

Fairleigh Dickinson University

The Undergraduate Politics and Law Journal

Volume 1 | Issue 1 | Spring 2023



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OUR STORY

The Undergraduate Politics & Law Journal at Fairleigh Dickinson University was founded in 2022. The journal provides undergraduate students with opportunities to explore legal and political issues (broadly understood) and collaborate with faculty and student editors to publish articles. The journal experience is enriching at the undergraduate level and provides students with an important entry in their scholarly portfolio.

THE UNDERGRADUATE POLITICS & LAW JOURNAL
2022 – 2023

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MASTHEAD

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Dear Reader,

It is my pleasure and honor to present the inaugural edition of the Undergraduate Politics and Law Journal at Fairleigh Dickinson University. Over the course of the 2022-2023 year, we have curated a wide array of articles written and edited by undergraduate students across the country. From Native American rights to presidential engagement and policy lessons to the comparison of Xi Jinping and Vladimir Putin's operational codes in Taiwan and Ukraine, these articles highlight the depths of which legal and political analysis and thought provide an understanding of complex issues and invoke a broader global perspective that we are proud and excited to share with you all.

I want to take a moment to thank the incredible UPLJ editorial team, over the last six months, our authors and editors, the true backbone of this journal, have, without fail, worked tirelessly to produce the incredible articles that you are reading today. These articles represent some of the finest undergraduate legal and political scholarships, and while this year's edition of the UPLJ is the first, these authors and editors have helped pave the way for future editions in the years to come!

On a more personal note, the publication of this edition marks the end of my tenure as UPLJ Editor-in-Chief. This incredible experience has taught me greatly and has been amazingly impactful, and it is one that I will carry with me for the rest of my life. I am genuinely grateful to the entire Fairleigh Dickinson University community, my family, my friends, and everyone who shared this journey with me and the broader UPLJ Team. I would also like to extend my immense gratitude and thanks to Professors Madelyn Ferrans and Bruce Peabody for believing in me and giving me the opportunity, encouragement, guidance, and advice that allowed this idea to become a reality. Words cannot express how grateful I am for everything you have done for me and the UPLJ; without all your support, none of this would have been possible. And last but certainly not least, I would like to express my sincerest thanks and gratitude to my Senior Managing Editor, Madison Bromke. Madison has worked alongside me and our advisors since the very beginning and has truly been an invaluable contribution to the UPLJ team. From late-night meetings to early-morning phone calls, her dedication is unsurpassable, she was my right-hand woman, partner in crime and I honestly couldn't have done it without her.

Finally, I encourage all of our readers to think deeply and engage with the work presented in this edition, and on behalf of the entire UPLJ team, we hope that you enjoy reading it as much as we did putting it together.

Briana Louro
Founder/Editor-in-Chief

Dear Reader,

Hi, my name is Madison Bromke and I am the Senior Managing Editor of the FDU Undergraduate Politics and Law Journal. I graduated this past May with a BA in Criminology and a minor in Pre-Law. This fall, I will be starting at Rutgers Law. I got involved with the Journal during the spring semester of my second year in undergrad.

With things just getting back to normal after COVID, the Journal was the first place I was able to get involved at FDU. I am so thankful for Professor Madelyn Ferrans, Professor Bruce Peabody, and Briana Louro for giving me the opportunity to work on this exciting new project. As this was the first year of the UPLJ, we came a long way from when we started last August, to our inaugural edition being released almost a year later. Briana and I put together a team of hard-working and dedicated students from both FDU campuses who served as our editorial board and worked with us during a 6-month editing process.

Being a part of this experience has allowed me to collaborate with my peers and build something from the ground up. This has taught me teamwork and analytical skills that I will carry with me for the rest of my life. I am so happy to finally see everything coming together and to share all of our hard work with the world! A huge thank you to all the authors who submitted pieces and worked tirelessly preparing their articles for publication. Together we developed the articles you can read today! This year's edition of the UPLJ will be the first of many and I cannot wait to read new editions in the years to come.

Once again thank you to our e-board, advisors, authors, and my partner in crime, Briana Louro for this amazing experience.

Madison Bromke
Senior Managing Editor

**HOW LEGAL HANDICAPS PREVENT EFFECTIVE LAW
ENFORCEMENT ON NATIVE AMERICAN RESERVATIONS**

Frank DeRogatis | 2022 – 2023

“...on some reservtions, Native women are murdered at a rate more than ten times the national average.” - Former Attorney General Thomas J. Perrelli¹

According to the Centers for Disease Control and Prevention, the most likely causes of death for White, Black, and Asian women are, in order, heart disease, cancer, and stroke.² For Native American women, however, the data tell a different story. According to the Urban Indian Health Institute, homicide was the third leading cause of death for American Indian and Native Alaskan women living on reservations in 2016.³ This data reflects a larger governmental failure to provide for and support effective Native law enforcement. In its long and abusive history with Native Americans, the leadership of the United States government has taken special care to ensure that “savages” would not be able to properly protect themselves from threats that originate from outside of their communities. Although there have been some recent judicial and legislative improvements, more needs to be done to remove the hindrances that still exist.

This Article will proceed as follows. It will begin with a brief history of the relationship between the United States and the Native American community, giving special attention to the actions of certain figureheads as well as specific instances of disregard for and suppression of the rights of Native Americans. Next, the article will explain how legal handicaps, including the especially damaging case of *Oliphant v. Suquamish*, have prevented effective enforcement of the law on Tribal lands. It will continue by presenting supporting data that has been gathered from reports of various federal agencies. Finally, the paper will address recent legislative and judicial

¹Department of Justice, Statement Of Associate Attorney General Thomas J. Perrelli Before The Committee On Indian Affairs (September 18, 2014), <http://www.justice.gov/opa/speech/statement-associate-attorney-general-thomas-j-perrelli-committee-indian-affairs-violence>.

²Centers for Disease Control and Prevention, Leading Causes Of Death, Females, All Races And Origins, United States, 2018 (March 3, 2022), <http://www.cdc.gov/women/lcod/2018/all-races-origins/index.htm>.

³Urban Indian Health Institute, MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS 2 (2018), <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

efforts to combat the unfortunate Oliphant holding, the results of these efforts, and suggestions for future actions.

I. A HISTORY OF DISREGARD

With even a cursory look at the documentation authenticating Columbus' expedition to North America, one might notice surprising language. Columbus was not sent merely to explore and trade, but rather to "conquer and subdue." He was given "the office of Admiral, with the charge of Vice-Roy and Governour" and entitled to "freely decide all causes, civil and criminal, appertaining to the said employment" as he "shall think fit in justice." Further, the royalty ordered that "People of all Cities, Lands, and Places in our Kingdoms and Dominions, and in those you shall conquer and subdue" would "treat you and your Lieutenants ... for executing the employments of Admiral, Vice-Roy, and Governour, as such in all respects."⁴ In other words, Columbus was given absolute power in all matters concerning the lands he encountered. He was immediately accountable to no one and was effectively the judge, jury, and executioner in all matters of law and justice. Without even considering the will of the people Columbus might encounter, the Spanish Crown decreed that they would be subservient to him. This blatant disregard for the will of others was a sign of a troubling pattern to come in relations with Native Peoples.

This disregard was so deeply ingrained in the hearts and minds of early Americans that it even made an appearance in the Declaration of Independence, becoming enshrined in a document that, among other things, advocated for equality. Along with twenty-six other grievances, King George III, "has endeavoured to bring on the inhabitants of our frontiers, the

⁴ Privileges and Prerogatives Granted by Their Catholic Majesties to Christopher Columbus (1492) (Spain), https://avalon.law.yale.edu/15th_century/colum.asp.

merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.”⁵ Interestingly enough, the same “merciless Indian Savages” had a system of government that the same men would find worthy enough to mirror eleven years later with the U.S. Constitution. In fact, in 1988 the U.S. Senate passed a resolution admitting that, “the confederation of the original Thirteen Colonies into one republic was influenced by the political system developed by the Iroquois Confederacy as were many of the democratic principles which were incorporated into the Constitution itself.”⁶

Perhaps one of the most famous instances of such disregard for Native Americans was President Andrew Jackson’s alleged remark after the U.S. Supreme Court ruled in favor of Native Americans in *Worcester v. Georgia*. The case was a victory for Native Americans and the court held that the states had no authority to impose their will in regard to Native Lands. Jackson is widely quoted as saying, “John Marshall has made his decision, now let him enforce it.”⁷ While there is debate as to whether Jackson actually made this remark, it certainly represents the action he took regarding the ruling. As Jackson deliberately stood by, Georgia was allowed to continue its unconstitutional actions, involving itself with Native affairs despite this power being vested only to the federal government. It was this inaction that allowed the states to begin enforcing damaging legislation, culminating in the infamous Trail of Tears that would worsen things for the already decimated Native population.⁸

⁵ National Archives and Records Administration, DECLARATION OF INDEPENDENCE: A TRANSCRIPTION (1776), <https://www.archives.gov/founding-docs/declaration-transcript>

⁶ 100th Congress, A Concurrent Resolution to Acknowledge The Contribution Of The Iroquois Confederacy Of Nations To The Development Of The United States Constitution (1988), www.senate.gov/reference/resources/pdf/hconres331.pdf

⁷ Thomas A. Donovan, *John Marshall Has Made His Decision, Now Let Him Enforce It*, AT SIDEBAR - FEDERAL BAR ASSOCIATION, Sept. 9, 2012, www.fedbar.org/wp-content/uploads/2012/09/sidebar-sep12-pdf-1.pdf

⁸ Encyclopaedia Britannica, WORCESTER V. GEORGIA, <https://www.britannica.com/topic/Worcester-v-Georgia>

II. THE OLIPHANT DECISION AND ITS IMPACT

Disregard for the welfare of Native Americans would continue into the 20th century, as underscored by the *Oliphant* decision. In 1973, Mark David Oliphant was arrested by Suquamish Tribal Police after assaulting an officer and resisting arrest on the Port Madison Indian Reservation. Oliphant was a non-Native, but he was a permanent resident of the reservation. Based on his non-Native status, Oliphant appealed to the U.S. Court of Appeals for the Ninth Circuit alleging that the tribal court that imprisoned him, the Provisional Court of the Suquamish Indian Tribe, had no jurisdiction over him.⁹ The case later made its way to the U.S. Supreme Court in 1978, where it was combined with another case into *Oliphant v. Suquamish*. After hearing arguments, a 6–2 majority decided in favor of Oliphant. Using scraps of material from past cases and legislation, the court struck a critical blow to tribal sovereignty and ultimately ruled that “Indian tribes do not have inherent jurisdiction to try and to punish non-Indians.” Further, the court stated it was “not unaware of the prevalence of non-Indian crime on today’s reservations” and deemed this prevalence of crime “considerations for Congress to weigh” which had “little relevance to the principles which lead us to conclude.”¹⁰ With this critical ruling, the court effectively deflected the issue at hand, choosing to allow past injustices to persist at the whims of Congress rather than to intervene and modernize the administration of justice.

Redeeming the court, both Chief Justice Warren Burger and Associate Justice Thurgood Marshall dissented. Marshall authored the dissent, agreeing with the lower court and writing that “I am of the view that Indian tribes enjoy as a necessary aspect of their retained sovereignty the

⁹ *Oliphant v. Schlie*, 544 F.2d 1007 (9th Cir. 1976), <https://law.justia.com/cases/federal/appellate-courts/F2/544/1007/239392/>

¹⁰ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), <https://www.law.cornell.edu/supremecourt/text/435/191>

right to try and punish all persons who commit offenses against tribal law within the reservation.”¹¹

To put it simply, the *Oliphant* decision impacted the jurisdictional powers of the Tribal lands. The Court ruled that the tribal courts do not have the power to prosecute non-Indians, taking away this sovereign Native American right. The result was a jurisdictional gap where the Tribal Police, the most numerous and most present law enforcement body on reservations, could not arrest non-Native offenders. Effectively, this enables non-Indian offenders to operate with impunity.

The fallout from *Oliphant* would become exceedingly apparent twenty-one years later in 1999, when the Bureau of Justice Statistics (BJS) published a report entitled *American Indians and Crime*. Self-dubbed as “the first step in a vigorous BJS effort to document issues of crime and justice affecting American Indians”, the findings of this report were shocking. According to the data, “American Indians experience per capita rates of violence which are more than twice those of the U.S. resident population.” One might ask if this staggering figure is the result of more crimes somehow being reported, but the data also show that, “American Indian victims of violence reported the crime to police at about the average rate for all races.” The data around the perpetrators of these offenses is even more damning, “At least 70% of the violent victimizations experienced by American Indians are committed by persons not of the same race – a substantially higher rate of interracial violence than experienced by white or black victims.”¹² As a whole, these data point towards Native Americans experiencing greatly elevated rates of violent crime, and that these violent crimes are occurring primarily at the hands of non-Natives. At this point, one might draw the connection between the inability of Native communities to

¹¹ *Id.*

¹² Bureau of Justice Statistics, *AMERICAN INDIANS AND CRIME* iii - vii (1999), <https://bjs.ojp.gov/content/pub/pdf/aic.pdf>

prosecute non-Natives and the soaring rate of interracial violence. Perhaps the promise of immunity is attractive to criminals.

A 2008 study funded by the Department of Justice reconfirmed these results. It found that the average annual rate of rape and sexual assault for American Indians and Alaska Natives had grown to nearly three times that of both White and African American women. The data from this study also supported the trend of interracial violence as shown in the previous paragraph, meaning that the increase in violent crime was directly related to the presence of non-Native offenders. Approximately sixty-seven percent of the offenders who targeted Native American women were White or Black, while less than thirty-three percent were Native American. These crimes were also more violent for Native American women, who were hit in ninety-one percent of victimizations while White and African American women were hit or otherwise struck in seventy-one and seventy-eight percent of victimizations, respectively. In addition, perpetrators used a weapon in twenty-five percent of rapes and sexual assaults against Native women, while weapons were only used in nine percent of rapes and sexual assaults against both White and African American women.¹³

III. EFFORTS TO EXPAND TRIBAL JURISDICTION

The data collected from these studies initiated discussions about enhancing tribal jurisdiction; fortunately, the disparity between the rates of violence against Native women and women of other races eventually began to attract attention. In response, Congress passed the Tribal Law and Order Act in 2010. In summary, the act, “enhances tribes’ authority to prosecute and punish criminals; expands efforts to recruit, train, and keep Bureau of Indian Affairs (BIA)

¹³ Ronet Bachman et al, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN 33 - 38 (2008), <https://www.ojp.gov/pdffiles1/nij/grants/223691.pdf>

and Tribal police officers; and provides BIA and Tribal police officers with greater access to criminal information sharing databases.”¹⁴ Specifically, one of the main functions of the Act enhanced Tribal Court sentencing abilities from maximums of one year imprisonment and/or a fine of \$5,000 to maximums of three years imprisonment and/or a fine of \$15,000.¹⁵ While clearly a step in the right direction, these sentences were still very minimal and once again could only be applied to Native offenders. Essentially, this act was Congress’ acknowledgement that a problem existed, but it still elected to endorse a precedent that crippled Native law enforcement.

In the same vein as the Tribal Law and Order Act came the 2013 reauthorization of the Violence Against Women Act (VAWA). The act, which was first passed in 1994, “was the first federal legislation acknowledging domestic violence and sexual assault as crimes and provided federal resources to encourage community-coordinated responses to combating violence against women.”¹⁶ Since it was first passed, the act has been reauthorized and expanded several times, adding various protections and resources for victims of violence. The 2013 reauthorization was particularly important, and it “enhanced access to safety and justice for Native women, immigrants, LGBTQ+ individuals, college students and youth, and public housing residents.”¹⁷ Specifically for Native Americans, the act contained a provision asserting the authority of the tribes to exercise special criminal jurisdiction over crimes of domestic violence.¹⁸ This was the first development on Tribal jurisdiction since the 1978 ruling in *Oliphant*. Congress had finally begun to answer the question that the Supreme Court left to it some thirty-five years ago.

¹⁴ Department of Justice, TRIBAL LAW AND ORDER ACT (July 19, 2021), <https://www.justice.gov/tribal/tribal-law-and-order-act>.

¹⁵ Indian Law Resource Center, TRIBAL LAW AND ORDER ACT AT FIVE YEARS (2015), <https://indianlaw.org/safewomen/tribal-law-and-order-act-five-years#:~:text=The%20Tribal%20Law%20and%20Order,total%20of%20nine%20years%20for>

¹⁶ National Network to End Domestic Violence, VIOLENCE AGAINST WOMEN ACT (2022), <https://nnedv.org/content/violence-against-women-act/#:~:text=Since%20its%20enactment%20in%201994,local%20responses%20to%20these%20crimes>

¹⁷ *Id.*

¹⁸ Department of Justice, 2013 AND 2022 REAUTHORIZATIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) (September 20, 2022), <https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-vawa>

As groundbreaking as the 2013 VAWA addendum was, it did not adequately help to curb victimization. Three years later the disproportionate violence on reservations persisted, and in 2016 a National Institute of Justice (NIJ) study revealed that, “More than four in five American Indian and Alaska Native women and men have experienced violence in their lifetime, and more than one in three experienced violence in the past year.”¹⁹ If it was not already alarming that over four out of five Native Americans will experience violence throughout their lives, the idea that one third of all Native Americans experienced violence in the last year is a clear sign of a problem. There were also issues with the collection of data and sharing of incidents among organizations; 2016 saw 5712 American Indian women and girls reported missing while only 116 of those cases were logged in the National Missing and Unidentified Persons System.²⁰ In short, VAWA had not been enough to stop the violence against Native women; the jurisdictional allowances it had made were not enough to reduce the number of violent crimes being committed by non-Natives.

Substantial change would come a few years later in 2021 after the Supreme Court ruling in *U.S. v. Cooley*. The case came out of an incident that began when Tribal Police Officer James Saylor encountered Joshua Cooley, a non-Native who had stopped his truck on the shoulder of a local highway. Saylor’s initial intent was to assist Cooley, but this changed after Cooley responded strangely to his questions, failed to produce identification, and Saylor noticed two semi-automatic rifles on the passenger seat. Saylor proceeded to search Cooley and his truck, finding a handgun, a glass pipe, and bags containing small amounts of methamphetamine. Saylor then handed Cooley over to county authorities, and he was charged with federal drug offenses.

¹⁹ Andre B. Rosay, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN 1 (2016), <https://www.ojp.gov/pdffiles1/nij/249822.pdf>

²⁰ Bureau of Indian Affairs, MISSING AND MURDERED INDIGENOUS PEOPLE CRISIS, <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>.

However, Cooley challenged the evidence produced by the search on the grounds that Saylor clearly knew he was a non-Native when he began interacting with him. The district court agreed with Cooley, suppressing the evidence.²¹

Still not dissuaded, the prosecution appealed all the way to the U.S. Supreme Court, which agreed to hear the case and eventually unanimously sided with Saylor. The court stated that, “To deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime would make it difficult for tribes to protect themselves against ongoing threats.” Additionally, “an initial investigation of non-Indians’ ‘violations of federal and state laws to which those non-Indians are indisputably subject’ protects the public without raising ‘similar concerns’ of the sort raised in our cases limiting tribal authority.”²² In summary, this decision hinged on two factors: the essentiality of public safety and the minimal interference that detainment had on suspects. The Supreme Court has long ruled in favor of public safety, creating exceptions that many would agree strike a reasonable balance between safety and liberty (the famous prohibition on shouting “fire!” in a crowded movie theater example comes to mind). Detainment and searches differ greatly from the prohibited Tribal prosecutions of non-Natives. Such actions did not expressly utilize Tribal law, but rather applied broader state and federal statutes in a manner acceptable to the court.²³

The power to detain and search non-Native suspects was an incredible advancement for Tribal law enforcement, but even this drastic measure did not end the problems at hand. As an example, take the account of Tribal Police Officer Jerome Lucero. In an interview with NPR, Officer Lucero recounted an incident where he pulled over a non-Indian driver who was

²¹ Frampton et al, *United States v. Cooley*, HARVARD LAW REVIEW, November 10, 2021, <https://harvardlawreview.org/2021/11/united-states-v-cooley/>.

²² *United States v. Cooley*, 593 U.S. 4, 7 (2021), https://www.supremecourt.gov/opinions/20pdf/19-1414_8m58.pdf

²³ *Id.*

traveling at thirty miles per hour in a seventy mile per hour zone. Upon speaking with the man, Lucero noticed that the man's pupils were dilated, and he had no idea where he was. In plain view were syringes in the door pocket and heroin in the middle console. Under any other circumstances Lucero would have been able to arrest the man on the spot, but because the man was a non-Indian and Lucero was Tribal police officer, he could only hold him at the scene and had to call other authorities. Both the local county sheriff's office and the New Mexico State Police were unwilling to send an officer, stating that they were "busy."²⁴ On paper, the power to detain may appear to be a trump card for Tribal police, but in practice it still allows violence and law-breaking to persist.

IV. ANOTHER METHOD TO CURB THE VIOLENCE

One of the latest updates to non-Native criminal prosecution came in the 2022 case of *Oklahoma v. Castro Huerta*. This case was spurred by an earlier ruling that declared much of eastern Oklahoma was Tribal property.²⁵ In short, the *Castro Huerta* decision allowed state governments to prosecute non-Natives on Tribal land, something they were previously barred from doing.²⁶ This case became relevant because it helped to curb violence in an alternate way. While it did not expand Tribal jurisdiction, it allowed other law enforcement agencies to cooperate better, helping to ease the burden of the federal agencies, specifically the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), that had previously been valiantly footing the surge of new cases. In particular, the FBI became tasked

²⁴ Savannah Maher, *Supreme Court Rules Tribal Police Can Detain Non-Natives, but Problems Remain*, NPR, June 9, 2021, <https://www.npr.org/2021/06/09/1004328972/supreme-court-rules-tribal-police-can-detain-non-natives-but-problems-remain>

²⁵ Conor P. Cleary, *McGirt v. Oklahoma: A Primer*, OKLAHOMA BAR JOURNAL, March 7, 2022, <https://www.okbar.org/barjournal/march-2022/cleary/>

²⁶ *Oklahoma v. Castro-Huerta*, 597 U.S. 24 (2022), https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

with providing “this basic level of policing in the eastern half of Oklahoma...[in addition to]...still doing all the things the American public expects the FBI to do.” The bureau had previously been investigating about fifty Native-related criminal cases a year, but it is now tasked with thousands.²⁷ According to Special Agent in Charge Edward Gray, agents are opening between thirty to forty additional cases each week. This overload has forced the FBI to focus on the most serious crimes: violent offenses and crimes against children. Simply because of a lack of manpower, small-time non-Native criminals, including car thieves and burglars, were going unpunished.²⁸ The jurisdictional expansion in *Castro Huerta* will undoubtedly provide much needed support to these investigations.

V. VAWA 2022: THE PIECEMEAL APPROACH

Another recent update to the situation came through the 2022 reauthorization of VAWA. While the 2013 version gave tribes special domestic violence criminal jurisdiction, (SDVCJ), the 2022 version simply gave special Tribal criminal jurisdiction (STCJ). The difference? STCJ gives Tribes authority over a number of different offenses (regardless of the offenders status as a Native or non-Native), with the full list being assault of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and criminal violations of protection orders. The 2022 reauthorization was specifically catered to address the unique situation on Native lands, but, as is all too common in the fight for Tribal equality, it came with a catch. First, in order to be eligible to participate in STCJ, Tribes must guarantee that defendants will receive essentially the same process they would in a typical

²⁷ Federal Bureau of Investigation, *Oklahoma FBI Case Volume Unprecedented*, FBI.GOV NEWS, July 8 2021, <https://www.fbi.gov/news/stories/oklahoma-fbi-case-volume-unprecedented-070821>

²⁸ The Editorial Board, *Opinion | An FBI Agent's Straight Talk on McGirt and the Mess in Oklahoma*, THE WALL STREET JOURNAL, April 24, 2022, <https://www.wsj.com/articles/mcgirt-v-oklahoma-native-american-reservation-fbi-supreme-court-tulsa-pd-systemic-racial-injustice-crime-policing-11650821774>.

courtroom, a stipulation that is challenging for many Tribes to ensure. Second, only a maximum of thirty tribes may be given STCJ, and only five may be added to the program per year.²⁹ Nevertheless, in the coming years it will be interesting to examine the efficacy of this program and the reports that come out of this reauthorization.

VI. SUGGESTIONS AND NEXT STEPS

Despite its very rocky history with Native Americans, in recent decades government leadership has committed itself more and more to both recognizing and addressing problems affecting Native peoples. As time has progressed, Natives have gained many partial victories through the courts, legislation, and law enforcement directives, but unfortunately the sum of all these parts still has yet to add up to a whole. The final and ultimate step in this process is for Native Americans to gain the unhindered ability to prosecute anyone who commits a crime on their lands, regardless of if they are Native or not.

It appears that there are four distinct methods to reach this outcome. The first, overturning the *Oliphant* decision, would put a swift end to the problems with non-Native prosecutions, enabling the Tribal police to step in and arrest those breaking the law on Native lands. Unfortunately, it is extremely unlikely, as this is a landmark Supreme Court case and the Court only overturns its decisions in the rarest of circumstances, a number that is under one percent. The second option is to continue with the *Castro Huerta* approach, allowing state law enforcement to handle non-Native prosecutions. While this option would put an end to the violence, it flies in the face of Tribal sovereignty. Native Americans have long fought for the ability to police their own communities, and the value of a community's police being comprised

²⁹ Department of Justice, 2013 AND 2022 REAUTHORIZATIONS OF THE VIOLENCE AGAINST WOMEN ACT (VAWA) (September 20, 2022).

of its own members cannot be understated. The third option is to rely on the expansions to VAWA as a means of prosecuting non-Natives. This option comes with severe limitations, as discussed above. With the current law, only a small fraction of all the tribes can exercise jurisdiction over non-Natives, and expansions occur at the slowest pace possible. Even then, there are a variety of requirements that make obtaining said expansions as difficult as possible. To rely on this approach at its current speed would allow an untold number of deaths to occur before meaningful developments were made.

The fourth and final option is for Congress to pass a law enabling the Tribal Police to arrest non-Natives. In the current legal context, such a law is possible. While the ruling in *Oliphant* determined that the Tribal Police did not have the power to arrest non-Natives, it did not state that they could never be given it, as the decision stipulated that Congress could enable this power with the proper legislation. The passage of such legislation is the ideal result to resolve this situation. Not only is the passage of such a law possible (unlike overturning *Oliphant*), but it would respect Tribal sovereignty (unlike the *Castro Huerta* method) and would promise immediate results (unlike expanding VAWA).

THE IMPACT OF POLICY: HOW SECTION 8 SHAPES CITIZENSHIP

Abigail Scherer | 2022 – 2023

I. INTRODUCTION

Receiving a Section 8 Housing Choice Voucher can take up to 10 years depending on where one lives, but imagine how it feels to finally have one and be able to live in affordable housing. This program helps millions of people be able to afford their rent and have a place to call home by providing rent assistance. However, rent assistance isn't the only thing families receive with this program, they also receive surveillance by the state over their lives. Recipients pay for their vouchers with their time, energy, and well-being. These costs of being a Section 8 recipient affect participants and can change their experience of citizenship. This Article examines the impacts of Section 8 Housing Choice Vouchers and how these impacts can be analyzed through a citizenship framework.

When citizens interact with the state, either through a program like Section 8 or on the street in interactions with the police, their citizenship is impacted. This is because citizenship is defined as “fundamentally, a relationship between citizens and government.”¹ In order to have full citizenship people need to have full membership in a community and all of the rights and benefits that come with that membership.² These relationships and benefits are experienced differently by different groups of people. A single mother on welfare will have a very different experience with the state than a retired, middle-class person. These different experiences change how someone views their relationship with the state. The state creates a hierarchy, reinforced by state actors—such as police officers and local housing officials—and this interaction impacts their citizenship. This idea is well documented in citizenship literature, ranging from

¹ Suzanne Mettler, *Dividing Citizens: Gender And Federalism In New Deal Public Policy* 8 (2018).

² T.H. Marshall, *Citizenship And Social Class In Inequality And Society* 148-154, 149 (1950).

administrative burden³ to policing.⁴ Using this literature, I created an analytical tool that can be used to examine the effect of U.S. housing policy on citizenship. Based on the concept of policy feedback, this tool can illuminate the impacts of a policy which can be used to evaluate how people's lives are affected by surveillance, stigma, knowledge gaps, and compliance.⁵ This Article will explain the methodology behind creating this analytical tool and provide a sample analysis of the Section 8 Housing Choice Voucher program.

Housing literature covers largely historical and political aspects of housing policy and current issues we face with the housing crisis.⁶ This information is used to show the disparities in housing and how these disparities create generational and racial inequality. Housing literature has typically analyzed the financial disadvantages of not having access to homeownership. The other impacts housing has such as health, education, and policing have also been well documented.⁷ What this literature has not examined is how all of these impacts affect citizenship and have created differences between groups of people. As a result, there is differentiated citizenship in the United States that is tied to housing policy.⁸

Part I of this Article will explain the methodology used to examine the research question, how does housing policy affect the experience of citizenship in the United States? To examine this question, I developed an analytical tool that draws on studies of both welfare and administrative burden to identify the psychological, learning, compliance, and surveillance

³ Donald Moynihan, Pamela Herd & Hope Harvey, *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY 43-69 (2014).

⁴ Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANNUAL REVIEW OF POLITICAL SCIENCE 565-591 (2017).

⁵ Suzanne Mettler & Joe Soss, *The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics*, 2 PERSPECTIVES ON POLITICS 55-73, 55 (2004).

⁶ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2018), Jessica Trounstein, *Segregation by Design Local Politics and Inequality in American Cities* (2019), Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (2019), Chloe N. Thurston, *At the Boundaries of Homeownership: Credit, Discrimination, and the American State* (2018), Randy Shaw, *Generation Priced Out: Who Gets to Live in the New Urban America* (2020).

⁷ Andrea Flynn et al., *The Hidden Rules of Race: Barriers to Inclusive Economy* (2018).

⁸ Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* 8 (2018).

impacts of policy. Identifying these effects will show that different people have different relationships with government, depending on the benefits they receive, generating differentiated citizenship. Part II of this Article will then apply this analytical tool to the examination of the Section 8 Housing Choice Voucher program. This Article is part of a larger thesis covering multiple housing policies in greater depth.⁹

II. ANALYTICAL TOOL

The analytical tool I created to examine housing programs has been developed from administrative burden and welfare literature. There are countless ways that citizenship can be affected so I had to choose only a few metrics with which to evaluate my case studies. The analytical tool includes the following metrics: surveillance, psychological, learning, and compliance.

Surveillance is a tool used by the state to control welfare recipients and housing programs. Using this as one of the metrics to measure a program allows analysis of how much the state encroaches on the lives of participants in various programs and how this affects them. Surveillance ranges from police surveillance to welfare home visits. Welfare may seem like a social safety net to help people who are struggling to receive food, shelter, etc. While welfare programs do provide these services to some degree, they also allow the state into the private lives of citizens. Programs for the poor in the United States are means-tested and in order to ensure that only those who are eligible receive benefits, the state uses surveillance. While we may think of welfare and policing as quite distinct policy areas, they both involve investigations and enlist the surveillance capacity of the state. Policing, which we tend to identify as an element within

⁹ Scherer, Abi. "The Impact of Policy: How Federal Housing Policy Shapes Citizenship in the United States." Undergraduate thesis, Ohio University, 2023, http://rave.ohiolink.edu/etdc/view?acc_num=ouhonors1682605770460877

the criminal justice system, actually serves as some citizens' encounters with government itself. Joe Soss and Vesla Weaver explain this by saying that police and the criminal justice system are the "second face of the state."¹⁰ This interaction with the police is a citizen's experience with the state, but it is only some citizens' experience. People of color and the poor have very different interactions with the police than white, middle-upper-class people do.¹¹ The disparate policing practices that people face produce differentiated citizenship.

The metric of surveillance was also taken from welfare literature. In welfare literature, it is clear that being a part of the welfare state puts one in a position to be surveilled. This is specifically true, however, with means-tested welfare programs, such as Supplemental Security Income, SNAP food stamps, or in our case, Section 8 Housing Choice Vouchers.¹² When people participate in means-tested welfare programs they are subjected to eligibility testing by the state. In some applications, participants are even required to sign documents allowing the agency to which they are applying to examine anything necessary to determine eligibility.¹³

Another common aspect of welfare surveillance is inspections. These inspections are used in various programs, such as Section 8 and previously in Aid to Families with Dependent Children. Home visits are a way of surveilling welfare recipients and moderating their actions. However, this is only for means-tested welfare programs because the state wants to determine who is deserving and undeserving of aid. This surveillance impacts how people live their lives, shaping their actions and limiting their citizenship.

The last three metrics in my analytical framework are all from administrative burden literature. Administrative burden is made up of three different costs: psychological, learning, and

¹⁰ Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANNUAL REVIEW OF POLITICAL SCIENCE 565-591, 567 (2017).

¹¹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2020).

¹² John Gilliom, *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy* 20 (2001).

¹³ *Id.* at 18

compliance.¹⁴ When people participate in a government program there are a lot of steps and rules that need to be followed. For example, if one wants to apply for a Section 8 Housing Choice Voucher to receive rental assistance, they have to first apply and provide documentation of employment, assets, income, etc. to their local housing authority. Then they have to update their information every year while they wait and when they do eventually receive a voucher, they have to follow all the rules and regulations of the program. Psychological costs include the cost of facing the stigma associated with a program and the mental strain that comes with participation in the program. This affects the mental state of a participant, and it affects their interactions and relationships with others who may not be a part of the program. Learning costs describe the burden of having to learn about the program and whether one is eligible or not. It also includes the challenges of learning how to navigate the application process and any other requirements the program may have that the participant has to follow. Finally, the compliance costs explain the burden of completing the documentation of various requirements, such as the application, re-enrollment, and additional requests for a program. Much of this burden occurs during the application process when an agency is determining an applicant's eligibility in a means-tested program. Each program has different levels of burdens and when program participants in different programs have differing experiences with the state, they are experiencing differentiated citizenship.

III. LITERATURE

T.H. Marshall defines citizenship as full membership in a community and it includes civil, political, and social rights.¹⁵ Civil rights include rights to liberty, freedom, property, etc.;

¹⁴ Donald Moynihan, Pamela Herd & Hope Harvey, *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY 43-69, 46 (2014).

¹⁵ T.H. Marshall, *Citizenship and Social Class in Inequality and Society* 148-154, 149 (1950).

political rights include the right to vote and to have political power; social rights are economic welfare, social well-being, and security.¹⁶ These elements create the traditional framework for evaluating citizenship. The analytical tool in this Article combines the research findings on housing policy with contemporary literature on citizenship to categorize the effects of housing programs and policies on people's civil, political, and social rights. This Article will examine housing using this new lens, focusing on the identified metrics.

Citizenship literature also explains the relationship between policy and the citizen by examining civic engagement, and pressure upon elected officials. Scholars ask how citizens' interests influence policymaking. Alternately, scholars study how policy affects citizens. This is studied less and is viewed as a gap in the literature by Suzanne Mettler and Joe Soss.¹⁷ The political tradition is to study mass opinion and behavior and how these are explained by state institutions, structures, etc.¹⁸ Instead, Mettler and Soss suggest that political scientists should be studying how policy shapes citizens and their interpretation and experience of citizenship.

One way policy impacts citizenship is through red tape and the administrative burden of participating in a program. Programs implement certain administrative rules to determine eligibility, these rules, however, differ greatly from program to program. An example is the difference between the process of applying for Social Security (SS) and Supplemental Security Income (SSI). In order to apply for SS, an applicant has to be 62 years old or be applying for a deceased spouse's benefits. This procedure can be completed online and takes 10-30 minutes with basic information like SSN and address.¹⁹ To apply for SSI, the applicant has to go to their

¹⁶ *Id.*

¹⁷ Suzanne Mettler & Joe Soss, *The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics*, 2 PERSPECTIVES ON POLITICS 55-73, 55 (2004).

¹⁸ *Id.* at 58

¹⁹ Donald Moynihan & Pamela Herd, *Red Tape and Democracy: How Rules Affect Citizenship Rights*, in 40 THE AMERICAN REVIEW OF PUBLIC ADMINISTRATION 654-670, 661 (2010).

local Social Security Administration office in person and provide pages of documents, from signed letters from employers to proof of US citizenship. The burden of providing all these documents and then being reevaluated randomly imposes a significant burden on people applying. The difference between these two programs separates citizens. The result is a different experience of citizenship for people based on policy.

The US policing system, too, influences people's experience of citizenship. For some people, their only interactions with the state are with law enforcement. This “second face” of the state is based on the exclusion of people viewed as part of an underclass by the state.²⁰ Separating people into groups and policing them differently creates differentiated citizenship.²¹ Some of the narratives that allow for this division are that people, primarily in race-class subjugated communities, are criminals, welfare queens, and no longer citizens.²² Police are state agents and may be the only state apparatus that a person encounters in their life. This creates disparities in people’s citizenship and their respective concepts of the state.

Literature on housing segregation focuses on historical policies and uses these to explain the current residential patterns. Housing literature explains that housing policy has historically disadvantaged minorities, and even policies that were meant to level the playing field still ended up having negative impacts. The US government put policies in place specifically designed to exclude minority populations and so the segregation and the housing issues we see today were largely caused by these government policies. Segregation in the United States is not *de facto*, it is *de jure*, meaning it has not been created by chance or fact, but instead by law. However, the narrative persists that people choose where they live and that's why we see segregation today.

²⁰ Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 ANNUAL REVIEW OF POLITICAL SCIENCE 565-591, 567 (2017).

²¹ *Id.*

²² *Id.* at 571.

While part of this narrative may be true in that blockbusting and white flight²³ was partially by choice, this problem was exacerbated by the state's use of discrimination, redlining, housing policy, zoning laws, and more as a way to continue housing segregation.

Scholars have established these discriminatory effects in housing, but the housing system in the United States not only entrenched inequality in society, but also created an opportunity structure for those with access to housing. In this way, housing is not only about social inequality but about the benefits, status, and deprivations of citizenship. Certain opportunity structures are only available to people if they own their homes and/or live in certain neighborhoods. For example, if you own your own home you have the ability to take out a home equity loan to pay for education, an emergency, or anything else. People who don't own their own homes don't have this option. This opportunity structure creates separated groups of people based on homeownership and neighborhoods. These groups will have access to different opportunities, and some people will be excluded altogether, creating differentiated citizenship based on housing.

Combining housing and citizenship literature exposes the deeper impacts of housing policy outside of the typical political analysis. Housing certainly affects how people vote and whether someone is politically active or not, but by using administrative burden and surveillance one can see the deeper impacts. The analytical tool outlined in this Article provides a way to bridge this gap between housing and citizenship literature.

²³ Blockbusting: a tactic used by real estate agents and building developers to scare white homeowners into selling their houses at low prices by telling them people of color will be moving into their neighborhood. White flight: when white people move out of their neighborhood because people of color move there.

IV. SECTION 8 ANALYSIS

To provide an example of how this analytical tool works this Article uses it to briefly analyze the Section 8 Housing Choice Voucher program.²⁴

Section 8 Housing Choice Vouchers were created by the Housing and Community Development Act of 1974. This program provides housing vouchers for program participants to use in any eligible unit to subsidize their rent. Based on the local average fair market rent and family composition participants have a certain rent price range they can rent within. Part of the rent is paid by the participant, which is usually 30% but no more than 40% of their income, and the other portion is paid for through the local PHA with funding from HUD. This is a rental program meant to provide housing aid for low-income people without confining them to public housing projects. The program is meant to allow participants the ability to move into more affluent neighborhoods, providing them with access to better community resources. Renting is a huge part of the United States housing climate, especially for low-income families, with a total of 44 million renter households in 2020.²⁵ Section 8 Housing Choice Vouchers assist eligible renters, making it an important program to study to better understand rental assistance programs.

Figure 1 includes a simple explanation of each analytical metric used and one example for each from the Section 8 Housing Choice Voucher program. This provides a brief summary of how one could use this analytical framework to develop an analysis of a program.

²⁴ To understand how Section 8 housing vouchers work I examined multiple primary sources and a secondary ethnographic source. The primary sources were from the Department of Housing and Urban Development (HUD) website and local Ohio Public Housing Authorities (PHA) websites. The secondary ethnographic source was *The Voucher Promise*, by Eva Rosen. While reviewing these sources I used a table similar to Figure 1 to sort information into the metrics of my analytical tool. This provided a framework to analyze the impacts Section 8 Housing Choice Vouchers have on citizenship.

²⁵ *America's Rental Housing 2022* - JOINT CENTER FOR HOUSING STUDIES, https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf, (last visited September 15, 2022).

Figure 1	Surveillance	Psychological	Learning	Compliance
Explanation	The monitoring of people’s private lives, through physical and technological means	The mental effect of stigma, judgment, and stress associated with program participation	The burden of learning the details of a program and its rules and regulations	The burden of completing the documentation of various requirements such as the application, re-enrollment, and additional requests of a program
Example	PHA housing inspections (done yearly and in response to complaints from the landlord or the tenant)	The stigma associated with having a Section 8 Housing Choice Voucher	Finding a landlord who will take your voucher with a unit for rent that will pass inspection and be eligible for the program	Filling out applications to apply, reapply, move your voucher, or file for an extension

A. SURVEILLANCE

Section 8 Housing Choice Vouchers have home inspections before the tenant can move in and once every 1-2 years while they have the voucher. The tenant or the landlord can also call for an inspection at any time. These inspections are meant to protect participants in the program from living in substandard housing and to hold landlords accountable to maintain the property. HUD’s website states that “Inspections are meant to help and protect you. Inspectors make sure you are being provided a decent, safe, and sanitary home. They are not there to assess you as a tenant or to check if your home is clean.”²⁶ This is in contradiction with the HUD federal code listed in the National Archives which says “If the family has caused a breach of the [Housing Quality Standards] HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with § 982.552.”²⁷

²⁶ HUD, Inspection Information for Residents, https://www.hud.gov/topics/REAC_Inspections/residents (last visited October 11, 2022).

²⁷ Title 24 Housing and Urban Development, 24 C.F.R. § 982.404(b)(3) 2014

The HUD website also states that families are required to “maintain the unit in good condition.”²⁸ These various HUD requirements for families create an opportunity for landlords and the local PHA to regulate and surveil participants. This plays out firsthand in Baltimore with Rosen explaining “Landlords, like tenants, can call for a spot inspection. They may selectively use these inspections as a way to bring their tenants' suspected violations of voucher rules to the housing authority's attention, for instance when they want a problem tenant evicted.”²⁹

B. PSYCHOLOGICAL

Section 8 recipients face stigma from people outside of the program who view them as lazy and claim they bring crime with them into a neighborhood.³⁰ This stigma changes how voucher recipients are treated by their neighbors and by landlords. Some landlords even flat-out deny voucher holders without any other consideration. This stigma and differential treatment is a part of the psychological cost of participating in the program. To have a voucher you must put up with stigma and different treatment than before you had a voucher.

C. LEARNING

When one receives a Section 8 Housing Voucher, they must find a unit in which to rent. This seems straightforward, but, voucher holders can be denied by landlords, and finding a place that can pass inspection may be difficult in a given area. Due to these difficulties, in 2000 only 69 percent of families in large metropolitan areas nationally were able to use their vouchers.³¹ Figuring out how to navigate the process of finding a rental unit that fits the HUD requirements

²⁸ HUD, Housing Choice Voucher Program Section 8,

https://www.hud.gov/topics/housing_choice_voucher_program_section_8#hcv10 (last visited January 11, 2022).

²⁹ Eva Rosen, The Voucher Promise: “Section 8” Housing and the Fate of an American Neighborhood 157 (2020).

³⁰ *Id.*

³¹ Meryl Finkel & Larry Buron *Study on Section 8 - HUD*

USER (2001), https://www.huduser.gov/portal/publications/pdf/sec8success_1.pdf.

is an example of a learning cost. Some websites can help participants find Section 8-friendly units and landlords, but these resources usually must be sought out by participants. In some cases, the local PHA will provide assistance, such as extending the period to find a unit, providing briefings to recipients, and/or landlord outreach. These types of assistance bring down the learning costs, leading to higher success rates.³² However, for most recipients the learning cost of figuring out how to find a suitable rental unit causes a burden, one that sometimes cannot be overcome, losing the participant their voucher.

D. COMPLIANCE

To receive a voucher, one first has to apply through the local PHA. This process is different based on the PHA and can have varying levels of difficulty. This can be seen in comparing the process at several local PHAs in Ohio. These jurisdictions represent a broad view of Ohio and can help show the differences between rural and urban administration of Section 8.

The PHAs studied were in Akron Metropolitan, Portage County, and Athens County. These three areas represent different types of communities. Akron is an urban center that has an aging housing stock and is on the decline. The population of Akron is 564,000 with a median household income of \$40,281 a year.³³ Portage County represents a suburban area with a mix of high-density and low-density housing. The population of Portage County is 162,382 with a median household income of \$59,485 a year.³⁴ Finally, Athens County is a rural county with small previously coal communities in Appalachia. The population of Athens County is 62,056

³² *Id* at v.

³³ U.S. Census Bureau Quickfacts: Akron, Ohio, <https://www.census.gov/quickfacts/fact/table/akroncityohio/INC110220> (last visited October 14, 2022).

³⁴ U.S. Census Bureau Quickfacts: Portage County, Ohio, <https://www.census.gov/quickfacts/fact/table/portagecountyohio/BZA110220> (last visited October 14, 2022).

with a median household income of \$42,414 a year.³⁵ The application process through each PHA differs greatly. In Akron, there is a step-by-step online application process and there are resources if you need the application provided in another format.³⁶ Akron also has a physical office with regular office hours that applicants can go to for aid or questions. In Portage County, applicants apply through an online portal after making an account. They have office hours four days a week and events at the office that are publicized on their website but do not seem to have another way to apply for section 8 other than through the online application. In Athens County, to apply for a housing voucher one has to fill out a 4-page pre-application that is available as a PDF online.³⁷ The Athens office also has office hours so applicants can go in person to apply for Section 8 housing. This starts the process with the PHA to determine eligibility for the program.

Depending on the jurisdiction, an applicant has to follow a certain set of application requirements and provide various documents to prove eligibility. This process requires an applicant to provide information about their employment, income, assets, family composition, and more. The local PHA also can request additional documents such as letters from employers to establish eligibility.³⁸ All of this documentation has to be done correctly to be eligible for the program and causes a burden on applicants.

V. SIGNIFICANCE

We think of welfare policies as programs that help the poor, disabled, and aged populations in our country. These programs are created to help people and provide them with the

³⁵ U.S. Census Bureau Quickfacts: Athens County, Ohio, <https://www.census.gov/quickfacts/fact/table/athenscountyohio/BZA110220> (last visited October 14, 2022).

³⁶ *Akron Metropolitan Housing Authority Online Application*, Akron Metropolitan Housing Authority, <https://ohakron.tenmast.com/apply/index.asp?Page=home&Folder=&StepPos=0> (last visited October 11, 2022).

³⁷ *Section 8 Housing Choice Vouchers*, ATHENS METROPOLITAN HOUSING AUTHORITY, <https://athensmha.org/section-8-housing/>

³⁸ Title 24 Housing and Urban Development, 24 C.F.R. § 982.551(b)(3) 2014

aid they deserve to help them get back on their feet or to take care of them. Throughout this Article, we have seen that some welfare policies, while still helping people, also bring a host of burdens on recipients. Therefore, in reality, the government shapes citizens and their experiences through these programs. This perspective is not immediately clear when looking at welfare policy so it is important to study these effects.

Housing impacts education, health, income, wealth, safety, surveillance, mental health, and much more. Housing is a key component of many societal problems we face, which makes it incredibly important to study. Finding solutions to our current housing crisis would have positive impacts on a plethora of important issues and it would improve the well-being of many Americans. Especially after the widespread unemployment due to the Covid-19 pandemic and the end of the eviction moratorium, studying housing is more important than ever.

VI. CONCLUSION

In this Article, we have seen how a citizenship framework can be used to create an analytical tool to evaluate policy. By using this tool to evaluate Section 8 Housing Choice Vouchers we see that there are costs associated with participating in the program and these costs impact the participant's citizenship. This tool is useful for showing how policy institutes surveillance, learning costs, psychological costs, and compliance costs. When someone signs up for a Section 8 Housing Choice Voucher, they are not just receiving housing assistance, they are also getting surveilled, and losing their time, energy, and in some cases well-being to learning, stigma, and compliance with the program.

This Article is part of a larger thesis on housing policy and citizenship. The thesis will take the analytical framework outlined in this Article and apply it to three housing programs: Section 8 Housing Choice Vouchers, early FHA mortgage insurance (1934-1936), and the HUD

mortgage insurance program created from Section 235 and Section 221(d)(2) of the 1954 Housing Act. I chose these specific programs because they cover different areas of housing that contextualize a broad view of housing policy.

Using this analytical framework, it becomes apparent that there is a relationship between housing programs and citizenship in the United States. Specifically, showing how where one lives, both the type of housing and the neighborhood, affects someone's access to opportunities. These opportunities are a part of a larger opportunity structure created by housing, due to the ingrained nature of housing and homeownership in American society and institutions over time. Access to this opportunity structure changes someone's experience of citizenship and unequal access creates differentiated citizenship that is tied to housing. This disadvantages portions of the population based on their housing situation, which tends to disproportionately disadvantage racial minority populations. This Article provides an example of how this work is done in my thesis and explains the methodology behind the analytical tool itself.³⁹

³⁹ Scherer, Abi. "The Impact of Policy: How Federal Housing Policy Shapes Citizenship in the United States." Undergraduate thesis, Ohio University, 2023. http://rave.ohiolink.edu/etdc/view?acc_num=ouhonors1682605770460877

**TINKERING WITH THE DIGITAL GATES: STUDENT SPEECH IN THE
AFTERMATH OF MAHANOY AREA SCHOOL DISTRICT V. B.L.**

Michaela Fuchs | 2022 – 2023

The First Amendment rights is integral to American democracy and way of life. Among other guarantees, it protects an individual’s right to free speech and expression. However, even though our Courts have recognized its importance and provided for its broad interpretation, there are certain historically recognized exceptions. This Article will explore the role that the First Amendment plays in public K-12 schools, tracing the history of free speech in the classroom. First, the article will examine three landmark Supreme Court cases, including *Tinker v. Des Moines Independent Community School District*,¹ *Morse v. Frederick*,² and *Mahanoy Area School District v. B.L.*,³ and will highlight how these cases impacted the development of student free speech rights over time. Using this as a framework, this Article will then show why the Court’s recent decision in *B.L.* was arguably too narrow. This Article will suggest that this narrow interpretation may raise concerns for public K-12 schools in their necessary attempts to address valid concerns like cyberbullying, harassment, or active threats against the school. Also considered will be the implications and potential concerns that school districts will have to balance involved in the current legal standard.

I. THE DEVELOPMENT OF STUDENTS’ FIRST AMENDMENT RIGHTS

A. *TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT*

Tinker v. Des Moines Independent Community School District (1969) is the seminal First Amendment student speech case, and provided an important initial step in clarifying the relationship between students and their schools by establishing a standard for student speech on school grounds. Christopher Eckhardt, Mary Beth Tinker, and John Tinker were students in the

¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

² *Morse v. Frederick*, 551 U.S. 393 (2007).

³ *Mahanoy Area School District v. B. L. by & through Levy*, 141 S.Ct. 2038, 210 L.Ed.2d 403 (2021).

Des Moines Independent Community School District, and during the winter of 1965, a group of students wore black armbands to express their opposition to the Vietnam War. Aware that there were students planning to do this, the principals of the school district verbally agreed upon a policy against the wearing of the armbands in school. After Christopher, sixteen-years-old, and Mary Beth, thirteen-years-old, wore their armbands to school, the principal suspended them. John did not originally take part in wearing the armband. He instead tried to resolve the disagreement by meeting with the chair of the Board of Directors, but they denied his request for a special meeting. When his efforts for a peaceful resolution failed, he joined his friends and classmates in protest and wore his armband the next day.

Parents of the suspended students sued the school district for violating the students' First Amendment rights and sought an injunction that would prevent the school from disciplining the students. The District Court dismissed the case and held that the school district took reasonable actions in its effort to maintain school discipline and order. The U.S. Court of Appeals for the Eighth Circuit affirmed the decision without opinion.

The Supreme Court analyzed whether the school district's suspension constituted a violation of the students' First Amendment rights. Writing for the majority, Justice Abe Fortas held that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."⁴ The Court determined that in K-12 school First Amendment free speech cases, the applicable standard or rule in the future would be that school officials would have to prove that

⁴ *Tinker* 393 U.S. at 506.

the behavior “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”⁵

In their reasoning, the Court argued that wearing the armbands represented pure speech. Pure speech in the U.S. involves communicating ideas through words or conduct and it is something that should not be regulated or interfered with. In addition, the Court said that “the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred.”⁶ Due to the ruling in this case, if school officials tried to regulate students’ speech, they would have to prove that the student’s conduct would materially and substantially interfere with the operation of the school.

This decision is important and integral to the function of our country’s education system because it argues for the marketplace of ideas. Two years before *Tinker*, Justice Brennan said “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, [rather] than through any kind of authoritative selection.’”⁷ The *Tinker* rule clarified what was only an implicit idea before, finding that students do have a fundamental right of free speech and expression.

Tinker set the standard for regulating student speech in cases where there is a disturbance on school campuses. The Court also acknowledged the importance of the school’s power in protecting student speech, including when the student’s speech may be unpopular. However, that speech may be regulated under some circumstances such as when the school was acting within

⁵ *Id.* at 505.

⁶ *Id.* at 514.

⁷ Viet Thanh Nguyen et al., *Fight of the Century: Writers Reflect on 100 Years of Landmark ACLU Cases* 127 (Michael Chabon et al. eds., 2020).

their legal purview related to *in loco parentis*. That is exactly what happened in the next major student free speech case, *Morse v. Frederick* (2007).

B. MORSE V. FREDERICK

On January 24, 2002, the Olympic Torch Relay traveled through Juneau, Alaska. Deborah Morse, the principal, allowed students and staff to attend as an approved school event. Joseph Frederick arrived late to school and joined his friends across the street from the school to watch the Torch Relay. Joseph and his friends unfurled a 14-foot banner with the phrase “BONG HiTS 4 JESUS.” Principal Morse demanded the students take down the banner, and everyone but Frederick complied. She seized the banner and suspended Joseph for 10 days. Frederick appealed his suspension, but the school district’s superintendent upheld it. He then filed suit in federal court alleging that the school board and Principal Morse violated his First Amendment rights.

The District Court concluded that the school did not violate Frederick’s First Amendment rights because the school officials were entitled to qualified immunity given their role and duties as school officials. However, the Ninth Circuit reversed, finding “the school punished Frederick without demonstrating that his speech gave rise to a ‘risk of substantial disruption’” as required by *Tinker*.⁸ The Supreme Court granted certiorari to answer two questions: whether Frederick had First Amendment free speech protections when he held up a pro-drug banner at a school-sponsored event and whether the principal was liable for damages.

The Court began its opinion acknowledging the precedent set by *Tinker*, noting that students do not shed their rights when they enter school grounds. However, they added a caveat, related to students’ Fourth Amendment protections against unreasonable searches and seizures. The Court stated that “Fourth Amendment rights... are different in public schools than

⁸ *Morse v. Frederick*, 551 U.S. 393, 399 (2007).

elsewhere; the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children.”⁹ This relates to the term *in loco parentis*, which refers to the legal responsibility that one takes on in the place of a parent. Here, Principal Morse and other school officials took on the responsibility highlighted by *in loco parentis*. Due to the assumed responsibility of Morse and other school officials, the Court also rejected Frederick’s claims that this was not a school speech case.

Related to the idea of *in loco parentis*, the Court then acknowledged that schools have an obligation to teach their students about the dangers of using illegal drugs. They noted that Congress “has provided billions of dollars to support state and local drug-prevention programs... and required that schools receiving federal funds under the Safe and Drug-Free Schools and Communities Act of 1994 certify that their drug prevention programs ‘convey a clean and consistent message that . . . the illegal use of drugs [is] wrong and harmful.’”¹⁰ By acknowledging legislative intent in combination with *in loco parentis*, the Court reasoned that, besides acting in place of a parent while children are at school, schools also have a legal obligation to educate their students on the dangers of drugs.

In its conclusion, the Court agreed with Principal Morse; students could construe Frederick’s banner as advocating the use of, or as celebrating drug use, neither of which the school could allow. Principal Morse was acting within the purview of her job. Even though this case still garnered a majority decision, it was narrowly written in order to earn the majority vote. Justice Alito wrote a concurring opinion and was joined by Justice Kennedy. This concurrence was particularly notable, because from it emerged the allusion to a balancing test, where, although Alito acknowledged the free speech rights that students have, narrow exceptions can

⁹ *Id.* at 406.

¹⁰ *Id.* at 408.

and should be made when necessary.¹¹ On the other hand, Justice Stevens, joined by Justices Souter and Ginsburg, dissented, writing that the statement made on the banner was nonsensical and made the assertion that the school should have to “show that Frederick’s supposed advocacy stands a meaningful chance of making otherwise-abstemious students try marijuana.”¹² Stevens therefore takes issue with how the majority interpreted the message of the banner, rather than exclusively with how the majority created a narrow exception by which schools may regulate the speech of students.

Although *Morse* defined the content regulation of student speech in terms of safety and the suggestion of illegal drug use, it begs the question whether schools can regulate other language in and outside of school because of its subject. In *Mahanoy Area School District v. B.L.* (2021), the Court examined a student’s vulgar language directed at the student’s teammates, as well as the role that social media plays in off-campus speech.

C. MAHANAY AREA SCHOOL DISTRICT V. B.L.

B.L., a student at Mahanoy Area High School (MAHS), tried out for her school’s varsity cheerleading team and while she didn’t make the varsity squad, the coaches placed her on the junior varsity team. Over one weekend, she posted a picture of herself on Snapchat with the caption: “Fuck school fuck softball fuck cheer fuck everything.” The post was visible to over 200 people, many of whom were other students at B.L.’s school, and some of whom were members of her team. Several students who saw the social media post approached the cheerleading coach to express their concern. The coaches decided that B.L.’s social media post violated team and

¹¹ Mark W. Cordes, *Making sense of high school speech after Morse v. Frederick*, 17 THE WILLIAM AND MARY BILL OF RIGHTS JOURNAL 657, 657-713 (2009) (discussing student speech with relation to a landmark case).

¹² Cordes, *supra* note 11, at 675.

school rules she agreed to before joining the cheer program, and they suspended her from the junior varsity team for a year. B.L.’s suspension from the team was affirmed by the school’s principal, as well as the district athletic director, superintendent, and board of education. In response to her suspension, B.L. and her parents filed suit.

The case presented a novel question for the Court. The Court needed to determine whether the *Tinker* standard—which holds that school officials can regulate speech that would materially and substantially disrupt the business of the school—applies to off-campus speech. The Court recognized that there are “three features of off-campus speech that often, even if not always, distinguish schools’ efforts to regulate that speech from their efforts to regulate on-campus speech.”¹³ These features include: (1) cases involving off-campus speech and the theory of *in loco parentis* are unlikely to stand, (2) regulations of off-campus and on-campus speech would imply that a student’s speech is always being regulated, and (3) whether the school has an inherent interest in protecting a student’s unpopular speech or expression.

First, as to the alleged vulgar speech, the Court acknowledged B.L.’s use of vulgar language and recognized the precedent for regulating that sort of language on school grounds. In cases like *Bethel School District v. Fraser* (1986), the Court agreed with the school’s suspension of a student who used a graphic sexual metaphor during a school assembly. However, the Court also determined that while vulgar, B.L.’s language was not obscene, and if she were an adult, the First Amendment would have protected her language. Next, the Court identified when schools may regulate vulgar speech. The factors include: the school’s interest in punishing vulgar language aimed at the school community, the school argued that they were trying to prevent disruption within a school-sponsored activity, and the school argued a concern for team morale.

¹³ *Mahanoy Area School District v. B. L. by & through Levy*, 141 S.Ct. 2038, 2046, 210 L.Ed.2d 403 (2021).

Initially, the Court of Appeals for the Third Circuit made two sweeping claims in their decision, arguing that *Tinker* does not apply to off-campus speech and that students should not have to waive their First Amendment rights as a precondition for extracurricular activities.¹⁴

At the Supreme Court, the majority opinion found that the school district had violated the First Amendment rights of B.L. but used different reasoning than the Third Circuit. The majority instead argued that the “special characteristics of the school would allow it to regulate some student expression initiated off-campus, including ‘serious and severe bullying or harassment targeting particular individuals, threats aimed at teachers or other students, the failure to follow rules concerning... online school activities, and breaches of school security devices.’”¹⁵ They will leave much of the nuances involved in ruling on future cases to the courts to determine when, where, and how schools may regulate off-campus speech.

Finding that the school violated B.L.’s First Amendment rights, the Court highlighted the importance that B.L. conducted this speech off-campus. B.L. spoke under circumstances where her parents, not the school, were responsible for her and her actions. The Court wrote its decision so as to not “set forth a broad, highly general First Amendment rule stating just what counts as ‘off campus’ speech” and when or how First Amendment standards have to give way to a school’s inherent need to protect the school community.¹⁶ In doing so, the Court set forth a narrow interpretation of the case at hand, acknowledging that while B.L. used vulgar language, it did not amount to a pertinent threat or disruption.

¹⁴ Martha McCarthy, *Social Media, Students, and the Law*, 10 *Laws* 81, 2021, at 81. (relationship between social media and student speech).

¹⁵ *Id.*

¹⁶ *B.L.* 141 S.Ct at 2045.

II. IMPLICATIONS AND GUIDING QUESTIONS TIED TO THE CURRENT STANDARD

Through these three cases we can see how student speech, and the regulations to which it is subject, has evolved over time. First, in *Tinker*, the Court developed the rule that school officials must prove that the behavior exhibited by a student materially and substantially disrupted the normal operation of the school. The Court also famously declared that a student does not shed their First Amendment or general constitutional rights upon walking onto campus. This is an important limitation on the power of public K-12 schools that protects a student's inherent rights as a citizen of the United States under the Constitution, and it still rings true with regard to on-campus speech today.

In *Morse*, the Court emphasized that due to the school's responsibility as *in loco parentis*, or functioning in place of a parent, the school had a legal responsibility to teach students about the dangers of illegal drugs. It was through this case that the Court determined that a restriction was "warranted by the special characteristics of the school environment and the compelling government interest in stopping drug abuse,"¹⁷ which recognizes the imperative balance between the interests of the student and the responsibilities of the school.

In *B.L.*, the Court intentionally avoided setting forth a broad and overarching rule regarding the off-campus speech of students, instead choosing to rule narrowly on the facts of this case. They argued that while B.L.'s language was vulgar, it did not amount to a substantial disruption, reiterating the *Tinker* standard. The Court was also hesitant to expand the school's exercise of jurisdiction, as the posts were made outside of the school setting.

¹⁷ New York State School Boards Association, New York State Bar Association, New York School Law 688 (Pilar Sokol eds., 39th ed. 2022).

The implications of the current standard are tremendous. More than half of people today use social media and “[t]he average daily social media use in 2020 was almost two and one-half hours, up from one and one-half hours in 2012.”¹⁸ Social media continues to have a greater impact on individuals and society. Technology, the internet, and social media also all change and grow far more quickly than public policy can, making it difficult to regulate.

Schools have many interests in protecting their students’ freedom of speech, but they also have other coexisting interests to consider, some of which include cyberbullying, threats to the school, threats to individual students or employees, and maintaining the order and function of the regular school business. For example, in *B.L.*, the Court found “‘serious and severe’ cyberbullying to be one type of student off-campus expression that can be the basis for schools to punish the perpetrators.”¹⁹ However, in changing their reasoning from what the Third Circuit had offered, the Supreme Court did not offer clarifications on what types of speech would belong in this category.

Social media is a particularly complex issue because messages, comments, or posts can be easily misinterpreted because of the lack of body language alongside the words. In addition, the anonymity of social media also makes it far easier for people to say things they may not say in person. The combination of both and other factors can make for a perfect storm leading to cyberbullying. Cyberbullying, or online bullying, has significant effects on the victim, and “[t]hose bullied are more prone to mental health issues, such as low self-esteem, social isolation, academic difficulties, and problems in forming healthy family and peer relationships, and a 2013 study reported that cyberbullying can have greater negative effects than traditional bullying.”²⁰

¹⁸ McCarthy, *supra* note 14.

¹⁹ McCarthy, *supra* note 14.

²⁰ McCarthy, *supra* note 14.

Cyberbullying issues are important and with the ubiquitous nature of social media in the lives of teenagers and students today, the narrow and ambiguous opinion in *B.L.* may be disappointing to some.

Now, with the guidelines provided in *B.L.*, there are several questions to ask when considering scenarios involving speech in schools, and several questions that may be helpful for school districts to ask when they come across cases like *B.L.* The majority in *B.L.* intended to write a narrow decision to avoid writing a broad rule on the First Amendment rights of students and accounting for all reasonable exceptions. Although we know *Tinker* is still an applicable standard, *B.L.* did not provide clear enough guidance in how Courts should apply it when the boundaries of on- and off-campus speech are far more abstract in the digital age. On account of this, there is a gray area when considering topics such as the language that may be harassment or cyberbullying.

School officials and students should consider the following questions when examining the parameters of a situation related to student speech: did the student use district-owned devices or technology to create the post, what exactly did the post say, and have the comments caused any disruption in the school? If a student uses district-owned devices, it is possible that their speech may not be as well protected. They are using district property to engage in conduct that may be improper or disruptive of the school environment.

In addition, the Court should provide further guidance on the language that students use on social media. It should be clear in what cases that a school may intervene in, such as in threats made toward a school, student or faculty member, or in incidences of cyberbullying and harassment. The question of how a post or comments could impact others calls attention to the original *Tinker* standard which is connected to whether the speech or expression caused a

disruption that materially and substantially interfered with the business of the school. Especially in cases of harassment or bullying, the rule should be narrower. To satisfy the Court's constitutional balancing test, the speech should not have to cause substantial disruption of the greater school business. Instead, it should be whether the school environment of the student(s) being targeted is disrupted. With this addition, schools could more easily determine what the material and substantial disruption is and who the parties are that are involved.

Since social media and the internet are evolving much faster than the Court could feasibly keep up with, it seems unlikely it will set forth a specific standard regarding student speech and social media. If it did, it would likely become antiquated quickly. However, to ensure uniformity and equity in schools across the country, it would prove useful for the Court to set forth more specific guidance for how to approach student speech online and when it would be justified to intervene. This might entail more specific guidance on cyberbullying and how to judge online threats, just to name two examples. By limiting any rule to guidance for schools, this would also allow room for schools to determine when speech should still be regulated where it is deemed necessary, like when related to local or school-specific issues.

In addition to these considerations, once the district has determined whether the First Amendment protects the speech at issue, the district can consider what course of action to take. If the speech is protected, then a discussion with the student may be a more appropriate starting point to better understand the situation at hand. If the First Amendment does not protect the speech, the school district must then decide whether they should take action to address that speech and determine what that would look like. Depending on the severity of the disruption, the district may take different disciplinary actions. For less severe incidents, detention, in-school suspensions, youth court programs, or restrictions on school social events may be more

appropriate. In more severe cases, disciplinary action such as out-of-school suspension may be a more appropriate course of action.

III. CONCLUSION

Protecting the free speech rights of students is an integral function of public K-12 schools and education. It has been over 50 years since the Court developed the *Tinker* standard, establishing that a student's behavior must materially and substantially disrupt the order of the normal school business for the school to regulate it and intervene. In *Morse*, the Court created a narrow exception, acknowledging the *in loco parentis* theory and how schools have a legal responsibility to teach students about the dangers of illegal drugs. More recently, in *B.L.*, the Court again wrote a narrow decision, where the *Tinker* standard remains in effect, but where a more permeable barrier between on- and off-campus speech was acknowledged.

This ambiguity or gray area will persist as an issue for the foreseeable future, and will intersect with issues like social media, cyberbullying, online threats, and more. It is arguably necessary for the Court to provide further guidance or guiding principles for schools across the nation to ensure uniformity, consistency, and equity across decisions. The primary function of the school is to prepare children and adolescents to become positive additions to society as adults. To be successful in fulfilling this mission in the lives of all students, schools must have the proper tools to employ consistency in scenarios involving *in loco parentis*, speech, discipline, and more.

**PRESIDENTIAL ENGAGEMENT, LEGISLATIVE FOCUS, AND
ASSUAGING FOSSIL FUEL-DEPENDENT COMMUNITIES: ENERGY
POLICY LESSONS FROM BILL CLINTON'S 1993 BTU TAX FAILURE**

Ethan Yan | 2022 - 2023

I. INTRODUCTION

In a 2010 United States Senate campaign advertisement, then-West Virginia Democratic Governor Joe Manchin promised to “take dead aim at the cap-and-trade bill,” wielding a semiautomatic rifle and shooting a bullet through a copy of the bill.¹ This legislation (which never passed) would have established limits on carbon emissions, tradable emissions permits, requirements for greater utilization of clean energy, and additional schemes to combat climate change.² Twelve years later, now-Senator Manchin found himself at the center of climate policy debates; with the Senate evenly divided along party lines, Manchin’s opposition could single-handedly defeat proposals lacking any Republican support. Thus, his endorsement delivered the nearly \$370 billion in clean energy investments contained within the Inflation Reduction Act of 2022.³

However, Manchin’s outsized influence over energy policy is not unprecedented. In 1993, Democratic Senator David Boren of Oklahoma found himself in a similar position with respect to President Bill Clinton’s first budget proposal. Both Manchin’s and Boren’s use of their political leverage demonstrated that for clean energy policies to achieve political success, they must provide sufficient guarantees to protect the livelihood of fossil fuel-reliant communities.

One of the most contentious elements of Clinton’s February 1993 budget was a tax that targeted the heat content of energy consumption. Known as the BTU tax—named for the British thermal units used to measure heat content—this proposal would have created different surcharges on the consumption of fossil fuels such as coal, oil, and natural gas. However, the

¹ Joe Manchin, *Dead Aim - Joe Manchin for West Virginia TV Ad*, YOUTUBE (Oct. 9, 2010), <https://www.youtube.com/watch?v=xIJORBRpOPM>.

² Kate Sheppard, *Everything You Always Wanted to Know about the Waxman-Markey Energy/Climate Bill — in Bullet Points*, GRIST (June 4, 2009), <https://grist.org/article/2009-06-03-waxman-markey-bill-breakdown/>.

³ Hiroko Tabuchi, *Manchin’s Donors Include Pipeline Giants That Win in His Climate Deal*, N.Y. TIMES (Aug. 7, 2022), <https://www.nytimes.com/2022/08/07/climate/manchin-schumer-pipeline-political-funding.html>.

consumption of renewable fuels would not be subject to a surcharge. Clinton championed this proposal in his first address to Congress “as the best way to provide us with revenue to lower the deficit because it also combats pollution, promotes energy efficiency . . . and because it does not discriminate against any area.”⁴ While the BTU tax passed the House of Representatives, Boren’s opposition in the Senate forced Clinton to remove the tax from his budget proposal in June 1993; instead, the budget increased the gasoline tax—a much more limited energy tax applied only to gasoline purchased at the pump—by 4.3 cents per gallon. In contrast, an analysis of Clinton’s BTU tax proposal noted that it would have taxed crude oil, coal, and natural gas at approximately 21%, 25.7%, and 16%, respectively.⁵ Given the BTU tax’s numerous purported benefits, important historical questions exist regarding the factors that led to its elimination.

Several scholars have mentioned the BTU tax as part of a broader discussion on American energy policy in the twentieth century.⁶ The most comprehensive analyses of the tax, however, come from Dawn Erlandson⁷ of the environmental organization Friends of the Earth and legal scholar Walter Wang.⁸ Both agree that the administration’s overzealousness in accommodating industry groups’ demands for exemptions played a significant role in the tax’s demise. Erlandson—an enthusiastic champion of the tax’s environmental benefits—emphasizes the Clinton administration’s political miscalculations and failure to defend its original policy. At the same time, Wang engages more with the merits of the tax, arguing that its twin goals of reducing the budget deficit and pollution ended up undermining each other. Nonetheless, both

⁴ William J. Clinton, *Address Before a Joint Session of Congress on Administration Goals*, THE AMERICAN PRESIDENCY PROJECT (Feb. 17, 1993), <https://www.presidency.ucsb.edu/documents/address-before-joint-sessioncongress-administration-goals>.

⁵ Julio J. Rotemberg & Michael Woodford, *Energy Taxes and Aggregate Economic Activity*, 8 TAX POLICY AND THE ECONOMY 159, 160 (1994).

⁶ See, e.g., Paul Sabin, “*The Ultimate Environmental Dilemma*”: *Making a Place for Historians in the Climate Change and Energy Debates*, 15 ENVIRONMENTAL HISTORY 76, 79 (2010); Michael J. Graetz, *Energy Policy: Past or Prologue?*, 141 DAEDALUS, Spring 2012, at 38, 42

⁷ Dawn Erlandson, *The BTU Tax Experience: What Happened and Why it Happened*, 12 PACE ENVTL. L. REV. 173 (1994).

⁸ Walter Wang, *Looking Back to Move Forward: Revisiting the Btu in Evaluating Current Policy Alternatives*, 2 SAN DIEGO J. CLIMATE & ENERGY L. 181 (2010)

scholars ignore a critical aspect of the BTU tax’s failure: proponents failed to allay concerns in fossil fuel-dependent states like Boren’s Oklahoma that it would disproportionately hurt their economic well-being.

Through examining newspapers, speeches, and other primary sources, this Article explores the arguments that Erlandson and Wang to understand why the BTU tax failed and what conditions have historically been necessary for the passage of energy taxes and other environmentally friendly energy policies. The first section of this Article focuses on how Clinton’s passive approach to the tax’s legislative journey—exemplified by his consent to a superfluity of exemptions—led to its demise. The second section argues that the administration was forced to choose between the tax’s economic and environmental motivations. Focusing on the former opened the door to alternative revenue-raising proposals that Democratic opponents of the BTU tax began championing. Finally, the third section emphasizes how supporters of the tax insufficiently addressed fears in communities reliant on fossil fuels that it would undercut their livelihoods, especially in Boren’s home state of Oklahoma.

These arguments provide lessons for present-day policymakers seeking to transform our energy systems to combat climate change. While an assertive and coherent political strategy is necessary to counter lobbyists’ influence, fundamentally, proposals must persuade fossil fuel-dependent communities that they will not be forgotten—a claim vindicated by the recent passage of the Inflation Reduction Act of 2022.⁹

⁹ Inflation Reduction Act of 2022, Pub. L. No. 117–169.

II. AN EXEMPTION GIVEAWAY: HOW CLINTON’S DISENGAGEMENT DOOMED THE BTU TAX

The dominant narrative following the Clinton administration’s decision to excise the BTU tax from its 1993 budget proposal was that the tax failed due to political miscalculations, not the tax’s demerits. Eager to avoid political confrontation, Clinton took a hands-off approach and left negotiations over the BTU tax to Congress. This approach opened the door to a multitude of exemptions demanded by industry lobbying groups that the administration acquiesced to. These exemptions, in turn, transformed the initial BTU tax proposal—which was championed as a fair, broadly applicable tax—into one replete with loopholes that senators could not stomach.

Writing a week after the administration abandoned the tax, David Hilzenrath argued in *The Washington Post* that the administration initially underestimated the strength of opposing lobbying groups.¹⁰ After realizing their mistake, the administration overcompensated, offering so many exemptions that “for each constituency that was placated, it seemed, another was emboldened to demand its own accommodation.”¹¹ Thus, while the tax passed the House, the version the Senate considered and rejected included thirteen exemptions ranging from asphalt to feedstock production.¹¹ In short, this new version was a far cry from Clinton’s initial proposal.

In accepting so many exemptions, “Clinton undercut his claim that all Americans would sacrifice equally”—a key benefit of the original BTU tax proposal.¹² The now unequal impacts of the proposal were particularly salient for Senator Boren, whose opposition as a member of the Senate Finance Committee compelled the administration to abandon the BTU tax. In an

¹⁰ David S. Hilzenrath, *Miscalculations, Lobby Effort Doomed BTU Tax Plan*, WASH. POST, June 11, 1993, at D1 ¹¹ Wang, *supra* note 8, at 185.

¹¹ *Id.*

¹² Michael Duffy, *I Hear You, I Hear You*, TIME 7 (June 21, 1993), <https://content.time.com/time/subscriber/article/0,33009,978735-1,00.html>.

interview three weeks prior to this abandonment, Boren explained that he was open to energy taxes only if they met specific conditions: “If we have to take some gasoline taxes . . . that hits my people like it hits everybody else - I’m willing to take some.”¹³ Even if some exemptions were given to soften the tax’s impact on Oklahoma industries, the plethora of exemptions to placate influential senators meant that the new proposal inevitably failed Boren’s standard of impacting Oklahomans and non-Oklahomans equally.

Additionally, the very existence of exemptions gave reluctant senators an argument against the tax unrelated to its economic effects: that the proposal epitomized bureaucratic inefficiency and special interest power. For example, in explaining why the BTU tax would not pass the Senate, Energy and Natural Resources Committee Chairman Bennett Johnston, a Democrat from Louisiana, argued that “[i]t is filled with exemptions, exceptions, [and] would be a boon for lawyers and bureaucrats and delays.”¹⁴ Thus, Democrats from oil-producing states could argue that their opposition stemmed from a distaste for the influence of special interests, deflecting criticisms that they were beholden to the oil industry.

The media reports and statements from influential senators above establish that the exemptions added to Clinton’s original proposal played a significant role in the BTU tax’s demise in the Senate. However, the addition of these exemptions was not an inexorable result of the legislative process but rather the product of a failed political strategy.

Despite indications that the exemptions might have deleterious political effects, the administration did not seek to mitigate these effects or reverse course. Instead, senior officials ignored the problem. In a press conference one month before the BTU tax’s removal, a reporter

¹³ Chris Casteel, *Boren Willing To Take Gas Levy, Not Btu Tax*, THE OKLAHOMAN, (May 24, 1993), <https://www.oklahoman.com/article/2431503/boren-willing-to-take-gas-levy-not-btu-tax>.

¹⁴ David L. Boren et al., *Alternative Deficit Reduction Plan*, C-SPAN (May 20, 1993), <https://www.c-span.org/video/?40736-1/alternative-deficit-reduction-plan>.

asked Secretary of the Treasury Lloyd Bentsen whether he was “worried that the floodgates have been opened now to all kinds of exemptions.” Bentsen’s answer—that he did not fear “any serious erosion” to the tax proposal—focused solely on the fact that the altered BTU tax would raise a similar amount of revenue.¹⁵ While Bentsen’s comments to the press might have been more sanguine than the administration’s internal deliberations, Bentsen tellingly failed to address the political implications of the exemptions. Specifically, he did not articulate how he would satisfy interest groups who had not received exemptions and felt that they were being treated unequally. The administration either had no such strategy or was oblivious to the problem. Thus, while Clinton wanted an energy tax that would reduce the budget deficit, he did not have a plan to engage with stakeholders’ concerns and shepherd the BTU tax through Congress.

The administration was too eager to submit to lobbying groups’ demands and failed to champion the benefits of its original proposal. When challenged about the exemptions a week after Bentsen’s comments, Press Secretary Dee Dee Myers deflected, stating that “those exemptions were the result of the House Ways and Means process...[a]nd the President supported the compromise that was worked out.”¹⁶ The administration was thus taking a hands-off approach; Congress, not the President, would be accountable for harmful deviations from the original tax proposal. While this deflection of responsibility had a particularly significant impact on the BTU tax, Michael Duffy contended that it was a reflection of the administration’s broader

¹⁵ *Press Briefing by O.M.B. Director Leon Panetta, Secretary of the Treasury Lloyd Bentsen, and Chairman of the Council of Economic Advisors Laura D'Andrea Tyson*, THE AMERICAN PRESIDENCY PROJECT, (May 14, 1993), <https://www.presidency.ucsb.edu/documents/press-briefing-omb-director-leon-panetta-secretary-the-treasury-lloyd-bentsenand-chairman>.

¹⁶ *Press Briefing by Dee Dee Myers*, THE AMERICAN PRESIDENCY PROJECT, (May 20, 1993), <https://www.presidency.ucsb.edu/documents/press-briefing-dee-dee-myers-135>. Myers’ comments regarding “the House Ways and Means process” were a reference to negotiations on the BTU tax by members of the Committee on Ways and Means. This Committee is generally responsible for drafting, scrutinizing, and approving tax-related proposals prior to their consideration by the full House of Representatives.

shortcomings. Pointing also to Clinton's vacillations about Supreme Court nominations, they argued that he was "increasingly spooked by opposition of almost any size."¹⁷

Dawn Erlandson, a strong proponent of the tax's environmental benefits, expresses similar sentiments when reflecting on its failure in the Senate. She argues that Clinton insufficiently countered industry groups' messaging that the tax would cut into lower- and middle-class incomes and increase unemployment. Instead of championing the BTU tax as a broad-based tax that would reduce the deficit and pollution, Clinton's "strategy appeared to be an avoidance of the topic." Thus, "most attacks on the bill went unanswered by the Administration."¹⁸

Clinton's casual treatment of the BTU tax's excision in his memoirs supports Erlandson's contention that the administration did not expend sufficient political capital to ensure the tax's survival. One would expect Clinton's memoirs to meticulously and thoroughly justify his actions. Yet he did not express regret that the Senate rejected a tax that he once declared "combats pollution, promotes energy efficiency, [and] promotes the independence economically, of this country."¹⁹ Instead, Clinton matter-of-factly noted that after the House passed his budget, the "Senate immediately scrapped the BTU tax in favor of a 4.3-cents-a-gallon increase in the gasoline tax." He even went on to defend the end result: "The bad news was that the gas tax would promote less energy conservation than the BTU tax; the good news was that it would cost middle-class Americans less."²⁰

The administration's reluctance to defend its initial BTU tax not only withdrew the White House from the legislative battlefield but also dampened the enthusiasm of environmentalist

¹⁷ Duffy, *supra* note 12.

¹⁸ Erlandson, *supra* note 7, at 184.

¹⁹ Clinton, *supra* note 4.

²⁰ Bill Clinton, *MY LIFE* 522 (2004).

supporters. As Erlandson puts it, “large grassroots organizations in the environmental community decided that the [BTU] tax had been revised beyond recognition.”²¹ Although many environmentalists reserved their harshest condemnations for energy lobbyists, the reactions of local advocates support Erlandson’s claim that inaction from the White House was discouraging. Jim Taylor, the Alabama State Conservation Chair of the Sierra Club, responded to the BTU tax’s abandonment by stating that “we need a president who’s willing to stand up and fight that influence,” referring to the influence of lobbyists on congress members.²² His comments reflect a recognition of Clinton’s potential impact on the tax’s fate. While groups like the Sierra Club could continue advocating for the BTU tax, they could not compete with the energy industry. Only the President, with his bully pulpit, had the stature and resources to combat industry attacks. Clinton, however, failed to utilize these advantages.

Thus, the primary-source record strongly supports the prevailing narrative that the BTU tax failed in the Senate due to the Clinton administration’s mismanagement of its legislative journey. This mismanagement manifested in the acceptance of numerous exemptions and the administration’s hands-off approach and failure to defend its proposal against well-funded opposition. Blaming deep-pocketed lobbyists for the proposal’s failure is not without merit; these lobbyists first demanded the exemptions, then later exploited their existence to denounce the unequal distribution of loopholes. Still, the arguments above gloss over substantive components of the BTU tax proposal that also contributed to its demise.

²¹ Erlandson, *supra* note 7, at 182.

²² Katherine Bouma, *Activists: Btu Tax Abandoned Because of Outside Influences*, MONTGOMERY ADVERTISER (3rd ed.), June 11, 1993, at 15.

III. IT'S THE ECONOMY, STUPID: HOW THE CLINTON ADMINISTRATION'S FOCUS ON ECONOMICS OVER THE ENVIRONMENT CONDEMNED THE BTU TAX

Proponents of the BTU tax championed it as a plan to reap the economic benefits of cutting the budget deficit while also having manifold energy-related benefits, such as reducing pollution and dependence on foreign oil. Yet the complexity and diversity of the BTU tax's benefits backfired by leading proponents to adopt an unfocused political strategy.

Reflecting on the implications of the BTU tax's defeat for future energy taxes, Wang argues that the primary takeaway is that "there must be a singular purpose for the legislation." Specifically, Wang contends that the proposal's twin goals of reducing the deficit and pollution did not reinforce but undermined each other. If the administration viewed the tax as a deficit-cutting proposal, it should have presented it as such. After all, Wang notes that this framing had enabled energy taxes such as the first federal gas tax to pass. However, if the goal was primarily environmental, Wang argues that the administration should have been more diligent in setting suitable tax rates.²³ In short, in trying to get the best of both worlds, the administration ended up undercutting both objectives.

This interpretation suggests that the overzealous granting of exemptions discussed above was a product of poor political management and a symptom of the tax's structural defects. In undertaking negotiations with various stakeholders and congress members, the administration was ultimately forced to choose between the tax's budgetary and environmental benefits. The administration's public statements and actions indicate that it focused on the former. Thus, the

²³ Wang, *supra* note 8, at 188.

tax became a vehicle primarily to raise revenue; environmental benefits, while appreciated, were not prioritized.

Bentsen's dismissal of the exemptions' political implications exemplified this attitude. As mentioned above, he refused to accept that the House's inclusion of thirteen carveouts for regional interests would impact the proposal's political success, citing its minimal impact on the tax's revenue. More revealing, however, is what he did not say. He did not acknowledge that because exempted industries no longer had a disincentive to pollute, these exemptions had watered down the BTU tax's environmental benefits. Instead, he stated generally that the administration had been "quite successful in keeping in there influencing [*sic*] the choice of the utilities on electricity and the fuels they choose."²⁴ Bentsen's tone, however, was inconsistent with the eventual content of the BTU tax. Providing just one of many examples, Bob Woodward explains that "the administration had agreed to lower the [tax] rate on coal, erasing much of the environmental benefit" originally available.²⁵ The administration had sent a clear message: it was willing to sacrifice pollution reductions for deficit reductions. It is thus unsurprising that environmentalists became "disillusioned with the evolving bill" and did not channel the resources necessary to counter energy industry lobbying, as Erlandson argues.²⁶

By framing the debate on economic terms, the administration also gave Democratic skeptics of the BTU tax fertile grounds for attack. They no longer had to refute arguments that their opposition would cause significant environmental harm. Instead, senators like Boren could base their arguments on deficit reduction principles. Summarizing Boren's position, David E. Rosenbaum of *The New York Times* reported that he wanted "more spending cuts than tax

²⁴ *Press Briefing by O.M.B. Director Leon Panetta*, *supra* note 15.

²⁵ Bob Woodward, *THE AGENDA: INSIDE THE CLINTON WHITE HOUSE* (1st pbk. ed. 2005), at 217.

²⁶ Erlandson, *supra* note 7, at 184.

increases, more discipline in controlling spending on benefit programs and no B.T.U. tax.”²⁷

Boren’s broader aims were reflected in his counterproposal of an “Alternative Deficit Reduction Plan.” This plan reflected a significantly different approach to the budget, centered on a broad requirement that every dollar increase in taxes would have to be accompanied by two dollars in spending cuts.²⁸ At this point, the BTU had become a tax that impacted energy usage instead of a true energy tax.

IV. THOSE LEFT BEHIND: HOW BTU TAX PROPONENTS FAILED TO ASSUAGE THE CONCERNS OF FOSSIL FUEL-DEPENDENT COMMUNITIES

For environmentalists who fervently support energy taxes, the preceding analyses reveal significant but not insurmountable constraints on such proposals. First, an energy tax must be backed by an administration willing to ardently defend it against special interest demands. Second, such a tax cannot try to split the difference between economic and environmental benefits. Thus, champions of carbon taxes to combat climate change today should frame them primarily as environmental proposals. However, these conclusions overlook fears that energy taxes like the BTU tax would leave behind communities whose livelihoods depend on fossil fuels.

In analyzing the effects of Clinton’s disengagement from the legislative process, Erlandson argues that the “message of what the country stood to gain from the enactment of the [BTU] tax never, in this legislative travesty, reached the ears, or minds, of the people,” even though Clinton “had persuaded some economists and editorial writers.”²⁹ While not intentionally malicious, these comments have dangerous undertones: they imply that the Oklahomans who

²⁷ David E. Rosenbaum, *Clinton Backs Off Plan for New Tax on Heat in Fuels*, N.Y. TIMES, June 9, 1993, at A1.

²⁸ Boren et al., *supra* note 14.

²⁹ Erlandson, *supra* note 7, at 184.

flooded Boren's office with calls arguing against the BTU tax were deceived by industry groups that focused on the plan's economic costs. These comments dismiss the fears of hundreds of Oklahomans and convey an elitist tone: they suggest that while educated individuals like economists and editorial writers understood the BTU tax's benefits, campaigners had simply done an insufficient job convincing opponents that their fears were ill-founded.

To be fair to Erlandson, it is undeniable that interest groups devoted significant resources to defeating the BTU tax. As part of a "very sophisticated job" that Bentsen called "spirited and clever," large corporations spent two million dollars in a nationwide campaign.³⁰ These campaigners also took advantage of relatively cheap advertising costs in Oklahoma to inundate the television, radio, and newspapers with anti-BTU tax messages, going so far as to instruct citizens on how to contact their representatives.³¹ While one may claim that these campaigns engaged in misinformation to deceive citizens about the BTU tax, a more persuasive interpretation is that they channeled existing fears into the political influence that led to Boren's opposition.

For starters, while the BTU tax received endorsements from environmental groups and some corporations, it lacked broad support from the beginning. Less than a month after Clinton proposed the BTU tax—and three months before he abandoned it—a Wall Street Journal/NBC poll revealed that only 35% of Americans supported the tax while 62% opposed it.³² Notably, this poll was conducted before the administration began offering exemptions—and may have been an impetus for these offers as an attempt to secure broader support. Thus, arguments that the exemptions were the sole cause of the BTU tax's failure are inconsistent with this polling data.

³⁰ Anne Willette, *Powerful Lobbyists Doomed BTU Tax from the Start*, BATTLE CREEK ENQUIRER, June 13, 1993, at C28.

³¹ Michael Weisskopf, *Fanning a Prairie Fire*, WASH. POST (May 21, 1993), <https://www.washingtonpost.com/archive/politics/1993/05/21/fanning-a-prairie-fire/79dd5254-1325-480b-a31f-49f066fa2a65/>.

³² David Rogers & Rick Wartzman, *Clinton, Seeking Help for Economic Plan, Mulls Energy-Tax Break on Ethanol, Some Natural Gas*, WALL ST. J. (Eastern ed.), Mar. 11, 1993, at A16.

Given that Boren’s opposition is widely considered the final nail in the coffin for the BTU tax, the political climate surrounding the tax in Oklahoma offers a valuable perspective on the concerns that created such widespread opposition. One of the most influential and widely mentioned studies was the University of Oklahoma’s Center for Economic and Management Research (CEMR) analysis. As Michael Weisskopf summarized in *The Washington Post*, this study painted a bleak picture of the tax’s impacts: “a [BTU] tax would kill 11,000 jobs in energy production and energy-intensive industries, add \$180 a year to the energy bills of average Oklahoma households, devalue farmland by \$1 billion and cut \$1.6 billion from oil and gas field revenue over three years.”³³ As Wang notes, eleven thousand jobs represented one percent of Oklahoma’s entire workforce.³⁴

BTU tax proponents quickly dismissed this study as unscientific, given that interest groups such as the Affordable Energy Alliance subsequently made donations to the CEMR. Yet these dismissals were ultimately unpersuasive. It is not difficult to see why. The study had lent intellectual credibility to what many Oklahomans—nearly one-third of whose employment related to the energy industry or massive energy consumption—had already believed or feared: the BTU tax would hurt their livelihoods.³⁵

Erlandson argues that the CEMR study was economically inaccurate. Its dominance in the public narrative was not a result of sound analysis but rather because “analyses that undermined industry’s predictions of dire consequences were rarely reported.”³⁶ While the merits and demerits of various economic analyses are outside the scope of this Article, Erlandson’s argument reveals a fundamental misunderstanding of political persuasion: you cannot change

³³ Weisskopf, *supra* note 31.

³⁴ Wang, *supra* note 8, at 187.

³⁵ For the statistic regarding how one-third of Oklahomans’ jobs were linked directly to the energy industry or significant energy consumption, see Weisskopf, *supra* note 31.

³⁶ Erlandson, *supra* note 7, at 183.

people's minds by pointing to the existence of some studies countering ones that confirm their fears. Individuals presented with competing studies would naturally take a risk-averse approach and oppose the BTU tax. Why take the chance to support a proposal that might cost you your job?

Furthermore, Erlandson's analysis of economic studies reflects insufficient sympathy for local interests. For example, she cites an American Council for an Energy-Efficient Economy report showing that the BTU tax would actually create forty thousand jobs nationwide.³⁷ Sure, some of these jobs might go to Oklahomans. But from the perspective of an Oklahoman who fears unemployment, the prospect of thousands of jobs being created for others across the country is not a winning argument. This focus on nationwide job creation reflects a lacking consideration for those left behind by energy transitions.

Erlandson is not the only person to have taken such a position. In his brief summary of the BTU tax's failure in the Senate, Michael J. Graetz states that "regional politics inhibited sound policy," before listing various regional interests.³⁸ Yet instead of highlighting defects with the Senate's composition, as Graetz alludes to, these regional interests reflect the reality that the BTU tax would have had different impacts on different regions. Even if there might be a net benefit to the nation as a whole, some regions would be left worse off. While weighing these costs and benefits involves normative considerations best left to policymakers, from a historical perspective, the BTU tax's failure reveals one important lesson: unless an energy tax proposal can compensate for its disproportionate impact on fossil fuel-dependent communities, it will have a difficult path to political success.

³⁷ *Id.*

³⁸ Graetz, *supra* note 6, at 38.

V. CONCLUSION AND FIRST-IMPRESSION COMPARISONS WITH THE INFLATION REDUCTION ACT

The BTU tax's short lifespan and unceremonious demise in the Senate were not only due to political miscalculations on exemptions, an absence of presidential leadership, and the mismanagement of conflicting goals. Rather, the proposal also failed on its merits because it did not ensure that communities whose economic viability depended on fossil fuels would not be abandoned. Even if fears to this effect were overblown, BTU tax proponents did not assuage and were overly dismissive of them.

These lessons have significant implications for contemporary debates over energy taxes such as direct carbon taxes, carbon-dividend proposals, and cap-and-trade plans like the one Manchin fired a bullet through in his 2010 advertisement. However, it is impossible to avoid comparing the failure of the BTU tax with the success of the recently passed Inflation Reduction Act. True, important differences exist between the two proposals. For example, the Act is “more focused on incentives than regulations or penalties,” a departure from the punitive nature of the BTU tax and previous cap-and-trade proposals.³⁹ Still, contemporaneous journalistic accounts highlight distinctions between the Act and the BTU tax that, at first glance, likely contributed to their diverging fates.

Consider first President Joe Biden's engagement with the legislative process. Biden took a much more proactive role in climate negotiations than Clinton did in BTU tax talks.⁴⁰ In 2021, Biden met with dozens of House and Senate members from both parties to discuss his initial

³⁹ Chris Megerian, *Learning from Failures: How Biden Scored Win on Climate Plan*, AP NEWS, (Aug. 9, 2022), <https://apnews.com/article/biden-trending-news-climate-and-environment-government-politics-cc0b5aa16a2c0aef4a6c50ea5a3b804c>.

⁴⁰ A possible explanation for this contrast is Biden and Clinton's different paths to the presidency. While Biden had served in Washington, D.C. for thirty-six years as a senator and eight as vice president, Clinton arrived at the White House without having held federal office. Instead, he had served for nearly twelve years as the Governor of Arkansas.

infrastructure plans—which, after many iterations, were eventually narrowed into the Act’s nearly \$370 billion in climate investments.⁴¹ However, Biden’s engagement was not a panacea. In fact, Manchin’s negotiations with the White House collapsed in December 2021, and when Manchin indicated a willingness to resume talks, he insisted on working only with Senate Majority Leader Chuck Schumer.⁴²

Thus, consistent with this paper’s conclusions that both procedural and substantive elements of energy proposals impact their passage, the BTU tax and Inflation Reduction Act indicate that presidential involvement is not dispositive. While Clinton’s disengagement doomed the BTU tax, Biden’s negotiations with Manchin also fell through. Still, something is to be said about Biden’s role in the Act’s passage. In the days leading up to the July 27, 2022, announcement of a climate deal, senior Biden aides communicated regularly with Manchin and Schumer. Yet they also respected Manchin’s desire to negotiate directly with Schumer, providing technical as opposed to substantive assistance.⁴³ In other words, they took a middle-ground approach, avoiding both Clinton’s absence and Biden’s initial leading role.

Preventing conflicts between economic and environmental goals also contributed to the Inflation Reduction Act’s success. Admittedly, the Act’s name suggests an economic focus, notwithstanding its climate investments. Yet a crucial difference exists between Act and the BTU tax. The BTU tax was a single vehicle aiming to raise revenue and simultaneously reduce pollution. Meanwhile, the Act’s energy and climate investments are paid for by distinct revenue-

⁴¹ See, e.g., Tal Axelrod, *Biden To Meet with GOP Senators amid Infrastructure Push*, THE HILL (May 7, 2021), <https://thehill.com/homenews/administration/552452-biden-to-meet-with-six-gop-senators-next-week>; Emily Jacobs, *Biden Reveals Lawmakers Invited to White House for Infrastructure Talks*, N.Y. POST (Apr. 12, 2021), <https://nypost.com/2021/04/12/biden-invites-lawmakers-to-white-house-for-infrastructure-talks/>; Emily Jacobs, *Biden Meeting with Second Group of Lawmakers to Decide Infrastructure Package*, N.Y. POST (Apr. 19, 2021), <https://nypost.com/2021/04/19/biden-meeting-with-second-group-of-lawmakers-on-infrastructure/>.

⁴² Burgess Everett & Marianne Levine, *The Sinema-Manchin Split That Shaped Dems’ Deal*, POLITICO (Aug. 7, 2022), <https://www.politico.com/news/2022/08/07/sinema-manchin-anatomy-senate-deal-00050259>.

⁴³ Ryan Lizza & Eugene Daniels, *POLITICO Playbook: How It Really Happened: The Inflation Reduction Act*, POLITICO (Aug. 8, 2022), <https://politi.co/3BM9bxF>

raising methods involving corporate taxes, tax enforcement, and prescription drug reform.⁴⁴ This separation of revenue and spending provisions meant that Senate Democrats did not have to choose between their economic and environmental goals—they could achieve both.

Yet most important in securing Manchin’s support were the fossil fuel provisions of the Inflation Reduction Act. Paraphrasing Democratic Senator John Hickenlooper, Lisa Friedman and Brad Plumer reported that Manchin “wanted to find a way to address climate change without creating a burden for the fossil fuel workers in his state.”⁴⁵ Myriad provisions of the Act reflect Manchin’s success in achieving this latter goal. For example, the Act requires the Department of Interior to hold annual oil and gas lease sales for at least two million acres of public lands and sixty million acres offshore for the next ten years. If the Department fails to meet these benchmarks, permits for wind and solar energy projects on federal land will be held up.⁴⁶ Thus, the Act links the success of renewable energy developments to opportunities for fossil fuel extraction. The Inflation Reduction Act also permanently funds the Black Lung Disability Trust Fund—providing medical support for coal miners with black lung disease—and appropriates \$4 billion in tax incentives for building renewable energy factories on former coal fields. Phil Smith of the United Mine Workers of America praised these and other provisions as critical support for the nearly 45,000 miners who have become unemployed over the last decade.⁴⁷

⁴⁴ Benjy Sarlin, *Analysis: Manchin and Schumer Get Their Big Deal*, NBC NEWS (Jul. 28, 2022), <https://www.nbcnews.com/meet-the-press/meetthepressblog/analysis-democrats-get-big-deal-rcna40379>.

⁴⁵ Lisa Friedman & Brad Plumer, *Surprise Deal Would Be Most Ambitious Climate Action Undertaken by U.S.*, N.Y. TIMES (Jul. 28, 2022), <https://www.nytimes.com/2022/07/28/climate/climate-change-deal-manchin.html>

⁴⁶ David Blackmon, *Manchin-Schumer Inflation Reduction Act Is a Watershed Moment for U.S. Energy*, FORBES (Aug. 1, 2022), <https://www.forbes.com/sites/davidblackmon/2022/08/01/manchin-schumer-compromise-is-a-watershed-moment-for-us-energy/>; Timothy Puko & Katy Stech Ferek, *Inside Climate Bill, a Broad Energy Push*, WALL ST. J. (Jul. 28, 2022), <https://www.wsj.com/articles/senate-climate-bill-is-a-boon-for-fossil-fuels-11659045759>.

⁴⁷ Brad Plumer & Lisa Friedman, *Democrats Got a Climate Bill. Joe Manchin Got Drilling, and More*, N.Y. TIMES (Jul. 30, 2022), <https://www.nytimes.com/2022/07/30/climate/manchin-climate-deal.html>.

Additionally, Manchin’s support for the Act was conditional on Biden, Schumer, and Speaker of the House Nancy Pelosi’s willingness to support separate legislation accelerating the approval processes for energy projects. An early outline of this proposal included time limits on environmental reviews for “major” projects, curbs on legal challenges, and the centralization of approvals within one federal agency. Manchin also secured a commitment to complete a three-hundred-mile pipeline to transport shale gas from his home state of West Virginia to Virginia.⁴⁸In short, the Act secured Manchin’s vote by pairing climate change initiatives with funding to support the livelihood of fossil fuel workers, at least in the short term.⁴⁹

Nevertheless, more comprehensive narratives of the Inflation Reduction Act’s political journey, contents, and effects will take time to develop. The future scholarship may reveal more evidence about how Biden avoided Clinton’s failures, more fully highlight differences between the BTU tax and the Act, or address additional contributing factors. Indeed, this Article touches on two aspects of the BTU tax that may be fruitful for future analyses: the transparency and timeline of negotiations and the role of partisan politics in energy policy.

Regarding the nature of negotiations, it is noteworthy that the publicity and extended length of BTU tax discussions enabled interest groups to secure exemptions and target potential swing voters like Boren. In contrast, the guarded nature of the direct negotiations between Manchin and Schumer significantly diminished outside groups’ influence on the energy aspects

⁴⁸ Brad Plumer & Lisa Friedman, *Democrats Got a Climate Bill. Joe Manchin Got Drilling, and More*, N.Y. TIMES (Jul. 30, 2022), <https://www.nytimes.com/2022/07/30/climate/manchin-climate-deal.html>.

⁴⁹ This separate legislation did not pass in the 117th Congress in which Democrats controlled both the House and Senate. Manchin was forced to withdraw it from a bill to fund the government on September 27, 2022 because he lacked the support of a filibuster-proof majority in the Senate. See Caitlin Emma and Burgess Everett, *Senate Advances Funding Bill after Manchin Punts His Energy Plan*, POLITICO (Sep. 27, 2022), <https://www.politico.com/news/2022/09/27/manchin-energy-plan-senate-vote-funding-00058984>.

When the Senate considered his proposals as an amendment to the National Defense Authorization Act in December 2022, it failed by a 47–47 vote. (Sixty votes were required for approval.) However, both Biden and Schumer kept up their ends of the deal, with the former releasing a statement in support of the amendment and the latter voting for it. See Rachel Frazin, *Senate Rejects Manchin’s Energy Permitting Amendment to Defense Bill*, THE HILL (Dec. 15, 2022), <https://thehill.com/policy/energy-environment/3776418-senate-rejects-manchins-energy-permittingamendment-to-defense-bill/>.

of the Inflation Reduction Act. Lobbyists' impact on the Act was further weakened by the short timeframe between the July 27, 2022, announcement of a climate deal and the Act's August 7 passage in the Senate. For a direct comparison, this eleven-day period was dwarfed considerably by the nearly four-month saga of the BTU tax.

As for the role of partisan politics, Boren's defection from the Democrats was so impactful on the BTU tax's fate because Clinton could not count on any Republican support. Manchin occupied a pivotal position for the same reason.⁵⁰ Notably, Boren's Oklahoma and Manchin's West Virginia were two of the six states most economically dependent on oil, gas, and coal production in 2014.⁵¹ Thus, until Democrats can secure bipartisan support or hold enough seats to overcome defections by senators from fossil fuel-dependent states, future climate and energy proposals will have to persuade these senators that their constituents will not be left behind—just as the Inflation Reduction Act convinced Manchin.

Nonetheless, by adding to existing research on the failure of the BTU tax through an analysis of Oklahomans' opposition, this paper offers crucial historical lessons that can both serve as a foundation for scholarship on the Inflation Reduction Act and help policymakers avoid past failures on any future climate legislation.

⁵⁰ It is worth noting that while both the BTU tax and Inflation Reduction Act were Democrat-driven proposals, myriad environmental laws in the 1970s and 1980s received bipartisan support, including the Clean Water Act and Endangered Species Act of 1973. See Adam Aton, *Is the Climate Bill 'Historic'? Maybe Not, Historians Say*, E&E NEWS (Aug. 9, 2022), <https://www.eenews.net/articles/is-the-climate-bill-historic-maybe-not-historians-say/>.

⁵¹ Brad Plumer, *These 6 States Are Most Dependent on Oil, Gas, and Coal Production*, VOX (Aug. 8, 2014), <https://www.vox.com/xpress/2014/8/8/5982865/these-6-states-are-most-dependent-on-oil-gas-and-coal-production>.

**XI AND PUTIN: COMPARING OPERATIONAL CODES AND LOOKING
TO TAIWAN AND UKRAINE**

Zach Donaldson | 2022 - 2023

As Russia continues its assault on Ukraine, tensions continue to simmer between Taiwan and China. These two cases, and an overall global environment in which authoritarian and illiberal regimes threaten both domestic peace and the borders between nations, underscores the importance of expanding the tools and paradigms we use in evaluating and responding to the actions of adversarial foreign leaders. With that context in mind, how are we to analyze the backdrop that led to the current war between Ukraine and Russia and potentially prepare for a similar situation in East Asia? Or is it even fair to suggest that such a conflict is likely? In order to adequately forecast the likelihood of looming international turmoil, we must take a holistic approach in analyzing the geopolitical, domestic, and ideological history of these two countries. Such an approach necessitates a careful look at who is at the helm of Russia and China's governments, and how they plan to use that platform. In short, what motivates leaders like Xi Jinping and Vladimir Putin?

This Article will define and use operational code analysis, utilize quotes from speeches by Russian President Vladimir Putin and Chinese President Xi Jinping to provide a summary of each president's profile, and draw a conclusion regarding Vladimir Putin's decision to invade Ukraine, and the likelihood of a Chinese incursion into Taiwan. Ultimately, I find that a variety of factors including geopolitical considerations and especially the distinct leadership styles of Presidents Xi and Putin, make it highly unlikely that China will follow Moscow's lead and pursue a comparable military "solution" to its intra-state tensions with Taiwan.

I. UNDERSTANDING CHINA'S ACTIONS TOWARDS TAIWAN: PREVAILING PERSPECTIVES

Many pundits draw the analogy that China's actions towards Taiwan could take a similar course to that of Russia towards Ukraine; both examples of smaller democracies being preyed upon by larger powers. A recent op-ed by Joseph Bosco claims that as Xi observes Putin's actions in Ukraine he is, "certainly drawing lessons for his own plan to attack Taiwan," and the war in Europe has spurred a mass flight of capital from an island nearly 5,000 miles away.¹ Yet, even a cursory analysis suggests these dynamics are not equivalent, especially insofar as the respective leaders differ in their military and diplomatic posturing.

Russia under Putin has shown a repeated pattern of military intervention and combat missions, deploying troops in Syria, Kazakhstan, Ukraine, and Georgia while also supporting militia groups in these same host countries.² In contrast, China's largest overseas deployments in the post-Cold War era have been U.N. Peacekeeping missions. China only has one formal foreign military base in Djibouti whereas Russia has over 20 total installations beyond its own borders.³

The symbolic image the two countries hope to reflect to the rest of the world elicits different tones as well. China under Xi seems keen on touting a statesmanlike presence and hosting interdependent economic programs and projects like the Belt and Road Initiative and Asian Infrastructure Investment Bank. The Belt and Road Initiative is an ambitious infrastructure project that seeks to re-establish an overland Silk Road economic trade route alongside a

¹ Joseph Bosco, *Russia's war on Ukraine makes China's attack on Taiwan more likely*, THE HILL, April 26, 2022, <https://thehill.com/opinion/international/3462914-russias-war-on-ukraine-makes-chinas-attack-on-taiwan-more-likely/>

² Andrew Scobell, Lucy Stevenson-Yang, *China Is Not Russia. Taiwan Is Not Ukraine*, United States Institute of Peace, March 4, 2022, <https://www.usip.org/publications/2022/03/china-not-russia-taiwan-not-ukraine>

³ *Id.*

maritime trade route to push China's political and economic influence westward.⁴ This entails a network of railways, energy pipelines, highways, and border crossings through former Soviet republics and South Asia. The effort has over sixty countries signed onto projects accounting for about two-thirds of the world's population.⁵ This assertive initiative poses China as an alternative to the United States for global leadership, funding efforts for developing and middle-income countries and undermining a Western effort to "pivot" to Asia.

Meanwhile, Russia under Putin has been less aggressive in parallel development and trade efforts, targeting its comparable international focus on strengthening ties with China vis-a-vis the Shanghai Cooperation Organization and BRICs, and projecting a strongman image.⁶ Russia's invasion of Ukraine has been problematic for China, forcing it into a position where it must balance both its European Capital and Washington ties against its budding relationship with Moscow.⁷

Furthermore, Taiwan and Ukraine differ in their military alliances and layers of protection in preventing and handling an onslaught. An invasion of Ukraine from Russia is straightforward; the two countries share a contiguous land border with unproblematic terrain. On the other hand, invading the island of Taiwan from China would require a coordinated and strategic mix of naval, air, and ground forces in a varied mix of urban and mountainous areas. Ukraine lacking NATO status also receives no firm defense commitments, no doubt playing a part in Putin's cost-benefit analysis of the invasion, an assessment that has been complicated by NATO allies' willingness (so far) to support the nation with arms, sanctions, and diplomacy.

⁴ Yu Jie and Jon Wallace *What is China's Belt and Road Initiative (BRI)?*, Chatham House, September 13, 2021, <https://www.chathamhouse.org/2021/09/what-chinas-belt-and-road-initiative-bri>

⁵ Andrew Chatzky and James McBride, *China's Massive Belt and Road Initiative*, Council on Foreign Relations, January 28, 2020, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>

⁶ Scobell, Stevenson-Yang, *Supra*.

⁷ Craig Singleton, *Why Xi Is Trapped in Ukraine*, Foreign Policy, April 26, 2022, <https://foreignpolicy.com/2022/04/26/why-xi-is-trapped-in-ukraine/>

While Taiwan is not a formal military ally of the United States either, legislation like the Taiwan Relations Act and continued military aid has many convinced in both Washington and Beijing that a robust security partnership and de-facto alliance exist.⁸

While these differences in China and Russia's national trade and development postures, military alliances, and overall place on the global stage are important factors for assessing their statecraft, this Article argues that the leadership styles of the two nations' presidents is a decisive consideration. In order to analyze this phenomenon, I turn to a somewhat distinctive tool, operational code analysis to draw conclusions about existing and future foreign policy choices of the two autocratic nations.

II. DEFINING OPERATIONAL CODE

Developed by Nathan Leites in his research on post World War II Bolshevik behavior, an operational code can be most simply understood as the modus operandi of a foreign political leader's behavior, how their domineering belief systems can categorize and explain action.⁹ As Alexander L. George summarizes, Leites "was referring to a set of general beliefs about fundamental issues of history and central questions of politics as these bear, in turn, on the problem of action."¹⁰

Behavioral Scientist Alexander George would later consolidate Leites' work into five fundamental questions within two categories and instrumental, to help define the makeup of leaders' operational code.¹¹ Philosophical questions aim to target the nature of the political world through the lens of a leader, whereas instrumental questions target the norms and guidelines in

⁸ Scobell, Stevenson-Yang, *Supra*.

⁹ Nathan Leites, *A Study of Bolshevism*. GLENCOE: FREE PRESS. (1953)

¹⁰ Alexander L. George, *The "Operational Code": A Neglected Approach to the Study of Political Leaders and Decision-Making*, INTERNATIONAL STUDIES QUARTERLY 13, no. 2: 190. (1969)

¹¹ Alexander L. George *The Operational Code: A Neglected Approach to the Study of Political Leaders and Decision Making*. INTERNATIONAL STUDIES QUARTERLY 13, no. 2: 191–222. (1969)

which said leader operates. The questions which make up the belief systems of leaders are as follows:

A. PHILOSOPHICAL

- 1.) What is the "essential" nature of political life? Is the political universe essentially one of harmony or conflict? What is the fundamental character of one's political opponent?
- 2.) What are the prospects for the eventual realization of one's fundamental political values and aspirations? Can one be optimistic, or must one be pessimistic on this score; and in what respects the one and/or the other?
- 3.) Is the political future predictable? In what sense and to what extent?
- 4.) How much "control" or "mastery" can one have over historical development? What is one's role in "moving" and "shaping" history in the desired direction?
- 5.) What is the role of "chance" in human affairs and in historical development?

B. INSTRUMENTAL

- 1.) What is the best approach for selecting goals or objectives for political action?
- 2.) How are the goals of action pursued most effectively?
- 3.) How are the risks of political action calculated, controlled, and accepted?
- 4.) What is the best "timing" of action to advance one's interests?
- 5.) What is the utility and role of different means for advancing one's interests?

Assessing leaders' operational systems through psychoanalysis or determining their beliefs overtly is impossible since we cannot directly get into their mind. Thus, Stephen Walker and other researchers began using explicit speech as their primary sources to collect data on the attitudes and thoughts of political leaders. Examples include public remarks, press conferences,

and political manifestoes.¹² Ole Holsti would further elaborate on this field, drawing on his predecessors' identified belief system categories to design discrete typologies of leaders which serve to both fit their philosophical and instrumental stances and add a practical framework to note trends and patterns among different leaders. Walker would later revise Holsti's four primary typologies as follows.¹³

1. TYPE A:

Conflict is temporary, caused by human misunderstanding and miscommunication. The future is relatively predictable, and control over it is possible. Establish goals within a framework that emphasizes shared interests. Emphasize negotiation and de-escalation.

2. TYPE B:

Conflict is temporary, caused by warlike states; miscalculation and appeasement are the major causes of war. The political future is relatively predictable, and control over historical development is possible. Control risks by limiting means rather than ends. Any tactic and resource may be appropriate, including the use of force.

3. TYPE C:

Conflict is temporary. The source of conflict is the anarchical state system, which permits a variety of causes to produce war. One should be pessimistic about goals unless the state system is changed, because predictability and control over historical development are low under anarchy. Pursue shared goals, but control risks by limiting means rather than ends.

¹² Mark Schafer and Stephen G. Walker, eds. *Beliefs and Leadership in World Politics*. NEW YORK: PALGRAVE-MACMILLAN. (2006)

¹³ Stephen G. Walker, *The Motivational Foundations of Political Belief Systems: A Reanalysis of the Operational Code Construct*, INTERNATIONAL STUDIES QUARTERLY, Vol. 27, No. 2, pp. 179–201 (1983); Stephen G. Walker, "The Evolution of Operational Code Analysis", POLITICAL PSYCHOLOGY, Vol. 11, No. 2, pp. 403–418. (1990)

4. TYPE DEF:

Conflict is permanent, caused by human nature (D), nationalism (E) or international anarchy (F). Predictability is limited, as is control over historical development. Seek limited goals flexibly with moderate means. Use military force if the opponent and circumstances require it, but only as a final resort.

Walker's revised typology has been used in the contemporary era to undergo profile constructions on a bevy of leaders in different regions internationally. One such example is a study conducted by Ozgur Ozdamar and Erdem Ceydilek on European populist radical right leaders and their foreign policy approaches as compared to other world leaders, analyzing their utilization of cooperative and conflictual strategies, leadership types, and their general disposition of hostility or friendliness.¹⁴ In their research, they use a computerized Verbs-In-Context analysis system (VICS) to pull and categorize quotes from 7 of the most active right-wing leaders in European nations as a way to determine their standing on numerous philosophical and instrumental beliefs. This research yields some interesting patterns and results, including mixed results on the conflictual and strategic natures of populist leaders, but a consensus amongst all of them in valuing strong control over historical development.¹⁵

Another study utilizing the VICS method was conducted by Scott Crichlow to quantitatively measure the operational codes of former Israeli Prime Ministers Yitzhak Rabin and Shimon Peres. These leaders' conduct was measured based off of the variance in their foreign policy approaches, including means of achieving peace, to each other and over time. Crichlow determined that both leaders' conceptions of their political environment changed over

¹⁴ Ozgur Ozdamar and Erdem Ceyilek. *European populist radical right leaders' foreign policy beliefs: An operational code analysis*. EUROPEAN JOURNAL OF INTERNATIONAL RELATIONS, Vol. 26, 137-162. (2020)

¹⁵ *Id.*

time from conflictual to neutral, that Rabin had a strong predisposition for cooperative politics, and that Peres underwent acute fluctuations in his posturing.¹⁶

Ozdamar uses a similar methodology via hand-coding in another study analyzing the views of prominent North-African and Middle Eastern Islamist leaders. Walker's typologies were particularly helpful in his study, involving 6 leaders which he chose to split into two distinct groups. These were Type-A leaders who valued negotiation and flexible strategies for risk aversion, and Type-B leaders who were more keen to use force and other necessary resources to achieve their ends. His study determined that the Type-A leaders and Type-B leaders shared very similar views on self-identity but varied more greatly on goal selection and mastery over historical control.¹⁷

As it relates to the United States, operational code analysis was prominently used in Walker, Schafer, and Young's study of foreign policy during the strategic adjustment after the Cold War. Utilizing the speeches of Presidents George H.W. Bush and Bill Clinton, they concluded Bush represented a more inflexible, less cooperative approach to conflict management than that of his successor.¹⁸

Walker, Schafer, and Young also developed a scoring system test through their operational code analysis of former President Jimmy Carter. Their study constructed indices for each operational code element, philosophical and instrumental, and then identified and compared his views of the political universe according to verb intensity. They would find that Carter's

¹⁶ Scott Crichlow, *Idealism or Pragmatism? An Operational Code Analysis of Yitzhak Rabin and Shimon Peres*, POLITICAL PSYCHOLOGY. (2002)

¹⁷ Ozgur Ozdamar. *Leadership Analysis at a "Great Distance": Using the Operational Code Construct to Analyze Islamist Leaders*. GLOBAL SOCIETY, Vol. 31, No. 2, 167–198. (2017)

¹⁸ Mark Schafer and Stephen G. Walker, *Presidential Operational Codes and Foreign Policy Conflicts in the Post-Cold War World*, JOURNAL OF CONFLICT RESOLUTION. (1999)

views on approach to political action and opponents in the political universe showed statistically significant shifts after the Soviet invasion of Afghanistan.¹⁹

These prior studies solidify the fruitfulness of an operational code approach of identifying the political strategies and philosophies of world leaders, comparing those beliefs to one another, and understanding their relation to the political environments they exist in.

To best analyze how similar Xi's approach to Taiwan may be to Putin's in Ukraine, this paper undergoes a similar process of identifying and categorizing the trends and core elements of their international profiles. Drawing from addresses, press conferences, and other publicly available speech materials since the two have served in a public capacity I will compare Xi and Putin across the philosophical and instrumental indices and assign both a Walker typology.

III. COMPARISON OF PHILOSOPHICAL BELIEFS: THE EXISTING POLITICAL ENVIRONMENT AND THEIR RELATION TO IT.

Perhaps the most revealing aspect of the operational code's philosophical analysis resides in the first question researchers probe: What is the "essential" nature of political life? Is the political universe essentially one of harmony or conflict? What is the fundamental character of one's political opponent? These questions seek to answer that of the environment for world leaders, how their actions should correspond to their foreign adversaries and the current tides of the political universe at large. An increasing presence of liberal institutions, alliance expansion, and emphasis on international law in the decades following World War II has defined much of the policymaking and rhetoric from great powers, and it is fair to say this reach has even influenced more traditional authoritarian regimes like those of Putin and Xi.

¹⁹ Mark Schafer, Stephen G. Walker, and Michael D. Young, *Systematic Procedures for Operational Code Analysis: Measuring and Modeling Jimmy Carter's Operational Code*, INTERNATIONAL STUDIES QUARTERLY. (2002)

One traditional school of thought paints Putin as a rogue leader; persistent in bending international norms and challenging mainstream thought. In terms of his standing on the first philosophical belief, this view would suggest Putin sees the political world as one of conflict and his political opponents as constant competitors. For example, former United States Defense Secretary Robert Gates once said of Putin that he “has a dramatically different worldview than the leaders of Europe and the U.S. He does not share Western leaders’ reverence for international law, the sanctity of borders ... due process and rule of law.”²⁰

However, this is by no means a unanimous view. Other analysts categorize Putin as a more nuanced strategist, certainly pragmatic and assertive of Russia’s interests, but generally operating in the rational paradigm with a few exceptions. This includes a 2018 study by Stephen Benedict Tyson and Matthew J. Parent.²¹ Utilizing dedicated computer analysis software to compile a database of over 1 million words spoken by Putin, they found him to be a more varied opportunistic leader. “When things are going his way... Putin is a businesslike world leader. When chaos looms... Putin is perfectly willing to play the thug, and use violence in an opportunistic way to bolster his own standing.”²² In other words, Putin may adopt more mainstream diplomatic policies when in good security standing but display aggressive tendencies when threatened. These studies also illustrate an increase in more hostile and rebellious action over time, specifically in the aftermath of the annexation of Crimea in 2014.²³

My independent analysis and reading of Putin’s foreign policy speeches over the past few decades seem to corroborate the latter set of conclusions. Putin’s participation in the United Nations and Russia’s signatory status to agreements like the Paris Climate Accords certainly

²⁰ Robert M. Gates, *Putin’s Challenge to the West*, THE WALL STREET JOURNAL, March 25, 2014.

²¹ Stephen Benedict Dyson and Matthew J. Parent, *The Operational Code Approach To Profiling Political Leaders: Understanding Vladimir Putin*, Intelligence and National Security. (2018)

²² *Id.*

²³ *Id.*

indicates his willingness to participate in the international system. However, those caveats outlined in high pressure situations are both apparent and significant. On the issues of Ukraine and NATO expansion, Putin has displayed rogue tendencies in a variety of ways, from ultimatums to demonizing adversaries. Putin has been uncompromising in his opposition of NATO expansion, stating in a 2008 speech after the Bucharest convention that “We view the appearance of a powerful military bloc on our borders, a bloc whose members are subject in part to Article 5 of the Washington Treaty, as a direct threat to the security of our country.”²⁴ This is unsurprising given the territorial claims Putin makes for Russia: his definition of security expands far beyond the state’s traditionally recognized borders. A staunch advocate of “New Russia” Putin posits that majority ethnic Russian territories currently occupied by Ukraine such as Kharkiv, Lugansk, Donetsk, and Odessa were unceremoniously stripped from Russia and that reunion is necessary.²⁵

Putin’s lack of flexibility on this issue and defense of Russian security shows a more discrete interest in isolationism and promoting national interests. It suggests views more in light of a politically conflicted world, interpreting other state’s moves as an affront to one’s own interests. Furthermore, Putin’s recent ventures in Ukraine shows that he views the character of his opponents in threatened situations as a mortal enemy. The President has likened the Ukrainian government and their value systems to that of the Nazi’s, one of the most oppressive totalitarian regimes in world history: “I would like to emphasize once again that our men and officers are fighting in Ukraine for Russia, for a peaceful life for the citizens of Donbass, and for the denazification and demilitarisation of Ukraine.”²⁶

²⁴ Press Statement and Answers to Journalists’ Questions, April 4, 2008 <http://en.kremlin.ru/events/president/transcripts/24903>

²⁵ Pamela Engel and Gus Lupin, *Putin Makes Worrying Comments about Novorussia*, Business Insider, April 17, 2014 <https://www.businessinsider.com/maps-of-novorussia-and-old-russian-empire-2014-4>

²⁶ ENEX, N1 Belgrade, *Putin to Russian Security Council: Our Heroes Sacrifice lives to save others*, N1, April 4, 2022 <https://rs.n1info.com/english/news/putin-to-russian-security-council-our-heroes-sacrifice-lives-to-save-others/>

Much like President Putin, Xi and China's approach to foreign policy have been categorized into more broad, unitary schools of thought as well. The Realist view tends to paint China as a revisionist state whose rising influence and power will warrant assertive action, whereas the more Liberal view would suggest that increasing economic interdependence will yield a more cooperative operational code. However, much like his counterpart Vladimir Putin, multiple operational code studies tend to suggest a more nuanced standing. One 2013 study conducted by He Kai and Feng Huiyun compared the policy statements of the at-the-time incoming President Xi and his predecessor Hu Jintao and found a fairly consistent shared preference for liberal tendencies, with Xi indicating an increase in more assertive policies and considerations of force.²⁷ These conclusions would be further corroborated and expanded upon by a 2017 study from Yi Edward Yang, Johnathan W. Keller, and Joseph Molnar, whose comparative analysis of China's National Defense White Papers under the past three administrations showed yet again a prevailing trend of liberalism among Chinese Leadership, with more trends of assertive behavior being mirrored under Xi's leadership.²⁸

My independent analysis and research of speeches Xi has made to the international community reflect these conclusions similarly. The rhetoric of the current President seems to suggest an external view of a harmonious political world and more amicable relations with his opponents than his Russian counterpart. President Xi commonly pays homage to philosophies and schools of thought which value international norms such as sovereignty and rule of law, especially when referencing the commemoration of historical events. For example, when speaking on the 60th anniversary of the Five Principles of Peaceful Coexistence, President

²⁷ He Kai and Feng Huiyun. *Xi Jinping's Operational Code Beliefs and China's Foreign Policy*, THE CHINESE JOURNAL OF INTERNATIONAL POLITICS, Vol. 6, 209-231. (2013)

²⁸ Yi Edward Yang, Johnathan W. Keller, and Joseph Molnar. *An Operational Code Analysis of China's National Defense White Papers: 1998-2015*, JOURNAL OF CHINESE OF POLITICAL SCIENCE, 585-602. (2018)

Jinping espoused the values of sovereignty, peace, and justice, even displaying a firm verbal commitment to the protection of such principles abroad. He stated that, “all countries, regardless of their size, strength or level of development, are equal members of the international community, and they are entitled to equal participation in international affairs.”²⁹ In an emphasis on sovereignty, he would also remark that, “The internal affairs of a country should be managed by its own people. We should respect the right of a country to choose its own social system and model of development and oppose the attempt to oust the legitimate government of a country through illegal means to seek self-interests or to impose one's own views.”³⁰ Xi even goes as far as to invoke these as fundamental beliefs in the history of China, stating “The Chinese nation has always held such beliefs as "peace is most precious", "harmony without uniformity", "peace among all nations" and "universal love and non-aggression.”³¹

Xi's statements have been well established harmonious political world a concurrent theme in many of his addresses to the international community. This is especially present in his communications with fellow members of the UN Security Council, as seen in diplomatic visits to France and the United States. At the Joint Opening Ceremony of the sixth round of the China-US Strategic and Economic Dialogue Xi addressed diplomats stating, “in addition, our interests are more than ever inter-connected. Both history and reality show that China and the United States stand to gain from cooperation and lose from confrontation.”³² On a diplomatic visit to France in 2014 Xi yet again invoked history, speaking of when, “Chairman Mao Zedong and General Charles de Gaulle moved our two great countries to a handshake, setting a fine example in the

²⁹ Carry forward the Five Principles of Peaceful Coexistence to build a better world through win-win cooperation, June 28, 2014 http://www.china.org.cn/world/2014-07/07/content_32876905.htm

³⁰ *Id.*

³¹ *Id.*

³² Work Hard to Build a New Model of Major-Country Relationship Between China and the United States, July, 9 2014 https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201407/t20140730_678188.html

world for countries with differing social systems to live peacefully together and engage in win-win cooperation.”³³

However, just as with Putin, Xi’s self-assertive illiberal statements are also profound, and his approach to Taiwan and other territorial measures demonstrate a straying from his the previously referenced statements emphasizing international harmony and respect for sovereignty. Xi’s territorial claims encompass over 80% of land in the South China Sea, the disputed islands known as the Senkakus in Japan and Diaoyus in China, and territory along the Himalayan border.³⁴ In his eyes these are separatist states rightfully belonging to China. Xi views separatism as a particularly unique threat, undermining the security and sovereignty of China. His goals with Taiwan have been quite unambiguous, proclaiming as recent as 2021 that, “the historical task of the complete reunification of the motherland must be fulfilled, and will definitely be fulfilled.”³⁵ In 2019, Xi even directly threatened to use force to bring Taiwan under mainland control.³⁶ It’s fair to say Xi views secessionist actors as posing a threat, potentially espousing ideas about democratic institutions and state sovereignty that run counter to Xi’s authoritarian rule.

Central to the operational code’s philosophical approach is not only a leader’s view on the nature and intentions of the external political world, but their own belief on where their country stands. How much “control” or “mastery” can one have over historical development? What is one’s role in “moving” and “shaping” history in the desired direction? These questions help us establish the identity and character of a nation in its leader’s eyes, its goals, and how

³³ Special Friends, Win-win Partners, March 26, 2014

https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201403/t20140326_678146.html

³⁴ David Tweed, *China’s Territorial Disputes*, Bloomberg, October 3, 2018 <https://www.bloomberg.com/quicktake/territorial-disputes>

³⁵ Carlos Garcia and Yew Lun Tian, *China Vows ‘reunificaton’ with Taiwan*, Reuters, October 9, 2021

<https://www.reuters.com/world/china/chinas-xi-says-reunification-with-taiwan-must-will-be-realised-2021-10-09/>

³⁶ *Id.*

those attributes transition to several foreign policy decisions which will be expounded on later in the instrumental belief comparison.

Putin's speeches and formative experiences indicate a desire to assert Russia as a great power on the world stage. The aforementioned Dyson & Parent study found that Putin scored well above the average for reference groups in the categories of major world leader and rogue leader, suggesting that he values power and influence on pursuing his goals highly.³⁷ Historian Mary Elise Sarotte points to Putin's experiences as a KGB agent stationed in Dresden as an origin point for this positioning, experiencing firsthand the consequences of a collapse of state power.³⁸ Putin has spoken personally on the effect the said event has on him, stating "I got the feeling then that the country no longer existed. That it had disappeared. It was clear that the (Soviet) Union was ailing. And it had a terminal disease without a cure – a paralysis of power."³⁹ Historians like Sarotte posit that this paralysis of power is something which has haunted Putin throughout his career, driving his desire to play power politics and re-establish a dominance similar to that of the Soviet Union.⁴⁰

Putin has made it abundantly clear that Russia should be a nation viewed as strong and prosperous on the world stage ever since coming into office. In his 2000 inauguration he called for a Russia that was "...free, prosperous, flourishing, strong and civilized country, a country that its citizens are proud of and that is respected internationally."⁴¹ Then again in 2004 upon re-election he echoed those same sentiments, stating, "...we want high living standards and a safe, free and comfortable life for the country. We want a mature democracy and a developed civil

³⁷ Stephen Benedict Dyson & Matthew J. Parent, *Supra*.

³⁸ *Id.*

³⁹ Nataliya Gevorkyan Natalya Timokova, and Andrei Kolesnikov. *First Person*. New York: Public Affairs. (2000)

⁴⁰ Christine Pazzanese and Liz Mineo. *Why Peace In Ukraine Isn't Likely Soon*, THE HARVARD GAZETTE, March 1, 2022 <https://news.harvard.edu/gazette/story/2022/03/why-peace-in-ukraine-isnt-likely-soon/>

⁴¹ Inauguration Speech of President of the Russian Federation, May 7, 2000 <https://beersandpolitics.com/inauguration-speech-of-president-of-the-russian-federation>

society. We want to strengthen Russia's place in the world.”⁴² Putin's recent actions are indicative of a desire to make good on his promises through forceful and assertive measures.

Conversely, Xi's speech has been far more nuanced and conflicting, suggesting a value of China as both a strong and prosperous nation, but not necessarily one which asserts force in the way Putin's Russia does. One of Xi's most repeated phrases throughout his administration, and one that has characterized much of how China views its current and future role in the world has been the promise of the “Chinese Dream” or “Great National Renewal.” This can be seen in several statements to the international community. Xi will call on both domestic appeal and identification invoking the Chinese citizenry, “the 1.3 billion Chinese people are endeavoring to realize the Chinese Dream of great national renewal,” and outline the peaceful guidelines under which such a dream is necessary, “China has put forward the two centenary” goals and is striving to realize the Chinese dream of great national renewal. It needs, more than ever, a peaceful and stable external environment.”⁴³

Chinese Renewal entails four major elements: a strong China, a civilized China, a harmonious China, and a Beautiful China.⁴⁴ Strong China refers to an economically, politically, diplomatically, and militarily well-endowed nation. Civilized China refers to an increased commitment to high moral standards and equity which runs concurrently with harmonious China, aspiring for parity among social classes. Finally, beautiful China refers to the aspirations of a more environmentally sustainable and conscious country. While such goals certainly

⁴² Address to the Nation at the Presidential Inauguration Ceremony, May 7, 2004
<http://en.kremlin.ru/events/president/transcripts/22452>

⁴³ Friendship and Cooperation Bring Better Life to Both China and Europe, March 29, 2014
https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201403/t2014329_678154.; Work Hard to Build a New Model of Major-Country Relationship Between China and the United States, July 9, 2014
https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201407/t20140730_678188.html

⁴⁴ Robert Lawrence Kuhn, *Xi Jinping's Chinese Dream*, THE NEW YORK TIMES, June 4, 2013
<https://www.nytimes.com/2013/06/05/opinion/global/xi-jinpings-chinese-dream.html>

necessitate a country of means and influence, Xi's public statements do not necessarily suggest a consistent theme of reasserting force to the tune of Putin. In fact, many of his sentiments have suggested quite the opposite: alluding to a more equitable and harmonious stature.

IV. COMPARISON OF INSTRUMENTAL BELIEFS: GOALS AND ACTION

Whereas the operational code's philosophical belief systems outline the background to categorize a leader's worldviews and goals, the instrumental belief questions target how they achieve those aims. What is the best approach for selecting goals or objectives for political action? How are the goals of action pursued most effectively? An instrumental belief analysis of Xi and Putin reveals varying emphasis on force for the pursuit of domestically prosperous and internationally respected states.

Dyson and Parent's study reaffirms Putin's consistent degree of hostility after the annexation of Crimea when relating to broader foreign policy issues.⁴⁵ While already showing an upward trend in expressions advocating force after 2014, when Putin's speech is disaggregated by topic, an even more violent leader emerges. For example, when speaking of his approach to terrorism in *First Person*, he stated "One should never fear such threats. It's like with a dog, you know. A dog senses when somebody is afraid of it, and bites. The same applies here... Only one thing works in such circumstances – to go on the offensive. You must hit first, and hit so hard that your opponent will not rise to his feet."⁴⁶ Much like his emphasis on strength in his electoral victories, Putin also shows a discrete interest in flaunting military success and bravery. When

⁴⁵ Stephen Benedict Dyson & Matthew J. Parent, *Supra*.

⁴⁶ Nataliya Gevorkyan, Natalya Timokova, and Andrei Kolesnikov, *Supra*.

addressing military successes in his 2014 Campaign in Crimea he would state, “Each one of these places is dear to our hearts, symbolizing Russian military glory and outstanding valour.”⁴⁷

While Xi has shown a similar uptick in aggressive behavior compared to his successors, as previously qualified in the National Defense White Papers study, he seems more keen on using cooperative language rather than the coercive language of his Russian counterpart. For example, when speaking at the summit for the Five Peaceful Principles of Peaceful Coexistence, Xi maligned historically escalating measures stating “During the Cold War of East-West confrontation, none of the policies such as "the big family" "bloc politics" or "sphere of influence" was successful in handling state-to-state relations, and they only heightened antagonism and tension.”⁴⁸ Furthermore, Xi has shown support for international institutions that would conceivably de-escalate international conflict, stating at the Nuclear Security Summit, “We must follow a sensible, coordinated and balanced approach to nuclear security and put it on the track of sound and sustainable development.”⁴⁹

From an action standpoint, Putin’s early political promises of international power inculcated at the beginning of his career would begin to take form with his later territorial actions. He continues to assume the role of a unifier and savior when speaking of old Soviet territory, believing it is within the auspices and mandate of Russia to reassert control over sovereign nations in the Post-Cold War order. For example, after the annexation of Crimea in 2014, Putin would paint pro-Russian sympathizers within the Republic as justification for its invasion such as his claim that “I heard residents of Crimea say that back in 1991 they were

⁴⁷ Transcript: *Putin says Russia will protect the rights of Russians Abroad*, March 18, 2014
https://www.washingtonpost.com/world/transcript-putin-says-russia-will-protect-the-rights-of-russians-abroad/2014/03/18/432a1e60-ae99-11e3-a49e-76adc9210f19_story.html

⁴⁸ Carry forward the Five Principles of Peaceful Coexistence to build a better world through win-win cooperation, June 28, 2014, *Supra*.

⁴⁹ Statement by Xi Jinping President of the People’s Republic of China at the Nuclear Security Summit, March, 25, 2014
https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201403/t20140325_678144.html

handed over like a sack of potatoes. This is hard to disagree with. And what about the Russian state? What about Russia?”⁵⁰ Concurrently, he would conflate those foreign sentiments with the anger of his own people, claiming, “It was only when Crimea ended up as a part of a different country that Russia realized that it was not simply robbed, it was plundered” when referring to Crimea’s autonomous status after the collapse of the Soviet Union.⁵¹

Putin is utilizing these same tactics in his onslaught on Ukraine, arguing that it is both virtuous and destined for the two countries to reunite under one sovereign entity. To do this, he continues to vilify his enemies, fabricate atrocities in Ukraine, and harken to the nostalgia and sympathies of pro-Russian sympathizers within the country. Putin made these convictions firm in a presidential address a few weeks after the beginning of the war, stating “...I will never abandon my conviction that Russians and Ukrainians are one nation, even though some people in Ukraine have been intimidated, many have been duped by nationalist Nazi propaganda, and some have consciously decided to become followers of Bandera and other Nazi accomplices, who fought on Hitler’s side during the Great Patriotic War.”⁵²

Putin’s territorial ambitions and repeated promises to assert Russia as a major international player certainly coincide with his actions in Ukraine, attempting to display force and re-establish old Soviet Territory. Xi is more complex; he is sympathetic to diplomatic efforts while still holding firm on protecting his view of Chinese territory. For example, in his aforementioned speech on the Five Principles of Peaceful Coexistence, Xi espouses sovereignty in his support of the philosophy, stating “Rejecting the law of the jungle by which the strong bullies the weak, the Five Principles of Peaceful Coexistence strengthened the movement against

⁵⁰ Speech of Vladimir Putin, March 28, 2014 <https://crimea.dekoder.org/speech>

⁵¹ *Id.*

⁵² ENEX, N1 Belgrade.

imperialism and colonialism that eventually brought colonialism to an end”⁵³ Xi even goes as far to suggest that no country should exert undue influence over global affairs, stating, “...the core of the Five Principles of Peaceful Coexistence is that there is sovereign equality among all countries and that no country should monopolize international affairs.”⁵⁴

Xi has shown a particular distaste for what he perceives as separatism or lost territory, stating at the 150th anniversary of Sun Yat-Sen's birth “we will never allow any person, any group, any political party, at any time, in any way, to split from China any part of its territory.”⁵⁵ Yet, he does not necessarily call for the same level of aggression Putin does, showing both nuanced and compromising solutions. For example, when speaking of the South China Sea, Xi stated that “Chinese people do not make trouble, but we are not cowards when involved in trouble. No foreign country should expect us to swallow the bitter fruit of damage to our sovereignty, security and development interests.”⁵⁶ Xi has also shown a will to participate in a “one-country, two systems methodology” with territorially disputed entities like Hong Kong and Taiwan, suggesting a less incursive approach to reclaiming land than his Russian counterpart.⁵⁷

V. CONCLUSION

Given the operational code variances (between Putin and Xi’s rhetoric), geopolitical differences, and lack of success of the Russian invasion it is far more unlikely than not that China would invade Taiwan for the foreseeable future. To summarize and review the operational codes of each respective leader, I will assign them a respective typology based off of Walker’s system.

⁵³ Carry forward the Five Principles of Peaceful Coexistence to build a better world through win-win cooperation, *Supra*.

⁵⁴ *Id.*

⁵⁵ Xi urges Pursuit of Sun Yat-sen's dream, November 12, 2016

<https://archive.shine.cn/nation/Xi-urges-pursuit-of-Sun-Yatsens-dream/shdaily.shtml>

⁵⁶ President Xi’s remarks on South China Sea issue, July 6, 2016

https://www.chinadaily.com.cn/world/2016-07/06/content_25989430.htm

⁵⁷ Brian Wong and John Mak, *‘One Country, Two Systems’ Is Still the Best Model for Hong Kong, But It Badly Needs Reform*, October 30, 2019

<https://time.com/5713715/hong-kong-one-country-two-systems-failure/>

Xi's leadership style matches a Type A Walker Typology. He certainly holds belief in his control over historical development and the necessity of strength. However, he is far more willing to participate and engage in the international system as seen through his continued espousal of win-win international alliances, one country two systems compromises, and proposed interdependent economic programs. While Beijing certainly has a robust military, they are far less internationally engaged than their counterpart in Moscow.

Putin matches a Type B Walker Typology. Much like Xi, Putin's territorial ambitions indicate a proud internal view as a country which shapes the development of history. Yet unlike Xi, Putin does not show as consistent or intense interest to engage in international systems and compromise. Russia is also heavily involved militarily abroad, holding over 20 military installations beyond its own borders.

Finally, the ongoing struggles the Russian President is facing in his "special military operation" do not encourage other countries to attempt such endeavors. Russia's military wildly outnumbered and outclasses Ukraine, yet they have not been able to successfully overtake Kyiv or garner significant foreign support well over a year after its launch.⁵⁸ It is unlikely that Xi, already predisposed to more cooperative tendencies and heavily focused on economically crucial international efforts like the Belt and Road initiative, would potentially jeopardize such security with a controversial military operation. If the tides were to change in Ukraine and proved to be a more promising endeavor for Russia, Xi could certainly reconsider and weigh the costs and benefits of a Taiwanese incursion. However, until then, Taiwan is not Ukraine and China is not Russia.

⁵⁸ Robert Burns, *Russia's failure to take down Kyiv was a defeat for the ages*, April 7, 2022 <https://apnews.com/article/russia-ukraine-war-battle-for-kyiv-dc559574ce9f6683668fa221af2d5340>

CHIPS AND DIP

Daniel Wagner | 2022 - 2023

Technology that quickens the spread of information is often responsible for the greatest changes in history. During the Chinese Han Dynasty a court official invented a papermaking process allowing it and subsequent regimes to expand their power and influence as paper was used as an object of trade and to spread literature, literacy, and state administration.¹ More than a millennium later, the Gutenberg printing press helped Europe to go from a time of relative stagnation to leap into the Renaissance via the mass printing of books. And in our age, computers have proved to be even more revolutionary than paper and the printing press. Acquiring information *en masse* is no longer restricted to written text in a book, but available on any device with connection to the internet. The ability to send, receive, and process near instantaneous speeds made decision making easier and quicker. Computers have changed the world, and they continue to do so.

But like the technologies that preceded it, the computer (and the internet) cannot be divorced from the economic and political context in which they are born and used. In August 2022, the U.S. Congress passed the Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (CHIPS Act), an increasingly rare piece of bipartisan legislation ostensibly designed to enhance American competitiveness and protect national security (and the economy) by developing domestic semiconductor manufacturing. While heralded by congressional leaders and praised the Biden Administration as “an historic bill that will lower costs and create jobs,” this paper takes a more skeptical look, making the case that the CHIPS Act is a mixed bag—perhaps commendable in its goals, but legislation that poses serious questions with respect to how it was passed, whether its goals will be met, and whether it amounts to another form of corporate welfare, as liberal and conservative critics have sometimes claimed. Instead of

¹ Hunter Dard, *Papermaking: The History and Technique of an Ancient Craft* (2011)

representing a story of unambiguous political cooperation and putting American interests first, we will see that this legislation is instead a touchstone for understanding a range of contemporary political maladies.

Humanity's reliance on computers will not end anytime soon, so it is up to us to ensure the security and stability of our semiconductors and their supply chain. Governments and multinational companies have taken great action to better manage the shortage. We must ask ourselves if government policies are ultimately helping or impeding established and developing industries and consumers, and what are possible unforeseen consequences of the state's intervention? Who are the winners and losers of the game and why does that matter? This is a global issue, and those who navigate this shortage in the best way will wind up on top for years to come. If the United States wants to remain the sole global superpower, it is imperative it must act, but is the CHIPS Act the best way to handle a problem of this magnitude?

After providing a short account of some of the longstanding and shorter-term considerations that created a shortage of semiconductors, this Article sketches the politics surrounding, and the substance of the 2022 CHIPS Act. I conclude by offering a preliminary assessment of the measure, not as a comprehensive critique, but to sound some notes of caution, focusing on how the measure's origins and major sections are not obviously oriented around the public interest as legislators and proponents of the law make it out to be.

I. A SHORT HISTORY OF THE SEMICONDUCTOR SHORTAGE

Like other groundbreaking innovations (in which new technologies created new interdependencies), society increasingly began to rely on computers in the internet age. Computers replaced or changed all sorts of industries and transformed the economy as we know it. News was first distributed in printed newspapers for hundreds of years. It was a massive

industry, and a staple for towns with nationally or internationally renowned newspapers. That all began to slowly change in the late 1900s. Starting in the 1970s, commercial television sets were in most homes. News media could now be broadcast directly to the viewer. There was no need to allocate massive amounts of resources to keep printing newspapers. Newspapers, however, remained a popular source of information. Then in the late 1990s, everything changed with the launch of the personal computer and the internet. Now, news can be accessed whenever the user wants, and can even be specialized to better suit the needs of the audience or consumer. Computers were a more convenient and efficient source of information than books or newspapers, and soon became the main way people today get their news.

Although it seems like the growth of computers is unstoppable, this reliance on computers has exposed problems with the digital economy, particularly with respect to questions of supply and demand and overall access. In particular, lawmakers, policy experts, industry leaders, and consumers are worried about availability and supply chain issues related to computer chips—a potential problem referred to as a semiconductor shortage. What matters at this critical time in history is how we solve and adapt to these problems. Who is handling the situation (government, markets, or industry) is just as important as the arena of ideas that develops potential solutions. The global scale of the issue has introduced numerous players to the game, and the game has only just begun. This shortage of computer chips has shaken the world and will have lasting implications for the world in the next few years.

So, what is a semiconductor? And why are they so important—and in short supply? A semiconductor is neither a conductor nor an insulator but still allows conductivity between conductors. In a computer, the semiconductor chip allows for the computer to draw power as well as transmit, receive, and store information. The most popular material for manufacturing

chips is silicon. “Silicon Valley” gets its name because silicon is the very heart of the computer industry. Semiconductors are not just in personal computers as well, but cars, smartphones, and even your coffee machine.

There is no “one size fits all” chip. Chips are specialized by design to be optimized for the electronics they are a part of. The more widespread and innovative use of computers coincides with increasingly complex chip designs. Chips for different electronics may need to be larger or more intricately designed with different components. This increasing complexity and demand for computer chips have caused massive amounts of stress on the system to a point where there is a current shortage of semiconductors. Recent events in the world have shaken the semiconductor industry further and revealed an abundance of holes in the system of chip supply.

First, and the most obviously, the COVID-19 outbreak placed twin pressures on the semiconductor industry—simultaneously straining supply lines while stoking demand. With people unable to work or cross borders normally, the supply of semiconductors could not keep pace with surging consumer interest in many of the products facilitated by this technology. Even with the pandemic being ostensibly over—in May 2023 the Director-General of the World Health Organization (WHO) declared that Covid is no longer a global public health emergency-- analysts estimate the backlog due to an incredible demand may continue to burden manufacturers. The shortage of semiconductors also led to shortages in other products that also require semiconductors.

As noted, the Covid pandemic posed challenges related to demand as well as supply. The pandemic forced many people to stay inside and engage with their electronics more. Computers were a means of communication with the rest of the world and entertainment. With an abundance

of streaming services, smart home gadgets, and video games, people were more than incentivized to stay inside and use their electronics. They also were more willing to buy new ones. Video games have seen exponential levels of growth, and the pandemic was a perfect means to foster and even speed up this growth. People use both desktop computers and consoles to play video games. Competition within the industry is also fierce, especially with consoles. The Xbox vs. PlayStation console war entered a new phase going into the pandemic with each side releasing a new version of their console. The combination of new items on the market and an artificially increased demand for these items lead to an inevitable shortage of chips.

These challenges of supply chain bottlenecks, relentless consumer demand, and emergent industries such as the pandemic are exacerbated by another factor impacting access to semiconductors: geopolitics. The geography of semiconductor production is not advantageous to producers or consumers. American technology companies like Intel and Nvidia are releasing new chips all the time with more improvements. But these companies only design the chips, and do not manufacture them themselves here in the United States. Most of the manufacturing is done by Taiwan Semiconductor Manufacturing Company (TSMC for short) in Taiwan. TSMC only has so many facilities to manage the magnitude of orders they are receiving. Add a journey across the Pacific and existing (and future) shortages of semiconductors seems all but inevitable. Going through Russia and Europe used to be an easier and quicker option until the invasion of Ukraine.

Taiwan also has a problem with China, as the Chinese government has had their eye on Taiwan since their communist revolution. When the Chinese civil war had concluded, the Communists lead by Mao Zedong had taken control of the mainland and had forced the Nationalists lead by Chang Kai-shek to flee to the island that is now Taiwan to rule over. Since

then, the Chinese Communist Party has maintained the fact that Taiwan is a part of China, “one China” and codified this by signing the Shanghai Communique with the United States in 1971, as the United States “acknowledges that all Chinese on either side of the Taiwan Strait maintain that there is but one China and that Taiwan is part of China”². Since then, the Taiwanese have tried to assert their sovereignty despite the “one China” system. In the midst of this tension, the Taiwan Semiconductor Manufacturing Company (TSMC) invented the fabless foundry technique, which enabled the industry to experience rapid growth. Since this has made Taiwan the semiconductor manufacturing hub of the world, China has wanted to gain control of this manufacturing base.

A successful invasion of Taiwan would allow China to control the global economy by leveraging control of chip production. China recently has begun to build up their military, they now have more nuclear weapons and new planes and fighter jets. China has not made a move on Taiwan is because of their semiconductor manufacturing equipment, as it would be counterproductive to blow up what you are after. China has made it increasingly difficult for this pillar of the Taiwanese economy to operate with tensions peaking during speaker Nancy Pelosi visiting the island in August.³ Such threats have forced the United States to increase its military presence in the region and view the semiconductor supply line and its vulnerability to China as a national security risk, and hence action must be taken.

² Ray Dalio, *Principles of a Changing World Order*, 413, 2021

³ Noureldein Ghanem, “Expert: China, Taiwan Tensions Threaten Global Semiconductor Industry”

II. SEEKING SOLUTIONS TO SEMICONDUCTOR SUPPLY: ENTER THE CHIPS ACT

With these diverse factors in play, it might seem like a shortage of semiconductors was inevitable. But in 2022, despite the otherwise polarized and vitriolic nature of American politics, lawmakers and both parties came together for a proposed government-supported solution. Congress called upon President Joe Biden to act, and he answered by demanding a review of the supply chain for American semiconductors via executive order.⁴ The order demanded that American business review and streamline their semiconductor supply line. Many companies applauded the order and began reviews soon after.

Intel took to reviewing their supply lines, and ultimately supporting direct government intervention, with gusto. In March 2022 Intel CEO Pat Gelsinger testified before Congress that “the only way to alleviate the current supply-demand imbalance long term is to increase manufacturing capacity by funding and implementing the CHIPS Act,”⁵ legislation that had been introduced in both chambers of Congress, but which had not yet been approved. In June, the company put out a statement discussing the importance of the semiconductor shortage as well as their ability to do something about it.⁶ Intel also announced their plans to build a new mega factory in Ohio with the potential for another in Arizona. CEO Patrick Gelsinger has been a staunch advocate for the CHIPS act since its inception. In addition to his congressional testimony, he and the company lobbied multiple government agencies to pass the measure.

What is the CHIPS Act, and why was Gelsinger so eager to embrace it? The CHIPS Act focused on strengthening the American semiconductor industry, especially its supply line, in part

⁴ Exec. Order 141017, Executive Order on Americas Supply Chains, Fed. Reg 04280

⁵ Press Release, The US CHIPS Act: Why Intel Supports It, INTEL, (June 8, 2022), <https://www.intel.com/content/www/us/en/newsroom/news/us-chips-act-why-intel-supports.html>

⁶ Id.

by providing about \$280 billion in new federal funding to support domestic semiconductor research and manufacturing. Specifically, the law grants federal financial aid and tax benefits to semiconductor manufacturers who invest⁷ in the United States. To receive this aid, those seeking it must demonstrate a need to Congress and the Department of Commerce that they need it to advance research and development or strengthen the supply line. The law also allows the department of education to partner with local and state education facilities and organizations to further advance research and development within the industry. This investment in education will also prepare a generation of students that will be ready to work all the new manufacturing jobs that will be created by the law.

As noted, ultimately the CHIPS Act was supported by lawmakers from both parties, although this observation may be the case of less than meets the eye. Given that both houses of Congress (and the presidency) were controlled by Democrats, it's not obvious how critical Republican support actually was. Furthermore, even though the measure passed the House by a 243-187 vote, this occurred despite a last-minute change of heart by Republican leadership who ended up *opposing*⁸ the bill. Twenty-four house Republicans defied leadership, each with their own electorally and politically specific reasons. Eight of those representatives were from Ohio, where Intel plans to build their super factory. Liz Cheney (R-WY) voted for the bill due to concerns about her primary opponent and electoral prospects. Her support for the bill was a final effort to garner support from moderate republican voters against Trump backed challenger Harriet Hagemann. In any event, after House passage, the Senate scaled back some provisions of the bill and voted its final approval 64-34. President Biden officially signed the CHIPS act into law on August 9, 2022.

⁷ Ellen Chang, "US Chipmakers Will Reap Rewards from Chips Act."

⁸ 24 House Republicans Defy Leadership and Vote for Chips Bill

III. ASSESSING THE CHIPS ACT

As outlined in the first part of this Article, the U.S. (and many other nations) faces a real and sustained challenge regarding semiconductor chip production. But is the CHIPS Act the right solution? Among other questions, we must ask ourselves, is it worth it to give hundreds of billions of dollars to companies that merely promise to help solve the problem—or are market based and decentralized solutions a more promising option?

At its core, the CHIPS act is a glorified investment in America’s semiconductor industry. Instead of strengthening our supply chain and national security, the CHIPS Act is more of a form of corporate welfare and is encouraging manufacturers to do something they are already doing, building semiconductors in the United States. Most of the law dictates who gets what in terms of government funding. Research and development are one of the laws' top priorities. A benchmark of the law is the CHIPS for America program. As stated by Commerce Secretary Gina Raimondo in a September press release,

“CHIPS for America, will ensure continued US leadership in the industries that underpin our national security and economic competitiveness. Under President Biden’s leadership, we are once again making things in America, revitalizing our manufacturing industry after decades of disinvestment and making the investments, we need to lead the world in technology and innovation.”⁹

The program involves investing in domestic research and jobs to strengthen the semiconductor supply of the United States. The press release placed a strong emphasis on attracting private investment and it is achieving its desired goal. This program has a price tag of fifty billion. But who benefits and is the policy carefully designed to tackle the problem of supply? In politics it is

⁹ Gina Raimondo, statement “Biden Administration Releases Implementation Strategy for \$50 Billion Chips for America Program.”

often best to follow the money to get a handle on whether the CHIPS Act's investments are primarily for America's future or its corporations.

Beyond questions related to the actual rationale for the CHIPS Act, we might also question whether the bill amounts to an unwarranted business subsidy and a form of industry "capture" that benefits some companies over others. Consider an historical example to drive this point home. Before the computer, a massive democratizing piece of technology was trains. In the late 1800s, trains allowed for faster westward expansion via the faster movement of resources and people. Congress had fallen in love with trains and wanted in on the action. Starting in 1862 with the Pacific Railway act, Congress gave similar subsidies to railroad companies to further the progress of the nation.¹⁰ One of the biggest companies to receive subsidies was the Union Pacific railroad company, which is still in business. The companies were paid by Congress based on the amount of track laid, which caused them to boondoggle on building lines that were not profitable in the slightest. The railroads, especially ones that lead to the middle of nowhere, started turning into losses for the government and investors. This led to the panic of 1873, which was the worst financial crisis in American history before the great depression.¹¹

A parallel between then and now can be drawn with the trains and chips. Looking at history, and especially American History, we ought to be cautious about giving money to corporations for the sake of progress and problem solving. In a free market, companies must compete and succeed to survive. If companies do not get money from customers, they go under. If companies have a stream of handouts from the government, they have less of an incentive to be more viable in the marketplace or even use their favor to monopolize. The government is going to shell out billions of dollars to a company that promises to build a lone factory. Is this

¹⁰ Encyclopedia Britannica, Inc. "Pacific Railway Acts"

¹¹ Alan Behrens, "Causes and Effects of the Panic of 1873."

factory going to be pumping out enough chips to satisfy demand? Will the shortage be over by the time of construction? What is the return on capital? Will semiconductor manufacturers suffer the same fate as the railroad investors? These questions must be asked when we think about investing taxpayer dollars into private enterprises.

Proponents of the law will throw out that giving these companies money to manufacture chips in the U.S will strengthen our national security amidst the contentious situation in the Taiwan strait. This argument is flawed because semiconductor manufacturers have operations going on in China. Intel employs twelve thousand people in China, and has sites in important cities like Beijing, Shanghai, and Shenzhen.¹² This means the CHIPS act funnels money directly into China. Kevin Roberts, president of conservative think tank The Heritage Foundation, had said in a statement opposing the bill;

“The answer to the [Chinese Communist party’s] malevolent ambitions are not spending billions of dollars to help Fortune 500 companies, with no guarantee those dollars won’t end up supporting these companies’ business operations in China.”¹³

Roberts is right, as the Chinese have tight control of money going in and out of the country. If our national security is at stake, then we must ensure that the money given to manufacturers stays in the U.S and strengthen the sector the way it is intended to do.

IV. CONCLUSION

The bottom line is that the CHIPS act is a mixed bag. It is a bipartisan law that is an investment into Americas future. The act propels American technology to beat out the threat of China and meet the needs of the increasingly digitized economy. It will allow for new jobs and

¹² Intel: China, Intel, <https://www.intel.com/content/www/us/en/jobs/locations/china.html>

¹³ Chris Stein, How Bernie Sanders and conservatives united against US semiconductor bill, BLOOMBERG, (July, 31, 2022) <https://www.theguardian.com/us-news/2022/jul/31/bernie-sanders-conservative-thinktanks-semiconductor-bill>

innovation, fostering economic development. Once you zoom out and look at the bigger picture, things are not all sunshine and rainbows. The CHIPS Act is a form of corporate welfare that allows big semiconductor manufacturers who are already drowning in profit to receive even more money at the expense of the American Taxpayer. This overspending during a time of rampant inflation also makes the problem worse and places more financial burden on the average taxpayer and less on the companies that see their stock prices continue to rise.

At the core of all of this is the question of whether the government and its agents are able to solve problems caused by international politics and market forces. Congress is only made up of 435 people, and most, if not all, are not only out of touch with the average person, but they are just as prone to making mistakes as everyone else. Market forces act outside of the control of the government, as even they must follow the ultimate law that is supply and demand. Whether it is trains or computers, the government has proven it does not have the ability to choose winners and losers in the marketplace because they promise to advance society and solve problems. Even worse, they could abuse their power for their own gain.

The free market will find a solution on its own to solve the problems of the semiconductor shortage. Due to the shortage of chips, Americans will naturally be inclined to manufacture more semiconductor chips domestically. The shortage creates the competitive environment necessary for innovation. It is only fair that those who are most viable in the marketplace enjoy the advantages that come with innovation. Why should the government be able to pick out who gets what when it comes to solving the problem?

BLACK LIVES MATTER CAMPAIGN: UNITED KINGDOM

Marilyn Torres | 2022 - 2023

The Black Lives Matter (BLM) movement has had a global impact since its inception in 2013. The BLM movement is dedicated to battling racism and police brutality towards people of color. The campaign was sparked after the death of Trayvon Martin, an innocent 17-year-old African-American individual; and the acquittal of George Zimmerman, the man who shot him.¹ The BLM has had different periods of intensity, with an increase in outrage after the death of George Floyd in 2020, who suffocated and died due to the actions of the police.²

Although the movement has its roots in the United States, its impact has been felt worldwide, including in Great Britain, a country with unfortunate race relations. Many people in the United Kingdom (UK) assert that there is systematic racism with disproportionate numbers of Black people in prison and segregated healthcare and education.³ Concerned UK citizens have claimed that the, “people have been silenced by society because people are blind to racism or are afraid of admitting there is a problem,” and sought to bring this issue to the forefront.⁴ The BLM movement was an avenue to open people’s eyes about the recurring issues in their country. The people hoped that coming together could help bring this change.

Several factors led to an increase in intensity within the BLM protests in Britain. This paper will explore the following factors and their influence on the BLM movement: 1) the consistent mistreatment of minorities by the police; 2) the institutional racism seen throughout the government and society; and 3) the treatment of the Black, Asian, and Minority Ethnic community during COVID-19.

¹ Reis Thebault, *Trayvon Martin’s Death Set Off a Movement That Shaped a Decade’s Defining Moments*, WASH. POST, Feb. 5, 2022, at Trayvon Martin’s death, Black Lives Matter and the activism that shaped a decade - The Washington Post.

² *How George Floyd, and What Happened Next*, N.Y. TIMES, July 29, 2022.

³ Mattha Busby, *This is a Historic Moment’: UK Anti-Racism Protestors on What Needs to Change*, THE GUARDIAN (June 12, 2020).

⁴ *Id.*

Systematic racism and police brutality exist in Britain. In fact, “a [Black] person in the UK is twice as likely to die in police custody than any other ethnicity.”⁵ The deaths of Mark Duggan, Sean Rigg, and Sheku Bayoh who were killed by British police were names that they kept in mind to honor while protesting.⁶

In the UK, a Black person is more likely to be stopped and searched and more likely to be subject to the use of police force.⁷ In addition, a Black person is “more likely to be tasered and more likely to die as a consequence of police use of force.”⁸ This type of treatment is very noticeable to the people in the UK and was brought to the forefront in an independent report about police custody deaths. This report found that there is a disproportionate number of people from Black, Asian, and Minority Ethnic (BAME) communities that have died following the use of police force.⁹ The report also found that between 1990 and 2008, 16% of those in police custody from use of force were Black, which is more than twice the proportion arrested.¹⁰ This kind of force used on the BAME community is what continues to push and ignite the flames of the BLM UK. Mark Duggan, Sean Rigg, and Sheku Bayoh are just a few of the individuals that have been killed by police. Mark Duggan was traveling as a passenger in a minicab when police confronted him. The police officers allege that Duggan pivoted out of the van, arming himself with a pistol. Duggan was shot twice by the police on his exit from the vehicle, once in the chest and once in the arm.¹¹ Sean Rigg was another man that died in police custody. He was at the police station when his physical and mental health had deteriorated and, despite claims from

⁵ Finally Greig, *How Many Black People Have Died in Police Custody in the UK? Sheku Bayoh, Sean Rigg, Mark Duggan, and Other Cases Explained*, THE SCOTSMAN (June 5, 2020 16:12 BST).

⁶ *Id.*

⁷ Loveena Tandon, *Why Black Lives Matter Protests Are Happening in UK*, INDIA TODAY (June 24, 2020 3:37 IST).

⁸ *Id.*

⁹ Greig, *supra* note 5.

¹⁰ *Id.*

¹¹ *Id.*

officers that he was ‘faking it’, Rigg became unconscious. He was eventually treated and taken to hospital where he died.¹² Lastly, Sheku Bayoh, “[...] died in Kirkcaldy in 2015 after being restrained by police officers using batons and incapacitant spray, while responding to a call about a man with a knife.”¹³ These incidents demonstrate that the unfortunate presence of police brutality in Britain, and this is recognized when protestors hold placards with their names. Discrimination in Britain does not go unnoticed and does not go unheard. The people want change and eagerly protest to bring reforms.

Another reason why many people in Britain are behind this movement is due to the institutional racism. As Professor Angela Morris stated, “Institutional racism is that which, covertly or overtly, resides in the policies, procedures, operations and culture of public or private institutions - reinforcing individual prejudices and being reinforced by them in turn.”¹⁴ Events like the Grenfell Tower and Windrush Scandal are examples of this institutional racism. Protestors chanted for the victims of the Windrush generation and victims of the Grenfell Tower fire. The Grenfell Tower was “a residential block in London, that caught fire in 2017 due to lack of fire safety measures. It caused the death of 72 people, most of them from Black and Asian background.”¹⁵ This shows the institutional racism in the country because the operations of this building were not up to date and the reason for it is because the people who lived there were of the BAME community. Moreover, the Windrush scandal was another incident in 2018. This is where “the legal status of thousands of people of Caribbean and African descent living in the UK was questioned denouncing their British Nationality wrongly.”¹⁶ The word “windrush” is the word for “immigrants who were welcomed by Britain in 1948 to fill in the shortage of labor due

¹² *Id.*

¹³ *Id.*

¹⁴ Angela Morris, Professor at Fairleigh Dickinson University, *Ethnic & Race Relations*, 2021.

¹⁵ *Tandon, supra note 7.*

¹⁶ *Id.*

to World War-II. Many times, these people did not carry passports as the British Nationality Act 1948 gave those from the empire the right of settlement in the UK.”¹⁷ These people were later asked to leave. This shows the racial mindset that lurks in their system and people are angry about it.

The final factor contributing to the continued presence of the BLM movement is Britain’s COVID response in regards to the BAME community. Statistically, there was a high death rate from COVID-19 among members of the BAME community.¹⁸ Not only were the numbers high but the numbers were also disproportionate due to the pandemic, especially in the Black, Asian and Minority Ethnic communities.¹⁹ Due to the high numbers of deaths, the Public Health England (PHE) conducted an inquiry that revealed a connection with the massive inequality of opportunities that exist in the UK, which was one of the major contributors towards disproportionate COVID-19 deaths in the BAME community compared to others.²⁰ The British Medical Association demanded action, however, “a recent survey of BMA has revealed that ‘more than a third of BAME doctors in the UK are still not being given access to potentially life-saving COVID-19 risk assessments.’”²¹ This caused much anger throughout the country. This can be seen through Belly Mujinga; one of the people who are symbolizing the BLM UK movement due to her death and the injustices behind it. Mujinga and her co-worker were selling tickets for Govia Thameslink Railway at London Victoria station. While selling these tickets they were allegedly spat and coughed on by a 57-year-old man who told them he had the virus in March 2020. Mujinga was later taken to Barnet Hospital with COVID-19, put on a ventilator and

¹⁷ *Id.*

¹⁸ Aamna Mohdin and Lucy Campbell, *So Many People Care!’ The Young Britons Whose Lives Were Changed by Black Lives Matter*, THE GUARDIAN (Nov. 13, 2020, 1:37 PM).

¹⁹ *Tandon, supra note 7.*

²⁰ *Id.*

²¹ *Id.*

later died.²² Mujinga's story underlines the injustice Black people, and specifically Black women, experience in the UK. This is why she became a famous face that helped the movement.

Police brutality, institutional racism and the COVID response sparked the presence of the BLM movement in Britain. If it weren't for people standing up for what they believe in, many people would be forced to deal with racism being normal in their society. Thankfully, in the summer of 2020, Britons stood up against this racism and showed their support of the Black Lives Matter movement with many protests. In fact, "more than 260 towns and cities held protests in June and July – from Monmouth in south Wales to Shetland in Scotland. British historians described them as the largest anti-racism rallies since the slavery era and at the heart of many of these protests was a new generation of young [Black] Britons."²³ This shows that the way people are treated in the UK leads to strong protests for change.

It is clear that the UK took the Black Lives Matter movement and made it their own through personal experiences. In the summer of 2020 when the protests broke out in America and later the UK, many people were worried that the BLM would just be a summer trend. Two months after the protests, the UK media rarely put it in the news.²⁴ The British citizens felt as if their government did not take them seriously. For example, "following the Black Lives Matter marches, Prime Minister Boris Johnson announced an inquiry into racial inequality - but faced criticism for saying the UK is not "a racist country" and his use of the word "thuggery" to describe protesters."²⁵ Even labor leader Keir Starmer said that "Black Lives Matter was a "moment" not a movement."²⁶ This really angered people, especially people working on the

²² Belly Mujina: *Calls for Inquest into Alleged 'Virus Cough Attack; Death*, BBC NEWS (Oct. 11 2020).

²³ Mohdin, *supra* note 18.

²⁴ Michael Baggs, *Black Lives Matter in the UK: 'We're Still Not Being Heard'*, BBC NEWS (Aug. 25, 2020).

²⁵ *Id.*

²⁶ *Id.*

BLM events. They feel as if the government is just dismissing everything and act like it doesn't really matter. However, they are still moving and marching.²⁷

Someone who has kept up with the protests to this day is Aima, an 18-year old protester that has kept marching despite the lack of media coverage. She has "helped organize protests in Central London in June that attracted thousands of supporters. And she's been marching every week since."²⁸ Aima says that "despite the fact there's not a lot of media attention - that there's not as many people as there was in the beginning - the amount of people that come out are still able to make a change and have their voices heard."²⁹ While as of right now there might not be as many people as there were in the beginning, the protests have led to some small changes. There has been a change in the names of road and building names to avoid controversy. These are small changes that these protests have had from the summer of 2020. Another change after the summer of 2020 protests is that "activists from the Black Lives Matter UK campaign group have placed their organization on an official footing, marking it with a change of name."³⁰ Taking this step can help with making change in the government. The campaign received £1.2m in donations following widespread protests in June.³¹ They confirmed to the Guardian, "that Black Liberation Movement UK was the group's new official name, but said it would continue to organize under the name Black Lives Matter and in collaboration with the wider BLM movement."³² Having an official footing is a good step to take so that more changes can be made.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Damien Gayle, *BLM UK Gains Legal Status and Renames as Black Liberation Movement UK*, THE GUARDIAN (Oct. 23, 2020, 12:56 PM).

³¹ *Id.*

³² *Id.*

Overall, while the Black Lives Matter movement might have started in America, the Britons made it their own through personal negative experiences and the need for change. They used so many injustices to ignite protest and stand up against the racism seen in their society. They are showing everyone that they have not forgotten the things that the media no longer mentions and while the media might not cover it anymore the people in Britain will not give up.

