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Hinckley Journal of Politics — 2022 editorial board

A WORD FROM THE DIRECTOR

As director of the Hinckley Institute of Politics, it is my honor to present the 2022 *Hinckley Journal of Politics*. This marks the 23rd edition of the *Journal*, showcasing the Hinckley Institute's continued pursuit of publishing exceptional academic research papers written by students at the University of Utah.

The 2021-22 academic year continued to present challenges for our students as our campus and state managed ongoing outbreaks of the COVID-19 virus. After a year of virtual learning, we were thrilled to see our students return to campus last fall. Throughout this pandemic, people debated the best ways to handle the public health and economic crises. Other issues came to the forefront as well, including voting laws, redistricting, education, immigration reform, and criminal justice reform. Throughout all of this, it became increasingly clear that our students must not only understand the political process, but know how to engage with it. The student contributions to this journal reflect that engagement.
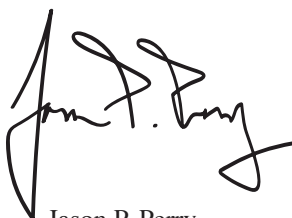
This edition also features an article written by distinguished members of our community: Dr. Rex L. Facer II, Associate Professor Public Management at Brigham Young University and chair of the Utah Independent Redistricting Commission (UIRC), and former-state Senator Karen Hale, commission member of the UIRC. Their article addresses the compelling issues surrounding the once-a-decade redistricting process and highlights the roles each of their organizations played. We are grateful to Dr. Facer and former-Senator Hale for their thoughtful contributions. We also invited members of the Utah Legislative Redistricting Committee to submit an article, but unfortunately they were not able to contribute at this time.

This publication was made possible through the diligence of the 2022 *Journal* co-editors Sydney Kincart and Kathleen Bradley and their student editorial board members. We also recognize the University of Utah Political Science Department and the important contributions of our faculty editors and advisors Professor Laura Gamboa and Professor Michael Dichio. I would also like to express my gratitude to the dedicated staff of the Hinckley Institute, particularly Brooke Doner, director of marketing, Alex MacFarlane, program coordinator, and Morgan Lyon Cotti, associate director, for their commitment and supervision of the publication.

Through the Hinckley Institute of Politics, University of Utah students are able to apply the practical politics they learn in the classroom to real world experiences. To date, the Hinckley Institute has placed and supported over 8,800 interns in offices throughout the State of Utah, in Washington, D.C., and throughout the world.

The 2021-2022 academic year was truly distinct. The challenges and opportunities it presented were unlike any other in recent history. Through this lens, we hope you enjoy the work of our best and brightest students featured in this publication.

Sincerely,

Jason P. Perry
Director, Hinckley Institute of Politics
Vice President, Government Relations

A LETTER FROM THE EDITORS

Dear Reader,

As the 2021-2022 school year closes, we reflect on the resilience of students grappling with the return to in-person classes and hybrid schedules. After over a year of mostly virtual learning, we quickly adjusted to the demands of the return to campus. Despite best efforts to stay positive, COVID-19 variants continued to disrupt our education, and rising case numbers caused us severe anxiety.

In the face of the challenges COVID-19 brought, students stayed involved with critical political events. During the summer drought and debates about canyon congestion, students were at the forefront of advocating for Utah's environment. We were first hand witnesses to Utah's redistricting process and a legislative session that tackled important topics of education, voting reform, and equity. We watched the United States leave Afghanistan, a military conflict which has raged for the duration of some of our lives. Now, we are seeing global conflict in Europe, learning from the courage of Ukrainians. We are also observing the historic nomination of a new Supreme Court justice. Students at the University of Utah have learned from these paramount political events, and they continue to have diverse involvement, experiences, and interests in politics.

The Hinckley Journal of Politics Editorial Board highlights this diversity through their studies of philosophy, mechanical engineering, biology, political science, economics, international studies, quantitative analysis of markets and organizations, communications, history, anthropology, psychology, Middle Eastern studies, elementary education, and disability studies. Our journal amplifies their varied interests, and it demonstrates that everything from identity development to the stock market is political. It was a pleasure to work with such passionate, thoughtful, and intelligent students throughout the selection and editing processes.

We are grateful that the Hinckley Institute provided us both with such a transformative experience as co-editors. We thank the Hinckley Institute staff for their support and guidance throughout the production process. Our faculty advisors, professors Laura Gamboa and Michael Dichio, challenged us to think critically about submissions, improved our editing skills, and refined student papers. Lastly, we thank our Editorial Board and student authors for their patience and contributions. Not only did we learn from them, but we found new friends. It's been an honor to work as co-editors of one of the few undergraduate-run journals in the nation.

We are excited to watch our generation continue to play an integral role in politics, and we hope you enjoy the *Journal* as much as we have.

Sincerely,

Kathleen Bradley
Co-Editor

Sydney Kincart
Co-Editor

EDITORS' NOTES

HINCKLEY JOURNAL OF POLITICS' MISSION STATEMENT

The *Hinckley Journal of Politics* is one of the only undergraduate-run journals of politics in the nation and strives to publish scholarly papers of exceptional caliber from University of Utah students in the fields of politics and public policy as well as opinion essays from local, state, and national public officials. Contributing research articles and opinion essays should address relevant issues by explaining key problems and potential solutions. Student research papers should adhere to the highest standards of research and analysis. The *Journal* covers local, national, and global issues and embraces diverse political perspectives. With this publication, the Hinckley Institute hopes to encourage reader involvement in the world of politics.

STUDENT RESEARCH PAPER SUBMISSION GUIDELINES

The *Hinckley Journal of Politics* welcomes research paper submissions from University of Utah students of all academic disciplines, as well as opinion essays from Utah's public officials. Any political topic is acceptable. The scope can range from University issues to international issues. Research papers should adhere to submission guidelines found on the *Hinckley Journal* web site: hinckley.utah.edu/journal.

STUDENT RESEARCH PAPER REVIEW AND NOTIFICATION PROCEDURES

Research paper submissions will be reviewed by the *Journal* editors, members of the editorial board, and faculty advisors. Submission of a research paper does not guarantee publication. Papers that do not adhere to submission and style guidelines will not be considered for publication. Acceptance to the *Journal* is competitive. The co-editors will notify potential authors when the decision has been made regarding which papers have been selected for publication.

SUBMISSION GUIDELINES FOR PUBLIC OFFICIAL OPINION ESSAYS

The *Journal* will consider for publication opinion essays written by national, state, and local public officials and community leaders. The opinions expressed by public officials are not necessarily those of the University of Utah, the Hinckley Institute of Politics, the Student Media Council, the editors, faculty advisor, or the Editorial Board. Officials should contact the *Journal* editors for additional information.

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ABOUT THE HINCKLEY INSTITUTE OF POLITICS

*T*he Hinckley Institute of Politics at the University of Utah is a nonpartisan institute dedicated to engaging students in governmental, civic, and political processes; promoting a better understanding and appreciation of politics; and training ethical and visionary students for service in the American political system. Robert H. Hinckley founded the Hinckley Institute of Politics in 1965 with the vision to "teach students respect for practical politics and the principle of citizen involvement in government." Since its founding, the Hinckley Institute has provided a wide range of programs for students, public school teachers, and the general public including: internships, courses, forums, scholarships, and mentoring. The Hinckley Institute places emphasis on providing opportunities for practical experience in politics.

INTERNSHIP PROGRAM

A nationally recognized program and the heart of the Hinckley Institute, the Hinckley internship program places more than 300 students every year in government offices, non-profits, campaigns, and businesses. The Institute provides internships opportunities to students from all majors for academic credit in Utah, Washington, D.C., and in more than 50 countries.

CAMPAIGN MANAGEMENT MINOR

The Hinckley Institute of Politics is proud to offer one of the nation's only minors in Campaign Management. The program is designed to provide undergraduate students the opportunity to learn the theory and practices that will allow them to be effective participants in election and advocacy campaigns. Students are required to complete a political internship and an interdisciplinary series of courses in areas such as campaign management, interest groups, lobbying, voting, elections, and public opinion, media, and other practical politics.

PUBLIC FORUMS AND EVENTS

The Hinckley Institute hosts weekly Hinckley Forums where politicians, policy makers, activists, academics, and influencers address public audiences in the Hinckley Caucus Room. Hinckley Forums enable students, faculty, and community members to gain insight into and discuss a broad range of concepts on local, national, and international levels. Past guests include Presidents Bill Clinton and Gerald Ford; Senators Orrin Hatch, John McCain, Harry Reid, and Mitt Romney; Utah Governors Jon Huntsman, Jr., and Gary Herbert; Nobel Peace Prize Winner Suzi Snyder; Civil Rights Activist Dolores Huerta, and many other notable politicians and professionals. The forums are reaired on KCPW 88.3 FM and video recordings are archived on the Hinckley Institute website.

SCHOLARSHIPS

The Hinckley Institute provides more than $600,000 in financial support to students annually. The Hinckley Institute is also the University of Utah's representative for the Harry S. Truman Congressional Scholarship – one of America's most prestigious scholarships.

HUNTSMAN SEMINAR FOR TEACHERS

The Huntsman Seminar in Constitutional Government for Teachers is a week-long seminar sponsored by the Huntsman Corporation. The primary focus of the seminar is to improve the quality of civic education in Utah schools by bringing Utah educators together with political experts and visiting politicians to discuss current events in Utah and American politics. The Huntsman Seminar is truly a unique opportunity for teachers to gain an in-depth understanding of local and national political issues.

DEPARTMENT OF POLITICAL SCIENCE

The Hinckley Institue values its relationship with the Department of Political Science. The Institute's programs provide students the opportunity to enrich their academic studies with experiences in practical politics, which complement the academic offerings of the Political Science Department. Courses are available in five subfields of the discipline: American Politics, International Relations, Comparative Politics, Political Theory, and Public Administration. If you have questions about the Department and its programs, please visit poli-sci.utah.edu or call (801) 581-7031.

ROBERT H. HINCKLEY

A man of vision and foresight, a 20th-century pioneer, a philanthropist, an entrepreneur, and an untiring champion of education and of the American political system—all are apt descriptions of Robert H. Hinckley, a Utah native and tireless public servant. Robert H. Hinckley began his political career as a state legislator from Sanpete County and a mayor of Mount Pleasant. Hinckley then rose to serve as the Utah director for the New Deal program under President Franklin D. Roosevelt.

Hinckley went on to serve in various capacities in Washington, DC, from 1938 to 1946 and again in 1948. During those years he established and directed the Civilian Pilot Training Program, served as Assistant Secretary of Commerce for Air, and directed the Office of Contract Settlement after WWII. In these positions, Hinckley proved to be, as one of his colleagues stated, "One of the real heroes of the Second World War." Also in 1946, Hinckley and Edward Noble jointly founded the American Broadcasting Company (ABC), and over the next two decades helped to build this company into the major television network it is today.

Spurred by the adverse political climate of the '40s, '50s, and '60s, Hinckley recognized the need to demonstrate that politics was "honorable, decent, and necessary," and to encourage young people to get involved in the political process. After viewing programs at Harvard, Rutgers, and the University of Mississippi, Hinckley believed the time was right for an institute of politics at the University of Utah. So in 1965, through a major contribution of his own and a generous bequest from the Noble Foundation, Robert H. Hinckley established the Hinckley Institute of Politics to promote respect for practical politics and to teach the principle of citizen involvement in government.

Hinckley's dream was to make "Every student a politician." The Hinckley Institute of Politics strives to fulfill that dream by sponsoring internships, scholarships forums, mentoring, and a minor in Campaign Management. Today, over 55 years later, Hinckley's dream is a reality. More than 8,800 students have participated in programs he made possible through the Hinckley Institute of Politics. Many of these students have gone on to serve as legislators, members of Congress, government staffers, local officials, and judges. All participants have, in some measure, become informed, active citizens. Reflecting on all of his accomplishments, Robert H. Hinckley said, "The Hinckley Institute is one of the most important things I will have ever done."

STUDENT RESEARCH PAPERS

Teacher Retention in Utah:

Empirical Analysis and Policy Challenges

By Bailey Warren, David Christensen, Jessica Snyder, Logan Burton and McKenna Pastorik
University of Utah

Abstract:

   Utah's large student population poses unique challenges for the education system. Currently, 29% of Utah's population is under the age of eighteen, making Utah's demographic distribution particularly young. This high proportion places Utah seven percentage points above the national average per the 2020 Census, which also ranked Utah as the fastest-growing state in the nation (US Census Bureau, 2021). Other states in the region that experienced similar levels of overall growth remain below Utah in their share of population under eighteen, ranging from 22% (Nevada) to 25% (Idaho). Further, a large portion of Utah's growth occurred within the population of those under age eighteen, with growth in this age bracket accounting for roughly one-third of overall population growth since 2010. This upward trend is expected to continue and poses potential strains on the public education system. Increasing the retention rate for teachers can ease the strains that come with a growing population of students. High teacher retention rates have been suggested to have fiscal benefits and positive impacts on student performance, but the determinants of high and low retention rates for Utah's education system are under-investigated. Based on theory and support from existing literature, we selected six variables: per-pupil spending, median income, district average salary, graduation rates, ACT scores, and average student-teacher ratio. With these explanatory variables, we performed an econometric analysis utilizing the CART and Random Forest models to predict retention rates. Our models suggest district graduation rates, median district income, and average district ACT score play a more important role in determining teacher retention, which runs counter to the literature and our assumption that the teacher-level variables of average district salary and per pupil spending would be stronger indicators. These findings are put into the perspective of the broader literature and policy measures taken to improve retention, which suggest that comprehensive support to improve working conditions has a greater impact than single targeted measures.

Keywords: teacher retention, per-pupil spending, random forest, teacher salary, graduation rates, ACT scores, student-teacher ratio, CART model, tree model.

Introduction

   Utah's large population of children results in a high student-teacher ratio, making attracting and retaining quality teachers an ongoing challenge for the state. Utah's retention rate is 56%, and "more than half of Utah's teachers quit within seven years," according to the USBE 2020 Annual Report (Utah State Board of Education, 2020). In comparison, a national representative survey on teacher retention yielded a retention rate estimate of 86% in 2020 (Rosenburg and Anderson, 2021). High rates of population growth and difficulties related to the coronavirus pandemic have placed stress on the supply of teachers; making the retention of high quality teachers a priority of the Utah State Legislature and the USBE. The classroom stability resulting from retaining teachers impacts student performance as well, meaning that teacher attrition has effects throughout the education system and in turn is affected by a multitude of demographic factors and classroom measures. We decided to investigate the latter to better identify the explanatory variables behind high and low retention rates.

Literature Review

   There is no shortage of literature on teacher attrition, both in the US and abroad. Our main goal in undertaking the literature review is gaining an understanding of what

the relevant literature surrounding teacher retention suggests about what broad characteristics are relevant to maintaining a higher teacher retention rate. Early research took off in the 90's and was focused on the economic determinants of teacher retention. Many early papers used the National Longitudinal Study of the Class of 1972 (NLS-72) to study the effects of wage and certification regulations on teacher retention (Stinebrickner 98, Rickman and Parker 90). Published primarily in economic journals, the consensus was that increasing teacher wages was a better avenue for decreasing attrition than using resources to improve working conditions.

More recent studies have analyzed these effects of workplace conditions on retention. "Teacher Attrition and Retention: A Meta-Analytic and Narrative Review of the Research" is a meta-analysis of research done on the effect of various variables on teacher attrition. When analyzing per pupil spending researchers found "A difference of $500 per pupil in instructional spending was associated with odds of attrition for teachers in the lesser funded schools that are 5.38 times greater than those for teachers from the better funded schools"(Borman & Dowling, 2017). Similarly, studies have examined burnout rates among "high-income" and "low-income" schools. Some older research suggests that in low income schools teachers report higher levels of burnout and stress when compared to high income schools (Kenyeri, 2002). However, a number of newer qualitative studies find that student poverty is not statistically significant when regressed against attrition (Boyd et al., 2011). We examine local median income in our paper as there are mixed effects reported in the literature. Student outcomes have also been studied as potentially playing a role in teacher retention, finding "teachers in high-performing schools were significantly more satisfied with all aspects of working conditions than teachers in low-performing schools, with the exception of mentoring and use of time."(Geiger & Pivovarova, 2018). Our study adds to the literature in that we combine a number of variables from student outcome, teacher compensation, and environmental factors all within a single model.

Methodology

Data

Our dataset consists of the following variables. All variables pertain to the year 2019 and each individual observation refers to one of the 41 school districts in Utah. FiveYear and OneYear will act as our dependent variables, whereas the remaining will be explanatory. Our data comes from the Utah State Board of Education and the US Census Bureau (Median). 2019 was selected as our year in question

due to 2020 and 2021 being potential outlier years.

- **OneYear:** Official 1-year Retention Rate of Teacher, calculated 2018-2019

- **PPS:** Per Pupil Spending. Calculated as district total expenditure divided by total number of students. Per pupil spending has a clear policy implication with teacher retention. As one of the few variables the state can directly control, we were interested in seeing the effects it would have on teacher retention.

- **Median:** Median income of the area in which the district is located in (2019).We included a measure of the average household income for each given school district as a proxy for the economic condition of the students in a given school.

- **DistAvg:** District Average Salary of a K-12 teacher within the district (2019). Teacher wages are the most intuitive factor of interest when formulating potential models to study attrition.

- **grad_rate:** High school Graduation Rates for 2018. High school graduation rates are a simply calculated metric that serve as a baseline for comparisons between school districts as well as a proxy for student success.

- **ACT:** Average cumulative ACT scores of students within the district. Prior retention research indicates that ACT scores should be a factor of interest due to the majority of schools benchmarking their performance on exam scores. In other words, ACT scores have been used as another proxy for student success, which has a potential relationship with teacher retention rates.

- **STRatio:** Average Student Teacher Ratio within the district. Given the widespread acceptance that lower student teacher ratios lead to better educational outcomes, and that those low ratios themselves correspond with high teacher retention, we feel it necessary to more precisely test its effects.

Model Specification

Our preliminary analysis of the data involved using several econometric techniques. For the purposes of this paper, we feel that Classification and Regression Trees (CART) and the Random Forests model provide the most appropriate and relevant analysis given our data limitations. CART models are not often implemented in social science analysis and feel may provide salient insights.

CARTs are predictive models that take the shape of a YES/NO decision tree predicting outcomes on either categorical or continuous variables (Chipman et al., 1998). Since our dependent variable in question is retention rate, our models will produce a continuous output.

To read a CART is as such. Each "node" presents a YES/NO question pertaining to a certain explanatory variable. Answering YES or NO will determine which branch to continue down the tree. For example, on this CART model on data from 2017 FiveThirtyEight article Higher Rates Of Hate Crimes Are Tied To Income Inequality.
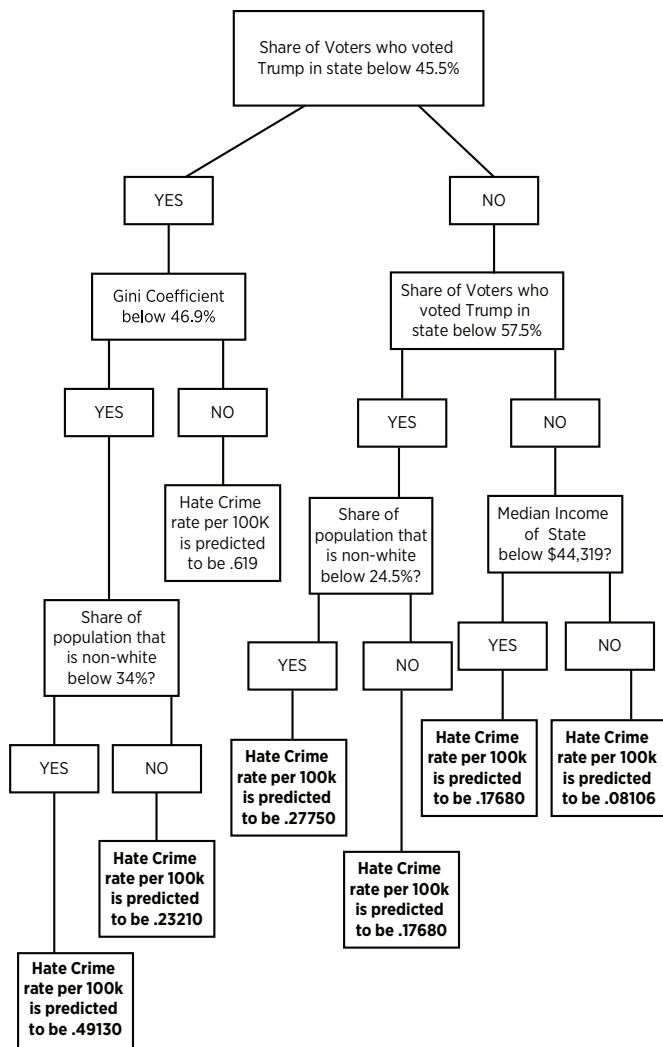
fig.1- A CART model made from data provided from a January 23, 2017 FiveThirtyEight article "Higher Rates Of Hate Crimes Are Tied To Income Inequality" by Maimuna Majunder (Majunder, 2017)

A sample interpretation we can glean is that states with the share of voters who voted Trump below 45.5% and have a Gini Coefficient above .469 (meaning answering NO) have a predicted Hate Crime rate per 100,000 of .619.

The depth of the explanatory variables (typically referred to as "nodes") give indicators as to the relative strength of association of the variables' effect on the dependent variable. This does not imply causality, but rather correlation.

While CART models do have the benefit of being relatively easy to set up and interpret, CART models have a propensity to "overfit" the data, creating inaccurate or overly optimistic results. To mitigate these effects, we will also implement the "Random Forests" technique, where a multiplicity of trees is calculated and compiled on average to portray a more accurate picture of the relative importance of explanatory variables.

Our dataset consists of the following variables. All variables pertain to the year 2019 and each individual observation refers to one of the 41 school districts in Utah.

Results

CART models

Using OneYear as our dependent variable, we get a tree as such:
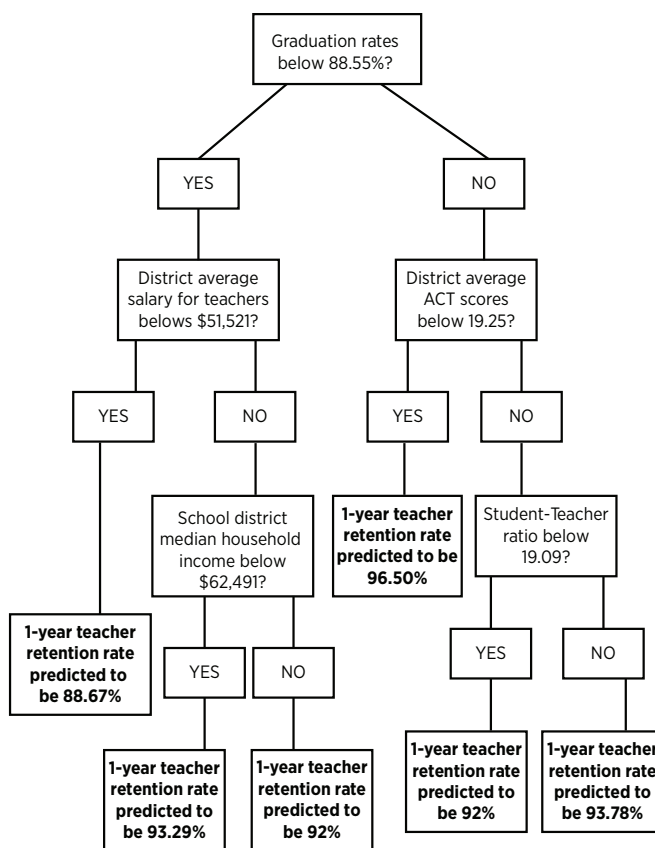
fig. 2- CART Model, OneYear as dependent variable.

Interestingly, we see that graduation rates take a more instrumental role on the effect of retention rates. As we can see, lower graduation rates (i.e., < 88.55%) and lower average

teacher salaries (i.e., $51,521) suggest that retention rates will be lower at 88.67%. However, as aforementioned, tree models do have a habit of overfitting. We will implement Random Forests to rectify this to our best extent.

It is important to note that there is a large multiplicity of potential models to be built from the CART model method. The aforementioned CART diagrams are just one of the many potentially viable diagrams from our dataset and not definitive.

Random Forests

Random Forests is a collection of hundreds of randomly-produced (usually through a machine-learning framework) CART models averaged. This process allows for analysis on the relative strength of association of each explanatory variable in relation to the dependent variable in question. Relative strength is measured by depth, meaning the number of "steps" the variables take before appearing in the tree. Variables that are less deep (variables that "show up" first) indicate more importance and relevancy to the dependent variable.

Random Forests can be visualized through Distribution of Minimal Depth and its mean diagrams. These bar graphs show each explanatory variable's average minimum depths (as indicated by a text box and tick mark) and as well as their counts at other depths (different depths are indicated by gradients) from the 500 CART models randomly made.

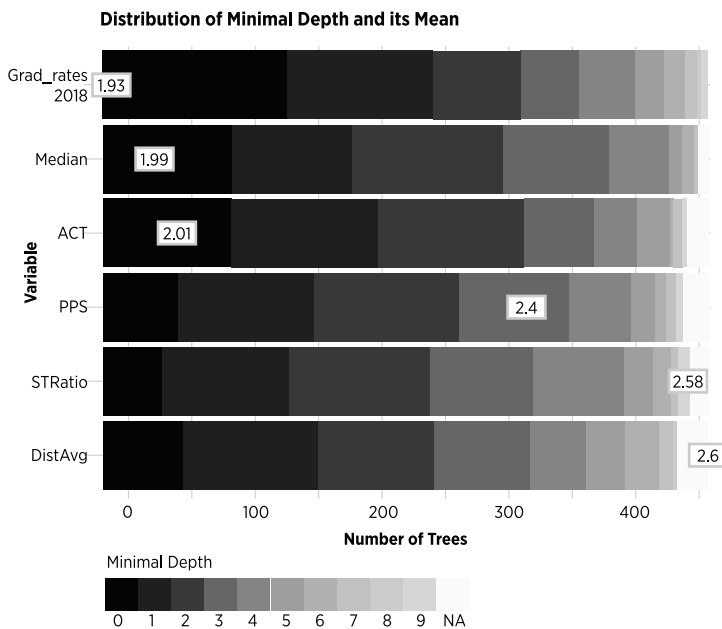Using OneYear as our dependent variable and creating 500 trees. We have a summary of:

fig. 3- Distribution of Minimal Depth and its mean. Gradients represent the number of trees at a specific depth

We see that grad_rates, Median, and ACT variables are significantly close to each other. This indicates that graduation rates, median income of the school district area, and average ACT scores have stronger relevance to teacher retention. However, PPS, STRatio, and DistAvg, despite having lower mean depth levels, are still decently relevant, as indicated by their respective depth distributions (see the arrangement of bar graphs representing number of trees with a specific depth level).

Discussion

In the random forest analysis the dependent variable was OneYear, or what remained between the 2018-2019 school year. In descending order the top three variables in the tree were district graduation rates, median district income, and average district ACT score. The fact that district graduation rates was the top variable is unexpected as the literature implies that graduation rates may mostly influence teacher retention through their effect on median district income. As such, one might expect it to be further down in the tree. This may signify a gap in the literature surrounding the true nature of the correlation between graduation rates and teacher retention, but it could also be indicative of the need to respecify the model. Median district income being the second highest in the tree confirms qualitative research which associates low-income districts with high teacher burnout and thus low retention. However, it may disagree with some aforementioned regression analyses that have found no statistical significance. Thus, although our model certainly supports qualitative evidence that median district income affects teacher retention, there is still some ambiguity and further data collection and analysis in this area would certainly prove fruitful. Literature on the correlation between average district ACT score and teacher retention, though not extensive, certainly is intuitive. The model seems to support the notion that teacher satisfaction, and thus retention, is related to the level of school performance. All three variables were above a depth of 2.01, implying that these variables were consistently more highly correlated with retention across trees.

It is also just as useful to analyze the variables that are lower down in the tree. The last three variables, though relatively lower than the first three, did not go below a depth of 2.6. This indicates that they too still have a meaningful relationship to OneYear. Based on the literature, we assumed that average district salary for teachers and per pupil spending would appear at a higher minimal depth in the models, perhaps even at the top of the forest. In other words, that they would have been a higher indicator in teacher retention. However, in the model, this was not the case. This difference between the literature and the random forest model provides room for

further analysis. It indicates that there are likely limitations to our data. Having a wider sample size that includes multiple years would increase the accuracy of this analysis. This could involve a times series study of retention, still focusing on Utah school districts. Or it could take the form of evaluating retention at the district level in various states with retention rates that are similar to Utah's. More comprehensive survey data including teachers' views on current work conditions and retention would also greatly add to this analysis. In terms of model specification, another factor to consider is that some of the variables (such as ACT and DistAvg) may be interdependent. However, random forest models do not account for that. Despite the data and model limitations, the model does indicate that all variables included in the analysis do have a meaningful correlation to teacher retention during the time period in question for Utah school districts. At this time it is important to emphasize that model correlation does not necessarily mean causation; it simply identifies a relationship.

Policy Application

Quantitative Teacher-Focused Policy Interventions

Previous research has prescribed teacher-focused policies related to average district salary and per pupil spending, which we assumed would have a more significant effect on attrition. As stated, this effect is theoretically intuitive, with higher district salary (adjusted for the cost of living) and higher per pupil spending correlating with higher retention rates. While Utah's overall teacher salary compares similarly to states with similar retention rates and ranks high in total education spending, the greatest concern arises when setting salary relative to the cost of living and cost of housing in certain districts along the Wasatch Front. A 2021 State Legislative Audit provided survey data indicating district-level differences in teacher concerns over salary in relation to rising housing prices (State of Utah Office of the Legislator General, 2021). In other words, not only does salary have an impact (as shown by our model), but there are disparate geographical impacts to salaries set at the state level, which requires further analysis between districts and utilizing housing price data from recent accelerations in the Wasatch Front market.

Local Level Teacher-Focused Initiatives

District average salary and per pupil spending are more frequently quantified and measured over time, thus enabling regression analysis such as ours. However, case study and survey research has also indicated that workplace conditions such as bonuses, teacher mentorship and support

resources, teacher feedback programs, tenure conditions, and unionization rates can prevent teachers from switching schools or leaving the profession entirely. A recent study of Tennessee's Priority Schools generated statistically significant results that "small economic rewards can help mitigate the problematic exit patterns of teachers in high-need schools" (Springer et. al, 2016). This shows that, beyond broader salary increases, bonuses can be an effective tool to retain teachers in schools where they are needed most. A more in-depth analysis of the current compensation, retention rates, and transfer rates and in Utah districts with lower household income compared to those with higher household income is warranted.

Unionization, Licensure, and Workplace Support

Other potential teacher-focused inroads for policy impact are both unionization and professional licensure, neither of which were prioritized in our model but have potential effects. The aforementioned 2021 Utah State Legislative Audit reported that "turnover rates for the 2015-16 cohort show a difference of nearly 20 percentage points" between licensed and unlicensed teachers (State of Utah Office of the Legislative Auditor General, 2021). Professional licensure is a tradeoff for comparing teacher shortages and filling vacancies given higher unlicensed turnover, so Utah's recent trend of hiring unlicensed teachers at increasing rates isn't a long-term solution. Unionization has mixed results on overall attrition, with a University of Utah panel data study showing that "underperforming teachers" in districts with strong unions had lower attrition rates in those with weak unionism, but that unions are effective in retaining teachers with "stronger qualifications" and professional licenses (Han, 2020). Since the state has a significant hand in enacting public sector union-friendly policies, there is an opportunity to remedy the issue of higher leave rates for newer and unlicensed teachers through mitigating discrepancies in the distribution of strong unions across districts.

In Utah, Washington County has a 73% retention rate, which is 17 percentage points higher than the state average, making the county an example of successful district-level policy initiatives. A recent publication from KUER Utah interviewed the state Superintendent to identify differences in Washington county's approach to workplace support for teachers, and found that the county has a robust teacher feedback and input system and a mentoring program assigning dedicated learning coaches to assist teachers with "lesson plans and classroom management" (Reed, 2021). While this isn't a sophisticated academic study of mentorship programs, its success in Washington County signals promise for implementation across the state, given salient fiscal and political conditions the county shares with much of the state's districts. Given that our model results on household

income align with the existing literature, such as the Arizona State University study that found that lower district median household income corresponds with lower attrition rates in Arizona school, district-level workplace improvement initiatives as well as financial incentives are especially vital for schools with a higher proportion of low-income students (Geiger and Pivovarova, 2018).

Student-Focused Policies

The Office of Educational Research and Improvement's Policy Brief "Toward a Comprehensive Approach to Teacher Quality" claims that compensation (tenure incentives included) and working conditions are prime teacher-focused retention determinants, but also noted that no single policy is the "silver bullet" given the many layers of decision making ranging from local boards to state legislatures, making the implementation of comprehensive educational support challenging (Reichardt, 2001). This comprehensiveness includes policies that consider both student success and teacher support. Our results generated median district income, district ACT average, and graduation rates as the strongest explanatory variables on retention. Given our findings, it is also necessary to consider student-focused policy interventions pertaining to these metrics. As mentioned, since these variables may potentially be highly interactive with each other and create a feedback loop with teacher-focused initiatives, implementing one specific, targeted policy measure is less practicable and less effective than a more comprehensive support package. For example, this comprehensiveness could come in the form of fully coordinated wraparound services for students in the public education system. To conclude, student-focused policy applications remain germane to teacher retention and possibly have a positive impact on rates, and thus warrant further research into the benefits of adopting optimal combinations of both teacher and student education policies on the federal, state, and district levels.

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Creating Community: The Effects of White Perception on the Identity Development of Latinx Immigrant College Students

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Abstract:

   This qualitative study explores the identity development of five Latinx immigrant college students, focusing on how the stigmatization of Latinx immigrants by white Americans affects Latinx understanding of self and place in U.S. society. This paper focuses on the consequences that these negative external messages directed at Latinx immigrants carry for their ethnoracial identities and sense of belonging in the United States. Findings reveal that while some participants temporarily internalized the negative perceptions associated with being Latinx, they became empowered by others with similar experiences to further advocate for themselves and other minoritized communities. Ultimately, my analysis reveals that what initially weakened and stigmatized this social category of Latinx individuals—the negative perception of them by whites—is also what eventually strengthened, and, in a way, politicized their ethnoracial identities. This research may be particularly useful for educators, mental health professionals, and community organizations who work closely with this community.

Keywords: Latinx immigrant experiences, identity development, whiteness, white perceptions, community empowerment

Introduction

   Latinx immigrants' sociopolitical and cultural identities often combine to create unique modes of discrimination in the United States, resulting in heightened xenophobia and nativism. This discrimination and racism are further reinforced through the perceptions that some white individuals have of the Latinx immigrant community. Such perceptions are often created by the system of white supremacy that promotes whiteness as ideal or the norm (DiAngelo, 2018, p. 33). While current research examines the often-monolithic ways white Americans perceive Latinx immigrants, we lack empirical research on how Latinx immigrants themselves interpret and understand how they are perceived by whites, and how these interpretations inform their identities. This paper explores how the stigmatization of Latinx immigrants by non-Latinx whites[1] affects Latinx understanding of self and place in U.S. society. This paper focuses on the consequences that these negative external messages can have for the ethnoracial identities of Latinx individuals and their overall sense of belonging in the United States.

   My research is guided by the following questions: To what extent do white peoples' perceptions of Latinx immigrants affect the way Latinx view themselves? How, if at all, is their identity influenced by these notions? Drawing on the experiences of five Latinx immigrant college students, I find that while some participants temporarily internalized the negative perceptions associated with being Latinx, they nonetheless became empowered by others with similar experiences to further advocate for themselves and other minoritized communities. A common thread of resilience, empowerment, and strength that many of the participants shared fortified their identities as Latinx immigrant women. Ultimately, my analysis reveals that what initially weakened and stigmatized this social category of Latinx immigrants—the negative perception of them by whites—is also what

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1 Non-Latinx whites refers to those of European ancestry. The rest of the paper will use the terms white Americans or white individuals as replacement.

eventually strengthened, and, in a way, politicized their ethnoracial identities.

Literature Review

Latinx Immigrants in the Eyes of White Americans

While it should be strictly noted that not all white Americans view Latinx immigrants in this manner, nor are they the only ones who possess these perceptions, past studies conducted on white Americans' perceptions of Latinx immigrants reveal that a large number hold a negative portrayal towards these groups (Fennelly 2008; Flores & Schachter 2018; Kim 2015; Lacayo 2017). The common stereotypical narrative casts Latinx immigrants, specifically those who are undocumented, as individuals who are unable and or unwilling to assimilate into U.S. society, are more prone to committing crimes, and are more likely to deplete social welfare benefits (Flores & Schachter 2018; Lacayo 2017). Such narratives likely emanate from, and indeed reinforce, a system of racial hierarchies that valorize whiteness and devalue and even stigmatize non-white categories, such as Latinx. However, we do not yet know how exactly Latinx individuals themselves respond to such views, and in particular how they affect the formation and meaning of their ethnoracial identities. One of the most prominent perceptions is the notion of criminality being inherent to Latinx identity. A participant from Lacayo's (2017) study noted the following about Latinx and criminality:

> Howard: Look at the statistics. The Mexican mafia runs California; all the gangs. It's not Jeffrey Dahmer. There's not Charles Manson. I mean, there's a few guys like that, the bulk of it is your gangbangers; that's your blacks and Mexicans. You got some white guys usually drunk, an occasional killing, but it's blacks and Mexicans. (p. 572)

It is important to note the lack of accountability and obvious excusal that the participant seemed to give to white people who have committed heinous crimes, noting that the "occasional killing" some white individuals commit is not as bad as the supposed unceasing crimes that "blacks and Mexicans" commit. Like Howard and other respondents, they placed Latinx as a group more prone to crime, while white criminals were treated as individuals who committed a singular bad decision (Lacayo, 2017, p. 572). Howard's comment is emblematic of the ideology of white supremacy, as his comment unveils how whiteness works to protect and uphold whiteness.

Moreover, white Americans tend to associate all Latinx with illegality regardless of what their actual immigration status may be (De Genova 2014; Lacayo 2017; Flores & Schachter 2018; Menjivar 2021).[2] This association generates a mechanism of racialized illegality that classifies all Latinx individuals as "quintessentially undocumented" (Menjivar, 2021, p. 98). Menjivar (2021) notes that the synonymity between "'illegality" and being Latinx creates a "spillover effect" that impacts other Latinx who hold lawful permanent residence, are naturalized U.S. Citizens, or are U.S.-born (p. 96). This means that all Latinx, regardless of immigration status, are seen as a threat to public security and are consequently potential targets of the immigration enforcement regime. Similarly, Flores & Schachter (2018) find that people do not specifically rely on a person's documentation status to determine their view of whether an immigrant is undocumented or not. Rather, individuals depend on stereotypical associations or social cues that label them as "illegal." Flores and Schachter (2018) state that illegality is written upon immigrants' "bodies" (p. 840) with specific attributes, including national origin, English-language ability, education, and occupation. These attributes act as predictors that shape white Americans' perceptions of illegality among Latinx immigrants.

The Role of Whiteness and Assimilation

While investigating how white Americans perceive Latinx in the United States, Lacayo (2017) uses a theoretical framework of "perpetual inferiority" to illustrate that white individuals see Latinx as an inherently inferior group that holds a deficient culture, one that is seemingly passed down to subsequent generations. Lacayo (2017) conducted 40 in-depth interviews of white Americans in Orange Country, California, and found that 37 out of the 40 participants viewed Latinx in a negative light, highlighting the fact that many believe Latinx are inherently inassimilable and are viewed as a perpetual foreign invader. Lacayo (2017) also finds that the participants did not view Latinx as American, but rather a separate group incapable of obtaining white Americans' values and expectations (p. 572). In other words, a group that is "othered" by whiteness.

Lacayo's study, in addition to the other studies cited, revealed that the majority of participants saw Latinx as a group of invaders seeking to threaten and go against American morals by speaking their native language, holding on to their traditions, and rejecting American values (Lacayo, 2017; Martinez 2006). Despite these findings, a paradox of

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2   See De Genova (2014), especially pages 42-53, for more information on the sociolegal production of migrant illegality.

wanting Latinx immigrants to assimilate while also viewing them as unassimilable exists. Fennelly (2008) found that when discussing how the presence of immigrants, specifically Mexican immigrants, made a middle-class group feel, a white man noted the necessity of assimilation stating, "I still think the quicker assimilation of these people is, the sooner, the quicker, the better. They'll get along much better. They'll feel more comfortable". (p. 164)

This begs the questions: How does a group assimilate if they are seen as unassimilable? More so, did the participant subconsciously mean he and other white people would feel more comfortable if Latinx assimilated? Who benefits from assimilation and is it the goal?

The continued rhetoric of Latinx as foreign invaders establishes their "otherness," which white Americans can use to further stigmatize and denigrate Latinx while simultaneously distinguishing themselves and cementing their whiteness. Such stigmatization contributes to the unceasing violence, xenophobia, and discrimination against Latinx immigrants in the United States, impacting their overall understanding of self and place in U.S. society.

Identity Formation of Undocumented Latinx Students

The United States is home to nearly 10.5 million undocumented immigrants who have lived in this country for an average of 15.1 years, establishing new roots and contributing to the United States society and economy in significant ways (Krogstad et al., 2019). While undocumented immigrants are individuals from all over the world, the vast majority of them are of Latinx origin, making up over 50 percent of the population. Mexicans, in particular, make up 47 percent of the total undocumented population (Gonzalez-Barrera & Krogstad, 2019). Within this community exists a sub-group of nearly three million undocumented immigrants, commonly referred to as "Dreamers"— or undocumented immigrants who were brought into the country at a young age (Svajlenka, 2019). Less than a million qualified for the 2012 Deferred Action for Childhood Arrivals (DACA) program[3]. A recent report conducted by the Presidents' Alliance on Higher Education and Immigration found that more than 450,000 students enrolled in higher education in the United States are undocumented; DACA recipients comprise a separate subset of roughly 216,000 students. Several of these students face unique challenges as they navigate the system of higher education while simultaneously being tasked to confront the consequences of being undocumented (i.e., discrimination,

health detriments, limited opportunities).

The relationship between race, ethnicity, and immigration status of young undocumented Latinx immigrants creates unique challenges for this group as they try to navigate U.S. society and understand their identity. Ellis and Chen (2013) note that undocumented immigrants' identity development is an ongoing process, one which is impacted by external sociopolitical factors and the cultural interactions they experience in and outside their home. Their identity formation is further developed and or hindered by the struggles faced due to their immigration status. Young undocumented immigrants are left with trying to understand their place in a world that constantly excludes them, and thus, establishing "a positive sense of ethnic identity serves [as] a protective or buffering role" to the negative external social messages that this group absorbs (Ellis & Chen, 2013, p. 252). Despite the many barriers that come with being undocumented, Ellis and Chen (2013) further note that many of their participants revealed a willingness to see their immigration status and struggles in a more positive light amongst other qualities, and that personal factors like resilience aided in their ability to overcome the challenges and negative perceptions associated with being undocumented (p. 261).

Hypotheses

My research is guided by the following questions: To what extent do white peoples' perceptions of Latinx immigrants affect the way Latinx view themselves? How, if at all, is their identity influenced by these notions?

I hypothesize that many of the negative perceptions and stereotypes attached to Latinx immigrants are shaped by the ideology of whiteness which works to "other" non-white groups. This "othering" allows some white Americans to stigmatize and label Latinx immigrants as unassimilable, uneducated, and criminally innate. I hypothesize that these negative perceptions temporarily impact the identity formation of young Latinx college students as they begin to navigate their place in American society. Once these students find a sense of belonging through community involvement and relationship building within the Latinx community, the negative perceptions that they initially internalized are no longer as prominent nor are the most salient factor in shaping their identities. Instead, Latinx immigrant college students use the negative perceptions of them by whites as a politicizing tool that then strengthens their ethnoracial identities which concurrently leads to solidarity amongst other minoritized

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3   The Deferred Action for Childhood Arrivals program (DACA) allows for eligible undocumented immigrants to receive temporary relief from deportation and work authorization. DACA does not provide a pathway to citizenship and must be renewed every two years.

groups. I propose the following hypotheses:

H₁ While Latinx immigrant college students may internalize the negative perceptions that some white individuals may have of them, this stigma is not the most important factor in shaping their identities.

H₂ While the ideology of whiteness may tell Latinx immigrant college students that they do not belong, relationships within the Latinx community countervail the effects of white attitudes, which help to unify Latinx and strengthen their identities.

H₃ A broad sense of solidarity with other minoritized groups is created amongst Latinx immigrant college students as a result of stigmatization and othering generated by the perceptions of white individuals.

Data and Methods

Sample

This study draws on the identity development and experiences of five Latinx immigrant college students in Salt Lake City, Utah. All participants of this study, except for one who is a U.S.-born citizen, are undocumented themselves (with or without DACA) and live in a mixed-status family; participants came to the United States with their family members as children and were brought between the ages of five months and 16 years of age. Four out of the five participants came to the United States from Mexico or Central America. Together, the participants held a variety of different immigration statuses, ranging from undocumented, to "DACA"mented, to U.S. Citizen. Table 1 provides additional demographic and contextual information about each of the five participants including age, country of origin, and educational status. It should be noted that my sample is limited in terms of size, gender, and age, as all five participants identified as Latinx women between the ages of 21 and 22. While the sample is not representative of all Latinx immigrant college students' experiences, common themes arose and were consistent throughout the focus group. Since my research is exploratory in nature, my goal is to generate ideas and hypotheses that might be later tested with more representative data.

Sampling Procedure

Participants were recruited using purposive sampling, a form of non-probability sampling method used to access a particular subset of people that can be hard to reach. Recruitment occurred through already established relationships with participants. I reached out to each participant individually through different communication mediums (i.e., text, email, social media) and asked if they were willing to participate in a research study. Once participants accepted, they were sent information regarding the purpose of the study and were informed that their identity would be protected and remain confidential through the use of pseudonyms. Each participant was also compensated $10 for participating in the study.

Data Collection

Qualitative data was obtained through an online focus group session conducted in November 2020. Participants were informed that the session would be recorded for transcription purposes and that I would be the only one with access to the audio file; verbal consent was given. Participants were further informed that they were able to leave at any point during the session. The focus group session took approximately 2 hours; all but one participant stayed the entire time. Before the session began, I provided the participants with additional background information on the study at hand. Moreover, I took the time to interact with participants to create a safe and welcoming environment before they began to share about themselves and their experiences as Latinx individuals. The focus group session contained nine open-ended questions related to their identity, whiteness, and assimilation. Participants were informed to answer only the questions that they felt comfortable responding to. Once the session ended, the audio file was uploaded to an online transcription service, and the file was deleted.

Results

Analysis of the transcripts reveals participants shared a common experience of temporary internalization of the negative perceptions they believe some white individuals have of them. This translated into conflicting internal notions of wanting to appear more "white" while simultaneously wanting to embrace their identity as Latinx immigrant women. Participants noted that as they interacted with community organizations and individuals with similar backgrounds and experiences, their identities as Latinx immigrant women strengthened, and with it, their overall group attachment increased. Despite the many barriers that the participants endured due to their ethnoracial identity and or immigration status, they chose to frame their experiences in a more positive light and took initiative to shape and transform their future. These findings are consistent with previous studies conducted on the identity formation of undocumented students in the United States (Ellis & Chen, 2013; Rosenberg et. al, 2020; Torres & Wicks-Asbun, 2014). The rest of the

paper is divided into four sections: identity development, role of white individual's perceptions, whiteness and assimilation, and finding a sense of belonging. Each section will provide an in-depth look into participants' experiences and their self-understandings as it relates to the broader context of U.S. society.

Identity Development

The majority of participants noted that understanding their identity as undocumented Latina women has been an evolutionary journey from staying silent about their immigration status to feeling empowered to share who they are with others. This evolution is primarily due to finding and building community with other individuals who share the same immigration status as they do. Many added that while they were aware of the struggles associated with being undocumented, they nonetheless chose to use these experiences as a way to uplift themselves and those around them, especially those from a younger generation who are not protected under the Deferred Action for Childhood Arrivals program (DACA). Esmeralda expressed her experience of navigating her identity as an undocumented person through community-centered spaces:

> *Being undocumented is lonely until you find your community and your space* [emphasis added]. It wasn't until I got connected to community organizations where I found that there are many other individuals like me who are undocumented or with DACA and that was really powerful. We can really use certain struggles as empowerment for the future generation to come.

Participants attributed their growth and understanding of who they are to community organizations; many of these organizations dedicated their time and resources to help the Latinx and or immigrant population. Community organizations were instrumental in introducing them to other members of the public who were also undocumented and or fighting for immigrant rights in Utah. Finding others who shared a similar background helped Esmeralda use her experiences as sources of empowerment to advocate not only for herself, but for those around her. Being in these spaces prompted a desire in these participants to help fight injustice in not just the undocumented community, but all communities who are systematically minoritized. Similar to what past researchers have identified, social activism acted as a key component and strategy that these participants utilized in an effort to better navigate U.S. society as undocumented persons while simultaneously managing the possibility of internalizing the racist perceptions that others have of them (Ellis & Chen, 2013; Rosenberg et al., 2020). This finding is consistent with previous qualitative studies conducted on the identity development of undocumented Latinx immigrants.

Role of White Individual's Perceptions

When asked whether they believed white individuals had a certain perception of them as Latinx immigrants, participants revealed several of the observations that have been addressed in previous studies (Fennelly 2008; Flores & Schachter 2018; Kim 2015; Lacayo 2017). Esmeralda said, "Undocumented immigrants get labeled as criminals, gang members; the worst of the worst." Participants also noted that many of the stereotypes and perceptions used against Latinx are synonymous with those used against undocumented immigrants, a statement consistent with the findings of studies discussing white individuals' perceptions of Latinx immigrants. One participant, in particular, Cristina, discussed her previous interactions with white individuals:

> I've gotten a lot of little microaggressions like, 'Oh, you speak English so well.' If I tell them that I'm in college or anything, then they act surprised that I'm getting an education for some reason. They also assume that I'm involved in, like criminal activity or something. *And obviously, all of this is just based on the color of my skin* [emphasis added].

Cristina revealed several of the key perceptions that white participants in Lacayo's (2017) study had of Latinx, mainly that Latinx were uneducated, criminals, and unassimilable (due to supposed limited English-speaking abilities). What should be noted about Cristina's comment, however, is her recognition that the perceptions that white individuals had of her were because of her race. The ongoing process of racialization has constructed an irrational understanding of how certain groups of people, notably people of color, are supposed to look, speak, and behave based solely on the way they look. When people of color break the expected norms, others can become uncomfortable, which is what occurred for Cristina.

Whiteness and Assimilation

Participants' discussion revealed that it is not so much white people's perception of them that affects them, but rather the system of whiteness that places itself as the core of desirability and the norm. Because whiteness works to exclude those who threaten it, some participants noted an appeal to appear more "white" in order to fit the mold of U.S. expectations as it relates to assimilation. Adriana recalls her experience of wanting to be "white" in order to fit in:

I grew up in a predominantly white community. There was one point in my life where I wanted to be white enough to be able to feel part of this community because I just felt so completely isolated—an outlier.

Being "white" not only specifies physical attributes like way of dressing, speaking, and acting, but also serves as a social standing. Adriana's desire to be "white" indicates a want of acceptance in a society that constantly tells people of color they do not belong. Whiteness thrives on the exclusion of those who do not fit the mold of what is acceptable; whiteness divides "us" from "them" (Madriaga, 2005). Stephanie also commented on her need to be seen as white to avoid dealing with the reality of her immigration status, though her outlook changed once she entered college:

I always felt like I wasn't white enough. And I felt a need to feel white and be seen white. And I always wanted to look and dress like the white girls did in high school and kind of push myself away as much as I could from the reality of my status. It wasn't until I got to college that I felt empowered by hearing other people's stories. And by seeing that this was something that there was actually a community behind.

While Stephanie noted fear in sharing her immigration status with those around her in fear of the repercussions, it was not until college, and more specifically after Donald Trump's presidential win, that she found herself surrounded by other individuals with the same experiences as her. Finding and building community helped her feel comfortable and empowered to be open about her status in an effort to educate those around her who were not familiar with the experiences of undocumented people.

When discussing the relationship between whiteness and assimilation, Adriana mentioned that "assimilation is problematic" and is "the backbone to the white supremacy ideology that is present in the United States." While at one point Adriana internalized the negative perceptions that society associated with her identity, she realized the need to exert small moments of resistance in order to fight back the internalization and challenge the false notions that whiteness upholds. Instead of assimilating into white norms and expectations, Adriana emphasized the need to integrate. To her, integrating is more inviting, it invokes the idea of incorporating one's whole individual self into what already exists without having to sacrifice any part of it.

Finding a Sense of Belonging

Despite having a better understanding of their identity, two out of the four participants (at this point one of the participants had left the focus group session) hesitated when asked whether they viewed themselves as American. Cristina stated:

It's hard to identify myself as an American. I've been here since I was five months old, I was raised here completely. But I never felt like I fit in here simply because I don't look like what the media or general society portrays as the ideal American. I don't feel like it's right to pledge allegiance to the flag of a country that so often makes it clear that they don't want you here, that criminalizes your people and enacts injustice against so many groups of individuals. And so, it's just this mix of things where I would like to consider myself an American because I have been here for my entire life, but I just don't feel like I belong. I feel like I'm othered.

Cristina and Stephanie were conflicted on whether they saw themselves as American. While they were aware of their contributions to U.S. society and being immersed into U.S. culture from a young age, they were also aware that they did not fit into the perception of what and whom an American looks like.

In spite of this internal conflict, many of the participants began to better understand their identity by finding a sense of belonging through the help of community organizations and or school clubs that introduced them to other individuals with similar experiences. These interactions helped strengthen their overall attachment and dedication to these groups that focused on social justice activism. Though some of the participants internalized the perceptions that others had of them, they found ways to mitigate and resist these internalizations by finding a sense of purpose and using their experiences as Latinx immigrant women to advocate for the broader community. While Cristina recognizes the struggles and trauma of being an undocumented Latina, she nonetheless chose to use her experiences as a vehicle to fight for the injustices that other systematically minoritized communities face, noting that being undocumented has opened her eyes to disparities that exist outside of her community. These findings are consistent with previous studies conducted by Rosenberg et al. (2020), who found that Latinx DACA recipients gave their lives meaning and purpose by establishing community and using their immigration status as a tool to fight for their rights and the rights of other immigrants.

In the end, the participants recognized the power they held as Latinx immigrant women and viewed themselves in a more positive and uplifting way. They further acknowledged that their resilience and experiences act as a tool for empowering those around them and grew hopeful for a better and more equitable future for all. The participants shared a moment of solidarity during the focus group session as they each called

one another "badass women" for overcoming the barriers that society placed upon them.

Discussion

This qualitative study examined whether white individuals' perceptions of Latinx immigrants affected the way Latinx perceive themselves. Each of the outlined hypotheses was discussed and substantiated through participants' narratives of their personal experiences. Findings reveal that while some participants temporarily internalized the negative perceptions associated with being Latinx immigrants, they nonetheless prevailed and became inspired by others with similar experiences to further advocate for themselves and other communities. This essentially indicates that whites' negatives perception of Latinx immigrants is what ultimately reinforced and politicized their ethnoracial identities. Furthermore, "whiteness" as the norm became the central reason as to why some of the participants temporarily internalized feelings of "otherness" and sought to become more "white." A common thread of resilience and empowerment that many of the participants shared simultaneously strengthened their identities as Latinx immigrant women. Participants further used their experiences to their advantage to form community and create a sense of belonging in a society that seeks to continuously exclude them.

Implications

Latinx immigrants continue to face several modes of discrimination due to their ethnoracial background and or immigration status. This research may be particularly useful for mental health professionals, educators, and community organizations that work closely with the Latinx community. These professionals can use this research to grasp a better understanding of Latinx immigrants' experiences in an effort to establish best practices when supporting, uplifting, and advocating for them. In particular, these professionals should take into consideration the ongoing racial battle fatigue that this group encounters due to the multiple levels of oppression they may face. While community building may help alleviate some of the psychosocial and emotional stressors that the system of white supremacy invokes, it is up to everybody to resist and dismantle the system of white supremacy—a system that harms everyone.

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Table 1:

Participant Demographics and Background Information (N = 5)	
Pseudonym, (age), country of origin, and educational status	Background Information
Stephanie (22), Mexico, College Graduate	Stephanie was born in Acapulco, Guerrero, Mexico, and came to the United States when she was three years old. She is a recent college graduate and has a full-time job as the director for diversity and inclusion at an up-and coming company. Stephanie is a DACA recipient.
Cristina (21), Mexico, College Senior	Cristina was born in Jalisco, Mexico. She and her parents immigrated to the United States when she was five months old; both of her parents were 19-years-old. She is triple majoring in communication, sociology, and political science. Her career goals include going to law school to become an immigration and civil rights attorney. Cristina is a DACA recipient.
Adriana (22), United States, College Senior	Adriana was born and raised in Utah. Her parents came to the United States at a relatively young age in pursuit of a better future. She is currently a college student double majoring in sociology and international studies. She hopes to go to graduate school in the near future. Adriana is a U.S. Citizen while her parents are undocumented.
Esmeralda (21), Guatemala, College Senior	Esmeralda was born in Guatemala and moved to the United States alongside her parents when she was one year old. She is currently a college senior pursuing a Bachelor's degree in political science and sociology. After graduation, she hopes to attend law school to become either an immigration or civil rights attorney. Esmeralda is a DACA recipient.
Sandra (21), Mexico, College Junior	Sandra was born in Mexico and moved to the United States when she was 16-years-old. She is a junior in college triple majoring in political science, Latin American studies, and international studies. She is still uncertain as to what she wants to do post-graduation. Sandra is undocumented and does not have DACA.

Appendix:

Focus Group Questions
1. What would you say is your most salient identity? What is the first identity or identities that come to mind that best describes you?
2. What has been your experience as a Latina/x individual in Utah?
3. What are some stereotypes that you think white individuals have about Latinx?
4. Do you think that white individuals have a certain perception of you when they first meet you? If so, what do you think that perception is?
5. What role do you think that the system of whiteness or white supremacy has in the way that some white people perceive Latinx immigrants?
6. What does it mean to assimilate into U.S. society? What is the purpose of assimilating and whom does it benefit?
7. Have any of you ever felt pressured to assimilate into U.S. society? What is your personal relationship with assimilation?
8. What does it mean to be American? Do you consider yourself American?
9. What motivates you to keep going despite your present challenges?

Japanese Internment Camps as a Threat to American Exceptionalism

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Abstract:

Proponents of American exceptionalism suggest that the history and values of the United States set it apart from other nations as a unique example of liberty and prosperity (Tyrell, 1991). The settlement of the American West in the 19th Century has contributed to the development of this ideal (Massip, 2012). This paper explores the impact that the internment of Japanese Americans in the Western United States from 1942 to 1945 has on the exceptionalism narrative and, more broadly, how internment reflects on U.S. foreign policy. Through a micro-political analysis of art and literature created by internees at the Topaz Internment Camp in Delta, Utah, this paper argues that Japanese internment fundamentally contradicts the vision of the American West as an expression of freedom and progress. Furthermore, this paper finds that internment fits into a pattern of xenophobic behavior by the United States that persists today, highlighting the role that fear and race play in shaping U.S. policy decisions. If the U.S. wants to truly embody the values espoused by its constitution, it must confront its past and take action to ameliorate the injustices faced by the communities it has oppressed.

Keywords: Japanese Internment, American foreign policy, American Exceptionalism, the American West, xenophobia

Introduction

The American West is often upheld as a symbol of American exceptionalism and aspirations (Massip, 2012). Yet the internment of Japanese Americans, most of whom were U.S. citizens, in remote and desolate regions of the West from 1942 to 1945 contradicts this mythic image. Historians Fu-Jen Chen and Su-Lin Yu write, "Guard towers [and] barbed wire... will reconfigure the Southwest as a traumatic place and the United States as a nation inconsistent in abiding by its own ideology of freedom, liberty, and justice" (Chen & Yu, 2005). This paper observes the American West through the lens of Japanese American internees at the Topaz Internment Camp in Delta, Utah to better understand the dissonance between America's "exceptional" self-image and the reality of how the U.S. government responds to perceived threats, especially from non-white nations. The fact that the U.S. targeted Japanese Americans and not German or Italian Americans

(the other Axis Powers in WWII) demonstrates the power of race in shaping U.S. foreign policy and how these policies disproportionately affect immigrants and people of color.

In order to grasp how the experiences of Japanese American internees impact American exceptionalism, this paper will analyze art and literature created by Topaz internees and compare it to white Americans' conceptions of the American West. I will begin by defining American exceptionalism, paying special attention to the American West as a symbol of this ideal. Then, after reviewing the events leading up to internment, I will use several paintings, essays, and photographs to highlight themes in the internee narrative. Specifically, this process will involve identifying key imagery, motifs, colors, and descriptions that appear in multiple works. These themes will then be used to deconstruct notions surrounding American Exceptionalism. In the final section of this paper, I will synthesize this analysis with the work of political scientists and historians to understand the implications of Japanese Internment for American foreign policy.

American Exceptionalism

French aristocrat Alexis de Tocqueville first described America as "exceptional" in 1840, an idea that has evolved to the point that it now saturates U.S. national identity. Because it developed under a unique set of liberal ideals, proponents of American exceptionalism argue that the country "avoided class conflicts, revolutionary upheaval, and authoritarian governments...and presented to the world an example of liberty for others to emulate" (Tyrell, 1991). Although renounced by many scholars, this conception of America's character remains prominent today, evoked in the rhetoric of U.S. leaders and felt in the hearts of countless Americans (Hasnain, King, and Blau, 2012). It promotes the long-standing tendency to imagine the nation as a moral hegemon, and it "enable[s] the exercise of American power" abroad (McEvoy-Levy, 2001).

For centuries, the settlement — and image — of the West has played an out-sized role in the realization of exceptionalism within the American psyche (Massip, 2012). In 1893, prominent historian Frederick Jackson Turner conceived the Frontier Thesis, a theory that portrayed westward expansion as the "fulfillment of American character" (Rojek, 2016). By embarking into harsh, unknown territory, Turner argued that pioneers were reborn, their ability to persevere in this landscape a testament to the grit and individualism instilled by the frontier experience (Massip, 2012). Turner argues that this experience continues to differentiate Americans from the rest of the world. The "process" of engaging with the frontier "redefines the newcomers' cultural and national identity," (Massip, 2012). It teaches them to embrace opportunity and optimism, ultimately contributing to a distinctive set of American values.

Some white scholars have framed internment as an inherently American experience, suggesting that because the "Frontier" is an expression of liberty and progress, internees' experience in this transformative landscape affirmed their "individuality, dignity, work ethic, and Americanness," (Chen & Yu, 2005). However, these reflections fail to include the perspectives of those who actually faced internment. Thus, it is necessary to draw from the accounts of Japanese Americans to truly understand how their experiences impact the vision of the West as an immortal space, as "American history writ large" (Massip, 2012).

Internment in the American West

The U.S. government quickly planned and erected Internment camps after the 1941 Japanese attack on Pearl Harbor (Kendall/Hunt Publishing Company, 1989). In the months following the attack, public opinion polls on the West Coast revealed increasing antagonism towards Japanese Americans, fueled by rumors of Japanese espionage "derived from front-page attention given to FBI raids and arrests of Japanese," and an enduring anti-Asian sentiment among westerners (Okihiro and Sly, 1983). In February of 1942, President Franklin D. Roosevelt signed Executive Order 9066, allowing, under the guise of "military necessity," for the relocation of any people deemed a threat to the United States (Hayashi, 2010). This order targeted anyone originating from an axis power: German Americans, Italian Americans, and Japanese Americans. However, the people sent to camps were predominantly of Japanese descent. Prominent liberal theologian Reinhold Niebuhr, among other critics at the time, condemned this decision as racially motivated, writing, "The assumption that American citizens of Japanese birth are more inclined to disloyalty than those of German and Italian descent compounds 'color' prejudice with general racial prejudice and adds a dash of 'occidental' bias against the 'oriental,'" (Niebuhr, 1942). In spite of such muted protests among intellectuals, a national survey conducted after FDR signed the order suggested that 93% of Americans approved of Japanese internment (Okihiro and Sly, 1983).

The U.S. military organized the camps and picked multiple locations in Western states for several reasons. First of all, the majority of Japanese Americans lived on the West coast, so building camps in nearby states was a matter of convenience in terms of relocation logistics. Similarly, the vast majority of federal lands are located in Western states, making it cheaper for the government to build here. Specific locations were picked based on access to water, electricity, and space (Hayashi, 2010). Because the military was relocating "threatening" people, it "insisted that all sites be located on 'wide open' terrain, from which escape would be difficult," (Arrington, 1962). Ultimately, 10 camps were developed in Arizona, Arkansas, California, Idaho, Colorado, and Utah. In *Democratizing the Enemy: The Japanese American Internment*, historian Brian Hayashi argues that land development was another motivation for location choice. For instance, in Topaz, Utah, the U.S. Army Corp of Engineers picked a plot of land with poor soil quality so that internees could improve the land to make it suitable for farming (Hayashi, 2010). Finally, war aims played a role. For example, U.S. military leaders expressed the need for laborers "to pick long-staple Arizona cotton, [a] raw material necessary for the production of parachutes," (Hayashi, 2010). The relocation process took place in the spring of 1942, resulting in the internment of over 110,000 Japanese Americans, 66,000 of whom were U.S. Citizens.

Life and Art at the Topaz Relocation Center

The Topaz Internment Camp, located in Delta, Utah, opened on September 11, 1942. The camp consisted of 42 blocks (34 of which were designated for residential living). Each of these blocks contained 12 barracks, recreation and dining halls, and a shared laundry and washroom. There was little privacy (Arrington, 1962). At the center of this residential area sat schools, libraries, and churches. One of these buildings housed the famous Topaz art school, started by Chiura Obata, an artist who believed his passion "could help others in their time of need," (Topaz Art Museum, 2020). The camp was surrounded by "tall, strong barbed wire fences, with watchtower guard houses equipped with searchlights every quarter of a mile manned by armed guards," and sat in a high desert valley, with dusty foothills on all sides (Arrington, 1961). Topaz is known for its extreme climate, where winter temperatures often fall below zero, summer temperatures rise above 100, and intense wind storms cover everything in dust.

The stark combination of this desert landscape and the drab camp architecture is central to much of the art and writing produced by Topaz internees. For example, Figures (1) and (2), done by different artists, each feature the nearby Mount Swasey, a moody color scheme, and some physical aspect of the camp. They speak to the sense of isolation created by confinement in a vast and barren environment. The first piece, titled "Where Would We go?" depicts two internees, standing behind a barbed wire fence and staring out at the snow capped mountains. The title of the piece could imply a hopeful tone - a couple dreaming about places beyond the confines of barbed wire. However, the dark color scheme suggests something more despairing. Maybe the internees felt they had no home in America to return to, or perhaps they are considering escape, but know that the desolate terrain would prevent them from getting far.

Figure 1, "*Where Would We Go?*" Thomas Matsuoka, 1944

Figure (2) portrays the barracks as small, unassuming structures in an expansive sea of desert, as if they are drowning in the landscape. It emanates a feeling of being lost or forgotten. Various accounts from internees support the analysis of these paintings. For instance, in an interview, Topaz internee Harano Christ recalls staring "wistfully" out at the barbed wire fence and the guards beyond it when she noticed a snake rustling in the grass. "I must have frightened it because it wiggled right underneath the fence," she recalled. "I thought, 'Oh, that garter snake has a lot more freedom than I do," she said, the agency of a mere critter a reminder of what she had lost (Christ, 2008). Similarly, writer Yoshiko Uchida describes her experience at Topaz as "a long desert exile," a description that captures the relationship internees had with the surrounding ecosystem: one defined by loneliness and heteronomy.

Figure 2, "Untitled" Edward I. Hashimoto

Day-to-day life in the camp proved dehumanizing due to poor living conditions and a lack of privacy. Artist Miné Okubo chronicled her experiences at Topaz in *Citizen 13660*, a book containing a series of drawings and captions describing life as an internee. Most of her pieces feature people in close and cluttered living quarters with frustrated expressions on their faces. Figure (3) depicts the experience of communal washrooms, where toilet stalls lacked doors and private moments became public affairs. There were few places in these camps where it was possible to be alone. Uchida provides commentary on this in *Desert Exile*, writing, "My own family, after three years of mess hall living, collapsed as an integrated [unit] and we did not recover it until many years after the war," (Uchida, 2015, 91). This lack of privacy stripped internees of their individuality and ability to function within a community (Chen and Yu, 2005). The fact that they were identified by numbers - Okobu was citizen 13660, for

instance - only exacerbated this loss. To make matters worse, internees rarely knew when they would have access to clean water and many were consistently ill throughout the course of their internment, leading to increased tension and resentment within the community (Uchida, 2015, 33).

Figure 3, From *Citizen 13660*, Miné Okubo, 1946

Living and working in an unpredictable climate took both physical and emotional tolls. Figure (4) features three hunched figures, braving a cold, desert windstorm. Their inability to look ahead or move freely demonstrates the way in which internees became subjects of their environment, both literally and figuratively. In a detailed and dramatic account, Uchida recalls her first experience with the infamous Topaz dust storms, writing that the wind, "swept us around in great thrusting gusts, flinging swirling masses of sand in the air and engulfing us[...]the dust was choking me," (Uchida, 2015, 136). In this scene, Uchida has lost control, becoming a puppet to the sand and the wind, a metaphor for the realities of internment. Later in the book, she looks in a mirror for the first time and finds it "rather disturbing to see [her] strange sun browned face looking back at [her]," demonstrating the physical and emotional changes internees experienced from performing labor in an exposed environment (Uchida, 2015, 122). The camps not only marked residents' skin but altered their sense of identity.

Figure 4, From *Citizen 13660*, Miné Okubo, 1946

Scholars have tried to fit internment into a Western narrative. When photographer Ansel Adams documented the experience of internees in California's Manzanar War Relocation Center, he stated, "The acrid splendor of the desert, ringed with towering mountains, has strengthened the spirit and the people of Manzanar[...]the huge vistas and the stern realities of sun and wind and space symbolize the immensity and opportunity of America," (Adams, 1944). Here, Adams aligns with the Frontier Thesis, portraying the landscape and the internees' experience within it as an expression of Americanness. Although the internees certainly persevered in this harsh landscape and experienced moments of appreciation for the western landscapes around them, calling these experiences inherently "American" dismisses the context of internment. Indeed, the photographers who visited internment camps were not allowed to feature the barbed wire fences or guard towers in their work, a literal erasure of confinement (Chen and Yu, 2005). Similarly, many of Adams photographs, like Figure (5), feature internees playing games or doing other community activities with smiles on their faces. These images stand in stark contrast to the scenes depicted by Okubo, whose drawings emphasize the oppression and loss faced by internees, often conveyed in the sullen expressions of her subjects. Adam's photographs reflect the perspective of a white outsider; the images fail to challenge the act of internment and instead portray Japanese Americans living what look like relatively normal, happy lives. Conversely, the work of Okubo and other Japanese Americans reflects the cruel reality of spending every day trapped, against ones will, in an internment camp. This striking difference speaks to the washed version of American history that supports exceptionalism. Through the lens of white historians, writers, and artists, it is easier to see the U.S. as a landscape of opportunity because we have generally experienced it as such. This narrative changes dramatically when it includes

the stories and perspectives of people of color. Instead of a nation that embodies "freedom and justice for all," America becomes a country built upon injustice and exploitation.

Figure 5, *Bridge Game*, Ansel Adams, 1943

Historian Leonard J. Arrington spuriously takes the sentiment of Adams a step farther in *The Price of Prejudice*, in which he compares internees to the Mormon pioneers. Here he writes, "It is clear from all the records that the evacuees, as with the early Mormon colonizers, were determined to build a city in this lonely desert region that America would be proud of," (Arrington, 1962). This is a false equivalence; the pioneers chose to venture West in search of a better life, facing trials in the name of freedom. They were also white. Japanese internees, on the other hand, were forced into these landscapes, trapped, and stripped of their agency and humanity. They were not white. Most of these people were citizens, and yet the U.S. denied them their fundamental rights, treating them as less than American and in many ways, less than human. This contradicts the liberal ideals espoused by the Constitution and suggests that the Frontier Thesis fails to take into account non-white experiences in the American West, including "Japanese Americans' confinement in the internment camps, Native Americans' forced assimilation as well as dispossession from the sacred land, [and] Hispanic Americans' internal exile within their former homeland" (Chen and Yu, 2005).

Directly challenging the long-standing exceptionalist view that defines the West as an expression of individualism and liberty, Japanese Internment redefines it as a place of confinement and trauma (Chen and Yu, 2005). This is made evident by the earlier discussion of art and writing created by Topaz internees, whose work reflects the loss of identity and

frustration they experienced, losses exacerbated by the harsh natural environment around them. In Figure (6), the dreary barracks mar the gorgeous landscape beyond, effectively capturing a reconfigured perspective of the American West, one shaped by the tragic legacy of internment.

Figure 6, "*Sunrise at Topaz*" Anonymous, 1944

Implications of Internment on U.S. Foreign Policy

"The tragic dilemmas and the pathetic uncertainties and frustrations of contemporary history offer ironic refutations of the dreams of happiness and virtue of a liberal age and, especially, of American hopes." - Reinhold Niebuhr, "The Irony of American History," 1952

There exists an incongruity between the virtuous, innocent country that Americans often purport to inhabit and the dark realities of history and power (Niebuhr, 1952). This duality

is expressed clearly in the contrast between the prevailing Japanese American and white conceptions of the American West, and more broadly in the implications of internment on U.S. history. Political Scientist Brent Steele defines exceptionalism as the belief that America offers an "exception" to the natural course of history, the best example of freedom and prosperity of any human civilization (Steele, 2020). Evocations of exceptionalism continue to arise in the rhetoric of U.S. leaders and citizens. For instance, in a 2021 speech President Joe Biden described the development of COVID-19 vaccines as "one of the most extraordinary achievements any country has ever accomplished" while failing to mention the contributions of other countries (Tharoor, 2021). Similarly, a 2017 survey suggests that 85% of Americans consider the U.S. to be one of the greatest countries in the world (Thorsett and Kiley, 2017). Because this belief pervades American identity, it has played a significant role in how the U.S. government behaves abroad, and many of the major, liberal traditions of (interventionist) U.S. foreign policy are influenced by a belief in exceptionalism. For instance, neo-conservatives view the U.S. as a moral hegemon, "chosen to deliver freedom to others," (Steele, 2020). However, the experiences of Japanese-Americans during internment stand in direct opposition to this statement.

Instead of delivering freedom, the U.S. delivered imprisonment and the evisceration of personal liberties and constitutional rights. Critics of American exceptionalism cite this type of hypocrisy in their evaluations of U.S. foreign policy decisions. For instance, former leader of Canada's liberal party, Michael Ignatieff wrote of the United States, "no country has invested more in the development of international jurisprudence for atrocity crimes and no country has worked harder to make sure that the law it seeks for others does not apply to itself," (Hasnain, King, and Blau, 2012). Here, Ignatieff is referencing the Pentagon's refusal to allow the International Criminal Court to try American military personnel. This highlights a lack of accountability for American military acts, which is especially problematic because the U.S. is guilty of thousands of civilian casualties in countries like Iraq and Syria, all while leading the prosecution of atrocity crimes abroad. The internment of Japanese-Americans stands as another stark example in support of Ignatieff's criticism. While the U.S. was vehemently condemning Nazi concentration camps, they quietly shipped thousands of their own citizens into internment. This demonstrates that the U.S., like every nation, is subject to the ugly cycles of history and the worst impulses of tribalism.

The fact that internment could take place in a country that prides itself on its liberal values speaks to the role that fear plays in shaping policy in the U.S., a trend that continues today. Military officials during WWII admitted that public fears of Japanese-Americans played a role in the relocation decision, in spite of limited evidence of actual espionage (Hayashi, 2010). This illustrates the dangerous impact that public opinion can have on foreign policy decisions, especially when race is involved (Okihiro and Sly, 1983). Political scientist John Mueller cites the bombing of Pearl Harbor and the subsequent actions taken by the U.S. as an example of a pattern in American foreign policy to "exaggerate foreign threats, and then to overreact to them," (Mueller, 2005). This remains relevant today in former president Donald J. Trump's rhetoric surrounding Muslim-majority nations, Hispanic immigrants, and China's role in the coronavirus pandemic (Lee, 2020). When he leads his supporters in chants of "Build that wall!", Trump appeals to the same xenophobia that allowed Japanese internment to take place in the 1940s and continues to run deep through many Americans today. This language purports that (non-white) immigrants inherently threaten the security and prosperity of American citizens. It creates a powerful "us against them" mentality. And in fact, two recent studies suggest that Trump's rallies are correlated with an increase in hate crimes, demonstrating how public opinion contributes to the incitement of violence (Kubiske, 2020). Furthermore, parallels between internment camps in the 1940s and modern migrant detention centers at the US-Mexico border suggest that perhaps the U.S. "has failed to learn from [its] past mistakes," (Takei, 2018). Internationally, the U.S. has faced few consequences for its blatant abuse of human rights at the border, including the separation of thousands of immigrant children from their families in 2018 (Gelernt, 2021). This demonstrates the ongoing lack of accountability for atrocities committed by the U.S, which has contributed to a false historical narrative that legitimates America's virtuosity. Without true repercussions, America can continue pursuing policies that disproportionately impact people of color, both at home and abroad.

In order for the U.S. to truly set an example of morality for the rest of the world to follow, it should "come to terms with the frustrations of history" and approach policy issues with a realistic view of itself and its biases, creating space for the stories of peoples it has oppressed in its national narrative (Niebuhr, 1942). In the context of Japanese internment, the Civil Liberties Act of 1988, which paid $20,000 reparations to internees who were still alive, marks a first step in the right direction. However, reparations came only after immense pressure from the Japanese American Citizens League, and the U.S. has failed to take similar action steps to ameliorate the injustices faced by descendants of slavery and indigenous communities. Additionally, financial reparations are just one piece in a broader cultural shift towards equity and justice. Education and public discourse surrounding events like internment play an imperative role in changing the narrative. This means including internment in history curriculums and allowing students to learn from the dark parts of American

history. In a state like Utah, which — unbeknownst to many of its residents — housed an internment camp, this could look like creating state funding for public school students to visit the Topaz site and art museum. In terms of foreign policy, the U.S. should implement more robust accountability measures and hold itself to the same standard it holds other countries for atrocity crimes.

Conclusion

A micro-political analysis of the experience of Japanese Americans at the Topaz Internment Camp reveals a traumatic narrative that disrupts the exceptionalist perspective of the American West as an expression of freedom, individuality, and opportunity. The U.S. stripped internees — the majority of whom were American citizens — of their basic human rights, forcing them into confined spaces that significantly impacted their physical and emotional health. More broadly, internment demonstrates the failure of the United States to respond justly or rationally to perceived foreign threats, especially from non-white nations — and, contradicts the image of America as an exceptional nation. In order for the U.S. to reconcile its self-image with a pattern of xenophobic behavior, it must face its past and elevate the experience of groups like the Japanese American internees. This looks like investing in reparations, public education, and stronger accountability measures. This looks like listening to the needs and experiences of communities that have faced oppression in the United States. Japanese internment will always be a part of U.S. history. Confronting this fact presents an opportunity for Americans to take action and create a future where the United States can live up to its values of liberty and justice for all.

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The Don Effect: What, if Any, Long-Term Effects Did President Donald Trump's Tweets Have On Individual Companies' Stock Prices?

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Abstract:

   The term 'stock market' refers to a collection of global exchanges where the buying, selling, and issuance of shares for publicly held companies takes place. Market volatility is a measure of the variance of returns of shares listed on the stock market over a given period. High volatility is associated with high risk and unpredictability, and high volatility can be the product of economic factors, economic news, interest rate changes, and fiscal policy. One type of economic news comes from public figures that have the power to change market sentiment with their influence, as was seen with the Twitter account of United States President Donald Trump. Many of Trump's tweets were simply humorous or banal, corresponding to little impact on the behavior of financial markets. Trump's tweets were a common point of contention in political discourse and raised the question of whether a sitting president should have unrestricted access to social media, especially if their social media posts could influence market trends. With the weight that a president's word can carry, unregulated Twitter posts could have potential consequences on market volatility through influencing sentiment towards a company mentioned in the tweet (the 'targeted company'). This study aims to determine whether Trump's tweets had any lasting impact on the volatility of a targeted company's stock price. To determine this, a difference-in-difference (DD) model is implemented to compare the volatility of stock price between a targeted company and other non-targeted companies within the same sector. Additionally, a Fisher's Test for Independence is used to determine whether an increase in volatility of a targeted company's stock price and a Trump tweet were independent events. The results of the DD model did not find any evidence to disprove the relationship between Trump's tweets and the volatility of the targeted company's stock price. Furthermore, the results of the Fisher's Test indicate that Trump's tweets and the volatility of a targeted company's stock price are not independent events. This study concludes that Trump's tweets may have had an effect on a targeted company's stock price, but these effects were transient and caused no long-term change in stock prices.

Keywords: Donald Trump, Twitter, Boeing, Toyota, Tesla, Financial Modeling, Sentiment Analysis

Introduction

   A difference-in-differences (DD) model is implemented to draw causal insight into the effects of Trump's tweets on market volatility. This "before-and-after" model allows for an estimate of Trump's tweets' effect on a targeted company's stock price through comparing changes in stock price over time. In this model, the treatment groups are the companies directly targeted by Trump's tweet, while the control groups are other related companies in the same sector as the targeted company. To ensure that the model captures the true effect of Trump's tweets on a company's stock price, specific tweets are first selected and scored by visual inspection for either positive or negative sentiment. This sentiment is then used in a constructed DD model to predict whether the stock price of the targeted company should increase or decrease. This predicted increase or decrease is then compared with the actual increase or decrease of the targeted company's stock. It is important to note that others have covered this question using different empirical models to draw conclusions (Rayarel, 2018).

   A Fisher's Test for Independence is performed in tandem with the DD to compare the volatility of a targeted company's stock price one week before and one week after a Trump tweet. The goal of this post hoc test is to determine whether a Trump tweet affects a targeted company's stock price beyond

random chance as compared to the stock price of one week before the tweet. Effects of the tweet are evaluated by changes in the level and slope of the stock price's volatility over time. The purpose of this analysis is to determine whether a Trump tweet and a targeted company's stock price volatility are independent events.

These two methods of analysis are used to determine whether a Trump tweet regarding a targeted company and the volatility of that company's stock price are predictable and dependent events. The outcome of this study finds that there is no adequate evidence to disprove the relationship between a Trump tweet and stock volatility. Additionally, a Trump tweet and the increase in stock price volatility for a targeted company are not independent events, but this volatility is transient and causes no long-term effect on the stock price.

Methodology

Data

Trump tweets were sourced from *Yahoo Finance* (Wolff-Mann, E. 2017), which has an archive of Trump tweets that target specific companies by name. All Twitter posts gathered from the *Yahoo* search engine are also cross-referenced with the *Trump Twitter Archive* (Brown, B. 2016). The critical variables under consideration are the date the tweet was posted, the closing price of the targeted company's stock, and any other control companies within the sector before and after the tweet was posted. To collect the stock data for the pre- and post-tweet periods, the *Yahoo Finance* API (Yahoo Finance. 2021) was used. This allows for easy access and manipulation of stock market data. Unfortunately, this data collection method was blind to intraday stock price volatility because historical archives containing historical intraday prices are not open source. This means that the scope of this study is limited to analyzing stock price volatility over a period of several days as opposed to within a single day.

Company Selection

Three companies are analyzed during this study. To provide a uniform baseline comparison, each selected company is compared to other companies operating in the same sector. Companies Boeing and Toyota were selected to demonstrate treatment effects that negatively impact the stock price due to the negative connotations implied in a Trump tweet (the treatment effect). Toyota was used again in conjunction with Tesla to test for a positive treatment effect. Boeing was compared to companies Embraer and Airbus, Toyota was compared to companies Honda and Subaru, and Tesla was

compared to companies Ford and BMW.

Sentiment Classification

Each tweet is attributed a positive or negative sentiment based on the connotation of the tweet's contents by visual inspection. A positive sentiment is associated with the tweet if the content demonstrated either Trump commending the company or observing something positive it did. Inversely, a negative sentiment was associated with the tweet if Trump denounced or proclaimed an issue he had with the company's decisions and practices.

Difference-in-Differences (DD) Model

To determine causality between a president's tweet and a company's stock price, a difference-in-differences model (DD) is implemented. The key feature of a DD model is its use of a control group and a treatment group. In this study, the treatment is a targeted company referenced in a Twitter post made by Trump. The control group, which is later compared to the treatment group, consists of other companies within the same sector as the targeted company. Tweets are selected based on optimal conditions to control outside market influences in order to ensure the treatment was unrelated to the outcome at baseline. Optimal conditions refer to relatively low market volatility for a given sector, so that there is not a change in news or market expectations. Limiting the control group to companies within the same sector also allows for outside effects to be controlled, such as changes in technological innovations, news about the specific sector, and other sector-specific variables that might affect stock price. The DD excludes periods of company-released earnings reports. This allows for the assumption that the composition of the treatment and comparison groups are stable for repeated cross-sectional design. Since the majority of the information that affects stock prices is public knowledge, identifying whether optimal conditions are present at the time of the treatment can be confirmed with a resulting $p < 0.05$ in the DD model, thus eliminating spillover from potential omitted variables.

Defining variables in the DD model, Y_{ft} represents the predicted stock price, with f identifying the company in question and t describing the day of the stock price. The variable t consists of three days before and after the treatment was imposed, allowing for trends within the treatment group and control group to be identified and accounted for when determining the treatment effect. $Treat_f$ defines a dummy variable for firms within the treatment group ($Treat_f = 1$) and firms in the control group ($Treat_f = 0$). $Post_t$ characterizes the effects that have an impact on all the firms within a market sector and can be read as stock prices pre-treatment ($Post_t = 0$) and stock prices post-treatment ($Post_t = 1$). Other aspects of the model include α, denoting the intercept of the function,

or the initial value that will be adjusted based on the inputs of the regression. ε_{ft} defines the error term, which can be read as any other factors that might affect a company's stock price. Coefficients β, γ, and δ_{rDD} demonstrate the effect a certain variable will have on a company's stock price. In conjunction, formula (1.1) can be derived as follows:

(1.1)

$$Y_{ft} = \alpha \ + \ \beta \ Treat_f + \ \gamma Post_t + \ \delta_{rDD}(Treat_f * Post_t) + \varepsilon_{ft}$$

For this equation to be a causal identifier, the error term must not affect a company's stock price and the control and treatment companies must demonstrate parallel trends during the pretreatment period (a method for implementing the error term is described in the Future Direction section). By assuming that all other variables that may affect a stock price have been accounted for, the only variable affecting the price is the treatment. Although, it is impossible to be certain that all market variables have accounted for everything given the nature of the stock market and the number of variables that influence it. These unknown factors will affect the results of this experiment. Adjusted stock prices are used for the control and treatment companies to satisfy the parallel trends assumption. The adjusted stock price is calculated by taking the deviation from the average stock price on any given day and dividing it by the average stock price on the given day. This results in the company's stock price percent change (1.2).

(1.2)

$$Average \ Price \ Deviation = \frac{Close - Average}{Average} \quad \text{x } 100$$

Ad Hoc Fisher's Test for Independence

Yahoo Finance is used to obtain two time frames of historical stock market prices for tweet-referenced companies: one for the week in which Trump tweeted about the company and the other for the week directly preceding the tweet. These times were selected in order to maximize the temporal resolution, which in this case is to say that the test focuses on changes in long-term stock price volatility without contending with brief periods of market volatility. These data are also available in the public domain. In the case of the week in which Trump tweeted, the stock price on the date of the tweet is compared to the stock price of three trading days before and three trading days after the tweet to determine average volatility on the selected week. This first case allows for the quantification of trading sentiment after a Trump tweet. In the case of the week in which Trump did not tweet, the stock price is obtained three trading days before and after of the week before the tweet in order to determine average volatility. This second case allows for the quantification of previous trading sentiment before the tweet. Finally, a Fisher's Test

for Independence is applied between both cases to see if the events of Trump tweeting and market volatility are associated beyond a random chance, with respect to the volatility of the stock price without a Trump tweet.

The parameter for trading sentiment is stock price volatility, given by (1.3):

(1.3)

$$Volatility \ (n) = \frac{(Closing \ Price) - (Opening \ Price)}{(Opening \ Price)}$$

After determining the stock price volatility for the targeted company both before and after the Trump tweet, the average volatility for the two cases is input into a 2 x 2 contingency matrix in the following format, where $\hat{n}$ denotes the arithmetic mean of weekly volatility:

	3 Trading Days Before	3 Trading Days After
D. Trump Tweet	$|\hat{n}_{11}| * 100$	$|\hat{n}_{12}| * 100$
No D. Trump Tweet	$|\hat{n}_{21}| * 100$	$|\hat{n}_{22}| * 100$

The treatment applied within the data matrix is two-fold: to eliminate negative values of volatility and to multiply by 100 such that the matrix is populated with percent values greater than 1 such that $n_{ij} \in \mathbb{R} \geq 1$. The Fisher's Exact Test relies on computing the p-value according to the hyper-geometric distribution using binomial coefficients, namely (1.4):

(1.4)

$$p = \frac{\binom{\hat{n}_{11} + \hat{n}_{12}}{\hat{n}_{11}}\binom{\hat{n}_{21} + \hat{n}_{22}}{\hat{n}_{21}}}{\binom{\hat{n}_{11} + \hat{n}_{12} + \hat{n}_{21} + \hat{n}_{22}}{\hat{n}_{11} + \hat{n}_{21}}}$$

Using the resulting p-value of the test, a conclusion is made on whether or not Trump tweeting about a company and the volatility of that company's stock are independent.

Results

Table 1 shows the results of the DD model regression (above the dotted line) and the Fisher's Test (below the dotted line). For the DD model regression, the top value not contained within parentheses lists the coefficients for the variable described within the row. The value contained within parentheses denotes the standard error of the given coefficient. For the Fisher's test, the p-values reflect that Trump's tweet and the volatility of a targeted company's stock price are not independent events. Because all p-values are below the critical threshold, this test fails to reject that both the tweet and the stock price volatility of a targeted company are independent events. The conclusion from the data presented in Table 1 is that there is a possible relationship between a Trump tweet and volatility of a targeted company's stock price.

Table 1: Regression and Test for Association

| The columns display the coefficients β, γ, and δ$_{rDD}$ for each of the corresponding variables				
	Boeing (-) close	Toyota (-) close	Toyota (+) close	Tesla (+) close
Treatment Group	278.1*	94.38*	108.8*	282.4*
(β)	(29.43)	(2.919)	(6.225)	(14.55)
Post-Treatment	4.044	0.0443	0.324	1.499
Period (γ)	(22.33)	(2.132)	(0.07)	(11.04)
Treatment Effect	-4.591	-0.268	2.913	-20.55
(δ$_{rDD}$)	(39.21)	(3.693)	(8.235)	(19.39)
Intercept	72.35*	25.68*	26.12*	33.41*
	(16.99)	(1.685)	(3.594)	(8.403)
P-value for DD	0.908	0.943	0.943	0.728
N (Sample Size)	28	24	21	28
P-value for Fisher's Test	0.03781*	0.03705*	0.001857*	6.924e-09*

* $p \leq 0.05$, denotes statistical significance

Boeing (Negative Sentiment) Parallel Trends

"Boeing is building a brand new 747 Air Force One for future presidents, but costs are out of control, more than $4 billion. Cancel order!" (Wolff-Mann, E. 2017)

Donald Trump posted this first tweet at 9 a.m. on December 6, 2019. This tweet focuses on Boeing, specifically describing Boeing's deal with the United States Government to provide a new presidential Air Force One aircraft. This tweet is designated to have a negative connotation, as what the President says reflects poorly on Boeing, specifically the costs of their product. In Figure 1, the average deviation of Boeing's stock price is compared to that of other companies within the same sector: Airbus and Embraer, which also produce military and civilian aircraft.

Figure 1: Boeing Parallel trends
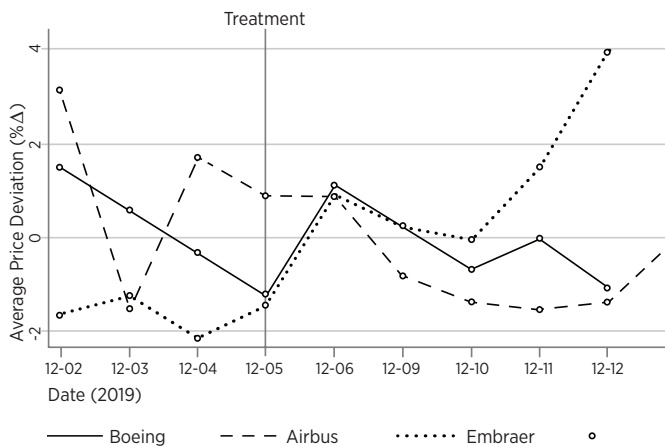
Toyota (Negative Sentiment) Parallel

"Toyota Motor said will build a new plant in Baja, Mexico, to build Corolla cars for U.S. NO WAY! Build plant in U.S. or pay big border tax [sic]." (Wolff-Mann, E. 2017)

Donald Trump posted this first tweet at 1:14 p.m. on Jan 5, 2017. Note that Donald Trump was President-Elect at the time. This tweet berates Toyota for setting up manufacturing plants in other countries. This tweet is thus designated to have a negative connotation, as what the President says reflects poorly on the practices of Toyota. In Figure 2, the average price deviation of Toyota's stock price is compared to that of other companies within the same sector: Honda and Subaru, which are both Japanese car manufacturers producing similar vehicles.

Figure 2: Toyota (Negative) Parallel Trends
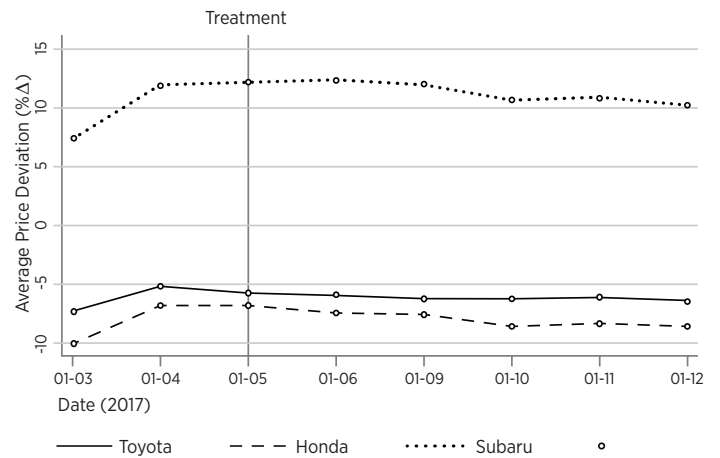
Toyota (Positive Sentiment) Parallel Trends

"Good news: Toyota and Mazda announce giant [sic] new Huntsville, Alabama, plant which will produce over 300,000 cars and SUV's a year and employ 4000 people. Companies are coming back to the U.S. in a very big way. Congratulations Alabama!" (Brown, B. 2016)

Donald Trump posted this first tweet at 11:30 pm on Jan 10, 2018. Interestingly, the company Mazda and the state of Alabama also shared the focus of the tweet. This should not affect what was expected from the treatment effect, but it may reduce the magnitude of the effect through dispersion. In Figure 3, the average price deviation of Toyota's stock price is again compared to that of Japanese car manufacturers Subaru and Honda (Figure 3).

Figure 3: Toyota (Positive) Parallel Trends
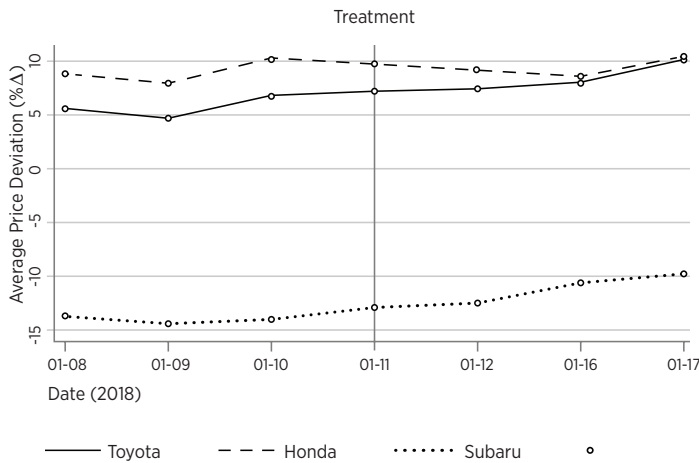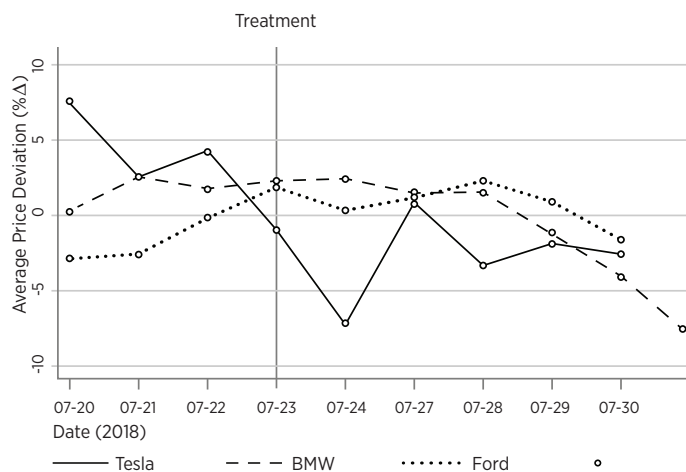

Tesla (Positive Sentiment) Parallel Trends

"Great job by @elonmusk in agreeing to build, in TEXAS, what is expected to be the largest auto plant anywhere in the world. He kept his word to me. Texas & @Tesla are big winners. MADE IN THE USA!" (Brown, B. 2016)

Donald Trump posted this first tweet at 10 a.m. on July 24, 2020. The President praises Tesla for creating more manufacturing jobs in the United States, and this tweet reflects positive sentiment on Tesla as a result. The average price deviation of Tesla's stock price is compared to that of other car manufacturers that produce electric vehicles, namely BMW and Ford.
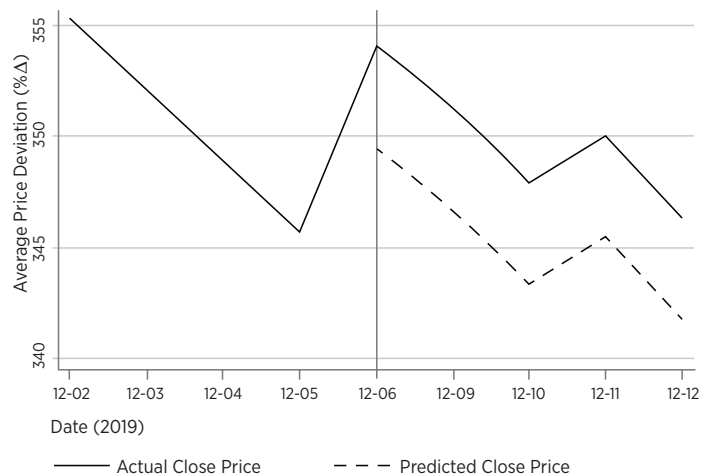
Figure 4: Tesla Parallel Trends

Boeing (Negative Sentiment) DD Model

Figure 1 is used to determine whether Boeing (treatment), Airbus (control), and Embraer (control) satisfy the parallel trends assumption. Data on the left side of the reference line represents the pre-treatment period which demonstrates weak similarity because the stocks have similar price movements. However, these movements do not always line up. The commonalities are thus strong enough to satisfy the parallel trends assumption. The results align with the prediction shown in Table 1, with the Treatment Effect (δ_{rDD}) negatively impacting Boeing's stock. However, the validity of this coefficient could be called into question, as it does not fit within the bounds of our critical p-value threshold. The standard error on this term was 39.21, indicating that the true population coefficient falls somewhere between -$43.8 and $34.62 at a 95% confidence level (Table 1). Additionally, the p-value attributed to the (δ_{rDD}) coefficient is 0.908. The confidence range and the p-value are far too large to provide any causation, and thus fails to reject the null hypothesis that Trump tweets have no effect on the volatility of a targeted company's stock price. Figure 5 demonstrates the predicted closing prices in comparison to the actual stock prices. The predicted line demonstrates a reduction of $4.59 off of the actual price.

Figure 5: Boeing (Negative) Treatment Effect

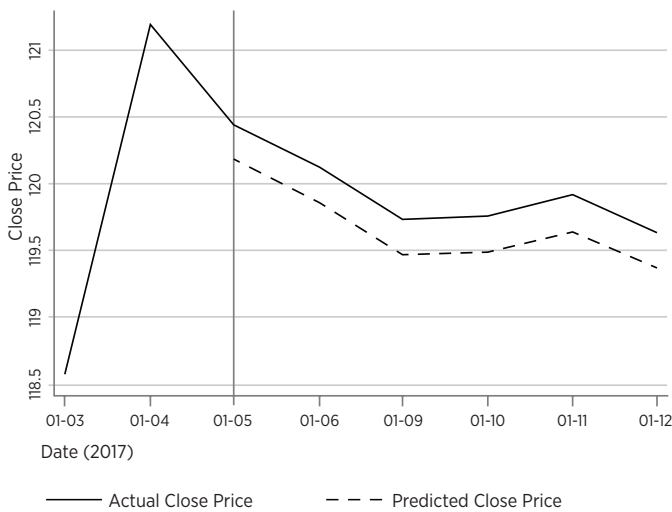
Toyota (Negative Sentiment) DD Model

Figure 2 is used to determine whether Toyota (treatment), Subaru (control), and Honda (control) demonstrated parallel trends during the pre-treatment period. Toyota and Honda display strong similarities, while Subaru does not. It is important to note that, although the slope of the lines at any given point are all similar, Subaru has a positive percent

change in stock price while both Toyota and Honda are negative. With Subaru demonstrating different behavior, the parallel trends assumption is not satisfied. Similarly to Boeing, the treatment effect on Toyota is negative, reducing Toyota's stock price by -$0.268 during the post period. However, this coefficient is not statistically significant with a standard error of $3.693, which produces a 95% confidence interval of -$3.961 to $3.425 (Table 1). This, in conjunction with the p-value of 0.943, prevents any causal interpretation of the coefficient, and thus these results fail to reject the null hypothesis that Trump tweets have no effect on the volatility of a targeted company's stock price. Figure 6 demonstrates the predicted closing prices in comparison to the actual stock prices. The predicted line demonstrates a reduction of $0.268 off of the actual price.

Figure 6: Toyota (Negative) Treatment Effect

Toyota (Positive Sentiment) DD Model

Similar to Figure 2, Figure 3 demonstrates a strong commonality in trends between Toyota and Honda, with Subaru as the outlier. Due to extreme differences between Subaru and its positive counterparts, the parallel trends assumption is not satisfied. As predicted, Toyota experienced a positive effect from the treatment, seeing a $2.91 increase in their stock price. However, the statistical significance of this is called into question as the confidence interval for the coefficient ranges from –$5.32 to $11.148 (Table 1). This range allows for too much variation in the possible population coefficients. Moreover, the p-value associated with the treatment effect is 0.943. Thus, these results fail to reject

the null hypothesis that Trump tweets have no effect on the volatility of a targeted company's stock price.
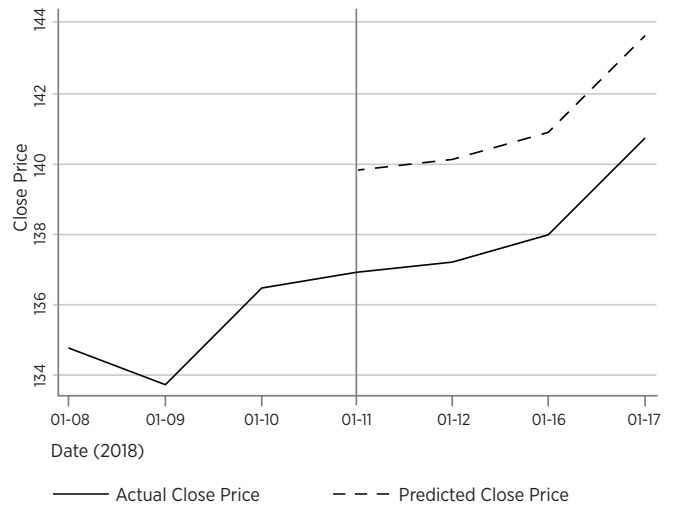
Figure 7: Toyota (Positive) Treatment Effect

Figure 7 demonstrates the predicted closing prices in comparison to the actual stock prices. The predicted line demonstrates an increase of $2.91 off of the actual price.

Tesla (Positive Sentiment) DD Model

Figure 4 exhibits the average percent change in stock prices between Tesla (treatment), BMW (control), and Ford (control) in an attempt to satisfy the parallel trends assumption. BMW and Ford follow similar trends; however, Tesla does not, jumping from highly positive to highly negative. This does not satisfy the parallel trends assumption. Contrary to the other examined companies, Tesla does not experience the predicted treatment effect. Instead, during the post-treatment period Tesla experiences a sharp decrease in their stock price, falling by $20.55. Similar to the other companies, this coefficient is not statistically significant. With a standard error of $19.39, the 95% confidence interval was –$39.94 to –$1.16, which leaves plenty of room for the true population parameter to hide (Table 1). Furthermore, this coefficient p-value is 0.728. The combination of the confidence interval and p-value fails to provide enough evidence of statistical significance and thus fails to reject the null hypothesis that Trump tweets have no 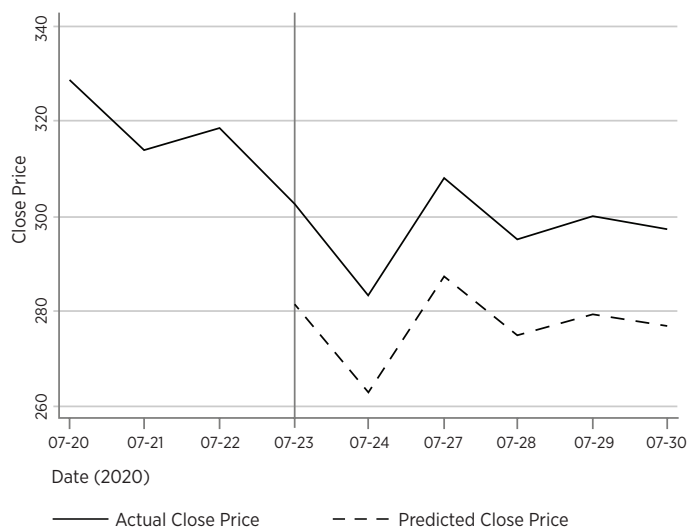effect on the volatility of a targeted company's stock price. Figure 8 demonstrates the predicted closing prices in comparison to the actual stock prices. The predicted line demonstrates a reduction of $20.55 off of the actual price.

Figure 8: Tesla (Positive) Treatment Effect

Date (2020)

——— Actual Close Price   – – – Predicted Close Price

Discussion

Limitations

The primary limitation of this study is the partition and availability of stock price data. The number of data points for each study is 25 on average, which is the maximum possible as historical intraday stock prices are unavailable to view for free. The duration between data points (1 day) provides a sparse understanding of the true effect that Donald Trump's tweets may have had in short-term trading. To draw a more detailed understanding, intraday prices could be used to determine these short-term effects. Additionally, a more extensive selection of tweets could vastly improve the study's ability to answer whether Trump tweets affect stock prices of targeted companies in general. More data points would have also improved the model's accuracy and temporal resolution. Furthermore, the sentiment classification could be improved using Natural Language Processing (NLP) computational techniques. NLP methods have the potential to be effective at defining the sentiment of social media posts (positive, negative, neutral) and provide a strength of the classification indicating strong positive or negative sentiment.

Future Direction

The DD model used in this research paper can be used in a machine learning framework which allows for greater predictive power at increased temporal resolution. For example, a gradient descent optimization could be used on the error term in function (1.1), which would increase the function's power to predict stock prices given the binary

of whether Trump tweeted about a given company. This methodology thus proceeds by optimizing the ε_{ft} error function using gradient descent (1.5).

(1.5)

Let: $\varepsilon_{ft} = -[\alpha + \beta\,Treat_f + \gamma Post_t + \delta_{rDD}(Treat_f * Post_t)]$

Rewriting ε_{ft} such that it defines an error function that measures the difference between current stock price S_i and predicted stock price Yft. This function takes in $(\alpha, \beta, \gamma, \delta)$ variables and returns an error value based on how well these variables predict the actual price of the stock. To compute the error for a trend in stock price, this error function is iterated N times, where N was the sample size of the price data, through each (S_i, Yft) point in the data set. Finally, the sum of the square distances between each point is calculated. It is conventional to square this distance to ensure that it is positive and to make the error function differentiable (1.6)

(1.6)

$$\varepsilon_{(\alpha,\beta,\gamma,\delta)} = \tfrac{1}{N}\sum_{i=1}^{N}(S_i - (\alpha + \beta Treat_f + \gamma Post_t + \delta_{rDD}(Treat_f * Post_t)))^2$$

Predictions that fit the actual price more accurately will result in lower values of this error function. To run gradient descent on this error function in order to optimize the error term for the DD, its gradients must first be computed. To compute this, the derivative of the error function must be taken with respect to each of the $(\alpha, \beta, \gamma, \delta)$ parameters. After derivation, gradient descent can initialize at any set of initial $(\alpha, \beta, \gamma, \delta)$ value, and each iteration will update $(\alpha, \beta, \gamma, \delta)$ to a line that yields slightly lower error than the previous iteration.

Conclusion

This paper found no evidence that Trump's tweets affect a targeted company's stock price beyond a one-week period. However, the statistical significance of the Fisher's Test was adequate to reject independence between Trump's tweet and stock price volatility. This implies that short-term transient volatility of a targeted company's stock could be caused by a Trump tweet. Moreover, the DD found that volatility of a targeted company's stock price was highly variable in the time after a Trump tweet. Despite finding evidence of an association between a targeted company's stock price volatility and Trump's tweets, the temporal resolution of this study is not adequate to determine the short-term intraday effects that Trump's tweets had on stock market volatility. For a better understanding of market patterns following a presidential tweet, more tweets regarding companies of different sectors must be collected in addition to the collection of intraday stock price information. Nevertheless, this study provides an

interesting look into the potential for presidential tweets to spark changes in the behavior of the stock market by altering the sentiment towards a targeted company.

In an Efficient Market, asset prices should respond quickly to any new information about a company. The fact that a president tweets about companies could therefore unjustly impact a company's stock. It follows that such presidential tweets could have the potential to drive entire markets both up and down, even if such impacts are only transitory. This paper makes no attempt to argue whether tweets of this kind should be restricted in any way, but rather focuses on the direct market implications of such tweets. In conclusion, it is the view of this paper's authors that caution should be taken when considering tweets from political figures as a form of technical analysis. With social media becoming more ubiquitous on the stage of United States politics, the information derived from tweets alone could unjustly harm retail traders through manipulating market sentiment and unjustly harm companies through non-foundational devaluation.

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The Authorization for Use of Military Force, Its Impact on International Legal Regimes, and Solutions Through Judicial Review

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Abstract:

The Authorization for Use of Military Force passed at the onset of the 21st century in response to attacks from the militant Islamist terrorist group Al-Qaeda against the United States on September 11th, 2001. Despite the bill's narrowly tailored text and mechanisms for legal military engagement, executive authorities since the Bush Administration have continually utilized the bill to justify lengthy interventionalist operations abroad. Civilian death, drone strikes, military operations, resource shortages, and conflation of international legal regimes have all arisen from these operations. While statutory restrictions through congressional repudiation have been presented as a solution to the mentioned problem, this paper will argue that such a solution is not only unlikely but insufficient. Instead, Gundy v. United States *offers us a unique opportunity to explore how a Supreme Court ruling against the Authorization for Use of Military Force would unfold. The Court could rule on the basis of nondelegation to rein in executive power and rule the Authorization for Use of Military Force as legally indefensible.*

Keywords:

Authorization for Use of Military Force, Executive Overreach, *Jus ad Bellum, Jus in Bello, Gundy v. United States,* Nondelegation, Supreme Court

Introduction

In response to terrorist attacks against the United States on September 11th, 2001, the Authorization for Use of Military Force (AUMF) was utilized to justify lengthy and broad interventionalist military campaigns across the globe (Hirsh, 2021). Many view President Biden's recent withdrawal of military troops from Afghanistan as a positive movement away from broad United States intervention (Green & Doherty, 2021). However, the assumption that withdrawal from Afghanistan is sufficient to address the broader trend of excessive use of military force is a faulty one. The executive continues to yield and utilize excessive war powers granted via congressional fiat (Hirsh, 2021). Even recently, Biden continues to exercise unbridled authority to conduct military operations such as in a recent airstrike at the Iranian-Syria border earlier last year (Carpenter, 2021).

Despite the severe harms that excessive executive authority regarding security and military power pose towards the international system, such excess has rarely been challenged either through congressional repudiation, statutory restriction, or judicial review (Fiebrich, 2021). It is no help that current administrative-legal "black holes" and "grey holes" embedded within national security law make the tracking and limiting of these excessive war powers a difficult undertaking (Vermeule, 2009). Consequences from excessive executive authority materialize in the form of an excess of human rights abuses across the globe, executive overreach in the use of military force, a conflation of international legal regimes *jus ad bellum*

and *jus in bello*, and ultimately lowering the threshold to engage in war (Nylen, 2020).

This paper will explain and analyze the history of the AUMF, review the negative harms the AUMF poses towards the international system, explore the necessity of compliance regarding legal regimes, and present a solution to prevent runaway executive overreach in the future. It will also argue that congressional repudiation and restrictions are not sufficient to contain executive overreach in the context of the AUMF, and why on-balance, judicial intervention, and review beyond the status quo are necessary.

The Authorization for Use of Military Force

Four days after the terrorist attacks against the United States on September 11th, 2001, S. J. Resolution 23 was passed by the 107th Congress (2001). The bill, the Authorization for Use of Military Force, permitted the president to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons." Interestingly enough, the initial draft of S.J. Resolution 23 granted the executive significantly more discretion than the finalized bill.

Key provisions of the bill included the highly controversial text "to deter and preempt any future acts of terrorism or aggression against the United States." Senate members were concerned this would grant a blank check to militarize against anyone Bush, or any subsequent president, deemed a threat against the United States, and as a result, the text was amended (Lune & Wayne, 2015). Through a nearly unanimous vote the Senate passed the bill by roll call on September 14th, 2001, alongside the House the same day. The House passed H.J. 64 420-1-10. The United States Representative Barbara Jean Lee was the sole dissenting vote and argued that the vague writing of the AUMF granted the executive overly broad power to wage war (Murray, 2010). In her own words, Lee "warned her colleagues to be 'careful not to embark on an open-ended war with neither an exit strategy nor a focused target'" (Murray, 2010).

Notably, the AUMF also lacks a sunset provision, which is an embedded measure within a statute to establish oversight by requiring periodic congressional review and approval (Anderson, 2018). The provision would require the President to regularly justify the nature and scope of an ongoing military operation and would embolden Congress to democratically deliberate and vote on whether the bill should be upheld or struck down (Goldsmith, 2015). The unlimited duration of the AUMF has been a critical component to its overly expansive use. Despite the aforementioned concerns, public support for the AUMF was at an all-time high with 89% of Americans believing the United States should take military action against the terrorist attacks on September 11th (Jones, 2001). On October 7th, 2001, military forces began mobilizing with airstrikes against the Taliban and Al-Qaeda in what has since been coined The War on Terror (Reuters, 2021).

The Resulting Humanitarian Nightmare

Since the passage of the AUMF, between 480,000 to 507,000 civilians have been killed as a result of the United States post-9/11 wars in Iraq, Afghanistan, and Pakistan alone (Crawford, 2018). Yet the veil of secrecy that surrounds national security policy means that this death toll is a dramatic undercount that does not factor in deaths resulting from resource scarcity, loss of access to food, water shortages, and a decline in health infrastructure and other infrastructure access (Crawford 2018). Additionally, the use of drones to conduct targeted killing operations and private security contractors (PSCs) also raise concern under the AUMF. Extra-judicial targeted killings through the use of drones have caused an estimated 22,000 civilian deaths since September 11th, 2001 (Beaumount, 2021). PSCs are hired by the United States as independent contractors that conduct operations while sidestepping United States military law, as well as international law resulting in widespread oversight issues (Wallace, 2016). The United States currently lacks proper tracking and transparency in the hiring and deployment of PSCs resulting in the legitimation of severe human rights abuses such as the killing of 20 Iraqi civilians in 2007 (Capaccio, 2021).

It's clear then that the deployment of military operations deriving from the AUMF has extended far beyond the scope of original congressional intent (Grimmett, 2007). The AUMF does not grant the executive unlimited discretion to use military operations beyond the scope of counter-terrorism as cited within the original resolution (Weed, 2015). While Congress has generally agreed that the scope of the AUMF has expanded beyond its original intent, inaction across various administrations has resulted in nearly no initiative towards restriction (Weed, 2015). Even in the present day, the 117th United States Congress, as well as Biden, has not only failed to repudiate or amend the AUMF, but has expressed interest to expand current authorization broadly enough to continue widespread wars in Libya, Yemen, Pakistan, and the Middle East (Healy & Glasser, 2021). In theory, this new military authorization would retain properties of congressional authorization for use of military force yet expand executive war powers to statutorily legitimize military operations beyond current limits (Bender & Desiderio, 2021).

Legal Regimes *Jus ad Bellum* and *Jus in Bello*

Since September 11th, 2001 the United States has taken a grand stance of military interventionism premised on the containment of threats, securitization, and state control (Nylen, 2020). Nylen (2020) analyzes how the United States has used a frontier-territory driven legal code to conduct unjustified military interventions. The United States classifies certain regions as exceptions to international law under this new legal code resulting in extraterritorial state violence and militarism. On a grand scale, international legal regimes that regulate how warfare is conducted become muddied as the United States disregards and applies exceptions within its military conduct under the AUMF. *Jus ad bellum* and *jus in bello*, for instance, become conflated under the United States' new legal regime (Blank, 2012).

Regimes of *jus ad bellum* and *jus in bell*o are two sides of the same coin. These two principles govern if states should engage in armed conflict and how to conduct military operations during times of conflict. The former principle is a doctrine that governs use of force, sometimes referred to as the law of self-defense, while the latter principle guides the protection and conduct of hostilities also cited by many as international humanitarian law (IHL) (Blank, 2012).

Scholars and international law experts tend to agree that there are four major components to *jus ad bellum* that states must follow to ensure ethical war. The components of *jus ad bellum* include that the war must be declared by a proper authority, such as a state, the war must have the aim of bettering the common good, the warring state must have just intentions, and the war must have the goal of peace (Johnston n.d.). While *jus ad bellum* was created by the United Nations Charter in 1945, and thus has no enforceable mechanism aside from voluntary compliance, following such doctrine would create conditions of just war as well as limit war overall (ICRC, 2015). Assuming a state follows the principles set out by *jus ad bellum* and rightfully enters into conflict, *jus in bello* dictates how a state ought to conduct operations within conflict. *Jus in bello* holds an expansive set of rules for how states ought to engage in conflict derived from just war theory principles (Maiese, 2003). Rules include the prohibition of the harming of civilians, the necessity to hold agents of war accountable for war crimes, the recognition and respect of actor neutrality, the preservation of peace for those who choose to remain neutral, a restriction of unnecessary violence, and the humane treatment of captured soldiers, more commonly called prisoners of war (Maiese, 2003). In the simplest terms, *jus ad bellum* garners the conditions that states may enter conflict while *jus in bello* sets the conditions for how to operate within such conflict. If states aspire to limit the frequency of conflict and war, compliance with these regimes is necessary, and conflation ought not to occur.

The Process of Conflation and Necessity of Compliance

United States military operations granted by the AUMF continue to conflate the two legal regimes by circumventing the rules of *jus ad bellum* and lessening compliance with jus in bello (Blank 2012). Legal regime conflation occurs in two ways. First, the use of drones in targeted killings under the justification of preventive self-defense (Blank 2012). Second, conflation occurs by misclassifying areas of intervention as "non- international armed conflict," (NIAC) justifying lawless and militaristic intervention.

Modern use of drones outside of areas of active hostilities is nothing new. For the last two decades, the United States has used drones authorized under the AUMF in the name of containing threats such as terrorism (Hirsh, 2021). Despite international humanitarian laws and calls from the United Nations to enact greater coordination and norms regarding the use of drones, laws governing drone use by the United States remains vague on legality (Stohl & Dick, 2021). When the United States deploys and uses drones in widespread conflict, it derives justification to do so from both offensive counter-terror operations and preventive self-defense. In other words, by using drones within its counter-terror operations, the United States forfeits the components of *jus ad bellum*, lowering the threshold to engage in conflict, and then rejects the checks of accountability found in *jus in bello* (Blank, 2012). This significantly reduces the *jus ad bellum* legal regime's ability to regulate a states use of military force and normalizes entering war by forgoing traditional legal norms that contain such operations (Martin, 2011).

Classification of areas of intervention as NIACs give the United States discretion to deploy military operations while side-stepping international legal norms and laws. Unlike areas of international armed conflict (IAC) which are subject to rules and doctrines set out by the United Nations and IHL, there exist far fewer international rules of engagement for NIACs (Rulac, 2017). *Jus ad bellum*, for instance, requires the declaration of war from a recognized sovereign state or authority to make entering into conflict permissible. Such a standard does not have to be met regarding NIACs for an actor to militarily engage (Rulac, 2017). During its War on Terror, the United States used this classification through the AUMF to justify extra-legal behavior and lawless intervention (Nylen, 2020).

Through the use of both drones and military intervention justified by malicious classification, the United States relies on a doctrine of threat-containment to justify preventive self-defense (Blank, 2012). Under humanitarian law and *jus ad*

bellum, in order for a state to conduct a first-strike, it must have deployed all other options prior to such strike. Options include diplomacy, an offer of surrender, or the attempt to capture (Blank, 2012). The United States, through a framework of threat-containment, forgoes these other options and instead deploys first-strikes and military operations with the intent of securitization which, as explained earlier, leads to civilian death, resource scarcity, and destruction of infrastructure.

Beyond this, there exists an even more significant harm that shows the necessity of durable solutions regarding the AUMF and resulting legal regimes conflation. When the United States classifies military intervention and widespread operations as self- defense, it circumvents the rules laid out by *jus ad bellum* (Martin 2011). This gives the United States a new more flexible avenue into war. War would no longer be regulated or recognized through strict legal doctrines but instead would be a flexible option in response to uncertain threats. In the most dire of situations, countries that model the United States would also adopt this destabilizing norm globally (Fisk & Ramos, 2013). Constraints found in the *jus ad bellum* regime would no longer serve to limit war, making intervention and widespread international war significantly more likely.

Complacency, Insubstantial Solutions, and Current Challenges

Despite the previously cited harms the AUMF poses towards civilians, countries, and international legal regimes, Congress currently lacks any intention on limiting existing presidential war powers. As explored earlier, the 117th Congress has even gone so far as to express interest in expanding already existing deference to the executive through a broader authorization in the name of continuing endless warfare in Libya, Yemen, Pakistan, the Middle East, and other places (Healy & Glasser, 2021). The aforementioned lack of a sunset provision also raises concern. If included in the original AUMF, such provision would grant Congress additional oversight to eliminate or amend the scope of the bill in the instance of broad executive overreach (Goldsmith, 2015). Without the provision, the AUMF grants the executive an ability to kick the can down the road and continue the use of military force, into the future indefinity.

Yet if we assume that there exists a congressional desire to check against executive discretion through repudiation or statutory restriction, which there is not, these checks would still be insufficient. Consider two dimensions: history and legal secrecy. It can be argued that congressional statutory restriction alone is not sufficient to encapsulate executive overreach. For instance, the War Powers Act of 1973 in response to the Vietnam War should have curtailed executive

war powers, yet decades of overreach clearly show a failure to do so (Blain, 2015). Section two of the act declares, "It is the purpose of this chapter to fulfill the intent of the framers of the Constitution of the United States and ensure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations" (War Powers Resolution, 1973). While the resolution intended to enhance clarity between Congress and the executive through "consultation" and "reporting," the executive has strongly increased its discretion in the introduction of armed forces towards the international system throughout the past decades (Blain, 2015).

Ongoing legal secrecy also warrants concern. Laws that govern the ability for the United States to respond to threats must arguably be flexible to ensure a quick and timely response should threats arise. However, unlimited discretion regarding how to respond grants too much flexibility and relies on legal "black holes" and "grey holes" that create ambiguity in administrative law that circumvents proper checks from courts and Congress (Vermeule, 2009). For instance, the Administrative Procedure Act (APA) – which was passed to ensure transparency in the law by making legal mechanisms and texts accessible to the public – becomes null under the justification of national security exceptions (Hafetz, 2016). Legal secrecy and the indeterminant nature of these administrative laws become a key component of what grants legal secrecy around national security policy. Much of the executive discretion that arises from the AUMF relies on these "black holes" and "grey holes" in administrative law that make understanding such laws difficult and reform tricky, but not impossible (Hafetz, 2016). Past rulings of detention policies under the AUMF, which will be explored next, show "black holes" and "grey holes" are not inevitable and the Supreme Court does have the ability to provide oversight towards these institutions.

Key Supreme Court Precedents

Supreme Court intervention has helped to shape procedures within military operations granted by the AUMF despite its failure to limit excessive overreach in general. For example, in the case of *Boumediene v. Bush* (2008), the Supreme Court ruled that prisoners held at Guantanamo Bay retained a right to habeas corpus after Lakhdar Boumediene and five other men were indefinitely detained at the Guantanamo Bay Naval Base. The Court ruled that despite the AUMF's classification of these men as "enemy combatants of the state," the prisoners are still entitled to protection under the Fifth Amendment and

its Due Process Clause and Geneva Convention. Boumediene, however, is not the only case that shows the Court's willingness to intervene against the executive and AUMF.

In *Hamdi v. Rumsfeld* (2004), Yaser Esam Hamdi, an American citizen, was detained by the United States military in Afghanistan, declared an "enemy combatant," and transferred to Guantanamo Bay Naval Base. The United States government argued that the AUMF and, by extension, the executive had the authority to hold Hamdi indefinitely and restrict their access to the court system. The Supreme Court ultimately ruled that such action was unconstitutional under the Fifth and 14th Amendment's Due Process Clause, which guarantees a citizen's right to contest detention before a neutral decision-maker. More importantly, the plurality opinion of the Court established that separation of power did not prevent the judiciary from hearing Hamdi's challenge in the first instance, even under the AUMF (Lawfare, n.d.).

Finally, in the case of *Hamdan v. Rumsfeld* (2006), Salim Ahmed Hamdan, a former driver for Osama bin Laden, was detained at Guantanamo Bay after being deemed an "enemy combatant." Hamdan brought suit and argued that the use of torture, abusive conditions, and indefinite detention violated the right to due process granted by the Fifth and 14th Amendments and the Geneva Convention. The Supreme Court held that the military commission violated the Due Process Clause and the Geneva Convention, ruling Hamdan's treatment illegal. Congress responded to the *Hamdan* ruling by passing the Military Commissions Act of 2006 (MCA), effectively eviscerating the ruling. Even so, the MCA passed assuming the AUMF's constitutionality and thus remains vulnerable to future challenges (Elsea, 2007).

These three cases illustrate the ability of the Supreme Court to review, contain, and strike down the AUMF and, by extension, executive overreach in three ways. First, each case illustrates the ability of the Supreme Court to invalidate legislation or components of legislation that violate constitutional, international, or customary law (Cody, 2021). Second, judges strike down hastily written laws or laws that extend beyond the purview of their original intent. Third, "black holes" and "grey holes" that exist within the law, such as Guantanamo Naval Base, are not immune to judicial review.

Nondelegation and The Supreme Court

As previously explored, the ability for the executive to utilize unbridled military authority goes beyond simple congressional authorization. There exists an element of secrecy and indeterminacy within administrative law. Much like the previous cases established, ruling the AUMF as unconstitutional may offer constraint on executive power and moreover provide solutions to the "black holes" and "grey

holes" found riddled within administrative law (Fiebrich, 2021). Before exploring how the Supreme Court would strike down the AUMF, we must first examine the case of *Gundy v. United States* (2019). *Gundy* offers unique insight into how the Supreme Court views issues such as unbridled authorization to agencies from Congress.

To better understand the case, two legal concepts must be understood, the nondelegation doctrine and the current state of the intelligible principle test. Nondelegation is a doctrine set out within administrative law which holds that Congress cannot delegate its legislative authority to other entities, branches, or agencies (Cornell Law n.d.). The intelligible principle is a legal test used by the courts to evaluate the efficacy and magnitude that nondelegation may play in statutory authorization or delegation, much like the AUMF. Established in *J.W. Hampton Jr. & Co. v. United States* (1928), the court ruled that Congress, in order to grant another entity its authority, certain legal criteria must be met. Congress must "lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform" (*Whitman v. American Trucking Assns, Inc.,* 2001, Section 2).

In *Gundy*, Herman Avery Gundy, the plaintiff, brought suit against the United States alleging that the Sex Offender Registration and Notification Act's delegation of authority to the United States Attorney General was impermissible on the grounds that the nondelegation doctrine should have made such delegation unconstitutional (Hall, 2020). While the Supreme Court ruled on a 5-3 decision for the United States, the opinion of the court shines light on nondelegation and a potential avenue to rule against the AUMF (Fiebrich, 2021). Within *Gundy*, the dissent found no basis for the intelligible principle test in the Constitution, explaining how there was no justification to apply such test to nondelegation (Fiebrich, 2021). The Supreme Court argued that the application of the intelligible principle test has been used by courts to bypass constitutional law and legitimize the decay of the separation of power principle.

To make the AUMF permissible under nondelegation, Congress must ensure such authorization is narrowly tailored, provide sufficient guidance to ensure the ability to fill in statutory details through discretion is limited, and place limitations on executive power overall under the statute (Fiebrich, 2021). Of course, the last two decades have shown the executive does not meet this standard and has expanded the scope of the bill far beyond the original intent (Grimmett 2007). Assuming a judicial challenge arises under the AUMF, the Supreme Court could find the bill unconstitutional and strike it down on four main grounds. First, the AUMF delegates uncapped discretion towards the executive, therein rejecting the narrowly tailored rule set out by nondelegation and the intelligible principle test. Second, the AUMF fails to provide a standard to check the validity of

operations relative to the congressional intent of the AUMF. Third, at a baseline, delegating congressional legislative war power authority degrades the separation of power principle. Fourth, nondelegation should be upheld by the Supreme Court far beyond the extent that it is now on the grounds of constitutional law (Fiedbrich, 2021).

Finally, while there is no way to know with certainty how justices will respond to a future judicial challenge against the AUMF, we can draw some inferences on past rulings and justice ideology. Most notably, Justice Kavanaugh had yet to be appointed and confirmed during the hearing of *Gundy*. Kavanaugh's past rulings suggest a pattern of pro-separation of power rulings stemming from an analysis of the intent of the constitutional framers (Kavanaugh, 2018). Justice Kavanaugh is likely to join Gorsuch, Roberts, and Thomas, which may bring Alito and Barrett into the fold. If the judges are successful in displacing the intelligible principle test and reinforcing the traditional teachings of nondelegation, they would be able to reject the legality of the AUMF (Fiebrich, 2021).

While most solutions towards the AUMF – and by extension, executive overreach – tend to focus on statutory restrictions or repudiation, this paper suggests that intervention by the Supreme Court is necessary to contain harms that have arisen from the AUMF and executive overreach. The fact that the Supreme Court ruled in favor of *Boumediene*, *Hamdi*, and *Hamdan* shows there is a willingness to constrain executive authority under the AUMF despite the legal "black holes" and "grey holes" that exist within the law. Combine this willingness with recent ideological shifts on the Supreme Court bench, soon the efficacy of the AUMF may come to light resolving the harms that arose from its enactment. Judicial review and a rejection of the AUMF would curtail international global violence as well as lessen-conflation of *jus ad bellum* and *jus in bello* legal regimes.

Conclusion

With global violence and international stability at stake, the necessity of court intervention against the AUMF has never been more apparent. The Authorization for Use of Military Force has killed civilians, destroyed infrastructure, and engaged in lawless intervention. On the larger scale of international legal regimes, the AUMF has conflated and degraded the legitimacy of *jus ad bellum* and *jus in bello*. This degradation of legal regimes lowers the global threshold for war by disregarding containment under *jus ad bellum* and leads to severe human rights abuses by disregarding the rules under *jus in bello*. While many have claimed that Congress is sufficient to resolve these issues stemming from the AUMF, it

is clear that historical failures and legal secrecy make this a fundamental non-starter.

Yet, despite historical failures and legal "black holes" and "grey holes" embedded within national security policy, the Supreme Court offers a solution. Court precedent shows a degree of willingness to check back against legal secrecy and indeterminacy. The case of *Gundy* and a new bench ideology show that the Supreme Court is willing to limit congressional delegation should a judicial challenge arise. The Supreme Court ruling against the AUMF on the grounds it violates nondelegation would serve as a durable check to limit executive overreach and contain both present and future instances of intervention and militarism.

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Healing, Not Prison: Analyzing Mental Health Courts as an Alternative to Prison and as a Method to Reduce Recidivism

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Abstract:

  Mental health and drug treatment courts have a substantially positive effect on instances of recidivism in non-violent offenders in the criminal justice system. A significant portion of the prison population in the United States suffers from serious mental illness (SMI); due to the deinstitutionalization of mental health treatment, prisons often end up being the only treatment option for people with SMI or substance abuse disorders. Policy is needed to treat the issues surrounding mental illness instead of punishing them. Incarceration is not the answer for people with mental health problems. Instead of punishment, a restorative model of justice can be implemented in the form of alternative courts that reduce recidivism for non-violent offenders with mental illness. The policy which could accomplish this is the expansion of mental health and drug treatment courts. To argue this point, this policy paper will provide a brief history of mental illness deinstitutionalization and explore the basic problems of mental health and substance abuse for people in the criminal justice system. The paper will summarize the basics of mental health court (MHC) functions and examples of MHCs in action are detailed alongside evidence of their efficacy. Potential opposition and drawbacks are explored, and additional policy recommendations for supplementing MHC programs are presented.

Keywords: recidivism, court, mental illness, substance abuse, criminal justice, incarceration

Introduction

Mental health disorders, such as depression and substance abuse disorder, can have devastating impacts on one's everyday functioning. Anyone who has experienced these problems or has known someone who has can understand that they can make confronting life's problems very difficult. The reality of imprisonment and the social problems former prisoners face can compound mental health problems and lead to recidivism – reoffending and returning to prison. A large portion of prisoners face some form of Serious Mental Illness (SMI), defined by the National Institute of Mental Health as "a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities" (2022). In one report, 37% of prison inmates and 44% of jail inmates had been told they had a mental health disorder by a mental health professional (Bronson & Berzofsky, 2017). An alternative method to treat these inmates without prison time would help to alleviate both the social problems formerly imprisoned people face as well as reduce the massive number of incarcerated people in the United States. The use of mental health courts (MHCs) is a superior alternative to prison time for offenders whose offenses are related to their mental illness. Many individuals involved in the criminal justice system suffer from mental illnesses and social problems that can be treated by mental health court programs (Almquist & Dodd, 2009). While these systems have many areas to improve and research should be continued to build upon them, MHCs are shown to reduce recidivism and increase wellbeing in participants.

Background

In the 1960s, President Kennedy signed into law a mandate to de-institutionalize mental health facilities. This de-institutionalization meant that people formerly institutionalized in inpatient psychiatric facilities were sent to live in the community while receiving outpatient mental health treatment. The people who formerly required inpatient treatment would not find the same level of care in the community, which led to a rise in people with mental illnesses being incarcerated. The steady rise in prison rates has led to a gap in the system that can be filled by MHCs. Regarding the advent of MHCs, Roberts states "The need for MHC can be directly connected to the deinstitutionalization of psychiatric hospitals roughly 40 years ago, a social movement aimed at releasing patients living with mental illness from deplorable conditions in state psychiatric hospitals and transitioning them to community mental health centers to provide quality treatment" (2017). According to this viewpoint, while many people were freed from flawed psychiatric hospitals, the resources needed for living in the community such as housing, medical, and mental health care were not made available to many former patients. Because of this, many of these patients were simply institutionalized in another way – through prison.

The proportion of incarcerated people who suffer from SMI is very large. According to the Treatment Advocacy Center, "in every county in the United States with both a county jail and a county psychiatric facility, more seriously mentally ill individuals are incarcerated than hospitalized" (2016). The Center's report estimates 356,000 people who were seriously mentally ill were incarcerated as of 2012 (Torrey et al, 2014). This is a social problem that can self- perpetuate. Research has shown that inmates in prisons have a significantly higher rate of SMI illness than the general population, with rates of 5.6% in the general population (Substance Abuse and Mental Health Services Administration, 2021) and 16%-24% in prisons (Bradley- Engen et al, 2010). In addition, rates of jail recidivism are higher for people suffering from SMI (Wilson et al, 2011).

One solution that can reduce both rates of incarceration and recidivism for offenders suffering from SMI is MHC programs. The first MHCs emerged in the 1990s, and the programs proliferated by the 2000s (BJA, 2008). These programs offer participants the chance to avoid incarceration if they take part in treatment. MHCs function through connecting participants to mental health treatment and other services and helping them avoid incarceration and recidivism. MHCs involve both stakeholders, or the team of professionals, judicial staff, and case managers, as well as the participants themselves in development of a treatment program. This plan can include service provision from mental health care providers and resources from social programs as well as supervision.

The goal of these court programs is to treat the problem of crime as a social issue instead of a problem of the individual. As such, they include an understanding of the interlocking social problems surrounding criminal behavior. According to one study on drug treatment courts, these problems can include lack of housing, income inequality, and unemployment (Rezansoff et al, 2015). Mental health and drug treatment courts seek to alleviate these underlying social problems in order to reduce the factors that serve as precursors to criminal behavior and incarceration.

General Characteristics of MHCs

According to the Bureau of Justice Assistance's *Mental Health Courts: A Guide to Policy and Practice,* authored by Almquist and Dodd, MHCs have wide variability in the way programs are structured and implemented due to their local nature. However, several characteristics can be ascribed to MHCs in general – among these are their design and function, and what research suggests about outcomes from participants (Almquist & Dodd, 2009). Mental health courts are designed for use by participants who are suffering from SMI and/or substance abuse disorders. They tend to utilize larger teams of individuals for support than normal criminal courts, and these teams serve to support the participants through treatment and recovery – they include the judges, probation officers, attorneys, case managers, and mental health personnel. The team members can refer participants to necessary support services and resources effectively, and sanctions and rewards are provided to participants to increase motivation and participation through to the end of the programs (Almquist & Dodd, 2009).

Almquist and Dodd also lay out several generalized outcomes that research has shown MHCs can achieve, despite the widely variable implementation of programs. Among their established outcomes are lower rates of recidivism for participants, citing a study in San Francisco's behavioral health court which found the risk of violent criminal charges for graduates 55% lower than comparable groups (Almquist & Dodd, 2009). What the studies explored by Almquist & Dodd represent is the ability of MHCs to keep their graduates from returning to jail or prison more effectively than criminal courts.

Significance of MHCs in the Criminal Justice System

The social costs associated with MHCs are essential in recognizing the value of implementing them as a solution for reducing participant incarceration. As Almquist & Dodd discussed, MHCs have the potential to lower these social costs for participants who experience SMI by lowering funds spent on courts, corrections, and law enforcement (2009). Inmates who experience SMI have been proven to be more costly and are imprisoned longer than inmates who do not, and they suffer from greater rates of issues in behavioral management and likelihood of suicide (Treatment Advocacy Center, 2016). These problems are avoidable. While MHCs are optional programs for people in the criminal justice system, every individual who avoids incarceration and/or a criminal record through the completion of these programs is a reduction in both human suffering and operational costs. A study comparing 105 participants in MHCs to a control group of eligible nonparticipants found that MHC participation saved $1,411,020 over 12 months post-MHC participation (Kubiak et al, 2015). One study on the prevalence of mental illnesses in prisons noted that there is "[...]broad consensus that jails are not the optimal settings to provide acute psychiatric treatment" and noted that "many communities have instituted mechanisms to divert individuals with SMI from the front door of the jail to community-based services or have established linkages to services by way of transition planning at the back door" (Steadman, 2009). These conclusions show that incarceration is not the answer to mental health problems in society. As such, MHCs which help participants who have SMI linked to their offenses avoid incarceration can provide a better alternative that treats the root problem the participants experience.

Another study suggests that deep-seated social problems in mental health and substance abuse lead to juvenile delinquency and can create persistent issues with the criminal justice system for people. According to this research, criminal issues are recurrent, stating that "serious psychosocial problems in individuals with a history of past juvenile delinquency could be stimulated cyclically, severely increasing the risk of recidivism" (Basto-Pereira, 2018). This means that without intervention, the cycle of psychosocial dysfunction many young offenders experience will self-perpetuate into adulthood. MHCs can serve as one intervention to break this cycle by preventing incarceration in the first place and putting participants on a treatment plan.

It must also be noted that part of MHC effectiveness is due to the combination of services involved in the programs. The programs holistically provide referrals, mental health treatment, and connection to community resources and social programs. However, these interventions in isolation will not ensure participant completion of an MHC program. For instance, connecting to available resources alone does not reduce recidivism. In a study on expedited enrollment in Medicaid after release from prison, researchers concluded that while the quicker enrollment did increase the use of community health services that otherwise wouldn't be utilized by past offenders with SMI, with 69% of participants utilizing outpatient services in a 12 month period compared to 37% of the control group, it did not show a significant reduction of recidivism – participants were in fact 13 percent more likely to be referred to jail and 7 percent more likely to be admitted to prison than the control group (Morrissey et al, 2016). This would indicate that merely having these resources available is not enough. Thus, the goal of MHC programs should be to include these things as parts of a whole treatment package to reduce recidivism most effectively for participants.

MHCs in Action

In a 2012 study from the American Journal of Criminal Justice, researchers examined recidivism rates for participants with SMI and discovered that those who completed the mental health court program had a rearrest rate of 14.5% versus 38% for those who terminated the program early (Dirks-Linhorst et al, 2012). This study focused on participants from the St. Louis County Municipal Mental Health Court (MMHC). The MMHC has counselors and case managers which provide their services to the court, and participants involved were accused only of lower-level crimes similar to state misdemeanors. This particular program connects participants with mental health services that are available to everyone, but it does not provide funding to participants to pay for said services. According to the study, "defendants who successfully complete the program typically have their municipal charges dropped, while defendants who are unsuccessful (i.e., negatively terminated) have a conviction on their record, pay a fine, and, in a limited number of cases, serve a jail term of up to 1 year" (Dirks-Linhorts et al, 2012). This program's main benefit is that participants receive case management to help them acquire resources in addition to avoiding a criminal record.

A case study in Sacramento discovered similar benefits to the researchers in St. Louis. According to Yuan and Capriotti, those suffering from mental illness who participate in MHCs have lower post-court and rearrest rates and lower severity of offenses that do occur (2019). In the Sacramento MHC program, offenders suffering from mental illness have their mental health issues addressed through medication and therapy and have assistance with substance abuse problems. The participants are still convicted of offenses but avoid sentencing. If the offenders complete the program they are not incarcerated (Yuan & Capriotti, 2019). The Sacramento study

involved 71 participants over the course of 2012 to 2014 and concluded that "MHCs are effective alternatives to traditional courts for defendants with mental illnesses that are directly relevant to their offenses" (Yuan & Capriotti, 2019). Yuan and Capriotti also surveyed participants for qualitative results in which they discovered consistent themes of participants feeling more positively toward the courts and the people involved in them, as well as improved relationships with family members and increased community involvement (2019). This provides further backup to the body of evidence that MHCs should be expanded in number and available resources.

In addition to the positive quantitative findings regarding reduced recidivism, Yuan also discusses positive qualitative results for the Sacramento MHC participants. The stakeholders involved, reported that the MHC program was good for both the public and the participants. The participants thought that working relationships with the MHC team were good, and stakeholders reported that the mental health assistance was part of the participants success (Yuan, 2019). Both the qualitative and quantitative conclusions from this case study indicate that the Sacramento MHC is a success for its participants and the stakeholders who work with them.

Type of Offense

One thing that is important to consider in choosing participants for MHCs is the participant's offense type. According to one study by Ray et al, the type of offense significantly affected the success rates, including time served in jail, for participants in MHCs (Ray, 2015). This study concluded that the issue with MHCs is not whether they work but for whom are they most effective. Ray states that MHCs are most successful "[...]in working with felons and doing so can lead to the greatest reductions in the use of criminal justice resources" (Ray, 2015). This seems to indicate that MHCs are less effective for misdemeanor offenses, but the authors note that MHC programs could be modified by changing check-in times and frequencies for participants who have lower-level offenses and differences in mental illness diagnoses. In addition, the authors note that additional community resources should be provided in general for people involved in the criminal justice system to reduce community problems with crime.

Challenges for MHC

While MHCs have been found to reduce recidivism for those who complete the programs, there are those who challenge their use or findings. Of note in Yuan's Sacramento case study, MHCs are effective when the offenses are directly related to the mental illnesses suffered by participants (Yuan, 2019). If participants have mental health issues that are unrelated to the criminal charges they are dealing with, then MHCs may not directly address the root problem of the crime committed.

Other challenges for MHCs include lack of funding and resources. McNeil and Binder, in a study interviewing 43 stakeholders in MHC programs, found that professionals involved in MHCs thought that there could be improvements with things like the participant selection process, measures of success and effectiveness, and access to treatment (2010). The stakeholders also expressed concern that MHCs could reduce access to treatment for those not participating, and having limited resources was a concern brought up by multiple interviewees. The stakeholders suggested that expanding resources made available to MHCs would be a major way to improve them from their current state (McNeil & Binder, 2010).

In the study from Ray et al, the simple solution was to modify the current MHC programs as well as provide additional community resources for individuals with SMI and/or problems with the criminal justice system (2015). In one study of SMI rates in the Washington State prison system, researchers concluded that the problem was not that de-institutionalization has led to the use of prisons as an alternative to psychiatric institutions. Bradley-Engen et al state that their findings "... help to temper alarmist claims that prisons are used increasingly as new asylums for persons with SMI. On the other hand, the findings clearly indicate that more and more persons with SMI—especially those with a co-occurring substance abuse disorder—are entering state prisons each year" (2010). While this statement indicates that the primary problem is not de- institutionalization, the author's conclusions regarding the increase in SMI in prisons still requires better solutions; one such solution is the wider implementation of MHCs.

Another issue with MHCs is potential moral concerns voiced by some mental health professionals. In a piece for Vox, Jillian Weinberger spoke to a psychiatrist, Dr. Irene Hurford, regarding a MHC in Philadelphia. In Dr. Hurford's opinion, participants in programs such as the one in the article have a desire to appear to have improved more than they may have in reality. According to Dr. Hurford, participants want to avoid disappointing those they may see as authority figures – instead, she believed that a superior program would be an

outpatient program provided well before the criminal justice system is involved (Weinberger, 2017).

Others have questioned whether the widespread implementation of MHCs actually increases the availability of resources for participants. One column in the journal *Psychiatric Services* says that a potential problem with MHC policy is that instead of bringing services to underserved populations, they may simply put participants at the front of the line (Steadman et al, 2001). This suggests a wider systemic issue wherein MHC participants may be provided resources that would otherwise have gone to other underserved individuals. While outside the scope of this paper, this systemic problem suggests larger availability of social resources could be necessary for all underserved populations, including those involved in MHCs.

Supplemental Policy Recommendations – Mindfulness

While MHCs have been proven to reduce recidivism, they do not eliminate it and other solutions could be posited to help the problem further. One potential solution is an increase in mental health services and other constructive programs within prisons. MHCs keep some people from being incarcerated, but other programs could be implemented within prisons for those who either choose not to participate or fail to complete the MHC program. One such solution is the introduction of educational resource programs as used in the documentary film *Doing Time, Doing Vipassana*. This documentary recorded the implementation of a mindfulness meditation program in India in which imprisoned people at a high-security prison were taught Vipassana meditation techniques. This had qualitative and quantitative effects on those involved in the program, which prisoners reporting subjective wellbeing improvement as well as lower rates of violence and recidivism (Menahemi, 1997). Implementation of programs such as this in the United States may be worthwhile as a supplement or alternative for MHCs.

The mindfulness-based intervention work done in *Doing Vipassana* is also backed up academic literature. The use of mindfulness interventions like Vipassana meditation helps improve the outcomes for participants and reduce recidivism by helping them cope with experiential aspects of mental illness; according to one group of researchers studying the use of mindfulness-based interventions in prisons, "Mindfulness interventions seek to limit efforts to avoid internal and external experience by fostering nonjudgmental acceptance of moment-to- moment experiences. This may help to prevent relapse by decreasing the perceived need to avoid painful aspects of reality" (Simpson et al, 2007). The authors of the study indicate that

much of the problem experienced by incarcerated individuals with comorbid PTSD and SUD is that they seek to escape the experience of PTSD through substance abuse, which in turn leads to higher rates of incarceration and recidivism. These can be reduced using mindfulness interventions.

Supplemental Policy Recommendations – Reform and Education

In addition to the wider adoption of mindfulness interventions and training on coping skills, the United States is currently seeing growth in other programs that seek to reduce recidivism. Since the problems with recidivism are so often related to problems in re-adapting to life outside of prison and lack of social resources, many of these reforms are intended to provide support and the ability to self-sustain for incarcerated individuals. Among the proposed reforms being adopted by the US Department of Justice are educational programs, jobs programs, and increased mental health treatment during incarceration (justice.gov, 2017).

A major solution for recidivism with quantitative research backing is an increase in education for incarcerated populations. According to a RAND Corporation study contracted by the Bureau of Justice Assistance, receiving any level of correctional education while incarcerated, from GED to postsecondary programs, reduced recidivism and was cost effective (Davis et al, 2013). This educational support within prisons could help reduce recidivism and increase self-sufficiency for formerly incarcerated individuals. In addition, job training programs can also help reduce recidivism. The Department of Justice website states that "inmates who worked in prison industries were 24 percent less likely to recidivate and 14 percent more likely to be gainfully employed after release from custody than other inmates" (justice.gov, 2017). This evidence proves that educational and training programs should be expanded within prison to help those who are unable or choose not to participate in MHC programs.

Conclusion

While mental health and drug treatment courts do not entirely eliminate instances of recidivism for participants, they have been proven to reduce the problem for those who participate in the program. MHCs can serve as a valuable alternative to incarceration and a criminal record for some participants, though there are improvements to the system that can and should be made. Possible systemic MHC improvements include narrowing the participant selection

process to ensure that only those whose offenses are directly related to their mental illness are chosen as well as expanding the resources allotted to the MHC programs. In addition, alternative resources should be researched and implemented for those who choose not to participate in these programs, as rates of SMI in United States prisons continue to increase. Alternative programs within prisons could be made available, such as mindfulness-based interventions. Additionally, for those who are incarcerated, experience SMI, and either choose not to participate or are ineligible for MHC programs, resources such as education and career training should be made available, as they are also shown to reduce recidivism.

SMI and crime are problems we face as a society that are not likely to be abolished with one simple solution. There are many challenges faced by individuals who find themselves in the criminal justice system, and the goals of our society should be to help reform offenders and reduce recidivism as much as possible. Programs which reduce recidivism pay dividends in saving time and effort within the courts, prison, and mental health systems. In addition, the qualitative increases to human life and wellbeing cannot be ignored. MHCs serve as an example of a person-centered and evidence-based system that can improve the wellbeing of both the individual and society. Despite the challenges faced, MHC programs are worth expanding for offenders with SMI in order to improve wellbeing outcomes, reduce rates of behavioral issues and suicide in prisons, and reduce the ever-increasing amount of people incarcerated.

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The Economic Downfall of Increased Climate Catastrophes and Unmitigated Insurance Risk

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Abstract:

   Catastrophic climate events have significantly increased in both magnitude and frequency. The effects of these events on both the insurance industry and the greater economy are manifold. This paper investigates the destruction caused by wildfires and hurricanes and the public and private reaction. Wildfires are of high frequency and low magnitude, whereas hurricanes are of low frequency and high magnitude. As such, each of these events illustrate different aspects of climate risk that need to be addressed. I compare these events and the following insurance reaction to better understand the challenges we will continue to face as climate events increase.

Keywords: insurance, climate change, wildfire, hurricane, climate risk, risk management

Introduction

Scholars and policymakers have long studied the effects of climate change. However, the manifold economic repercussions are less understood and still not priced into most markets. The steady increase in temperatures over the past half century has begun unleashing significant weather and climate events across the world. Catastrophic events range from increased flooding and soil erosion to extreme wildfires and ocean acidification. Total aggregate cost pricing of these events is inestimable, as the negative externalities will likely affect generations to come. As the frequency of catastrophic events increases, understanding how insurance companies and policymakers can cushion and protect the economy is paramount.

Past wildfires and hurricanes offer a unique insight into how well the public and private sectors have handled the increase in both frequency and magnitude of catastrophic climate events. Hurricanes have been the highest magnitude and most expensive natural disaster in America (A. B. Smith, 2020). Once perceived as entirely random and low risk, they are now expected to become more frequent and increasingly destructive. Wildfires are generally not as financially damaging as hurricanes but have increased dramatically in both size and seasonal frequency over the past twenty years. Thus, the insurance and policy reaction to wildfires and hurricanes sheds light and offers both warnings and solutions to insuring the increasing climate catastrophes.

These solutions are imperative to securing a stable insurance market and by extension, a healthy economy. Insurance companies function by redistributing risk in an economy. By doing so, individuals and companies can take risks and continue investing without the need to keep huge amounts of money on hand as a rainy day fund. If increased climate catastrophe causes insurers to financially suffer or pull out from an area, the effects are manifold, such as dissuading home buying and disincentivizing local business growth. As investment slows, the ripple effect can hinder the entire regional economy.

This paper discusses what climate events are insurable, the importance of protecting insurance access, and how problems posed from past wildfires and hurricanes are applicable when

mitigating future insurance fiascos. Finally, this paper will offer some rudimentary policy changes that could lessen the impact of the predicted increase in catastrophic climate events.

Understanding Insurable Climate Risk

The magnitude and costs of damage created by wildfires and hurricanes are unparalleled in the modern world (Watson). The unprecedented dramatic increase in these climate events has put a significant strain on insurance providers. Hurricanes have not yet reached the point to where they are as dependably destructive on a seasonal basis as wildfires are; however, climate models show hurricane destruction becoming more common and reliably seasonal (D. Smith et al., 2010). Thus, understanding the success and failures in mitigating wildfire damage may allow us foresight which can be applied to hurricanes and other climate events as they tend towards a higher frequency. The first quandary is differentiating between types of catastrophes, as well as building risk models better equipped to handle an increase in the frequency of large magnitude events while supporting policies that minimize the negative externalities of such events.
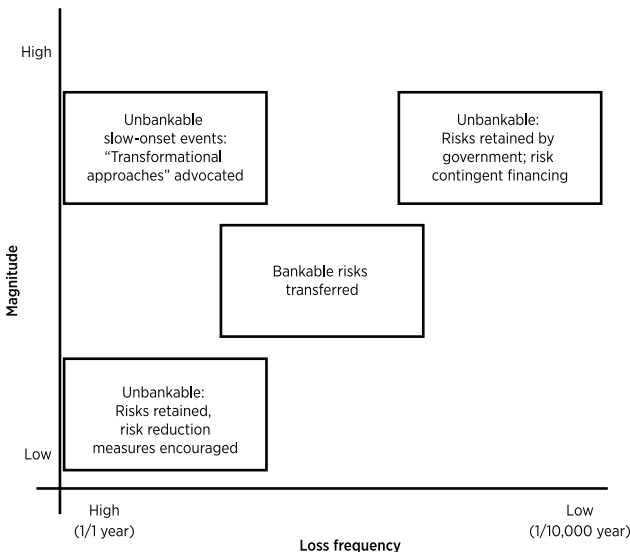

Figure 1: This figure offers a general categorization of types of risk. Magnitude describes the size of the event and loss frequency describes how often that event might occur (Christophers et al., 2020).

Figure 1 offers an elementary categorization of climate related catastrophe risk. The unbankable, slow onset events might include sea level rise destroying an island nation or ocean acidification and pollution decimating a fish population that is essential to an industry. Disasters like these have an extremely high magnitude but a low frequency and are unstoppable, thus being uninsurable. These are still losses that

a population will need to bear, however, as they are of very low frequency and are predictable, they break a main tenant of insurable risk: that it must be random and equally distributed amongst a population. Risks like these are generally in the hands of governments and organizations to help mitigate.

Wildfires and hurricanes are too quick and random to fit in this category, so they would lie in the "Bankable risks transferred" section in the middle of the chart, along with other natural events such as floods, landslides, and heatwaves. These events are of large magnitude, but not so large they can't be insured (Christophers et al., 2020). Temporarily, they are not excessively frequent and not incredibly rare. Although these events generally affect a high risk population, they do so in such a way that is random within that population. As long as these events do not become significantly more seasonal or predictable, insurers can increase the risk pool size and insure these events.

California Wildfires, Hurricanes, and the Surrounding Insurance Fiasco

Wildfires in particular offer an interesting insight into how insurance companies handle the increased frequency and magnitude of climate events. The past ten years have contained eight of the worst and most expensive wildfires ever recorded (Krishnakumar and Kannan, n.d.). 2017 was the most destructive and expensive wildfire season of all time. Over the course of this season in California alone, there was a total of $14 billion spent on direct costs, including insurance claims and wildfire suppression. The estimated overall costs are roughly 100 billion when including the short term negative externalities (*Full Community Costs of Wildfire*, 2018). This estimate does not include the long term health costs, which could cost up to four times as much. In relation to figure one, wildfire events are trending away from the "Bankable risks transferred" section and quickly approaching the "Unbankable" territory.

In reaction to the dramatic push towards "Unbankable" territory, insurance companies have been scrambling to decrease their exposure and often times completely end business in fire prone areas. Following the record-breaking 2017 fire season, there was a total of 167,570 issuer led non-renewals (when the insurance company refuses to renew a contract). Roughly half of these occurred in fire prone, high risk zip codes (Friedman, 2019a).

Non-renewals negatively impact both the homeowner and the local housing market. Mortgage lenders require homes to be insured from catastrophe (*Can I Own a Home without Homeowners Insurance?* | III, 2022). If a California

homeowner is unable to obtain coverage following a non-renewal, they are forced to turn to the insurer of last resort: the California Fair plan. This generally costs the homeowner hundreds of dollars per month extra and drives the value of the home down.

The Fair plan, by definition, is a temporary solution. This plan was set up following the riots and brush fires in the 1960's as the insurer of last resort in California. Their purpose is to assist the voluntary insurance market in areas of high risk where a small handful of private insurers could not reasonably carry the financial risk. It can provide for only a small portion of insurance needs, is only eligible for those turned down by all other insurance, and only applies to those in high risk areas. Homeowners with more than three million in liabilities or those seeking more than fire insurance need to look elsewhere or add in a supplementary plan. As such, the cost of the Fair plan insurance is not competitive, but it is vastly superior to not having insurance.

As insurers continued to struggle with the increased risk of California wildfires and the associated pricing, many continued dropping coverage or steeply increasing their insurance rates. In 2020, the California Insurance Commission passed a one year moratorium on insurance companies dropping policies in fire prone areas (Friedman, 2019b). This has provided a temporary relief to the roughly 800,000 households at risk, and to the FAIR plan, which saw a rapid increase in growth since 2017. This moratorium acts as a band aid on a bleeding wound. Although it is helping thousands of homeowners stay under coverage, the ripples of the insurance uncertainties are being felt elsewhere throughout the California economy.

Many of the recent reactive insurance policies are set up to protect those from losing coverage as well as to offer emergency and last resort coverage. However, these policies do not address the growing issues in the housing market in high risk areas. With the aggressive increase in fire seasons, not only are buyers less inclined to live in a high risk area, but the costs of insurance disincentivize home buyers and makes the cost to entry even higher. The California Realtors Association found in a poll of their members "34% had a potential buyer decide not to buy because of the difficulty of finding fire insurance" (Friedman, 2020). Thus, not only are current homeowners burdened with increasingly high insurance costs, but the value of their home will decrease significantly as buying pressure eases in fire prone areas.

California's progressively destructive fire seasons have had a silver lining. The California government and insurance companies have been able to ease into the economic turmoil of seasonal catastrophes—other states have not had the luxury. In 1994, Hurricane Andrew rolled through Florida. At the time, it was the largest natural disaster ever recorded in America. Following the damage, nine insurance companies went bankrupt and many others took monumental losses (Navarro, 1996). Allstate, for example, "Paid out $1.9 billion, $500 million more than it had made in profits from its Florida operations from all types of insurance and investment income on those funds over the 53 years it had been in business" (*Spotlight on: Catastrophes - Insurance Issues* | III, 2020). Since then, Florida has created an insurance pool to cover future disasters as an insurer of last resort, much like the FAIR plan in California. To date, 32 other states have plans like this.

Although these "Insurer of last resort plans" have thus far been sufficient to hedge against most climate catastrophes, many worry in the long run that the current insurance system may buckle under the weight of increased climate catastrophe severity and frequency. The former CEO of AXA insurance warned, "A [2 degrees Celsius] world might be insurable, a [4 degrees Celsius] world certainly would not be" (Tooze, 2019). Our current systems have not accounted for even a 1 degree Celsius increase and thus may not be equipped to handle further possible large scale disasters.

The Economic Threat of Increased Catastrophes

If the insurance company aftermath of Hurricane Andrew provides any forewarning, our current insurance system is still quite underprepared to handle high magnitude climate events. The financial statistics of recent years shows the severity of the issue; the current insurance definition of a catastrophe is, "An event where claims surpass 25 million" (*Spotlight on: Catastrophes - Insurance Issues* | III, 2020). In 2019, worldwide catastrophe costs reached 71 billion from around 409 natural disasters. Two Japanese typhoons were the largest events in 2019. They each caused roughly 7 billion in damages. Overall, this distribution is fairly healthy and insurable. However, megaevents are expected to become increasingly common. Hurricane Katrina, for example, caused insured damages of 41.1 billion, Hurricane Sandy cost roughly 25 billion. Wildfire damage in 2020 cost roughly 16.5 billion (*Reviewing the Horrid Global 2020 Wildfire Season » Yale Climate Connections*, 2021). Insurance exists as a shock absorber to the economy, and reinsurance absorbs the shock to primary insurance. When both shock absorbers are overloaded, common individuals and companies are faced with accounting for potentially monumental damages. The following economic effects are severe.

This problem is twofold. First, catastrophic climate events are increasing in magnitude and frequency at an alarming rate. Second, risks have increased and they have not been accounted for in the larger financial markets. Although states have taken initiatives towards creating larger insurance

pools and spreading out the risk of their catastrophes, such as the FAIR plan, reinsurers are still significantly overexposed. S&P Global ran a model which looked at 19 of the top 21 reinsurers. The findings suggested, "That reinsurers' estimates of their exposure to natural catastrophe risk—and therefore physical climate risk—could be underestimated by 33%--50%"(Global Reinsurers Grapple With Climate Change Risks, 2021). The study further showed that one third of those reinsurers put climate change as a pricing aspect in their models, and it generally reflected only a small aspect of pricing (*Global Reinsurers Grapple With Climate Change Risks*, 2021).

Ignoring climate risk is negligent pricing, this is not the first time the public has seen the insurance industry engage in negligent pricing behavior. Prior to the 2008 recession, insurance companies were over-exposing themselves in the housing market. The posterchild of this financial mismanagement was American Insurance Global (AIG) and their near collapse. In short, AIG sold excessive amounts of insurance on faulty housing market products, as the housing market collapsed, these derivative products rose in value and nearly sent AIG into bankruptcy. The Federal Reserve of New York ended up bailing out AIG with an 85 billion dollar loan (*What Went Wrong at AIG?*, 2015).

The costs to society of an insurance company going bankrupt are huge. Insurers do not only exist to protect the homeowner, but also the bank. If an individual's home is leveled by an extreme disaster and insurance does not reimburse them for the event, this is likely to result in the individual taking a several hundred thousand dollar loss, defaulting on their mortgage payment and often leading to bankruptcy. As the world learned in 2008, high mortgage default rates cause a ripple effect and extensive damage (Colin McArthur, 2017).

Asking insurance companies to properly price their risk is not asking the impossible, but certainly the improbable. Insurance companies are for-profit and compete in the open market. As such, they are incentivized to maximize profits while minimizing liabilities. Overlooking tail risks to capture a larger market share may cause short term profits, but will almost certainly lead to a long term fallout, such as AIG in 2008 or many of the insurance companies in Florida prior to Hurricane Andrew.

Solutions

Following the 2008 recession, the U.S. government passed the Dodd-Frank Act. Among other things, this act required large financial institutions to submit to government stress testing and monitoring. Stress testing is done to ensure large banks have their risk well-mitigated and the required capital should adverse economic scenarios present themselves. This act should be expanded to insurers and reinsurers to include and specify climate change induced risk and require the insurance institutions prove they can still afford to operate should extremely adverse climate catastrophes strike.

Once it is ensured that insurers can afford payouts in an extreme climate year, the next step is understanding the impact an increase in insurance rates may have on a population. In California, as discussed above, individuals in high fire risk areas are forced to pay a premium on home owners insurance. This deters buyers, cools the housing market, and lowers the home values. Research should investigate the groups most affected by these potential adverse economic scenarios spurred by increased insurance costs and policy needs to be enacted to cushion these groups.

Conclusion

The risks from climate change are manifold. The increase of climate catastrophes present a ticking time bomb to the insurance industry and the world economy if policy is not put in place to mitigate it. Although large insurance pool plans such as the California FAIR plan serve to limit the burden on insurance companies, these plans have limitations. The reinsurance industry is put in place to assist when the insurance industry is overwhelmed. However, studies show the reinsurance industry does not have the required capital to perform as necessary should exceptionally adverse climate catastrophes occur. At this point in time, should responsible steps be taken to mitigate the unavoidable dramatic increase in climate risk, our insurance industry can develop the robustness to withstand these events. However, if policymakers and private insurers continue to underestimate climate risk, the future of the world economy will be increasingly reliant on unmitigated risk.

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PUBLIC OFFICIAL CONTRIBUTIONS

Utah's Inaugural Independent Redistricting Commission

Rex L Facer II and Karen Hale

In 2018, in an effort to encourage transparency and curb gerrymandering in the once-in-every-10-years legislative process of drawing equally populated political districts, Utah voters supported and passed Proposition 4. The successful, citizen-led ballot initiative created an independent redistricting commission with a goal to draw lines that did not favor one party or candidate over another, but instead were shaped by guiding principles.

The passage of Prop 4 was a long-awaited win for grassroots organizers who had worked for years – even decades – to pass an initiative that would establish a fair redistricting process in Utah. With the maxim of "Voters should pick their politicians; politicians shouldn't pick their voters," individuals, civic groups, and the lead pro-initiative organization Better Boundaries, worked throughout the state to promote the creation of an independent, standards-driven redistricting commission that would work with the Utah public to draw and recommend maps for the legislature's consideration.

Similar efforts have taken place across the nation. For the 2020 redistricting cycle (each cycle is coordinated with the release of population numbers from the decennial U.S. Census), 25 states boasted redistricting commissions, some of which had been created through a citizen's initiative. While some commissions are vested with primary responsibility for redistricting, others are advisory to their state legislatures; some are created only as back-up commissions in the case redistricting maps cannot be completed by the legislature (NCSL 2019, p. 91).

Citing concern that the language of the 2018 Prop 4 ballot measure (which became law with its passage) restricted the legislature's constitutional duty to oversee redistricting, Utah lawmakers, in a declared "compromise" with Better Boundaries representatives, repealed the statute in 2020 and enacted Senate Bill 200, "Redistricting Amendments." The new language confirmed the Utah Independent Redistricting Commission's advisory role; allowed for the legislature to maintain its own redistricting committee; and removed requirements for lawmaker accountability and transparency.

With the enactment of SB 200, the legislative redistricting committee would not be required to publicly defend and explain its selection of maps nor claim adherence to specific redistricting standards and requirements, while the Utah Independent Redistricting Commission (in observance of the principles of Prop 4) would be required to adopt a set of standards outlined in state code and accompany its map recommendations with a "detailed written report describing each map's adherence to the commission's redistricting standards and requirements" (Utah Code Annotated § 20A-20-303). The commission, if it desired, would be allowed to adopt standards that allow for the use of partisan political data and residential addresses of incumbents, candidates, or prospective candidates (Utah Code Annotated § 20A-20-302). However, the use of partisan political information and candidate addresses was contrary to the prohibitions listed in Prop 4 for both the legislature and the commission. The commission explicitly chose to not use partisan political information and candidate addresses, while the legislature explicitly chose to use incumbent addresses.

The Commission

In February 2021, the seven-member redistricting commission was appointed. The governor appointed the chair; the Senate President and House Speaker each appointed a Republican member and jointly appointed an unaffiliated political party member. Senate and House Democratic leaders each appointed a Democratic member and jointly appointed an unaffiliated political party member[1]. Appointed commissioners could not be lobbyists, candidates, elected office holders, or political party office holders; could not be employed by political parties or campaigns, Congress, the legislature, or elected officials; and could not hold any position that reports directly to an elected official or legislative or gubernatorial appointee.

Upon appointment, the chair called the commission together. Commissioners adopted a code of ethics and took an oath to faithfully discharge their duties in an "independent, impartial, honest, and transparent manner" (Utah Code Annotated § 20A-20-201).

Although map drawing would be postponed because of late census numbers (March 31 was the historic release date of census numbers for redistricting; due to the COVID pandemic, the Census Bureau projected the 2021 release date for those numbers would be in mid-to-late August), commissioners met regularly in-person and virtually for public meetings throughout the spring and summer. With $1 million funding appropriated by the legislature, the commission worked to hire an executive director, staff, legal counsel, and a community outreach firm. Commissioners attended a national redistricting conference hosted by the National Conference of State Legislatures (NCSL) in Salt Lake City. Staff participated in community fairs and festivals throughout the state to educate attendees about the redistricting process, seek citizen input on communities of interest, and explain opportunities for further citizen engagement.

Redistricting criteria, some of which were presented in Prop 4 language and mandated in SB 200, were discussed, developed, and expanded. Before adoption, the proposed criteria were posted on the commission website, inviting public input. After deliberation, the commission unanimously adopted its mapping criteria, which included criteria mandated in statute:

1) specific population deviation for each type of map to be submitted; 2) district contiguity; 3) reasonable compactness; 4) preservation of communities of interest; 5) adherence, to the extent practicable, to natural, geographic, and human-designed boundaries; 6) preservation, to the extent practicable, of cores of prior districts; 7) minimization of division of municipalities and counties; and 8) boundary agreement, to the extent practicable, among the different map types (i.e. congressional, legislative, state school board districts). The commission also expanded the ninth criterion, *prohibition of the purposeful or undue favoring or disfavoring of an incumbent elected official, candidate or prospective candidate, or a political party,* to include *the prohibition of residential addresses of incumbents, candidates, or prospective candidates in creating its proposed maps* – an additional measure outlined in the original language of Proposition 4.

Maps

With the delivery of Census redistricting numbers on August 12 and the subsequent processing of those numbers for programming, the commission and staff began mapping. The chair had organized the commissioners into three map-drawing teams, each with a Democratic and Republican appointee. Staff and volunteer GIS specialists patiently taught and assisted commissioners on application of the mapping software. Dedicated to a transparent process, the commission live-streamed each mapping session on YouTube. Each draft of each type of map (congressional, house, senate, and state school board) was continually posted on the Commission's website with an invitation for public feedback. The public was also invited and encouraged to use online mapping tools to submit their own maps for consideration.

For two months, commission mapping teams regularly met for dozens of hours each week to evaluate public feedback and painstakingly create new maps that incorporated public sentiment and met not only constitutional and Voting Rights Act requirements, but also the commission's adopted criteria. Additionally, commissioners traveled throughout the state to host 15 public hearings (seven public hearings in specific regions were required in statute). Members of the commission also met with the Navajo Nation, local governments, school

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1   Rex L Facer II served as chair. Rob Bishop and Lyle Hillyard were Republican appointees. N. Jeffrey Baker was the unaffiliated appointee by the Republicans. Christine Durham and Karen Hale were Democratic appointees. William A. Thorne Jr. was the Democratic unaffiliated appointee. Karen Hale replaced Pat Jones who resigned for personal reasons in April 2021. Commissioner Bishop resigned October 25, 2021 citing a frustration with the makeup of the commission and disagreement with other commissioners' congressional mapping philosophies. To fill the vacancy due to Rob Bishop's resignation, Logan Wilde was appointed on October 29 – after the maps had been unanimously approved by the remaining six commissioners.

boards, and other organizations. The Legislative Redistricting Committee also held a series of public hearings across the state during this time period. There was some confusion by the public as to why there was a dual process. Nevertheless, there were significant differences between the public hearings of the commission and the legislative committee. For example, the commission published their maps as they were drafted and discussed those maps in their public hearings, while the legislative committee did not release their maps until November 5. With access to the commission's drafted maps, the public had opportunities to examine each map's impact on their communities and make concrete recommendations on how to improve each map. Commissioners reviewed the public's comments and sought to incorporate that feedback into the map-making process. The commission received over 2,000 comments and an additional 1,000 submissions identifying communities of interest.

In late-October, after lengthy discussion and deliberation, the commission unanimously approved a set of 12 maps to present to the legislature. The commission published the final set of approved maps on its website and set about finalizing the report that would be, in accordance with statutory requirements, delivered to the legislature along with the maps. On November 1, 2021 the commission then formally presented the maps and the report to the Legislative Redistricting Committee for consideration. In addition to the commission's presentation, there was substantial public comment at the Legislative Redistricting Committee's public hearing, with the vast majority of commenters both recognizing the transparent process of the commission and recommending the legislature's use of the maps developed by the commission.

The maps developed by the Legislative Redistricting Committee were first released to the public late in the evening on Friday, November 5, less than three full days before the committee's next public meeting on Monday, November 8. The maps were dramatically different from those submitted by the Independent Redistricting Commission. At the public hearing on Nov. 8, the public noted the committee's lack of transparency and again strongly encouraged the committee's adoption of the Independent Redistricting Commission maps. A later analysis by KSL and the Deseret News found that as legislators were considering the commission's maps and their own maps, the legislature received over 900 emails from individuals encouraging use of the independent commission maps. The legislature received emails from 11 individuals approving of the legislature's drawn maps (Dunphey and St. Clair 2022). Nevertheless, even with the overwhelming public

support of the commission's work, and despite the short time for public review of the legislative maps, the Legislative Redistricting Committee that day adopted the maps they had drawn. Notably, outside observers praised the work of the commission as being transparent and principled, and criticized the maps approved by the legislature as being cracked (where the voting power of an opposing party's supporters is divided across several districts, limiting opposing representation and contributing to less competitive districts) and extremely gerrymandered (e.g., Aemero et al. 2022; Brewer et al. 2021; Wasserman 2021).

While the commission's maps were not adopted, it is important to recognize that the commission functioned productively. Using a set of agreed upon and statutorily mandated criteria, the commission unanimously adopted a set of maps and earned the support of the public. One of the most notable of those criteria was to not purposefully or unduly favor or disfavor a candidate, potential candidate, or a political party. To that end the commission specifically chose to not use political data such as voting patterns or addresses of candidates or incumbents. Partisan information did not guide the commission's map drawing. The commission also worked in a bi-partisan, cooperative manner, avoiding the pitfalls of partisan divides that befell other commissions across the country (e.g., New York, Virginia, Connecticut, and Ohio) (Rakich 2022).[2] Ultimately, the work of the Utah Independent Redistricting Commission will be reviewed during the 2022 Legislative interim.

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[2]   Notably, Commissioner Rob Bishop, a Republican appointee, resigned just prior to the commission finalizing its set of maps. However, the remaining six commissioners, appointed by Republicans and Democrats, came together to unanimously adopt a set of maps.

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"The history of achievement is one long story of continued struggle against adversity and of courageous contest against overwhelming odds"

-Robert H. Hinckley