

OPEN WATER

**An Undergraduate Journal in
the Social Sciences**

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St. Mary's College of
Maryland**



MISSION

The aim of this journal is to create a forum for the expression and consideration of both central and marginal political issues through scholarly research and analysis. These topics should be of contemporary or future relevance, and evaluated within political, historical, economical, anthropological, or sociological contexts. This analysis should serve as a foundation upon which to base further discussion of domestic and international matters, and inspire meaningful participation in an enlightened debate of political issues. In providing undergraduates an open, non-partisan and structured context in which to put forth their ideas, this journal aspires to contribute to the composite value of knowledge from which well-reasoned and eclectic thought may spring.

Open Water is published annually, and is open to submissions from all students at St. Mary's College of Maryland.



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INTRODUCTION

“There are more ideas on earth than intellectuals imagine. And these ideas are more active, stronger, more resistant, and more passionate than ‘politicians’ think. We have to be there at the birth of ideas, the bursting outward of their force: not in books expressing them, but in events manifesting this force, in struggles carried on around ideas, for or against them. Ideas do not rule the world. But it is because the world has ideas...that it is not passively ruled by those who are its leaders or those who would like to teach it, once and for all, what it must think.”

- Michel Foucault -

All too often, we find ourselves caught in a false dichotomy between imagination and thought – a dualism often encapsulated in the juxtaposition of realism and idealism.

The reality of our circumstances, however, is entirely dependent on perception – imagination is, actually, the lens through which we interpret thought. The equivalence of ideas with reality and imagination with ideals places artificial constraints on innovation and creation, where we find ourselves seemingly bound by reality.

The goal of this journal was to create a new space for students to explore the issues that matter to them, unbound by convention and dogma. This first issue of *Open Water* established that space, but only began to define it.

This publication is left to future generations of students to share their insight and concern over social and political issues. It should continue to grow and evolve as a reflection of new ideas.

- Hannah Faddis, *Founding Editor of Open Water* -

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What impact has China's One-Child Policy had on China's Political and Social Culture?

Elisabeth Neu

Since its introduction in 1979, the One Child Policy has helped curb population growth in China, preventing the births of an estimated 300 million people.ⁱ Despite many successes, the policy has enhanced the cultural preference for sons and the extent to which couples will go to have a male child. In addition, the strict policies have fostered a political culture of secrecy, inaccuracy, and fear regarding fertility practices. This paper will examine the origins of the One Child Policy, its implementation, and the policy's effects on the region today.

Effects of the One Child Policy

First, the policy has led an increased gender imbalance in China's population through sex selective abortion, treatment bias, abandonment, and reports of infanticide. Tens of millions of men are entering their typical period of marriage and child rearing without any potential mates, causing many government officials and scholars to fear social unrest. Second, the policy has made it difficult to gauge both the true gender imbalance between males and females born since the policy's implementation *or* the actual size of China's population today. This is because many stillbirths, births soon followed by death, and live but unapproved births go unreported.

As a result of strict child bearing limitations and a cultural preference for sons, millions of female fetuses are aborted each year. At the same time, many "illegal" infants are shunted into orphanages or hidden from official reports. Underreporting has two main problems. First, government statistics become unreliable and may not give officials and scholars an accurate picture of the policy's true effects. Second, children who go unreported are effectively doomed to life as second-class citizens, hidden from the government, education, and health care.

Causes and Implementation of the One Child Policy

With all of these problems, one might inquire why the Chinese government implemented the policy in the first place or why it remains in effect. These questions are best solved by examining the time period building up to the policy's implementation. Between 1950 and 1970, the Chinese populations swelled from 540 million to 850 million.ⁱⁱ By the 1970s, this increase was expected to lead to even greater population expansion as the tens of millions of people born during this population boom began to enter their childbearing years. From 1970 to 1979, the Chinese government made its first

attempts to reduce fertility with the "long, late, and few" policy, which helped to halve the total fertility rate from 5.9 births per woman in 1970 to 2.7 in 1979.ⁱⁱⁱ Nevertheless, by the 1970s, China's population accounted for one quarter of the world's population, while the country only had seven percent of the planet's arable land.^{iv} The government decided to take more drastic action.

When it began in 1979, the Chinese government claimed that the One Child Policy was to be a short-term measure. The move was intended to shift China toward a small family culture, and population containment was deemed essential for economic reform and the improvement of living standards.^v Kane & Choi write, "The ideal of a one-child family implied that the majority would probably never meet it."^{vi} In line with this realization, the policy contains many components affecting different populations. For example, while a strict one child limit is typically imposed on couples in cities, there are several exceptions. Second children are permitted in cases of a second marriage where one partner has not had a child, if the first child has an abnormality or a condition that may reduce their life expectancy (requiring proof from a physician,) if the father is employed in a dangerous occupation such as mining, or if both spouses are only children.^{vii} It should be noted that this final factor will become more controversial as more and more Chinese people born at the beginning of the One Child Policy enter their child-bearing years.

In rural regions, a second child is often permitted after a spacing period of several years, though the exception only applies in certain regions if the first child is female, while government workers are excluded entirely.^{viii} As roughly seventy percent of the Chinese population resides in the countryside, the effect of this policy decision is that the one-child policy only applies to a small percentage of the overall population.^{ix} The policy even allows for couples to have a third child in some sparsely populated regions.^x Lastly, the policy does not apply to non-Han minorities living in China.^{xi}

The One-Child policy works in conjunction with several other policies designed to limit fertility. Late marriages and the previously addressed issue of child spacing also play roles in limiting the crude birth rate. Men residing in cities are not permitted to marry until the age of twenty-five, while women in cities must be twenty-three or older. These age limits are respectively two years lower in rural areas.^{xii} Contraception is also widespread, with eighty-seven percent of women using some form of birth control, primarily of long-term forms such as intra-uterine devices and sterilization.^{xiii} Nevertheless, despite all of these policies working together to curb population

control, many couples and women defy regulation, while enforcement of the penalties varies.

Problems with the Implementation of the One Child Policy and Fertility Reporting

The primary interest for the local government and for citizens is apparent compliance with state policies:

“In a context in which the number of children is determined by state policy and the desire for a son is strong, neither individuals nor birth planning cadres have great incentives to report births followed by infant deaths, births not approved by the planning system, or female births. To defy government imperatives and achieve their family target, couples may not report accurately on their fertility behavior. To meet the expectations of higher-level administrators, local birth planning officials may report the smallest possible number of births.” (Merli & Rafferty, 2000, 109)

Deceptions exist at every level to prevent unwelcome statistics. If “illegal” pregnancies are carried to term and discovered, parents employed by the government or in state owned enterprises can lose their jobs, while the majority of couples face fines, loss of benefits, and higher charges for obstetric care.^{xiv} However, in many rural areas in particular, regulations are regularly flouted, as it difficult for local cadres to enforce unpopular regulations in their own small communities.^{xv} Underreporting has even been explicitly encouraged in recent years by the introduction of new economic mechanisms to improve local birth planning performance by making it a major criterion for evaluating cadres’ job effectiveness at every level. As a result, officials have instructed respondents to underreport recent births in areas where fertility remained higher than the target figures, or have prepared answers for respondents to submit.^{xvi}

For example, one study from 1995 carried out in three provinces found that the actual number of girls in the under-14 age group exceeded the number registered by 22 percent.^{xvii} Another survey discussed by Merli & Rafferty (2000) investigated reported infant mortality rates in four Chinese counties. Infant mortality estimates from their survey indicated an average of 5.9 deaths per 1,000 live births between 1981-1991, in a country where the infant mortality rate is believed to have been around 40 per 1,000 in 1990.^{xviii}

At the same time, women who become pregnant without permission receive great pressure to have abortions, which are widely accepted and

accessible, particularly in cities.^{xix} Some women who become pregnant without permission leave their hometowns in order to deliver in secret elsewhere. These evasions have become much easier with the new mobility of the rural workforce.^{xx} However, women who proceed with unapproved pregnancies are often reluctant to use health services because of fears of fines or further pressured to have an abortion. As a result:

“Many deliveries of babies that have not been officially sanctioned occur at home without trained personnel, a practice that is associated with the risk of maternal or neonatal mortality. A study carried out in rural Sichuan province in 1990 reported a doubling of maternal deaths for unapproved pregnancies as compared with those women who received government sanction to become pregnant.” (Hesketh, Lu & Xing, 2005, 1172)

While measures are often taken to mask “illegal” pregnancies, they also frequently occur under sanctioned childbearing attempts. The cultural bias for sons, compounded with strict policies governing how many children can be born per couple, often leads to underreporting in the total fertility rate – particularly for female births. Underreporting is so widespread that some scholars estimate 37 million children under the age of ten went uncounted in the 2000 census.^{xxi} The preliminary estimates of the 2000 census reported a total of 1.266 billion people in Mainland China, excluding 30 million residing in Hong Kong, Macau, and Taiwan.^{xxii} According to the final tabulations, China had 1.245 billion people, a 1.6 per cent reduction from the preliminary account. However, a later sample survey indicated a 1.8 percent undercount in the census, which would reinflate the estimates of China’s population in 2000 to 1.268 billion. This 1.8 percent undercount was significantly higher than the 0.1 per cent reported in the 1990 census, which many view as a cause for concern, and the undercount may have been higher still.^{xxiii}

Goodkind (2004) estimates that the underreporting rate in 2000 was triple that seen in 1982 or 1990. Once again, many believe that accurate reporting was discouraged by extensions of population policy beginning in the early 1990s that held officials personally responsible for violations of family planning rules within their jurisdictions. While adult counts are considered to be very accurate, underreporting of children has been witnessed in all three censuses since the implementation of the One Child policy. “China’s family planning policies have undoubtedly contributed to reduced childbearing, yet

ironically, these very policies hinder statistical authorities from counting infants and children.”^{xxiv}

While Goodkind’s (2004) research highlights the effects population control policies have had on underreporting due to fear of government’s reactions, it also highlights another issue. While it is true that a greater number of living females were not reported in the census, the difference gender had on underreporting was in fact quite modest; 28.1 per cent vs. 24.4 percent of children estimated to exist but not reported between the ages 0-4.^{xxv} The reason for this is that a greater number of females ‘truly missing’ at birth owing to pre-natal sex selection therefore suggests fewer females are ‘statistically missing’ (alive but hidden) from the census. However, this interpretation misses one key aspect; many births in China are not registered until some time after they occur, meaning that some births that end in deaths are not recorded.^{xxvi} This discrepancy has led many Western and Chinese scholars to agree that Chinese birth and infant mortality statistics still suffer from severe underreporting.^{xxvii}

As noted by Smith (1994), an infant death in the West may be considered a stillbirth in Asia. This phenomenon has led some scholars to suggest that the already skewed fertility and sex ratio statistics in China are altered further in a culture in which the definition of a birth may exclude issue dying shortly after delivery.^{xxviii} If a child dies shortly after birth, whether male or female, the child’s parents may choose not to record the death as it may delay their ability to try for another child. Thus, if a pregnancy results in a stillbirth of either definition, no birth record will reach the head of the village family planning groups.^{xxix} Potential causes of death and disparity may include infanticide, neglect leading to higher rates of death, and underreporting of surviving female births.^{xxx}

Disparities in the Sex-Ratio of Children Born Under the One Child Policy

Hesketh & Xing (2006) write: “In the absence of manipulation, both the sex ratio at birth and the population sex ratio are remarkably constant in human populations.”^{xxxii} Typically, around 106 males are born for every 100 females, a trait that has been documented since the early eighteenth century.^{xxxiii} Although the sex ratio at birth favors males, the sex ratio tends to even out during a particular cohort’s lifetime as females have a greater resistance to disease and tend to engage in fewer risky behaviors than males.^{xxxiii} In circumstances where females receive the same nutrition and health care as males, females have lower mortality rates across all age groups. Asia, with a sex ratio of 104, is the only continent with a sex ratio over 100; North

America in contrast stands at 96.8 and Africa at 99.8.^{xxxiv}

Although the typical favoring of male children over female children may have been a larger contributor to imbalance in the sex ratio throughout much of history, this phenomenon has been overshadowed by sex-selection abortion. Abortion has affected the gender balance to the point that Amartya Sen (2003) revised his decade-old theory on the world’s “missing women” to state that the main cause for fewer women in regions of Asia and Africa was no longer simply the result of biased care toward male children, but primarily the result of sex selective abortion.^{xxxv} However, even in existing statistics, the continued gender preference is visible by the number or recorded stillbirths in couples who are permitted to have second or third children. For example, among first births surveyed in four rural Chinese counties, the sex ratio was 1.15, still significantly higher than the normal average of 1.06 of all births, but almost all reported first pregnancies were carried to term, and only one full-term birth in ninety was reported as a stillbirth.^{xxxvi} However, abortion rates rose nearly 56% for second and third pregnancies, with the reported sex-ratio increased to 1.35 and 1.40 respectively.^{xxxvii} In addition, the ratio of live births to reported stillbirths increased from 89.6 : 1 to 19:1 for second pregnancies and 16.4 :1 for third pregnancies.^{xxxviii} If we are to assume that all reported stillbirths were female, the sex-ratio would deflate to an average of 1.12 for all births.^{xxxix}

The combination of a cultural preference for sons, sex-selection technology, and the recent small family culture has proven devastating for the sex-ratio in China. When large family size is the norm and access to contraception is limited, son preference has little influence on sex ratio because couples continue bearing children, largely irrespective of the gender of the children.^{xl} Realization of the potentially disastrous effects of this distortion has led the Chinese government to outlaw prenatal sex determination and sex-selective abortion, though these techniques are still being carried out on a large scale, with virtual impunity. China is not alone in this problem; Sen (2003) estimated in 1992, when the theory of the “missing women” was first introduced, that while 44 million women were missing from China, 37 million women are missing in India, and around the world nearly 100 million women were missing.^{xli} A more modest estimate from another scholar estimated that the number topped 100 million in 2002 rather than in the 1990s. China only (officially) had 86 female children born for every 100 males.^{xlii} However, other Asian countries experiencing declining fertility rates and growing sex-ratio imbalances include Taiwan (1.19 males

born for every female), Singapore (1.18), South Korea (1.2) and parts of northern India (1.20), with most of the gender imbalance once again stemming from sex-selective abortion.^{xliii}

The One Child Policy in China Today

Thirty years after the implementation of the One Child Policy, many problems have come to light. Officials in China and other countries faced with strong biases for male children are now engaged in public campaigns to convince couples that daughters are just as valuable as sons.^{xliiv} Many are concerned about increased violence and instability occurring as a result of having a large population of males without counterpart females:

“The shortage of women may have increased mental health problems and socially disruptive behavior among men and has left some men unable to marry and have a family. The scarcity of females has resulted in kidnapping and trafficking of women for marriage and increased numbers of commercial sex workers, with a potential resultant rise in human immunodeficiency virus infection and other sexually transmitted diseases. There are fears that these consequences could be a real threat to China's stability in the future.” (Zhu, 2003, 463)

Another important concern involves the growing aging population in China. By the year 2025, eighteen percent of the population will be over 65 years old.^{xliv} While in rural areas the care of elderly parents typically falls on children, another issue is that sixty percent of the workforce is entitled to a pension, which will be difficult to maintain with a smaller workforce.^{xlvi}

While there are undoubtedly many problems with the current system, some scholars point out that China faced a very difficult situation. China needed to control its population, and would certainly have been heavily criticized if unrestrained population growth was permitted.^{xlvii} The One-Child policy has been successful in curbing the total fertility rate, stabilizing in 1995 at approximately 1.7 children per mother.^{xlviii} The policy has in effect halved the Chinese crude birth rate in less than three decades.^{xlix} In addition, the policy has been successful in changing Chinese perceptions about desired family size; although many people wish to have more than one child, the notion of having fewer children has appeared to catch on even in rural areas, where parents worry about dividing lands among surviving children.^l

However, this was not always the case. When the policy was relaxed in the mid-1980s, many couples who had recently had a first child quickly progressed to having their second. The policy was quickly tightened up again.^{li} To this day, acceptance of the policy remains strongest in urban areas and areas with the highest level of enforcement, while acceptance is weakest in the poorer areas where enforcement is more lenient.^{lii}

Nevertheless, large families are no longer seen as an asset by most of the population, while improved living standards has made the likelihood of each child born surviving to adulthood much higher. The growing acceptance of small families has led to a pilot program in thirty pilot counties where the One Child policy has been lifted, allowing couples to choose their family size.^{liii} In addition, possible scenarios for the future include allowing all couples to have two children with a five year gap in between births for couples in both rural and urban areas. However, for the time being, the area deserving of greatest attention remains the gender bias expedited by the difficult choices associated with having a limited number of children. As Kane and Choi (1999) note, the Chinese girl has once again become expendable.^{liv}

In March of 2008, Zhang Weiqing, minister of the National Population and Family Planning Commission, announced that China intended to continue with the One Child Policy for at least another decade.^{lv} Noting that some 200 million people will be entering their childbearing years over the next decade, Weiqing argued that abandoning the policy now could bring unwanted volatility to the birthrate.^{lvi} With this planning in mind, increased focus on stabilizing the sex-ratio is more important than ever and desperately needed in order to combat the other problems associated with the One Child Policy. However, for millions of Chinese people, particularly for low-income males, even an immediate policy change would be coming too late.

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- ⁱ Hesketh, Lu & Xing, 2005, 1172
- ⁱⁱ Zhu, 2003, 463
- ⁱⁱⁱ Ibid.
- ^{iv} Hesketh, Lu, & Xing, 1171
- ^v Ibid.
- ^{vi} Kane & Choi, 1999, 992
- ^{vii} Zhu, 463
- ^{viii} Hesketh, Lu, & Xing, 1171
- ^{ix} Zhu, 463
- ^x Ibid.
- ^{xi} Bin Park & Han, 1990, 161
- ^{xii} Zhu, 463
- ^{xiii} Hesketh, Lu, & Xing, 1171
- ^{xiv} Zhu, 463
- ^{xv} Ibid.
- ^{xvi} Merli & Rafferty, 2000, 109
- ^{xvii} Hesketh, Lu & Xing, 1173
- ^{xviii} Merli & Rafferty, 113
- ^{xix} Zhu, 463
- ^{xx} Ibid., 464
- ^{xxi} Goodkind, 2004, 281
- ^{xxii} Ibid., 283
- ^{xxiii} Ibid.
- ^{xxiv} Ibid., 293
- ^{xxv} Goodkind, 285
- ^{xxvi} Smith, 1994, 485
- ^{xxvii} Merli & Rafferty, 109
- ^{xxviii} Smith, 482
- ^{xxix} Ibid., 485
- ^{xxx} Ibid., 481
- ^{xxxi} Hesketh & Xing, 2006, 13272
- ^{xxxii} Ibid., 13273
- ^{xxxiii} Ibid., 13272
- ^{xxxiv} Ibid., 13273
- ^{xxxv} Sen, Amartya, 2003, 1297
- ^{xxxvi} Smith, 482
- ^{xxxvii} Ibid., 483
- ^{xxxviii} Ibid., 483
- ^{xxxix} Ibid., 484
- ^{xl} Hesketh & Xing, 13273
- ^{xli} Sen, 1297
- ^{xlii} Ibid.
- ^{xliiii} Hesketh, Lu, Xing, 1173
- ^{xliv} Das Gupta, 2005, 529
- ^{xlv} Hesketh & Zhu, 1997, 1686
- ^{xlvi} Ibid.
- ^{xlvii} Hesketh & Zhu, 1687
- ^{xlviii} Hesketh, Lu, Xing, 1172
- ^{xliv} Merli & Smith, 557
- ^l Hesketh & Zhu, 1687
- ^{li} Merli & Smith, 558
- ^{lii} Ibid., 557

lii Zhu, 464
liv Kane & Choi, 994
lv Yardley, 2008
lvi Ibid.

Danger of Donations to the Non-Violent Wings of Hamas

Nathan Bossie

“We can not separate the wing from the body. If we do so, the body will not be able to fly. Hamas is one body.” – Founder and Former Spiritual Leader of Hamas, Sheikh Ahmen Yassin

In order to limit the capabilities of terrorist organizations, the United States has made it illegal to donate money to terrorist groups. The United States government has classified Hamas as a terrorist organization thereby, making it illegal to donate to the group. However, Hamas serves other functions aside from carrying out terrorist operations. These other functions can be grouped into either political or charitable dimensions. There are many people who appreciate Hamas’ political and charitable efforts and believe the myth that these wings of Hamas are different from their militant wing and so donations to Hamas’ political and charitable wings ought to be legal.

The primary objective of restricting donations to Hamas is to minimize the capabilities of their militant wing. It would be unnecessary to restrict donations to the political and charitable wings of Hamas if these donations did not influence the organization’s militant capabilities. It is therefore, important to determine how closely connected Hamas’ political and charitable wings are with their militant wing. Before explaining how donations to the political and charitable wings of Hamas support the groups’ violent terrorism, it is necessary to explain Hamas itself.

History

The name ‘Hamas’ has a double meaning. It is an acronym for Harakat al-Muqawama al-Islamiya (translates to Islamic Resistance Movement). Hamas is also Arabic for ‘zeal’. The group was founded in 1987 “and strives to raise the banner of Allah over every inch of Palestine.”ⁱ

Since Hamas was founded they have worked parallel to, and at other times in competition with, the Palestine Liberation Organization (PLO), the political party which had come to represent Palestine. The PLO’s main goal had been to take back what they see as their rightful land, now Israel. However, after Israel took over the West Bank and the Gaza Strip, the PLO ‘temporarily’ changed its mission to the short-term goal of retaking the lost land. The PLO adopted an “armed struggle” with Israeli occupants as the chief means for reacquiring the West Bank and Gaza Strip but they were “achieving no success over decades of struggle, [so] the PLO made two historic concessions by the end of the 1980’s.”ⁱⁱ They

recognized Israel and “its right to exist” and they also “dropped the armed struggle as a strategy, for the sake of a negotiated settlement.”ⁱⁱⁱ When the PLO made these two changes, they created a void for which Hamas came to fill.

Hamas’ primary goal and strategy developed from the shift in the PLO. The PLO dropped the struggle to regain the land of Israel for Palestinians and they stopped their primary strategy of violence. Hamas views these concessions as illegitimate. In their charter they argue that the land of Palestine belongs to generations of Palestinians and that there can be no entity with the right to give over that land. Article Eleven of Hamas’ Charter states:

“The Islamic Resistance Movement believes that the land of Palestine has been an Islamic Waqf throughout the generations and until the Day of Resurrection, no one can renounce it or part of it...No Arab country nor the aggregate of all Arab countries, and no Arab King or President nor all of them in the aggregate, have that right, nor has that right any organization or the aggregate of all organizations, be they Palestinian or Arab, because Palestine is an Islamic Waqf throughout all generations.”^{iv}

Militant Wing

Along with denouncing the PLO’s decision to recognize Israel and its right to exist, Hamas also disagreed with the change in strategy from violence to negotiation. One of the key pillars in Hamas has been their devotion to violent Jihad. Article Twelve of the Hamas charter states, “Nothing is loftier or deeper in Nationalism than waging Jihad against the enemy and confronting him when he sets foot on the land of the Muslims.”^v This statement reflects that the primary strategy of Hamas is “waging Jihad.” There are two types of Jihad: the first is an internal “struggle for virtue and morality, the striving to follow God’s will.”^{vi} The second is a violent struggle against non-believers. Hamas’ slogan clarifies that the Jihad they speak of is the violent struggle. The slogan of Hamas states “Allah is its goal, the Prophet its model, the Qur’an its constitution, Jihad its path and death for the case of Allah its most sublime belief.” This is the basis of Hamas’ violent wing. Hamas has become known for its suicide bombings of Israeli citizens. The goal of these bombings is not merely to inflict death and injury but also to terrorize the general populace. The militant wing of Hamas was originally broken into separate cells of three or

four operatives per cell. This division into small cells has remained the structure for Hamas' terrorist groups^{vii}.

Charitable Wing

The other weakness of the PLO, which Hamas capitalized on, was ineffective domestic policy. The PLO has been plagued with corrupt leadership. Combined with the challenges of governing under occupation, the result has been a fall in the standard of living for Palestinians. "The economic, social, and health conditions in the West Bank and Gaza Strip are truly miserable, leaving a void that groups like Hamas are all too eager to fill."^{viii} In 2003 unemployment was estimated to be between 35 and 40 percent; and in 2004, 75 percent of the population "living in the West Bank and Gaza survived below the poverty line of \$2 per day."^{ix}

Due to the economically vulnerable state of the West Bank and Gaza Strip, Hamas was able to gain invaluable public support through charitable activities. Strategies for combating a terrorist organization can differ widely based on whether or not the terrorist organization is integrated or isolated from the community. Whether Hamas' intentions were nobly set to help struggling Palestinians or if the organization simply recognized the value in garnering public support does not matter. What matters is how remarkably well Hamas has established itself as a key social and charitable factor in the lives of Palestinians. This goal has been a central objective for Hamas. Article 21 of Hamas' charter states:

"It is incumbent upon... Hamas to look after the interests of the masses the way they would look after their own interests. They must spare no effort in the implementation and maintenance of those interests, and they must avoid playing with anything that might effect the future generations or cause damage to their society. For the masses are of them and for them, their strength is theirs and their future is theirs."

Hamas' charitable efforts have been managed with remarkable efficiency. Hamas has been able to bring real aid to a population which is in desperate need. They have provided "structured education, health and welfare services and help to the poor... Hamas' assistance and care of needy people have been felt personally by hundreds of thousands of Palestinians."^x In addition to the effectiveness of their charitable efforts, Hamas has also been able to bring a sense of "honesty and transparency... [which has]

been compared with the corrupt performance of other major Palestinian factions."^{xi} The public support for Hamas, generated through its charitable organizations, has helped garner similar support for Hamas' political wing. This political wing is much more closely related to the violent acts of Hamas. In this way, the charitable wing of Hamas supports the group's terrorism through aiding the political wing as well as the militant wing.

Political Wing

The political wing of Hamas, in the past, was responsible for organizing and supporting the other two branches of Hamas. Early in Hamas' history, the main responsibility of the political wing was establishing the other two wings. The founder and first political leader of Hamas was Sheikh Ahmen Yassin. After Hamas was created in 1987, Yassin "led the establishment of the logistical and financial support network known as the *dawa*, the charitable infrastructure that also served his need of identifying and recruiting new members and military operatives... Yassin himself organized these Hamas cadres into small cells."^{xii} After establishing the charitable and militant wings, the role of the political leadership of Hamas had to change. Yassin began "spearheading Hamas coordination with other Palestinian militant groups."^{xiii} This is intra-organization communication is typical of a political wing for any group.

In 1989 Yassin was arrested by Israel and would remain in prison until he was released in 1997. Upon his arrest Mousa Abu Marzook took over leadership of Hamas. Marzook "oversaw the organization's growth in fundraising, military operations, and social services infrastructure."^{xiv} In the early 1990's Marzook created the Hamas political bureau with himself at its head. This bureau is now known as the *Majlis al-Shura*. The *Shura Council* has come to be the "overarching political decision making body... Under this *Shura Council* are committees responsible for supervising a wide array of activities."^{xv} At the time, Marzook lived in the United States for the first half of the 1990's. From there he oversaw the "international funding effort for both the Hamas *dawa* and the terrorist operations."^{xvi}

In recent history, the political wing of Hamas has been expanding rapidly. "In March 2005 Hamas made three successive historic decisions... The most important of these three milestones was Hamas' decision to participate in the legislative election in January 2006." Hamas' performance in the January, 2006 elections caught the world by surprise. BBC News reported the results as a "stunning victory in the Palestinian elections by the militant Islamic movement."^{xvii} Much of the western

world was shocked to hear that a terrorist organization could win in a democratic election. This ‘shock’ was the result of an uninformed populace. If Hamas’ only function were militant than, the election would have been unforeseeable. However given the state of affairs and Hamas’ non-militant functions, “[the] Hamas’ victory in those elections was in fact almost unavoidable.^{xviii}”

Donations support Terrorism

Establishing Hamas as a single entity and not as three separate wings is the first step to determining if and how donations to the political and charitable wings of Hamas can strengthen the military capabilities of Hamas. The three wings of Hamas are very much interrelated. Past spokesman of Hamas, Abdel Aziz al-Rantissi, “usually remembered when speaking to the press to perpetuate the myth of a formal separation between the political and military branches of the Hamas.” He was very much aware of the potential for a crackdown on all wings of Hamas if the outside world viewed Hamas as a single body. However, other leaders of Hamas would not deny the unity of their organization. Hamas’ founder, Yassin, once said “we can not separate the wing from the body. If we do so, the body will not be able to fly. Hamas is one body.”

The remainder of this paper will show how donations to the political wing and to the charitable wing of Hamas benefit their militant wing. We can say that if the non-violent wings of Hamas support the group’s military wing than donations to these non-violent wings support Hamas’ terrorist activities. The ways in which the political and charitable wings of Hamas support the militant wing are numerous.

The charitable wing of Hamas supports the militant wing in direct and indirect ways. Yassin developed the charitable wing of Hamas based on lessons he learned from his time with the Muslim Brotherhood while studying in Egypt. As long as the dawa (call to further the Muslim cause) focused on education or charitable acts, government administrations would be less likely to interfere. In time Hamas’ dawa “blossomed into an efficient network of grassroots service organizations across the Gaza Strip and the West Bank.” This grassroots network has spread across many aspects of Palestinian life. Hamas operates schools, universities and mosques, helps to rebuild homes, provides health care and other forms of welfare, and provides fiscal support for the families of martyrs. These charitable acts help to build public support of Hamas as an organization. This strong public support goes a long way in the effort to legitimize the militant operations of Hamas. This same public support was invaluable for Hamas in the 2006 elections.

The charitable dawa of Hamas also benefits the group’s militant arm in more direct ways. Some of the “funds designated for dawa have been diverted directly to terrorists in order to fund attacks.^{xix}” Hamas’ dawa normally raises between “\$25-30 million per annum – [this] forms the lion's share of Hamas's budget.^{xx}” It is hard to estimate what portion of this fundraising supports Hamas’ military activities but it is clear that a portion of these funds does get diverted to sponsor terrorism. The other direct way in which the dawa aides Hamas’ militant wing is by monetarily providing for the families of terrorists.

“According to interrogations of Hamas activists and terrorists it was discovered that the financial assistance to their families was a significant consideration for their decision to execute the attack, including suicide attacks.^{xxi}”

As mentioned previously, Hamas is a single body. As such, distinguishing between the charitable wing and the militant wing can be difficult. Over the years, Hamas has established a wide spread network of charitable organizations.

“These institutions are crucial to Hamas’ terrorist activity: they provide cover for raising, laundering, and transferring funds, facilitate the group’s propaganda and recruitment efforts, provide employment to its operatives, and serve as a logistical support network for its terrorist operations.^{xxii}”

In regards to these methods for aiding the militant wing of Hamas, it is especially hard to draw a distinct line between the two ‘wings’. Employees of the charitable wing execute terrorist activities while other employees provide logistical support. This means that the same people who conduct terrorist missions are also the people administering the charitable acts of Hamas. Donating money to Hamas’ charitable organizations is partially directed to terrorist plots, it employees terrorists, supports a network dedicated to easing the path for terrorists and builds support for their violent attacks.

The political wing of Hamas is even more closely related with Hamas’ terrorist actions than the group’s charitable wing. It is well documented that the military wing of Hamas is directed by the political wing. Yassin, the political leader of Hamas, once admitted to, “his own direct role in managing military operations, and of the ultimate subordination of the military branch of Hamas to the ‘non-military’ political wing he headed.^{xxiii}” This admission holds

great importance in that Yassin was not merely taking credit for his personal involvement in terrorist actions. Yassin went further to claim that the military component of Hamas was under the control of the political wing. This statement however cannot be entirely trusted. There are reasons for Yassin to make this claim even if it were not true. The belief in this statement would give the political faction of Hamas more power in negotiations if it were to take this route. The possibility that violence could be, at least temporarily, stopped by the political wing of Hamas would give Yassin far more power.

In 1995 the Brigadier General, Yaakov Amidror, head of Analysis and Assessment Division of Israel endorsed the validity of Yassin's claim. In an article detailing the internal decision making process Amidror wrote that the Hamas political bureau "determines terrorism policy... assists Hamas fugitives, supports terrorist attacks, [and] encourages additional terror."^{xxiv} Although these conclusions were first advanced by Israel, other nations have made clear their agreement on the subject. In 1999 Jordan "banned Hamas from operating in the kingdom... Jordanian raids of Hamas political offices produced unlicensed personal weapons and documentary evidence that Hamas had been actively smuggling weapons [through Jordan]."^{xxv} The Jordanian raids were significant in that they specifically targeted political offices. The evidence linking these political offices to arms smuggling reinforced Israel's conclusion that the political and military wings of Hamas are closely related. The raids reveal that containing donations to the political wing of Hamas could reduce the armaments of the military wing. "Likewise, Canadian intelligence has determined that Hamas political offices in Damascus also serve as militant recruitment centers." This intelligence sheds light on another method by which the political wing supports the military operations of Hamas. By restricting donations Hamas' political offices would be less able to aid in their recruitment efforts. The Europe Union (EU) has historically held a more balanced view of the Israeli-Palestinian conflict than North America. In 2001 the EU recognized Hamas as a terrorist organization but differentiated between Hamas' military wing and its non-violent wings. However, "In 2003, there emerged a European consensus that such distinctions are no longer tenable given available evidence of the interdependence between such groups... the EU banned all Hamas wings, including charitable and political factions."

The combined effort to crack down on Hamas has not seen the expected results. Despite international efforts to weaken Hamas, they have recently won political power in a democratic election.

It has been irrefutably shown that "Hamas political leaders and dawa organizations support Hamas terror." The problem these efforts are facing is one of strategy. The international community has attempted to attack Hamas by limited and reducing its capabilities. The problem with this approach is that Hamas is a symptom of a larger problem – the detestable living situation in the West Bank and Gaza Strip. Any real advances must address the standard of living in the region to have any hope at reducing the demand for a group such as Hamas. "Shutting off the flow of funds from such sources to Hamas is absolutely critical, but must be accompanied by an international humanitarian aid effort – one with strict oversight components at both the donor and recipient ends of the aid spectrum – to fill the gap in desperately needed social services."^{xxvi}

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ⁱ Hamas Charter; Article 6: Peculiarity and Independence

ⁱⁱ Hroub (2006)

ⁱⁱⁱ Hroub (2006)

^{iv} Hamas Charter; Article 11: The Strategy of Hamas: Palestine is an Islamic Waqf

^v Hamas Charter; Article 12: Hamas in Palestine, Its Views on Homeland and Nationalism

^{vi} Levitt (2006)

^{vii} Levitt (2006)

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ix Levitt (2006)
x Hroub (2006)
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xix Israel Ministry of Foreign Affairs Article
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xxi Israel Security Agency Report: “Dawa” – Hamas’
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xxii Levitt (2006)
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xxvi Levitt (2006)

Plunged Into Eternity: Debating the Constitutionality of the Death Penalty

Phillip Gordon

On December 13, 1791, the Bill of Rights was ratified by the United States Congress as the first ten amendments to the American constitution. Seven days later, on December 20, 1791, Joseph Jones was executed for murder in Pennsylvania by hanging, and, although it's fair to say Jones was not aware of it, he became the first man put to death in the United States following the ratification of the Bill of Rights. It's also fair to say that no one present at the hanging was there to argue that the execution violated Jones's newly minted constitutional rights; at the time, there was nothing inherently cruel, and certainly nothing unusual, about a public hanging, there was no evidence to indicate that the death sentence was issued from a constitutionally deficient trial, judge, or jury, and if anyone besides Jones himself felt that he had been unfairly targeted for execution, history makes no note of it. Even so, the 14th Amendment granting Jones "equal protection" would not be enacted for another seventy-seven years.

As of July 1, 2009, there were 3279 people on death row in the United States, and the protections not readily available to Joseph Jones are aggressively pursued by the convicted, their lawyers, families, and criminal advocates. Their efforts have produced thousands of stays of execution or commutations on the grounds of a constitutionally unsound conviction or sentence, but none of those mercies would have been possible without the atmosphere of social revolution that pervaded the 1960s in America. In the midst of the turmoil of the civil rights movement, a number of progressive reformers challenged what had up till then been a cornerstone of criminal justice and jurisprudence in the United States. In a series of highly public debates, these reformers argued passionately that the administration of the death penalty in America constituted gross disregard of the guaranteed liberties of the federal constitution.

Presently, there are four clauses of the constitution that have been used to challenge the practice, administration, and proliferation of capital punishment. The first lies in the Fifth Amendment of the Bill of Rights, which states that "nor shall any person be....deprived of life, liberty, or property, without due process of law"ⁱ. The "due process clause" is reiterated in the Fourteenth Amendment. The second arguable clause comes from the Sixth Amendment, which stipulates that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district in wherein the crime shall have been committed."ⁱⁱ The third and arguably most important

clause is found in the Eight Amendment, which states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."ⁱⁱⁱ The fourth clause comes from the Fourteenth Amendment, an amendment meant to prevent the various states from undermining the rights of their residents as American citizens. In the last sentence, this amendment guarantees that "no state shall deny to any person within its jurisdiction the equal protection of the laws."^{iv} What these clauses mean for capital punishment depends heavily on the interpretation of their language and their application to empirical data and individual cases.

Execution of the Innocent and the Due Process Clause

The most tragic element of the death penalty as an institution in American criminal justice is the unavoidable execution of innocent people. One of these executed people highly suspected of innocence was James Adams, an African American man executed for murder at the Florida State Prison on May 10, 1984 despite compelling evidence of his innocence that should have been grounds for a new trial. According to the authors of "Punishment of the Innocent", "We know of nearly two dozen cases in this century where the evidence similarly suggests that the wrong person was convicted of murder or rape, sentenced to death, and executed."^v In addition, the advent of new forensic criminology, most importantly DNA analysis, has greatly improved the certainty by which the innocent may be definitively exonerated and the frequency with which justice may be achieved. However, the topic of most interest to constitutional writers is this; that the evident fact that innocent people are executed and convicted of capital crimes proves that true due process does not exist, and if, as some have argued, the criminal justice system will never be able to avoid executing the innocent, then the death penalty will always be rendered an unconstitutional violation of the due process clause of the Fifth Amendment. Or, at the very least, a drawn-out appeals process will always be an element of American executions. In the fourth chapter of "Debating the Death Penalty", Ronald Dworkin argues that "if America is going to have the death penalty, then they are going to have to accept the need... for an extensive appeals process."^{vi} Similarly, H.A. Bedau cites Justice Potter Stewart's belief that since "death is different"^{vii}, federal courts should be willing to impose "super due process"^{viii}, a more thorough version of the due process clause meant to greatly reduce the chance of a wrongful execution. As tragic as innocent executions may seem to some, others, such as Louis Pajman, subscribe to a more utilitarian view of the collateral damage of capital

punishment. Pajman writes in his essay “Why the Death Penalty is Morally Permissible” that “If the basic activity or process is justified, then it is regrettable, but...acceptable, that mistakes are made.”^{xix} An occasional error does not constitute a compelling reason to completely overturn use of the death penalty. Ernest Van den Hagg, one of the death penalty’s most steadfast defenders, concurs with Pajman, writing in “The Death Penalty Once More” that “the fifth amendment implies that the death penalty is constitutional, and the fourteenth amendment re-enforces it”^{xx}. Because the wording of the Fifth Amendment requires due process to put life and limb in jeopardy, it implies that life may be taken as a punishment. The Fifth Amendment proves that the framers did not find a problem with the death penalty in practice, though, in his “Reply to Van den Hagg” H. Adam Bedau argues that there is nothing in the constitution to prohibit the supreme court from finding punishments that deprive life, limb, or liberty, unconstitutional through any reasonable constitutional justification. Bedau even maintains that a close analysis of the Constitutional Convention’s discussions reveals that while the death penalty may have enjoyed the support of the framers, they recognized that they day might come where it no longer enjoyed the support of the public.

Capital Punishment and the Right to a Fair Trial

The cornerstone on which the American criminal justice system is based is the fair trial before a jury of the accused peers; the sixth amendment guarantees this belief that this is the best way to guarantee fairness and equity to all people. An unconstitutional trial inevitably produces an unconstitutional sentence. It is the belief of a number of the writers whom I encountered that the administration and production of capital trials is dangerous and unconstitutional because in their desire to obtain the death penalty a number of prosecutors, jurists, and juries have inadvertently violated the constitution and endangered the liberty of the condemned. These arguments are brilliantly articulated in Walter E. Oberer’s essay *The Death Penalty and Fair Trial*. Mr. Oberer states as the foundation of his argument that “juries in death penalty cases must be “death qualified”, [that] if the evidence warrants it, they are willing to return a verdict of death.”^{xi} This “qualification” has been taken to the extreme, so much so that “peers” not “death qualified” are turned away from service on the jury; in this way, capital juries are no longer “a representative jury of their peers.” With a jury entirely composed of a minority of people for whom the death penalty is entirely acceptable, “does this minority jury bring other attitudes into the jury box

that are prejudicial to the defendant”^{xii} and which would then elicit an unconstitutional trial and unconstitutional sentence. If these things are true, Mr. Oberer is right in asking “Why have the “due process” and “fair trial” implications not been more carefully examined?”^{xiii} in such cases as *Oregon vs. Leland*, in which the Supreme Court ruled on the burden of proof as it relates to the insanity defense. Whereas the defendant used to be entitled to an impartial trial by jury, this is now the entitlement of the prosecution. On page 299 of *Capital Punishment in America*, H.A. Bedau re-enforces the disturbing trend of unconstitutional capital trials, by citing the continuing deficiency of counsel through under-available public defenders or incompetent court-appointed attorneys. Stephen B. Bright writes that “if a local trial court cannot comply with the most fundamental safeguard of the constitution by providing a capable attorney to one whose life is at stake, it should not be authorized to extinguish life.”^{xiv} Bright asserts that a legal code that allows all lawyers to try capital cases is like a medical ethic that permits all doctors to perform brain surgery. Despite these claims, Paul G. Cassel remains unconvinced that a trial tainted by inadequate counsel is sufficient to curtail the death penalty, writing that to completely abolish the death penalty, there would need to be substantial proof that capital counsel is inadequate “frequently, throughout the United States, and under current appointment procedures.”^{xv} In other words, the distribution, number, and procedural indifference in appointing capital counsel must be proved beyond the misconduct of a few hack lawyers. Such problems as jury prejudice and incompetent counsel “paved the way for... federal courts to consider that the nation’s Bill of Rights had been violated by state criminal courts.”^{xvi} Furthermore, Stephen Bright insists that the machinery of the capital trial, more so than other proceedings, is dangerously influenced by human error and prejudice, saying that “Prosecutors exercise vast and unchecked discretion in deciding which cases are to be...capital cases...extraneous factors influence whether juries or judges impose it.”^{xvii} Hugo Bedau sums up this dilemma well, saying that “It is in trial...that errors occur, remediable by federal habeas corpus...which would call into question any execution or sentence.”^{xviii}

Is the Death Penalty Cruel and Unusual?

In literature regarding the death penalty, the most prolific attack on its constitutionality has been that capital punishment violates one of the most sacred provisions of the constitution; that “excessive fines shall not be levied, nor cruel and unusual punishments imposed.” Those critical of capital punishment have maintained that executions in the

United States violate this provision in two important areas; 1) that current methods of execution inflict “cruel” amounts of pain on the condemned 2) the act of execution, regardless of the method is a “cruel” punishment.

One of the “cruel and unusual” punishment justifications most present in current literature is that execution itself is not necessarily cruel, but that the methods currently employed in the United States subject the executed to undue pain and suffering that amount to cruel and unusual punishment. Current literature is quick to point out that while the three most common methods of execution (lethal injection, lethal gas, and electrocution) are all attempts at “humanizing” execution, none of these have escaped criticism, and the “cruel and unusual” methods which they were meant to replace have remained on the books. Lethal gas was used for the first time in Nevada in 1924, and has been criticized ever since; “It is asserted that cyanide gas induces excruciating pain...[the condemned] have been known to defecate, vomit, and drool...second...death by this method can take over three minutes...it has been argued that such a span of time amounts to pure torture.”^{xxix} The amount of pain, the time which execution takes, and the condition of the body at the conclusion of the procedure were all prevalent in the sources I reviewed.

Lethal injection, now the most common method of execution in the United States and the only method used at the federal level, has been criticized on the grounds that the needle produces an unnecessary amount of pain, that the executioners take too long to find a vein (it has been suggested that to remedy this problem, lethal injection be administered by a medical professional, but this alternative produces a bevy of ethical dilemmas too numerous to list), and that the lethal drugs take too long to take effect. Since it has taken as much as 30 minutes for executioners to complete an execution because of these problems, The Encyclopedia of Capital Punishment argues that such a span of time is enough to amount to psychological torture. In his essay “An Abolitionist’s Survey of the Death Penalty” H.A. Bedau argues that an “important reform in the system has been the effort to make executions more efficient and humane”^{xxx}. Bedau recognizes that one of these innovations was the electric chair, introduced in New York in 1890, but questions “whether the electric chair ever lived up to the claims of efficiency and humanity ...its faults [in] actual practice have been well documented and are beyond dispute.”^{xxxi}

The fact that electrocution, firing squad, and hanging are largely viewed as grotesque, barbaric, or unnecessary seems to indicate that the majority of the

public agree with these claims; as of 2009, only nine jurisdictions support electrocution, only three support firing squad, and only three support hanging (the last judicial hanging in the United States took place in Delaware in 1996). However, the admittedly flimsy challenges to death by lethal injection on constitutional grounds have almost certainly secured capital punishment’s use for a long time to come. If hanging, firing squad, and electrocution were the only currently supported methods of execution in the United States, capital punishment would have gone out of fashion long ago. The availability of alternatives has limited the defense of “cruel and unusual” methods, but proponents of such methods remain.

Moral Opposition to “Cruel” Punishment

While the fact that the most visible aspect of capital punishment is the method by which it is delivered means that unconstitutionally of method will always be the most prolific argument in opposition, the “cruel and unusual punishment” criticism with most historic significance is that of simple moral opposition. At its core, this school of thought argues that the act of execution, no matter the means by which it is administered, is inherently cruel. Opponents of this argument claim the opposite; that it is the moral prerogative of society to protect itself from dangerous people by removing all chance that they will ever be able to further harm society. Literature regarding capital punishment’s constitutional standing is brimming with variations on this argument, claiming everything from the biblical “an eye for an eye” to Albert Camus’ “Reflections on the Guillotine.” While the death penalty is frequently criticized as being morally unjustified, a number of writers and social theorists hold that to not utilize capital punishment is a greater betrayal of human morality. Among these writers is Louis J. Pajman, who argues in “Why the Death Penalty is Morally Permissible” that commonly accepted morals permit human beings to execute other human for criminal acts since these acts are themselves simply formalized transgressions against institutionalized morality. Moreover, Pajman believes that “painless” injection has removed much of the punitive nature of the death penalty, and ought to be done away with, fails to see anything immoral about the electric chair, and supports the re-classification of non-homicide felonies such as rape and armed robbery as capital crimes. In Pajman’s mind, none of these measures would inherently violate the constitution. Writing in the “Background and Developments” section of “The Death Penalty in America” Hugo Adam Bedau writes that “the adoption of the eight amendment ban on cruel and

unusual punishment was understood to be a prohibition only against inflicting the death penalty in its most aggravated forms.^{xxxii} By this, Bedau refers to some of America's more garish methods of execution, i.e. burning at the stake, crushing with rocks, stoning, and drowning, although these methods had largely disappeared by the time the Bill of Rights was ratified. In his essay "The Death Penalty Once More" Ernest Van den Hagg argues that even if the death penalty were cruel, it could remain in use as long as the method employed were not unusual for the time; in other words, the death penalty in America is constitutional because executions themselves are not unusual, however, if the method employed were boiling, that execution would be unconstitutional because boiling is not a normal means of execution. For executions to be in violation of the constitution, they must be both cruel and unusual.

The Death Penalty and Equal Protection

While the Fourteenth Amendment to the Constitution was originally intended to extend the protections of the federal government to the citizens of the states, it also guarantees that all people shall enjoy "equal protection under the law". In the realm of modern constitutional thought, it is only natural that equal protection of the law ought to extend to equal protection of punishments meant to re-enforce those laws. Since the institution of the civil rights movement in the 1960s and the subsequent national commitment to racial and social equality, there have been a number of compelling arguments made that the current practice of executions in America violates the clause of equal protection because "there is empirical evidence that it is not chance, but due to factors of race, class, and social policy."^{xxxiii}

Stephen Nathanson states in his essay "Does It Matter if the Death Penalty is Arbitrarily Administered" that even more disturbing than the "discriminatory aspects of capital punishment"^{xxxiv} is that capital punishment is imposed on "a minuscule percentage of murderers who are not obviously more deserving of death than other criminals or murderers"^{xxxv}, in short, the fact that the death penalty is arbitrarily administered. Nathanson re-iterates that those who are executed are "not necessarily as bad as those who remain alive"^{xxxvi}, and "because other equally deserving people escape the death penalty for no legally acceptable reasons [these executions would violate the eight and 14th amendments."^{xxxvii} For Nathanson, there is much more at stake than simply guilt or innocence, and he concludes with an attack on Van den Hagg's work, whom he says is "profoundly mistaken in thinking that the justice of a

reward depends solely on whether the recipient deserves it."^{xxxviii}

At the head of the opposition to the equal protection criticisms of the death penalty is Ernest van den Hagg, who "favors justice over equality if we can't have both."^{xxxix} Van den Hagg firmly believes that the fact that some people are more likely to receive the death penalty than others "does not free other guilty people from receiving the punishment of death."^{xxx} The distribution of the punishment should not be the determining factor in its administration; rather, the imposition of the death penalty should be based on the guilt of the convicted individual. One of the most consistent dismissals of the racial inequity of the death penalty is that the most executed groups in society are the same groups that are most likely to commit capital crimes. However, this rebuttal has been called into question on two grounds. Bryan Stevenson says that there is a "conscious and unconscious racial bias in the administration [of the death penalty]"^{xxxi} and that "the disparities in arrest, sentencing and incarceration persist even when offender rates are racially proportionate."^{xxxii} Racial discrimination was equally, if not even more profoundly defined when other felonies were punishable by death. Hugo Bedau reports that "a black male convicted of raping a white woman is significantly more likely to be executed than other racial rape combinations."^{xxxiii} Of course, the fact that such sentences often originate from trials dominated by white judges, prosecutors, and juries also has implications for the accused right to a fair trial. A similar empirical argument was made in the case of *Rudolph vs. Alabama*, but an appellate court struck later down the argument, saying that a case based entirely on statistics was not sufficient to prove intentional discrimination. Since courts are naturally powerless to prove "accidental" discrimination, they require proof of intent to discriminate, while "accidental" discrimination may be no less serious or damaging.

While most emphasis in the constitutionality of execution is placed on the status of the defendant, claims have been made that not only is there a conscious bias in the administration of death based on the race of the victim, but that these biases effect the victim's right to equal protection under the law. According to Samuel Gross and Robert Mauro, "The language of the fourteenth amendment itself, prohibiting the denial of "equal protection under the law", speaks, if anything, more clearly of victims than of defendants."^{xxxiv} Gross and Mauro continue, speaking to the lenient tendencies shown in capital cases where the victim was black, regardless of the victim's race, since the primary motivation behind

the Fourteenth Amendment was the protection of blacks from racist victimization.

The Continuing Debate

In conclusion, a stunning array of factors in American criminal justice and society at large have combined to give credence to the belief that capital punishment is no longer upheld by the United States Constitution. At the same time, traditional views of criminology and morality continue to support capital punishment as a legitimate way to punish criminals and secure society in keeping with constitutional provisions. Our system of federal and state-level appellate courts will continue to rule on the individual merits of these arguments on a case-by-case basis, and the historical presence of the death penalty under the constitution will likely continue for many years to come.

ⁱ The Constitution of the United States, Amendment Five

ⁱⁱ The Constitution of the United States, Amendment Six

ⁱⁱⁱ The Constitution of the United States, Amendment Eight

^{iv} The Constitution of the United States, Amendment Fourteen, Section 1

^v Radelet, Michael L., Bedau, Hugo A., Putnam, Constance E. (1992) Punishment of the Innocent Baird, Robert M. and Rosenbaum, Stuart E. (Eds.), *Punishment and the Death Penalty* (95-124) Amherst, New York: Prometheus Books

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^{viii} Ibid

^{ix} Pojman, L.P. (1998). Why the Death Penalty is Morally Permissible. Pojman, Louis J and Reiman, Jeffery (Eds.), *The Death Penalty: For and Against* (1-67). Lanham, Maryland: Rowan and Littlefield

^x Van Den Haag, E. (1985). The Death Penalty Once More. *University of California –Davis Law Review* 18 (4), 957-972.

^{xi} Oberer, W. (1964) The Death Penalty and Fair Trial. *The Nation* 198: 342-344

^{xii} Oberer, W. (1964) The Death Penalty and Fair Trial. *The Nation* 198: 342-344

^{xiii} Ibid

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Terrorism in Failed States: Examining the Threat in Somalia

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Terrorism represents one of the greatest challenges to the state in the twenty-first century, be it terrorist attacks from abroad or domestically initiated incidents. It presents a particular challenge in failed states, where the lack of a central government, law enforcement mechanisms, and judicial institutions means that many of the counterterrorism strategies employed by developed nations are unable to be implemented. As such, many developed nations consider failed states potential safe havens for terrorist organizations and sources of violent criminal activity. This paper will examine the posed and actual threat of terrorism within failed states, focusing on the case study of Somalia (which ranked number one on the Fund for Peace's 2009 Failed States Index), and evaluate the accusations of developed nations that these countries are "breeding grounds of instability, mass migration, and murder...reservoirs and exporters of terror."ⁱ

One of the particular challenges in discussing the topic of terrorism is to pinpoint the definition of the term 'terrorism'. At present, there exists no internationally-recognized definition of 'terrorism'. Within the U.S. government alone, there exist several definitions of terrorism, all essentially similar in essence, but with the language varying from department to department. For the purposes of this paper, 'terrorism' will constitute 'violent, premeditated activity carried out by sub-national groups towards civilians for religious, political, or ideological purposes, with the intent of causing physical, emotional, or economic harm in such a way as to effect a population beyond the immediate victims.' A 'failed state' is "a state that can no longer perform its basic security, and development functions, and that has no effective control over its territory and borders."ⁱⁱ

Up to this point, the primary method of dealing with failed states has been to engage in extensive state-building reconstruction. Using Charles Call's definition, 'state-building' will be defined as "actions undertaken by international or national actors to establish, reform, or strengthen the institutions of the state and their relation to society."ⁱⁱⁱ Finally, in order to fully understand the wider implications of such policies, the term 'counterterrorism' will encompass actions undertaken by international or national actors with the intent of suppressing or counteracting terrorism by sub-state organizations.

At present, the Fund for Peace ranks 20 countries as 'failing' on its 2009 Failed States Index. The majority of these countries are located in Africa and the Middle East, two regions plagued by instability and conflict. A failed state is one in which the state's institutions are no longer able to provide basic goods and services or provide governance to its population and, as a result, loses its legitimacy.^{iv} Typically, this decline is accompanied by escalating corruption within the public sector; clan-based, ethnic, or regional hostilities; rising inflation; and a failing economy.^v Of the 20 states listed in the Fund for Peace's index, only Somalia can be classified as a 'collapsed' state, which Robert Rotberg describes as a "geographical expression only, with borders but with no effective way to exert authority within these borders."^{vi} In the world of international politics, Somalia serves as a warning to others of the implications of state failure. It presents a model of how far conditions can deteriorate following the collapse and dissolution of the state apparatus. The environment in Somalia is considered to be a worst-case scenario. Therefore, it can be argued that if failed states are as susceptible to terrorism as policy-makers assert then terrorism should manifest itself in Somalia.

While the reasons for state failure are hotly debated amongst academics and policy-makers alike, in most cases the decline of the state results from corruption and internal conflict within the government leading to a mismanagement of financial resources and a subsequent economic decline. This, in turn, launches a downward spiral that results in the outcomes of state failure. For example, rising inflation leads to the inability of the local populations to buy basic goods, resulting in both shortages and a widening disparity between rich and poor. This provokes resentment amongst the lower economic brackets of society, which promotes conflict and corruption. Alternative causes of state failure include invasion by external forces, such as the U.S.'s overthrow of the Taliban in Afghanistan, or ethnic/tribal conflict such as that in Rwanda.

The Fund for Peace, an independent non-profit organization that monitors conditions in weakening and failed states, publishes an annual Failed States Index based on twelve indicators of instability. These include: "mounting demographic pressures; massive movement of refugees or internally displaced persons (IDP) creating complex humanitarian emergencies; legacy of vengeance-seeking group grievance or group paranoia; chronic and sustained human flight; uneven economic development along group lines;

sharp and/or severe economic decline; criminalization and/or degeneration of the state; progressive deterioration of public services; suspension or arbitrary application of the rule of law and widespread violation of human rights; security apparatus operates as a 'state within a state'; rise of factionalized elites; and the intervention of other states or external political actors."^{vii} In 2009, Somalia ranked number one on the Failed States Index. While the designation of being a failed state is objected to by many of the countries who score highly (and thus negatively) on the list, the Failed States Index is generally considered to be the most comprehensive examination of state failure and is often cited by policy-makers. It must be recognized, however, that the prime failing of the Failed States Index and all failed state literature lies in the fact that it is extremely difficult to obtain accurate data from these states. As Thomas Dempsey notes, "Very little quantitative research is available in the failed state literature. Even qualitative approaches are limited by the high levels of fear, suspicion, and outright intimidation common to failed states."^{viii} Nevertheless, reasonably accurate analysis can be performed using proxy data, which is what the Fund for Peace uses when determining the scores for its Failed States Index.

Terrorism poses a threat to all states, regardless of their state of economic development and political stability. In failed states, which lack the resources and capabilities to launch counterterrorism measures, and whose inherent instability promotes the dissatisfaction that leads to terrorism, it presents a particular challenge. The purpose of the state is to provide basic public goods and services to the people. In addition to failing to provide these, failed states are also incapable of providing security, legal, judicial, or economical oversight within their borders. Maintaining a standing law enforcement or military force requires money, a resource which is scarce in failed states due to rampant corruption. The absence of these forces means that there is little governmental control over political and economic activities within the country. It also means that there is little possibility of the state being able to launch an effective counterterrorism campaign within its borders without the aid of an external actor.

The lack of an effective centralized government means that the population splits along cultural, ethnic, religious, or linguistic lines, a move which often results in factional fighting between the groups in an attempt to gain power. This chaotic environment can provide a cover for

the illegal activities of transnational terrorist groups. The existence of weak and ill-respected judicial institutions means that even if these activities were uncovered, there would be little to no legal repercussion. "Terrorist organizations, whether indigenous or foreign, are presented with a situation in which there are few, if any, restrictions on their operations and there is little fear of political pressure, much less police scrutiny."^{ix} Lack of efficient security forces means that there are few border controls thus allowing for the uncontrolled migration of people (including terrorists) between a failed state and its neighbors. Indeed, the potential for hard-to-trace financial transactions kidnappings, and illegal smuggling of arms, narcotics, and other goods, makes the failed state an attractive operations base for terrorist groups.^x

Violence is endemic in failed states, where domestic terrorism is often intermingled with the ravages of civil war and factional infighting. Prolonged exposure to conflict can result in feelings of hopelessness and depression amongst the local population. In failed states, religion offers a form of escapism from the harsh conditions of everyday life. The potential for religious revivalism to become radicalized increases as conditions worsen and resentment amongst the population grows. Terrorist groups, even those operating under non-religious ideologies, often utilize this discontent to gain the support of the population for their aims. For example, they might portray themselves as engaging in jihad on infidels who pose a significant threat to the Muslim community. The threat of radicalization is not as major a concern in Somalia as it is in other failed states. Reports indicate that the majority of the population is not radicalized and does not support the promotion of jihad that the prominent terrorist groups are expounding.^{xi} The potential for increased support of terrorism does exist, however, as Somalis have supported in the past (and continue to support) radical Islamist movements including Al-Ittihad al-Islamiyya (now defunct) and Al-Shabaab. These organizations promote an agenda that, besides containing jihad-oriented elements, includes the expulsion of foreigners (namely Ethiopia, African Union Mission in Somalia (AMISOM) peacekeepers, and the United States) and the establishment of a traditional Islamic state. In addition, radical organizations in Somalia offer job opportunities for a population that, lacking a centralized government and industries, is experiencing severe unemployment. With little potential for employment and a need to feed both one's self and

one's family, amounts such as the \$300 offered by Al-Shabaab to new recruits are very attractive.^{xiii}

With a lack of a functioning governmental apparatus to provide some measure of organization and control, failed states serve as a destabilizing force to the countries surrounding them. The potential for terrorist groups to operate relatively unnoticed in failed states makes them a security threat to the entire region. As mentioned previously, border controls rarely exist in failed states, often leaving neighboring countries with the burden of sending security forces to monitor their territory. This inefficiency means that terrorists can easily slip across the borders unseen to commit terrorist acts. This was precisely the case in the 1998 bombings of the U.S. embassies in Nairobi and Dar-es-Salaam, where Al-Qaeda members smuggled personnel and arms into Kenya and Tanzania from Somalia.^{xiii} The possibility of this occurring causes insecurity and fear in the governments of those countries bordering failed states. In an effort to prematurely quell any sentiments for the terrorist organizations in their own territories, these governments often resort to oppressive tactics to keep the population in check.

Also causing insecurity and posing a threat to the government is the massive influx of refugees that results when a state collapses. As conditions continue to deteriorate in a failed state and as violence escalates, large numbers of people cross the unprotected borders to take refuge in more stable neighboring countries. These governments are placed under increasing amounts of strain as they attempt to accommodate the refugees. The potential for conflict within the country also increases, as this influx of foreigners might cause resentment amongst the native population, who now face additional competition for resources and employment. Kenya, which harbors 320,000 refugees (most of whom are from Somalia), has experienced increased ethnic conflict and heightened group grievances as a result of escalation of conflict in Somalia.^{xiv}

The threat of terrorism in failed states is perceived by developed nations as significant enough to merit extensive counterterrorism efforts. Many of the traditional approaches that would be used in other nations, such as the extradition of international terrorists or addressing the root causes of terrorism, are not effective options in failed states due to the lack of infrastructure necessary to support such endeavors. Previous counterterrorism programs have taken two forms: internal and external strategies. Internal strategies are those undertaken at the country level to directly stop the terrorist groups. They can include such actions as

“increased domestic surveillance, border controls, aggressive intelligence and police action, and direct engagement with terrorist organizations.”^{xv}

External strategies are those that are designed to fight terrorism indirectly by preventing it from obtaining support or finances. Such methods include “investment in infrastructure and economic developments, disruption of terrorist financing, political sanctions against nations that support terrorism, and overt military action against terrorist organizations.”^{xvi}

The United States, United Nations, and other international actors have utilized both forms of counterterrorism strategies when fighting terrorist organizations in failed states. AS Banks notes, “One U.S. counterterrorism strategy has been to develop legislation and law enforcement programs dedicated to catching and punishing would-be terrorists before they strike, on the theory that interdiction of these early-stage crimes may, over time, deter future terrorism.”^{xvii} Indeed, one of the prime strategies employed by the U.S. has been its use of direct military strikes on suspected terrorists. As recently as 14 September 2009, the U.S. military has launched attacks on members of Al-Qaeda in Somalia suspected of having been involved in the 1998 bombings of the U.S. embassies in Nairobi and Dar-es-Salaam. The strike not only killed Saleh Ali Saleh Nabhan, but also several of the leaders of Al-Shabaab.^{xviii} Other counterterrorism approaches have included the support of the ‘state’ (such as it exists in the failed state) and official policies such as the 2002 East Africa Counterterrorism Initiative. This \$100 million program, launched by President George W. Bush, “has provided key states in the Horn of Africa with military training, programs to strengthen control of the movement of people and goods across borders, assistance for regional efforts against terrorist financing, and police training.”^{xix} The challenges that this program has faced in the Horn of Africa are experienced by many counterterrorism efforts in failed states.

The chief difficulty in enacting counterterrorism strategies in failed states stems from the fact that there barely is a state. Without a centralized power capable of providing some measure of governance to the population, counterterrorism programs must be implemented and carried out almost entirely by external actors. Oftentimes, the foreign security forces that carry out these programs are poorly educated in local languages and customs, thus leading to the inadequate collection of intelligence. At the same time, the external actors may be seen as interfering in the affairs of the country, which can cause

distrust amongst the native population and further encourage terrorism. In Africa and the Middle East where the majority of failed states are located, the U.S. is seen as a hostile actor whose counterterrorism efforts cause more harm than good. International support of weak and failing governments/factions can also encourage terrorism and escalated violence by opposition groups. Additionally, the high levels of violence and anarchical atmosphere inherent to the failed state makes implementing counterterrorism efforts a struggle for foreign security forces. With the attention of military personnel focused on keeping local communities safe and secure from violence, their secondary counterterrorism goals often suffer. "Counterterrorism missions require personal interaction between military forces and local communities. In a failed state, such interaction entails serious risks for soldiers and civilians alike, and is not likely to yield much in the way of cooperation."^{xx} This risk, combined with the mutual distrust felt by both parties, means that most counterterrorism missions achieve very little in the way of tangible success.

The other main difficulty in implementing counterterrorism strategies in failed states is rooted in the organizational structure of terrorist groups. The most successful terrorist groups feature a decentralized organizational model based on the concepts of 'hubs' and 'nodes'. The 'hub' serves as the main operating brain, providing the ideology for the organization, finances, and training tools without actually directing the operations of its branches. The 'nodes' (or cells) are often scattered about the world and operate largely independent from the main terrorist hub save for the aforementioned resources that the hub provides.^{xxi} These cells may only loosely share the ideological goals of the hub. The presence of these nodes in failed states is particularly problematic since they can operate relatively unseen within the chaotic atmosphere. They can easily smuggle personnel and arms across the borders into neighboring countries, where they can then engage in terror acts. In many instances the personnel of the nodes are members of the indigenous population. Therefore, it is difficult to distinguish whether an individual is a member of a terrorist group or not by merely observing him.

The most prominent terrorist group following this organizational model is Al-Qaeda, which is based in Pakistan, but has nodes spread throughout Africa and the Middle East. It is widely believed that the Somali cell of Al-Qaeda provided the main support in the 1998 U.S. embassy bombings in East Africa.^{xxii} The failure of the

international community to eradicate Al-Qaeda from Somalia, despite the U.S. and AMISOM's increased counterterrorism activities, is indicative of the challenge that this organizational structure presents.

Classified as the world's only 'collapsed state', Somalia presents a prime case study to evaluate whether the accusations of policy-makers of failed states being 'breeding grounds of terror' carry any legitimacy. Since Somalia has all the conditions of a failed state present in their most extreme form, it stands to reason that, if these accusations are true, there should be increased instances of terrorist activity within the country. Somalia occupies a geopolitically important location in East Africa, forming most of the Horn of Africa. Its prime location means that instability within the country affects both the bordering countries as well as the region as a whole. Within the region, Ethiopia, Egypt, and Kenya are the prominent external actors taking an interest in Somali affairs. "Egypt and Sudan both perceive a strong, unified Somali state as an essential counterweight to Ethiopian influence in the Horn."^{xxiii} Instability in Somalia has a direct influence on the national security of Ethiopia and Kenya, both of whom have suffered at the hands of Somali terrorist groups and harbor large numbers of Somali refugees. Besides having created approximately 1.3 million internally displaced persons, conditions in Somalia force 20,000 people to flee the country each month.^{xxiv} The government's inability to provide basic goods and services and a corresponding scarcity of resources has been compounded by successive years of famine, drought, and disease. These conditions are the result of a steady decline following the independence of the Somalian colonies from Britain and Italy.

The Republic of Somalia came into existence when the colonies of British and Italian Somaliland were granted their independence and subsequently united. From the beginning, political Islamist groups such as the Muslim Brotherhood-inspired Jama'at al-Ahl al-Islaami, sought to incorporate Islamic principles into the fledgling Somali state.^{xxv} Inter-clan conflicts prevented the formation of a functioning modern government and, in 1969, a successful military coup by General Mohamed Siyaad Barre established a socialist government within the country. The popularity of the Barre regime declined throughout the 1970s and 1980s, during which time repressive and terror-style tactics were employed by the state to force the people into submission. By the late 1980s, a withdrawal of foreign aid by the Western

powers left the government entirely without resources. As Call notes, “Funded almost entirely from external resources (100 percent of the development budget and 50 percent of the recurrent budget was covered by foreign aid), the Somali state was a castle built on sand.”^{xxvi} Corruption levels rose, salaries fell, industrial and agricultural production declined and the ability of the government to deliver services fell.

A civil war from 1988 to 1992 between various clans and the central government led to the rise of warlords and subsequent destruction of the capital, Mogadishu. At the same time, the Islamist opposition group Al-Itihaad Al-Islaami gained power by promoting an alternative to the repressive socialism of the Barre regime: an Islamic state based on sharia law.^{xxvii} In 1991, Barre was forced to abandon Mogadishu, the government collapsed, and Somalia descended into lawlessness. Throughout the early 1990s, both the U.N. and the U.S. launched a series of nation-building and humanitarian missions in Somalia to ease the suffering of the people. These efforts were mostly unsuccessful as the missions came into violent conflict with prominent local warlords, and all missions were abandoned in 1994 following the Black Hawk Down catastrophe. In 2000, a Transitional National Government (TNG) was created to provide some semblance of governance to the people. It never became operational, however, as Ethiopia quickly denounced it as a front for Islamic terrorists and established an opposing Somali Restoration and Reconciliation Council.^{xxviii} In 2004, the TNG was replaced by the Transitional Federal Government (TFG), which soon faced opposition from the Islamic Courts Union (ICU), a radical Islamist group who viewed it as a tool of Ethiopia. Following an escalation in violence between the TFG and the ICU, Ethiopia, with the backing of the U.S., invaded Somalia and defeated the ICU. Ethiopian forces remained in Somalia until January 2009. Currently, the TFG, headed by President Sheikh Sharif Sheikh Ahmed, relies on AMISOM peacekeeping forces to maintain its hold over Mogadishu. It has lost control over the regions of Somaliland and Puntland, which have declared autonomous rule, and over the southern parts of the country, which have fallen into the hands of Al-Shabaab, the armed militant wing of the former ICU.^{xxix}

Somalia has existed without a central government since 1991 when General Mohamed Siyaad Barre was forced to flee the country. Since then, repeated attempts have been made, both internationally and domestically, to rebuild the state. These efforts have failed for two reasons.

First, external actors have sought to push their own agendas within the country and set up governments that are acceptable to them, rather than to the Somali people. The U.S., Ethiopia, and the African Union are the main culprits in this respect as they have been responsible for creating the TNG and, more recently, the TFG. The US supported the 2006 Ethiopian invasion of Somalia that defeated the ICU and strengthened the position of the TFG. Any government that is organized by an external actor, rather than a native one, will lose legitimacy in the eyes of the people. Indeed, the current Transitional Federal Government is widely viewed as illegitimate and an agent of both the U.S. and Ethiopia. In addition, these governments tend to exclude entire clans and ethnic groups within Somalia. The end result is that these clans become armed rejectionists who form opposition groups that fight the government and prevent it from establishing legitimacy.

Second, these state building efforts face difficulty in settling such fundamental questions as whether to have a unitarian or federalist government. The federalists, who make up a large part of society, believe that authority should be given to the clans and are wary of centralized governments due to its history of abuses, such as those suffered by society under the Barre regime. “For many Somalis, the state is an instrument of accumulation and domination, enriching and empowering those who control it and exploiting and harassing the rest of the population.”^{xxx} Unitarians promote a centralized government and “fear that decentralization will...destroy any hope of reviving Somali nationalism, and providing neighboring states with ample opportunity to play divide and rule.”^{xxxi}

All of this has resulted in the conditions inherent in failed states. Somali clans and warlords fight amongst themselves for control of towns and regions. The inability of the government to provide services or goods has resulted in the privatization of all forms of industry. Criminal activities such as smuggling, piracy, arms trafficking, and narcotics sales are the main source of employment. At the same time, a high population growth rate combined with few job opportunities and a young population (44.7% of Somalia’s population is under age 15) has led to few valid employment choices.^{xxxii} Most young men have no choice but to join armed militant groups and terrorist organizations in order to earn some semblance of a steady paycheck. Poverty is widespread, with the GDP per capita averaging at \$600 for the average person. The public lives in fear due to a lack of central police force or national-level judicial system. Instead,

clan chiefs and warlords protect their people with their own militias, and local communities run independent courts using a mixture of sharia and traditional Somali law.^{xxxiii} Having been forced into an atmosphere of anarchy for the past 19 years, the Somalis live their daily lives surrounded by almost constant conflict, where it is difficult to determine whether terror acts have been committed by clans or actual terrorists.

The earliest group to be classified as a terrorist organization in Somalia was Al-Ittihad Al-Islaami, which earned its designation by the U.S. government after 11 September 2001. Its leaders were trained in Saudi Arabia and followed a form of Wahhabism, a radical form of Islam, which promoted the formation of an Islamic emirate in Somalia. Dissolved in 2001, “it was implicated in the mid-1990s in two hotel bombings inside Ethiopia and an assassination attempt against an Ethiopian minister.”^{xxxiv} At its height, it had more than 1,000 members and received funding from Saudi Arabian and Gulf State Islamic charities.^{xxxv} The most recent Somali group to receive a designation as a terrorist organization is Al-Shabaab, which first appeared on the list in February 2008. “Al-Shabaab, whose leaders are affiliated with Al-Qaeda, consists of a disparate grouping of armed extremist militia” and was originally the armed wing of the Islamic Courts Union, surviving after the ICU’s defeat in 2006.^{xxxvi} The organization is dedicated to fighting the Transitional Federal Government and forcing the removal of foreign troops from Somali soil. Although it has not made a formal declaration of attachment, it is often linked to Al-Qaeda by analysts and policy-makers. It uses classic guerilla tactics including suicide bombing, shootings, public executions of collaborators, and targeted assassinations. In February 2009, suicide attacks killed 11 Burundian African Union peacekeepers. More recently, Al-Shabaab has changed its strategies in order to achieve maximum intimidation of the public by engaging in “‘high gain’ assassinations and arrest of clan elders...On June 19, Omar Hashi Aden, the Minister of National Security, was killed in a large-scale suicide car bomb in Beletwyne.”^{xxxvii}

The U.S.’s biggest fear in Somalia is the potential of it becoming a haven for Al-Qaeda. “The Somalian nodes [of Al-Qaeda] participated in all major Al-Qaeda activities within Africa: the bombing of US embassies in Kenya and Tanzania in 1998; the bombing of a hotel in Mombasa in 2002; attacks on an Israeli airliner in 2002; and an attempted attack on the U.S. embassy in Kenya in 2003.”^{xxxviii} Al-Qaeda first began to operate in

Somalia during the U.S. /U.N. humanitarian interventions of the early 1990s. As conditions within the country have deteriorated since then, they have been able to operate due to porous borders and a lack of both security and intelligence agencies. The fear of policy-makers within the U.S. is that Al-Qaeda will use the chaotic conditions within Somalia to gain support for their cause amongst the native population and to carry out transnational terrorist attacks within East Africa, as they have done previously.

In actuality, the U.S. and other international actors need not fear that Somalia will become a ‘terrorist haven.’ Al-Qaeda, despite its best efforts, has so far failed to galvanize strong support within the Somali population. Its use of Somalia as a terrorist haven would require the support and assistance of Somalis. Indeed, in the past, “Al-Qaeda underestimated the cost of operating in Somalia. Al-Qaeda constantly experienced extortion from Somali clans and unanticipated losses when bandits attacked their envoys.”^{xxxix} Al-Qaeda’s promotion of jihad is also unpopular amongst the Somali community, who are “generally not predisposed toward Islamic fundamentalism or entreaties by international terrorists.”^{xl} As is true with most terrorist organizations within Somalia, most of the combatants have no strong ideological attachment to the group and are merely fighting to satisfy their economic needs. The support that exists for Al-Shabaab is mainly due to the presence of foreign troops within the country. As Bronwyn Bruton argues, “Resistance to the so-called government [the U.S.-backed TFG] has united various radical groups that would otherwise be competing with one another.”^{xli}

At the present time, the future appears uncertain for Somalia. “Few Somalis believe there are terrorists in their country, and many regard the American-led war on terrorism as an assault on Islam.”^{xlii} Indeed, the use of military strikes by the U.S. has resulted in civilian deaths and has served as a propaganda tool for Al-Shabaab. In order for counterterrorism efforts to succeed in Somalia, the U.S. has to engage in public diplomacy, making it “clear that their counterterrorism efforts are aimed at a small number of criminals, many of them foreigners, not the Somali population at large.”^{xliii} State-building should be made with the realization that the U.S. will not be threatened if an Islamic state is established by the Somali people or resistance organizations. Previous governments have failed due to the exclusion of certain ethnic and religious groups, and clans from the political machine. Incorporating these groups and allowing

Al-Shabaab to participate in the legitimate political system by removing it from the list of terrorist organizations would perhaps enhance the ability of these new governmental efforts to gain legitimacy and stability.^{xliiv} Additional programs aimed at rebuilding the infrastructure within Somalia and promoting economic development that reduces poverty (and the main incentive of many ordinary Somalis to join terrorist organizations) also has the potential of resulting in beneficial changes. Such an adjustment in counterterrorism strategy is necessary if the U.S. wishes to have any sway at all over the influence of terrorist organizations in Somalia.

The failure of a state results in instability both within the country and the region. Lack of law enforcement, governmental apparatuses, and judicial institutions encourages lawlessness as the population struggles in the aftermath of its government's failure. Lack of the rule of law results in a chaotic atmosphere that encourages violent inter-group conflict thus making it difficult to distinguish between 'normal' conflict and terrorist acts. At the same time, the lack of governmental oversight allows for both illegal and terrorist activities to take place. Smuggling as well as arms, human, and narcotics trafficking increase in occurrence and success rates. As demonstrated in the 1998 U.S. embassy bombings by Al-Qaeda, it is all too easy for terrorists to carry out their operations relatively unseen within failed states. Counterterrorism efforts have faced significant challenges due to the sheer amount of violence taking place, lack of necessary infrastructure, and a resentment of external actors by the population. This said, the accusations of policy-makers that failed states serve as 'breeding grounds of terror' seem to be inaccurate. Somalia may witness more internal violence than other nations, but ultimately only Al-Shabaab operates as a prominent terrorist organization within the country, carrying out its mission of resisting the efforts and denying the legitimacy of the Transitional Federal Government. The fear that Al-Qaeda will use Somalia as a base from which to attack the rest of East Africa and the Middle East appears to be unfounded, as previous attempts by the organization to do so have failed to gain strong public support, which would be necessary if the group wished to carry out successful operations.

Somalia represents the conceptual 'failed state' in its most extreme form. While the situation on the ground may currently appear desperate, it does not seem that the country is not at threat for becoming a haven for international terrorists. Because Somalia is surrounded by weak and failed

states, the economic, political, security, and social problems in Somalia are exacerbated. To prevent these problems from leading to a haven for terrorism, external actors, including the U.S., the United Nations, and other relief organizations, must conduct remediative activities to alleviate poverty, improve local and regional security, and provide direct economic and political assistance. Further, such activities should not be limited to Somalia, but applied to the surrounding states as failed states are a problem within the African region.

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From ‘Just Saying No’ to ‘Just Staying Safe’: Sexuality Health Education Policy of the United States

Artemis Mahvi

Introduction

During President Barak Obama’s campaign for presidency, he promised voters change and accountability in an effort to renew voters’ faith in government and policy. Though there are still strides to be made in a number of legislative areas, the President has made advances in federal policies concerning sexuality health education. When the President developed his 2010 budget, he made drastic changes in policy by replacing Title V abstinence-only education and Community Based Abstinence Education (CBAE) -two programs that have been marked in legislative history for unprecedented funding for sexual abstinence until marriage-with comprehensive sexuality health education programs.

President Obama’s policy, known as Teen Pregnancy Initiatives marks a new period of sexuality health education in the United States. This change in sexuality health education policy illustrates the cyclical process of policy (Refer to Table 1). Disclosure of information, evaluations, and shifts in key politicians, as well as other public players, contributed to the change of policy. In turn, a new policy was developed to solve the social ills established by both conservative leaders and the government. At the beginning of this cycle, sexuality health education legislation was adopted and implemented by the states, first through AFLA, then Temporary Assistance to Needy Families (TANF) Title V, and finally the Community Based Abstinence Education legislation (CBAE). Since the major goal of these legislations was to reduce out-of-wedlock pregnancies, a focal indicator of policy success was the rate of teenage and single parent pregnancies. Statistical information concerning these indicators was collected and showed that the federal government’s efforts appeared to be successful year after year. However in 2005, this fifteen year trend reversed. A out-of-wedlock pregnancies continued to rise, what previously gave legislators evidence that government policy was succeeding was no longer valid. This policy paper will evaluate the stages of policy, but more specifically evaluation and change, to determine what led to President Obama’s legislative comprehensive approach in federal sexuality health education policy.

Evaluation of Programs and Curricula

Ideally, implemented policies will undergo an evaluation to determine its success in achieving its goal. Depending on the result, policy will either be adjusted to better fulfill its aims, or it will continue as is. Federal sexuality health education policy was no different, and after years of federally funded abstinence-only initiatives, policy and program assessments were performed that measured program success. Though there had been small independent evaluations that favored one type of sexuality education program over the other, there had been a lack of government-backed studies with two significant exceptions. The following studies were requested by government institutions. The first report was mandated by Congress and conducted by Mathematica to evaluate the effectiveness of Title V abstinence-only education programs. The second study, *Emerging Answers* (2007), was led by Dr. Douglas Kirby and the National Campaign to Prevent Teen and Unplanned Pregnancy. This report gathered information from past studies about both comprehensive and abstinence-only approaches, and provided conclusions about the effectiveness of these programs. These studies presented evidence that abstinence-only approaches are ineffective, and argued that the content in comprehensive curricula is more accurate than in abstinence-only curricula.

Mathematica Policy Research Inc. Evaluation on Title

In the Balanced Budget Act of 1997, Congress authorized a scientific evaluation of the Title V, Section 510 Abstinence Education Program. The study selected four different programs that were taught in various parts of the country, and examined the impact the program had on youth behavior. Mathematica followed participants for six years after study enrollment in order to assess the impact of the curricula. The study additionally evaluated effectiveness of the abstinence-only programs; it also judged content. To determine the effectiveness, there were two groups: a control group that was not offered abstinence-only education and a program group that participated in the educational services (Trenholm et al., 2007).

The Mathematica Institute conducted this study for Congress to evaluate the \$50 million dollar program legislated by the government. This extensive study showed that there was no statistical difference between youth

who participated in Title V abstinence education and youth who were not in the program. This study showed that government abstinence-only programs were not effective on youth sexual behavior and federal dollars were being allocated in unproductive means.

The research done by Mathematica was extensive and followed over 2,000 youth to evaluate four Title V Section 510(b) programs that state officials noted as “promising.” The study showed that abstinence-only education programs were not effective in several ways. First, the youth in the program group were no more likely than youth in the control group to have abstained from sex. In both program and control groups, nearly half of youth remained sexually abstinent (Trenholm et al., 2007).

A compelling finding was that participants receiving abstinence-only services responded to evaluative knowledge questions the same as those who had not received the education provided. The report states that “the programs improved identification of STDs [sexually transmitted diseases] but had no overall impact on knowledge of unprotected sex risks and the consequences of STDs. Both program and control group youth had a good understanding of the risks of pregnancy but a less clear understanding of STDs and their health consequences” (Trenholm et al., p xvii, 2007).

Knowledge about condom protection was also a subject that youth in both groups were unclear about. For example, 25 percent of the youth studied were unsure about condom protection against Chlamydia, gonorrhea, and herpes, and one out of seven youth were unsure about condom protection against HIV. These responses made clear that the program curricula contained either misleading or unclear information. The findings showed that 21 percent of program group youth reported that condoms never prevent HIV, compared to the 17 percent in control group (Trenholm, et al., 2007).

Emerging Answers 2007

Emerging Answers 2007, led by the National Campaign to Prevent Teen and Unplanned Pregnancy and funded by the CDC, was a research project that aimed to disseminate up-to-date research on teen pregnancy. As part of the organization’s “Putting What Works to Work” (PWWTW) project, *Emerging Answers* presented programs and approaches that have reduced teen sexual risk taking, that can lead to pregnancies and STDs. The report discussed various programs and their effectiveness; it also

recommended promising practices and strategies to organizations (Kirby, 2007).

Emerging Answers (2007) presented strong evidence of current teen sexual activity and why effective programs are necessary. For example, in 2002 it was reported that more than 30 percent of teenage girls in the United States were pregnant at least once by the age of 20, more than 80 percent of these were unintentional. In addition, young people age 15 to 24 accounted for a fourth of the sexual population in the U.S., yet they accounted for nearly half of the all new STI cases (Kirby, 2007). With this statistical information on the youth sexual health, *Emerging Answers* (2007) wanted to investigate programs that were effective by examining studies of sexuality health education programs between 1990 and 2007. There were a total of 56 studies that were compared and evaluated. The studies had to meet 14 criteria points, which included focusing on teens between 12 and 18 and having a sample size of at least 100 participants. There were many well-known studies evaluated such as the Mathematica study discussed earlier (Kirby, 2007).

Emerging Answers (2007) presented the programs in three categories: (1) those that focus on sexual risk and protective factors; (2) those that focus on nonsexual factors; and (3) those that focus on both. Comprehensive and abstinence-only sexuality education programs were included in the category that focused on sexual risk and protective factors. The report identified only seven rigorous abstinence-only program studies; however, there were not any studies that showed overwhelmingly positive effects¹ of abstinence-only programs (Kirby, 2007).

There were two less rigorous studies that the report identified that may have had some positive effects on behavior; one program delayed sexual initiation among middle school students; another appeared to have decreased the frequency of sex and sexual partners. In addition, abstinence-only programs improved participants’ values about sexuality, though these beliefs did not necessarily translate into a change in behavior (Kirby, 2007). Though the results showed that some abstinence-only programs are effective, there was not enough evidence to justify the educational approach (Kirby, 2007).

Comprehensive programs, contrary to abstinence-only programs, showed that they had a positive effect on behavior. *Emerging Answers* (2007) evaluated 48 comprehensive programs, in

which 40 percent of the programs had positive behavioral effects. These behavioral changes included the delay of the initiation of sex, a reduced number of sexual partners, and increased condom and contraceptive use (Kirby, 2007). Specifically, “30 percent reduced the frequency of sex (including a return to abstinence), and more than 60 percent reduced unprotected sex. Furthermore, nearly 40 percent of the programs had positive effects on more than one of these behaviors” (Kirby, 2007). The study discovered that all of the comprehensive programs had effect on at least one indicator of sexual behavior. In the nearly 50 evaluations, most of the youth demonstrated an improved knowledge about contraceptives and STIs, including the consequences and risk factors (Kirby, 2007). Another indicator paralleled positive results in abstinence-only programs: positive attitudes and values about having sex, using condoms, or other forms of contraception (Kirby, 2007). Though these are just a handful of positive behavioral effects, the report gave a number of markers that comprehensive approaches are more effective in reaching teens, and thus, impacting their sexual health.

Emerging Answers (2007) debunked several myths and arguments that abstinence-only supporters use to support their message. One of the most common arguments is that teaching about safe-sex will only promote and encourage teenagers to engage in sexual behaviors. In 2002, a report was released by the Heritage Foundation, a conservative think-tank, that supported abstinence-only methods arguing that abstinence-plus methods “implicitly encourage sexual activity among the youths they teach,” and that “these programs are thinly disguised efforts to promote condom use” (Rector, 2002).

The release of *Emerging Answers* (2007) research discredited abstinence-only supporters’ arguments, and showed that comprehensive approaches both promoted health behaviors and gave youth access to information about their sexual health. The study showed that none of the comprehensive programs showed an increase in sexual activity, which contradicts the myth that teaching participants about protection will encourage them to engage in sexual activity. In addition, these programs did not send any confusing or implicit messages to adolescents; rather, it taught them about abstinence while imparting information on protection necessary in modern society (Kirby, 2007).

Another important piece of evidence that strengthened the report’s findings is that these comprehensive programs can be replicated in a number of communities and still have the same positive outcome. Three comprehensive programs evaluated were replicated in different locations, but with similar circumstance and settings. The evaluation in both locations for each program showed that the positive effects were consistent (Kirby, 2007). The importance of this finding proved that these evidence-based comprehensive approaches are suitable for a wide scale replication and dissemination across the United States. The report recommended that it is necessary for communities to provide programs that contain information on sexual risk and protective factors designed for the target youth in their community. This extensive evaluation on various programs geared to reduce sexual activity and unintended pregnancies was used by advocates of comprehensive sexuality education to support their argument (Kirby, 2007).

The evaluations provided credible evidence that abstinence-only programs were ineffective and, thus, a failure in legislation. However, other motivations were needed to pressure policymakers to change federal programs. The following sections will provide the forces that influenced the direction of sexuality health education policy in the United States.

Pressure from Comprehensive Sexuality Health Education Supporters

When abstinence-only methods were initially implemented by the government, there were a number of organizations that aggressively campaigned to instate comprehensive approaches instead. Sexuality Information and Education Counsel of the United States (SIECUS) was one of the key organizations involved, as well as scholars, such as Dr. Douglas Kirby. Together, these crucial players pushed to disclose information on abstinence-only programs in hopes of changing public opinion about sexuality health education programs and their curricula. They revealed the medical inaccuracies and bias of abstinence-only approaches, while promoting abstinence-plus methods. Their efforts influenced public opinion and contributed to the shift away from abstinence-only programs.

SIECUS was, and continues to be, an influential player in the sexuality education debate. Since its founding in 1964, the organization has aimed to increase the amount of

information on sexuality and sexual health to policy makers and communities. SIECUS publishes numerous books, journals, and resources for professionals, parents, and the public (*History*, 2009). SIECUS gained momentum in their movement after Title V abstinence education funding was created. The organization developed community advocacy and media outreach projects that addressed the issues of abstinence-only education (*History*, 2009) “SIECUS also published many books and manuals, including Guidelines for Comprehensive Education: Kindergarten – 12th Grade, which was quickly hailed as a major breakthrough in sexuality education” (*History*, 2009). By providing resources and releasing reports on the status of youth and the sexuality education programs they participate in, SIECUS became a leader in the debate and is recognized for their advocacy.

Organizations were not the only ones dedicated to disclosing information on sex education in the United States. For the past 30 years, Dr. Douglas Kirby has focused his career on comprehensive sexuality education and became one of the most influential scholars in the debate. He continues to focus his studies on adolescent sexual behavior, comparisons of comprehensive and abstinence-only education programs, and youth development programs. He also co-authored *Reducing the Risk*, an evidence-based abstinence-plus curriculum. In addition to his reports, he has also worked with the CDC and the National Institute of Health (NIH).

To increase the awareness of sexuality education programs, curricula, and health, Dr. Kirby “published more than 140 articles, chapters, or monographs on sexuality-related programs, and has given more than 300 presentations or trainings to professional groups or to the media on this topic” (Program Services New, 2008). One of his most influential studies was *Emerging Answers 2007*, which as mentioned earlier, evaluated a range of programs from comprehensive approaches to abstinence only approaches (*Emerging answers 2007*, 2007).

Organizations, scholars, and public advocates worked together to give policymakers, communities, schools, and families, the information necessary to understand the debate of sexuality health education. As the government continued to fund abstinence-only programs, advocate efforts grew. While Dr. Kirby provided information on sexuality education programs and teenage sexual health, SIECUS aggressively

campaigns for the use of comprehensive approaches. In addition, they advocated for removal of abstinence-only education within the federal government. People involved in the comprehensive movement were dedicated to distributing information about access, education, and programs of sexual health in hopes of changing policy. These advocates were not the only ones calling for a new approach, but state officials were too asking for alternative methods to teach youth about sexuality and sexual health. The following sections illustrates the paradigm shift occurring in the states and request for change.

States Reject Title V Funding

Preceding the President’s formation of a federally funded comprehensive approach, states had already begun rejecting Title V funding and requested for an abstinence-plus programs. These rejections totaled \$23 million in unspent funds (*Sexuality education*, 2008). SIECUS reported that most states that opted out of funding based their decision on “strong research and evaluations demonstrating the ineffectiveness of abstinence only programs” (*Sexuality education*, 2008). Their rejection of funds illustrates a paradigm shift in sexuality health education among state administrations, and a need for new initiatives to meet state needs.

Before substantial research and evaluations were disclosed about the failure of abstinence-only methods, only a handful of states were not participating in Title V funding. For the first five years Title V was implemented, California was the only state that did not participate in the programⁱⁱ, forgoing nearly \$7 million the state was eligible to receive (Stein, 2007). Prior to the 1996 reform, California had implemented a state-wide abstinence-only initiative, but it was terminated in 1996 due to program ineffectiveness (Hauser, n.d.). Californian government officials established that abstinence-only programs were not effective in their state, and therefore decided to opt-out of the program funding.

As research about abstinence-only programs’ inadequacies was released, states slowly began to reject funding. Maine was the second state to opt-out of Title V and Pennsylvania followed suit. By 2007, 14 states declined funding; the number climbed to 25 just a year later. States that rejected funding represented several regions of the nation. In January 2008, Governor Napolitano of Arizona

announced that the state would no longer accept Title V funding due to evidence against abstinence-only programs, the state's high teen pregnancy ratesⁱⁱⁱ, and growing public support for comprehensive approaches (*Sexuality education*, 2008). It is not that state legislators were opposed to abstinence education, rather they believe that comprehensive approaches are a more effective approach. Keith Daily, a spokesman for Ohio Gov. Ted Strickland (D), stated that "the governor supports abstinence education. What he does not support is abstinence-only education" (Stein, 2007). Instead the governor requested that money be allocated towards abstinence in age-appropriate comprehensive approaches (Stein, 2007).

Some states were unable to comply with all points of the A-H abstinence education definition^{iv}. For some states, it was difficult to find programs that would incorporate all points. Alaska's only Title V grantee, Kids Are People, was denied funding due to their inability to comply with the tight restrictions and short extensions of the program (*Sexuality education*, 2008). Other states, such as Ohio and Washington, had applied for program funding, but made it known they would allocate money towards comprehensive approaches, demonstrating their demand for comprehensive funding (Stein, 2007). The trend among states leading up to President Obama's policy change demonstrated the call for a different approach, but more specifically, a comprehensive method that incorporates both abstinence education and information about contraceptives.

An Era of Change

Since 1996, over \$1 billion in federal and state matched funds have been poured into abstinence-only-until-marriage sexuality health programs nation-wide. The majority of these programs were obligated to follow the abstinence-only education eight-point definition outlined in TANF legislation Title V Section 510(b). This guideline in education was highly restrictive and inaccurate. It ignored the reality that youth are sexually engaged. The Mathematica study on government funded abstinence-only programs showed that Title V Section 510 programs were not effective in decreasing sexual activity or increasing knowledge about sexually transmitted infections (STIs) and contraceptives. *Emerging Answers* (2007), on the other hand, discovered that comprehensive programs were effective at affecting one or more indicators of teenage

sexual behavior, such as use of contraceptives. Furthermore, organizations, such as SIECUS, have advocated for comprehensive sexuality health education programs since the creation of AFLA; one of the first pieces of legislation in which traditional values and abstinence-only methods were emphasized and funded by the government. Various campaigns have been launched to promote this approach, but former Presidents Clinton and Bush not only continued federal funding, but increased the level of funding for this restrictive and ineffective approach.

When the Bush administration left office, a window of opportunity opened for abstinence-plus supporters, as President Obama was a supporter of comprehensive sex education, and gave these advocates hope for policy change (MSNBC, 2009). Cecile Richards, president of Planned Parenthood Federation of America, reported that she spoke to President Obama, and that "he totally understands the need for young people to have comprehensive sex education – they need information that protects their health" (MSNBC, 2009). However, she was skeptical whether or not he would implement effective change in policy because "when Congress gets involved, sometimes things get more complicated" (MSNBC, 2009).

Richards is correct; policy formation and legitimization are steps in public policy that are subject to manipulation by key players in reform, and generally the party that formulates the policy definition wins the battle. Kraft and Furlong (2007) explained how the policy process is a competition of the conception of goals, and that "problem definition is never simply a matter of defining goals and measuring our distance from them. It is rather the strategic representation of situations" (Kraft and Furlong, p126, 2007). In the case of sexuality education, conservative elements were able to shape the problem of increased out-of-wedlock births by defining it as a morality issue rather than a medical issue. By connecting the problem with other social ills, such as divorce rates, the morality issue became the main focus legislation concerning sexuality health education. However, recent legislation demonstrates a shift in players from religious conservatives to comprehensive sexuality health education supporters. The evaluations of abstinence-only education programs set up the grounds for policy change in the United States concerning its sexuality education approach. The Mathematica study and *Emerging Answers* (2007) found that abstinence-

only programs are not effective in reducing sexual occurrence among participants (Trenholm et al., 2007; Kirby 2007). The reports presented evidence against the abstinence-only approach, which were key to the debate and showed that current policy was unsuccessful.

President Obama recognized this policy failure and revamped the sexuality education programs the federal government endorsed. In May of 2009, President Obama revealed his federal budget for FY2010 that abandoned abstinence-only sexuality education programs. He replaced them with “evidence-based” programs geared to reduce teen pregnancy (DHHS, 2009). According to the budget report released in May, the new administration supports comprehensive approaches based on finding from previous reports (i.e. *Mathematica and Emerging Answers*). The report stated that these evaluations “indicate that the most positive results come from high intensity youth development programs that provide a range of services in addition to comprehensive sex education, such as after school activities, academic support, or service learning” (DHHS, 2009).

In the President’s new budget, abstinence-only programs were no longer to be funded. Instead, government programs will redirect their focus to “science-based” programs that discuss abstinence, as well as providing medical information to youth who are already sexually active. The new programs will provide \$164 million to both community-based and faith-based organizations that use promising models supported by evidence (DHHS, 2009). Out of the \$164 million allocated in the initiative, \$110 million will be allocated through Pregnancy Prevention Discretionary Grants. At least a quarter of this money is directed for “programs that replicate the elements of one or more teenage pregnancy prevention programs that have been proven through rigorous evaluation to delay sexual activity, increase contraceptive use (without increasing sexual activity), or reduce teenage pregnancy” (DHHS, 2009). Another \$25,000 is allocated for research and development of these programs in order to refine and test for more effective methods (DHHS, 2009).

In addition to the Pregnancy Prevention Discretionary Grants, President Obama took money out of Title V Section 510, and relocated the \$50 million to new grants called Teen Pregnancy Prevention Block Grants. Evaluations of these new grant programs are also included in

President Obama’s budget. Approximately \$4 million will be used to carry out studies of teen pregnancy prevention approaches (DHHS, 2009).

President Obama’s budget marked a new era of responsibility and accountability in sexual health education policy. His change in policy sparked many abstinence-plus supporters to speak out, including Sarah Brown the director of the National Campaign to Prevent Teen and Unplanned Pregnancy. She stated that “in a highly constrained fiscal environment, it’s critical to focus precious dollars on programs that have evidence of good effects...when you look at the best science, the abstinence-only programs come short” (MSNBC, 2009). Brown makes a valid point, and reveals reasons for policy change. The depressed economy has affected the government and their budgetary approach. President Obama determined that federal dollars were being ill sent in support of abstinence-only programs that were not only medically inaccurate, but ineffective. With the new comprehensive legislation implemented, sexuality health education policy illustrates the cyclical process of policy, and will continue on this path to ensure policy that is successful, efficient, and effective.

Conclusion

As the policy process moves through stages, so does sexuality health education policy. Following the evaluation process, President Obama was able to justify a change in the federal approach away from abstinence-only and to abstinence-plus education. After over a decade of implementation and several program evaluations, abstinence-only programs were proven to be ineffective, and therefore a poor use of government resources. Public policy was not addressing the real issues that teenagers face in regard to sexuality, and instead, aimed to solve a problem unrealistically by enforcing a traditional relationship structure and conservative principles.

Sexuality health education policy has evolved as political and societal forces have pressured and shaped it. Societal forces pushed the disclosure of information about abstinence-only methods, for its bias, medical inaccuracy, and censorship. These forces influenced the paradigm shift among states, and thus, caught the attention of legislators. Abstinence-only programs were not fulfilling the legislative goals that were sought; therefore, millions in federal funds were being wasted in failed policy. All of

these forces contributed to the change in policy and a step in a new era of sexuality health education. However, this time legislators got it right, and finally, the youth in the United States will be receiving essential knowledge about their sexual health in order to make informed and responsible decisions about their bodies. As President Obama promised, we have stepped into a new era of responsibility and accountability.

Tables and Figures

Table 1. Policy Process Model- Sexuality Health Education Policy	
<i>Stages of the Process</i>	<i>Illustration</i>
Agenda Setting	Rise in out-of-wedlock pregnancies and single-mother households on welfare. Religious Right was able to shape issue on morality problem.
Policy Formulation	AFLA passed in 1981 that focused on providing moral approach for illegitimacy. Set stages for Title V (1996) and CBAE (2001) for specific definitions and grant requirements. ^v
Policy Legitimization	Religious Right successfully mobilized in communities and were able to influence legislators.
Policy Implementation	AFLA, Title V and CBAE, as well as other initiatives, were implemented via states through grants.
Policy and Program Evaluation	The evaluations of these programs were not assessed adequately. Title V and CBAE evaluations were conducted after over a decade of implementation.
Policy Change	President Barak Obama changed policy and focused pregnancy prevention programs on evidence-based and medically accurate methods.

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ⁱ Indicators of successful abstinence-only programs are: delay in the initiation of sex, hastening to the return to abstinence, or reduction the number of sexual partners (Kirby, 2007).

ⁱⁱ However, there were a number of CBAE grantees in the state, including the Await and Find Project. From 2004-2007, the program received \$800,000 a year (*Sexuality education*, 2008).

ⁱⁱⁱ Arizona ranked 46th in 2005 for teen pregnancy birth rates at 58.2 per 1,000 teens

^{iv} The abstinence-only program, located under Title V section 510(b), defined abstinence education under an eight-point definition that restricted what information was taught to program participants.

^v AFLA is an acronym for the Adolescent Family Life Act and became one of the first legislations addressing illegitimacy via morality and abstinence from sexual engagement. Title V part of Temporary Assistance to Needy Families and is known as the abstinence-only-until marriage program. This was the first legislation that denoted funding specifically for abstinence-only program, even goes as far to define these programs. CBAE, Community Based Abstinence Education, was legislation that put more stringent guidelines on abstinence education and focused on more faith-based education.

Recent Findings in Congressional Oversight of the Intelligence Community

Rosa Trembour

“Oversight is designed to look into every nook and cranny of governmental affairs, expose misconduct, and put the light of publicity to it. Oversight can protect the country from the imperial presidency and from bureaucratic arrogance.”

(Lee H. Hamilton, July 15, 1999)

The quotation above reveals the goal of congressional oversight since it came into existence several hundred years ago. I use the word goal because to this day it has not been fully realized. Hamilton’s words are simply a best-case scenario for Congress in carrying out its role of oversight of the intelligence community. This role was rooted in the Framers’ intent for guidance of American national security, as seen in the Federalist Papers and then translated into the Constitution. This review will describe the nature of the modern intelligence community since its inception and the basis for Congress’ role in the complicated process of oversight. It will also examine key issues in the history of congressional oversight and how they are still relevant today.

Many associate the birth of the modern intelligence community with the dissolution of the Office of Strategic Services in 1947, which was considered America’s first intelligence agency. The National Security Act of 1947 established the Central Intelligence Agency, which came to replace the OSS as America’s premiere intelligence organization (Warner 2000).

Scholars of congressional oversight have organized their findings into time periods that run parallel to events in intelligence community history. Three distinctions include the Era of Trust (1947-1974), the Era of Oversight (1974-late 1990s), and the current, Broken Era (1997- present). Although there are some variations to dates as well as sub-eras, these three phases of intelligence community history over the last sixty years demonstrate the reasons for the current state of congressional oversight.

The Era of Trust

The first was coined the “era of trust” because of the lack of interaction between the CIA, other intelligence agencies, and congressional oversight committees (Johnson 12). There were several instances in which Congress had to adjust to a

new intelligence organization, but from then on there was little disagreement for the next twenty-five years. This period between 1947 and 1974 has also been called the period of “benign neglect,” as there was little interaction between CIA activities and Congress, much less interference on either side in policy-making decisions or changes. This “hands-off view of oversight” was a result of Congress simply not wanting to know the “inner-workings” of the intelligence community (Van Wagenen 2007). Congress had always been aware that the intelligence community engaged in covert activities and secret missions, but it was reluctant to inquire into the methods by which these organizations conducted their missions because they did not want to be held responsible for any criminal practices or violations of the Constitution.

The Era of Oversight

On December 22, 1974, Seymour Hersh published an article in the New York Times titled “Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years.” The article was a compilation of the CIA’s so-called “family jewels,” or “misdeeds” over the past twenty-five years. The era of trust ended immediately, and the Intelligence Community was swept into the era of oversight in which Congress reasserted its authority (Knight 1). The article was only the first step in a long string of scandals that would spur committee reform and thus strengthen congressional oversight. Two committees were established, one in the Senate under Chairman Frank Church, and the other in the House of Representatives under Chairman Otis Pike. These committees were not permanent, but were established to “investigate the conduct of the National Security Agency” and create a plan for strict oversight of its intelligence operations in the future. Similarly, Vice President Nelson Rockefeller also chaired the “Rockefeller Commission,” which dealt with domestic CIA activities (McDonough, Rundlet and Rudman 9-10).

The findings of these committees were shocking, both to Congress and the public. The investigation process only proved how faulty the oversight system had been during the previous era of trust. In one case, a staffer on the Church committee found that “only one person on each committee was cleared for NSA information,” and NSA had only made budget data available. There was no record of any oversight on the part of the Senate Armed Services and Appropriations Committees, whose responsibility it was to review NSA activities (McDonough, Rundlet, and Rudman 10).

These findings, along with many others involving the CIA and the FBI produced the Hughes-

Ryan Amendment (1974), “which required the president to notify between six and eight congressional committees of covert intelligence actions” (McDonough, Rundlet and Rudman 11). Congress only continued to increase its oversight authorities, establishing the Senate Select Committee on Intelligence (SSCI) in 1976, and the House Permanent Select Committee on Intelligence (HPSCI) in 1977. These measures were significant to the history of congressional oversight because they were the first permanent committees to be established that dealt solely with the intelligence community. In 1978 Congress passed the Authorization Act, which allowed for one hundred percent oversight of the “Intelligence Community’s purse strings” by the SSCI and HPSCI (Van Wagener 2007).

The CIA refers to this time period of oversight reform as “getting tough.” The Church and Pike Committees had recommended permanent intelligence committees, and congress had established these. Furthermore, the slew of legislation following the release of the “family jewels” was well received because it provided an overwhelming sense of security for Congress and the public. The new, robust character of congressional oversight was not only the best solution to avoiding a media disaster with news reports, but it was a way for Congress to fill its Constitutional role of checks and balances with the Executive branch (power of the IC translated into influence over foreign policy decisions).

In 1987 Congress’ reasserted power and new outlook on responsibility were put to test during the Iran-Contra Affair. President George H.W. Bush was pushing for a new Director of Central Intelligence, and all eyes were on the White House because of its perceived involvement in selling arms to Iran and diverting the profits to the Contras in Nicaragua (1985-1986). The Iran-Contra affair was both a violation of the Boland Amendments (part of oversight reform) and the U.S. arms and trade embargo on Iran. When Bush chose Robert M. Gates to be his DCI, the Senate overwhelmingly disapproved because of Gates’ supposed failure to act on information that was given to him regarding CIA involvement in Iran-Contra. Gates was forced to withdraw his nomination, as the SSCI had conducted investigations and found two of Gates’ colleagues responsible for U.S. participation in illegal actions with foreign nations (meddling in Central American politics and inflation of arms sales to Iran). The SSCI asserted its oversight power (confirmation hearings and investigations of the nominee) and thus actively impacted the President’s agenda (Eland 2006).

This is just one example of the “functioning oversight” that managed to persist into the late 1990s. Several reasons for the progress of this era were “the

relations between the Intelligence Committees and those that had competing jurisdictions in intelligence oversight, the professionalism and nonpartisan conduct of the staff,” and the respect of committee members in honoring their duty to uphold the Constitution. It was the decline of these practices that ushered in a new era and provided the basis for current criticism of Congress’ role in overseeing the intelligence community (Van Wagener 2007).

The Broken Era

The current, “broken era” of oversight is largely due to the “growing partisanship in both congressional committees” as a result of increased focus on “tiny aspects of the authorization process,” causing the larger issues to be overlooked (Ott 88). This breakdown in the process however is also because of the unwillingness of intelligence agencies to be interdependent, whether with each other or with Congress and the executive.

A recent article in the Washington Post points to “passive resistance of intelligence agencies to answer questions” as one block in the information sharing process and subsequent breakdown in oversight. Senator Mike DeWine noted that “you have to ask the right questions” in order to get what you want (Priest 2004). This disconnect exists in many other relationships among Congress, the IC, and the President. For example, Priest cites a “congressional lack of interest in intelligence, as the majority of SSCI and HPSCI hearings are closed and even staffers are left in the dark. The line between protecting intelligence products and utilizing information for important decisions is no longer clear, which promotes a closed mind-set in matters of intelligence. Even when most agencies and the two congressional committees have clearance, it is “all about protecting sources.” Steven Aftergood of Secrecy News seconds this, explaining that it is possible for Congress to “evaluate management issues and reforms without exposing sources,” but it rarely makes the effort to do so (Juliano 2008).

Other factors that contribute to the “broken” or “dysfunctional” era of oversight are the Government Accounting Office (GAO), which serves as Congress’ “investigative arm” for the IC, and the National Security Agency (NSA). Ivan Eland of the CATO Institute undermines that “intelligence committees alone cannot monitor the CIA.” In reviewing the reasons for this he notes that greater utilization of GAO would enable other oversight committees (besides SSCI and HPSCI) to “adequately monitor” IC activities. Although the GAO pledges “oversight, insight, and foresight” to congress regarding the intelligence community, its resources are unemployed which contributes to

redundancy within the community (Walker 2006). Another source identifies vacancies at congressional oversight offices at NSA, an indication that information sharing is almost obsolete between agencies. The lack of requests for intelligence product information has declined so steeply that staffing the GAO office at NSA no longer makes sense (Juliano 2008). Whereas Congress would have liked to see more productivity from GAO and NSA, the executive had a different solution.

In August 2004, President Bush spoke on the issue of redundancy. His solution to the problem of multiple, “overlapping jurisdictions” by agencies was to appoint a Director of National Intelligence to oversee the “foreign and domestic activities of the intelligence community.” Although this was consistent with the recommendations of the 9/11 Commission, such a position would imply a drastic makeover of the intelligence community in terms of reorganizing oversight responsibilities (Malveaux 2004). Bush garnered significant support from the 9/11 Commission and several oversight committees, however the ODNI is still in the process of successfully integrating the IC and forming a working relationship with Congress.

This highlights the additional struggle between Congress and the executive when it comes to oversight. If the executive continues to reorganize the IC offices, then Congress must deal with the inconsistencies of information sharing and subsequently more complicated oversight. The degree of difficulty it takes to procure necessary information across agency lines then comes into play. It was only after he was named House intelligence committee chairman that Pete Hoekstra learned of the Bush Administration’s decision ordering warrantless surveillance and wiretapping of American citizens who were “suspected of ties to al-Qaeda” (Diamond 2005). According to USA Today Hoekstra was not allowed to bring a staffer or take notes during the meeting, lending credence to the claim that the secrecy of briefings and surveillance now takes an even larger toll on congressional oversight, preventing lawmakers from filing bills to stop such actions.

The protracted struggle for clear-cut oversight policy that further defines today’s “broken” era only continues when taking into account the “Gang-of-Eight” leanings of the executive. According to a provision of U.S. Code 50, the president must “ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States.” However, he may deem it necessary to “limit access” of covert information, in which case he defers to the gang-of-eight, which usually consists of

the leaders of each party in both houses and the chairs of the intelligence committees as well as ranking members. Senator Russ Feingold of the SSCI challenged in September of 2007 that the Bush Administration was abusing this provision and thus preventing Congress from obtaining reports from IC agencies. This only hinders the oversight process, most recently seen with opposition from the Administration to releasing “documents with regard to detention and interrogation.”

Whereas Feingold cites the Bush Administration as the main “impediment to effective congressional oversight of intelligence,” Stephen Knott, a professor at the University of Virginia Miller Center of Public Affairs, pegs the oversight committees themselves as the setback in question. He argues that Congress has taken on an “ownership” role over the CIA instead of a “partnership,” and in doing so crippled the agency’s “effectiveness.” Knott’s accusation is not unfounded, as he provides examples of Congress’ “line-by-line authority over the CIA’s budget, pork barrel spending,” and culpability in transforming the CIA from a “risk taker” into a “conscious bureaucrat.” Because the CIA relies on technology to conduct its various operations, Congress has forced the agency to buy high-priced equipment from companies that produce their products in surprisingly, no place other than certain congressmen’s districts. Knott explains that doing away with the “dirty stuff” of the CIA (usually clandestine human intelligence) will not make it any more effective or easy to oversee. He advises Congress to “acknowledge the uniquely executive character” of the CIA and “dismantle the cumbersome oversight apparatus” of the last twenty-five years. Contrary to Feingold’s solution, Knott suggests, “restoring” the executive power of “secrecy and dispatch” in controlling the “business of intelligence” (Hamilton and Madison Federalist 64, 70). He feels that only then will America be able to “defeat and deter its enemies.”

The dichotomy of this issue further illustrates the “broken era” of congressional oversight and therefore the many facets of why this has occurred. Congressional oversight has either turned a blind eye on noticeably illegal situations, or let valuable information seep through the cracks by failing to communicate with its counterparts. Examples of this include the SSCI and HPSCI’s refusal to “consider a review of pre-war intelligence related to Iraq” in 2003, and failure to finish a Phase II report on the 2004 Iraq Inquiry. Another example is the absence of any inquiries or investigations into IC involvements in “the prisoner detentions, interrogations, and renditions around the globe” when this area is under the jurisdiction of these committees (Whitelaw,

2006).

Although the forecast for the future of congressional oversight of the intelligence community looks rather grim, it is important to note that, just as in the past, the strength and relevance of oversight change and adjust according to the issues of the time. The relative lack of definitive structure and practice in this area of oversight is not ideal, however struggles as a result of political scandals, competing interests, and the political machines that engage in institutional combat further aggravate the public and its perceptions of the intelligence community. Through the three eras of congressional oversight, the intelligence community as well as the White House learn more and more about how far they can push congress, or expand on the Constitution for that matter. This trend has prompted numerous political scientists and members of Congress to closely examine these issues and continue to reiterate the true intent of the Framers in building a system of checks and balances that would serve the people. This aspect of today's Broken Era is a little more promising, and hopefully an indication of changes to come.

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A Match Made in Heaven: The Increased Interaction Between History and Anthropology in the Study of Colonial Burial Practices

Allison Conner

The burial rituals and practices of 17th century England and America shared many cultural traits. Colonists, particularly in the Chesapeake region, were very recently arrived from Great Britain. Immigrants continued to arrive from the homeland, and correspondence and a desire to conform to the fashions of England kept the American colonies and Great Britain culturally close. While conditions in America facilitated modification and innovation in traditional English practices, the stamp of British heritage remained on colonial social practice for many years and is arguably still present in some forms today. As such, any study of the 17th century burial practices of the American Chesapeake region involves an in-depth examination of contemporary practices in the mother country in addition to general colonial practice.

Due to the very cultural, every-day nature of mortuary practices, it has been largely ignored by historians until fairly recently. The 20th century shows the greatest devotion to exploring this topic, and many authors note the relatively sudden burst of interest which developed during this time period. As Charles O. Jackson noted in the 1970s, “The new scholarly outpouring is a striking phenomenon.”ⁱⁱ Though the historical analysis of this topic is limited to a single century, a myriad of theoretical approaches have been utilized in the study of 17th century burial rites. Since the 1920s historians have used the tenants of historicism, psychohistory, social history, Marxism, and many other approaches to understanding colonial funerary practices and their meaning to the larger history and society of the time period.

While theoretical approaches vary widely throughout the 20th century, a general trend toward greater integration with the social sciences, particularly anthropology, can be seen in the historical treatment of this topic. As Richard Hofstadter wrote in 1956, “The historian’s contact with the social sciences is clearly of more importance to the present generation of historians than it has been at any time in the past.”ⁱⁱⁱ In 1984, the historian, Robert Darnton, went so far as to say that, “Several anthropological books by historians and historical books by anthropologists have shown that the two disciplines are destined to converge.”ⁱⁱⁱⁱ Perhaps, historical archaeology, which forms the foundation of some of the most recent works on colonial burial practices, represents just such a convergence of

anthropological method and historical theory. The historical discussion of burial rites and rituals in the 17th century Chesapeake region is a reflection of both scholarship in America on colonial practices, and scholarship in England on corresponding English practice during the same time period. This historical discussion tends to progress from the *Annaliste*-based structuralism of the 1970s (referred to as social structural history here), which inspired the anthropological theory of functionalism, to an increasingly greater blend with anthropological ideas through the social historians of the 1980s, and culminating in the heavily archaeological-based cultural history of the early 21st century.

The first real proliferation of work on the topic of 17th century American and English burial practices came with the popularization of an *Annaliste*-inspired form of structuralism and its inherent societal focus in the 1970s. Though the information concerning 17th century colonial Chesapeake burial practices has been in the historical record since the 17th century, it required the advent of a historical theory concerned with the lives of every day people and societal processes in general before it could be given proper scholarly focus. Peter Laslett wrote:

The phrase ‘sociological history’ has been occasionally used here as its title, but it might almost be better to use ‘Social structural history’ instead. This new title is required first and foremost to register a distinction in subject matter, for confessedly historical writing has not previously concerned itself with births, marriages, and deaths as such, nor has it dwelt so exclusively on the shape and development of social structure.^{iv}

While the subject matter of social structural history widened the scope of the discipline dramatically, the methodology remained static to a large degree. It retained a focus on documentary support, statistics and quantifiable data, and a particular interest in “institutions” from previous attempts to make history a scientific discipline. Much like the positivist historians of the past, it sought general laws, not of nature or humanity, but the particular code or codes which governed behavior in a society.

Anthropology had given social structural history a new topic of interest but had not penetrated the theory methodologically. In fact, structuralism rather inspired anthropological theory, with its focus on the underlying function of every social action to the continuation of society. Ernst Breisach notes how Lévi-Strauss, “transferred the structuralist theorems into the discipline that in recent years has acquired a

special relationship with history: anthropology.”^v This anthropological theory, developed from structuralism, was called functionalism and focused on the function of ritual, belief, and custom to the continuation of culture and to human survival. Functionalist elements are particularly common in the social structural history of the 1970s regarding American and English burial practice in the 17th century.

Religion and the Decline of Magic by Keith Thomas, is one such example of strong functionalist elements in a social structural history. His commentary on ghosts and their relationship to burial practices in the 17th century provides a good example:

The essential *task* of ghosts was to ensure reverence for the dead and to deter those who sought to molest their bones or frustrate their dying wishes...Ghost-beliefs are thus more likely to be important in a relatively traditional society, that is to say, one where it is believed that in significant areas of life the behaviour of the living should be governed by the presumed wishes of the dead, and one where the links with the dead are deliberately preserved. [Emphasis mine]^{vi}

In this interpretation, ghosts are stripped of any symbolic importance and function solely as a means of preserving societal order and tradition, inspiring a very functionalist reading of the text. As an example of social structuralist history, ghosts serve as an identifiable part of the societal code which defines directly the relationship between the living and dead. This one visible element serves a predictive purpose for defining other manifestations of the underlying cultural code. For example, it presumes the existence of a traditional society which maintains strong ties to the dead, an expectation which one would expect to be reflected in the actual cultural practice of burial. Such a link can certainly be found in the practice of burying community members within the church in the 17th century Chesapeake area. The church being one of the centers of community life in the 17th century, this practice maintains strong ties between the living and the dead.

Another telling example of social structuralist theory is Thomas’s treatment of shifts in Protestant burial practices after the Reformation. With the loss of a societal acceptance of purgatory, where intercessions on behalf of the dead can further a loved one on to heaven, songs and masses for the dead ceased to serve a function in Protestant society and were thus eliminated. This break in traditional practice is a manifestation of a much deeper break

with the previous societal code. The individualism, so characteristic of the historical interpretation of the Protestant social code, is manifested in a burial practice and mourning ritual where the individual is responsible for his or her own salvation and cannot receive spiritual help from others. As Thomas wrote, “This implied an altogether more atomistic conception of the relationship in which members of society stood to each other.”^{vii} Thus social structuralist history was both the search for the societal code by interpreting social action and the prediction of social action through an understanding of the underlying social code.

Though Breisach defines structuralism as the search for “invisible, impersonal, and timeless structures,” Thomas utilizes structuralism with a greater awareness of its limitations when confined to simple cause-effect equations. Robert Darnton wrote, in *The Great Cat Massacre and Other Episodes in French Cultural History*:

Keith Thomas...seems to imply that social conditions determined popular beliefs. But when confronted with so bold and bald a proposition, he backed down—and wisely so, for it would have committed him to a simple, stimulus-and-response view of attitude formation and it would not even have made sense of the chronology.^{viii}

The social structural theory of history utilized by those who studied 17th century British and American burial practices in the 1970s is not an orthodox structuralism as Breisach would see it, but a historical understanding of the function of social ritual to perpetuating the societal code.

Another work, written in 1977, *Passing: The Vision of Death in America*, edited by Charles O. Jackson, is a collection of historical writings which conforms to the social structural theory of history. Although this book is a collection of works, it was developed to, “argue an overall thesis...The volume is characterized, therefore, by an interrelatedness and conceptual continuity which places it somewhere between that of a typical collection of readings and the standard historical monograph.”^{ix} Thus it can be inferred that the social structural theory of history was such a popular method of exploring the topic of 17th century burial practices in America that an entire collection could be dedicated to it in 1977. Without a doubt the book utilizes this theory of history. The section headings of two authors, Robert Blauner and Leroy Bowman, titled “A Final Theoretical Note: Death and Social Institutions”^x and “Theory of the Functioning of Funerals”^{xi} respectively, clearly express this theoretical position. The introduction, which summarizes the intended theoretical position

of the entire collection states, “The social dimension of death is reflected in the additional fact that individuals die through a whole cluster of social definitions and value-laden categories.”^{xii} This is very much in keeping with the origins of structuralism as a theory which originated in the belief that language expressed a code through which social life was constructed and ordered.^{xiii} The social structural theory of history popularized the study of 17th century American mortuary ritual, and obviously exchanged ideas with the discipline of anthropology.

The historical exploration of colonial American burial rites in the 17th century developed an even deeper connection to anthropology in the 1980s with the popularization of social history. Richard Hofstadter’s idea of the ideal mix of social science and history relates well to the theory of social history. He wrote:

In this genre the work of a historian can best be described as a sort of literary anthropology. His aim will be a kind of portraiture of the life of nations and individuals, classes and groups of men; his approach to every system of culture and sub-culture will be that sympathetic and yet somewhat alien and detached appreciation of basic emotional commitments that anthropologists bring to simpler peoples.^{xiv}

As this quote demonstrates, interest in the social lives of past people had progressed beyond a focus on social institutions and the underlying, unifying “code” which ordered a society, to a more organic vision of the everyday life of common people. Social history corresponded a great deal to ethnography in anthropology. Like ethnography of the past, social history tried to capture a broad, narrative image of the past lives of average men and women, and to understand their emotional reactions within the cultural rites and rituals which made up their everyday lives. In order to glimpse their worldview from those snapshots. While elements of social structural history remained—historians still concerned themselves with a ritual’s function in society—the emotional responses to and emotional instigation for certain rituals was now taken into consideration. Grief, expressed by the common man, became a cultural emotion that played a part in the interpretation of burial customs. This represented a greater focus on the common man and his emotions than social structural history. An important element of social history was its focus on the masses as the impetus of history. Mark Poster wrote:

The introduction of social history into the discipline brought with it a series of

methodological innovations...above all, the subjects of history were expanded from the political and intellectual elite to the working classes, women, the poor, criminals, and minority ethnic and racial groups...The turn to social history also meant in particular a preference for ‘history from below.’^{xv}

Where social structural history had made society an acceptable topic of study, social history made the average man, even the minority person, and his or her feelings an important historical focus. Along with this concern for the everyman was an appreciation for non-elite sources and non-documentary sources.

The 1980s offers another excellent collection of historical works, linked by a common theoretical focus. As the title implies, *Mirrors of Mortality: Studies in the Social History of Death*, edited by Neil McKendrick and Joachim Whaley, contains historical works written under the theoretical guidelines of social history. Whaley mentions, “An astonishing amount of intellectual energy and artistic accomplishment [was devoted] to speculation about the nature of death and a possible after-life” as well as the “incredible material resources and enormous physical prowess [expended] in order to provide the dead with houses or monuments.”^{xvi} This suggests historical sources other than documents such as art, artifacts, and buildings. The cultural manifestation of emotion also plays a large part in the collection. The introduction states:

Fundamental to this revision will be the distinction between grief and the expression of grief. That men are more or less sad when faced with death is not something which historians can hope to measure. But the ways in which it is generally permissible for men to express grief are both constantly changing and linked to some of the most important characteristics of any human society.^{xvii}

The focus on the collective emotions of individual, average members of society and the recurring use of the general term “men” connotes the “history of the masses” methodology of social history. The attitude of many individual, everyday men is what creates the cultural view of death: “These individuals and the diverse emotions felt by them contribute to the formation of social attitudes which in essence represent average feelings.”^{xviii} The social history of death is more culturally focused, and therefore anthropological, than social structural history which was more sociological and functionalist in perspective.

Death, Ritual and Bereavement is a collection of works compiled in 1989 which was

edited by Ralph Houlbrooke and based on the same theory of social history. Houlbrooke wrote, “These new studies in the social history of death in England from 1500 to the 1930s focus on the death-bed, funerals, burials, mourning customs, and the expression of grief.”^{xxix} Yet again, the focus is on cultural ritual and not that ritual’s function in perpetuating society. There is also an emphasis on the expression of emotion through cultural action as demonstrated by the concern over expressions of grief. The collection’s focus is primarily cultural:

Death...whose essential nature does not alter in the course of time. But its causes and incidence, understanding of its physical aspects and beliefs about the after-life, the treatment of the dying and their comportment, the disposal of mortal remains and the ritual responses of survivors—all these have clearly changed, and the historian can study the process in a wealth of remaining evidence.^{xx}

Ritual, emotion, and the possibility of using non-documentary evidence place this collection within social history. However, social structural elements remain through a lingering sense of functionalism. As Houlbrooke states, “Funerary rites have long interested both historians and anthropologists, largely because of the great range of purposes they have been designed to fulfill in different cultures.”^{xxxi} The transition from social structural history to social history was not a clean break, though the increasing incorporation of anthropological elements has become more common as the years progress.

A more significant development occurred with a particular type of new cultural history, written by historical archaeologists primarily in the 1990s and early 2000s. There is no more complete integration of history and anthropology than historical archaeology, which depends on textual sources—particularly the more quantifiable records like wills and probate accounts—in order to more fully comprehend the archaeological record of a site. Simultaneously, the archaeology of a historical site gives valuable information of a more everyday nature, either not considered worthy of recording for posterity or pertaining to a group which did not have access to historical documentation. The strong bias toward incorporation of archaeological materials corresponds well to the poststructuralist elements mentioned by Breisach as an influence on the new cultural theory of history: “Poststructuralist theory directly problematizes the text as mediation. In Derrida’s case, the text is as much an indication of the absence of the real as it is itself an inscription of reality.”^{xxxii} The text serves as a foundation for

preliminary research, but its inherent faults and limits are recognized. It makes clear the absence of certain information, or certain voices in the historical record which can be remedied through archaeological research.

There is a strong sense of give and take between the methods and information provided by history and those provided by archaeology. Robert Darnton, though not discussing historical archaeology, described the relationship well when he spoke of cultural history in general:

It begins from the premise that individual expression takes place within a general idiom, that we learn to classify sensations and make sense of things by thinking within a framework provided by our culture. It therefore should be possible for the historian to discover the social dimension of thought and to tease meaning from documents by relating them to the surrounding world of significance, passing from text to context and back again until he has cleared a way through a foreign mental world.^{xxxiii}

Both historical documents and field work combine to produce a genuinely in-depth account of colonial American burial practices in the 17th century. There is also an element of revisionism in the works of the historical archaeologist, as the archaeological record has a tendency to revise the common historical views developed based on documentary evidence alone.

Jamestown: The Buried Truth by William M. Kelso is a phenomenal example of the collaboration possible through historical archaeology. His outline of the work in the introduction makes obvious the back and forth present between historical documents and archaeological excavation:

In chapter 1 I review what can be learned about the nature and extent of the first Jamestown settlement and its settlers from documentary evidence alone. Chapter 2 recounts the exciting and painstaking discovery of James Fort and rereads the documents in the light of this archaeological discovery. In chapter 3 the recovery of early Jamestown burials becomes a means to understand more about the people of James Fort, the Jamestownians. Through an examination of the James Fort artifacts, chapter 4 corrects earlier and simpler notions of the nature and causes of what has been called Jamestown’s failure.^{xxxiv}

Historical documents serve as a foundation and provide valuable information not found archaeologically, archaeology serves to clarify and

explain the documentary evidence, and archaeology can produce insights of its own, some of which directly contradict previous historical notions. It is apparent that history and archaeology can learn much from each other.

There is a very precarious balancing act taking place in Kelso's work. As he states at the beginning of chapter 1, "Eyewitness testimonies carry great weight in any search for the truth. A reading of the documents pertaining to early Jamestown is essential if we are to discover its buried secrets."^{xxxv} However, he also recognizes that, "the written records pertaining to them [the accomplishments of Jamestown] are scarce, ambiguous, and sometimes conflicting,"^{xxxvi} establishing the value of archaeology because, "The soil has yielded a new understanding of the early years of Jamestown; a new picture of its settlers, of their abilities, their lives, and their accomplishments."^{xxxvii} In the case of cultural history, the blend of history and anthropology written by historical archaeologists produces a balanced and detailed picture of colonial American burial practices.

Another excellent contribution by a historical archaeologist to the discussion of 17th century Chesapeake mortuary practices is *Dig a Grave Both Wide and Deep: An Archaeological Investigation of Mortuary Practices in the 17th-Century Cemetery at St. Mary's City, Maryland* by Dr. Timothy Riordan of Historic St. Mary's City. This report notes in the preface the valuable new information which can be gleaned from the archaeological record of the site, particularly given the scanty records of St. Mary's City which is noted in several locations later in the book. The historical overview of the report, an indicator in and of itself of the collaborative nature of historical archaeology, mentions in several places such lack of documentary evidence as, "During this period the records are remarkably silent about conditions in the St. Mary's chapel yard,"^{xxxviii} and "There is no historical documentation relating to the tearing down of the chapel but the Jesuits maintained an active interest in the land into the 18th century."^{xxxix} The implication is that archaeology can fill in the gaps in the historical record.

Like Kelso did in Jamestown, Riordan also recognizes the potential of archaeological excavation for revising the historical record. He mentions the skepticism with which the archaeological discovery of evidence for "A-shaped" coffin lids at Martin's Hundred in Virginia was received given that:

One of the earliest historical studies of American mortuary practices, written a little more than a decade before the Martin's Hundred excavations [conducted in the early

1970s], could not even say that coffin use was common in 17th-century America. It further stated that all of the coffins used during this period had flat lids and were octagonal in shape.^{xxx}

Clearly the archaeological evidence called into question the document-based historical conception of burial practices in the colonial Chesapeake. According to the working theory of historical archaeology, neither history nor archaeology alone possesses sufficient information, but by combining them a greater understanding of the cultures of the past can be grasped. As Riordan states, "While the picture is still incomplete, significant advances have been made in understanding the variability seen in the archaeological record."^{xxxi} The report as a whole was written as a mixture of historical and archaeological sections and concluded with a synthesis of the information gained by examining the evidence of each discipline in light of the other. Historical archaeology and the new cultural history written by those who practice it provides the best current mixture of anthropological and historical methods and information in order to create a greater understanding of the culture and everyday life of the past.

The three theoretical perspectives discussed here cover a relatively short period of time. This is due primarily to the sudden burst of interest in social and cultural topics in history which came about in the 1960s in conjunction with the Civil Rights movement. Indeed, though works can be found on 17th century mortuary rituals in England or America which date back to the 1920s, these books are scarce and tend to concern legal or economic aspects of burial practices more than the cultural dimension of death. Given the relatively brief time-span during which mortuary rites in colonial America were explored with a cultural or social focus, the distinction between theories is not always distinct and clear cut. Newer historical perspectives developed and attained popularity without totally abandoning the ideas of the theories before. Tinges of functionalism, for example, can be found not only in the works of the social historians, but in the reports of the historical archaeologists as well, though the presence and centrality of this concept tended to fade over time. Elements of this notion of functional cultural ritual have become engrained in both history and anthropology since the social structuralists developed the idea.

Over time, the history of colonial mortuary practices has demonstrated increasing integration of anthropological ideas and theories. The two disciplines have developed from a mutual borrowing

of ideas in the social structural history of the 1970s, to a greater methodological integration in the social history of the 1980s, and culminating in a near-perfect synthesis of history and anthropology in the works of historical archaeologists. Anthropology has borrowed many theoretical ideas from history, such as the functionalism of Lévi-Strauss in the 1970s and the important foundation which history plays in historical archaeology in the 20th and 21st centuries. However, archaeology also serves as a means of refining and correcting the biases which are always inherent in the historical record, as well as expanding its resources regarding topics or groups, which were seen as unimportant by past writers and could not be researched in any other way. Anthropology can also be credited, if not with inspiring a social view of history, than at the very least with legitimizing such a shift. Without a doubt the new and incredibly detailed information which has been recently presented by historical archaeologists, is a testament to the power of history and anthropology combined.

The success of historical archaeology regarding the topic of colonial American mortuary practices by no means indicates that such a synthesis is ideal or appropriate for all topics. There are many aspects of life for which archaeology can determine little—politics and beliefs being chief among them—which history is infinitely superior in researching. Similarly, archaeologists are uncovering more and more information, particularly in the case of slave societies, which has little no to historical record associated with it. Of course, the direct influence of anthropology is most beneficial in cultural history; however the aspects of life which can be construed as cultural could encompass virtually all of historical inquiry. Ultimately, anthropology and history are compatible disciplines, which can learn a great deal from each other to the betterment of both.

ⁱ Charles O. Jackson ed. *Passing: The Vision of Death in America* (Westport, Connecticut: Greenwood Press, 1977), 3.

ⁱⁱ John Tosh, *Historians on History*. 2 ed. (Great Britain: Pearson Education Limited, 2009), 231.

ⁱⁱⁱ Tosh ed., *Historians on History*. 2 ed., 329

^{iv} Tosh ed., *Historians on History*. 2 ed., 190.

^v Ernst Breisach, *Historiography: Ancient, Medieval, and Modern* (Chicago: University of Chicago Press, 2007), 390.

^{vi} Keith Thomas, *Religion and the Decline of Magic* (New York: Oxford University Press, 1971), 602.

^{vii} Thomas, *Religion and the Decline of Magic*, 602.

^{viii} Tosh ed., *Historians on History*. 2 ed., 328.

^{ix} Jackson ed., *Passing: The Vision of Death in America*, x.

^x Jackson ed., *Passing: The Vision of Death in America*, 195.

^{xi} Jackson ed., *Passing: The Vision of Death in America*, 170.

^{xii} Jackson ed., *Passing: The Vision of Death in America*, 4.

^{xiii} Breisach, *Historiography: Ancient, Medieval, and Modern*, 390.

^{xiv} Tosh ed. *Historians on History*. 2 ed., 233.

^{xv} Tosh ed., *Historians on History*. 2 ed., 316-317.

^{xvi} Neil McKendrick and Joachim Whaley ed.

Mirrors of Mortality: Studies in the Social History of Death (New York: St. Martin's Press, 1981), 1.

^{xvii} McKendrick and Whaley, *Mirrors of Mortality: Studies in the Social History of Death*, 14.

^{xviii} McKendrick and Whaley, *Mirrors of Mortality: Studies in the Social History of Death*, 9.

^{xix} Ralph Houlbrooke ed. *Death, Ritual, and Bereavement* (London: Routledge, 1989), before title page.

^{xx} Houlbrooke ed., *Death, Ritual, and Bereavement*, 1.

^{xxi} Houlbrooke ed., *Death, Ritual, and Bereavement*, 1.

^{xxii} Tosh ed., *Historians on History*. 2 ed., 318.

^{xxiii} Tosh ed., *Historians on History*. 2 ed., 326.

^{xxiv} William M. Kelso, *Jamestown: The Buried Truth* (Charlottesville, Virginia: University of Virginia Press, 2006), 8.

^{xxv} Kelso, *Jamestown: The Buried Truth*, 9.

^{xxvi} Kelso, *Jamestown: The Buried Truth*, 1.

^{xxvii} Kelso, *Jamestown: The Buried Truth*, 7.

^{xxviii} Timothy B. Riordan, *Dig a Grave Both Wide and Deep: An Archaeological Investigation of Mortuary Practices in the 17th-Century Cemetery at St. Mary's City, Maryland* (St. Mary's Archaeological Series No. 3, Maryland: Historic St. Mary's City, 2000) 1-5.

^{xxix} Riordan, *Dig a Grave Both Wide and Deep: An Archaeological Investigation of Mortuary Practices in the 17th-Century Cemetery at St. Mary's City, Maryland*, 1-6.

^{xxx} Riordan, *Dig a Grave Both Wide and Deep: An Archaeological Investigation of Mortuary Practices in the 17th-Century Cemetery at St. Mary's City, Maryland*, 2-1 and 2-2.

^{xxxi} Riordan, *Dig a Grave Both Wide and Deep: An Archaeological Investigation of Mortuary Practices in the 17th-Century Cemetery at St. Mary's City, Maryland*, 2-2.

The Problem of the Underinsured

Zinash Seyoum

Introduction

When lawmakers and constituents across the United States talk about health care policy reform, the discussion usually starts with the problem of the 45 million uninsured Americans. Although being uninsured is a problem within itself, it is the consequences that really explain the nature of the crisis. By lacking insurance, people are likely to experience great difficulty in getting needed medical care. The uninsured receive less preventive care and are diagnosed at more advanced disease stages. Once they are diagnosed, they tend to wait until their conditions turn critical before seeking medical care. By the time they get to the emergency room after their condition has progressed from its initial stages, the care they receive might be too little and too late. In the process of trying to pay their medical bills, the uninsured can lose their savings, their property, go bankrupt and in the end, possibly lose their life. In order to address the problem of the uninsured, Congress is currently debating a comprehensive health reform legislation that would extend them access to coverage.

However, in addition to those who lack health insurance, there is a less monitored group of Americans who is indeed insured but is only slightly better off than the uninsured. An increasing number of people are underinsured, meaning that their coverage excludes some fundamental services, such as preventive care. They are the victims of a cost-sharing trend which has left them facing increasing out-of-pocket medical expenses. In this paper, I will first examine the problem of the underinsured. I will then trace the cost-sharing trend to identify the nature of their problem. In the final section of this paper, I will address two opposing views of cost-sharing and draw lessons for current and future health care policies. The increasing number of the underinsured should be alarming to lawmakers because as they consider expanding coverage to include the uninsured, this group can help foresee the types of challenges the new health care system will run into. Unless proper reform is passed, expanding coverage to everyone will create insurance plans that discourage people from seeking medical care, thus leading them to greater sickness and higher costs down the road.

I. Getting to Know the Underinsured

a. Who are they?

When it comes to underinsurance, there is no generally accepted definition and it is partly why the growing group of underinsured individuals is not

yet tracked by the government (Kavilanz, Oct. 2009, par. 14). In a Commonwealth Fund study entitled “How Many Are Underinsured? Trends Among U.S. Adults, 2003 and 2007”, the authors used the organization’s 2007 national survey data to provide a definition and an estimate of the number of adults who are underinsured. Their analysis found that 25 million insured adults between the ages of 19 and 64 lacked adequate insurance coverage. This number had significantly increased from 16 million in 2003. Participants were identified as being underinsured on the basis of their out-of-pocket health care costs relative to their incomes. For individuals with incomes above 200 percent of the federal poverty level, being underinsured meant that they spent 10 percent or more of their income on out-of-pocket medical expenses, or that their deductibles equaled 5 percent or more of their income. For low income respondents who were under 200 percent of the federal poverty level, they were considered to be underinsured if they spent 5 percent of their income on out-of-pocket medical expenses.

As the study’s findings show, the lack of adequate insurance coverage is not a problem limited to low-income adults. Although people with incomes below the poverty level were at the highest risk of being underinsured, “insurance erosion had spread up the income distribution well into the middle-income range”. For people with annual incomes of \$40,000 to \$59,000, the underinsurance percentage rate reached double digits in 2007. Also, barely half of those with incomes of 200 percent to 299 percent of the poverty level were insured all year with adequate coverage (Lorber).

Now that Cathy Schoen and her co-authors have established a working definition of what it means to be underinsured, the next step is to understand the problems associated with this group.

b. What is the problem?

The problem of the underinsured can be understood through their health seeking behavior and the consequences of those behaviors. Despite the fact that the underinsured have health insurance all year long, they are at high risk of access problems and financial stress. According to the Commonwealth Fund study I referred to in the first part, the underinsured were significantly more likely to go without needed health care and to struggle with medical bills compared to people with adequate health insurance. As a result of high medical costs, half of the underinsured (53%) went without needed care, including not seeing a doctor when sick, not filling prescriptions, and not getting recommended diagnostic tests or treatments. They were almost as likely as the uninsured to face financial stress related

to medical bills. For example, nearly half (45%) of them reported facing difficulty paying bills, being contacted by collection agencies for unpaid bills or changing their way of life to pay their medical bills.

When asked why there was a sharp increase among the underinsured, the Commonwealth Fund study's lead author and the foundation's Senior Vice President Cathy Schoen explained that it was due to the insured facing higher cost-shares and limits in insurance benefits. As a result of these two factors, she stated that people could have health insurance and still go bankrupt if they got sick.

In 2001, 1,458 million American families had filed for bankruptcy. In order to investigate medical contributors to such filings, a Harvard study surveyed 1,771 personal filers in five federal courts and completed in-depth interviews with 931 of them. Based on the results from this sample, the study concluded that 1.9 to 2.2 million Americans experienced medical bankruptcy. Among those whose care costs led to bankruptcy, out-of-pocket costs averaged \$11,854 since the beginning of their illness. The most important and most striking finding of the study was that 75.7 percent of the filers had insurance at the start of illness. A follow up study in 2007 found that out of all the people who declared a medical bankruptcy that year, three-quarters of them were insured. While out-of-pocket medical costs averaged \$17,943 for all medically bankrupt families, those with private insurance at the beginning paid \$17,749; those with Medicaid paid \$14,633; and those with Medicare paid \$12,021 (Himmelstein et. al. par. 11).

As shown by the evidence above, the underinsured have a very important story to tell. Although they have access to coverage, they forgo needed care and face financial stress related to medical bills. They are thus only slightly better off than the uninsured. If adequately insured Americans already bearing the cost of the 45 million uninsured thought it could not get any worse, they are in for a surprise. As more people feel the pressure from the current recession, many underinsured Americans will be unable to pay high deductibles and co-pays for treatment received in hospitals and emergency rooms. Since the law requires hospitals to treat all emergency admissions regardless of insurance, they will either write off the underinsured as bad debt or shift costs to their charity care program.

Increasingly though, hospitals have chosen to take the second option and are shifting costs to those who can pay, meaning the government, private insurers and the self-insured (Kavilanz, Mar. 2009, par 7-11). In turn, insurance providers are charging higher premiums to both their business and individual clients to cover their own cost increases. As

businesses struggle with the cost of providing their employees coverage, they are shifting a higher percentage of premiums to workers, thus charging them higher deductibles. In addition to these deductibles, insurance companies are asking their clients to pay more out-of-pocket for their prescription drugs. By being on the final receiving end of this vicious cost-sharing trend, those who have insurance are in danger of becoming underinsured. In the next section of my paper, I will trace in detail the vicious cycle of cost-sharing which explains the sharply increasing number of the underinsured.

II. Understanding the Cost Shifting Trend

a. Rising Cost of Health Care

Background

For the past several years, the cost of health care in the United States has been increasing sharply. In 2007, health care expenditures were more than \$2.2 trillion, representing three times the \$714 billion spent in 1990, and over eight times the \$253 billion spent in 1980. In the same year, health care spending was about \$7,421 per resident and made up 16.2% of the nation's Gross Domestic Product. Compared to other industrialized nations, the United States has the highest spending on health care. In comparison to recent years, although health care expenditures grew at an annual rate of only 6.1 percent in 2007, they outpaced inflation and the growth in national income (An et. al, par 1-2). Without a health care reform, this trend is going to continue upwards, thus putting a burden on those seeking medical care.

Factors Driving Cost

There are several factors that are driving the growth of health care cost. Although there are disagreements on what they are, some generally accepted factors include prescription drugs and technology, chronic diseases, the aging population and administrative costs. Spending on prescription drugs and new medical technologies has been viewed as a primary contributor to the rise of overall health care spending. According to some analysts, the availability of more innovative and expensive drugs and technological services feeds health care spending through the development costs and through the demand they generate from consumers (An et. al, par 7). Even if the drugs are not necessarily more effective, consumers will continue to ask for these costly products because they have a strong faith in modern technology.

Another factor contributing to the rising cost of health care is related to longer life spans and greater prevalence of chronic diseases. This in turn has placed ever growing demands on the health care system because people are increasingly asking for long-term care services such as nursing homes and

treatment for ongoing illnesses (An et. al, par 8). Today, it is estimated that total medical care costs for people with chronic disease account for approximately 70 percent of the United States' health care expenditures. As David Mechanic, author of *The Truth About Health Care*, indicates, the five basic diseases creating the vast majority of the nation's health care expenses are diabetes, congestive heart failure, coronary artery disease Asthma, and depression (10).

The third factor contributing to the rising cost of health care is the fact that health expenses increase with age. As the baby boomers are now in their middle years, some experts say that caring for this growing population has raised costs. This trend will only continue because the baby boomers will soon begin to qualify for Medicare and many of those costs will be shifted to the public sector. However, experts do stress that aging of the population "contributes minimally to the high growth of health care spending" (An et. al, par 9).

The final factor contributing to the rising cost of care is administrative cost. It is estimated that at least 7 percent of health care expenditures are allocated towards administrative costs, which include marketing and billing. In the Medicare program which is operated by the federal government, this portion is a much lower 2 percent. Some argue that the mixed public-private system creates overhead costs and large profits that are fueling health care spending (An et. al, par 10).

Due to the four factors I mentioned above, health care costs in the United States have been soaring for the past several years. As a result, health insurance providers have been sharing a larger portion of their expenses with their clients. The vicious cycle of cost shifting thus starts with insurance companies charging higher premiums to cover their own costs, while safeguarding their profits at the same time.

b. High Premiums

In the United States, employer-sponsored coverage is the leading source of health insurance, covering approximately 162 million nonelderly individuals. According to a new survey by the Kaiser Family Foundation and the Health Research and Educational Trust, 60 percent of employers offer health benefits to their workers. Although they generally subsidize the cost of the insurance, workers share the expense through a variety of payments such as co-payments, deductibles and premiums (Villegas, par.1). Using this type of coverage as an example, one can see the alarming pattern premiums have taken in recent years.

Employer-sponsored family health insurance premiums have been on the rise for the past several years. Between 1999 and 2008, premiums rose by 119 percent nationally, while median family income only increased by 29 percent. Studies have shown that slower growth in wages and lower savings for retirement have been part of the trade-off to maintain health benefits (Schoen et. al. 2). Despite these trade-offs, workers and their families continue to experience increasing monthly cost of premiums which are taking up a larger share of any wage increase they might receive.

As mentioned above, premiums have been rising faster than average income. At the state level, in just five years between 2003 and 2008, total premiums for family coverage under employer-sponsored plans went up by a cumulative average of 33 percent. This five-year increase in family premiums ranged from approximately 25 percent in three lowest-growth states, Michigan, Texas, and Ohio, to 45 percent in the two highest-growth states, Indiana and North Carolina. While twelve states experienced a 40 percent increase or more, 36 states witnessed a 30 percent increase or more, which falls well above the rate of income growth (Schoen et. al 2).

According to projections, the rising trend of premiums is only going to get worse in the years to come. In 2008, the average employer-based family premium across the United States was \$12,298. The range went from more than \$13,500 in Indiana, Massachusetts, Minnesota, and New Hampshire to \$11,000-\$11,500 in states with the lowest average premium costs, such as Idaho, Iowa, and Hawaii. Current projections estimate that in the absence of reform, national per-person spending on health insurance premiums will increase by 94 percent from 2009 to 2020, equaling an average of 5.7 percent annual growth. Using these national projections, and applying the same rate of increase to all states, average total family premiums would reach \$17,599 by 2015 and \$23,842 by 2020. The projections for that year for family premiums range from \$21,009 in Idaho to \$26,730 in Massachusetts (Schoen et. al 4).

People with employer-sponsored insurance do not see the total annual cost of the premium because employers pay a significant share of it. However, "the steady increase in premiums has been consuming resources that employers might otherwise have used for salary or wage increases" (3). Why should this trend be a concern? According to Tom Billet, a senior consultant with human resources consultancy Watson Wyatt, "the headline [for the years to come] is greater cost sharing" (Kavilanz, Mar. 2009). In order to moderate annual premium growth, employers are cost-sharing, limiting benefits,

or doing both. If they increasingly shift costs to their employees, the former will be facing higher out-of-pocket expenses in the form of deductibles and co-payments.

c. High Deductibles

As shown above, employers are increasingly shifting costs to their workers in order to moderate their own health care expenses. According to Shub Debgupta, senior director of the Benefits Roundtable at the Corporate Executive, ten years ago employers paid on average about 90 percent of their workers' health costs. That is down to 73 percent and is expected to drop to 70 percent over the next few years. For example, Children's Hospital Research Center in California never used to charge workers for health insurance. This year, the research center is requiring nonunion employees to pay up to \$255 a month for dependents and is increasing deductibles by \$100. Some small businesses are shifting even greater costs to their employees because they lack the financial reserves to offset revenue losses and because they have fewer workers among whom they can spread the insurance risk (Haynes).

Therefore, the result is yet another increasing trend, except this time it is passed down to deductibles. For example, the median deductible in 2008 reached \$1,000 for individual coverage in employer-sponsored PPOs. Compared to \$250 in 2000 and \$500 in 2007, that is a dramatic increase. According to Blaine Bos, a partner at Mercer, "what makes this finding more startling is that it refers to traditional PPOs, not the high-deductible health plans". He said that Health Savings Accounts (HSAs) may have changed employers' thinking on how high they can raise the deductible without angering employees. As the former president of both the National and the California Association of Health Underwriters said, "the sharp rise in deductibles recently reflects, in part, reality catching up with skyrocketing medical trend" (Morris, par.1).

So how exactly is this reality catching up? In 2008, the Corporate Executive Board did a survey and found that a quarter of officials from 350 large corporations had increased deductibles by an average of 9 percent. In addition, 30 percent of the employers who participated in the survey stated that they expected to raise deductibles by an average of 14 percent in 2009. In another survey of approximately 2,000 large corporations in a representative poll, the global benefits consulting firm Mercer found that 44 percent of them had already planned to increase employee-paid portion of premiums in 2009, compared to 40 percent of the corporations in 2008 (Haynes).

In the United States, Preferred Provider Organizations (PPOs) dominate the employer market by covering 58 percent of workers. Next to PPOs, Health Maintenance Organizations (HMOs) cover 20 percent of workers with a breakdown of 12 percent in Point-of-Service plans, and 8 percent in consumer-directed plans. Consumer-directed plans are plans with high-deductible plans that include a tax-preferred savings option such as Health Savings Account (HSA) or Health Reimbursement Arrangement (HRA). Although PPOs continue to dominate, the share of HSAs and HRAs has increased to 8 percent today from 5 percent last year and 4 percent in 2006. An estimated 5.5 million insured workers are enrolled in these plans, including 3.2 million in plans that allow the worker to establish an HSA and 2.2 million in plans with an HRA established by the employer (Palosky and Singh, par. 8-9).

Although not entirely, the increase in deductibles is partly driven by the growth in consumer-directed plans such as those that qualify for a tax-preferred Health Savings Accounts (HSAs); in order to cut down costs, employers are increasingly introducing them. HSAs are medical savings accounts that allow consumers to save for medical expenses on a tax-free basis. They are linked with high deductible health plans (HDHPs) and were federally enacted as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003. In order to establish an HSA, a consumer must enroll in a high deductible health plan that meets certain requirements. In 2006, the requirements for an HSA-qualifying HDHP included a deductible of at least \$1,050 for single coverage and \$2,100 for family coverage. In addition, the plan must limit the total amount of out-of-pocket cost-sharing for covered benefits each year to \$5,250 for single coverage and \$10,500 for families (Hoffman and Tolbert 1).

Compared to more traditional health care plans, although the premiums may be lower, HDHPs require greater out-of-pocket spending. Proponents of HSAs claim that this type of plan offers consumers a way to save for higher expected health care costs. They point out that a key advantage of an HSA is that it is portable. If the funds are not used in a year, they can be rolled over and used in future years. But once the fund is exhausted, there is no help in paying additional out-of-pocket expenses (Hoffman and Tolbert 1). Also, although Health Saving Accounts have not been available long enough to extensively assess their effect, there have been research and analyses suggesting that despite having lower premiums than more traditionally structured health plans, HSA qualified HDHPs are still likely to be unaffordable for most low-income families (20).

In fact, a study released in 2005 by the Employee Benefits Research Institute indicated that people enrolled in consumer-directed health plans did not appear to be as satisfied with their coverage and were more likely to delay or forego medical care. The study surveyed 1,204 individuals between the ages 21 and 64 through an online questionnaire. According to responses, 1 percent of the participants were enrolled in a consumer-directed plan, and 9 percent were enrolled in just a high-deductible plan. The study found that only 42 percent of the former and 33 percent of the latter were “very” or “extremely” satisfied with their plan. On the other hand, of those enrolled in consumer-directed plans, 31 percent spent five percent or more of their income on out-of-pocket medical bills and premiums. In addition, 35 percent of them said that they delayed or avoided health services due to high cost (Kaiser Health News, Dec. 2005). Therefore, although consumer-directed plans address the problem of high premiums I discussed in the previous section, their high deductibles can discourage sick individuals from seeking medical care.

d. Prescription cost-sharing

In addition to the burden of higher deductibles that individuals have to face, insurance companies are asking people to pay hundreds of dollars for very expensive drugs that may save their lives or slow the progress of serious diseases. That means that insurers have abandoned the traditional arrangement that had patients pay a fixed amount of \$10, \$20 or \$30 for a prescription, no matter what the drug’s actual cost. They are now charging people a higher percentage of the cost of high-priced drugs, usually 20 to 33 percent. According to New York Times reporter Gina Kolata, the drugs are used to treat diseases that may be fairly common, including multiple sclerosis, rheumatoid arthritis, hemophilia, hepatitis C and some cancers. There are no cheaper alternatives for these drugs and patients are forced to pay the price or go without them.

This situation happened to Robin Steinwand, a fifty three year old woman with multiple sclerosis. In January 2008, she went to refill her prescription of Copaxone shortly after renewing her insurance policy with Kaiser Permanente. She had been insured with Kaiser for 17 years through her husband and even though the drug cost \$1,900 a month, the insurance company only required a \$20 copayment. She had been taking Copaxone since 2000, when she was diagnosed with multiple sclerosis and had been buying a 30 days’ supply at a time. But when she went to refill her prescription at a pharmacy near her home, the pharmacist handed her a bill for \$325. At first, Ms. Steinwand thought it was a mistake. The

supervisor told her that Kaiser had changed their policy and that they were charging 25 percent of the cost of the drug, up to a maximum of \$325 per prescription. At this rate, her annual cost would be \$3,900 unless the Kaiser Permanente changed their price. She ended up paying for the drug because she needed it to slow the course of her disease (Kolata).

Ms. Steinwand asked her insurance company why they had raised their prices. The answer came in a letter from the federal Office of Personnel Management, which negotiates with health insurers in the plan her husband had as a federal employee. Drugs like Copaxone were classified as “specialty high-cost specialty drugs used to treat relatively few people suffering from complex conditions like anemia, cancer, hemophilia, multiple sclerosis, rheumatoid arthritis and human growth hormone deficiency”. Ms. Steinwand could change a plan at the end of the year to find an insurer that would only charge her \$20 for her drugs. However, she was nervous because she kept wondering “will the next company follow suit next year?”

e. Back to the Underinsured

Based on the trend of cost-sharing I have covered so far, the nature of the problem of the underinsured can therefore be identified as the rising cost of health care. With skyrocketing expenditures related to medical care, insurance companies are passing on their share of expenses to their clients by charging them higher premiums. As businesses struggle with the cost of providing their employees coverage, they are shifting a higher percentage of premiums to workers by charging them higher deductibles. In addition to these deductibles, insurance companies are asking individuals to pay more out-of-pocket for their prescription drugs, as in the case of Ms. Robin Steinwand. As a result of this trend, there are 25 million individuals who have health insurance but who struggle under the weight of this long cost-shifting tradition.

In the next section of my paper, I will address a long standing debate between those who support cost-sharing and those who oppose this practice. On one hand, proponents of cost-sharing claim that when consumers directly feel the expensive price of health care, they will become better and more responsible consumers of medical care. Cost-sharing can therefore lower the overall high cost of health care, thus addressing the nature of the problem of the underinsured. On the other hand, opponents argue that cost-sharing forces people to forgo preventative care and wait until their conditions become worse and costly before they seek medical care. This trend therefore increases the problem of

the underinsured. Based on the existing evidence, which side is right?

III. The Debate on Cost-sharing

a. Arguments for Cost Sharing

As an Editorial in the New York Times phrased it “conservative health theorists and insurance industry leaders have long argued that the best way to slow soaring health care costs is to force people to pay a significant share of the bill so that they will buy medical services more judiciously and sparingly”. According to Barry Schilmeister, a health care consultant with Mercer, “most people are shielded from the true cost of care because all they pay when they go to the doctor is \$15 to \$20 co-pay”. But in 2010, the catch phrase will be “Taking Responsibility” (Haynes) because people will face greater out-of-pocket costs. Some studies suggest that co-insurance can persuade patients to use care more efficiently. With no co-insurance costs, patients have no financial disincentive to forgo care, even if it is of dubious value; but once patients bear some of the economic costs of receiving medical care, they are more likely to use only those health care services that are worth the additional cost that they must pay (Gruber 1).

The idea of shifting costs to consumers in order to make them think twice before they use medical care is explained by the concept of “moral hazard”. This phrase is used by economists to describe the fact that insurance can change the behavior of the people seeking medical care. Insurance is a way to make human life safer and more secure. However, these efforts could backfire and make people engage in riskier behavior, making the provision of insurance more complicated and problematic. As John Nyman, an economist at the University of Minnesota, wrote in his book entitled *The Theory of the Demand for Health Insurance*, the fear of moral hazard lies behind “the thicket of co-payments and deductibles and utilization reviews which characterizes the American health-insurance system” (Healthcare economist).

The following case study is an elaborate example of how the moral hazard works. Troy Britt is a 46 year-old man who has an adequate HMO health plan through his employer. Due to his average income, he is usually careful and budgets his money accordingly when it comes to his household expenses. As for his health care, it costs him little to no money as his co-pays are \$0 for office visits and \$5-\$10 for most prescription medications. As a result, he usually does not think twice about going to his doctor when he needs to. On one hand, there is a positive aspect to his behavior because he can get immediate treatment should he get sick at any point.

One the other hand, Troy’s lack of hesitation in consuming medical care is also where the issue of moral hazard lies.

Troy also happens to lead a sedentary life and because he is single and does not like to cook, he has a poor diet of fast foods and frozen products. He rarely gives any thought to what he eats and he never exercises. He eats large amounts of fat, cholesterol, and sodium and avoids high-fiber foods like fruits and vegetables. Although he is aware of the health risks of his lifestyle, he justifies his behavior by going to his doctor regularly in the hopes that the former can fix his health problems should they arise. During his last check-up, Troy’s doctor tells him that he has arterial occlusion, high cholesterol, and high blood pressure. His physician is also very concerned with his patient’s predisposition for heart disease. The doctor encourages Troy to make lifestyle changes immediately and prescribes him two medications: Lipitor for high cholesterol and Lopressor HCT for hypertension. Because it is much easier to take a few pills instead of joining the gym, losing weight and eating healthy, Troy takes his medication regularly and visits his doctor more frequently. This man could easily stop his unhealthy lifestyle and pick up exercise habits. But since he does not have any financial incentives to do so, he continues his risky behavior (Health Insurance).

In the long run, Troy will contribute to the rising cost of health care because the chronic conditions he will develop will require continued expensive treatment. Also, his demand for prescription drugs will give an incentive to pharmaceutical companies to come up with medications that are supposedly better than the Lipitor and Lopressor HCT that he is currently taking. But if Troy were to directly feel the cost of his visits to the doctor, and if he were to pay a higher portion of the price for his drugs, he would opt out for a better lifestyle. He would pick up healthier eating habits, would exercise more, and therefore would reduce his visits to the doctor.

b. The reality of Cost shifting

Some defend higher deductibles and copayments as a way to discourage people from using care the way Troy Britt did as demonstrated above. Others, such as Commonwealth Fund president Karen Davis, strongly oppose the practice of cost-shifting because they do not believe that it is “an equitable or effective solution to rising health care costs” (Mahon). Their argument is supported by the Rand Health Insurance Experiment (HIE) that was conducted in the 1970s. The HIE randomly picked several families and gave them insurance with different levels of patient co-insurance. The

experiment conductors then followed the families over a five-year period to evaluate the effect on their medical utilization and their health.

Jonathan Gruber from the National Bureau of Economic Research used the results from this study to answer the following questions he posed: To what extent do higher patient co-insurance charges reduce use of medical care? To what extent is that reduction harmful in terms of personal health? How do these effects vary by patient characteristics such as income and health status? Before analyzing the data himself, he warned that the results from HIE could be misinterpreted to make the case for both sides in the health care debate. On one hand, those who favor more patient cost sharing highlight that the conclusion of the RAND experiment proved that co-insurance in a health plan did not adversely affect the patient's health. On the other hand, those who opposed more cost sharing claimed that for some individuals, especially low income and less healthy people, co-insurance had a negative impact on their health.

The HIE was conducted by enrolling 2,000 non-elderly families from six locations around the United States. The families who participated in the HIE, containing about 5,800 individuals, were assigned health insurance plans with wide ranging co-insurance and maximum out-of-pocket dollar expenditure amounts. For co-insurance, there were five different types of arrangements: free care; 25 percent co-insurance, 50 percent co-insurance; 95 percent co-insurance; and a deductible of \$150 per person, or \$450 per family for outpatient care only. For the plans with co-insurance, the maximum out-of-pocket expenditure varied between 5, 10, and 15 percent of income, with a cap of \$1,000.

Gruber's interpretations of the results indicated that higher co-insurance rates with a limit on out-of-pocket expenses could significantly reduce health care use, without sacrificing health outcomes for the average person. However, one clear negative impact on health occurred for those who were of lower income and at high medical risk.

The author of the report did acknowledge three important limitations of this study, which I consider to be relevant to the current problem of the underinsured. First, the study was conducted during a five year time frame whereas the problem of the underinsured has been a gradual development throughout several years. Second, the effects noted in the study will only hold true if there are low maximum out-of-pocket expenditure limits. With the current trend in cost-shifting from insurance companies, to employers and then to workers, there are no such limits. What we are seeing today are sharply increasing out of pocket expenses that do not

look promising. Finally, the types of medical care in the 1970s were very different from what we have today. As a result of technological advances in treatment and procedures, the prices attached to them have also significantly increased (8). Due to these three limitations, Gruber acknowledges that there is uncertainty in extending the results of the RAND study to the 21st century.

IV. Conclusion: Lessons for the Future

In 2007, Deborah Costillo of Bon Aqua, Tennessee paid \$700 per month in premiums for herself and her husband in her employer-sponsored insurance plan. But when her husband had to have a cyst removed from his neck, Deborah's plan would not cover the procedure. The family, whose household income totaled about \$40,000, took four years to pay off the \$4,500 debt they incurred (Taylor). Donna Carter, who is a mother of twin boys and a girl, is facing sharp increases in out-of-pocket expenses for her health care coverage. In her case, her employer picks up 50 percent of the coverage for her family, which went up from 33 percent a few years ago. However, she is paying \$200 a month more in premiums because insurance costs have skyrocketed. Her co-pays have also increased from \$20 to \$30. As a result of these conditions, she has stopped taking her asthmatic daughter to the doctors every time she gets a cold or a sinus infection. Instead, she is trying over-the-counter remedies. The family has further changed their way of life in that they do not take vacations; they stay home (Haynes).

The story of these two women truly speaks about the problem of the underinsured in the United States. Although both of them had or currently have health insurance, their access to medical care is very limited. Under the Commonwealth Fund's study of the underinsured, Deborah Costillo is an example of those who are almost as likely as the uninsured to face financial stress related to medical bills. Donna Carter could be one of the underinsured who reported changing their way of life to pay their medical bills.

In this paper I have examined the problem of the underinsured. By tracing the trend of cost-sharing from insurance providers all the way to individuals, I have argued that the nature of the problem of the underinsured is the rising cost of health care. As lawmakers look ahead to future health care policy reforms, there are a lot of lessons they can learn by taking a closer look at the group of 25 million underinsured adults.

Congress is currently debating a comprehensive health reform legislation that would expand access to coverage. By extending coverage to those who lack it, lawmakers are hoping to address

the adverse and costly consequences of being uninsured. However, the underinsured can attest to the fact that having insurance does not guarantee access to medical care. If reform policies are not designed properly, they will only manage to add the uninsured to the group of the underinsured. As insurance companies and employers shift costs to working individuals in order to control the rising cost of health care, they too will contribute to the number of the underinsured.

However, all is not lost. For example, there are important lessons to be learned from the conclusions of the RAND study when it comes to addressing the problem of both the uninsured and the underinsured. Based on this experiment, Jonathan Gruber has drawn lessons for the right way to design health insurance. The three features he suggests are as follows: "co-insurance for the typical patient; an income related out-of-pocket limit; and evidence-based design of co-insurance that targets co-insurance to places where care is least effective" (13). The co-insurance would address the moral hazard argument which claims that people will over utilize their access to care unless they directly feel the cost of health care. The income based limit on out-of-pocket expenses would make sure that people do not experience any financial stress related to paying off medical bills. Finally, the evidence-based design of co-insurance, which also pushes for an evidence-based medicine, will guarantee that money is not spent unnecessarily. Ultimately though, the lesson for lawmakers is that any type of health care reform needs to address the rising cost of health care.

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**A Fanfare for the Common Man:
Aaron Copland During the Great Depression,
New Deal & Second World War**

Lawrence P. MacCurtain

This work was written to examine the historical and political context behind composer Aaron Copland's music during the Depression era to the Second World War. This is not a musicological perspective, but instead a primary source driven analysis of how Copland's political ideology, specifically his Popular Front ideals, shaped a new, more accessible American musical aesthetic that could appeal to the masses.

During the darkest days of the depression there emerged a community of progressive, avant-garde artists who resolved to utilize their talents to pursue leftist ideals. The extent and nature of these ideals ultimately varied among individuals, for the term leftist is admittedly vague. The American left was not a collective or unified political body, and within this broad field there existed those who belonged to the Popular Front, socialists, Marxists, and full-blown communists. Historian Elizabeth B. Crist contextualizes the "left" in saying:

During the 1930's, "the term 'Left movement' in the arts was actually a misnomer," Harold Clurman warned readers in the closing pages of *The Fervent Years*. "It was a form of loose talk that misrepresented the true nature of things. The so-called 'Left movement' in the arts was not 'Left,' 'Right,' or 'Center,' but was for our day the *main* movement of the American consciousness in the process of its growth." For the artists and intellectuals...left-wing politics was mainstream politics.¹

In general, those artists oriented to the left in general questioned American capitalism in light of the Depression, and championed progressive or even radical solutions to the nation's economic and social problems.

Emboldened by the ostensible failure of capitalism and encouraged by the dramatic and unprecedented New Deal reforms, the American artistic community thrived in the era's climate of liberal legislation and experimentation. Speaking of the role artists played in the Depression, Crist says: "The onset of the Depression revived collectivist energies, encouraged more adventurous economic reform, and invested aesthetic philosophies with greater social urgency. Artists were excited to think that their knowledge and experience might be germane to the world around them."ⁱⁱ Musicians and composers in particular looked to the left to derive

meaning, relevance, and inspiration from the American experience. Accordingly, Crist asserts that for musicians: "the challenge was not to find new styles and techniques to distance contemporary composition from the music of the romantic past, but to find new audiences and modes of expression best suited to the modern present."ⁱⁱⁱ In this context of leftist progressive ideals, the composer Aaron Copland emerged as one of America's premier artists. For Aaron Copland, the Great Depression was dually a response to the economic and cultural void of the nineteen twenties. In explaining the state of modern American music, Copland said in 1939:

I began to feel an increasing dissatisfaction with the relations of the music-loving public and the living composer. The old "special" public of the modern-music concerts had fallen away, and the conventional concert public continued apathetic or indifferent to anything but the established classics. It seemed to me that we composers were in danger of working in a vacuum. Moreover, an entirely new public for music had grown up around the radio and phonograph. It made no sense to ignore them and to continue writing as if they did not exist. I felt that it was worth the effort to see if I couldn't say what I had to say in the simplest possible terms.^{iv}

Like many of his artist contemporaries, Copland viewed the Depression as an opportunity for innovation. For Copland, innovation entailed creating a new type of American music for a new type of American listener: the common man.

Trained as a classical composer in the traditions of Europe, Copland appreciated the haute contributions to his genre, but at the same time longed to make the field of classical music accessible to everyday Americans. For Copland the economic breakdown of America fashioned an aesthetic of austerity, which he embraced in the "imposed simplicity" of his music. In pursuing a uniquely accessible American genre of classical music that might be enjoyed by the masses, Copland incorporated popular folk themes and songs. Crist contends that imposed simplicity transcended musicality and helped to command an audience: "The ideal of 'imposed simplicity' was not merely a matter of compositional procedure. In explaining this new style, Copland stressed not the technique of his musical idiom but the functional nature of his scores, signaling the purposes for which he composed and the audiences that he had in mind."^v Reading Copland's accounts of the utility of imposed

simplicity, one finds little correlation between the aesthetic and the larger political context of the thirties. Copland actually downplayed the relationship between his pursuit of common music and leftist political ideals to protect himself and his music from detractors:

The relation of Copland's music to leftist politics has been generally masked by its enduring success, obscured by the legacy of anticommunist historiography, and derided by the resurgence of aesthetic formalism after World War II. But a closer look at the associations between political ideology and aesthetic expression in his music from the era of Depression and war makes clear that Copland's turn toward "imposed simplicity" was not merely a sympathetic or practical reaction to a changed cultural context. Instead, the composer and his music clearly participated in the cultural work of the left-wing social movement known as the Popular Front.^{vi}

Copland and controversy were increasingly synonymous as the nineteen thirties progressed and critics denounced his music as overly simplistic and possessing an unbecoming proletariat quality typical of a Soviet art collective. A 1943 correspondence between Copland and friend Arthur Berger highlights the nature of criticism with regards to imposed simplicity. Copland defends his austere musical aesthetic as possessing a becoming naturalness:

The inference is that only severe style is really serious. I don't believe that. What I was trying for in the simpler works was only partly a larger audience; they also gave me a chance to try for a home-spun musical idiom, similar to what I was trying for in a more hectic fashion in the earlier works. In other words, it was not only musical functionalism that was in question, but also musical language. I like to think that in *Billy* and *Our Town*, and somewhat in *Lincoln*, I have touched off for myself and others a kind of musical naturalness that we have badly needed—along with "great" works.^{vii}

Harold Clurman, a friend and contemporary to Copland, articulates the anxieties held by some that the music of the avant-garde gave rise to: "malevolent allusions to the 'Left' writers, 'foreign' ideas, 'un-American' ideals and other spurious epithets that serve to confound everyone so that the world may more easily be set back on the old anarchic path that people of power find normal and

pleasant."^{viii} Like many artists of the era, Copland no doubt exhibited left leaning sympathies. But, his commitment to democratic ideals was apparent throughout the Second World War. Ultimately, Copland's music, specifically its accessibility to the common American, can be regarded as a product of the Great Depression. This common music derived from Copland's own leftist convictions that the classical genre should appeal to the masses and adhere to a simple aesthetic of austerity.

The ideological foundations for Aaron Copland's pursuit of a uniquely American musical aesthetic can be traced back to the composer's adherence to progressive Popular Front politics. Crist defines Copland's political propensities as diversely leftist:

Copland...embraced the ideal of community and its possibilities for personal fulfillment, cultural cohesion, and political action, but he was more firmly aligned with the cultural politics and ideologies of the Popular Front. His notion of community, as expressed in his music, embraces... philosophy of urban planning as well as the ideals of social justice and multi-ethnic tolerance characteristic of the Front.^{ix}

For Copland and many of his artist contemporaries, the policies of FDR's New Deal liberalism, while a step in the right direction, ultimately did not go far enough to address the underlying injustices of capitalism, and the social inequities it bore. *New Republic* political commentator George Soule articulated the frustrations of Americans like Copland, who: "ought not to be satisfied with the recommendation of specific programs or pieces of economic and social machinery, but should also strive to forge the human values which alone can give these devices validity."^x

For the most radical of Americans, such "human values" could be forged and sought with the Communist Party USA. An interview with Copland conducted by musicologist Vivian Perlis in 1979 elucidates the composer's interactions with radical politics: "Well, I never joined anything. In that sense I wasn't aligned, but I was very sympathetic for the more radical side of things. It was kind of a feeling of the period, one was going to carry it along."^{xi} Copland's cautious response later in life is more telling of the political environment of postwar America. Copland was indeed aligned with the Popular Front, and his correspondences, political activity and work contemporary to the nineteen thirties attest to this. The alternative to the CPUSA

for Americans who felt that the New Deal reforms of FDR did not go far enough was the Popular Front.

The Popular front was a left-wing social movement that emerged in the mid-nineteen thirties, which incorporated a broad spectrum of political ideologies and thought. Crist provides a more precise description of the movement:

The Popular Front may be defined as an initiative of the Moscow-based Communist International (Comintern) that allowed for the creation of national coalitions to unite liberals, progressives, and Communists in the fight against fascism. Under previous doctrine of the Third Period, announced in 1928, the Comintern had no tolerance for leftist reform politics, and democracy was considered but a masked form of fascism that ensured bourgeois rule.^{xii}

The Popular Front movement espoused ideals of economic reform to capitalism, racial equality, and social justice, sans the Marxist revolutionary fervor of the CPUSA. Accordingly, the Popular Front attracted a broad range of liberal, progressive minded Americans who were sympathetic to the radical ideologies, but nonetheless wanted to distance themselves from full communism. Copland found a comfortable political niche within the progressive confines of the Popular Front, and the movement's palatable radicalism helped to drive the composer's quest for a new American musical aesthetic. Contextualizing the relationship between Copland's politics and music, Crist notes: "Music was a weapon in the class struggle."^{xiii}

In the climate of reform, experimentation and innovation, which grew out of the Depression, artists like Copland began to increasingly blur the political and cultural realms. Indeed, the editors of *Music Vanguard*, a progressive music journal contemporary to the Depression, epitomized the blurred relationship between the political and cultural states in declaring: "Contemporary composers and performers need and desire a wider audience and a sounder economic relationship with it..."^{xiv} Such was the motivation behind Copland's pursuit of the uniquely American musical aesthetic. Accordingly, in 1935 Copland implored his fellow American composers to castaway the eclectic and abstract sounds of Schoenberg and write music that appealed to the masses: "It is obvious that those young people who just a few years ago were writing pieces filled with the *weltschmerz* of a Schoenberg, now realize that they were merely picturing their own discontent...No more Schoenberg. The music I write must have more pertinence than Schoenberg's had even to his own Vienna."^{xv}

In the pursuit of creating music with "pertinence" to America, starting in the mid-nineteen thirties Copland took to the road to explore the nation. Harold Clurman, a longtime friend of the composer mused in a 1934 correspondence how Copland sought his radical musical aesthetic not in the Soviet Union, but instead America: "Some people go east to the U.S.S.R. to become 'radicalized', but you went west to the U.S.A.—away from the nest of red radicalism N.Y.—and are drawn into the 'political struggle' with the peasantry!"^{xvi} Copland's inward exploration and reflection of America was part of a larger trend within the artistic community during the thirties to seek radical inspiration, in the traditions of the Popular Front, by incorporating the nation's folklore. Crist argues that this phenomenon of inward inspiration developed under a broad political context of New Deal and Popular Front initiatives:

The programs of the New Deal, and the Popular Front as an encompassing left-wing social movement...encouraged artists and intellectuals to draw on the resources of traditional American culture, such that by the second half of the 1930's, folk music was widely considered by leftist composers to be the authentic expression of the American people and a means of relating their concert works to national culture. Copland, too, moved away from the militant idiom of the proletarian avant-garde and toward an accessible, folkloric style that was to bring his greatest success.^{xvii}

For Copland, this entailed collecting as well as modifying traditional American folksongs, anthems, and hymns, so as to create a unique national aesthetic, which employed imposed simplicity. By composing music that incorporated and featured American folksongs, Copland realized his earlier ambitions to reinvigorate the nation's classical repertoire for the common audience.

In the late nineteen-thirties Aaron Copland's vision of an accessible American musical aesthetic began to increasingly materialize with the help of an additional artistic medium: film. Copland recognized the mass appeal of the American cinema, and film's potential to promulgate his new brand of music. Accordingly, when Copland was invited by prolific photographer and director Ralph Steiner in 1938 to write a score for the documentary film *The City*, the composer readily accepted. The film was a groundbreaking documentary and the product of collaboration between Ralph Steiner, Willard Van Dyke, and the legendary Pare Lorentz. All three men had been involved with the production of the

celebrated 1936 documentary *The Plow That Broke the Plains*. *The City* was developed and funded with federal money to be screened at the 1939 New York World's Fair as part of the "City of Tomorrow" exhibit. The exhibit was designed to show off the progress of the New Deal Farm Security Administration, which assumed the responsibility of resettling rural Americans displaced by the Depression and dust bowl.

The film was divided into three parts for which Copland composed four distinct musical movements. The first section chronicled the idyllic American town, as personified by a collection of quaint New England villages, followed by the rise of the industrial center and modern metropolis, and finally the New Deal era emerald city of Greenbelt, Maryland. The film's transcript paints a lush opening scene: "Set among the rolling fields and woodlots, with its tree-lined dirt road, its church and common, its town hall and blacksmith shop..."^{xviii} Crist analyzes the idealization of the New England village as a veritable utopia, a model to be emulated in New Deal America:

In *The City*, the New England utopia stands for that lost world—or, rather, a world that never really existed but is construed as a place where "the self-sufficient life" and its "life-directed interests" once were nurtured. As the camera pans across a series of gravestones in a sequence from part I of the film, the voice-over commentary speaks directly of death and rebirth... The film exploits nostalgia as an impetus for reform, and its images of rural life evoke the decidedly contemporary cultural context...^{xix}

The film made dramatic allusions to the departure of small town ideals and culture as manifest through the rapid industrialization of America. The bucolic and Acadian scenes of rural New England were violently juxtaposed with the chaotic fervor and grit of the industrialized modern metropolis. Similarly, Copland's score paralleled the film's scenes by interjecting the pastoral sounds of the New England village, complete with tolling steeple, with the cacophonous triads and fifths of factories, coke mills and trains. At the height of the nightmarish scenes depicting American industrialization and the urban horrors it bore, the narrator optimistically reminded the audience that the jarring vision was not inevitable; these claims were backed up with tranquil footage of the FSA's Greenbelt, Maryland development.

In considering the significance of *The City* with regards to the political and social context of the

New Deal era, Crist declares the film to be a veritable celebration of Popular Front ideals.^{xx} The closing lines of Crist's analysis concerning the "alienation of self and society" should sound familiar given Copland's own pursuits to stem the apathy and indifference of the American music listener.

Ultimately, Copland's musical contributions to *The City* proved favorable to both the critics and the American public, as evident by the composer's continued work in Hollywood as a writer of music scores. For the left leaning Copland, Hollywood in the nineteen thirties was a haven for the avant-garde and progressive minded, and he used his time there to carry his musical aesthetic of imposed simplicity into the realm of mainstream. In a 1937 correspondence to friend Carlos Chávez, Copland extols the exciting opportunities presented to him in Hollywood as a composer: "The...arrangements are O.K. It is just a question of finding a feature film which needs my kind of music."^{xxi} In 1939, Copland was nominated for two Oscars for the musical scores of director Lewis Milestone's *Of Mice and Men*. By 1940, Copland and his music had finally broken into the mainstream, and the composer's ideals of imposed simplicity had succeeded in producing an accessible American classical genre. Works like *Billy the Kid*, originally written as a ballet in 1938, and the 1940 academy award nominated film score for Thornton Wilder's *Our Town* captured the imagination of Americans while simultaneously making Aaron Copland a household name. In the end, the Depression may have succeeded in making Copland and his music mainstream, but it would be the Second World War that would make him a legend.

The Popular Front political ideology, which had driven and sustained Aaron Copland as well as his contemporaries throughout the Depression and New Deal era, became increasingly unpalatable in light of the Soviet Union's alliance with Nazi Germany in 1939. Crist notes the tenuous position of American leftists to the Molotov—Ribbentrop pact:

By 1939, the economic crisis of the Great Depression had begun to improve and the political situation in Europe to worsen. If progressives hadn't yet taken note of the events across the ocean, they had to appraise the global situation in August 1939, when the Soviet Union signed a nonaggression pact with Nazi Germany. Many within the American Communist Party were disillusioned by the treaty, which the leadership labored to explain, and the community of anti-Stalinist liberals grew in size and influence. For the twenty-two months that the pact was in effect, the CPUSA struggled to navigate the hairpin

turns of Comintern policy and to toe the newly militant, antiwar line dictated by Moscow.^{xxii}

Across America, committed leftists began to reexamine their loyalties and ideology in light of the Comintern's partnership with fascist Germany. With the American left increasingly divided over the actions of the Comintern and the Soviet Union's incestuous relationship with Hitler, there developed an indigenous leftist movement independent of Europe's scandals. Despite the advent of war in Europe, the Popular Front movement continued to function in America, albeit sans the influence of the Comintern after 1942. The Second World War purged the Front of the more radical and foreign elements, leaving in their wake a solidly American political movement dually committed to progress and democratic institutions. Consequently, Copland and his music entered the wartime period committed to the progressive ideals of the Front.

America's entrance into the Second World War following the attacks on Pearl Harbor convinced many of the nation's artists including Copland of the continued importance for accessible music. For Copland, accessible music was of chief political concern given the assault upon America's democratic ideals by the Axis. Copland reasserts in the liberal journal *Twice A Year* the necessity for a common American wartime musical aesthetic grounded in imposed simplicity:

The new musical audience will have to have music which it can comprehend. That is axiomatic. It must therefore be simple and direct. . . . The need to communicate one's music to the widest possible audience is no mere opportunism. It comes from the healthy desire in every artist to find his deepest feelings reflected in his fellow-man. It is not without its political implications also, for it takes its source partly from that same need to reaffirm the democratic ideal that already fills our literature and our stage. It is not a time for poignantly subjective lieder, but a time for large mass choral singing. It is the composer who must embody new communal ideals in a new communal music.^{xxiii}

Between 1941 and 1945 Copland arguably produced his three most well known and beloved works: *Lincoln Portrait* (1942), *Appalachian Spring* (1944), and *Fanfare for the Common Man* (1942). For Copland, these pieces collectively represented the ideals, institutions, and freedoms for which America had set out to defend. Crist notes the ever-present

Popular Front political influences and the implications it had for Copland's wartime music: "*Lincoln Portrait* uses Lincoln's own words to renew the call for social and economic justice, affirming with Carl Sandburg "the people, yes." Originally set in the context of the Civil War, *Appalachian Spring* honors the individual sacrifice for the common good; the *Fanfare for the Common Man* . . . follows Copland's own precept by envisioning "new communal ideals in a new communal music."^{xxiv}

The *Lincoln Portrait* in particular spoke to Copland's commitment to radical leftist ideals even during wartime. The sixteenth president had long been a darling political figure to the American left, especially with the Popular Front. Crist contends that Lincoln was a logical figure for Copland to incorporate into a musical suite along with poet Walt Whitman: "Whitman and Lincoln were hardly random choices: they dominated the historical imagination of the Left—Communists, Democrats, and the Popular Front alike. Both men were embraced as representatives from the American past of contemporary social democratic values. And both were associated with the Civil War, opposed to slavery, and committed to preserving the Union."^{xxv} Similarly, Lincoln was routinely invoked by FDR to legitimize New Deal reforms and initiatives: "In a 1934 "Fireside Chat" on the role of government in the regulation of capitalism, for example, Roosevelt quoted Lincoln to urge management and labor to support the recovery programs of the New Deal. "I believe with Abraham Lincoln," he asserted, "that 'the legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all. . . .'"^{xxvi} Ultimately for adherents of the left like Copland, the Second World War was not just a struggle between freedom and tyranny, but more fundamentally a clash of unrestrained capitalist fascism versus the democratic institutions of liberalism.

Aaron Copland was a progressive composer who came of age during the Depression and Second World War. Copland and his music thrived in the liberal climate of New Deal reform, experimentation and innovation. As a lifelong adherent to the left, specifically the Popular Front, Copland was committed to producing an accessible American musical aesthetic that was ideally compelling and obtainable to working class Americans. Consequently, Copland set out during the nineteen thirties to create a new genre and aesthetic of American classical music that relied upon imposed simplicity to produce a sound that was recognizable and gripping to the average listener. To achieve this, Copland incorporated traditional American folk songs, anthems, and hymns to his music. Film,

specifically musical scores proved to be an invaluable way for Copland to garner mainstream attention and support for his new common aesthetic. Likewise, the advent of the Second World War served to immortalize Copland and his music, transforming the composer's aesthetic from a radical Popular Front phenomenon to a triumphant strain of American patriotism and postwar power.

ⁱ Elizabeth B. Crist, *Music for the Common Man: Aaron Copland During the Depression and War* (New York: Oxford, 2005), 12.

ⁱⁱ *Ibid.*, 17.

ⁱⁱⁱ *Ibid.*, 5.

^{iv} Aaron Copland, "Composer from Brooklyn," *Magazine of Art* (1939); repr., *Our New Music: Leading Composers in Europe and America* (1941; rev. and enlarged ed. *The New Music, 1900-1960*, New York: W. W. Norton, 1968), 158, 159.

^v Crist, *Music for the Common Man*, 6.

^{vi} *Ibid.*, 9.

^{vii} Copland to Berger, April 10, 1943, Aaron Copland Collection. American Memory Collection, Library of Congress, online at <http://www.memory.loc.gov/ammem/achtml/achome/html>.

^{viii} Harold Clurman, *The Fervent Years: The Story of the Group Theatre and the Thirties* (New York: Alfred A. Knopf, 1945), 120.

^{ix} Crist, *Music for the Common Man*, 73.

^x George Soule, "Hard-Boiled Radicalism," *New Republic*, January 21, 1931, 265.

^{xi} Transcript of interview with Vivian Perlis, September 16, 1979, p. 324, Aaron Copland Collection. Music Division, Library of Congress, Washington, D.C.

^{xii} Crist, *Music for the Common Man*, 19

^{xiii} *Ibid.*, 41.

^{xiv} Richard Reuss, *American Folk Music and Left-Wing Politics, 1927-1957*, ed. Joanne C. Reuss (New York: Scarecrow Press, 2000), 67.

^{xv} Aaron Copland, "A Note on Young Composers," *Music Vanguard* 1, no.1 (1935): 16; repr. in *Aaron Copland; A Reader*, ed. Richard Kostelanetz (New York: Routledge, 2004), 126-27.

^{xvi} Harold Clurman to Copland, September 13, 1934, Aaron Copland Collection. Music Division, Library of Congress, Washington, D.C.

^{xvii} Crist, *Music for the Common Man*, 42.

^{xviii} Transcript scenario of *The City* from Civic Films, 2, Aaron Copland Collection. Music Division, Library of Congress, Washington, D.C.

^{xix} Crist, *Music for the Common Man*, 96.

^{xx} *Ibid.*, 109-110.

The City occupies an indeterminate position along a continuum of left-wing thought, lying somewhere between a committed, consistent radicalism and New Deal liberalism, and this uncertain terrain is precisely what belongs to the Popular Front itself...the ideas of community presented here...epitomizes the radicalism of the Front, which emphasized the alignments of race and class...attempting to counteract the alienation of self and society considered endemic to modern industrial culture

^{xxi} Copland to Carlos Chávez, June 2, 1937, Aaron Copland Collection. Music Division, Library of Congress, Washington, D.C.

^{xxii} Crist, *Music for the Common Man*, 147.

^{xxiii} Aaron Copland, "The Musical Scene Changes," *Twice A Year* 5-6 (1940-1941), 343.

^{xxiv} Crist, *Music for the Common Man*, 149.

^{xxv} *Ibid.*, 150.

^{xxvi} *Ibid.*, 151.

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