Gutmann, and Thompson assume that certain fundamental public issues have already been decided before deliberation takes place. Rawls assumes that individuals in society have already agreed to his second principle of justice, which reads as follows:

> Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.51

Although Rawls’ second principle leaves a lot of room for interpretation, no matter how it is interpreted its requirements are quite demanding: The social and economic position of those worst off in society must be maximized. Deliberation, then, can only be utilized to work out how society should achieve this demanding principle of justice.

Gutmann and Thompson similarly define the outcomes that are best for society prior to citizens actually engaging in any sort of deliberation. They define “basic opportunity” and “fair opportunity” as certain substantive principles that should obtain in any society. They are quite specific in defining basic and fair opportunity: “Health care, education, physical security, housing, food, employment, or the equivalents in income, are all goods that are especially important to living a decent life and securing other opportunities in our society.”52 That is, deliberation should not really be deciding what we might mean by “basic opportunity” or “fair opportunity,” or whether those are even outcomes that society values more than certain other things. For instance, any argument that tries to promote less than full employment as in the best interest of society has to be ruled out; we already know, before deliberation has taken place, that employment must be guaranteed to every member of society. Gutmann and Thompson become even more precise in defining the limits to deliberative outcomes:
The obligations on government can be simply stated: (1) guarantee child support; (2) make work pay; and (3) make work available. What specific reforms each of these implies is ultimately a question to be pursued in a process of democratic deliberation, but we can suggest the general shape that the answers might take.53

Not only have they already determined, before deliberation has taken place, that full employment with a high minimum wage along with government-financed child support is in the best interest of society, they even have a sense of the “general shape” of the specifics of those very reforms. Part of this “general shape,” for instance, will involve universal health care because “universal health care coverage is essential to basic opportunity.”54

If Rawls demands that society must maximize the wellbeing of the least advantaged member of society, and Gutmann and Thompson demand that society must guarantee employment, a high minimum wage, child-care support, and universal health care coverage, what are citizens supposed to be deliberating about? All the really important issues have already been decided. The questions the deliberative democrats leave for deliberation are not “Should we have universal health care coverage?” and “Should society guarantee a job for everyone?”, but rather, “How should we structure the system of universal health care coverage that we have (supposedly) agreed upon?” and “What sort of reforms are needed to make sure that everyone is employed?” To deliberate about the latter set of questions is to deliberate in a vacuum; it is to skip over the really central issues that must be at the heart of deliberation.

Rawls and Gutmann and Thompson’s impulse to resolve these contentious, controversial issues prior to any deliberation actually taking place seems to be based on their fear that allowing such fundamental issues to accede to the deliberative agenda is a recipe for chaos; surely if society is left to debate the provision of scarce but desired resources, like health care, housing, and income, the debate will quickly devolve into a fight and deliberation will break down. Citizens, rather than deciding whether or not they want universal health care coverage, can only be expected to decide the shape that that reform might take. But what the deliberative democrats are forgetting here is that citizens cannot simply be told by, say, a political theorist acting as a benevolent dictator, that they should have universal health care coverage or high minimum wages. A substantive commitment like that can only emerge when individuals are forced to engage in deliberation that compels them to hear the reasons, arguments, and testimony of less-advantaged individuals. The commitment to an equitable health care system or a living wage, then, does not come when a political theorist tells members of society that they must implement those reforms. Rather, it comes when...
there is conflict and disagreement over those issues, and individuals, in that process of conflict and disagreement, come to recognize the necessity of such reforms. The commitment to the common good that the citizen feels demands equitable health care coverage and living wages. He must come to feel that commitment himself. Conflict and disagreement in the deliberative process are essential.

Rawls and Gutmann and Thompson’s impulse to limit the sorts of reasons and arguments that can be given in deliberative forums likewise seems to stem from a fear that deliberation will devolve into chaos if individuals make use of controversial reasons and arguments. Rawls quite clearly establishes what sort of reasons and arguments are off limits during deliberation:

In discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines—to what we as individuals or members of associations see as the whole truth—nor to elaborate economic theories of general equilibrium, say, if these are in dispute.55

Much the same comes out in Gutmann and Thompson when they insist that during deliberation citizens should only make recourse to “relatively reliable methods of inquiry.”56

But to have a political theorist simply tell individuals that they cannot make use of their comprehensive religious, moral, and philosophical doctrines does not go very far towards making them believe that they should not use such doctrines. If someone is committed to a particular worldview—whether it be evangelical Christianity or general equilibrium theory—he is not going to come to question the tenets of that worldview, and the applicability of that worldview to the common good, unless he makes recourse to that worldview in the deliberative forum. That is, the validity of the tenets of general equilibrium theory or socialism or evangelical Christianity can only be ascertained if these conflicting and contradictory ways of thinking about the world are used in deliberative settings. Being forced to make arguments that appeal to the interests of the deliberative group is what will force the classical liberal to perhaps abandon some of the tenets of general equilibrium theory or the evangelical Christian to perhaps abandon some of his literal interpretations of the Bible. A consensus about what sorts of arguments and ways of looking at the world are valid develops not by people being told that they must abandon their comprehensive doctrines before deliberation, but rather by hashing out which worldviews can really appeal to the interests of others. Certain arguments and reasons come to be ruled out in deliberation not because they have been ruled out before deliberation has taken place, but
rather because the very process of deliberation ensures that deliberators no longer take those types of arguments and reasons seriously.

Working out which sorts of reasons and arguments can be oriented around the good of others would be well and good if all worldviews were listened to equally. But to assume that that is the case is to ignore reality: certain ways of thinking about the world, classical liberalism’s theory of the market, for instance, have achieved predominance in our debates and discussions. Often what is necessary, then, is forcing those involved in deliberation to listen to new concerns and ideas. Usually that is going to involve making use of a whole host of non-deliberative activities. A big part of the reason why we even have a commitment to deliberation, for example, is precisely because a whole host of explicitly non-deliberative, antagonistic activities helped establish deliberation as a framework to which Americans are, to some degree, committed. As Michael Walzer puts it:

Indeed, what might be called the struggle for deliberative democracy—that is, for political equality, a free press, the right of association, civil rights for minorities, and so on—has required a lot of slogan shouting. It is not easy to image a democratic politics to which popular mobilization has become superfluous.

That is, “slogan shouting”—non-deliberative, antagonistic political activity—was necessary to get people with power to take deliberation seriously—to make them feel a commitment to such a process and to get them to recognize that such a process is essential to the common good. Walzer’s point is that the only reason anyone even takes deliberation seriously is precisely because its tenets were promoted in a non-deliberative fashion. Those who wanted a greater and more equal voice for all citizens had to protest, strike, and demonstrate. The very notion of deliberation was not taken seriously until those who wanted to expand deliberation’s scope undertook highly antagonistic activities that forced people to take deliberation seriously.

Once there is some general commitment to deliberation established, confrontational, non-deliberative methods are necessary to further expand the issues that should accede to the deliberative agenda. Walzer, again, makes this point nicely:

Demonstrating intensity and conviction now doesn’t necessarily preclude negotiating later on, and this combination can be used, and has been, in defense of democratic rights—to vote, or strike, or associate freely—as well as in defense of substantive but contested reforms like prohibition, or gun control, or the minimum wage.
Deliberative Citizenship

Even when citizens, to some degree or another, are committed to deliberative decision-making, issues often cannot reach the deliberative agenda until those that care deeply about those issues—those that feel resolving those issues in particular ways is fundamental to the common good—force other people, who perhaps disagree or are indifferent, to listen to them and take them seriously. More often than not this is going to involve protests, strikes, marches, and sit-ins. A big reason why management is willing to deliberate with unionized labor is precisely because labor has forced management to listen to them and take them seriously. By making use of the strike, labor has put its concerns on the deliberative agenda. The managers only come to feel a certain commitment to the welfare of labor if they are forced to feel that way by non-deliberative activities. One needs only to think back to the sit-ins, marches, and protests of the American Civil Rights Movement to be reminded that deliberation often only comes about after engagement in non-deliberative activities.

Even when previously neglected issues accede to the deliberative agenda—even when civil rights or a minimum wage, for instance, become topics that people are willing to deliberate about—different ways of thinking about the common good will assure that deliberation will not often settle fundamental conflicts and differences in opinion. As Ian Shapiro has pointed out, deliberation might even sharpen conflict. That is, part of the sharpening, amending, and changing of preferences and opinions that occurs because of deliberation can actually serve to heighten the conflict and make clear that two sides are at an impasse. Should the two sides, both committed to the common good and to the process of deliberation, simply set aside their comprehensive doctrines to find some sort of agreement? The answer is no. When issues really matter, we should expect real conflict. Walzer, again, is instructive here:

Certain deep disagreements, like those between Left and Right, are remarkably persistent, and local forms of religious or ethnic conflict are often so embedded in a political culture as to seem natural to the participants. So politics is the endless return to these disagreements and conflicts, the struggle to manage and contain them, and, at the same time, to win whatever temporary victories are available. The democratic way to win is to educate, organize, mobilize...more people than the other side has.

Deliberation is essential. It allows us to develop a fundamental commitment to the common good and to recognize that the common good cannot be satisfied by the market. But the common good can mean irreconcilably different things to two sides. When the conflict is established,
or perhaps even clarified, by deliberation, the two sides must make recourse to non-deliberative activity; they must mobilize, organize, campaign, and propagandize to determine where the forces lie. Even a deliberative form of politics must often culminate in conflict.

Conclusion

Classical liberalism’s hegemony in the public discourse seems to be based on the fact that it demands and expects so little. Its guiding assumption tell us that people are the same, always and everywhere, and we can get the best by assuming the worst. Let us just assume humans are simple automatons, it seems to say, and then we can arrive at elegant and simple conclusions about how society works and, more importantly, should work. Humans, then, are rationally self-interested, and to get the best outcomes we should let these simple automatons interact in the market. Because the market does not really decide issues—it just gives outcomes—we can avoid conflict and disagreement by sidestepping issues that might actually result in conflict or by labeling outcomes as “just” simply because an impersonal system gives them. Democratic decision-making is not a real alternative; as Hobbes so elegantly demonstrated, letting rationally self-interested individuals interact without top-down sovereignty ultimately culminates in chaos and violence. Given that the political sphere must be one of top-down, hierarchical control, the classical liberals contend that we might as well maximize the scope of the market. Even those classical liberals that pay lip service to “democracy” take the simple assumptions of classical liberalism and apply them to the political sphere. A sphere of democratic decision-making, if it really exists, is just another extension of the market place.

The central point that comes from the deliberative democrats—and that they might do better to elaborate more explicitly—is that to assume simple rational self-interest and thus the impossibility of genuine democratic decision-making is really to miss the point. If we take a more realistic and complex view of human motivation, the deliberative democrats tell us, we recognize that individuals act in all sorts of different ways and are capable of developing and refining new and complex motivations. Recovering the notion of citizenship from Tocqueville and Mill, the deliberative democrats insist that individuals are capable of caring about the divergent and conflicting interests of their fellow citizens and of recognizing that a conscious decision about a public outcome is more satisfactory to more people than simply letting a market decide winners and losers. Starting with a complex notion of human possibility, the deliberative democrats, echoing Tocqueville and Mill, know that we cannot simply assume that individuals have the commitments and orientations necessary to make democratic decision-making work. Those very commitments and orientations are developed and refined, they argue,
in the give-and-take of reasons and ideas. Unfortunately, the deliberative democrats try to narrow both the scope and form that deliberation can take in order to prevent circumstances in which deliberation breaks down into chaos and violence. Though they are responding to a real concern, trying to limit the scope and form of deliberation in order to eliminate conflict and disagreement defeats the whole purpose of deliberation; working through conflict and disagreement—deciding which issues should be on the deliberative agenda and what sort of reasons can be given—is essential to developing the mores of citizenship. Given the importance of conflict and disagreement, political space must be left for non-deliberative activity. As Michael Walzer importantly points out, non-deliberative political activities can also foment the mores of citizenship, allow new issues to accede to the deliberative agenda, and resolve conflicts when a deliberative impasse has been reached.

If the deliberative democrats are willing to acknowledge this important space for conflict and disagreement, what they have recovered from Tocqueville and Mill is an alternative program to Smith’s classical liberalism. What that program needs now are public champions willing and able to present this alternative way of thinking about the social world to members of society. Instead of every undergraduate hearing on the first day of economics class, “Let’s just assume humans are rationally self-interested and spend the better part of the next four years drawing a picture of society based on that assumption,” they might hear on the first day of social theory class, “Let’s assume that humans are complicated and spend the next four years thinking about the possibilities that open up for society.” What is needed is a revolution in ideas.
Endnotes


2 Smith, p. 343.

3 Smith, p. 72.

4 Smith, p. 75.


6 Friedman, p. 24.

7 Friedman, p. 13.

8 Friedman, p. 24.

9 Smith, p. 710.

10 Friedman, pp. 25-26.

11 Friedman, p. 25.


13 Smith, pp. 709-710.

14 Smith, pp. 687-688.


17 Downs, p. 7.


Deliberative Citizenship

22 Gutmann and Thompson, *Democracy and Disagreement*, p. 19.
26 Cohen, p. 95.
28 Tocqueville, pp. 506-507.
29 Tocqueville, p. 507.
30 Tocqueville, p. 508.
31 Tocqueville, p. 508.
32 Tocqueville, 287.
33 Tocqueville, p. 272.
34 Tocqueville, p. 274.
37 Mill, p. 255.
39 Rawls, p. 97.
40 Rawls, p. 97.
41 Gutmann and Thompson, *Democracy and Disagreement*, p. 52.
43 Gutmann and Thompson, *Democracy and Disagreement*, p. 42.
44 Tocqueville, pp. 513-517.
45 Gutmann and Thompson, *Why Deliberative Democracy?* p. 35.
References


Gutmann, Amy, and Dennis Thompson. Why Deliberative Democracy? Princeton:
Deliberative Citizenship


Institutional Trust:  
The Case Study of Mexican State Institutions

Lorenzo Felipe Lagos

Abstract

The determinants of change in trust have long been a matter of debate in the social capital literature. An area of particular interest for political scientists has been trust in state institutions because of the possible consequences it could have on democratic life. In an attempt to generalize results, most studies have focused on large cross-sectional samples. However, these studies overlook the context in which citizens and state institutions find themselves. The case study of Mexico presented in this paper attempts to contribute to the literature by emphasizing context over generalizability. The case of Mexican state institutions supports the hypothesis that events that taint an institution for not performing according to its prescribed function lead to sharp declines in trust. Consequently, structural reforms that ensure that institutions recur to their constitutive norm may help increase trust in state institutions. In addition, there is strong evidence indicating that GDP growth causes an increase in trust in state institutions. Therefore, democracies in developing countries may benefit when their economies are performing well.

Introduction

My desire to write this thesis is perhaps best explained by a true story. A friend of mine has a house on a very secluded beach on the Mexican Pacific coast. He invited me to escape the Philadelphia winter and spend a week in the sun. This was March 2009. The son of the lady that works at the house came to pick us up at the airport. As we were riding in the truck our conversation naturally shifted towards the state of insecurity in the country – a very common occurrence in Mexican small-talk. Our driver said that things were very calm around his neighborhood because of the presence of drug lords. We inquired how this was so. He said, “the cartel has put a new operative in place called Operación Limpieza (Operation Cleanup) that has made robbers and kidnappers stay out of my neighborhood. The capos want to make money by selling drugs in the streets. But who is going to go out and buy drugs when it is not safe to be on the streets. The cartel posted warnings and murdered anyone who robbed or kidnapped.” I wanted to ask more, but our driver immediately changed the subject.
After this conversation, numerous questions started building up in my head. Have the narcos replaced public security institutions? Do some Mexicans trust the drug cartels more than the state? How has this affected other Mexican institutions? How has this affected the rule of law in the country? These fascinating questions were enough to keep me busy doing years of field research, perhaps enough to write a book. Given time and geographical constraints, I decided to search for available information on Mexican institutions. After months of searching, I came across a survey conducted by Consulta Mitofsky that measures trust in a variety of the county’s institutions. Unfortunately, the survey was conducted at a national level, impeding the possibility of comparing institutional trust among states with high vs. low cartel presence. Therefore, I chose to use this national data in order to reveal the factors that cause variations in trust in Mexican state institutions. The central question of this research paper is: what explains changes in trust in Mexican state institutions?

Although different from the initial inquiries, this research question is equally ambitious. Firstly, it contributes to the literature on the determinants of institutional trust from an in-depth and context-based perspective, rather than through a cross-sectional and generalizable approach. The case of Mexico is particularly interesting because it is a developing country that has recently democratized. As such, the second ambitious characteristic of this research endeavor is that it sheds light on the importance of trust in state institutions for young democracies in developing countries. This is made possible by the implications of theories on the determinants of institutional trust from which the hypotheses tested in this paper are derived. Testing the direct effects of institutional trust on democracy would be too complicated of a task. Finally, answering this research question suggests means of action to improve young democracies and identifies economic scenarios that catalyze the further development of democratic society.

The arguments defended by the case of Mexican state institutions are twofold. Firstly, events that taint an institution for not performing according to its prescribed function lead to sharp declines in trust. Consequently, structural reforms that ensure institutions recur to their constitutive norm may help increase trust in state institutions. Secondly, there is strong evidence indicating that GDP growth causes an increase in trust in state institutions. Therefore, democracies in developing countries may benefit when their economies perform well. In order to explain as clearly as possible how these arguments were reached, the paper is divided into six sections. The first section delves into the literature on trust, bringing in definitions of key terms, explaining the debate on the relation between democracy and trust, and developing three basic arguments derived from theories on the determinants of institutional trust. The second section presents three hypotheses derived from the literature and their respective causal mechanisms. The third section
clarifies the selected data and justifies the methodology used for testing the hypotheses. The fourth section describes the data results succinctly, while the fifth section analyzes these results. Finally, the sixth section concludes.

Literature Review

Trust in State Institutions and Democracies

Trust can take a variety of forms. In the most general sense, “trust involves a judgment, however implicit, to accept vulnerability to the potential ill will of others by granting them discretionary power over some good. When one trusts, one accepts some amount of risk for potential harm in exchange for the benefits of cooperation” (Warren 1). Indeed, risk is a central aspect of trust and the outcome that is put at risk to others’ malfeasance is of some value to the person that is deciding whether to trust (Tilly 4). Nevertheless, cooperation increases by taking such risks, allowing social coordination problems to be resolved. (Leslie 540). However, an important distinction is that trusting an individual is not the same as trusting an institution. Unlike institutions, individuals can reciprocate and interact in face-to-face relations. Consequently, it is somewhat harder to trust an institution – some even believe that it is impossible to do so (Hardin 35). This dispute on institutional trust, which will be thoroughly developed in the next section, is reflected in the views regarding the decline in political institutions within the United States and Western Europe over the past decades (Inglehart 4, 1997). The central question in this debate asks: is the decline of trust in state institutions favorable or unfavorable for democracies?

The debate on the relation between institutional trust and democracy remains unresolved. However, finding the factors that determine this type of trust sheds light on which stance to take on the debate. On one hand, the cry for democracy stems – at least in part – from a lack of trust in authorities. If people in Tunisia were willing to sacrifice their lives to overthrow the ruling Constitutional Democratic Rally, it is clear that the trust relationship between the citizens and this party had severely deteriorated. Indeed, political legitimacy and trust in government are highly interrelated (Inglehart 104). Furthermore, even developed democracies impose checks and balances on state institutions, as if acknowledging that full trust in the system’s institutions is never warranted. On the other hand, some argue that a prerequisite for democratization is the incorporation of trust networks by the government (Tilly 22). In other words, a democracy requires a society that trusts the government will commit – and is able – to fulfill its functions. Moreover, even fully democratized nations benefit from institutional trust. Given that political resources are scarce, warranted trust in particular institutions permits people in democracies to invest their resources more effectively – namely where trust is not warranted (Warren 4). Also, checks
Institutional Trust: The Case Study of Mexican State Institutions

and balances are not necessarily proof of the undesirability of institutional trust within democracies since their function is precisely that of facilitating trust in government institutions. This debate remains unresolved given the complications that arise when testing what institutions (if any) deserve trust conditional on the stage of democratization. Nonetheless, it is possible to test what factors cause changes in institutional trust. The arguments for these factors have theoretical bases that imply either a favorable or an unfavorable view of institutional trust for democracies.

Because theories on the determinants of institutional trust have implications on the effect that trust in state institutions has on democracy, revealing these factors is important not only in itself, but also because it may justify the stance taken on the aforementioned debate. The following section clarifies existing theories found in the literature from which three arguments to construct hypotheses are derived. Moreover, the implications that these arguments have on the relation between democracy and trust in state institutions are clarified. The three arguments are divided into the following subsections: materialist, functional, and security.

The Determinants of Institutional Trust

Materialist Argument

The materialist argument states that low trust in state institutions is not necessarily an unfavorable condition for a democracy. The theories that support this argument affirm that institutional trust is incredibly hard to justify. In its most extreme form, the theories rely on the notion of encapsulated trust, which denies the normative possibility of trusting an institution. But even theorists that believe that institutional trust is possible provide materialist arguments. Both explain the declining trust in state institutions as a result of people refining their conditions for trust. The cause for this refinement lies in increasing material well-being (hence the materialist argument). As such, a decline in trust in state institutions may imply that people are actually better off.

Encapsulated trust, as explained by Russell Hardin, questions the normative possibility of trusting an institution. In Hardin’s model, trust is intelligible only when A trusts B to do (or in relation to) x. The variable x must be a definite action or purpose which A expects B to do because B has a reason to do so that is grounded in A (Hardin 26). As such, individuals can genuinely trust only when they have enough information that allows them to know the potential trusted actor’s motivations towards the trusting individual (Hardin 24). This means that there are specific cognitive conditions that need to be met in order for one to trust someone or something. Consequently, the complexity and opacity surrounding the interests of modern state institutions leads theorists advocating for encapsulated trust to conclude that it does
not make sense to trust institutions. For example, a citizen (A) should trust Congress (B) to include the public option in the healthcare bill (x) if and only if she has enough information to expect that the motivations of congressmen and congresswomen align with her preferences towards the public option. This type of trust is impossible on two grounds. On one hand, it is incredibly costly – if not impossible – to obtain such information. On the other hand, the nature of democratic systems hinders the possibility of high trust in state institutions because of the variety of preferences and motivations to which these institutions would have to align themselves. As a result, the theory of encapsulated trust deems trust in state institutions as nonsensical because the conditions for trust cannot be met.

The literature points to material well-being as the causal factor that modifies people’s cognitive conditions regarding trust. In other words, citizens are refining their conditions for trusting others as their material well-being increases. Specifically, Ronald Inglehart argues that trust in government institutions decreases when people surpass a materialist stage and become Post-materialists (Inglehart 299, 1997). In other words, people’s conditions for trusting institutions become more sophisticated once their level of material well-being has an effect on their value-system. A Materialist emphasizes economic and physical security, while a Post-materialist emphasizes autonomy and self-expression (Inglehart 135, 2008). Although it is hard to determine when a country’s value-system changes, testing the effect that material well-being has on institutional trust may prove to be quite insightful. In particular, if the effect is negative, this would support the adoption of post-materialist values in a country. In terms of democracy, it is clear that post-materialist values, including autonomy and self-expression, would provide a healthier democratic society. However, increasing material well-being does not always change the value-system of a country since the latter is highly determined by culture. Nevertheless, since a decrease in institutional trust may suggest that post-materialist values are being internalized, such a fall could be seen favorably in some cases.

Functional Argument

The functional argument claims that low trust in state institutions is an unfavorable condition for democracy. Unlike the notion of encapsulated trust, the theories that support this argument state that it makes sense for people to trust certain institutions. The conditions for institutional trust are made possible by the fact that the constitutive norm for which an institution stands is intelligible to the members of society. Moreover, these theories explain declining trust in state institutions as a result of the inability of these organizations to recur to their constitutive norm. Therefore, their performance in terms of their normative function is the determining factor for changes in institutional trust (hence the functional argument). As such,
a decline in trust in state institutions implies suboptimal performance of a democracy’s state institutions.

Whereas supporters of encapsulated trust claim that the conditions to trust state institutions can never be fulfilled, other theorists believe that institutions in general can be trusted. Claus Offe’s defense of institutional trust aims at explaining how people can trust institutions and discusses why citizens will trust some institutions and not others. Obtaining enough information on the preferences and intentions of an institution is not a necessary condition for institutional trust, but rather one must know the “repertoire of meaning and justification” that is produced by the institution in order to trust it (Offe 71). For example, people can trust their bank because the basic idea for which the institution stands is intelligible to them. The condition that determines whether the bank is trusted depends on whether the institution is structured in such a way that it complies with the idea for which it stands. As opposed to Hardin, Offe believes that institutions can be trusted when they merit such trust.4

This defense of institutional trust assumes that institutional frameworks shape people’s behavior. In other words, if an institution is structured so as to recur to its “constitutive norms”, individuals have reason to expect that strangers within this institutional regime will express predictable patterns of behavior that concur with the meaning inherent to the institution (Warren 7). Unfortunately, members of society cannot determine whether an institution is properly structured. They can, however, observe the performance record of an institution. In the specific case of state institutions, individuals may be more aware of the institutions’ performance since it directly affects the lives of all citizens given their all-encompassing functions. As Charles Tilly argues, “integration of trust networks into public politics operates... incrementally in response to governmental performance” (Tilly 22). Consequently, this functional argument implies that trust in institutions can be generated. The most obvious way of achieving this is to have a flawless record of maintaining the institution’s constitutive norm. Finally, the functional argument has a clear stance on the debate regarding the relation between trust in state institutions and democracy. Since a decrease in institutional trust suggests poor institutional performance, a democracy that is experiencing a decline in trust in state institutions is not functioning correctly.

Security Argument

It is unclear whether the security argument claims that low trust in state institutions is an unfavorable condition for a democracy. This is because this argument is supported by theories on generalized trust rather than institutional trust. The theories presented here have both rational and psychological aspects. Nonetheless, the common determinant for declining
generalized trust is pessimistic economic outlooks from people in society. In other words, when people are afraid of their present and future economic prospects, they trust others less (hence the security argument). Moreover – as elaborated later on – the corrosion of generalized trust hinders the capacity of individuals to fight for common ends, crippling civil society and allowing corrupt government to arise (Warren 12). Therefore, the effect that declining trust in state institutions has on democracy will depend on whether this type of trust is included in or excluded from the broader notion of generalized trust.

The definition of trust used in this paper emphasizes the fact that trust always involves the risk of being harmed by the agent trusted in exchange for obtaining the benefits of cooperation. Thus, the decision to trust (or not to trust) can be treated as a choice made under uncertainty for which a rational choice approach would be appropriate. Under this framework, people tend to be characterized as risk averse, risk neutral, or risk loving. The rational security argument states that people who enjoy greater economic security tend to be more risk loving when it comes to trusting others, while those that lack this security are more risk averse (Inglehart 89). This difference stems from the fact that a person on shaky economic grounds cannot afford to take the risk of trusting a stranger because if the trusted agent defects on the actions that are expected of him, the trusting individual loses more relative to what an economically secure trusting individual would lose. This argument can also be seen from a psychological lens. Eric Uslaner argues that dispositions to optimism and pessimism, which are highly reflected in economic security, produce the differences in the willingness to trust strangers (Uslaner 139). Therefore, trust is not only determined by economic status, but also by the context in which trust decisions are made. In other words, even a rich person will be less likely to trust others when the future seems dire, such as during a global economic crisis.

The security argument concerns a broader notion of trust than the arguments presented in the previous sections. The trust explained here applies not only to institutions, but to anything that would not be trusted because of informal links, including family or group ties. In other words, the security argument deals with trust conferred to things or people with whom the trusting individual has had no previously established relationships. This trust in strangers and distant institutions has been defined by the literature as generalized trust. On the other hand, trust in acquaintances and kin is considered particularized trust (Warren 9). The social capital literature is heavily invested in generalized trust because it enhances the capability of building social capital. According to Robert Putnam, social capital includes “features of social organization, such as trust, norms, and networks that can improve the efficiency of society by facilitating coordinated actions” (Putnam 167). Since trust in strangers and distant institutions eases the
creation of networks that help solve coordination problems, generalized trust is a crucial factor in social capital. Whether trust in state institutions should be considered a part of generalized trust is a contentious issue that will be touched upon in the next section.

In short, the security argument states that generalized trust declines when the economic outlooks from people in society become more pessimistic. Given the positive view that the social capital literature has of generalized trust, a decline in this type of trust is unfavorable for a democracy. In other word, decreasing generalized trust entails a decrease in social capital, which can curtail economic efficiency and civic engagement. As such, the recommendations of this argument would include a stable economic environment and the provision of resources that would increase the people’s sense of economic security, including social safety nets. The following section discusses whether generalized trust encompasses trust in state institutions.

Generalized Trust and Trust in State Institutions

The three arguments that have been presented to explain changes in institutional trust are summarized in the table below. These arguments are not exhaustive or mutually exclusive.

<table>
<thead>
<tr>
<th>Type of Trust</th>
<th>Decrease in Trust in State Institutions</th>
<th>Recommendation for Democracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Materialist Argument (Ronald Inglehart and Orlando Patterson)</td>
<td>Institutional trust</td>
<td>Sometimes favorable since this may indicate that a country has internalized post-materialist values</td>
</tr>
<tr>
<td>Functional Argument (Claus Offe and Jean Cohen)</td>
<td>Institutional trust</td>
<td>Unfavorable since this indicates poor democratic performance</td>
</tr>
<tr>
<td>Security Argument (Ronald Inglehart, Claus Offe, and Eric Uslaner)</td>
<td>Generalized trust</td>
<td>Unfavorable if trust in state institutions is included in generalized trust</td>
</tr>
</tbody>
</table>

The question of including trust in state institutions as a part of generalized trust arises as a result of the lack of mutual exclusiveness in the arguments. Both Claus Offe and Ronald Inglehart – advocates of conflicting
views regarding trust in state institutions – are supporters of the security argument (Warren 11). They agree that the economic dispositions of optimism or pessimism play a role regarding generalized trust. Moreover, both concur that more generalized trust is a good thing for democratic societies. Given that Inglehart deems a decreasing generalized trust as unfavorable and a decreasing trust in state institutions as favorable in some cases, he is implicitly excluding institutional trust from the more encompassing notion of generalized trust. This suggests that his vision of a prosperous society entails a discriminating trust in political institutions coupled with strong generalized trust. On the other hand, Offe’s view regarding these two notions of trust does not generate any conflict. Thus, it can be implied that there is no need for any division and that generalized trust encompasses the notion of institutional trust. In this last case, a decline in trust in state institutions will always be regarded as unfavorable because it implies a decrease in generalized trust, which promotes the creation of social capital. The same judgment is unclear in the exclusionary case because theorist may still view trust in state institutions as positive for democracies on its own accord.

This inclusion vs. exclusion debate of trust in state institutions and generalized trust contains other mixed stances. Not all advocates of the materialist argument support exclusion and not all advocates of the functional argument support inclusion. For example, Jean Cohen supports the functional argument, but avoids including trust in state institutions as part of generalized trust. He argues that strong institutions are essential to social capital building (Cohen 222). Cohen believes that strong political and legal institutions provide the necessary conditions for creating social trust. Rather than generalized trust encompassing trust in state institutions, the latter is independent and promotes the former. On the other hand, the materialist argument postulated by Orlando Patterson argues for a causal mechanism linking socioeconomic status to both generalized trust and trust in political institutions. He suggests that greater affluence allows for a more reasonable perception of the effectiveness in politics, “which reinforces generalized trust, political trust, and the tendency to become more politically active” (Patterson 196). Therefore, this materialist argument views institutional trust as being in harmony with generalized trust.

To summarize, the literature points to three arguments for explaining changes in trust. Two of these – the materialist and the functional argument – stand in direct contrast regarding trust in state institutions. The former maintains material well-being as the catalyst for change and views a decline in trust in state institutions as favorable for democracy in some cases. The latter focuses on the performance of institutions as the basis of change and regards a decline in trust in state institutions as unfavorable for democracy. The third is the security argument and it refers to generalized trust rather than institutional trust. The cause of change in this argument is the disposition to
economic optimism or pessimism in society. This argument provides no clear normative judgment on a decline in trust in state institutions. The inclusion of trust in state institutions in the notion of generalized trust implies that a decline would be unfavorable. This is because there is a broad consensus in the social capital literature that generalized trust is a crucial factor for building social capital. However, the exclusion of trust in state institutions does not necessarily imply a favorable view of a decline in this type of trust. Finally, these views on exclusion and inclusion are not divided according to materialist vs. functional lines. The following section postulates hypotheses that stem from these theories in order to test them in the specific case of Mexico.

Hypotheses

Based on the literature review, the following hypotheses for explaining changes in trust in Mexican state institutions arise:

1. Increasing indicators of material well-being lead to decreasing trust in state institutions, and vice-versa.
2. Events that mark the failure of state institutions to perform according to their proper function lead to decreasing trust in state institutions, and vice-versa.
3. Decreasing indicators of economic security lead to decreasing trust in state institutions, and vice-versa.

The first hypothesis stems from a naïve version of the materialist argument. The causal mechanism starts with an increase in material well-being in Mexico, as measured by Gross Domestic Product (GDP) or the Human Development Index (HDI). With this economic development taking place, the value-system in Mexico shifts gradually away from materialism and towards postmaterialism. Consequently, Mexicans internalize autonomy as a core value and thusly refine their conditions for trusting state institutions. Assuming the notion of encapsulated trust, Mexicans will realize that it is ridiculous to trust in something whose interests are opaque. Therefore, trust in state institutions declines as material well-being increases.

From explaining the causal mechanism of this first hypothesis, it is possible to identify two weaknesses. Firstly, it is unclear whether an increase in GDP or HDI actually improves the material well-being of all Mexicans. This is even true for per capita measurements since most of the wealth may be concentrated in a small percentage of the population. Nonetheless, these two indicators continue to be the common proxies for economic development. Secondly, even assuming that the material well-being of everyone increases with GDP or HDI, it is not certain that Mexican citizens
become Post-materialists as a result (see footnote 8). This is especially the case of historically Catholic countries such as Mexico, where it is harder for values such as autonomy and self-expression to take hold (Inglehart 217, 1997). Nevertheless, it is impossible to test for cultural variations and value-system shifts when dealing with only one case. As such, the first hypothesis rests solely on the notion that people refine their conditions for trust as GDP increases – regardless of changes in values. Because values of autonomy and self-expression are not necessarily internalized, even if this hypothesis is proven correct, it is inconclusive in providing evidence for the argument that low levels of trust in state institutions are good for democracy.

The second hypothesis is based on the functional argument. The causal mechanism starts with an event that proves to citizens that a Mexican state institution is not performing according to its prescribed function. Given that the state institution is not recurring to its constitutive norm, Mexican citizens would realize that the institution cannot be trusted. In other words, the fact that the institution defected from what it is supposed to do means that the institution is not structured so as to align the motivation and interests of its members with its goal. Since the structure of the institution is flawed, Mexican citizens will fear other future defections that may hurt them and will therefore not risk trusting the state institution.

This hypothesis implies that it is possible to improve trust in state institutions by undergoing structural reforms. However, the cause of the failure of an institution to recur to its constitutive norm is not always structural. There may be exogenous factors such as embedded corruption in society or chronic violence that may prevent the state institution from fulfilling its duty. Given that these factors are more common in developing countries that in developed countries, this hypothesis would imply that there is higher volatility of trust in the former. Either way, any action that may increase institutional trust would be recommended primarily because low levels of trust in state institutions are viewed unfavorably by the theories supporting this hypothesis. In other words, since improving the poor performance of state institutions is good for democracy, means of action such as enacting structural reforms, controlling embedded corruption, and fighting chronic violence would be recommended.

The third hypothesis reflects the ideas of the security argument – or the encompassing security argument to be more precise. This specification lies in the fact that the hypothesis works under the assumption that generalized trust encompasses trust in state institutions. The causal mechanism starts with a change towards a more negative attitude in society about economic security, which can be measured by indicators like the Consumer Confidence Index (CCI). This means that Mexican citizens become more risk averse when it comes to trusting strangers or distant institutions. More specifically, the Mexican people fear for their own economic prospects and therefore
avoid the risk of losing more by trusting a state institution. Finally, because this hypothesis assumes that trust in state institutions is encompassed by generalized trust, if this hypothesis is proven correct, it would imply that low levels of trust in state institutions are bad for democracy. This is mainly because social capital would decrease as a result.

To summarize, the three hypotheses are not precisely the same as those stated by the arguments derived in the literature. The first hypothesis is based on a naïve notion of the materialist argument and the third hypothesis assumes that trust in state institutions is included in the notion of generalized trust. These limitations stem primarily from issues related to the feasibility of testing unobservable factors. Nevertheless, the second hypothesis follows the functional argument quite closely. The following section explains the methodology carried out to test these three hypotheses. It also justifies the selection of certain data over others. Finally, the meaning and source of the data used are clarified in order to lay down the implications and limitations of the results obtained.

Methodology

Institutional Trust Data

The data on institutional trust comes from the nonpartisan, independent public opinion research center Consulta Mitofsky. The survey samples are representative of the Mexican population. These surveys were held sporadically from April 2004 up until November 2007, after which the survey was carried out on a monthly basis. The total amount of observations per institutions is 41, which is sufficient for observing trends in the data.

The question regarding institutional trust asks: How much trust do you have in the following institution? After which a list of institutions is presented and the respondents are given the option to answer using a scale that ranges from 0 (lowest) to 10 (highest). After this information is collected, the arithmetic mean for each month is provided as the resulting trust in the given institution. Consulta Mitofsky considers a ranking from 8 to 10 to be high, between 6 and 7.9 to be medium, and from 0 to 5.9 to be low. The use of this particular public opinion data stems from the fact that it is the only publicly available data on institutional trust in Mexico that spans over more than 4 years and includes a variety of the country’s institutions.

The institutions selected for this paper can be divided into three categories: state institutions, state-related institutions, and non-state institutions. The reason for selecting more than just state institutions is to evaluate whether there are differences between these categories that would make the case of state institutions more noteworthy. The state institutions selected are the President, Senators, Deputies, the Supreme Court, the Army, and the Police. State-related institutions include the Federal Electoral
Institute (IFE) and the Political Parties. Business and the Media constitute the last category. All the available data on trust in these institutions were inserted into the statistical analysis program *EViews*. This institutional trust dataset is the basis for testing the three hypotheses proposed in the previous section.

**First and Third Hypotheses: Regression Model**

The method for testing the first and third hypothesis was an OLS linear regression model. The reason for not including the second hypothesis in this analysis is because it is impossible to measure events that mark the proper or improper performance of institutions through time. On the other hand, the first and third hypotheses deal with measurable phenomena.

Firstly, material-well being can be measured through GDP, HDI, and other indicators. This study uses GDP because it is the available indicator with the highest frequency (quarterly data). At most, the other indicators were available on a yearly basis. Such lack of data points would have weakened the analysis, given that the monthly institutional trust data only spans from April 2004 to January 2011 with many gaps in the first months. Secondly, perceptions of economic security can be measured through the Consumer Confidence Index (CCI). The CCI is comprised of five partial indicators: two relate to the current and expected economic situation of the household, the other two attend the current and expected economic situation of the country, and the fifth reflects the willingness of people to buy durable goods at the present time. This indicator is estimated by the Mexican central bank (Banco de México) and the National Institute of Geography and Statistics (INEGI) based on the results of a national survey. Fortunately, the frequency of this data is monthly. The datasets ranging from April 2004 to January 2011 for both GDP and CCI were inserted into *EViews*, and the following OLS regression was run for each institution (*i*):

\[
TRUST_{it} = c + \beta_1 GDP_t + \beta_2 CCI_t + \varepsilon_t
\]

There is no issue with multicollinearity in this regression because CCI and GDP are not highly correlated. In fact, the correlation between these independent variables is -0.13, which is quite small and surprisingly negative.

According to the first hypothesis (or the naïve materialist argument), the coefficient for GDP (\(\beta_1\)) should be negative and significant for trust in state institutions. This is because increasing material well-being is expected to refine the conditions for trusting institutions. On the other hand, the third hypothesis (or the encompassing security argument) expects the coefficient for CCI (\(\beta_2\)) to be positive and significant, given that a decrease in economic security makes people more risk averse in terms of trust.
Second Hypothesis: Piecewise-Trend-Break

The method for testing the second hypothesis is more complicated than a simple OLS linear regression. This method involves selecting a simplified model that best describes the data in order to view changes in trend. Changes in the trend for trust in institutions can then be coupled with events regarding the proper or improper performance of institutions’ respective functions. I call the method proposed here “piecewise-trend-break.”

For selecting the most appropriate model, the trust data for each institution was analyzed as a whole. Linear and quadratic trend models were fitted onto every institution’s trust data. For reasons specific to the nature of the data, there was no evidence for the possibility of an exponential trend or for any seasonal or cyclical variations. Afterwards, the model with the lowest Schwarz Information Criterion (SIC) was selected. If the trend that fits the data best revealed no change in the direction of trust (i.e. increasing vs. decreasing), no additional steps were taken. This is always the case with linear models, but only occasionally for quadratic models. If the data followed a quadratic trend that showed a change in the direction of trust, the data was broken into no more than two subsamples. In other words, when the fitted trends looked like an inverted U, the maximum was used as the point for dividing the data. Finally, for those institutions where a separation of the sample was necessary, the first and the second step were repeated on each subsample until the entire sample data for each institution was modeled in a piecewise fashion.

This methodology was selected because it allowed for a reasonable, non-idiosyncratic way of analyzing changes in institutional trust. The inherent smooth curve of the quadratic model is appropriate for forecasting purposes since it takes into account the entire sample in a single model. However, the objective of this paper is to identify the determinants of changes in trust in state institutions, not to forecast their future levels. Therefore, it is more reasonable to identify places where the trend breaks. Curves cannot identify these ruptures, but lines can. On the other hand, it would not make sense to analyze every single change in trust that occurs from one observation to the next despite the fact that these are linear. Short-term variations are most likely random and are reflected in the non-zero variance of the sample. Most importantly, an attempt to explain these changes would require utilizing many historical idiosyncrasies. Such an idiosyncratic approach loses analytical power in a manner analogous to data mining: the model fits the noise instead of the signal.

In the end, the objective is to find those linear breaks that cause more than short-term change. In other words, the dates in which the signs of the coefficients in linear trends change indicate a variation in the medium-term trend in institutional trust. Admittedly, this methodology only accounts
for changes in the direction of the trend in institutional trust – increasing, decreasing, or plateau – and exclude changes in intensity. Nevertheless, this information is sufficient for shedding light on the plausibility of the second hypothesis (or the functional argument). According to this hypothesis, there must be a significant event at every trend break such that if the event demonstrates that the institution is not recurring to its constitutive norm, the trend becomes negative, and vice-versa.

Data Description

Regression Model

The coefficients, their respective significance levels, and the R-squared of the regression ran on each institution are summarized in the following table:

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>GDP $t \beta_1$</th>
<th>CCI $\beta_2$</th>
<th>R-SQUARED $R^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STATE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>President</td>
<td>0.302724*** (+)</td>
<td>-0.002437</td>
<td>0.221662 (22%)</td>
</tr>
<tr>
<td>Senators</td>
<td>0.455490*** (+)</td>
<td>-0.008111* (–)</td>
<td>0.395194 (40%)</td>
</tr>
<tr>
<td>Deputies</td>
<td>0.573082*** (+)</td>
<td>-0.003211</td>
<td>0.334416 (33%)</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>0.465727*** (+)</td>
<td>-0.014616*** (–)</td>
<td>0.625113 (63%)</td>
</tr>
<tr>
<td>Army</td>
<td>0.131636** (+)</td>
<td>0.001496</td>
<td>0.099076 (10%)</td>
</tr>
<tr>
<td>Police</td>
<td>0.424061*** (+)</td>
<td>-0.003175</td>
<td>0.285021 (28%)</td>
</tr>
<tr>
<td><strong>STATE-RELATED</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Parties</td>
<td>0.109534</td>
<td>-0.008032* (–)</td>
<td>0.082288 (8%)</td>
</tr>
<tr>
<td>IFE</td>
<td>0.062633</td>
<td>0.003139* (+)</td>
<td>0.084488 (8%)</td>
</tr>
<tr>
<td><strong>NON-STATE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business</td>
<td>0.734690*** (+)</td>
<td>-0.015732*** (–)</td>
<td>0.622258 (62%)</td>
</tr>
<tr>
<td>Media</td>
<td>0.324301*** (+)</td>
<td>-0.005730** (–)</td>
<td>0.475550 (48%)</td>
</tr>
</tbody>
</table>

* = 10% significance, ** = 5% significance, *** = 1% significance

The coefficient for GDP is positive and highly significant for all state and non-state institutions. The GDP dataset is measured in trillions of pesos, which is approximately tens of billions of dollars. In Mexico, this data is in billones de pesos. Therefore, an increase of approximately ten billion dollars...
in Mexican GDP leads to a 0.30 increase in trust in the President; 0.46 for Senators; 0.57 in Deputies; 0.47 in the Supreme Court; 0.13 in the Army; 0.42 in the Police; 0.73 in Business; and 0.32 in the Media. In the case of state-related institutions, the coefficients for trust in the Political Parties and the IFE were also positive but not significant.

The results of the CCI are mixed. For non-state institutions, the coefficient for CCI is negative and highly significant. For state-related institutions, the coefficient is significant but positive in the case of the IFE and negative for Political Parties. For state institutions, the coefficient is negative for both Senators and the Supreme Court, but has high significance only in the latter. Lastly, the other state institutions have a non-significant, negative coefficient for CCI, except for the Army, whose coefficient is positive. Moreover, it is hard to conceptualize exactly what a one-point change in the CCI means in concrete terms since it is meant to give economists an idea of how confidence in the economy has changed relative to other times.

In order to put into context how much the CCI changes from safe times to unsafe times, it is helpful to look at the maximum and the minimum of the dataset. The maximum occurs in March 2006 with a value of 112.55, while the minimum takes place in October 2009 with a value of 76.95. Therefore, CCI drops approximately 35.6 points from the economically most secure to the economically least secure period in the sample, making a one-point drop equivalent to 2.8% of the change. Consequently, dividing the coefficients by 0.028 reveals the effect of CCI on institutional trust when drastic changes in the perceptions of economic security occur. In other words, when perceptions of economic security change from extremely positive to extremely negative, trust in the Senators increases by 0.29; in the Supreme Court by 0.52; in the Political Parties by 0.29; in Business by 0.56; and in the Media by 0.20. Finally, trust in the IFE decreases by 0.11 when such a drastic decrease in the perceptions of economic security takes place.

The R-squared indicates what percentage of the variance in the dependent variable is explained by the independent variables. In other words, it reveals how much CCI and GDP explain trust in institution $i$. Normally, a good R-squared is above 80%. However, the dependent variable studied in this paper is not a typical economic variable. There are many non-measurable factors that could affect institutional trust. Moreover, given that only two independent variables are included, it would be quite impressive if these explained at least a third of the variation in institutional trust.

The R-squared values of the regressions are quite consistent. Non-state institutions hold high R-squared values, and so do three out of the six state institutions. The other three state institutions have decent R-squared values, while the state-related institutions score the lowest of all. The following table will help clarify the former:
It is unclear what other measurable independent variables exist that could contribute to institutional trust. Nevertheless, this is a powerful model because only two independent variables lead to relatively decent R-squared values in most of the cases.

Piecewise-Trend-Break

The graphs of the piecewise-trend-break method are located in Appendix E. All institutions begin with increasing linear or quadratic trends. Afterwards, the trust data stabilizes in a smaller range. This increase and stabilization in institutional trust is also clearly visible in the rough data graph on all institutions located in Appendix F. When these initially increasing trends end, there are three different options that may ensue: a drop followed by another increasing trend, a plateau, or a decreasing trend; a simple plateau; or a switch in trend. The defining characteristic of a drop is that the difference between the value previous to the break and the value that follows it is greater than 0.30. This helps to differentiate between the drop followed by a plateau and the simple plateau.

The months where the trend-breaks occur are coupled with relevant political events taking place on those same dates in order to see if a reputation problem may account for these changes. The summary of the results are stated concisely in the following table:
### Institutional Trust: The Case Study of Mexican State Institutions

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Institution</th>
<th>Change in Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 06-Jun 06</td>
<td><strong>Pre-election criticism:</strong> media criticized for biased election coverage</td>
<td>Media</td>
<td>Drop: 7.65 to 7.17 (0.48)</td>
</tr>
<tr>
<td>Jun 06-Aug 06</td>
<td><strong>Election controversy:</strong> allegations of electoral fraud</td>
<td>IFE</td>
<td>Drop: 7.54 to 7.10 (0.44)</td>
</tr>
<tr>
<td>Aug 06-Sep 06</td>
<td><strong>Election controversy resolved:</strong> no total recount awarded, Calderón wins the presidency</td>
<td>Senators, Deputies, Political Parties</td>
<td>Drop: 6.26 to 5.52 (0.74), Drop: 6.12 to 5.73 (0.39), Drop: 6.35 to 5.74 (0.61)</td>
</tr>
<tr>
<td>Feb 07-Mar 07</td>
<td><strong>Security problems:</strong> Army deployed in Northern states, corruption of Police emphasized</td>
<td>Army, Police</td>
<td>Trend: 0.02 to -0.01 (-0.03) Drop: 6.53 to 5.85 (0.68)</td>
</tr>
<tr>
<td>Feb 09-Mar 09</td>
<td>n/a</td>
<td>Supreme Court</td>
<td>Plateau: 6.94</td>
</tr>
<tr>
<td>Jul 09-Aug 09</td>
<td><strong>Elections:</strong> midterm elections results given</td>
<td>Political Parties</td>
<td>Drop: 6.08 to 5.75 (0.33)</td>
</tr>
<tr>
<td>Sep 09-Nov 09</td>
<td>n/a</td>
<td>President</td>
<td>Plateau: 6.72</td>
</tr>
</tbody>
</table>

The relevant events corresponded only to times when trust in the institution dropped or the trend switched sign. The following section analyzes the data presented and delves into the details of the events in the table in order to evaluate how they could have affected institutional trust.

## Data Analysis

### Developing Countries and the Materialist Argument

The regressions provide convincing evidence against the first hypothesis. The precise opposite of the materialist argument’s prediction occurred: increasing material well-being increased trust in state institutions, and vice-versa. The most obvious explanation for the collapse of this first hypothesis is that it is based on a naïve version of the materialist argument. Inglehart would point to cultural factors as the reason why
economic development in Mexico may not necessarily lead to a change in the country’s value system and consequently refine people’s conditions for trust (see footnote 8). But upon closer inspection, there may be a quite simple explanation for these results.

Despite being a member of the OECD, Mexico is still in many ways a developing country. As such, the starting point for material well-being is much lower than in developed countries. Assuming that the material well-being of everyone increases with GDP, a national government’s successful economic strategy would imply that the majority of people escape poverty. In this case, people may still rely heavily on the government for maintaining their newly achieved economic status. Consequently, their conditions for trusting institutions are not refined and people become more confident in the institutions they view as responsible for their material improvements. Moreover, the people would be thankful to the government and trust it for bringing them out of such dire conditions. However, this may not be the case in developed countries, where the majority of the population would move up from the middle class as material well-being increases. Indeed, the analysis presented here only contains evidence for the case of developing countries. Therefore – in developing countries such as Mexico – increasing indicators of material well-being lead to increasing trust in state institutions, and vice-versa. A closer look at the results from the regressions provides stronger support for this refined version of the first hypothesis.

All state institutions and non-state institutions have positive and significant coefficients for GDP, while state-related institutions only lack the significance. This evidence suggests that the state-related institutions included in the analysis are not viewed by Mexican citizens as being important factors in changing material well-being. The IFE organizes elections and the Political Parties participate in them. As the economic conditions of the country improve, it is unlikely that Mexicans will rely more on the IFE or the Political Parties. Even though political actors that enact economic change come from some party line and their electoral victories are decided by the IFE, these state-related institutions are not viewed by citizens as key economic players. On the other hand, the non-state institutions included in the analysis clearly contribute to GDP growth. Business is an obvious contributor to the economic prosperity of the country. It is the only institution that is significantly correlated to GDP data (0.70) and its coefficient for GDP is the largest out of all the institutions (0.73). Also, the Media in Mexico is dominated by big business. This is particularly clear in television, where two companies, Televisa and TV Azteca, control almost 100% of the Mexican TV broadcasting market. The owners of these media networks, Emilio Azcárraga and Ricardo Salinas Pliego respectively, are powerful members of the Mexican business community. Another piece of evidence that suggests the tight relationship between business and the Mexican media is that the correlation in trust

Lorenzo Felipe Lagos
between these two institutions is remarkably high and positive (0.87).

If the public’s view of an institution as a contributor to economic prosperity determines whether their institutional trust positively depends on GDP, certain doubts exists regarding the results for some state institutions. While the President, the Senators, and the Deputies enact reforms to improve the country’s economy, the Supreme Court, the Army, and the Police do not directly contribute to the economy. The first deals with judicial matters, while the last two focus on security issues. The only defense for these results is that reliance on all state institutions increases as the country is developing. A more prosperous country requires a solid judicial system and a safe environment. Thus, when material well-being increases in developing countries, people confer more trust upon those institutions that will further this development. As for the case of the IFE and the Political Parties, it is unclear whether prosperity is directly linked to electoral matters. Therefore, one of two conditions must be satisfied in order for an institution’s trust to increase as material well-being increases in a developing country: 1) the institution is a state institution; or 2) the public views this institution as a main contributor to economic prosperity.

Economic Security

The regressions also provide evidence against the third hypothesis: decreasing indicators of economic security lead to decreasing trust in none of the state institutions. The coefficient for CCI was only positive for the Army, but it was not significant. In all the other state institutions, the coefficient was negative and only significant for the Senators and the Supreme Court. Thus, trust in these two institutions decreases as perceptions of economic security increase. This is suggestive evidence against the assertion that people become more risk averse in trusting a state institution as their economic safety weakens. Moreover, these mixed results might be a reflection of the fact that this hypothesis is based on the encompassing security argument. In other words, the third hypothesis is derived from an argument that assumes trust in state institutions is included in generalized trust. Given that the coefficients for all state institutions were not the same sign may indicate that trust in state institutions is not necessarily a category that is encompassed by generalized trust. Instead, each state institution may have its own merits for being included or excluded from this broader category. A closer analysis of the results from all the regressions provides further insights to the previous arguments.

All the state-related and non-state institutions have significant coefficients for CCI and all of them are negative, except for trust in the IFE which is positive and significant. Indeed, the case of the IFE is special, probably because of its autonomy. It is the only institution whose trust is not significantly correlated to that of any other institution. Trust in the IFE is
also small when extreme changes in economic security perception take place (0.11). On the other hand, trust in Business attains the greatest effect (0.56), while the Supreme Court follows closely in second (0.52). This may seem counterintuitive: why would a person whose economic safety is at stake trust Business, the Media, Political Parties, and the Supreme Court more, but at the same time trust the IFE less?

There are two possible answers to this question. The first possible answer is that people who fear they might lose everything will want to gain protection from some state institutions and political parties, secure jobs from non-state institutions, and ensure favorable results in elections. For example, a person will confer more trust to Business and the Media when the economic future is uncertain because these are primary actors in ensuring that jobs in the economy are created. Moreover, trust in Political Parties, the Supreme Court, and the Senators also increases as this person seeks political protection. Finally, this person also holds certain beliefs about how his favorable economic situation could be maintained, and therefore will not trust the IFE in fear that the will of the people does not coincide with his/her preferences. Nevertheless, this explanation is quite a stretch and there is not enough evidence to support it. It does not explain why the coefficients of trust in other state institutions are not significant. Moreover, it contradicts the previous section’s explanation that maintained that the IFE and Political Parties are not linked to economic prosperity. The second possible answer to these results pertains to the inclusion vs. exclusion debate between trust in state institutions and generalized trust. Since the IFE organizes elections, it supports relationships among people as democratic citizens. As such, the IFE is an institution that creates trust among strangers, which is precisely the definition of generalized trust. Given that the original security argument addresses generalized trust, it is reasonable for the regression on trust in the IFE to support this argument. Nonetheless, this second explanation does not clarify why trust in Business, the Media, Political Parties, and the Supreme Court have negative coefficients for CCI. In the end, although it is certain that the evidence presented here does not support the encompassing security argument, the results are too mixed to ascertain which other argument they would support.

The previous analysis may cast doubts on the validity of the regressions as a whole. Yet while the regressions have their limitations, they still maintain strong explanatory power. One clear limitation is that the data spans around 7 years, making it impossible to make long-term analyses. Even though this might have affected the results regarding CCI, the fact that the results for GDP are remarkably consistent strengthens the support for the refined version of the first hypothesis. Furthermore, the R-squared values of the regressions are not ideal, meaning that many other factors affect institutional trust. Nonetheless, none of the state institutions fall under
the “low R²” category. Indeed, those in the middle category are the state institutions in charge of security issues and the President – institutions with high political visibility whose trust is consequently affected by more factors than GDP and CCI. The converse argument applies to the Supreme Court. Given its low political visibility, fewer factors affect the trust that society confers upon this state institution, leading to the highest R-squared value when only GDP and CCI are included in the regression. Finally, even though the regression analysis has not illustrated all the factors that affect trust in state institution, the evidence sheds light on the validity of two possible determinants of institutional trust found in the literature. Therefore, the case study of Mexico supports the idea that increases in material well-being lead to increases in trust in state institutions and that changes in perceptions of economic security have mixed results.

Democratization and Reputation

The general graph of institutional trust in Mexico shows that trust increases considerably from April 2004 until around mid-2006, where the values stabilize within a small range. A possible reason for seeing such trends in trust in state institutions may be due to Mexico’s democratizing process. After almost 70 years of single-party rule by the Revolutionary Institutional Party (PRI), Vicente Fox from the opposing National Action Party (PAN) was elected president in 2000. The democratic transition was gradual and built up from the local level: it moved from municipalities to states, to the chambers of Congress, and finally to the presidency (De Remes 177). Fox’s election may have caused Mexican citizens to begin to trust these state institutions more. The promise of political inclusion of every citizen and accountability by the government might well account for the increasing trend. However, this is simply speculation, especially since there is no point of comparison given that trust in state-related and non-state institutions also experienced the same increase during this period. Moreover, it is unclear what caused the stabilization of trust within a small range somewhere around mid-2006. On one hand, some may argue that Mexico’s democratization took a step backwards in the 2006 presidential elections. After an extremely tight race, Felipe Calderón from the right-leaning PAN beat Andrés Manuel López Obrador from the left-leaning Party of the Democratic Revolution (PRD) with 35.89% of the popular vote against 35.33%. Mr. Obrador and his followers demanded a total recount and laid claims of electoral fraud. Although this matter is still murky, those who believe that fraud occurred have good reason to stop trusting state institutions. On the other hand, trust in state institutions cannot increase forever. It is only logical that the initially increasing trends stabilized after some time. This view is further supported by the fact that state-related and non-state institutions also stabilized within a smaller range around the same period.
The piecewise-trend-break method provides clearer insight into specific political events and how these changed trust in state institutions. Most importantly, it provides strong evidence for the second hypothesis: events that mark the failure of state institutions to perform according to their proper function lead to decreasing trust in state institutions, and vice-versa. Moreover, the evidence presented by the piecewise-trend-break method also supports this functional argument with regards to all institutions studied in this paper – not just state institutions. In other words, when an institution does not recur to its constitutive norm, people stop trusting it in the short-term.

The events surrounding the July 2, 2006 presidential elections caused decreases in trust in several institutions. In that year, trust in the Media dropped 0.48 points from May to June, trust in the IFE dropped 0.44 points from June to July, and trust in the Senators, the Deputies, and Political Parties dropped 0.74, 0.39, and 0.61 respectively from August to September. Firstly, the Mexican media was heavily criticized for the amount of airtime it gave Mr. Calderón as opposed to Mr. Obrador. An important aspect of a trustworthy democratic system is the fair dissemination of information. When it became clear to many that the Media was not fulfilling its democratic responsibility, its trust fell considerably. Secondly, the IFE became the center of attention regarding the possibility of electoral fraud and the demand for a total recount of the votes. Given that the credibility of the IFE was put in doubt and that its reputation was tainted through these events, Mexican citizens reacted by trusting it less. Finally, the political actors that were on the ground discussing and fighting for the resolution of this electoral controversy were the Senators, the Deputies, and the Political Parties. Once it was decided in August that no total recount would be awarded, those who were dissatisfied with the resolution stopped conferring trust to the institutions they depended on. Therefore, when institutions do not do as expected, they suffer the consequences.

That data also shows that Political Parties suffer a similar fate after every election. The piecewise-trend-break method reveals a 0.33 point drop in trust in the Political Parties right after the July 2009 midterm elections as well. In fact, trust in this state-related institution peaks as election time approaches, but suffers from sharp decreases right after the electoral results are announced. This evidence may support the converse of the second hypothesis: as an institution performs according to its proper function, people trust it more. According to this functional argument, these electoral peaks occur because parties are reaching their base and building their constituencies as they campaign. This link between the people and their representatives tends to disappear once elections are over, especially in young democracies. Therefore, as long as institutions perform their appropriate function, their institutional trust increases. Another possible explanation for
these peaks may be attributed to the visibility that Political Parties obtain during electoral periods. However, this explanation is weakened by the fact that other institutions that receive significant media attention during elections, including the IFE, do not have these peaks.

The fight against international organized crime has also taken its toll in terms of institutional trust. The slope for trust in the Army decreased by -0.03, while trust in the Police dropped 0.68 points from February to March 2007. The Army has been one of the most trusted institutions in Mexico.\textsuperscript{19} However, its primary function in public life was to provide aid during natural catastrophes. After President Calderón decided to take on the drug cartels, the Army was deployed in several states – starting with Michoacán in December 2006 – because the municipal and state police forces were deemed too corrupt to combat the drug cartels effectively. The amount of political capital the President invested in the Army is reflected in the fact that the trust in the Army data is significantly correlated to that of the President (0.74). After the initial deployment, more Army troops have been deployed and the police forces have been reformed. Both institutions suffered for different reasons. On one hand, the Police were already corrupt. However, it became evident that it could not perform its function as violence escalated. This indicates that there actually has to be a visible problem that affects public life, rather than just a hidden structural issue, in order to see a decrease in institutional trust. On the other hand, the Army faced the problem of a change in function. Given the violent response of the drug cartels and the difficulty in adapting to the duty of ensuring public security, the trend in the Army’s institutional trust became negative. This suggests that the problem of recurring to one’s constitutive norm is not only an issue of structure and performance, but also a political issue since this norm can be altered by the whims of the executive and legislative powers.

The evidence presented by the piecewise-trend-break method certainly has its limits. Firstly, explanations for drops in institutional trust are the only ones taken into account. Only the speculative argument for democratic consolidation and the case of trust in Political Parties provide evidence regarding increases in trust as institutions recur to their respective constitutive norms. Secondly, the piecewise-trend-break method does not account for non-events. There may be other important political events that were ignored simply because they did not fall around the dates where breaks in the trend occurred. Finally, the analysis only explains short-term changes in institutional trust. In other words, the insights brought by the functional argument may lose significance with a database that covers a longer period of time. However, the analysis still holds value despite these limitations. Firstly, negative events have a sharper and more defining moment for institutional trust than do positive events. Secondly, the short-term nature of these explanations reveals that human beings may also have a short-term
memory in terms of institutional reputation. The case of trust in Political Parties provides the best example for this. Finally, these explanations also allow for the possibility of improvement through policy. By changing the structure of an institution and fighting corruption, it is more likely that an institution can recur to its constitutive norm. However, as the case of the Army suggests, politicians must be careful when they seek to alter the norm to which an institution has to recur.

Conclusion

The arguments defended by the case of Mexican state institutions are twofold. Firstly, events that taint an institution for not performing according to its prescribed function lead to sharp declines in trust. The evidence for this argument is provided by the piecewise-trend-break method, which reveals that all the dates when institutions experienced a drop in trust match political events that mark the failure of the institution to recur to its constitutive norm. Consequently, structural reforms that ensure institutions recur to their constitutive norm may help increase trust in state institutions. Nevertheless, embedded corruption and chronic violence make it harder for some institutions to perform properly even if appropriately structured. Furthermore, it is more probable for trust in an institution to breakdown if constitutive norms change. This may not be a common occurrence, but the example of the Mexican Army shows that certain institutions can experience a shift with respect to their function. Moreover, this decline is more probable when the capability of an institution to perform such a function is limited. Therefore, resources that enhance capabilities are equally relevant to institutional trust. All in all, when an institution does not perform as expected and the public experiences the negative effects of this poor performance, institutions suffer the consequences in terms of the trust.

The second argument supported by the case of Mexico is that GDP growth causes an increase in trust in state institutions, and vice-versa. The evidence for this argument is provided by the regression analysis, which reveals that the coefficient for GDP in all the state institution regressions is positive and highly significant. Therefore, trust in state institutions is not all about the institutions themselves; the economy plays an important role as well. The analysis of the results suggested that the positive effect of GDP growth on institutional trust may only apply to developing countries because the majority of people would be escaping poverty and consequently relying more on the government. It would be interesting to conduct a similar study that focuses on a developed country, in order to take into account the differences between moving up from the middle class and escaping poverty. As opposed to the first argument defended by the case study of Mexico, this second argument does not apply to all institutions. Only state institutions
and institutions that the public regards as main contributors to economic prosperity experience such an effect. Trust in Political Parties and the IFE was not significantly affected by changes in GDP. Finally, the regression analysis revealed mixed results in terms of the effects of economic security concerns on trust in state institutions. These results do not indicate that the security argument for generalized trust should be rejected. Instead, the results suggest that there should be more research focused on determining which specific institutional trust should be included as a part of generalized trust. The analysis in this paper provided some evidence for the IFE because of the relationships it facilitates between strangers as democratic citizens. Perhaps a cross-sectional study that pairs up institutions with similar supporting functions would shed more light on this issue.

The arguments supported by this study also have important implications for the debate on democracy and trust in state institutions. In general, it seems that trust in state institutions is vital for young democracies such as Mexico. On one hand, this study provided supporting evidence for the functional argument, which views decreasing trust in state institutions unfavorably since this would imply that democratic institutions are not functioning properly. On the other hand, the case of Mexico also provides strong evidence against the materialist argument, which views decreasing trust in state institutions favorably because this would imply that people have internalized post-materialist values. Instead, GDP growth leads to increases in trust in state institutions. Therefore, democracies in developing countries may benefit when their economies perform well.

Reflecting back on the story about the driver and Operation Cleanup, it is clear that this paper only answers some of my initial questions. For example, if the state institution that is meant to provide public security fails to do so, trust in that institution will decrease. Consequently, it is worrying that the trend for trust in the Army has become slightly negative. Nevertheless, it remains unclear whether illegal organizations – such as the drug cartels – that perform these function, have gained trust from the population. I find this research topic fascinating, but it requires trust data measured at the local level and years of field research. Fortunately, the arguments defended by the case of Mexican state institutions provide further motivation for these ambitious research endeavors. Most importantly, the arguments indicate the importance of seeking high trust in state institutions and suggest the means to do so.
Appendix A: Institutional Trust Survey Sample Selection

Mexicans over 18 years of age that possess a voting card comprise the survey’s population. Three samples are taken every year and the survey is repeated for these samples every three months until the year ends. The sample selection consists of choosing fifty out of the more than 5,000 municipalities in the country at random. The probability of choosing a municipality is proportional to that of its population size. For each municipality, two electoral districts are chosen at random. Within this district, two random blocks are chosen. And from each block, five random households are selected. Only one member of each household is interviewed using a previously designed questionnaire. The sample size is 1,000 in all the months that this survey has been carried out.

TÉCNICA DE RECOLECCIÓN DE DATOS
El estudio fue llevado a cabo en viviendas particulares a través de entrevistas “cara a cara” utilizando como herramienta de recolección de datos un cuestionario, previamente estructurado mismo que es aplicado por personal calificado para esa labor (el cuestionario no es de autollenado).

MÉTODO DE ESTIMACIÓN DE LOS RESULTADOS
Los resultados presentados no son frecuencias simples, sino estimaciones basadas en la utilización de factores de expansión, calculados como el inverso de la probabilidad de selección de cada individuo en la muestra y corrección por no-respuesta en cada sección seleccionada en muestra.

ERROR MÁXIMO Y CONFIANZA DE LAS PREGUNTAS ELECTORALES
Aunque cada porcentaje tiene su propio error asociado, el diseño de muestra garantiza que en las estimaciones nacionales al menos 95 de cada 100 veces, el error no sobrepasa el ±3.1 por ciento. En los estudios de opinión pública, además del error muestral, se debe considerar que pueden existir otros errores ocasionados por el fraseo de las preguntas y las incidencias en el trabajo de campo.

Source: http://consulta.mx/

Appendix B: Consumer Confidence Index

La Encuesta Nacional sobre la Confianza del Consumidor (ENCO) se lleva a cabo durante los primeros veinte días de cada mes y tiene como base una muestra de 2,336 viviendas urbanas a nivel nacional, en las que se entrevista personalmente al informante, para el cual se requiere que al menos tenga 18 años de edad. La ENCO se recaba en 32 ciudades que comprenden a la totalidad de las entidades federativas del país y el Nivel de Confianza de sus resultados es de 90% con un error máximo esperado
del 15 por ciento. La información captada permite estimar el Índice de Confianza del Consumidor, el cual está constituido tanto por la opinión que el entrevistado tiene del presente (comparado con algún punto de referencia en el pasado) como por su opinión de la situación futura (comparada con la presente).

Este es un índice con base igual a 100 en enero de 2003, que resulta de promediar cinco indicadores parciales de los cuales dos hacen referencia a la situación económica actual y esperada del hogar entrevistado, otros dos atienden a la situación económica actual y esperada del país y el quinto índice refleja qué tan propicio consideran el momento actual para la compra de bienes de consumo duradero. De esta manera, cada uno de los indicadores parciales que integran el Índice de Confianza del Consumidor resulta del promedio ponderado de los resultados expandidos de las respuestas a cada una de las siguientes preguntas:

a) Comparada con la situación económica que los miembros de este hogar tenían hace 12 meses ¿cómo cree que es su situación en este momento?
b) ¿Cómo considera usted que será la situación económica de los miembros de este hogar dentro de 12 meses respecto a la actual?
c) ¿Cómo considera usted la situación económica del país hoy en día comparada con la de hace 12 meses?
d) ¿Cómo considera usted que será la condición económica del país dentro de 12 meses respecto de la actual situación?
e) Comparando la situación económica actual con la de hace un año ¿cómo considera en el momento actual las posibilidades de que usted o alguno de los integrantes de este hogar realice compras tales como muebles, televisor, lavadora, otros aparatos electrodomésticos, etcétera?

En cada una de las cuatro primeras preguntas los entrevistados tienen cinco opciones de respuesta: mucho mejor, mejor, igual, peor y mucho peor. En la quinta pregunta las opciones son: mayores, iguales y menores. Los ponderadores utilizados para cada opción de respuesta son los siguientes:

Opción de respuesta Ponderador
Mucho mejor o mayores 1.00
Mejor 0.75
Igual 0.50
Peor 0.25
Mucho peor o menores 0.00

Es importante destacar que la gran mayoría de las series económicas se ven afectadas por factores estacionales. Éstos son efectos periódicos que se repiten cada año y cuyas causas pueden considerarse ajenas a la naturaleza económica de las series, como son las festividades, el hecho de que algunos meses tienen más días que otros, los
periodos de vacaciones escolares, el efecto del clima en las diferentes estaciones del año, y otras fluctuaciones estacionales como, por ejemplo, la elevada producción de juguetes en los meses previos a la Navidad provocada por la expectativa de mayores ventas en diciembre.

En este sentido, la desestacionalización o ajuste estacional de series económicas consiste en remover estas influencias intra-anales periódicas, debido a que su presencia dificulta diagnosticar o describir el comportamiento de una serie económica al no poder comparar adecuadamente un determinado mes con el inmediato anterior. Analizar la serie desestacionalizada ayuda a realizar un mejor diagnóstico y pronóstico de la evolución de la misma, ya que facilita la identificación de la posible dirección de los movimientos que pudiera tener la variable en cuestión, en el corto plazo. Cabe señalar que la serie desestacionalizada del Índice de Confianza del Consumidor se calcula de manera independiente a la de sus componentes.

Source: www.banxico.org.mx/

Appendix C: Independent Variables in Regression Model

![Gross Domestic Product Graph]

---

Lorenzo Felipe Lagos
Appendix D: Correlations

<table>
<thead>
<tr>
<th></th>
<th>PRESIDENT</th>
<th>SENATORS</th>
<th>DEPUTIES</th>
<th>SUPRCOURT</th>
<th>ARMY</th>
<th>POLICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRESIDENT</td>
<td>1.000000</td>
<td>0.813808</td>
<td>0.854844</td>
<td>0.747192</td>
<td>0.737515</td>
<td>0.815137</td>
</tr>
<tr>
<td>SENATORS</td>
<td>0.813808</td>
<td>1.000000</td>
<td>0.961632</td>
<td>0.899694</td>
<td>0.406340</td>
<td>0.841706</td>
</tr>
<tr>
<td>DEPUTIES</td>
<td>0.854844</td>
<td>0.961632</td>
<td>1.000000</td>
<td>0.839641</td>
<td>0.509069</td>
<td>0.852708</td>
</tr>
<tr>
<td>SUPRCOURT</td>
<td>0.747192</td>
<td>0.899694</td>
<td>0.839641</td>
<td>1.000000</td>
<td>0.427503</td>
<td>0.790066</td>
</tr>
<tr>
<td>ARMY</td>
<td>0.737515</td>
<td>0.406340</td>
<td>0.509069</td>
<td>0.427503</td>
<td>1.000000</td>
<td>0.594069</td>
</tr>
<tr>
<td>POLICE</td>
<td>0.815137</td>
<td>0.841706</td>
<td>0.852708</td>
<td>0.790066</td>
<td>0.594069</td>
<td>1.000000</td>
</tr>
<tr>
<td>PARTIES</td>
<td>0.702211</td>
<td>0.845271</td>
<td>0.834255</td>
<td>0.666906</td>
<td>0.336935</td>
<td>0.788376</td>
</tr>
<tr>
<td>IFE</td>
<td>0.569866</td>
<td>0.327124</td>
<td>0.356830</td>
<td>0.222216</td>
<td>0.560564</td>
<td>0.343427</td>
</tr>
<tr>
<td>BUSINESS</td>
<td>0.731807</td>
<td>0.911222</td>
<td>0.890104</td>
<td>0.909123</td>
<td>0.303362</td>
<td>0.718524</td>
</tr>
<tr>
<td>MEDIA</td>
<td>0.799359</td>
<td>0.813653</td>
<td>0.796111</td>
<td>0.808729</td>
<td>0.466112</td>
<td>0.712308</td>
</tr>
<tr>
<td>GDP</td>
<td>0.457236</td>
<td>0.568730</td>
<td>0.559691</td>
<td>0.648416</td>
<td>0.361946</td>
<td>0.515214</td>
</tr>
<tr>
<td>CCI</td>
<td>-0.155009</td>
<td>-0.324289</td>
<td>-0.169342</td>
<td>-0.529955</td>
<td>0.217405</td>
<td>-0.175230</td>
</tr>
</tbody>
</table>
Correlations above 0.7 are marked in bold

Appendix E: Fitted Piecewise Trends

Trust in the President

<table>
<thead>
<tr>
<th></th>
<th>PARTIES</th>
<th>IFE</th>
<th>BUSINESS</th>
<th>MEDIA</th>
<th>GDP</th>
<th>CCI</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRESIDENT</td>
<td>0.702211</td>
<td>0.569866</td>
<td>0.731807</td>
<td>0.799359</td>
<td>0.457236</td>
<td>-0.155009</td>
</tr>
<tr>
<td>SENATORS</td>
<td>0.845271</td>
<td>0.327124</td>
<td>0.911222</td>
<td>0.813653</td>
<td>0.568730</td>
<td>-0.324289</td>
</tr>
<tr>
<td>DEPUTIES</td>
<td>0.834255</td>
<td>0.356830</td>
<td>0.890104</td>
<td>0.796111</td>
<td>0.559691</td>
<td>-0.169342</td>
</tr>
<tr>
<td>SUPRCOURT</td>
<td>0.666906</td>
<td>0.222216</td>
<td>0.909123</td>
<td>0.808729</td>
<td>0.648416</td>
<td>-0.529955</td>
</tr>
<tr>
<td>ARMY</td>
<td>0.336935</td>
<td>0.560564</td>
<td>0.303362</td>
<td>0.466112</td>
<td>0.361946</td>
<td>0.217405</td>
</tr>
<tr>
<td>POLICE</td>
<td>0.788376</td>
<td>0.343427</td>
<td>0.718524</td>
<td>0.712308</td>
<td>0.515214</td>
<td>-0.175230</td>
</tr>
<tr>
<td>PARTIES</td>
<td>1.000000</td>
<td>0.452203</td>
<td>0.657464</td>
<td>0.639471</td>
<td>0.335715</td>
<td>-0.133867</td>
</tr>
<tr>
<td>IFE</td>
<td>0.452203</td>
<td>1.000000</td>
<td>0.176429</td>
<td>0.481517</td>
<td>0.096089</td>
<td>0.256614</td>
</tr>
<tr>
<td>BUSINESS</td>
<td>0.657464</td>
<td>0.176429</td>
<td>1.000000</td>
<td>0.866916</td>
<td>0.703746</td>
<td>-0.437738</td>
</tr>
<tr>
<td>MEDIA</td>
<td>0.639471</td>
<td>0.481517</td>
<td>0.866916</td>
<td>1.000000</td>
<td>0.637440</td>
<td>-0.339508</td>
</tr>
<tr>
<td>GDP</td>
<td>0.335715</td>
<td>0.096089</td>
<td>0.703746</td>
<td>0.637440</td>
<td>1.000000</td>
<td>-0.126358</td>
</tr>
<tr>
<td>CCI</td>
<td>-0.133867</td>
<td>0.256614</td>
<td>-0.437738</td>
<td>-0.339508</td>
<td>-0.126358</td>
<td>1.000000</td>
</tr>
</tbody>
</table>
Institutional Trust: The Case Study of Mexican State Institutions

Trust in the Senators

Trust in the Deputies

Trend

Senators

Trend

Deputies
Trust in the Police

Trust in the Political Parties
Appendix F: Institutional Trust in Mexico
Appendix G: Rankings

<table>
<thead>
<tr>
<th>Ranking</th>
<th>April 2006</th>
<th>January 2011</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>Army 7.5</td>
<td>Army 7.7</td>
<td>Deputies 35.7</td>
</tr>
<tr>
<td>2nd</td>
<td>Media 7.0</td>
<td>Media 7.6</td>
<td>Business 30.2</td>
</tr>
<tr>
<td>3rd</td>
<td>IFE and Supreme Court 6.7</td>
<td>IFE and Supreme Court 7</td>
<td>Senators 27.7</td>
</tr>
<tr>
<td>4th</td>
<td>President 6.1</td>
<td>Business 6.9</td>
<td>Supreme Court 22.8</td>
</tr>
<tr>
<td>5th</td>
<td>Supreme Court 5.7</td>
<td>President 6.8</td>
<td>Political Parties 21.3</td>
</tr>
<tr>
<td>6th</td>
<td>Business 5.3</td>
<td>Senators 6.0</td>
<td>Police 16</td>
</tr>
<tr>
<td>7th</td>
<td>Police 5</td>
<td>Police 5.8</td>
<td>President 11.5</td>
</tr>
<tr>
<td>8th</td>
<td>Political Parties and Senators 4.7</td>
<td>Political Parties and Deputies 5.7</td>
<td>Media 8.6</td>
</tr>
<tr>
<td>9th</td>
<td>Deputies 4.2</td>
<td></td>
<td>IFE 4.5</td>
</tr>
<tr>
<td>10th</td>
<td></td>
<td></td>
<td>Army 2.7</td>
</tr>
</tbody>
</table>

Endnotes

1. The encapsulated trust model does not deny that people trust institutions; it only states that this should not occur.

2. Unlike Hardin, Inglehart does believe that it is intelligible to trust an institution.

3. The term functional is used instead of functionalist in order to avoid confusion with structural functionalism.

4. Notice that Offe’s argument explains when things are trusted, while Hardin’s argument focuses on when they should be trusted. The non-normativity of the defense of institutional trust implies that the argument is easier to falsify with data.

5. Informal links refer to those ties where previous relationships have already been established, while formal links are those formed among agents that have had no previous relationship. For an institutionalist explanation of how these links are supported see Nichols 1999.
Putnam further draws the distinction between bonding trust (among kin) and binding trust (among people from different groups). See Putnam 2000.

Offe and Inglehart have conflicting rather than opposing views since Inglehart also believes that performance has an effect on institutional trust. “It seems inconceivable that governmental performance would not influence public opinion” (Inglehart, 294, 1997). Nevertheless, the stark differences between the materialist and the functional argument elaborated here remain valid.

This is certainly a naïve statement because economic development does not always produce changes in culture and social structure (Inglehart, 117).

This may be changing in Mexico since the democratic transition in 2000.

See Appendix A for more information on the sample selection

Deputies in Mexico are analogous to Representatives in the US; both comprise the Lower Chamber of Congress

The Instituto Federal Electoral is the autonomous institute that organizes federal elections in Mexico

See Appendix B for more information on how the CCI is estimated

From observing the graphs located in the Appendix C, it is interesting to note how CCI begins to drop before the 2007-2008 global economic crisis hits.

See Appendix D for the table on correlations

The SIC is used to select the model that best explains the data by applying a heavy penalty for degrees of freedom

The equivalent of trillion in English is billón in Spanish, while a billion in English is mil millones in Spanish

See Appendix F

See rankings in Appendix G

References


Veering Off the Abolitionist Path in America:
The Influence of the Ambiguously Written Constitution

Avinash Samarth

Abstract

In the 21st century, capital punishment in the United States stands as a peculiar institution. Despite widespread international movements for its abolition, and widespread expert agreement on its ills, the death penalty still persists in the United States. America remains the only country in the Western world to retain the death penalty today. We use it frequently, executing approximately 52 people per year, a rate comparable to both Saudi Arabia and Yemen. The question of why the United States still retains the death penalty has been the subject of debate for decades. Countless historical explanations have been posited, ranging from the religious to the political, from the racial, to the legal. The historical analysis of modern social institutions is important -- they help us understand why and how such institutions came to be normatively accepted and persistent in the world today. In this paper I will set out to examine why the United States retained the death penalty despite its initial suspension in 1972 by the Supreme Court under Furman v. Georgia. In doing so I will relate the narratives of two countries, the United States and the United Kingdom, and their experience with abolition in the post-World War II era.

Introduction

“For centuries the death penalty, often accompanied by barbarous refinements, has been trying to hold crime in check; yet crime persists.”

Albert Camus, Resistance, Rebellion, and Death

In the 21st century, capital punishment in the United States stands as a peculiar institution. Despite widespread international movements for its abolition, the death penalty still persists in the United States. America remains the only country in the Western world to retain the death penalty. We use it frequently, executing approximately fifty-two people per year, a rate comparable to that of Saudi Arabia and Yemen.

The question of why the United States still retains the death penalty has been the subject of debate for decades. Countless historical explanations have been posited, ranging from the religious to the political, from the
racial\textsuperscript{5} to the legal.\textsuperscript{6} The historical analysis of modern social institutions is important -- they help us understand why and how such institutions came to be normatively accepted and persistent in the world.

In this paper I will set out to examine why the United States retained the death penalty despite its initial suspension in 1972 by the Supreme Court under Furman v. Georgia. In doing so I will relate the narratives of two countries, the United States and the United Kingdom, and their experience with abolition in the post-World War II era.

Part I will detail the American narrative. I will capture the main abolitionist movement in the United States, which occurred between 1960 and 1976.

Part II will detail the British narrative. The major modern British abolitionist movement occurred slightly earlier than its American counterpart, from 1948 to 1969.

Part III will examine some potential explanations for the trajectories of these narratives. In doing so I will weigh the evidence for the impact of entrepreneurial political elite and public opinion, on the trajectory of abolition in both of these countries. Both explanations have very commonly been proposed and analyzed. The international comparison, moreover, will tease out parallels and/or contradictions to delineate what aspects of the American narrative can be explained with each.

Part IV will examine the impact of the textual, written Constitution of the United States in the persistence of the death penalty and will compare it to that of the British experience. The United States and the United Kingdom differ in terms of their approaches to constitutionality. The American Constitution is codified. Codified constitutions are written and contain textual provisions that are binding on all state institutions and practices. The United Kingdom, on the other hand, has no formal written constitution -- it is “uncodified.” Instead of a single document, the English constitution is derived from a number of sources, including the laws passed by Parliament and from precedents established by judicial decisions. As a result, Parliament is not answerable to a ‘higher law;’ rather it can “make or unmake any law on any subject whatsoever.”\textsuperscript{7} More importantly for this analysis, capital punishment in England was not understood through any ambiguous normative standard that derived from an authoritative text. This is not the case in America, where the Constitution, specifically the Eighth Amendment, provided such a standard with which to judge capital punishment.

From compiling these explanations together, I will conclude that although the influence of elite policy entrepreneurs and public opinion can, together, explain: (1) the initial movements for the abolition of capital punishment; and (2) why capital punishment became a prominent issue for British and American governments, it cannot adequately explain why America reneged on its abolition of the death penalty.
I will also conclude that there is a tenable case to be made of the influence of the ambiguously written Constitution in veering the United States off its abolitionist path and pushing the country towards a reinstatement. I will show that the reasons for this phenomenon were twofold. First, the incorporation of the Eighth Amendment into the capital punishment debate diverted time and attention away from the discussion on the efficacy of capital punishment itself, a debate that the abolitionists in England showed could be won with objective data. Second, the shift of the debate to the meaning of “cruel and unusual punishments” moved the discussion away from social scientific searches for measurable behavior patterns towards interpretive searches for the best understanding of normative concepts.

Part I: The American Narrative

1960s and Prior: The Declining American Death Penalty

The American 1960s were marked with strong movements towards civil and political rights, increased application of the social sciences to public policy, and a renewed interest in humanitarian public policies. In the wake of the Second World War, an increasing number of American politicians became concerned with preserving the “sanctity of human life” in both the political and legal realms.8 The attitude of the sixties was visibly present in its treatment of the death penalty. Throughout the decade, capital punishment met not only challenges to its legal codification, but also waned in frequency as a practice used by law enforcement, establishing two strong and identifiable paths towards abolition.

The first path edged towards the de jure abolition of capital punishment in the United States. Even in the earliest part of the decade, opponents attacked American capital punishment “on several fronts” with an unprecedented furor.9 Members of Congress introduced bills to end particular mandatory capital punishment statutes, and other members introduced bills that banned capital punishment in its entirety.

Movements also occurred on grassroots levels. Churches and religious groups put pressure on both state and federal governments to change existing death penalty statutes.10 Elite opinion had begun to move away from supporting the death penalty, and even public support of the death penalty, which had always been relatively strong, fell to its weakest points in this decade.11 While in 1953, 70 percent of the public supported capital punishment, by 1966 that figure was down to 42 percent.12 Within various state legislatures around the country, the death penalty lost even more battles. While Congress refused to ban the use of capital punishment, nine states (Alaska, Delaware, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, and West Virginia) completely and explicitly abolished capital punishment by 1967.
In some of these cases, state legislatures were the actors that orchestrated the end of their states’ practices of capital punishment. In 1963, for instance, the Michigan legislature amended its state constitution to prevent any possible attempts to reinstate the death penalty. Movements in other states were driven at the level of the citizenry. Oregon abolished the death penalty in 1964 by way of a public referendum, which passed with a large majority.

The second abolitionist path was towards a de facto abolition of capital punishment, emerging as law enforcement officials sought and applied the death penalty less often. For even though forty-one states still had capital punishment on the books by the end of the 1960s, the frequency with which executions were carried out was dropping drastically, and the practice as a whole was becoming increasingly rare in the United States. Kansas, for example, ended up observing a de facto moratorium on capital punishment in the early sixties, because its Republican governor “just [didn’t] like killing people.” Judges, prosecutors, and juries were all more reluctant to impose the death penalty than in the past, preferring to dole out life sentences instead. It appeared that even without significant abolitionist activity or grand legislative actions, the death penalty was falling out of favor throughout the country.

The data illustrate this trend. In 1960, fifty-seven people were executed in total across the United States. This was down enormously from the earlier years of the twentieth century, in which as many as nearly 200 people were executed annually. As the sixties wore on, the frequency of executions fell even further: in 1963, twenty-one individuals were executed, in 1964, fifteen individuals were executed, and in 1965, the number executed had fallen to only seven. By 1968, a de facto moratorium on capital punishment was in effect in the United States, and no persons were executed for the rest of the decade.

The 1960s Legislative Debates over the Death Penalty

As capital punishment came under increasing fire during the 1960s, members of the 86th, 87th, and 89th Congresses introduced several bills that were either partial steps towards or complete plans for its abolition. Although few of these proposals were ultimately enacted, they do provide valuable insight into the frame of the debates that occurred in the federal legislatures of the sixties regarding capital punishment. These debates reveal a strong focus on two points of interest: deterrence and morality.

The major federal bills regarding capital punishment are enumerated as follows, in chronological order. In 1960, Representative Abraham Muter (D-NY) introduced H.R. 870, a bill to ban all capital punishment on the federal level. In 1962, Senator Wayne Morse (R-OR) attempted twice to amend H.R. 5143 to prevent all executions in the District of Columbia. In 1966, Senator
Philip Hart (D-MI) introduced a bill in the Senate (S. 3646), joined by nine other senators, abolishing the death penalty for all federal crimes.25 Also in 1966, Representative Robert Kastenmeier (D-WI) introduced a bill to abolish the death penalty in its totality, under “all laws of the United States.”2627

The leading concern in discussing these bills, as Representative Multer pointed out in his testimony before the House Judiciary Committee in support of H.R. 870, was “whether we can justify the death penalty on the ground that it prevents or deters crime.”28 As bills, amendments, and arguments were levied against or for capital punishment, each side stressed the issue of deterrence. Concerning H.R. 870, Representative Multer immediately submitted into the record the results of Great Britain’s 1953 Royal Commission on Capital Punishment, which could find no link between the death penalty and murder rates.29 Senator Hart, when introducing S. 3646 in the Senate, focused the debate on what he called the “key question” -- whether or not “the death penalty deter[s] and prevent[s] similar crimes in the future.” He then published six statements of penologists, professors, and police officers, all testifying that it did not.30

Senator Morse similarly called upon a wealth of expert articles and testimony to justify what he viewed as the first of his main points regarding the death penalty, deterrence. He declared that:

“It is pretty well established by a great many research studies, and pretty well established in the authoritative writings of many of our criminologists and penologists, that many people labor under the misconception that capital punishment is an effective deterrent to crime. The research studies do not bear that out […].”31

Senator Morse “assure[d] everyone” that he would “urge that criminologists and penologists be called in to testify” on the issue of deterrence. In the meantime, he placed in the record two articles explicitly to “demonstrate how capital punishment has failed to deter crime.”32

But arguments over deterrence were not solely the concern of the death penalty abolitionists. The second concern that the congressmen consistently identified was the issue of morality. These arguments claimed either that the death penalty is wrong because ‘thou shalt not kill,’ or that the death penalty is legitimate because of ‘eye-for-an-eye’ principles of justice. Representative Multer argued, “There is a moral question involved in the justice of capital punishment” because “innocent men have been executed” and “life is sacred.”33 He explained, “Only God with his infinite wisdom and charity should wield that awful power [to execute].”34 Senator Morse similarly argued, “The taking of life is the prerogative of God, and not of men.”35 In the same speech, Morse summarized his points against the death penalty:
“First, I consider it to be immoral. Second, I do not consider it to be an effective deterrent to crime. Third, I think the time has come when we ought to set a good example of high civilization and make clear that we no longer resort to the eye-for-an-eye [...] jungle law.”

The Involvement of the Courts

Up until the end of the 1960s, the courts had nothing to say about the constitutionality of the death penalty itself. Not only had the death penalty been widely accepted throughout the nation’s history, its constitutionality per se had never been formally challenged in any court. In fact, the practice had been in wide use at the time the Constitution was written and implemented, and few people, if any, thought that the Constitution had any sort of implicit or explicit goal of abolishing capital punishment. Illustrative of this general understanding, neither litigants, nor the press, nor public interest groups had ever focused on the constitutionality of capital punishment itself in any substantial manner. Even the American Civil Liberties Union did not, at the time, consider capital punishment to be a civil rights issue. But as the transformative sixties continued, and as the Warren Court gave a friendlier ear to minority-held and liberal ideas, it appeared that the Court might finally be poised to wrestle with the issue of capital punishment on constitutional grounds.

The first steps toward court involvement regarding the constitutionality of the death penalty came not in the forms of amicus briefs or arguments from litigants or interest groups, but came instead from the ‘top-down’ -- from constitutional experts and a particularly interested Supreme Court Justice. In 1961, attorney Gerald Gottlieb published a prominent article in the University of Southern California Law Review contending that the American death penalty was of questionable constitutionality, specifically crafting his argument under the Eighth Amendment. Gottlieb was not concerned whether or not capital punishment deterred crime. Rather, he argued that the death penalty had become unconstitutional because of the “changed standards of decent conduct” in modern times. He linked these standards to the Eighth Amendment and its dynamic ban on “cruel and unusual punishments” by way of Trop v. Dulles, a case in which the Supreme Court held that the meaning of the Eighth Amendment was not very precise, and therefore “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” Gottlieb’s novel argument helped set the legal stage for the courts to address the question of capital punishment outside of the domain of the legislature, and within the domain of the Constitution.

Two years later, Supreme Court Justice Arthur Goldberg circulated a memorandum to the other eight Justices on the Supreme Court regarding six capital cases for which certiorari petitions were pending. Justice Goldberg
specifically discussed the constitutionality of the death penalty and the possible arguments with which the practice could be challenged. This type of memorandum was unusual for a Supreme Court Justice, and surprising to many on the Court, including Justice William Brennan, who observed, “in not one of the six cases had any party directly challenged the validity of capital punishment under the Eighth Amendment.”

Despite Justice Goldberg’s efforts, the six cases were not granted certiorari. This still gave him an opportunity to publish a dissenting opinion against the denial of certiorari, which he did for Rudolph v. Alabama. He suggested that the Court “should have heard the case to consider whether the Constitution permitted the imposition of death on a convicted rapist who has neither taken nor endangered human life.” Goldberg also made reference to Trop v. Dulles in the same manner as had Gottlieb two years prior, similarly asking whether or not the “imposition of the death penalty […] violate[s] ‘evolving standards of decency that mark the progress of [our] maturing society,” giving more credence to the possible link between the Eighth Amendment and capital punishment.

The dissenting opinion of Justice Goldberg awakened a strong interest in bringing the issue of capital punishment into the realm of litigation. Michael Meltsner, the assistant counsel to the NAACP Legal Defense Fund in the 1960s, wrote that before Goldberg’s dissent, “no one seriously considered making the enormous effort that would be required” to challenge the constitutionality of capital punishment. But although interest in challenging capital punishment in the courts had just been awakened, it was quickly and cleverly put into action. The NAACP’s Legal Defense Fund (often referred to as ‘The Fund’), joined in the late 1960s by the ACLU, was the leading group behind this effort.

By the mid-sixties, the movement for anti-capital punishment litigation had “gained impressive momentum.” Courts on both federal and state levels rendered decisions of one kind or another regarding capital punishment statutes. Until 1972, the Supreme Court frequently modified the procedures and methods by which capital punishment could be carried out in the United States.

In 1968 the Supreme Court rendered the first blow to capital punishment, delivered in their opinion of Witherspoon v. Illinois. Prosecutors at the time could reject potential jury members because of their conscientious qualms about capital punishment, and in the case of William C. Witherspoon, the prosecution had used this justification to dismiss half of the potential jury pool. The Supreme Court ruled that such a practice gave an unfair bias to the prosecution and deprived the defendant of the right to an impartial jury. While Witherspoon did not address capital punishment on the grounds of the Eighth Amendment, it did create a significant hurdle for prosecutors intent on seeking the death penalty in their cases. And because
of the significant blow to capital punishment Witherspoon was thought to represent, the decision announced to potential litigants that the Supreme Court held a favorable attitude toward criticisms of capital punishment.

Fund attorneys were relentless in attempting to get the Court to rule on the constitutional arguments they were advancing. In Boykin v. Alabama, the attorneys argued that the infrequent, arbitrary, and discriminatory use of the death penalty as a punishment for robbery was “cruel and unusual” per the Eighth Amendment. The Court, however, skipped over these arguments and remanded the case back to the state trial court on the ground that Boykin’s guilty pleas had not been entered properly (there was no record the Boykin had made them “voluntarily and understandingly”).

The next year, Fund lawyers made another attempt in Maxwell v. Bishop, challenging the practice of a unitary capital trial, in which a jury will rule on guilt and punishment simultaneously. The Court again ignored the constitutional arguments levied by the Fund lawyers and sent the case back to a state trial court on the ground that Witherspoon had been violated (Maxwell had been sentenced by a jury that prosecutors had filtered out so that it did not contain citizens who were wary of capital punishment).

In 1972, the Supreme Court heard the case of Furman v. Georgia and finally addressed the constitutional arguments presented by the Fund lawyers. The attorneys levied several arguments, both targeting capital punishment per se and Georgia’s capital punishment statute in particular. In the attorneys’ most heavy-hitting argument, they claimed that the “death penalty, as administered in the second half of the twentieth century, [is] inconsistent with evolving standards of decency.” Drawing upon Trop v. Dulles, the attorneys hoped to convince the Supreme Court Justices that capital punishment had become a violation of the Eighth Amendment to the Constitution.

But in contemplating these issues the Supreme Court found itself very divided. By the time its decision was handed down, there was no majority opinion in the case. Instead, each Justice had written his own opinion. There were five concurring opinions, written by Justices Brennan, Douglas, Marshall, Stewart, and White, and four dissenting opinions, written by Justices Burger, Blackmun, Powell, and Rehnquist.

The concurring Justices agreed that the death penalty statutes presented before the Court were “arbitrary and capricious” and therefore in violation of the Eighth Amendment’s prohibition on “cruel and unusual punishment.” Even so, there were large points of disagreement among these Justices. Only Justice Brennan and Justice Marshall regarded capital punishment per se as unconstitutional. The other three, Justices Douglas, Stewart, and White, limited their objections to the way in which capital punishment was meted out under Georgia’s death penalty statute (for reasons that also applied to thirty-nine other capital punishment statutes in the
United States). Together, the Justices believed that Georgia’s statute, under which Furman was being tried, could and would lead to arbitrary sentencing. They identified jury discretion as the problem: because the law gave the jury too much power in deciding whether or not to execute a defendant, the law thereby allowed jurors’ prejudices to impact sentencing decisions. This meant that executions were decided “wantonly and freakishly.”

Despite these differing opinions, Furman effectively rendered capital punishment, as it then existed under forty U.S. Federal and State laws, unconstitutional. The positions of Douglas, Stewart, and White, however, made it clear that the Supreme Court did not believe that capital punishment itself was unconstitutional. Rather, the methods by which it was meted out at the time made it unconstitutional.

Unsurprisingly, several states took the next few years to rewrite their death penalty statutes in efforts to meet the criticisms levied by Douglas, Stewart, and White. In 1976, several of these laws came before the Supreme Court in a slew of cases: Gregg v. Georgia, Jurek v. Texas, Proffitt v. Florida, Woodson v. North Carolina, and Roberts v. Louisiana. These cases were consolidated into Gregg and decided on July 2, 1976, just four years after the Furman decision.

In a 7-2 decision the Court upheld death penalty statutes that gave juries “guided discretion” for invoking the death penalty, finding these versions of capital punishment not to be unconstitutionally arbitrary. The opinion of the 1976 Court also noted that capital punishment itself did not violate the Eighth Amendment, citing the “marked indication of society’s endorsement of the death penalty. […] [in] the legislative response to Furman.” Paying close attention to public opinion polls, the Gregg decisions reinstated capital punishment, effectively ending the moratorium imposed by Furman.

Executions resumed on January 17, 1977, when a Utah firing squad shot and killed Gary Gilmore, a convicted killer who had requested execution by that means.

The 1970s Legislative Debates over the Death Penalty

The unexpected voice of the Supreme Court regarding the constitutionality of capital punishment toward the end of the 1960s and into the 1970s reverberated in the debates of the 91st, 92nd, and 93rd Congresses. While the 1960s saw a relatively large number of debates over the issue compared to other periods of American history, the frequency of such debate in the 1970s dwarfed even those. Legislators campaigning against capital punishment scrambled to formally suspend the death penalty, worrying that the de facto and unstable judicial moratorium could easily fall apart, resulting in an extraordinary bloodbath. Legislators campaigning to protect capital punishment scrambled to pass laws that they believed would stand
up against the Court’s judicial review. Each side recognized the importance of decency point towards the “repudiation of automatic death sentences.”\textsuperscript{89} The Court ruled that the various legislatures that passed these new statutes had effectively remedied the capriciousness found in earlier applications of the death penalty and had avoided problems under the Eighth Amendment.\textsuperscript{90} In later decisions, the Court returned to the constitutionality of specific methods and practices with which capital punishment was meted out, rather than reconsidering the constitutionality of the punishment itself.

The 1960s trend toward abolition did not only reverse in the realm of the federal courts after the Gregg decisions. By the late 1970s, public opinion was swinging evermore strongly in favor of the death penalty, and the frequency with which it was challenged in both the state legislatures and Congress fell drastically.\textsuperscript{91} Juries and judges both became much more willing to sentence defendants to death, evidenced by the explosion of the number of people on death row after the moratorium was lifted. By the end of the twentieth century, the frequency of executions had returned to levels reminiscent of the early 1950s, and death row was over ten times larger than it had been in the early sixties.\textsuperscript{92}

\textbf{Part II: The English Narrative}

\textit{The 1940s: Ambiguity in the Debate}

By the 1940s, capital punishment had been in widespread use for centuries in the United Kingdom. But from the early 1800s to the late 1920s, there was a steady march to curb both its frequency and its severity.\textsuperscript{93} While these slow movements accomplished some feats, including a decrease in the number of crimes punishable by death and the end of all public executions, it was not until the late 1940s that efforts for complete abolition of the death penalty began to be taken seriously in government. After World War II, as the nation “felt sickened by [...] wholesale slaughter” and the “holocaust of Nazi Germany”\textsuperscript{94}, the British Parliament began to consider the possibility of abolishing the death penalty from all future use. These sentiments created a prime opportunity for Parliament to begin serious debate over the abolition of capital punishment in the 1940s. But in all of these debates, information was sparse, and opposing arguments frequently cited contradictory facts, especially in regards to the efficacy of the practice.

As it existed at the time, the “punishment for murder prescribed by English law was […] the punishment of death.”\textsuperscript{95} Capital punishments for murder were largely mandatory in nature – judges had no power with which to discriminate in doling out capital punishments in certain murder cases over others. And although by the twentieth century murder was the only crime for which the death penalty was exercised in practice, there were still on average 12 persons executed per year in Britain.\textsuperscript{96}
Veering Off the Abolitionist Path in America

The laws of murder, however, came under fire in the years directly after the War’s end early 1945. In May of that year, the Labour Party won an unprecedented victory in national elections, and for the first time in British history the democratic-socialist party held a large majority of seats in the House of Commons. With a party known to be favorable towards the lessening of penal severity in a position of substantial power, the Howard League began a significant “propagandistic” assault upon the British death penalty. The Howard League, amalgamated from two earlier penal reform interest groups in 1921, was an influential “insider” organization in British politics. Its members were largely middle-class and wealthy professionals and it “functioned as a small, well-connected, London-based elite” organization. The Howard League held it partly to be their mission to publish and disseminate informational pamphlets urging the electorate to move towards abolition.

But alongside their goal of educating public opinion on the moral ills of the death penalty, the group worked hard to urge members of Parliament to take action in London. Coming before the House of Commons in 1947 was the Criminal Justice Bill, introduced by Home Secretary Chuter-Ede and aimed at humanizing the British penal processes. The Howard League urged “that the Criminal Justice Bill [of 1947] should include a clause abolishing the death penalty” and they received support from 190 members of Parliament in response to their efforts.

When the 1947 Criminal Justice Bill was read in the House of Commons, it stimulated an unprecedented flood of debate regarding the abolition of capital punishment. Sydney Silverman and Reginald Paget, two members of the Labour Party who vehemently criticized the death penalty, made the strongest speeches. Silverman emphasized the need for a strong movement against capital punishment to emanate from the House of Commons. He believed the House of Commons to be a true representation of the educated opinion of the British people and argued that the people themselves should ultimately decide the fate of the death penalty. Silverman expressly noted that little dependence should be placed upon judges, who, he rhetorically exclaimed, “have always been demonstrably and completely wrong.” Silverman believed the House of Commons, as opposed to all other components of British politics, provided a good “cross-section of the mind of the community.”

Paget crystallized his arguments in two ways: he first criticized the nature of capital punishment as a primitive act of retribution and second noted that there is “really only one question” of capital punishment: deterrence. Paget was also concerned by the power of government to take away the life of an individual: “Let the dictators have their gallows and their axes, their firing squads and their lethal chambers. The citizens of a free democracy did not have to shelter under the shadow of the gallows tree.”
Avinash Samarth

The Howard League declared on the first page of its journal in 1948 that the extended debates over capital punishment during the readings of the Criminal Justice Bill were the “beginning of the end” of the death penalty in Britain. Not only did the debates legitimize the issue of abolition in Parliament, but they also spread interest within the general public. The Times, for instance, took up the topic beginning in the late 1940s. In a leading editorial in November 1947, the newspaper asked whether “the death penalty deter[s] more effectively than other punishment,” and answered its own question, stating, “nowhere has abolition led to an increase in crime.” The Times, as a whole, conveyed an air of support for the abolitionist side and would continue to do so throughout the coming decades.

The next year, in March of 1948, Sydney Silverman sponsored an amendment to the Criminal Justice Bill to put a de jure moratorium on the British death penalty for a period of five years. Debates once again centered on the principles on which capital punishment was based and the efficacy of the practice as a deterrent against crime. Silverman reiterated Paget’s remarks from the previous debate, arguing that the retributive principle of punishment was fundamentally wrong and that it was the duty of Parliament to raise the standards of human conduct after the horrors seen in World War II. While Silverman opened the debate by characterizing the death penalty as “revolting” and “barbarous,” opponents like Sir John Anderson emphasized their faith in the efficacy of the death penalty. Anderson noted that to his own knowledge, he could not think of anyone who had been wrongly executed.

The clause passed the House of Commons by a vote of 245 to 222 and was added to the Criminal Justice Bill, which itself also passed, and so on June 1 and 2, the issue of abolition was put before the House of Lords. The House of Lords was not nearly as favorable towards the idea of abolition as the House of Commons, and this soon became apparent in debate. The “great bulk of speeches delivered” on the bill were in favor of the retention of the death penalty. Nevertheless, debate was extensive, lasting for two days.

While a handful of members supported the clause, the vast majority of Lords stood against its passage. Viscount Templewood, standing in favor of the clause, cited Sweden and Switzerland as empirical examples of governments that had shown that murderers could be reformed and did not need to be killed to be deterred from killing again. The Lord Archbishop of Canterbury, on the other hand, criticized the evidence from other countries, noting, “nobody can say how far any individual is deterred by that warning [of death].” Lord Pethick-Lawrence recognized the same, but used this as platform for supporting the clause, noting, “quite […] frankly, I say that if it were proved to me conclusively, […] that the abolition of capital punishment would lead to an increase in the murder rate, I would not stand for its
Veering Off the Abolitionist Path in America

abolition.” Lord Roche, basing his opinion “on [his] experience,” argued that in practice, the death penalty was only applied to those who society truly needed to execute, and the rest he believed had been reprieved. Although Viscount Templewood was very vocal throughout the debate, offering frequent commentary against the retentionists’ arguments, the House of Lords rejected the abolitionist clause by an overwhelming 181 to 28.

The question of public opinion took on a larger role during and after the 1948 debates in the House of Commons. Although there was little data on the topic at the time, there was “some indication that the nation as a whole did not support the suspension of capital punishment” as voted by the House of Commons. Letters written in to The Times, for instance, were overwhelmingly retentionist. The very notion of public opinion, however, was debated heatedly in Parliament in the context of abolition. While Silverman had argued that the question of abolition should not be left up to judges, he also noted that the whims of the general, uneducated, and ignorant public should not be decisive on abolition. Viscount Templewood made similar remarks, arguing that the opinions of the general public were inevitably ignorant about the proper issues in debate over abolition. Viscount Samuel pointed out that the large majority in favor of abolition in the House of Commons was probably even larger than had been recorded, as ministers in favor of abolition had been compelled to abstain. He believed that the extreme divergence between the public and the House of Commons was evidence that the true opinion of the ‘public’ was wholly misinformed on the issue of capital punishment. Viscount Templewood agreed, noting that if Parliament had relied upon public opinion in the past when restricting the death penalty, it would have found that public opinion was always against the “expert” views of Parliament. Whether or not to take into account the opinion of the public, and who exactly constituted ‘the public,’ were issues not resolved by the end of the 1940s.

As the debate over the abolitionist measure unfolded, it became clear that the British politicians were severely lacking in objective information about capital punishment. Many members of Parliament resorted to their own experiences or hearsay anecdotes to support their arguments, and many of them cited bits of information that clearly contradicted each other. There was, at the time, a general lack of “basic information on the actual effects of capital punishment.” Criminal statistics were virtually unknown, foreign experience was difficult to obtain or relate back to English terms, and prior Royal Commission reports were much like the arguments of reformers: collections of Biblically based, morality-fueled opinions on the “evils of the death penalty.” In an effort to remedy this lack of information, Home Secretary Chuter Ede announced a Royal Commission in 1949 to empirically study the question of limiting the death penalty in Great Britain.
The 1950s: A Royal Commission and Shifts in the National Atmosphere

In the 1950s capital punishment developed into a major issue in British politics. The reasons for this were threefold. First, the 1953 report published by the Royal Commission on Capital Punishment, which distinguished itself from prior commissions by relying on the social sciences and solid facts, rather than mere conjecture, identified several shortcomings of the death penalty. Second, the Fifties in England were marred by high-profile capital cases that resulted in executions largely thought by the public to be miscarriages of justice. Third, eager abolitionist members of Parliament, supported whole-heartedly by the Howard League and armed with the evidence of the Royal Commission, took advantage of the wavering atmosphere over capital punishment. These three forces led to two major legislative developments: the introduction of the Death Penalty (Abolition) Bill of 1956 and the compromise that resulted from its failure, the Homicide Bill of 1957.

The Royal Commission on Capital Punishment finished their investigation by 1953. After hearing the testimony of 118 witnesses and producing a report that exceeded five hundred pages, the Commission officially recommended a series of modifications to the practice of capital punishment. These included giving discretion to juries over when to impose the death penalty, as well as replacing the current method of execution, hanging, with lethal injection. From Europe, the Commission listened “almost exclusively to experts -- criminologists, prison officials, judges, doctors, [and] criminal law professors.”

Witnesses testifying in front of the Commission gave facts and opinions that were centered on the deterrent value of the death penalty. Sir Frank Newsam, permanent undersecretary at the Home Office, testified that in his experience, the average murderer was not of irredeemably bad character, and did not especially need to be deterred from ever committing a crime again by imposing death.

The Chief Constables’ Association of England and Wales and the Police Federation disagreed, however, believing capital punishment to be a deterrent, especially to those who were violent, and a group of chaplains agreed. Nevertheless, testimony in support of deterrence of the death penalty was largely limited to opinion rather than scientific fact.

The Howard League, on the other hand, submitted a memorandum analyzing the empirical effects of abolition on other countries. It showed that there was no evidence that abolition did not result in an increase in murder, nor that the restoration of the death penalty had ever resulted in a decrease.

While the Commission did not ultimately recommend abolition, the Commission did marshal together “an impressive array of evidence against the death penalty” that supported “significant doubts about its deterrence.” After wading through mounds of statistical evidence, the
Veering Off the Abolitionist Path in America

report stated that the uniquely deterrent force of the death penalty was likely “exaggerated,” and that it is “important [...] not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.”

While the British movement against capital punishment was always “basically a humanitarian campaign,” at this point it had become “modern and scientific,” relying on sociology and psychology to scrutinize the efficacy and legitimacy of capital punishment in the United Kingdom. This gave abolitionists a strong new leg on which to stand. Although they had classically been limited to “moral and humanitarian bases” of arguments in the earlier decade, they could now “prove objectively and scientifically that the abolition of capital punishment would be advantageous to the nation.”

While the Commission was holding its sessions on capital punishment, three very controversial, and very public, capital cases were held and tried by the Government. The first of these three was the trial of Timothy Evans. Evans was accused in 1950 of murdering his wife and daughter and was subsequently convicted and sentenced to death. During the course of his trial, Evans had accused John Christie, his upstairs neighbor, of being responsible for the two murders. Evans was hanged in March of that year. Three years after Evans’ trial, Christie was discovered to be a serial killer, responsible for murdering several women at his property, including his own wife, consequently raising serious doubt about Evans’ conviction.

The second of these cases was the trial of Derek Bentley in 1952. Bentley, a nineteen-year-old boy, was accused and convicted of the murder of Police Constable Sidney Miles, who was shot and killed during a burglary attempt carried out by Bentley and his accomplice Christopher Craig. Bentley was sentenced to death despite the fact that Craig had been the one to actually shoot PC Miles and despite the fact that Bentley had been in police custody at the time of the killing. Craig did not receive the death penalty, as he was only sixteen years old and therefore underage. During the course of the investigation, a psychiatrist had also concluded that Bentley appeared to be borderline retarded.

The third case to spark public interest in abolition was the trial of Ruth Ellis in 1955. 28-year-old Ellis was executed for the murder of her unfaithful lover, David Blakely, having shot him with four bullets outside a pub on Easter Sunday, and thereby committing what other countries would have deemed a crime passionel. Ellis was the last woman executed in Britain and one of the few women to be subjected to the penalty in all of twentieth century England. While there was no doubt regarding Ellis’ guilt, there was doubt about her state of mind and doubt about the appropriateness of her sentence, especially given the commonplace of reprieves at the time.

The public’s reaction to these three cases was both large and vociferous. All three had been generally perceived to be “miscarriages
of justice.” In the weeks before Bentley was executed, his case became a “cause célèbre” amongst the British people. In stark contrast to England’s older public executions, on the night before the Bentley execution, over three hundred people gathered to protest his sentence. In support of granting reprieve to Ellis, numerous petitions were submitted to the Home Office, some containing thousands of signatures. She garnered a great deal of sympathy because of her young age, her children, the impulsive and passionate nature of the murder she committed, and the fact that she was an attractive blonde woman. Evans’ case saw the most backlash, although it only occurred posthumously. The likelihood of his innocence prompted even Parliament to mention the issue and criticize the Home Office in the mid-1950s.

By 1956, there was increasing pressure from the public, from the release of the report by the Royal Commission, and from various abolitionists in Parliament, for a new debate on capital punishment. The abolition of the death penalty had “developed into a leading issue on the British scene,” and in that summer, the House of Commons debated and voted on the Death Penalty (Abolition) Bill, introduced by Sydney Silverman the year prior.

The Howard League and the National Campaign for the Abolition of Capital Punishment helped link the public’s newfound interest in capital punishment with the dealings of Parliament. The groups were well suited for this. The Howard League was an organization that “enjoyed a close working relationship with the Home Office.” The NCACP was partly founded by Silverman himself, and assisted in the abolitionist effort by initiating an “intensive drive for abolition” in the same year. The NCACP organization soon had over 20,000 members.

The NCACP was led by Gerland Gardiner, a prominent barrister, and Victor Gollancz, a publisher and charismatic activist. It was the occupation of the latter that allowed the NCACP to substantially affect the public atmosphere surrounding capital punishment. Alongside public meetings in many important cities in Britain, the organization published several pieces of literature, spurring public interest in abolition, based on both emotional and scientific appeals.

The mass of literature included Gollancz’ own Capital Punishment: The Heart of the Matter and Arthur Koestler’s Reflections on Hanging. Both works were passionate polemics against capital punishment that based themselves on moral arguments. As Gollancz succinctly stated in his work: “Capital punishment is wrong and that is all there is to it.” Koestler similarly focused on the art of polemic, but also wrote detailed the experience of other abolitionist countries, as well as delving into the emotional and personal aspects of a series of murders in Britain, all in an effort to disprove the alleged deterrence of the death penalty. The NCACP also connected abolitionist members of Parliament with the public, allowing both Sydney Silverman and Reginald Paget the ability to publish pamphlets as part of the
Veering Off the Abolitionist Path in America

NCACP’s efforts. Their works included Hanged and Innocent?, a short book identifying several miscarriages of justice in the practice of the death penalty, including the execution of Timothy Evans.

Debate on the Abolition Bill did not ignore the rapid changes in public interest, although Parliament was unsure how to deal with it. While Montgomery Hyde noted that public opinion was changing in support of abolition, Sir Robert Grimston argued that the public had been exposed to misleading propaganda. By 1956, 45 percent of the public disapproved of a trial suspension of capital punishment -- 24 percentage points lower than recent years past.

Nevertheless, debate over Silverman’s bill did not see any new arguments that had not already been mentioned in the Parliamentary discourse. Abolitionists continued to argue that capital punishment was not uniquely a deterrent, while retentionists saw it as necessary to keep homicide rates low. The abolitionists in Commons were victorious again, with a vote of 286 to 262.

The Bill was then passed along to the House of Lords, where debate opened on July 9. While several Lords voiced their opinions in favor of abolition (in fact “nearly twice as large as had been expected”), the bill was “thoroughly trounced” with a vote of 238 to 95. At the center of the Lords debate was whether capital punishment was a uniquely effective deterrent, greater than life imprisonment. While Viscount Templewood cited the Royal Commission’s inability to find sufficient evidence of such a notion, MPs like the Lord Chancellor Viscount Kilmuir and Viscount Malvern expressed their wholehearted opinion that capital punishment served as a deterring force in the United Kingdom.

Although the Government and the House of Lords stood strong against abolition, they could not ignore the constant pressure arising out of the House of Commons on the subject. The Cabinet was faced with a dilemma: it did not favor the complete abolition of capital punishment, but it recognized that there was a large demand from Commons for the practice to be reformed. The Cabinet wrestled with the question of deterrence. While they admitted that many other countries had abolished capital punishment without effect, they did not see Britain as civilized enough to deal with its abolition. The Cabinet was certain that Britain, as a unique society, would see a disastrous rise in homicide rates if capital punishment were done away with.

A compromise seemed on the horizon, and it came in the form of the 1957 Homicide Bill, introduced by Home Secretary Lloyd George in November of 1956. The Home Secretary had personally recommended that capital punishment not be abolished and the Government justified the bill’s support by noting, “public opinion desired a compromise and did not want total abolition.” The bill, however, did not modify the death penalty.
per se of justice." In the weeks before Bentley was executed, his case became a “cause célèbre” amongst the British people. In stark contrast to England’s older public executions, on the night before the Bentley execution, over three hundred people gathered to protest his sentence. In support of granting reprieve to Ellis, numerous petitions were submitted to the Home Office, some containing thousands of signatures. She garnered a great deal of sympathy because of her young age, her children, the impulsive and passionate nature of the murder she committed, and the fact that she was an attractive blonde woman. Evans’ case saw the most backlash, although it only occurred posthumously. The likelihood of his innocence prompted even Parliament to mention the issue and criticize the Home Office in the mid-1950s.

By 1956, there was increasing pressure from the public, from the release of the report by the Royal Commission, and from various abolitionists in Parliament, for a new debate on capital punishment. The abolition of the death penalty had “developed into a leading issue on the British scene,” and in that summer, the House of Commons debated and voted on the Death Penalty (Abolition) Bill, introduced by Sydney Silverman the year prior.

The Howard League and the National Campaign for the Abolition of Capital Punishment helped link the public’s newfound interest in capital punishment with the dealings of Parliament. The groups were well suited for this. The Howard League was an organization that “enjoyed a close working relationship with the Home Office.” The NCACP was partly founded by Silverman himself, and assisted in the abolitionist effort by initiating an “intensive drive for abolition” in the same year. The NCACP organization soon had over 20,000 members.

The NCACP was led by Gerland Gardiner, a prominent barrister, and Victor Gollancz, a publisher and charismatic activist. It was the occupation of the latter that allowed the NCACP to substantially affect the public atmosphere surrounding capital punishment. Alongside public meetings in many important cities in Britain, the organization published several pieces of literature, spurring public interest in abolition, based on both emotional and scientific appeals.

The mass of literature included Gollancz’ own Capital Punishment: The Heart of the Matter and Arthur Koestler’s Reflections on Hanging. Both works were passionate polemics against capital punishment that based themselves on moral arguments. As Gollancz succinctly stated in his work: “Capital punishment is wrong and that is all there is to it.” Koestler similarly focused on the art of polemic, but also wrote detailed the experience of other abolitionist countries, as well as delving into the emotional and personal aspects of a series of murders in Britain, all in an effort to disprove the alleged deterrence of the death penalty. The NCACP also connected abolitionist members of Parliament with the public, allowing both Sydney
Silverman and Reginald Paget the ability to publish pamphlets as part of the NCACP’s efforts. Their works included Hanged and Innocent?, a short book identifying several miscarriages of justice in the practice of the death penalty, including the execution of Timothy Evans.

Debate on the Abolition Bill did not ignore the rapid changes in public interest, although Parliament was unsure how to deal with it. While Montgomery Hyde noted that public opinion was changing in support of abolition, Sir Robert Grimston argued that the public had been exposed to misleading propaganda. By 1956, 45 percent of the public disapproved of a trial suspension of capital punishment -- 24 percentage points lower than recent years past.

Nevertheless, debate over Silverman’s bill did not see any new arguments that had not already been mentioned in the Parliamentary discourse. Abolitionists continued to argue that capital punishment was not uniquely a deterrent, while retentionists saw it as necessary to keep homicide rates low. The abolitionists in Commons were victorious again, with a vote of 286 to 262.

The Bill was then passed along to the House of Lords, where debate opened on July 9. While several Lords voiced their opinions in favor of abolition (in fact “nearly twice as large as had been expected”), the bill was “thoroughly trounced” with a vote of 238 to 95. At the center of the Lords debate was whether capital punishment was a uniquely effective deterrent, greater than life imprisonment. While Viscount Templewood cited the Royal Commission’s inability to find sufficient evidence of such a notion, MPs like the Lord Chancellor Viscount Kilmuir and Viscount Malvern expressed their wholehearted opinion that capital punishment served as a deterring force in the United Kingdom.

Although the Government and the House of Lords stood strong against abolition, they could not ignore the constant pressure arising out of the House of Commons on the subject. The Cabinet was faced with a dilemma: it did not favor the complete abolition of capital punishment, but it recognized that there was a large demand from Commons for the practice to be reformed. The Cabinet wrestled with the question of deterrence. While they admitted that many other countries had abolished capital punishment without effect, they did not see Britain as civilized enough to deal with its abolition. The Cabinet was certain that Britain, as a unique society, would see a disastrous rise in homicide rates if capital punishment were done away with.

A compromise seemed on the horizon, and it came in the form of the 1957 Homicide Bill, introduced by Home Secretary Lloyd George in November of 1956. The Home Secretary had personally recommended that capital punishment not be abolished and the Government justified the bill’s support by noting, “public opinion desired a compromise and did not want
The bill, however, did not modify the death penalty per se. Rather, it modified the law of murder. It sought, amongst other pursuits, to amend the law by creating categories of capital and non-capital murders. The Government, exploiting its majority in the House of Lords, passed the bill quickly through committee without amendment, and through the Lords unaltered. The Homicide Bill became law in March.

The 1960s: Culmination

The movement towards abolition, meanwhile, quickened its pace as it became readily apparent that the Homicide Bill of 1957 was illogical and flawed. More members of Parliament disregarded public opinion, of which a majority still favored retention, in the 1960s, and by the government, though hardline retentionists still relied on it heavily. By the time Sydney Silverman introduced a new abolition bill in 1965, nearly all obstacles for the abolitionists were gone, paving the road for the final riddance of the death penalty in Britain. And while the Parliamentary debates in the 1960s regarding the abolition of capital punishment offered few new arguments that differed from those in the 1940s and 1950s, the debate did become even more centralized on the issue of deterrence.

By the beginning of the decade, the 1957 Homicide Bill was proving to be a disaster. Ironically, the failure of the bill, which was meant by the Government as a concession to abolitionists, strengthened the case against the death penalty. Its underlying reasoning was that some murders required the death penalty while others did not, a move that the Royal Commission had explicitly warned against. While, for instance, a farmer who shot his wife would be executed, a farmer who had bludgeoned his wife to death with a shotgun would not. While a thief who accidently killed a person when startled would be hanged, a man who thoughtfully carried out a plan to poison would not.

Many abolitionists were against the bill from its inception. Hugh Klare, general secretary of the Howard League, thought the bill to be “illogical.” Ironically, abolitionists were assisted by the bill’s consequences, especially in regard to the issue of deterrence. After the bill was passed, the proportion of capital murders increased while the proportion of non-capital murders decreased, the exact opposite of what proponents of the death penalty as a deterrent predicted.

Even the Government, in its own inter-office communications, recognized that “there [was] a growing recognition that the Homicide Act of 1957 was a mistake” but that “this cannot be said publicly until the Government is prepared to propose an alternative.” Richard Butler, Secretary of State for the Home Office, stated in a memorandum that because of the Homicide Bill he was “under considerable pressure to do something about capital punishment” and expected “increasing criticism of [his]
decisions in individual cases, and increasing Parliamentary pressure for debates about them."

This pressure was a result of the religious and political elites turning against the death penalty in Britain. In the space less than of a decade, the Church of England had completely reversed its attitude towards capital punishment -- a "complete revolution." Some members of the clergy, like the Reverend F. P. Coleman, even made motions in Parliament against the death penalty. Bishop Mortimer of Exeter pressed the House of Lords for abolition. Many clergymen also started giving speeches against the morality of capital punishment. As the religious elite turned against the death penalty, many of their followers did as well.

The public outcry over the recent controversial capital cases had not left Britain’s conscience. While the majority of the British public still supported the institution of capital punishment, by about a three-to-one ratio, that support had fallen substantially from previous years. The cases had damaged the public image of the practice. Almost all those who had "recently made up their mind against capital punishment" said that a "major factor" in their decision were "recent hanging cases." In the elite and educated circles especially, the cases had served as another nail in the coffin of the death penalty.

By 1965, abolition seemed inevitable, and in the November of that year, despite public opinion and a rising crime rate, the political elite passed the Murder Act. It suspended the death penalty in Britain for a period of five years. Even the Government, who in the 1950s had held steadfast against abolition, by 1964 saw abolition as inevitable.

The debates of the political elite, continuing in Parliament, mirrored the culmination of the various forces that emerged against the death penalty in the 1950s. Often citing the results of the prior Royal Commission, members of Parliament focused heavily on the issue of deterrence. Yet although there were significantly fewer members defending capital punishment, the debate still lasted for two days.

Sydney Silverman stood center stage once again, chastising the failure of the 1957 Homicide Act, and stressing the irrelevance of public opinion polls, which still showed a large majority against the abolition of the death penalty. Both Houses significantly devalued the question of public opinion. As Silverman asserted: "we do not govern ourselves in this country by referendum." It was readily apparent that Parliament would weight polling data much less than had been considered in the late 1940s.

After Silverman’s speech, the retentionists in both Commons and in Lords spoke overwhelmingly about deterrence. Lord Molson tried to delegitimize the statistics disproving the deterrence of the death penalty, arguing, "If I were subjected to a great temptation to commit murder, the knowledge that the penalty was death would be a great help in resisting..."
that temptation.” Lord Chuter-Ede retorted that it is “most unusual for any crime of murder to have been long premeditated,” and thus such knowledge would not be an efficient deterrent. The Earl of Haddington cited the results of the Royal Commission to support the illegitimacy of the practice of capital punishment. Similarly, the Lord Bishop of Chester cited the testimony given by Professor Thorsten Sellin, a prominent sociologist at the University of Pennsylvania, to the Royal Commission. The Commission had asked Sellin if “capital punishment cannot, on the basis of your figures, be exercising an overwhelming deterrent effect.” Sellin answered that his data could not support the existence of such an effect. The Bishop also cited the Evans case as a tragic miscarriage of justice.

At the conclusion of the debates in Parliament, Commons voted 355 to 170 to pass the bill, and Lords subsequently agreed by a vote of 204 to 104. A caveat was added to the bill throughout the process, however: abolition would not necessarily be permanent, but would rather be placed on a five-year ‘trial’ period.

While the Act was not debated until 1970, the Government, especially the new home secretary James Callaghan, hinted that it was looking at making abolition permanent the year prior. The most important part of the ‘trial period’ was a report being compiled by the Home Office Research Unit on the facts and figures of the abolition experiment. This report, entitled Murder 1957-1968, showed that murder rates had increased from 3.9 per million in 1965 to 4.2 per million in 1968, but that this rate had been steadily increasing from 1955 onwards, reinforcing the idea that murder rates were disconnected from the state of capital punishment.

The data were used to the abolitionists’ advantage. When the new home secretary, James Callaghan, introduced a motion to make the Murder (Abolition of Death Penalty) Act of 1965 permanent, Gerald Gardiner, Lord Chancellor, pointed out in the pursuant debate that the murder rate had not significantly changed in the past ten years. But the House of Lords was not the only arena in which such data were used. The Times, on December 15, 1969, ran a letter signed by 35 criminologists stating they felt “compelled to point out that there is nowhere in any of the voluminous statistical material about murder and the death penalty any conclusive evidence as to its special deterrent value.”

While public opinion stood strong against the permanent abolition of capital punishment, at over 80 percent, Parliament largely ignored their views. At the beginning of the debate on his motion, James Callaghan stated that:

There are times when Parliament has to act in advance of public opinion and give a lead. On penal questions it is not uncommonly the case; Parliament has done it before and Parliament was not wrong. Let us give a lead again today.”

Avinash Samarth
Veering Off the Abolitionist Path in America

Commons debated Callaghan’s motion for seven hours and carried it 343 to 185. In the Lords, it passed with a majority of 46.209 After two decades of fervent debates, novel data collections, and complicated political movements, Parliament had finally abolished capital punishment permanently.

Part III: The Influence of Entrepreneurial Elites and of Public Opinion

For the first half of the post-war period, policy in the United States seemed to be on the same track towards an end of executions as found in Great Britain. This section will, through both theoretical and comparative analyses, explore some explanations of why the United States may have diverged from that path towards permanent abolition, instead reinstating and strengthening its institution of capital punishment.

One of the most commonly made arguments for the failure of abolition in the United States and the success of abolition in England attributes the disparity to the political elites of the United Kingdom, who were less willing to bend to public opinion on the subject.210211 Consequently, the first part two parts of this analysis will deal with elite actions and public opinion. I will first weigh the influence of elite political entrepreneurs on the development of capital punishment policy in the two countries. I will then similarly analyze the influence of public opinion. In an effort to weigh the influence of each of these I will try to ascertain the extent of their effects on:

(i) The initial efforts for abolition
(ii) The prioritization of abolition as a pressing concern for government
(iii) The reversal of abolition in the United States

At the end of this section, I will advance again and defend the central point of this paper: that the influence of a textual Constitution helped derail America from its path towards abolition and instead re-entrenched the death penalty by creating a new basis for its legitimation.

The Influence of Entrepreneurial Elites

Particular elite individuals in politics had strong influences on the development of capital punishment policy in both the United States and England. The narratives of both countries feature influential abolitionist figures in government who worked in tandem, consciously or otherwise, with interest groups advocating for abolition. These entrepreneurial elites can explain why each country made an initial effort for abolition and also why those efforts eventually gained enough traction to warrant serious government attention. Nevertheless, while the actions of interested elites may explain why abolition was initially introduced in each country, and why it was important on each country’s governmental agenda, those influences do not sufficiently explain why the United States made such a significant
backtrack in the 1970s.

(i) The initial abolition efforts on the federal level in America and in Britain were both sparked by interested ‘entrepreneurial’ politicians. In America, and on the legislative front, Senators Morse and Hart introduced and supported several bills in the early 1960s that took steps towards ending capital punishment. Morse, whose home state of Oregon abolished the death penalty by popular referendum in 1964, was a “relentless advocate for all forms of Constitutional protection under the law,” and his stance against the death penalty was no exception. Senator Hart, meanwhile, as chairman of the congressional subcommittee of Criminal Laws and Procedures, held numerous hearings on the death penalty, though few were consequential. Combined, Senators Morse and Hart were largely responsible for introducing and focusing discussions in Congress on capital punishment -- discussions that were very rare before the 1960s.

MP Sidney Silverman had a similar but much stronger effect in the British legislature. He was vocal in all of the debates between 1947 and 1965, often speaking first and framing the discussion in his own terms. Silverman was, much like Morse, a relentless advocate for abolition, introducing abolitionist measures in 1948, 1956, and 1965. But Silverman also took further steps in his project than any similar American politician. He co-founded and worked closely with the National Campaign for the Abolition of Capital Punishment to create a link between the public and elite campaigns for abolition. Kingdon would likely identify Silverman as a “policy entrepreneur” for abolition because of his persistence and unconditional attachment to the project. Although America had politicians who were very interested in abolition like Senator Morse, none of these individuals persisted as consistently and as strategically as Silverman in the United Kingdom.

The American narrative had a stronger figure, though, in its judiciary: Justice Goldberg. Goldberg took the initiative to bring the capital punishment debate into judicial grounds. He had recruited Alan Dershowitz as a clerk in 1963, and had asked him on his first day to prepare a memorandum that could find capital punishment to be “cruel and unusual” in violation of the Eighth Amendment. Goldberg’s “extraordinary initiative” resulted in a memorandum that was circulated around to the other justices had a “bombshell effect” on the Court.

Although the memorandum was not made available to the public at the time, Goldberg would soon transplant its arguments into a dissenting opinion that initiated the NAACP’s Legal Defense Fund (LDF) to challenge capital punishment through litigation. Goldberg had no explicit connection with the LDF, like Silverman had with the NCACP. Even so, the dissenting opinion he volunteered after Rudolph v. Alabama “awakened interest in the constitutionality of capital punishment.” The ACLU also adopted a formal position against the death penalty in 1965, as it had been “encouraged by the
Veering Off the Abolitionist Path in America

‘Goldberg signal.’”217

As evidenced by the narratives, the influences of political elite and interest groups can therefore largely explain the initial abolition efforts in both England and the United States. Silverman and the NCACP led the charge for abolition in the former while Goldberg and his effectual connection to the NAACP’s LDF led the charge in the latter.

(ii) The actions of elites can also explain why the abolition of capital punishment was placed so prominently on both the British and American government agendas.

While the United States had interested congressmen, like Senators Morse and Hart, pushing for abolition, their efforts were largely unsuccessful (though they did appear to be slowly gaining more traction). Before the legislative actions in the United States could amount to significant legislation, the judiciary, in 1968, took over the issue of capital punishment. Primed by Goldberg’s dissent, the LDF put considerable pressure on the courts to make a final decision on the constitutionality of capital punishment. The LDF thereby directed significant judicial attention to the issue of abolition and effectively drove it higher on the broader government’s agenda.

The LDF orchestrated a widely dispersed legal strategy in its efforts. It reasoned that with a “campaign of test cases,” it could create a death row “logjam,” pushing the judiciary to favor abolition.218 In 1967, with money granted from the Ford Foundation to fight for the rights of the indigent, the LDF provided assistance to over fifty men and created a “Last Aid Kit,” circulating it around to overburdened public defenders and criminal lawyers.219 The “Last Aid Kit” was a toolkit for capital punishment cases. It contained drafts of petitions for habeas corpus, applications for stays of execution, and legal briefs that put forth every significant constitutional argument against the death penalty.220 By making its arguments and influence available to all death row inmates, the LDF put pressure on the America judiciary from many sides to do something about the constitutionality of capital punishment.

In England, the efforts of Silverman and the NCACP heightened the awareness of the issues concerning capital punishment in both the public and in Parliament, effectively placing abolition high on the political agenda. The relationship between Silverman and the NCACP forged a wider collaborative effort between abolitionist MPs and community activists to increase social awareness of the death penalty and its ills.

The political abolitionist elite in England engaged in a widespread drive of persuasion. This approach differed from the litigation strategy in America, where such efforts were not thought to be necessary in order to push the Supreme Court to find capital punishment unconstitutional. The NCACP, with its publications, town meetings, and community activism, likely increased the importance of capital punishment in the public sphere.
Gallup suddenly started asking the public questions about capital punishment much more often in the early 1950s. While it is unclear whether or not the publication and propaganda efforts by the NCACP and the political elite had a large effect in swaying the public towards abolition, especially since public opinion never turned predominantly against the death penalty, it likely helped to develop capital punishment into a “leading issue” by 1960. Moreover, Silverman’s “entrepreneurial” activities allowed him to take advantage of this change as a “policy window” of opportunity in order to push the issue of abolition to the upper ranks of Parliament’s agenda.

(iii) The motivations and activities of the political elite cannot, however, explain the backtrack by the United States from abolition in the 1970s. No remarkably influential elite figures, nor significantly organized interest groups, led the charge against abolition between Furman and Gregg. Gottschalk writes that there was no “grand mobilization by interest groups to change the context of litigation” on capital punishment. She also observes that Furman, for instance, “did not ignite conservative groups to fight for the death penalty with the same intensity they mobilized against abortion after Roe v. Wade.”

Admittedly, there were some prominent elite figures in American politics that came out in support of the death penalty before the Gregg decision. New York City Mayor Ed Koch, for instance, declared his support for the death penalty by saying that, “when the killer lives, the victim dies twice.”

The pleas of elite American retentionists, however, were not much different from those of some political elites in England who similarly came out in support of capital punishment during its moratorium. MP Duncan Sandys, for example, collected over 800,000 signatures for a petition submitted to Parliament, calling for the revocation of abolition. Sandys also recruited a number of small elite conservative groups to call for the reinstatement of capital punishment. Their efforts were unsuccessful.

In America, such interest groups did not organize elite retentionist opinion. Instead, collective reactions to the moratorium came mainly from some state legislatures. These legislatures signaled their distaste with the Court’s decision by passing laws to circumvent the Furman decision and reinstate capital punishment.

The Influence of Public Opinion

There are strong similarities in the public opinion of capital punishment between England and America in the period of 1940-1975. Both were strongly against the abolition of the death penalty, and both deviated only slightly from this position throughout the course of the abolitionist narratives. Although public opinion itself cannot explain the initial abolition efforts in either country, which were mostly elite movements, this section
will explore its influence on agenda-setting in England and its influence in the American backtrack on abolition in the 1970s. This section will conclude that public opinion cannot by itself explain the American reneging of the abolition of capital punishment.

(i) The force of public opinion alone cannot explain initial abolition efforts in either country. Most Americans and British always favored the retention of capital punishment. Nevertheless, changes in public opinion may have their own effects on political decisions. This was not the case in England, however. Silverman’s initial attempts to abolish capital punishment in the late 1940s predated the minor shift in public attitudes towards abolition in the 1950s. Moreover, this change was not very significant, and indeed may well have helped spark it.

In the United States, changes in public opinion did coincide with initial efforts for abolition, both in the legislatures and in the judiciary; but it is unlikely that these changes can explain those initial efforts for several reasons. First, as in Britain, the abolitionist population in the United States was never large enough to mount a significant majority, and thus never large enough to create a strong voting bloc to sway elite opinion to pursue abolition. Moreover, abolition of the death penalty was never a politically fruitful endeavor for a politician to initiate. Judicial entrepreneurs for abolition, like Justice Goldberg, and the interest groups that pursued abolition in the courts, like the LDF, were isolated from the consequences of the electorate’s opinion.

(ii) Public opinion also had little to no role in the United States in pushing abolition up on the government agenda. While public support for the death penalty was falling to new lows in the United States during the early 1960s, there was also no concerted effort from the public to consider the abolition of capital punishment on any foreseeably short timetable, at least on the federal level. This is not surprising since the prioritization of capital punishment occurred largely because of the legal assault of the LDF in the courts, a realm generally sectioned off from public attitudes.

In England, however, the influence of public opinion on the government agenda is more complex. Parliament wrestled with how to deal with public attitudes towards capital punishment from 1948 onwards. Despite the conclusions of Gottschalk and Garland, I do not believe that Parliament was isolated in its decision-making on the death penalty from the demands of public opinion. This is evidenced in the Parliamentary records that I have reviewed: nearly all debates over capital punishment between 1948-1969 frequently brought up the question of public opinion.

It is interesting, first, to note that Silverman in 1948 made arguments expressly for why public opinion should be taken into account in decisions over the death penalty. But Silverman did not see raw poll data as a legitimate representation of “public opinion.” He believed it lay in the opinion of the
House of Commons, which provided an educated “cross section of the mind of the community.”

As public opinion, or at least poll data, began to trend toward larger support for abolition in the 1950s, abolitionists began to rely on it more frequently. MP Montgomery Hyde had argued that the changes public opinion towards abolition was a justification for ending capital punishment. The Government justified the middle-of-the-road 1957 Homicide Act by noting that public opinion was still mixed over abolition, and still predominantly opposed. The Government inferred that this meant the public was calling for a “compromise.”

By the 1960s, public opinion had halted and reversed its momentum, growing more in favor of retention. In the 1965 debates, Lord Alpert, a retentionist, stressed that public opinion was “of great importance” and “must not be ignored.” Lord Ferrier similarly stressed the “dangers” of acting incongruently with public opinion.

Parliament and its members did not invoke public opinion consistently. While abolitionists justified arguments using its trends in the 1950s, they rallied against using public opinion when trends reversed in the 1960s. Members of Parliament clearly seemed to only rely on public opinion when current trends appeared to justify their pre-existing preferences on the death penalty. Likely because of this common strategy, public opinion in and of itself was rather ineffectual in driving the government agenda in one particular way.

Nevertheless, the public had been significantly shocked by the cases of Bentley, Evans, and Ellis, had been subject to the NCACP and its proliferation of abolitionist literature, and had also read of the results of the 1953 Royal Commission’s report in various national newspapers. In light of these facts, it is not particularly contentious to assert that capital punishment had risen much higher on the national agenda and in the public consciousness during the late 1950s and early 1960s. Public opinion, as an aggregation of pre-existing preferences, likely did not have a substantial effect on the government agenda, but its vocal abolitionist sector did participate in raising national awareness on the subject.

(iii) The influence of public opinion on the reneging of American abolition is also complex. Public opinion was cited as central in the majority opinion of Gregg, which looked “to objective indicia that reflect[ed] the public attitude.” Meanwhile, the public had in some ways made attempts to overturn moratoria. California, for instance, overturned its own Supreme Court’s declaration of the death penalty as unconstitutional in early 1972 (before Furman) by a referendum amending the state constitution. Within two years of Furman twenty-eight state legislatures had passed laws to reinstate the death penalty, modifying it to meet the Court’s requirements.

Nonetheless, as the Court is generally isolated from public opinion,
it was at the Court’s discretion that the public and the legislatures were allowed to have such an effect. The Supreme Court decided to incorporate the statistics of public opinion, and decided to make public attitudes central in the reasoning of Gregg. The Court could have just as easily halted all public attempts to end the moratorium; yet it did not take such a position.

England had similar, and in fact greater, public opposition to abolition, especially after the passage of the Murder Bill of 1965, yet its government did not take that opposition seriously and did not overturn its original abolition. It is unlikely, however, that this is merely because Parliament simply ignored public opinion. Retentionists in Parliament brought up the public’s overwhelming stance against abolition frequently when the question of reinstatement was on the table in 1969.

In fact, since the American moratorium was imposed outside of the representative branches of the federal government, one would think it more intuitive that America would have been less likely to renege on abolition than its British counterpart, which passed abolition through the legislature and in fact had higher rates of public support for the death penalty. It is unlikely, therefore, the public opinion itself had much effect on reinstating the death penalty in the United States.

Let us briefly then review the conclusions of this section. We have an explanation of how initial abolition efforts came about in both countries: they came from interested elites with the ability to create political and legal pressures in government. We have an explanation of why abolition was transformed into a priority issue: again these came largely from elite pressures, although abolition efforts in England were likely helped to a small degree by the national atmosphere, ignited by current events. We also have a very partial explanation of why America may have reneged on its abolition of capital punishment, namely some sort of a disorganized combination of elite and public opposition. Yet this explanation is not very tenable, because England faced parallel types of pressure after abolition and nonetheless held strong onto abolition.

Part IV: The Influence of the Ambiguously Written American Constitution

This section will pursue how the influence of the textual Constitution may fill in the gaps of the previous explanations, specifically in regard to the reinstatement and expansion of the death penalty in the United States. I will pursue two main analyses that suggest that the existence of a textual document, the Constitution, may have contributed to America’s deviation from the path on which it was traveling with Britain towards permanent abolition. The first analysis (Part A) will review the historical effect of the ambiguously written Constitution on the shift in legislative and public debates away from issues of deterrence and morality. This will directly lead
into the second analysis (Part B), which will argue that a debate around the ambiguous textual phrase “cruel and unusual” tended towards affirming the general majority retentionist attitudes regarding capital punishment and thereby created a new legitimation for the practice.

**Framing the Debate**

The early legislative debates surrounding capital punishment in England and America were remarkably similar, despite the fact that they occurred on slightly different timescales. The modern abolition movement in Britain lasted from 1948 to 1969. The parallel movement in the United States lasted from the early 1960s to 1976. The question of whether or not the death penalty was a unique deterrent lay at the center of both during their early phases. Retentionists and abolitionists alike relied on their respective views on deterrence in both countries in the justification of their positions.

The centrality of deterrence in the debate over abolition is evidenced by the British move to convene a Royal Commission in 1949 tasked with investigating the issue. The results of the Commission would prove fruitful for the abolitionists, and the debate in England never wavered from the frame of deterrence. Abolitionists, in other words, were able to ground the debate in a frame that, in light of empirical evidence, proved to be in favor of their side. The British retentionists were not successful in moving the debate to a different arena, nor were such efforts very pronounced.

In the early 1960s, the American abolitionist congressmen did not pursue a different path than their English counterparts. These politicians, too, attempted to use the published data of criminologists, sociologists, and psychologists to prove that the death penalty was not a deterrent. The results of the 1953 Royal Commission even reverberated in the halls of the Capitol. Representative Multer submitted into the congressional record, alongside six other statements, the results of the Commission, all in an effort to prove that the death penalty did not deter people from committing crimes. The two countries, in their debates over capital punishment, were very parallel during the period immediately after their abolitionist measures began.

But there was a clear divergence between the two countries when the Constitution became involved. The LDF began its assault against capital punishment in the judiciary by the late 1960s. In 1968, the first Supreme Court decision regarding the issue, Witherspoon v. Illinois, announced to the country that the Court was willing to criticize the longstanding institution of capital punishment in America.

Almost immediately, Congress responded to the Court’s signal. While prior to 1967 there were no mentions of the “unconstitutionality” of the death penalty in the congressional records, as the Supreme Court became more interested in the constitutionality of the death penalty, debates in Congress began to preemptively address the issue. By 1971, Congress was
discussing whether or not capital punishment could be understood as “cruel and unusual punishment” and Senator Hart attempted to convince Congress that it should rule that it was. While he and others still referenced the ideas of deterrence, as before, the way in which deterrence was incorporated into these debates had changed. For instance, Hart’s introduction of the Death Penalty Suspension Act (S. 1969) adapted his deterrence argument into an argument that the death penalty was “cruel.” Debate increasingly involved a question of whether or not any failure of the death penalty to deter counted as an adequate explanation for why it was “cruel,” rather than whether or not the punishment truly did deter.

England, at the mid-way point in its abolition narrative, had intensified its debate over deterrence. Armed with the results of the Royal Commission’s report, abolitionists seemed to fall on the winning side of the Parliamentary discussions. Without the question of constitutionality, retentionists had few arguments to draw upon to support the protection of the death penalty, and were, despite the recent data, boxed into merely repeating their beliefs that the death penalty was indeed a deterrent. In light of the 1953 Royal Commission report, this maneuver was destined to fail. The English focus on deterrence meant whichever side could marshal more objective fact on their side was more likely to succeed.

Yet such debate still took time -- in England there stood over twenty years between Silverman’s initial efforts and final abolition. In America, the courts took over the issue before less than a decade of congressional debate. Moreover, debate lulled after the judicial involvement became more pronounced. As Representative Kastenmeier noted, there was a “growing but unofficial consensus that [questioning capital punishment] ought not to be done […] until final Supreme Court decision of all the constitutional issues.”

After the Court’s decision in Furman, the judiciary’s rulings had an even more pronounced effect on legislative debates, as congressmen attempted to read the decision and the Constitution in the manner that helped them the most. The phrase “cruel and unusual” became more central to the debate, for it was the judiciary’s deciding factor of whether or not the death penalty was constitutional.

Additionally, the phrase introduced ambiguity into the debate. While the English discussions had revolved around a subject that was open to empirical measurement (i.e. the deterring effect of the death penalty), the American focus on “cruel and unusual” did not. As Caleb Foote observed seven years before Furman, the Eighth Amendment “represent[ed] some of the most ambiguous language in the Bill of Rights.”

Cruel and Unusual: Interpretive Judgments vs. Social Science

The debate in America then became not one oriented towards
discovering social scientific evidence of objective behavioral patterns, as had been the case in England, but one oriented towards textual interpretation. While debates over more objective domains gravitate towards claims that can be empirically supported, debates involving interpretation are more muddied and unpredictable. In an attempt to analytically understand the complex dynamics that resulted in the reinstatement of the death penalty in America, I draw upon theories of philosophical hermeneutics and inter-subjective communication. I first apply such theories to the notion of 'interpreting' the Constitution. I then look at, and discuss the significance of, the discursive interaction between the Supreme Court and various legislatures, both state and federal. I cast this interaction as inter-subjective communication and argue that it dialogically forged a meaning of “cruel and unusual” that played into the majority’s default opinion of capital punishment. I lastly compare this analysis to the English experience. In this section, I aim to conclude that the influence of the textual Constitution’s written normative standards helped re-establish the American death penalty by dialogically constructing a meaning for the Eighth Amendment that justified the punishment and created new legitimation for its persistence.

Philosophical hermeneutics is indispensable to this discussion. It aims to account for what happens to us as we go about understanding the world, and it derives its basis from how we interpret texts. The constitutionality of capital punishment, of course, explicitly regarded whether or not the death penalty was, as per the text of the Constitution, “cruel and unusual punishment.” Rather, though, than pursuing the debate over normative hermeneutics, theories about the ‘correct’ way to apply some authoritative text to a decision,244 I here instead attempt to use hermeneutics descriptively. In other words, I seek to describe how the acts of interpreting the Eighth Amendment themselves led to the “entrenching of the death penalty.”245

Hermeneutics scholar Hans-Georg Gadamer, in Truth and Method,246 provided an influential account of how we approach and come to understand the meanings of texts. He noted that his objective was to identify “not what we do or what we ought to do [in interpretation], but what happens to us over and above our wanting and doing.”247 Gadamer argues that a ‘reader’ is always necessarily situated in some sort of “tradition,” a position that creates for him a “historically effected consciousness.”248 The “prejudices” that result from this embeddedness interact as if in dialogue with the text, expanding or moving the “horizons” that limit one’s understanding from one’s particular vantage point.249 Interpreting a text, in other words, involves a “fusion” of these horizons.250

As the American debate over abolition shifted towards issues of constitutionality, ‘readers’ of the Constitution (i.e. justices, congressmen) engaged in this process of interpretation, or in the “fusion of horizons.” In all such practices, they ‘read’ from a position of “communal tradition and
individual prejudices."^{251}

Interpreting the Constitution on the issue of capital punishment was complex, however. Gadamer may well have summarized the tension that existed between modern abolition efforts and the Constitution when he wrote that:

In [...] legal [...] hermeneutics there is the essential tension between the text set down [...] on the one hand, and on the other, the sense arrived at by its application in the particular moment of interpretation."^{252}

When thinking of interpretations of the Constitution as involving such a tension, it is unsurprising that Furman produced such a “badly splintered Court.”^{253} Given the infamous ambiguity of the Eighth Amendment, and the relative lack of textual precedent explaining “cruel and unusual” at the time, the clause held an open world of meaning to be read. It had, in a sense, a vaguely defined background itself, and was therefore amenable to a variety of resultant understandings. It was only likely that the distribution of opinions would have been so dispersed.

But how then can we describe the subsequent convergence of Gregg? To pursue such an answer we also consider that ‘readers’ of the Constitution are not only engaging dialogically with its text, but are also engaging dialogically with other readers. We must investigate, as Vogel^{254} writes, the “constitutional conversation that goes far beyond the technical legal discourse of judges and lawyers.” In a way, the Supreme Court, the Congress, and various state legislatures all “talked” to each other between 1972 and 1976 regarding interpretations of “cruel and unusual.” The medium of this communication came in the form of Court opinions and legislative responses (i.e. bills, acts, and laws). The preceding analysis focused on isolated readers interpreting the Constitution. The subsequent analysis looks at the interactions of those interpretations in the public sphere.

Specifically, I argue that through this communication a meaning of “cruel and unusual” was dialogically forged. Habermas^{255} notes that the purpose of inter-subjective communication in the public sphere is the reaching, or forging, of a shared understanding. Gadamer’s hermeneutics similarly “insist[...] on the cultivation of shared meanings and a shared public space as a premise of interpretive praxis.”^{256}

The shared meaning of “cruel and unusual” that led to interpretive consensus came about from inter-subjective communication between the Supreme Court, Congress, and various state legislatures. After the Furman decision was handed down, Congress engaged in debate over its meaning. In attempting to pass new legislation to meet the requirements of Furman, Senators Eckhardt and Hruska noted that its definition hinged upon how each Justice had interpreted the Constitution. Eckhardt attempted to identify common currents underneath the Justices’ reasoning. He noted that if the standards of the ‘swing’ Justices were met, then capital punishment would not
be “cruel and unusual.” By way of this reasoning, Eckhardt was dialogically engaging the Court in crafting a shared meaning of “cruel and unusual.”257

Similarly, the Supreme Court, in its majority opinion in Gregg, ‘read’ into the various legislative responses to Furman. In Gregg the Court assumed that the Eighth Amendment and “evolving standards of decency” necessarily referred to public opinion.258 Thirty-five state legislatures, as well as Congress, had passed laws introducing a modified practice of the death penalty after Furman, and the Court paid attention to these actions in Gregg.259 These laws essentially represented the collective opinion of each legislature as to the definition of “cruel and unusual” — they were communicative acts. Because the bills were passed, they were thus statements from each legislature about its interpretation of “cruel and unusual.” Specifically, they asserted that the specific practices they laid out were not “cruel and unusual.” Through this to-and-fro discussion, the Supreme Court and the legislatures conjointly built up a common understanding of the meaning of the phrase “cruel and unusual.”

This dynamic, however, played into the interests of the retentionists since they represented the political majority. Critical Legal Studies scholars argue that the reading of the Constitution and constitutional cases “consists of political choice.”260 The most extreme forms of this critique claim that ‘readers’ of the Constitution merely impose “their private value judgments on [its] text.”261 Despite the extremity of this position, it is consistent with the events seen in the reverberations of the Furman decision in Congress. While abolitionist congressmen claimed that Brennan and Marshall were correct in Furman, retentionist congressmen aligned with Douglas, White, and Stevens. Moreover, as legislative debate over capital punishment had been essentially suspended after the Court had become involved, Congress was still mostly retentionist. While Representative Fletcher Thompson (R-GA), eight years before Gregg, had voiced his concern that the Supreme Court would “allow the minority to control the majority,” and impose “upon this entire nation and all the courts thereof the minority views of those who oppose capital punishment,”262 it appears that the Court did just the opposite, working together with the majority to reify its opinion as constitutional truth. Moreover, the Court also verified that the legislatures had not affronted the national opinion in its legislative responses to Furman. The Court, for example, invalidated the mandatory death sentencing laws that were passed, arguing that they were “repudiated” by societal standards.263 In total, these communications resulted in a textual meaning that was fixed via the weaving of a “social fabric of understanding.”264

We may again juxtapose this sequence of events against the English experience. While the English also discussed and debated capital punishment, the domain of their discussion was significantly different. The English narrative centered on the issue of deterrence, a rational-scientific
topic, while the American narrative pursued the meaning of a textual phrase focused on more normative terms. In other words, the knowledge that the American debate eventually pursued became essentially different than the knowledge pursued by the English debates.

Habermas characterizes forms of knowledge by the interests that drive them. Each form of knowledge has a corresponding organized mode of inquiry and methodology of production. For instance, Habermas contrasts the empirical-analytical sciences, based in a technical interest to predict and control the natural environment, with the cultural-hermeneutic sciences, interpretive modes of inquiry that derive from a practical interest to come to mutual understandings between social actors. In the case of the capital punishment debates, England pursued an empirical-analytical knowledge, that is, the question of whether or not capital punishment is effective as a deterrent against crime. This type of knowledge was obtainable through social scientific searches for measurable behavior patterns. The United States, on the other hand, pursued a hermeneutic knowledge, a shared and mutual understanding as to the meaning of “cruel and unusual.” From this characterization, we notice the much greater social nature of the American contention regarding capital punishment as compared to the British. While the debate in England sought more empirically based evidence of behavioral patterns, the American debate focused on socially constructing normative understandings.

The effect of this social construction was to re-legitimate the death penalty in the United States. This line of events lies in stark contrast to the United Kingdom, which had no opportunities in its 1969 debates over reinstating capital punishment to do the same. The turn in debates towards the ambiguously written Constitution uniquely pushed the United States towards a re-entrenchment of the practice of capital punishment.

Steiker and Steiker assert that the Gregg decision “legitimated” the practice of capital punishment. They argue, drawing on the work of Max Weber, that the decision proliferated an “experience of belief in the normative legitimacy of capital punishment.” Legitimation, it is important to note, is therefore essentially social. They also note that this social belief was “false and exaggerated” in the sense that it was induced “in the absence of or in contradiction of evidence” to what capital punishment was “really” like. The researchers posit that legitimation occurs on at least two fundamental levels: “internally” with capital sentencers and other criminal justice actors, and “externally” with society at large.

The narrative that I have compiled reveals legitimation on these levels and consistent with their effects. The turn to a constitutional debate over the death penalty overshadowed and diminished the absence of evidence of capital punishment’s value as a deterrent. After the Court’s decision there were pronounced changes both in courtrooms and in the national community.
at large. The frequency of executions skyrocketed and the size of death row exploded to levels that were even higher than before abolitionist movements in the 1960s and 1970s. This reversal was indicative of juries and judges more comfortable with doling out death sentences. Moreover, Gallup poll data show public support for the death penalty suddenly increasing by the late 1970s, and reaching record highs in the 1980s and 1990s. The results of the Eighth Amendment debate surrounding capital punishment seem to have effectively led to a new legitimation for capital punishment as a social practice.

Conclusion

A comparative analysis between the American and English abolition narratives yields insight into an explanation of the persistence of capital punishment in the United States today. In the first half of these narratives, the countries both appeared to be moving in the same direction, towards the end of capital punishment. Similarly, the initial debates over capital punishment in each country strongly mirrored the initial debates in the other. But the American debate suddenly changed when the NAACP’s Legal Defense Fund made efforts to push the issue of capital punishment into the courts and framed the discussion as one of constitutionality instead of deterrence. At this point, abolition efforts in Congress held back while the Court wrestled with whether or not the death penalty could be held unconstitutional.

After the debate over the death penalty in America was taken over by the courts, time and attention were diverted away from the debate about the efficacy of capital punishment itself, a debate that the abolitionists in England had shown could and would likely be won with the analysis of social scientific data. The shifted debate focused instead on the different understandings of a normative textual phrase, “cruel and unusual,” rather than evidence gathered from the social sciences. As the American interpretive approach tended towards affirming the general supportive stance of the death penalty, it soon became a new basis for its legitimation.

The narratives themselves are consistent with this explanation of the persistence of the death penalty in the United States. Nevertheless, the social and political worlds are complex. While the shift of the American debate to the ambiguously written Constitution was probably not the sole factor that led to the persistence of the death penalty, it did coincide with the point at which the United States suddenly veered off its trend towards abolition -- a trend that was slowly developing both in legislatures and in the community at large. This “veering off” point becomes very pronounced when the American abolitionist narrative is juxtaposed to that of the British, who marched slowly and steadily towards abolition over the course of twenty years.

It is important to note that the shift to the textualist debate in America
was not in any way preordained, but rather was the effect of abolitionist elites and interest groups that took the initiative to push the debate out of the legislatures and into the courts. Ironically though, the constitutional realm gave retentionists much more ground to stand on when defending the death penalty as it was held under scrutiny.

Further research to support the claims of this paper could look at similar narratives in other countries with codified constitutions. Were their abolitionist debates pushed towards textual normative standards located in their constitutions? And if so, what were the results of those debates? Did they confirm or reject the general opinion of that country on the issue of capital punishment?

The legal legitimation of the death penalty can also help explain why the practice remains so entrenched in the 21st century. While it is beyond the scope of this paper to delve into the exact terms of that legitimation today, it does provide an account of how such legitimation may have originated in the 1960s and 1970s. When thinking of modern social institutions, it is necessary, I think, to trace how those institutions have developed and, more importantly, how the ways in which we think of those institutions have historically evolved. I hope that this paper has shed such insight into the peculiar American death penalty, the only example of capital punishment in the modern Western world.
Endnotes

1 1960.


11 Gottschalk, p. 205.


Veering Off the Abolitionist Path in America


18 Christianson, p. 194.

19 Christianson, p. 195.


21 ibid.


27 Methodology of American Debate Research: The search engine of *HeinOnline.org* was used to filter through the *Congressional Record* for the bills that had the most “relevant” debate to capital punishment, constrained to the 1960s as suggested by secondary literature. These selection of these bills were the product of that method.


29 ibid.


32 Senator Morse (OR), p. 4121.


34 ibid.


36 Senator Morse (OR), p. 4127.


40 Meltsner, p. 55.

41 Meltsner, p. 25.


43 Gottlieb, p. 281.


45 ibid, and Gottlieb, p. 272, 277, 281.

46 Brennan, p. 314-315.

47 ibid.

48 ibid.

Veering Off the Abolitionist Path in America

50 ibid.
51 ibid.
52 Meltsner, p. 28.
53 Petrezselyem, p. 7.
55 ibid.
57 Bowers, Pierce, and McDevitt, p. 17.
60 ibid.
62 Bowers, Pierce, and McDevitt, p. 18.
63 ibid.
64 ibid.
65 ibid.
66 ibid.
72 Paternoster, p. 64.
74 ibid.
75 Paternoster, p. 37.

Senator Hart (MI), p. 17336.

ibid.

ibid.

ibid.


Representative Eckhardt (TX), p. 6533.


Methodology of American Debate Research: After 1967, searches for operators “capital punishment” AND “cruel” OR “unusual” and operators “death penalty” AND “cruel” OR “unusual” returned these debates. These debate were cross-referenced with those bills listed as most “relevant” from “capital punishment” or “death penalty” searches.


Woodson v. North Carolina (1976), opinion delivered as part of the July 2 Cases, consolidated under Gregg.


Christianson, p. 206.
Veering Off the Abolitionist Path in America


95 Christoph, p. 21.


97 Christoph, p. 26.


99 Tuttle, p. 56.


103 Methodology of British Debate Research: Key bills were identified by secondary literature. The debates of these bills were available on *Historic Hansard* online.

104 Block and Hostettler, p. 109.

105 Tuttle, p. 57.

106 Tuttle, p. 58.


108 Silverman, cc. 2189.
Silverman, cc. 2188.

Silverman, cc. 2189.


Paget, cc. 2304.


Anderson, cc. 1000.

Block and Hostettler, p. 114-117.

Tuttle, p. 69.

ibid.


Christoph, p. 27.

ibid.

Block and Hostettler, p. 122, and Tuttle, p. 55, 84.


See note 109.

Block and Hostettler, p. 151.

Christoph, p. 81.


ibid.

ibid.

Gottschalk, p. 228-229.


Tuttle, p. 144.

ibid.
144 Clark and Widdecombe, p. 231.
145 Block and Hostettler, p. 143-145.
146 Potter, p. 168.
147 Block and Hostettler, p. 139-143.
148 Potter, p. 169.
149 Block and Hostettler, p. 163-165.
150 Clark, p. 231.
151 Block and Hostettler, p. 142.
152 Block and Hostettler, p. 164.
154 Clark, p. 241, and Tuttle, p. 100.
155 Hollowell, p. 370.
156 Tuttle, p. 102.
157 Potter, p. 170.
158 Christoph, p. 113.
159 Christoph, p. 114, and Tuttle, p. 102.
160 p. 7.
161 p. 171-203.
164 Christoph, p. 116.
165 Christoph, p. 135-137.
Veering Off the Abolitionist Path in America


167 Tuttle, p. 119.


169 Block and Hostettler, p. 183.


174 Tuttle, p. 143.

175 Block and Hostettler, p. 192.

176 Block and Hostettler, p. 191, 196.


178 Potter, p. 181.

179 Block and Hostettler, p. 191.


181 Wright, p. 90.


183 Potter, p. 193.

184 Potter, p. 194-195.


187 See note 109.

188 Clark and Widdecombe, p. 237.


191 Silverman, Sydney, cc. 872.


196 ibid.

197 ibid.

198 Lord Bishop of Chester, cc. 610.


Veering Off the Abolitionist Path in America


202 Block and Hostettler, p. 259-260.


204 See note 109.


215 Hodgkinson and Rutherford, p. 266.

216 Meltsner, p. 29.
217 Hodgkinson and Rutherford, p. 269.
218 Meltsner, p. 107.
220 Meltsner, p. 112.
222 Tuttle, p. 100.
223 Kingdon, p. 175-180.
224 p. 223.
225 ibid.
226 ibid.
227 Wright, p. 110, 115.
229 p. 227-230.
232 See note 155.
233 Tuttle, p. 143.
234 ibid.
Veering Off the Abolitionist Path in America


238  Gottschalk, p. 219.


240  See note 67.

241  ibid.


245  Gottschalk, p. 235.


247  Gadamer, p. xxvi.

248  Gadamer, p. 336-337.

249  Gadamer, p. 301.

250  Gadamer, p. 305.


252  Gadamer, p. 307.

253  Steiker and Steiker, p. 426.


See notes 73-74.


ibid.

Vogel, p. 793.

ibid.


See note 96.

Dallmayr, p. 1466.


p. 429-438.

Steiker and Steiker, p. 429, [some italics mine].

Steiker and Steiker, p. 429-430.

p. 430-432.


ibid.


References


Veering Off the Abolitionist Path in America


172 ◆ SPICE | Philosophy, Politics, and Economics Undergraduate Journal


Veering Off the Abolitionist Path in America


