

THE DECLINE AND DECAY OF THE U.S. CONSTITUTIONAL ORDER

by  
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## ABSTRACT

The following Thesis highlights the fundamental differences of democratic and non-democratic institutions. It also outlines potential warning signs that American democracy has elements of authoritarian tendencies within its Constitutional design. The world is extremely complex and in order to advance the strategic interests of the United States, it is important to self-reflect. The perception of America as the “shining city on a hill” is constantly being challenged and American exceptionalism must continue to evolve in the 21<sup>st</sup> Century. The methods utilized throughout this Thesis compiles several academic literature to include: peer-reviewed articles, books, polls, studies, Congressional testimony, and Court documents. In each chapter, the critical literature review is supported by the case study methodology. This will help determine the outcome of the overarching empirical research question. Finally, the Thesis offers several major findings to include: the United States is becoming too autocratic with respect to its policies, governance, and institutional framework; the credibility of the United States is fractured across the global landscape and this poses a significant threat to democracy as a whole; and there is an increase in partisan polarization at the federal, state, and local level. The Thesis will also highlight potential opportunities to keep America on track throughout the 21<sup>st</sup> Century.

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*“Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty.” - John F. Kennedy*

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## Table of Contents

- I. Acknowledgements
- II. Forward (Introduction) p.1
  - American Exceptionalism in the 21st Century and why it matters
- III. Chapter 1 (Political Models) p.7
  - (Case Study: Democratic Ideas vs Authoritarian Regimes: US vs Russia)
  - Tyranny vs Liberty (Comparing Democratic vs Non-Democratic Institutions)
  - National Identity (Examining a clash of ideas)
  - Authoritarian elements within a Democratic Institution and its impacts globally
- IV. Chapter 2 (Rule of Law and Separation of Powers) p.35
  - (Case Study: 2001 and 2013 AUMF)
  - Examining the Rule of Law (Becoming too authoritarian)
  - Separation of Powers (Examining how the President is becoming too powerful and the role of Congress)
  - The importance of checks and balances within a Democratic Institution
- V. Chapter 3 (Free and Fair Elections) p.60
  - (Case Study: The 2000 and 2016 Presidential Election)
  - Political Party Rules
  - Campaign Finance Laws
  - Voter ID and Registration
  - Gerrymandering
  - State and Non-State Election interference
  - The role of technology
  - Public Opinion
- VI. Conclusion p.81
- VII. Bibliography p.86
- VIII. Curriculum Vita p.97

## **Thesis Introduction**

Is American democracy beginning to fracture? This is a question that many political scientists, policymakers, and even the average citizen have begun to ask. The current global landscape is extremely unstable, ever-changing, and in a constant state of flux. The United States will continue to be threatened from state, non-state, and violent extremist organizations (VEOs). The ability for the U.S. to spread its democratic values and advance its strategic interests abroad will also be a significant challenge throughout the 21st Century. The success of U.S. foreign policy is predicated on how well it is perceived abroad. The idea of American Exceptionalism dates back to Alexis De Tocqueville and is not a new concept. However, there are several warning signs that the American idea of democracy is starting to crack. Undoubtedly, the foreign policy decisions the U.S. has made over the last twenty years has had a direct impact on how we are perceived. Domestic and foreign policy are interconnected and are both essential to our democratic survival. Recent events and issues such as the rule of law; the rise of the administrative state and growing polarization; social issues; checks and balances; and the way we interact with allies and adversaries are all signs that it is time the U.S. should self-reflect. There is empirical evidence that suggest American Exceptionalism as we have come to know may be starting to fracture.

According to a 2018 American Institutional Confidence poll on the health of our democracy in an era of polarization found that “Only 40% of respondents say they are “somewhat” or “very” satisfied with “how democracy is working in the United States.” When we look at who is satisfied and who is dissatisfied, it seems that partisan affiliation — rather than race, education levels, age or any other demographic characteristic — drives current views of our democracy” (Baker Center, p.6, 2018).

We often hear of failing democracies occurring due to corruption, autocratic behavior, outside interference, and trampling on the civil liberties of their citizens. Additionally, we see the majority of failing democracies crumbling from a military coup d'état. Failing democracies however, do not necessarily have to come from a military coup. It could just as easily happen with the elected officials who are entrusted with citizens' faith and confidence. These officials who are entrusted with preserving our liberties, values, and principles can trample on the very fabric of our democratic institutions in ways that are more effective than military coups.

Some might view this thesis as a pessimistic view on American Exceptionalism, but it is the right of every American to stand-up for their beliefs and have the courage to do some self-reflection. As President Obama argued in his speech to the Democratic National Convention, "We're not done perfecting our union, or living up to our founding creed – that all of us are created equal and free in the eyes of God." Obama simply meant that yes we still are a "shining city on a hill," as Ronald Reagan believed, but our democratic ideals are still very much "under-construction."

This thesis aims to serve as a guide to highlight the warning signs that America is becoming the very type of government that we have always opposed. Autocratic behavior and elements certainly exist within our constitutional structure. However, in order to ensure our democracy continues to survive, we need to implement safeguards to ensure the inalienable rights to life, liberty, and the pursuit of happiness are preserved.

The thesis structure is broken into three main arguments to better assess the state of American exceptionalism. These sections include: Political Models (Democracy vs Authoritarian); Rule of Law and Separations of Powers; and Free-Fair elections. Democracy, rule of law and free elections are the essential elements that have made American democracy

stable and exceptional, compared to other western democracies. The exploration of the state of American exceptionalism will also help to throw more light on one of the chief questions of this study: Is a country with a more democratic form of government such as the United States, better able to effectively implement and achieve its national interests than an authoritarian regime? A theme of American foreign policy has been that the U.S. pursues its national interests abroad in such a way that reflects its democratic ideals at home, or at the very least, does not completely contradict them. This was an important facet of American exceptionalism as well.

Each chapter provides the reader with extensive research that includes primary and secondary sources with respect to each major argument. Additionally, this material includes peer-reviewed articles, empirical statistical data, books, and government documents (i.e. Congressional testimony, National Security Strategy, Special Council Reports, and Congressional Research Service). The critical literature review will help to develop potential trends or broad truths that the majority of scholars agree on. Additionally, the literature is utilized as a spring board to effectively test the empirical evidence outlined throughout that chapter. In conjunction with each chapter containing a critical literature section, it also utilizes the comparative case study methodology throughout the thesis. The case studies will include resources such as newspapers articles, government documents, books, Court decisions, blogs, and other data statistics to help determine the outcome of the overarching empirical research question.

The first chapter of the thesis will examine the very idea of a democracy and authoritarian regimes with respect to tyranny versus liberty. The intent is to give the reader an historical and foundational perspective of how those very distinct political models attempt to implement their policies. It will also give the reader more background information on the very

idea of American exceptionalism and help ascertain what elements are truly unique compared to that of many other political models. This chapter will also discuss the very nature of “national identity.” Each nation undoubtedly has different opinions on this element and it certainly helps shape their own foreign policy initiatives. Finally, this chapter will also analyze the major authoritarian elements or behavior that sometimes occurs within democratic institutions and its potential impact globally. The case study that will be discussed in this chapter will be the United States and Russia. The endstate of this chapter is to not only level-set the reader but identify those critical warning signs that the United States must adhere to if we are to prevent our institution from becoming the government we have always opposed. If the United States is truly unique from other Nations, then it is imperative that we also understand how our system of government could be at risk of fracturing.

The second chapter aims to conduct an internal analysis of our foundational values such as the rule of law, separation of powers, checks and balances, and the rise of the administrative state. The argument outlined in this chapter identifies key examples of autocratic behavior found within our constitutional framework and how it impacts our perception abroad. The case study discusses the 2001 and 2013 Authorization for the Use of Military Force (AUMF) to help determine the role of Congress, Executive power, and impacts internationally.

The third and final chapter discusses the very critical element of free and fair elections found in our democratic institutions. The central themes highlighted throughout this chapter include political party rules with respect to Political Action Committees (PACs); political gerrymandering, dark money; voter identification/registration; state/non-state interference (i.e. 2016 Russian election interference); the rise of technology; and public opinion. The chapter attempts to highlight how these elements are becoming autocratic and an existential threat to our

democracy. It will also provide the reader with potential solutions or safeguards to implement in order to meet the threat head on. The case study in this chapter will discuss the 2000 and 2016 Presidential Election and how it has impacted our perception abroad.

All three chapters discuss extremely important elements of our democratic foundation and how there are warning signs that we are slowly shredding some of our constitutional norms. Autocratic tendencies do exist but we need to first identify them, come to a common understanding of them, and offer viable solutions to ensure our Constitutional republic continues to flourish. The thesis will discuss the findings but more importantly help offer safeguards in order to preserve, protect, and defend the Constitution.

**American Exceptionalism: Chapter 1**

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## Chapter 1: Political Models

What sets the United States apart from other nations? The idea of American Exceptionalism in the 21st Century has come to the forefront in today's political environment. The views of how effective democracies have fared throughout the world have also been raised by many scholars, policymakers, and elected officials alike. Undoubtedly, this has an impact on how the United States shapes foreign policy. The term American exceptionalism is rooted in Alexis de Tocqueville's *Democracy in America* where he stated: "The position of the Americans is therefore quite exceptional, and it may be believed that no democratic people will ever be placed in a similar one" (Volume II, p.36, 2006). He also believed that the "spirit of religion and the spirit of liberty" are mutually reinforcing. Tocqueville also argued that religion is the "safeguard of morality, and morality as the best security of law and the surest pledge of the duration of freedom" (De Tocqueville, p.11). The United States will continue to face persistent challenges throughout the 21st century. How the United States is perceived throughout the world is also vital to preserving American strategic interests. John F. Kennedy once stated that "A man may die, nations may rise and fall, but an idea lives on" (JFK Presidential Library, p.1, 2019). The debate of American exceptionalism is very much alive in today's political environment and the clash of ideas on how to best display American soft and hard power throughout the world will continue to be debated for the foreseeable future. This chapter will examine the distinct characteristics of democratic and non-democratic institutions (i.e. tyranny vs liberty); examine the role of national identity as a clash of ideas; and discuss how authoritarian elements may exist in democratic institutions. The end goal of this chapter is to give the reader a solid foundation of the unique elements in both institutions. It will also give a baseline and better understanding of the political models implemented throughout the global landscape. Finally, it will help determine

the warning signs of authoritarian elements within democratic institutions from an overarching perspective.

American Exceptionalism is centered on the idea of liberty and democracy. It also has a different meaning or ideological perspective for everyone. Tyrrell argues that “American exceptionalism is not the same as saying the United States is “different” from other countries. It doesn’t mean that the U.S. is “unique.” Countries, like, people, are all different and unique, even if many share some underlying characteristics. Exceptionalism requires something far more: a belief that the U.S follows a path of history different from the laws or norms that govern other countries. That’s the essence of American exceptionalism: The U.S. is not just bigger and more powerful country- but an exception” (Tyrrell, p.1, 2016). The clash of ideas of American exceptionalism has dated back to the Founding of America and given today’s political and global challenges, it is relevant to conduct further research that will enable all political scientist to help answer the question: Is a country with a more democratic form of government better able to effectively implement and achieve its national interests (i.e. foreign policy) than an authoritarian regime?

### **Critical Literature Review**

A recent PEW study found that many people around the global landscape are dissatisfied with how democracy is working. It is also important to remember that there is a direct correlation between economic stability and the overall effectiveness of democracy. The Pew Study found,

“The link between views of the economy and assessments of democratic performance is strong. In 24 of 27 countries surveyed, people who say the national economy is in bad

shape are more likely than those who say it is in good shape to be dissatisfied with the way democracy is working” (PEW Study, p.1, 2019).

It is through careful examination that we are able to determine which system of government is truly exceptional or unique. Before drawing any conclusions, it is essential to gather an abundance of scholarly research centered around the political models topic. It is also critical to discuss the main themes found in effective government institutions: free and fair elections, human rights, economic, social conditions, and national identity. To understand just how important the topic of American exceptionalism and democracy for that matter is, that same 2019 PEW study found that “Most believe elections bring little change, that politicians are corrupt and out of touch and that courts do not treat people fairly” (PEW Study, p.1, 2019). This sentiment is only rising faster, especially in aspiring democratic nations.

### ***American Exceptionalism Defined***

To dive into answering the empirical question, it is essential to first discuss why political scholars such as Tocqueville developed and discussed the term American exceptionalism. Tocqueville argued, “I confess that in America I saw more than America; I sought there the image of democracy itself, with its inclinations, its character, its prejudices, and its passions, in order to learn what we have to fear or to hope from its progress” (Tocqueville, p.1, Volume II, 2006). Tocqueville’s quotes and ideas on what he experienced on his visit to the New World are still very much relevant in today’s society.

In his book *American Exceptionalism: A Double-Edged Sword*, Seymour Lipset argues that “America continues to be qualitatively different. To reiterate, exceptionalism is a two-edged phenomenon; it does not mean better. This country is an outlier. It is the most religious,

optimistic, patriotic, rights-oriented, and individualistic” (Lipset, p.26, 1996). Lipset draws comparisons on how various European travelers initially saw the New Nation to how effectively contemporary America has become in maintaining those values. Drawing from the historical lens of the creation of a government is essential to understanding how those institutional structures play a vital role in the overall implementation of policy.

There have been several historical documents to include the Gettysburg Address, Manifest Destiny, and speeches from historical figures throughout history that have capitulated what American exceptionalism means. For example, John Winthrop argued: “We shall be as a city upon a hill. The eyes of all people are upon us.” Although these stirring words from Winthrop’s “A Model of Christian Charity” (1630) have fostered a tendency to view America in religious terms—“America” as an elect nation and “Americans” a chosen people—American exceptionalism was more decisively shaped by the ideals of the European Enlightenment. The founders imagined the United States as an unprecedentedly free, new nation based on founding documents—the Declaration of Independence and the Constitution—that announced its unique destiny to become the champion of the universal rights of all humankind” (Oxford, 2019).

The role of religion, the historical events such as the French Revolution, and the European Enlightenment all had major impacts in the developing of American exceptionalism. Many historical figures such as Washington, Jefferson, Madison, Penn, Locke, Paine, Winthrop, and Tocqueville all helped assist our understanding of how religion should interconnect with our society. Tocqueville argues, “Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for it does not impart a taste for freedom, it facilitates the use of it” (Tocqueville, p.8). The impacts of the French Revolution and the growing debate amongst many leaders throughout Europe, provided

America's founding fathers a useful test case to form an effective democratic institution. Tocqueville argues, "Religion is much more necessary in the republic which they set forth in glowing colors than in the monarchy which they attack; it is more needed in democratic republics than in any others" (Tocqueville, p.12). Tocqueville had a true outsider's perspective on our new democracy and understood that in order for liberty to truly flourish, there needed to be a balance between religion and the state. Undoubtedly, religion played a significant role in the developing of the "new society" and how the U.S. views church vs state relations today. Tolerance was another element that many of the Founders believed to be a key ingredient for true liberty to flourish. Locke argued, "Further, the magistrate ought not to forbid the preaching or professing of any speculative opinions in any church, because they have no manner of relation to the civil rights of the subjects. If a Roman Catholic believe that to be really the body of Christ, which another man calls bread, he does no injury thereby to his neighbor. If a Jew do not believe the New Testament to be the word of God, he does not thereby alter anything in men's civil rights. If a heathen doubt of both Testaments, he is not therefore to be punished as a pernicious citizen. The power of the magistrate and the estates of the people may be equally secure whether any man believe these things or no" (Locke, p 88).

The very idea of American exceptionalism has been debated by several scholars, academic, policy makers, and elected officials. For example, every Presidential administration and has a very different and unique idea on how to implement a foreign policy strategy. For example, John Quincy Adams believed more in the "isolationist" approach to foreign policy by focusing on liberty from a domestic standpoint rather than risk foreign intervention. In other words, leading by example is the best approach to proving the United States' creditability. To further the argument that religion is critical element within America's society, the Puritans

provided a path for American exceptionalism to the entire globe. For example, Numrich argues, “From the Puritans' "city upon a hill" and the Pilgrims' "errand into the wilderness, to periodic religious revivals, to the intonations of civil religion in public speechmaking, "[American] history has been essentially the history of one long millenarian movement. Americans, in their cultural mythology, are God's chosen, leading the world to perfection." This view has created "the propensity for an exceptional American moralism that can be directed at any mundane target either at home or abroad." In American interfaith circles, this view is often expressed as modeling a better way to an embattled world” (Munrich, 2019).

One of the most critical elements that American exceptionalism encompasses is that of individual liberty. Scott argues, “First and foremost, liberty has been regarded as the protection of natural rights — a notion of liberty we might simply call “natural-rights liberty.” Second, we have taken liberty to refer to the self-governance of a local community or group, a conception we might call “classical-communitarian liberty.” Third, we have taken the term to refer to economic individualism, or what we might call “economic-autonomy liberty.” Fourth, we have understood it to refer to the social justice of the national community, or what might be called “progressive liberty.” And fifth, we have understood liberty to refer to moral individualism, which we can call “personal-autonomy liberty” (Scott, 2019).

Individual liberty is an element that is free from government interference and it has been embedded in America’s fabric since the founding. For example, Scott argues, “The core *principles* of natural-rights liberty are those expressed in the opening of the Declaration of Independence, and they are correctly regarded as reflecting the teachings of John Locke, as well as other early-modern liberal thinkers. The core *practice* of classical-communitarian liberty, meanwhile, is given most vivid display by Alexis de Tocqueville in his descriptions of the

participatory townships he observed in 1830s New England” (Scott, 2019). Protecting civil and individual liberty of its citizens is a high priority in function democratic institutions. There are cases however where these liberties are constantly being defended (i.e. Patriot Act, gay marriage, abortion, gun rights, etc). The fundamental idea of liberty is also open to interpretation across the political spectrum. For example, many conservative leaning individuals tend to focus on limited government and interpret the Constitution as written. The more left leaning individuals tend to view government as a means to protect liberties through social initiatives and view the rights of its citizens as “human rights” rather than “U.S. rights.”

### *Free and Fair Elections (Authoritarian and Democratic)*

The first main idea centered around an authoritarian and democratic principle is the idea of free and fair elections. Zavadskaya’s article “Electoral Sources of Authoritarian Resilience in Russia: Varieties of Electoral Malpractice, 2007-2016” attempts to analyze the role of the electoral process has throughout Russia. He argues that:

“On the one hand, elections make it easier for the incumbent to collect politically relevant information. On the other hand, they urge the ruling elites to minimize electoral uncertainty, specifically uncertainty about remaining in office, ex ante. This leads incumbents and regime officials to tilt the electoral playing field through a variety of manipulations, from re-drafting electoral and party legislation to ballot stuffing or the intimidation of voters and opposition. Recent research has demonstrated that the role of elections varies dramatically from one form of authoritarianism to another, reflecting its ambiguous role in triggering democratization” (Zavadskaya p. 457, 2016).

This academic study into Russia's electoral practices gives all political analysts a real insight into authoritarian rule in the modern environment.

Horowitz is another scholar who discusses Russia's political culture in the modern world. He states that "Varieties of democratic political institutions are a fourth type of factor. During transitions from authoritarianism, some argue that strong presidencies are more likely to provide institutional platforms to stifle nascent democratic trends. Strong presidencies or more fragmented party systems may also make divided government more likely. Such divided government is likely to obstruct coherent policymaking, and hence to undermine the legitimacy of democratic institutions (Horowitz, p. 120, 2003). He also discusses the role of the church throughout the Russian political culture and its impacts on authoritarian rule and culture.

The role of free and fair elections is not just a major challenge seen throughout Russian politics. Authoritarian rule seems like it is returning to a once promising democratic Turkey. Somer argues, "a growing body of other studies maintains that what Turkey is undergoing amounts to a complete democratic breakdown and a transition from semi-democracy to a new type of political regime such as competitive authoritarianism under a hegemonic Party. In support of this view, these analyses rightly highlight developments such as the erosion of the institutional checks on the executive power, the weakening of the distinctions between state and party, government restrictions of civic freedoms and the skewing of the electoral playing field in favor of the incumbent party" (Somer, p.482, 2016). Somer provides readers with extensive research into the causes of Turkey's transition back to authoritarian rule and the electoral process along with the new system of government are at the heart of the transformation.

Free and fair elections along with an effective form of government in Turkey may be transitioning into a different direction than many American foreign policy experts hoped for. But that may not be the case for one Eastern European country. Moldova may be experiencing a democratic opening from years of Soviet rule. Tudoroiu argues that “domestic as well as geopolitical factors have made the citizens of Moldova tolerant toward authoritarian practices and reluctant to develop civic engagement. The ensuing weakness of civil society has prevented the development of a consolidating democracy. After 2001, this allowed the communists to build a semi-consolidated authoritarian regime. The latter acted against the civic sector, thus preserving the conditions allowing its own survival. A favorable conjunction of circumstances created the present democratic opening but did not modify the structural factors that prevent the democratization. The article explores the possible ways of taking advantage of this opening in order to break the vicious circle and put Moldova on a definitely democratic trajectory” (Tudoroiu, p. 237, 2011). Tudoroiu’s research is critical and provides the necessary reasons as to why authoritarian rule has lasted for so long in this particular part of the Region and perhaps the major reasons that it may be starting to shift. The idea of “Nation Building” has long been seen as a strategic goal of the United States to advance their democratic principles abroad.

Democracies around the world including our own also deal with the idea of free and fair elections along with an appropriate form of government. Every election cycle, there are highly emotional debates on voter intimidation, voter ID laws, Congressional re-mapping, and interference of outside entities to include foreign governments. These factors play a significant role into the perception of our own democratic free and fair electoral process. With the rise of social media, an ever-growing polarization of our political parties, and Congressional re-districting, the idea of free and fair elections in the U.S. electoral process will remain a highly

debated issue from some time to come. It is because of the political instabilities of the U.S. electoral process and the perception of free and fair elections that have led to a decrease in overall political participation and civic engagement.

Voting booths and a lack of participation in the electoral process has been in decline globally. For example, Robert Putnam argues that “It is not just the voting booth that has been increasingly deserted by Americans. A series of identical questions posed by the Roper Organization to national samples ten times each year over the last two decades reveals that since 1973 the number of Americans who report that "in the past year" they have "attended a public meeting on town or school affairs" has fallen by more than a third (from 22 percent in 1973 to 13 percent in 1993). Similar (or even greater) relative declines are evident in responses to questions about attending a political rally or speech, serving on a committee of some local organization, and working for a political party” (Putnam, p.67, 2000). This data highlights that the integrity of the United States election system and elected officials altogether severely impacts the voting turnout of the electorate.

### ***Human Rights and Modern Free Speech (Technology)***

Another central idea associated with the democratic and authoritarian forms of government is its impact on human rights. Charron argues first, that single-party regimes are more responsive to citizens demands than other types of authoritarian rule because they have a structured mechanism to channel citizens’ “voices” (the single party). As a consequence, they will provide QoG following societal demands, which are low in low-income countries and high in high in come ones. Second, the effect of the other relevant authoritarian types—monarchies and military regimes—is exclusively conditional on rulers’ self-interests. We predict that with

short-sighted rulers, monarchies and military regimes will tend to under-provide QoG” (Charron, p. 397, 2011).

The media must be free from corruption and bias when reporting the news to the entire population. Tai argues that “Media censorship is the hallmark of authoritarian regimes, but with an enormous increase in flows of information, it becomes increasingly difficult for any state to completely curb news coverage before it reaches the public. In fact, a number of scholars suggest that access to uncensored information opens societies and empowers citizens with new tools. If their prediction is true, authoritarian regimes will face a stark choice between either sealing themselves off hermetically or waiting for their demise” (Tai, p. 185, 2014).

Additionally, it is also critical to understand what effect social media may play in an authoritarian government. For example, Skoric and Lei argue that the impacts of social media in China are extremely meaningful when it comes to voicing a political opinion. Skoric argues that “The informational use of social media is a prominent predictor of online political expression in China. In their examination of the motives of Weibo use, Chan et al. (2012) showed that people who used Weibo to obtain knowledge and perspectives on current events were more likely to talk about politics and governmental issues online. Moreover, they found that the use of Weibo for informational needs strengthened the relationship between the intensity of Weibo use and online political expression” (Skoric, p.334, 2016).

Chen and Xu also argued that “Moreover, authoritarian regimes sometimes allow citizens to voice their opinions on public platforms, such as social media, concerning issues that seem politically sensitive. A recent vivid example came from Hong Kong, one of China’s special administrative regions. At the end of 2014, a group of Hong Kong students initiated a protest against the Communist Party’s decision on Hong Kong’s electoral reform, which was joined later

by many Hong Kong residents. The Hong Kong protest was certainly a sensitive political issue in the eyes of the Communist Party of China. Surprisingly, after some initial hesitation, the Chinese government allowed its citizens to discuss this event almost freely online. It came to pass, however, that Chinese online commentators were deeply split on the Hong Kong protest, for a large proportion of them actually voiced support for the government's position" (Chen, p.792, 2017).

A free media, especially social media, is on the rise and the topic of cybersecurity is critical. People must have a voice in the process but often governments (democratic and authoritarian) utilize the cyber world to their advantage in order to influence public opinion and advanced their own strategic interests. Howard argues that "Democracy has evolved throughout history, and democracy can survive the challenges of the cyber age. However, democracy will be affected by the internet and increased cybersecurity" (Howard, p. 1355, 2019). Whatever system of government your Nation has, social media has become a critical factor in how information is distributed amongst the civilian population and increased the speed at which that information is received.

### ***Economic and Social Well-being***

The third main factor in an effective system of government is economic and social well-being. The idea of capitalism vs socialism is paramount to understand. Inglehart argues, "Over the past two centuries, the spread of democracy has been driven by the forces of modernization.

As countries urbanized and industrialized, people who were once scattered over the countryside moved into towns and cities and began working together in factories. That allowed them to communicate and organize...Greater economic and physical security led successive generations to place less emphasis on survival and more on intangible values, such as freedom of

expression, making them more likely to want democracy. Economic growth also went hand in hand with more education, which made people better informed, more articulate, more skilled at organizing, and therefore more effective at pushing for democracy” (Inglehart, p.20, 2017). Inglehart really captures the sense of capitalism, the spread of democracy throughout the world, and the impacts that economic stability provides to many developing countries.

Horowitz argues that the economic structure of an authoritarian regime is center to how successful or unsuccessful the government is. He argues, “Across the post-communist world, what factors might explain variation in making transitions to democracy and in implementing democratic principles? Consider first economic structure. Economic policy change is an important link between economic structure and democratization. In the post-communist countries, democratization was a prerequisite to dismantling planned or socialized economies and instituting market based ownership and resource allocation mechanisms. Hence those seeking to preserve the old economic regime should be more opposed to democracy, and those in favor of a transition to a market economy more supportive of democracy” (Horowitz, p. 121, 2003).

Shaw does an effective job at really highlighting the difference in socialism vs capitalism in today's environment. He argues, “Now as a system of political economy, capitalism is advancing, and socialism is retreating at both national and international levels. On the world stage, all the former Soviet socialist republics have changed into market or quasi-market economies. Reforming socialist countries, including China and Vietnam, have taken systematic measures to adapt to the world order dominated by capitalism. Multinational corporations from advanced capitalist societies, such as Japan and the USA, have invaded developing countries, spreading capitalist modes of production, consumer goods, and lifestyles to almost every corner

of the world. At the national level, countries that still adhere to socialism are witnessing a growing private sector led by small businesses and foreign investments and a declining public economy represented by state enterprises” (Shaw, p. 306, 2010).

The fourth main element in any society is the cultural footprint of the society. There have been many surveys, polls, and debates on this issue. Regardless of the system of government (i.e. democratic or authoritarian), there is always some level of nationalism in the society. There is also empirical evidence that suggest the views of religion, family dynamics, and overall ethnic diversity are rapidly changing. For example, one study suggests, “Medians of around seven-in-ten say their countries have become more diverse and that gender equality has increased over the past 20 years. And roughly six-in-ten across the countries surveyed say that family ties have weakened” (PEW Study, p.1, 2019). The sense of culture or nationalism is critical because it helps shape the overall ideology of its citizens. The founding of a democratic society in America for example is predicated on its diversity and being an active member of the society. It is also about a set of commands or ideals founded in the U.S. Constitution. One study found, “In addition to voting, paying taxes and following the law, a majority of Americans said several other traits were very important to good citizenship, including serving on a jury if called (61%); respecting the opinions of others who disagree (61%); and participating in the U.S. census every decade (60%)” (PEW Study, p.1, 2019). The mere term of nationalism, theocracy, and even populism are heavily written throughout the political models topic. For example, Bieber argues,

“There are other forms of legitimacy that autocrats can draw on (output legitimacy, such as economic growth, or input legitimacy, such as theocracy, communism). Nationalism provides, however, an important source of legitimacy, either as building legitimacy against external actors or against domestic others

(minorities and opposition). However, it is often unconsolidated democracies that are the most susceptible to virulent nationalism” (Bieber, p.1, 2018).

The idea of free and fair elections, basic human rights, economic and social security, and national pride are the hallmarks to an effective society. It is also clear that there is an abundance of academic and analytical research on this very topic. There are also distinct differences with respect to the authoritarian and democratic systems of government. There is no question that the idea of American exceptionalism is still much in debate. There are a number of policy makers, politicians, academic professionals, and national security experts that have differing opinions on this topic. The very idea of the United States spreading its values of democracy to aspiring Nations has even impacted the ability to achieve national interests. For example, Carothers argues, “Some autocratic governments have won substantial public sympathy by arguing that opposition to Western democracy promotion is resistance not to democracy itself, but to American interventionism” (Carothers, p. 56, 2006).

### **Methodology/Data**

In order to more closely address the empirical question on which system of government is overall more effective in advancing their global interest in the 21st century, it is more beneficial to take a systematic comparison approach of the unique political models around the world. The methodology utilized for this thesis is the case study and comparative research approach. Therefore, this chapter examines the Soviet Union-Russia and the United States to better ascertain which system of government is more effective and aligned to implement their strategic interest in the 21st Century. By comparing these case studies that are unique in nature, researchers can closely examine how they compare given similar circumstances but with very different results. Each case study has had certain events over the course of their nations

development that have impacted the international community. Some of these events have come in the form of military engagements that shaped the current operational environment of the global landscape. Data is gathered from historical documents, government records, personal accounts, and academic material.

## **Data Presentation**

### **U.S.S.R. – Russia**

Exploring the case of the Soviet Union and now the modernized Russia allows researchers to accurately assess the rise or the fall of an authoritarian regime. It also allows researchers to provide future recommendations with respect to foreign policy or an administrations National Security Strategy. Countering the Soviet Union, Communism, and now the modern Russian narrative has been the major theme of American interests for several decades. But what made the Soviet Union in the 1960's push American and the West closer to a nuclear war than ever before? What made them appear to be stronger than ever before in the 1980's? And what has brought them back to the international stage under Vladimir Putin? Examining the political culture, economic, and military might of the Soviet Union will give insight into their hardcore beliefs in socialism and Western aggression.

Authoritarianism is “a theory and a system of government customarily linked with dictatorship, in contrast to democracy. It is a principle based on obedience to authority, and opposes autonomy of individuals in thought and action. As a form of government, authoritarianism concentrates power in a leader or in a small elite not constitutionally accountable to the people” (Bedeski, p.2, 2018). Much of the Soviet Union and other authoritarian states restrict the basic human rights of life, liberty, and the pursuit of happiness.

Most authoritarian regimes limit or abolish the freedom of speech, the press, and religion. The ideology of Soviet Union Communism, developed by Karl Marx and enforced by Vladimir Lenin, Leon Trotsky, and Joseph Stalin, seemed to transform this thought throughout the 19th and 20th Century.

The fundamental idea of Communism experienced throughout the Soviet Union centered on the beliefs and writings of Karl Marx. During the 1980s, The Soviet Union was essentially controlled by the Tsar or one unified government. However, Marx believed that there were two classes of people: Bourgeois (Rich) and the Proletariat (poor). Marx and his followers believed that everything belonged to the “Community” and felt that if there were no change in the political or social structure, then the rich would only get richer and the poor would get poorer. This led to the fundamental rise of the Communist Soviet Union. According to one study, “The 1960s and 1970s saw a rapid increase in the wealth and power of the Party elite, and this did not go unnoticed by the Soviet people. While millions of average citizens died from starvation, the Politburo enjoyed imported German cars, ate expensive French food, and slept on luxurious Italian silk sheets. The hypocrisy of the Politburo created a backlash from the younger generation, who refused to adopt the Party ideology in the same way as their parents. When the Soviet Union put to the test in the 1980s, these young people were unwilling to step forward to protect and save a nation they loathed” (Norwich University Study, p.2, 2018).

The economy and military industrial complex implemented throughout the Soviet Union was one solely focused on building the military strength to advance their strategic interests abroad. “Stalin’s “Five Year Plans” were almost entirely driven by a need to increase the production of capital goods for the nation. The Soviet Union needed to industrialize to compete with the rest of the world, and the only way to do so was to funnel all available resources into

this goal. Unfortunately for the Soviet people, the Politburo never changed direction to increase the availability of consumer goods” (Norwich University Study, p.2, 2018).

Examples such as the war in Afghanistan during the 1980s and the Chechnya conflict in 1994 give an insight into just how much the economy played a significant role in building the military hard power of the Soviet Union-Russia. Odom’s argues, “Although numerous organizational changes occurred in the military-industrial system over the years, its structural outlines were created in the late 1920s and well established by the end of the second FYP in 1938. The system was not yet devouring the lion’s share of industrial production, but during World War II, it came to encompass most of the economy, as more than half the annual national income went to military expenditures” (p. 56). The fact that the Soviet Union and now Russia aims to carry out their military industrial complex over social elements in their society, has created a sense of opposition toward the government. Lieven argues, “This weakness will remain even if the Russian economy improves somewhat over the years to come, for economic growth alone will guarantee neither Russian state will be able to mobilize greater national wealth for its own purposes, not that it will find enough Russian soldiers willing to risk their lives to support these purposes” (Lieven, p. 186, 1998).

The Russian revolution experienced in 1917-1921 and other Nationalist movements seen throughout Europe seemed to openly challenge the system of authoritarian rule. The Soviet Union encompassed several unique republics that included a variety of different ethnicities, languages, and cultures. Pressure and intimidation put on from the authoritarian regime of the Soviet Union was also constant. One study highlighted, “Many of these former Soviet allies began to split along ethnic lines, which only fueled separatist movements in Ukraine, Belarus, and the Baltic States. As these Soviet republics exerted their independence and pulled away from

the Soviet Union, the power of the central state was fatally weakened, and by 1991, the Soviet Union was no more” (Norwich University Study, p.2, 2018).

Although there seemed to be a move toward a real democratic institution with the collapse of the Soviet Union and the effect that Gorbachev’s Perestroika and Glasnost campaign had at returning a “voice” to the Russian people, the current President may be attempting to return to the authoritarian rule of yesterday. Marsh argues, “While officially a democracy, the Russian Federation has been slowly sliding back towards authoritarianism under the guise of patriotism and nationalism. Vladimir Putin has reformed the Russian state, crafting a post-Soviet domineering regime that controls the media and suppresses dissent. Putin’s United Russia party dominates Russian politics, occupying a majority of seats in the Duma, Russia’s parliament. Effectively able to pass any law, Putin has progressively undermined civil liberties and slowly consolidated power in the hands of the central government” (Marsh, p.1, 2015).

Putin is an extremely influential leader and has advanced Russia’s strategic interests across the global landscape. From Ukraine to the Middle East, Putin has attempted to undermine the United States at every step. The situation in Syria, his desire to control the flow of oil throughout Europe, and Russian interference in our election process has caused significant challenges for the United States.

The use of nationalism and the ability to control the narrative throughout Russia is certainly an element to Putin’s political success. Nance argues,

“It is a society of true democracy, a political system which ensures effective management of all public affairs, ever more active participation of the working people in running the state and the combining of citizen’s real rights and freedoms

with their obligations and responsibility to society. Democracy in capitalist countries, where there are antagonistic classes, is, in the last analysis, democracy for the strong, democracy for the propertied minority. In the U.S.S.R., on the contrary, democracy is democracy for the working people, i.e. democracy for all” (Nance, p.65, 2019).

By utilizing the media and essentially controlling the narrative, Putin has maintained an extremely high approval rating for the most of his term as President. Populism has certainly contributed to his success. One study found, “Russians who hold a favorable opinion of Putin generally express satisfaction with the March 4th election results: 71% in this group are pleased with the former president’s victory, while just 20% are not” (Pew Study, p.1, 2012). Russian influence throughout the international landscape has only furthered Putin’s credibility with his own people. Populism certainly has an impact on any autocrat who wishes to advance their own self-interest. Kendall-Taylor argues, “These leaders first come to power through democratic elections and subsequently harness widespread discontent to gradually undermine institutional constraints on their rule, marginalize the opposition, and erode civil society” (Kendall-Taylor, p.1, 2016).

There is also empirical evidence that suggest Russian Nationalism is still very much relevant and on the rise. One study found, “Roughly half of Russians (53%) agree that their homeland should be for Russians only; four-in ten disagree. The public voiced a similar degree of ethnic chauvinism in 2009, when 54% said “Russia should be for Russians” (Kohut, p. 25, 2012). There is a direct correlation with the popularity of Putin, his handling of foreign affairs, and the views of the Russian people on democracy. There is also no question that Russia is in an “identity crisis” under Putin’s leadership.

## United States

The framers of the United States Constitution developed a system like no other in the world and it is still the very hallmark for freedom that other nations attempt to emulate. At least that is what the idea of American exceptionalism teaches us. One study suggests that a “Democracy is a system of government in which a country’s political leaders are chosen by the people in regular, free, and fair elections. In a democracy, people have a choice between different candidates and parties who want the power to govern. The people can criticize and replace their elected leaders and representatives if they do not perform well. The people are sovereign—they are the highest authority—and government is based on the will of the people. Elected representatives at the national and local levels must listen to the people and be responsive to their needs” (p.1).

The very task of forming a functional government that is beholden to its citizens was not an easy task for our Founders. There was much debate between the Federalist and Anti-Federalist as well. The framers of political system attempted to implement effective checks and balances when they created the Executive, Legislative, and Judicial branches of government. The principles for which the framers laid out are still very much relevant in today’s political culture as well. The ideas of big government, campaign finance laws, pork barreling, outside influence from lobbyist, economic prosperity, and military strength are all the hallmarks of an effectively governed institution.

The foundation of our system of government caused great concern from the Anti-Federalist perspective. Burriss argued that the Anti-Federalist viewed the National government “would be too far removed from the people, in general, to sympathize with them, and too few to communicate with them” (Burriss, p.6, 2017).

The U.S. system of government and political culture is seen throughout the world as exceptional or unique, especially the use of our checks and balances. For example, the Founder's believed that the Legislative branch was the most powerful because they were supposed to be the one branch of government that was the voice of the people. Power struggles in today's environment has certainly caused divisiveness and a clashing of opinions. Politics today is extremely polarizing and gridlocked on almost every issue of great importance. Burris argues, "A remote national government given such great powers would cause a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other" (Burris, p.7, 2017).

The political culture of today's politicians is all about power and money as means to influence their donors/electorate to endorse them. It also helps them craft their message and telegraphs their stances on issues. The objective is to get re-elected and if they sit on very important Committees that affect their District, this leads to status throughout the Washington Beltway. The free and independent media is also one of great distinction from that of an authoritarian regime. Although many would argue, many politicians of today's culture attempt to sway public opinion by attempting to dismiss the media's coverage. Perhaps the idea of a free and fair media however is a potential smokescreen, even from the initial creation of America. For instance, Tocqueville argued "It would be a mistake to suppose that the periodical press has always been entirely free in America; there have been several attempts at establishing forms of anticipatory censorship and bail" (Tocqueville, p. 727, 2006). The idea of a free and fair media is certainly tested in today's environment and it is a critical element that can be taken advantage of by any politician attempting to sway public opinion in their favor.

The Freedom of the Press survey was conducted in 2017 that found three main points:

- Journalists covering the campaign of Republican Party presidential candidate Donald Trump were subject to unusually hostile rhetoric from the candidate himself, as well as instances of exclusion from events and intimidation by Trump supporters. Journalists were also bombarded with harassment on social media during the year, often by right-wing users whose remarks were threatening or anti-Semitic.
- A number of journalists were targeted for arrest while covering protests, including several who faced serious charges in connection with demonstrations against oil pipelines, though in most cases the charges were eventually dropped.
- Political polarization in the media worsened during the presidential campaign, due in part to the emergence of “alt-right” news sites that disseminated highly nationalistic or nativist messages, conspiracy theories, and at times false or propagandistic coverage.

There is strong evidence that suggest that not only is the political culture of the United States becoming more polarizing, the U.S. media in turn is becoming equally more polarized. For example, one survey finds “76% of Republicans are satisfied with American democracy right now, compared to just 44% of Democrats. This difference is likely a result of President Trump’s election and Republican’s control of the executive and legislative branches of federal government” (2018 American Institutional Confidence Poll, p.11, 2018).

Democratic governments such as the United States enjoy a capitalist form of economic prosperity. This thought is centered on the idea of free trade, economic freedom, open markets, and the ability to purchase any products they wish. The United States allows its citizens to build

and create businesses of their own in order to deliver products to willing customers. Innovation, research, science and technology have become key fundamental drivers in the U.S. economy.

West argues, “Innovation and entrepreneurship are crucial for long-term economic development. Over the years, America’s well-being has been furthered by science and technology. Fears set off by the Soviet Union’s 1957 launch of its Sputnik satellite-initiated a wave of U.S. investment in science, engineering, aerospace, and technology. Both public and private sector investment created jobs, built industries, fueled innovation, and propelled the U.S. to leadership in a number of different fields” (West, p.1, 2018).

Democratic institutions encourage public participation throughout its political process. According to one study,

“The key role of citizens in a democracy is participation. This takes many forms.

Citizens have an obligation to become informed about public issues, to monitor the conduct of their leaders and representatives, and to express their own opinions.

Participation also involves voting in elections, debating issues, attending community meetings, becoming involved in private, voluntary organizations, and even protesting.

However, political participation in a democracy must be peaceful, respectful of the law, and tolerant of the different views of other groups and individuals” (Stanford Study, p.1, 2018).

The use of technology via social media has only increased the ability of the civilian population to actively participate in the political process and voice their opinion. They also receive information from various forms of media and the speed to which they receive that information is also more abundant.

One of the most important and critical elements of a democratic system is the rule of law.

One study argues, “Democracy is a system of rule by laws, not individuals. In a democracy, the rule of law protects the rights of citizens, maintains order, and limits the power of government. All citizens are equal under the law. No one may be discriminated against on the basis of their race, religion, ethnic group, or gender” (Stanford Study, p.1, 2018). This right is absolutely critical to ensure that everyone has equal footing with respect to the law. No one is above the law, not even Presidents or candidates for political office.

### **Analysis/Discussion**

The vast abundance of research collected on the democratic and authoritarian systems of government really are highlighted in the Soviet Union-Russia and the United States case study. With respect to the free and fair elections research, both forms of government have their own unique flaws in their respective systems. The researchers made it clear that authoritarian regimes are heavily relied on consolidating their power in order to achieve legitimacy. The ruler or unilateral government in the authoritarian regime will consolidate power within the legislature, attempt to sway public opinion via intimidation, and “stuff the ballot box” through voter fraud. It is unbelievable that Vladimir Putin maintains an 84% approval rating. Perhaps this has a lot to do with him controlling the media and narrative. It is also clear that the strategic interests abroad are attempts by him to sway public opinion and distract the internal domestic (mainly the economy) issues of Russia.

With respect to the military, economic, and social factors of the society, it is clear that the research sways towards having a more democratic system of government. During the rise of the Soviet Union, those leaders put the military buildup first before the needs of their people.

Whereas a democratic institution gives the ability of the people to determine what products to build, design, and sell to their customers. Having a free and open trade market is also advantageous towards the democratic system of government. It is much easier to hold the minority in check through economic sanctions and military involvement.

The basic human rights, as the research suggested, and the case studies discussed, are in line with the democratic form of government. Research suggested that the Soviet Union-Russia had rulers (and maybe still do) that are self-interested and implement policy based on their own personal survival over the needs of others. Democratic forms of government are about preserving those unalienable rights to life, liberty, and the pursuit of happiness. Research undoubtedly sides with the United States case study.

The rule of law and the checks and balances on the person in power is also more evident in a democratic form of government. Research agrees with the United States case study on this matter. The system of government is more in line with the interests of the people (Legislative branch) than an authoritarian regime. This not to say that authoritarian regimes are not focused on advancing their interests of their people, but the U.S. political model ensures that people's voices are heard in various forms (i.e. elections, lobbying, political donations, media, etc). The government has the innate responsibility to take care of its people, but it also encourages political participation in its process. The free and independent research suggests that overall, the United States case study is supported by this theory. There were cases however, that authoritarian regimes are taking notice of the social media impacts on society and this may be an opening for more civilian participation regardless of the form of government. It is becoming significantly harder for governments to censor or hide their domestic and international policies due to the advancement of technology. In other words, social media platforms have become the norm in

today's society and it is extremely difficult for any government or politician to control the "narrative." This doesn't mean that authoritarian regimes have not attempted to limit or restrict citizens from voicing their opinions however. China for example has implemented a "social credit system" to help track the views of its society. According to Freedom House, "This form of digital totalitarianism would allow the state to gather information on Chinese citizens from a variety of sources and use it to maintain scores or rankings based on an individual's perceived trustworthiness, including on political matters" (Puddington, 2018).

The research collected on this topic along with the case studies presented, all lead to one conclusion: Both the United States and Soviet-Union-Russia believed and still do that they are exceptional and unique. The empirical question of what form of government (authoritarian or democratic) are more likely to advance their strategic interests still remains unclear. However, research suggests that although the democratic form of government, in particular, the United States is without flaws and imperfection. However, the United States still has the advantage simply because of the design of the government structure. The basic human rights is certainly a major element as to why America proudly boast that they are unique and in fact exceptional compared to different forms of government. The clash of ideas on this opinion however, will continue throughout the 21st Century. Further research is needed to ascertain what the effects of the global economy (i.e. trade agreements, sanctions, G8 Summit), military involvement throughout the international landscape, election intervention, advancement of social media, and the continued threat of global terrorism will have on both forms of government.

## **Conclusion**

This chapter gives the reader a solid foundation of the overarching themes or characteristics of tyranny vs liberty. It also highlights the role of national identity and its impacts

globally. More importantly, it outlines the philosophy and ideology of the two different forms of government. Where democratic institutions are more centrally focused on a set of ideas, authoritarian nations are more focused on advancing the self-interests of an autocratic ruler. This is extremely dangerous and causes many challenges for the United States. Finally, a breakdown of the institutional framework of a democratic system raises concerns that they are autocratic elements that exist within the democratic institution. The following two chapters will highlight the warning signs that lie within the democratic makeup of the United States.

**American Exceptionalism: Chapter 2**

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## **Chapter 2: Rule of Law and Separation of Powers**

The fundamental foundation of any democratic institution is the implementation of the rule of law, separation of powers, preserving the basic human rights and equality of its citizens. It is these elements that drive American values and the forcing mechanism in crafting a Foreign Policy or National Security Strategy. These principles have been the guiding light for all aspiring countries who desire to live in a self-governing society. Authoritarian governments however, attempt to assert their power over the normal citizen and have little regard for abiding laws. They do this for the sole purpose of advancing their own strategic interest. Checks and balances are necessary in order to prevent a King, tyrant, or dictator from leading their country into the abyss. It is the separation of powers that makes America exceptional to any other form of government.

American Foreign and Domestic Policy must be shaped appropriately in order to preserve the elements of the rule of law and enforce the constitutional separation of powers. The modern political culture however, has had an increasingly use of executive orders from the President. Thus this leads to many critics saying that America has moved ever further to an “Administrative State.” The Judicial Branch has also seemed to become the new norm in implementing policies of the Presidential administration. In recent years, there have been several Supreme Court cases that have advanced the political agenda of the President. The Courts have been a means for the President to “stack the deck” with politically likeminded individuals in order to pass their agenda. But the real question is if America has advanced so far to the administrative state, then what is the role of Congress? Don’t they bear some responsibility in developing and executing policy? The answer is absolutely they do. The founding fathers did view the Legislative branch of government as a threat to democracy and self-government. However, they still must reassert their constitutional authority and power. Ultimately, it is up to the Members of Congress to play

a significant role in implementing effective policy for this Nation and preserving the very constitutional values we hold to be unique. This chapter will focus on the overall theme of the importance of the separation of powers in drafting policy. It will also examine how democratic institutions offer a very stark difference while upholding the rule of law. Finally, this chapter will address whether or not a democracy such as America has adopted authoritarian principles in its policy and really challenged the idea of American exceptionalism.

### **Critical Literature Review**

The literature review conducted for this chapter is a collection of primary and secondary sources in the form of research polling, peer-reviewed journal articles, and books. It covers a very broad range on the topic of checks and balances, the separation of powers, the rule of law, international perspective, and the current political landscape. It is to give the reader a solid foundation of the information already available on this subject. It will also uncover potential new ideas to explore and develop known trends.

There is empirical evidence that suggest that the majority of citizens in the United States find that checks and balances are of fundamental importance in preserving democracy. The separation of powers and just how effective the United States government is in implementing their policy are also worth noting. According to a Pew Study, “In addition, large majorities in both parties (83% of Republicans, 85% of Democrats) view a system of checks and balances as very important for a strong democracy. In that same study, many found that giving the President too much power would be extremely risky. The study argues, “Americans overwhelmingly think that it would be too risky to give U.S. presidents more power to deal directly with many of the country’s problems: 77% say this, while just 17% say that problems could be dealt with more effectively if U.S. presidents didn’t have to worry so much about Congress or the courts. When a

similar question was asked six months ago, a wide majority also expressed skepticism about increasing presidential power (77% now, 72% then)” (p.1). It is also interesting to point out, that this was the result regardless of who is President (Democrat or Republican).

When it comes to preserving the American or democratic values such as the rule of law, there have been several scholars and academic literature written on the importance of those principles. According to Susanne Karstedt and Gary LaFree, “The rule of law is a cornerstone of the institutional regime of democratic societies. All actions of citizens, the state, and government are equally subject to legal scrutiny, independent of positions, status, and power. The criminal justice systems figures as a powerful institutional symbol of the state’s monopoly of the use of violence against its own citizens, and its restrictions are emblematic of the firm establishment of the rule of law in democracies” (Karstedt & LaFree, 2006, 12). Other literature details the correlation between the separation of powers and the rule of law. For example, Meyerson argues, “This aspect of the rule of law – the accountability aspect - is once again supported by the separation of powers. In this case it is the separation of judicial from executive power which is engaged. In providing that only the courts can exercise judicial power the doctrine prevents government officials from having the last word on whether they have acted illegal. The separation of judicial power thereby provides for an effective check on the executive branch” (Meyerson, 2004, 1). When shaping American Foreign Policy in particular, it is always necessary to uphold the rule of law and American ideals. There will always be constitutional critics such as Schwarz or research advocates such as the Brennan Center for Justice who state that the policy being implemented by the United States hinders on the personal liberties of normal citizens. They will also argue that the executive branch is simply becoming too powerful. For example, Schwarz argues, “the executive remains the dominate, almost exclusive, branch of

government choosing and wielding national security tools in response to terrorist threats. President George W. Bush acts with little deference to or collaboration with Congress or the federal courts on matters he considers relevant to national security” (Schwarz & Huq, 2008, 1).

Due to the fluidity and complexity of the global landscape, it has been extremely challenging for America to really advance their strategic interest through meaningful policy. There has also been much debate and topics written on the idea of the United States model as a whole. For example, Oueslati argues that “the sense of moral righteousness and ordained exceptionalism which guided America’s vision of itself and of the world persists in the post-Cold War era and will attain its climax during the George W. Bush presidency. In a world dominated by the Internet, social networks, and alternative sources of information, the traditional ideological tools of U.S. foreign policy such as civilizational advancement, messianic vision, spread of liberty, democracy and human rights, have become less operational and more problematic for the U.S. at the turn of the twenty-first century” (Oueslati, 2014, 1). It appears that this challenge will certainly not slow down any time soon. The normal citizen of the world has several options to receive information and have begun to challenge its leaders on many fronts.

Promoting the American principles and values such as the rule of law is always in the National interest of every Presidential Administration and embedded into their National Security Strategy. For example, the current NSS focuses on promoting American prosperity. The NSS states, “We welcome all economic relationships rooted in fairness, reciprocity, and faithful adherence to the rules. Those who join this pursuit will be our closest economic partners. But the United States will no longer turn a blind eye to violations, cheating, or economic aggression.” (NSS, 2017, 17). The spread of American values is also nested into virtually every major policy

decisions. This ensures our international partners that America is really that “shining city on a hill.” For example, in the current Counterterrorism strategy, it states, “Guided by this strategy, rooted in American principles, and harnessing our inherent strengths as a nation, we will eliminate terrorist’ ability to threaten America, our interests, and our engagement in the world” (National Counter-terrorism, 2018, 3).

But these ideals are not just embedded into National Security or strategy documents. Legislation passed into law and signed by the President are also attempting to promote American values. For example, the Helms-Burton Act of 1996 (LIBERTAD) explain the importance of promoting democracy. David Fidler in his explanation of the Act, argues “The final fundamental tenet of the liberal tradition is the protection of existing democratic States and the encouragement of the spread of democratic ideas, values, practices, and institutions throughout the international system” (Fidler, 2018, 307). Promoting democratic values are a top priority for U.S. policymakers and elected officials. The following study highlights the importance of protecting these principles throughout the global landscape. It also shows just how effective the United States is in advancing their strategic interest.

A recent PEW study found some alarming trends in this particular area. In a study conducted in 2017, found six major alarming global perspectives with respect to democracy. The Study found: “About nine-in-ten Swedes (92%) say representative democracy is a good way of governing their country, the highest share of any country in the survey; Germans are overwhelmingly opposed to rule by the military or by a strong leader; People in Vietnam are the most likely to support military rule among the countries surveyed; Support for a strong leader who is unchecked by the judiciary or parliament is highest in India; Just 6% of people in Mexico

are satisfied with the way democracy is working in their country, the smallest share of any country surveyed; Trust in the national government is highest in Tanzania” (p.1).

There has also been several pieces of literature written on the idea of the founding fathers to develop a system of self-governance, rule of law, and the separation of powers. What is quite interesting is the fact that the framers of our constitution couldn't imagine what today's political environment has become. Or could they? According to Anthony Burnello from Eckerd College: “an excellent example can be found in Hamilton's defense of what we today would think of as a very limited franchise for the election of the chief executive. In Federalist 68, Hamilton extols the idea that a, “small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation” (Hamilton, Madison, and Jay 2001, 352). To Hamilton this highly desired model served not only to acquire the “sense of the people” but also to oppose “cabal, intrigue and corruption.” (Burnello, 2018, 108).

This passage is critical because it raises the importance of elections and who the society ultimately elects to be the President. Again, is the President acting in their own self-interest in advancing their own political agenda or are they really advocating for the will of the people? Other scholars would argue that each branch shares some form of ambition or self-interest in accomplishing their goals. For example, Federalist 51 argues:

“Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be

necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

Additionally, this passage highlights the overall relationship between the Executive and Legislative branches. In some instances, the Congress knows that the President has a clear term limit and therefore may elect to obstruct the process of the President’s agenda.

The idea of a “moral compass” or ethical characteristics is also vitally important in determining if our leaders or America as a whole have become too autocratic in its nature. Can we always rely on the rule of law or trust the President to be ethical at all times during his/her time in office? Has Congress overtime given too much power to the Executive branch? During a national crisis such as the September 11th attacks, the Congress gave overwhelming power to President Bush to use the military forces against any country harboring terrorist. Should we have relied on the President to act in the best interest of the American people? Perhaps we can go further in this debate on the rule of law and ethics during another national crises. The Emancipation Proclamation during Lincoln’s administration was certainly a national outcry and a highly debated issue in this country. As Guelzo explains, “But in Lincoln's case, prudence demanded that he balance the integrity of ends (the elimination of slavery) with the integrity of means (his oath to uphold the Constitution and his near-religious reverence for the rule of law). Lincoln understood emancipation not as the satisfaction of a "spirit" overriding the law, nor as the moment of fusion between the Constitution and absolute moral theory, but as a goal to be achieved through prudential means, so that worthwhile consequences might result. He could not be persuaded that emancipation required the headlong abandonment of everything save the single

absolute of abolition, or that purity of intention was all that mattered, or that the exercise of the will rather than the reason was the best ethical foot forward” (Guelzo, 2006, 1).

The real question is this: Has the United States moved closer to autocratic behavior or does the electorate just favor authoritarian tendencies? What has caused the polarization of the American people to support dictator or tyrant elements? For example, Hetherington and Weiler argue “Authoritarianism is a particularly attractive explanation for changes in contemporary American politics because it structures opinions about both domestic and foreign policy issues. In addition to having concerns about racial difference and social change, those who are more authoritarian tend to prefer more muscular responses to threats than those who are less” (Heatherington & Weiler, 2009, p. 4). Could this be the reason for example why the 2001 Authorization for the Use of Military Force (AUMF) passed 98-0 in S.J. Res 23?

Finally, it is essential to address the current political landscape in the United States. The “Trumpian” effect could absolutely be apart of this ever growing move toward a “dictator” or “tyrant” form of behavior in our current political atmosphere. A recent PEW study offers that the majority of the public feel that the President lacks the respect for democratic institutions. The study argues, “Fewer than half of Americans (45%) say Donald Trump has a great deal or fair amount of respect for the country’s democratic institutions and traditions, while 54% say he has not too much respect or no respect. These views are deeply split along partisan and ideological lines. Most conservative Republicans (55%) say Trump has a “great deal” of respect for democratic institutions; most liberal Democrats (60%) say he has no respect “at all” for these traditions and institutions” (p.1). This study is really at the heart of the President’s critics and perhaps more importantly, how we have become so divided in our ideological thoughts on democratic principles as a whole. As Taub argues, “Authoritarians are thought to express much

deeper fears than the rest of the electorate, to seek the imposition of order where they perceive dangerous change, and to desire a strong leader who will defeat those fears with force. They would thus seek a candidate who promised these things. And the extreme nature of authoritarians' fears, and of their desire to challenge threats with force, would lead them toward a candidate whose temperament was totally unlike anything we usually see in American politics — and whose policies went far beyond the acceptable norms” (Taub, 2016, 1).

There is clear empirical evidence that the society is extremely unhappy with our elected officials, especially the United States Congress. According to the Real Clear Politics Poll, the current Congressional approval rating is 17.2%. The public is simply unhappy with the current political environment and frankly has been for a very long time regardless of which political party is in power. Even political commentators such as Tucker Carlson have argued, “Trump’s election wasn’t about Trump...It was a gesture of contempt, a howl of rage, the end result of decades of selfish and unwise decisions made by selfish and unwise leaders” (Carlson, 2018, 3). This passage along with other literature have found that this movement toward the administrative state filled with only “Executive Orders” and the fundamental breaking down of democratic principles has been occurring far before the election of our current President.

The reasoning for this growing divide or polarization of American politics is centered on its ability to effectively implement meaningful legislative policy to move America forward. In other words, Congresses inaction has led to many Presidential administrations to sign Executive Orders rather than implement policy that is originally drafted in the Congress. There is also a growing debate on how much Presidential power should be given to the Executive branch. This frustration in the electorate has caused many to question the real motives of our elected officials. Are we really that ideologically divided that we cannot perform the very functions of

government that our founding fathers envisioned? The current PEW studies suggest we are fracturing that very idea designed over 242 years ago. Due to Congress' ever growing unpopularity, the separation of powers and upholding our American values such as the rule of law are at a tipping point. This does not necessarily fall on the responsibility of the Executive branch. It is the Legislative branch that must bring to bear the responsibility as well. Case Study into the Authorization for the Use of Military Force is an extremely debated issue among scholars. It is not only a question of whether or not Congress forfeited their constitutional power and authority to the President, but it is a question of the rule of law, the basis of our democratic principles, and implementing autocratic principles in developing policy. This study will examine the impacts and importance of the separation of powers in the development of policymaking. It will also highlight the importance of upholding our principles of the rule of law and showcasing why America is truly a rare form of institutional design.

### **Methodology/Data**

The data and methodology utilized for this chapter is the case study and comparative research approach. This will further explore on the hypothesis that many scholars have alluded to in the literature review. The case study will examine the 2001 and 2013 Authorization for the Use of Military Force (AUMF) and examine how the separation of powers impacted the ability to uphold the rule of law in our democracy. These two examples, although similar in nature, had two very different outcomes. Given the hypothesis or notion that America has moved closer to autocratic tendencies and increased Executive power immensely, this case study will also give an insight into what this means for the current global or domestic landscape.

## **Data Presentation**

The current global landscape will continue to remain fluid and very complex. We have become even more polarized as a Nation. The threat the United States faces is not slowing down and given the persistent challenges from State, Non-State, and Violent Extremist Organizations (VEOs), how does America continue to advance their idea of American Exceptionalism and uphold the very principles we hold so dear? Knowing the uncertainty of these challenges, the President and more especially, the Congress must effectively work close together in order to address the very real threats we face in the 21st Century. The Constitution essentially lays out what the roles and responsibilities are for the Executive and Legislative branches. However, given the events of the September 11th attacks and the ongoing War on Terrorism to include new threats from the Islamic State, these very basic guidelines from the Constitution continues to be a growing balance of power issue with the President and the Congress. Many policy experts, academia, and scholars have debated the separation of powers, rule of law, and the ever-growing movement of autocratic behavior from our leaders. Have we simply become too autocratic in nature? The case study of the 2001 and 2013 AUMF will give a glimpse into the Executive branch potential overreaches with respect to the rule of law and implementing the overall will of the American people. It will also raise new questions into what is ethically moral and more importantly what is actually legal per our system of governance.

It is essential to lay the necessary ground work or legal authority per the United States Constitution before addressing the AUMF's themselves. Article II of the U.S. Constitution clearly states that the "executive power shall be vested in a President of the United States... The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States. However

Article I, the national legislative article, states: The Congress shall have power...To declare war, grant letters, of marque and reprisal, and make rules concerning captures on land and water” (p.11). Additionally, the Constitution provides the necessary guidance for Presidents to seek authorizations. According to Curtis Bradley and Jack Goldsmith, “Many war powers scholars argue that the President is constitutionally required to obtain some form of congressional authorization before initiating significant offensive military operations. These scholars frequently tie this requirement to Congress’s constitutional power to declare war. Nevertheless, they do not typically argue that Congress’s authorization must take the form of a formal declaration of war” (p. 2057). The debate among scholars and even former Presidents have come down to interpretation. Curtis argues, “Whatever the implications of the Founding history for the issue of whether Congress must authorize war, almost no one argues today that Congress’s authorization must take the form of a declaration of war” (Bradley & Goldsmith, 2005, 2059). It is interesting to note that the Congress has not declared war since World War II.

International law, United Nations regulations, and Supreme Court rulings are all elements to determine the legal authority for a President to carry out military operations against State, Non-State, and VEO’s. The implications of fighting an enemy such as the Islamic State makes it even more challenging from a legal perspective. According to Murray, “Throughout history, wars have typically been declared and fought between states and against clearly identifiable combatants, but this new enemy is neither organized by state affiliation nor located in a specific geographic area” (Murray, 2015, 3). The challenge that the United States continues to face from enemies that are not particularly tied to a country makes it even more vital that the language in Congressional authorizations is clear. Murray argues, “the scope of authority given to a president on September 18, 2001 was left open to interpretation. Any authorization for war boosts the

power of the president, but the extent of that power depends on the situation and the wording of the authorization. Broad authorizations give him enhanced powers to move troops, use force, and detain the adversary” (Murray, 2015, 3).

The history of the War Powers Resolution, Constitutional authority, and legal rulings are very important to understand the basis of enacting congressional authorizations to the Executive. Goldsmith argues “Examination of declared wars throughout U.S. history reveals that Congress’s war declaration have never by themselves constituted Congress’s authorization for the President’s use of military force. Rather, even when Congress has declared war, it has always taken the additional step of authorizing the President to use force to prosecute the war” (Goldsmith, 2005, 2062). The balance of power between the Executive and Legislative branch is just as fluid and complex as the enemy we currently face. It is a give and take between what authorities, roles and responsibilities that each branch have. That being said, we have seen two AUMF examples that have produced very different results. One was very broad with respect to authorization and one was very specific in its legislative language. Undoubtedly, the situation around the globe and the mood or emotion of the country played a significant role in the passage of those two authorizations.

Taub discussed the theory that many Americans “activate” their authoritarian characteristics when threatened. She explains that this causes “many Americans to seek out a strongman leader who would preserve a status quo they feel is under threat and impose order on a world they perceive as increasingly alien” (Taub, 2016, 1). The attacks of September 11, 2001 prompted a strong and quick response from the President and the Congress. Introduced as S.J. Res. 23 only a few days after the 9-11 attacks, the 2001 AUMF passed the Senate 98-0 with two members not voting. It was signed into law by President Bush on September 18th. The

administration argued that it was consistent with the 1973 War Powers Resolution. It is important to note that the United States had an idea of who was behind the attacks but it did not know with certainty before the AUMF was passed. The Congress and Administration moved at lightning speed to pass the legislation. Representative Lee, a strong advocate against the AUMF stated “It was a blank check to the President to attack anyone involved in the September 11th events anywhere, in any country, without regard to our nation’s long-term foreign policy, economic and national security interests, and without time limit. In granting these overly broad powers, the Congress failed its responsibility to understand the dimensions of its declaration. I could not support such a grant of war-making authority to the President. I believe it would put more innocent lives at risk” (The San Francisco Chronicle). In a time where emotion and a strong response were required, the legislative branch essentially gave immense power to the President. It is the duty of the President to exercise his constitutional authority as Commander in Chief, but Congress failed in its attempt to provide the necessary oversight and check on the Executive power.

Representative Lee raised valid concerns with the 2001 AUMF implementation and many other legal scholars raised their concerns as well during the drafting of the AUMF. Murray argues, “George W. Bush treated the AUMF as if it were a dose of steroids, meant to make the president stronger, but requiring no follow-up treatments. Essentially, the administration argued that the president could act on his own during wartime with or without an authorization by the Congress, but that the Congress had boosted these powers by passing the 2001 AUMF. Principals within the Bush administration interpreted the statute as giving broad congressional authority to do whatever the administration thought was necessary to conduct the war and without the need to consult further on matters of implementation” (Murray, 2015, 3).

The balance of power and rule of law argument is always a debate and it was brought up in the original drafting of the 2001 AUMF. Rand argued, “The initial AUMF drafts proposed by the White House sought presidential authorization to “deter and pre-empt any future acts of terrorism or aggression against the United States” The lack of clear target and durational parameters in this language raised controversy....As Representative DeFazio argued on the floor: the earlier drafts ceded too much authority to the executive branch. The congressional majority agreed with this notion, and the overly broad language in these early White House drafts was ultimately rejected by Congress in the final draft, which instead authorized the President “to use all necessary and appropriate force” in pursuit of those responsible for 9/11” (Murray, 2014, 135).

It is clear that the United States Congress may have not fully understood the power that they were giving to the President. According to Ball, “On September 18, 2001, without any substantive input into drafting of the legislation, Congress passed a joint resolution drafted by the White House:

In General-That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons” (Ball, 2007, 11).

This theme of giving the President very broad authority continued throughout the Presidency of George W. Bush with the passing of the Iraq Joint Resolution and then the Patriot Act. Bush’s critics will always point to this broad authority when discussing detainee operations at Guantanamo Bay, NSA Surveillance, Military Commissions, and FISA abuses with the

collection of foreign intelligence on American soil. The rule of law, ethical and moral dilemmas were highly debated throughout this time. According to Simone, “The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees,” said the report, which reveals new details about prisoner treatment at U.S. military prisons in Cuba, Afghanistan and Iraq....“Those efforts damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies and compromised our moral authority, the report said” (Simone, 2009, 1).

The consequences of giving the Executive branch broad authority is that it significantly reduces the power of the legislative. The branch that is “the closes” to the people essentially relinquishes their constitutional power immensely. Congress does however, maintain the “power of the purse” and if they do not agree on the appropriate strategy, they can always choose not to authorize or appropriated funds toward the President’s policy. The 2001 AUMF with respect to the checks and balances on Presidential policy or strategy was seen in the *Hamdan v Rumsfeld*. The case was centered on whether or not the President had the ability to establish military tribunals or commissions. The Supreme Court overturned the Court of Appeals and found that the commissions were unconstitutional under the Uniform Code of Military Justice (UCMJ). The overarching authorization however, is still the basis for the Executive to assert their power. For example, when conducting military operations against the Islamic State, President Obama referred that he already had the constitutional authority. According to Murray, “the president used his Article II commander in chief powers to authorize airstrikes in Iraq, ostensibly to protect American personnel. Then, in a surprise move, Obama announced in a September 10 prime-time televised speech that the United States would “degrade, and ultimately destroy, ISIL through a

comprehensive and sustained counterterrorism strategy” that included “a systematic campaign of airstrikes.” The United States, he said, would hunt down these terrorist “wherever they are.” (Murray, 2015, 193). The normal 60-day time limit on military operations as outlined by the 1973 War Powers Resolution did not apply according to the Obama administration because they did not seek congressional authorization. They argued that they already had the authorization from the 2001 AUMF. Many scholars, analysts, and even political leaders question why the Congress gave the Executive so much broad power. Was it just the mere emotion of such horrific attacks that propelled political leaders to pass this AUMF? Perhaps it was just a show of rare bipartisanship that is missing in today’s political culture. Maybe it was really the first sign of autocratic tendencies that had an abundance of support from the American people and elected officials. Nevertheless, the 2001 AUMF gave the President immense constitutional power over the legislative branch that continues in today’s global uncertainty. Undoubtedly, the passage of this legislation and authority given to the President had immense consequences. If given this very broad authority, what limits does the President have? Where is the rule of law in this particular instance?

The 2001 AUMF passed the Senate in overwhelming support with very broad language. The next example offers a stark difference to the 2001 AUMF in that the 2013 AUMF provided very specific language and authority to the President. In other words, it limited the power that the President had. It is also essential before addressing the 2013 AUMF that the global landscape and the ideological differences between Presidential administrations were starkly different from one another. The National Security Strategy, the National Defense Strategy, and Foreign Policy strategy were starkly different. The United States was also in its longest war in Iraq and Afghanistan. The mood of the country was experiencing “battle fatigue” and started to shift more

toward social concerns such as racial and gender equality. This overwhelmingly dominated the news cycle. The growing threat from VEO's such as the Islamic State created a global landscape predicated on fear. Bombings throughout Europe and soft attacks within the United States were on the minds of many. These concerns and fears has a direct impact on how elected officials legislate and more importantly, decide how to execute foreign policy.

President Obama took an isolationist or Jeffersonian approach toward Syria and defied many military experts for U.S. involvement. The Syrian foreign policy strategy will undoubtedly have an impact on Obama's legacy. According to Gallagher, "In the retrospective, it is axiomatic among Washington's foreign policy establishment that the Obama administration's response to the chaos in Syria will be a lasting stain on his legacy. With nearly 500,000 dead since the March 2011 uprising that sparked the war, the foreign policy elite have blamed Barack Obama for not doing more" (Gallagher, 2017, 1).

The 2013 AUMF introduced in the Senate as S.J. Res.21 authorized the President to respond to the use of chemical weapons by the Assad regime in Syria. The 2013 AUMF authorized the President to use the military in a limited manner against military targets. Additionally, the AUMF authorizes the President to: respond to the government of Syria's use of weapons of mass destruction in the conflict in Syria; Deter Syria's use of such weapons in order to protect U.S. national security interests and U.S. allies and partners; Degrade Syria's capacity to use such weapons in the future, and Prevent the transfer to terrorist groups or other state or non-state actors within Syria of weapons of mass destruction" (Congress.gov). The Joint Resolution passed the Senate Foreign Relations Committee Chaired by Senator Menendez and Ranking Member Bob Corker by a 10-7 vote. The Resolution had bipartisan support and some opposition. Senator Corker stated "None of us want the U.S. mired down in another conflict, so

the committee has significantly limited the president's original authorization." The Congress had appeared to learn their lessons from the previous AUMF and the on-going war on terrorism. The wars in Iraq and Afghanistan resulted in a sense of "battle fatigue" with the American people and their simply wasn't an appetite to get involved in another conflict. The opposition of the Resolution argued that the President didn't have a clear and concise strategy in Syria and the growing civil war wasn't in the national interest of the United States. Perhaps the Wilsonian thought process of the Obama Administration was compelling them to get involved in this response to such humanitarian disregard for human life by the Assad regime. The basic rule of law and individual rights threatened the credibility of the United States. The Jacksonian's in Congress, argued that the Syrian civil war was not the problem of the American people and it wasn't our place to get involved.

Once again the balance of power was of clear debate. Senator Rand Paul introduced an Amendment (SA 1849) to the 2013 AUMF that stated "Notwithstanding any other provisions of law, the authority to use force resides in Congress, and the President does not have authority to carry out the military action set forth in this resolution absent passage of the resolution" (congress.gov). It is clear however that the Congress, in particular, the Foreign Relations Committee was committed to implementing the policy as stated by the Obama Administration. Senator Corker in his opening statement, stated "but one of the problems that members have, and I think this hearing and tomorrow's hearing is important to answer, is while we make policy, you implement policy. And the implementation of this is very, very important, and I think there have been mixed signals about what that implementation actually is going to mean and the effect it is going to have on the country that we are involved in" (www.congress.gov). In the drafting of the 2013 AUMF and subsequent approval out of the Committee, it was clear that Congress was

reasserting its constitutional authority and returning some power back to the appropriate branch of government. From the Obama administrations perspective, they wanted and needed the Congress to play a significant role in the process. They argued that the AUMF would provide the necessary credibility the United States desperately had to have. The 2013 AUMF never made it to the floor of the Senate because Russia and Vladimir Putin offered Obama a deal to allow Russia to address the concerns for the United States. Perhaps the most important lesson learned from the 2013 AUMF is that we as a government learned a lesson on what the consequences could be with giving the President too much broad authority. Perhaps we had also learned from the consequences from the rule of law perspective and the Congress exercised their constitutional authority to voice the will of the people.

### **Analysis/Discussion**

The two examples listed above were very similar in nature but had two different outcomes. The attacks on 9-11 was the most horrific incident that anyone has ever seen and therefore required an overwhelmingly response. There were also very different ideological strategies that were implemented. Giving the two examples outlined in the case study, it is clear to see why the PEW study found that the majority of Americans find it too risky to give the President overwhelming power. The reasoning into why one AUMF passed the Congress and the other didn't, really depends on the fundamental differences with the strategy. The two administrations viewed National Defense in very different ways as well. In addition, the time period, mood of the overall Nation, and overall behaviors of our elected officials was significantly different. In 2013, the Country was in the longest war in Iraq and Afghanistan. The mood of the Country was different in that it was more focused on social issues such as gay

rights, women's rights, healthcare, racial tensions, and the economy. The Nation really did not have the appetite to get involved in another conflict.

Tyrant or dictator behavior or tendencies were evident in the passage of the 2001 AUMF. The consequence of that very broad legislative language allowed then President Bush to incorporate detainee operations to include interrogation techniques, FISA warrants of citizens, and really call into question the rule of law. These are the mere results or unattended consequences in giving the Executive immense power. But we must never compromise our ideals, principles, or values as Nation. The 2001 AUMF in particular had not only international ramifications but domestic impacts as well. For example, the relationship between the "police state" and the Muslim community during 9-11 caused extensive debate on the individual rights of American citizens. Karstedt argues, "As terrorism amplifies a wider "ambient insecurity" emanating from everyday experiences of crime and disorder, democracies find themselves under increasing pressure to provide security to their citizenry" (Karstedt, 2006, 18). But how far are our elected officials willing to go? Did our politically elected individuals just create an issue to advance their own political party agenda? According to Cizar, "Strategic party politicians have seen a potential advantage in emphasizing issues that are closely related to authoritarianism, particularly Republicans, who have stressed "wedge issues" such as race, culture, and crime to counter the Democrats' traditional advantage on economic issues. As those issues have moved to the forefront of the agenda, authoritarianism is more important for partisan political behavior" (Cizar, 2014, 72). This subject requires further analysis and evidence into the growing polarization of the American society.

With respect to today's political culture, it is at the tipping point of the democratic experiment. Politically, we are more polarized than arguably since the Civil War and there is

seemingly an abundance or reliance of the “Administrative State.” So who will ultimately decide to “check the President’s power? The Congress? The Electorate? Tisdall argues, “This crisis of governance has been building for decades. It is only now, as Trump’s iconoclastic assaults on established beliefs, laws, institutions and values test the system to destruction, that the true scale of pre-existing weaknesses and faultlines is becoming apparent” (Tisdall, 2018, 1). The use of Executive Orders from Presidents has been a longstanding tradition but the use of them to pass legislation must be appropriately checked by the legislative branch. As Tisdall argues, “Trump’s frequent use of “executive orders” has provided another wake-up call. Most infamous was his travel ban on people from seven Muslim-majority countries, but others – concerning his Mexican border wall, his unilateral imposition of steel tariffs, and his reversal of Barack Obama’s Affordable Care Act – were also highly contentious. Yet, once issued, such orders are rarely overturned. After numerous legal challenges, the supreme court upheld the travel ban” (Tisdall, 2018, 1). There is no question that President Trump is challenging the status quo. Again, each Presidential administration possess their own ideology with regard to how they view the world. Further research is required to really answer whether or not it requires tyrant behavior to reverse the political mess we find ourselves in today. The power of the Executive and the overreliance of the Administrative state will continue to be debated throughout the modern political culture. One could also argue that there must be some accountability placed on Congress and their inability to pass effective legislation. Perhaps the original construct of the legislative branch was designed in a way that “over-checks” the Congress. For example, Madison argues, “In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principals of action, as little connected with each other as the

nature of their common functions and their common dependence on the society will admit” (Madison, Federalist 51). Regardless, the best way for Congress to reassert its constitutional power and rein in some of the power vested or given to the President, is to seek bipartisan support through meaningful legislation. Congress must also side on the overall will of the people, after all that’s why they got elected in the first place right? There is one more element that needs to be mentioned with respect to the current President and that his critics point to an even more autocratic Administration. That element is what some scholars call “Modern Personality Cults.” Leese argues, “Especially during the late nineteenth and early twentieth century, state leaders increasingly came to rely on the newly emerging mass media to project favorable images of their rule in the public sphere and thus tried to create emotional bonds with the populace. Despite certain analogies, these attempts to ‘construct charisma’ vary in several important aspects from modern personality cults” (Leese, 2018, 341). Sit argues the four signs or markers of a slow move to authoritarianism are: “Rejecting or showing weak commitment to democratic rules; Denying the legitimacy of political opponents; Encouraging or tolerating violence; and A readiness to stifle or limit civil liberties of opponents, including media” (p.1). He goes on to say, “In modern times, countries don’t typically collapse into authoritarian rule all at once. Countries like Venezuela and Turkey voted for rulers like Hugo Chavez and President Recep Tayyip Erdogan, respectively. They then devolved, with the consent of their constituency, into authoritarianism” (Sit, 2018, 1).

## **Conclusion**

The United States will always remain unique in the many blessings, traditions, diversity, and customs that we possess. But perhaps we should look to the very tradition of the Oath of Office that several members of our military and elected officials take. They don’t swear an oath

to a person, a President, a King, Queen, or even a government. What makes America exceptional is that we swear an oath to an idea or perhaps more clearly, a set of commands. It's a simple but powerful idea that has created several democracies across the world including the United States over 242 years ago. The idea or Constitution of the United States provides the necessary and fundamental element of equality and individual rights. The basic human rights of life, liberty, and the pursuit of happiness is what American Exceptionalism is really all about. The design of our system of government offers the necessary checks and balances over the other branches. The legislative branch is the closest to the voice of the people and it must reassert its constitutional power over the other branches. This is surely an effective technique to help curb the threat of an authoritative ruler. Some scholars would argue that once an authoritarian comes into power it's extremely difficult to remove them or limit their growing need for control. Certain events, the pulse or emotion of the American people, and the inaction of the legislative branch are the consequences however. The two authorizations in the case study are proven examples of Executive overreach and the growth of authoritarian control. The rule of law, basic human rights, and the foundation of equality must always be protected. Further research is needed however, to determine how the continued polarization of the American electorate have resulted or impacted the current political culture we experience. Through this extensive research, analyst may also ascertain the reason why these warning signs in democracy have impacted free and fair elections in the American electorate.

**American Exceptionalism: Chapter 3**

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### **Chapter 3: Free and Fair Elections**

An essential element within an effective democratic society is conducting free and fair elections. It is truly the hallmark of a functioning society and aims to provide a government of, by, and for the people. The current American political landscape is extremely polarizing and the credibility of elections has never been more tested than it was in 2000 and in 2016. It is essential that the society simply have trust in the political electoral process. Without this assurance, the element of free and fair elections poses a direct threat to our constitutional republic. This element that America holds so dear has significant impacts globally as well. The international community looks to America as that “shining city on a hill.” The ability of America to implement a foreign policy strategy and advance our national interest on the world stage is constantly challenged by our adversary’s. Our actions speak louder than words. We cannot encourage other inspiring nations to push for democracy if we aren’t true to our own principles. Therefore, we must uphold and preserve the values of our principles here at home. There are clear signs that our democratic process has flaws and is showing signs of authoritarian elements. This chapter will discuss topics to include: The impacts of Political Action Committees (PACs); Campaign Finance Laws; Voter Identification/Registration; Gerrymandering; Outside interference; and the role of technology. This chapter will also conduct a case study analysis of the 2000 Presidential Election Bush vs Gore Supreme Court decision.

#### **Critical Literature Review**

The literature review conducted for this chapter is again a collection of primary and secondary sources in the form of research polling, peer-reviewed journal articles, and books. The topics covered are critical elements that discuss free and fair elections. There is an abundance of empirical data on this topic and it will even include recent legal decisions handed down by the

Supreme Court. The literature review will provide the reader a wealth of knowledge accumulated over time and explore potential new ideas on the subject.

The role of money and the use of Super PAC's in political campaigns have raised concerns not just for candidates but the overall society as well. There is clear empirical evidence that the society wants to reduce the amount of money given to campaigns. A recent PEW study suggests,

“There is widespread – and bipartisan – agreement that people who make large political donations should not have more political influence than others, but Americans largely don't see that as a description of the country today. And there is extensive support for reining in campaign spending: 77% of the public says “there should be limits on the amount of money individuals and organizations” can spend on political campaigns; just 20% say they should be able to spend as much as they want” (PEW, p.1, 2016).

There is also evidence that suggest there is an appearance of corruption spread throughout the entire political landscape, especially within the electoral process. The Citizens United case attempted to address the role of corruption.

The D.C. Circuit relied on Citizens United in the follow-up case of SpeechNow.org, and in doing so created the Super PAC. The D.C. Circuit distinguished these new “independent expenditure–only groups,” which could accept unlimited contributions and make unlimited expenditures, from traditional PACs that could contribute directly to candidates. 31 Relying on the Citizens United Court's determination that “preventing corruption or the appearance of corruption” was the only justification sufficient to allow the regulation of campaign finance, the D.C. Circuit found that independent expenditures made by groups designed to make only such

expenditures could not pose a threat of quid pro quo corruption: because these expenditures could not be coordinated with candidates, “there [was] no corrupting ‘quid’ for which a candidate might in exchange offer a corrupt ‘quo.’ The court thus held that “the government has no anti-corruption interest in limiting contributions to an independent expenditure group” (Harvard Law Review, p. 1482, 2019).

These landmark cases have paved the way for Super PAC’s to raise unlimited contributions to a particular candidate. As long as these Super PAC’s maintain their “independence” from other candidates thus by no direct coordination with a particular candidate, they are within their legal constitutional right.

Smith argues, “Both decisions were based on the Supreme Court’s longstanding position that, as a matter of law, political expenditures made independently of a candidate or party do not pose a sufficient threat of corruption to justify the infringements on speech and association that result from government regulation of campaign contributions and spending. This privileged position for independent expenditures has been at the core of constitutional analysis of campaign finance law since it was first announced in *Buckley v. Valeo*” (Smith, p. 604, 2013).

The rise of Super PAC’s have certainly impacted a candidate’s ability to attack their opponent and distance themselves from attack ads. There is also evidence that the laws and regulations favor big corporate donors, outside interests, and insiders. Pillow argues, “In sum, super PACs can make effective independent expenditures because they are staffed by insiders who know what to do because they have worked for the candidate's actual campaign.

Furthermore, the prohibition against coordination actually helps the candidate because it allows him or her to take the high road while super PACs do the "dirty work" (Pillow, p. 978, 2013).

The second element on the topic of free and fair elections is the impact of campaign finance laws on our electoral process. It is closely interconnected with Super PACs or "Dark Money." There is an abundance of information on this topic and growing trends that only show that money in politics is having an impact on the credibility of our process.

Jorgensen argues, "The 2016 presidential campaign brought new publicity to the public's disapproval of money in politics. Donald Trump proclaimed during the first Republican debate, "I will tell you our system is broken. I give to many people . . . I give to everybody, when they call I give, and you know what? When I need something from them, two years, three years later, I call, they are there for me." Once Trump became the last Republican candidate standing, he formed joint fundraising ventures with at least 11 state party organizations that can raise \$449,400 per donor in direct cash donations, showing the campaign finance system even places limits on billionaires who lend themselves money to run for president" (Jorgensen, p. 217, 2019).

There is clear evidence that suggest there are signs of authoritarian elements within our electoral process. Due to the amount of money in politics and its potential influence on candidates, it suggest that there is a rise of "elitism" within the society who truly has the ultimate influence. This is highly debated amongst scholars and academia. It also has opened the door to potentially new ideas on how we form legal barriers and restrictions to limit the amount of influence on political candidates.

Reese argues, "Several leading scholars—most notably Lawrence Lessig, Zephyr Teachout, and Ganesh Sitaraman—argue that this reality is problematic. These leading critics of

big money in politics make a simple, yet compelling point: if the wealthy are able to dominate, influence, or control elections in a way that somehow changes elected official behavior, then we may have a problem that undermines the legitimacy of our republican form of government at its democratic ideological core” (Reese, p. 125, 2019).

The idea of “Dark Money” has been a growing trend and a cause for concern over the last several years. There is also evidence that suggest that Dark Money not only is affecting the federal level, but the local and state elections as well. In her testimony to the New Jersey State Senate Appropriations Committee, Zdanys argued,

“Dark money poses a significant threat to democracy. It thwarts accountability for misleading political messages and robs voters of the information necessary to properly evaluate them. And, dark money has a particularly pernicious effect at the state and local levels. In 2016, the Brennan Center issued a comprehensive study of dark money in state elections. It found that, because a great deal of power over economic matters is subject to direct election at the state level, dark money “frequently flows from special interests with a direct and immediate economic stake in the outcome of a contest. The generally lower costs of state and local elections, compared to federal elections, can make dark money even more powerful in this context” (Brennan Center for Justice, p.2, 2019).

The concern over money in politics is not a new. What is new however, is the way that the system could be changed to limit its overall impact and restore accountability to the process. For example, Grumet argues, “The system is best served if campaign resources are drawn back toward more accountable organizations with obligations to report their sources of funding and with greater capacity to engage on substantive issues” (Grumet, p. 147, 2014).

Money in politics is certainly a growing trend, especially in today's political environment. But there are other elements that attempt to influence the voter electorate to one side or the other. Voter identification and registration laws are an important factor to consider in determining if our election process is free and fair. There is an extensive amount of information available on this topic and it continues to be relevant in today's political climate.

A recent PEW study finds that the majority of Americans are in favor of same-day registration. The study finds that "Overall, about two-thirds (64%) of Americans strongly or somewhat favored the idea of same-day voter registration in our pre-election survey, but partisans were divided. Roughly eight-in-ten Democrats and Democratic-leaning independents (78%) favored allowing people to register on Election Day, compared with 49% of Republicans and Republican leaners (PEW Study, p.1, 2018).

A similar study also concluded that the idea of Photo identification is still highly debated and torn along ideological lines. The study suggested, "In our pre-election survey, around three-quarters of Americans (76%) favored requiring all voters to show government-issued photo identification to vote. The vast majority of Republicans (91%) backed ID requirements, while a smaller majority of Democrats (63%) said the same" (PEW Study, p.1, 2018).

There is also evidence that many states have decided to implement voter identification laws but opponents have argued that these restrictions are suppressing the vote, especially for minority individuals. Additionally, these restrictions are having a direct impact on voter participation.

Valentino has argued, “Over the last two decades, a large number of U.S. states have introduced restrictive voter identification (ID) laws. As of this writing, 32 states have voter identification laws of some kind on the books (see National Conference of State Legislatures, 2016). Standard theories of participation would predict that registration and voting restrictions increase the material costs of voting without increasing the benefit and will therefore tend to reduce participation (Downs, 1957). These general expectations have been borne out empirically in a variety of classic studies, with bureaucratic obstacles to voting and registration among the most reliable predictors of variation in participation across states and over time” (Valentino, p. 331, 2017).

There is an abundance of information that shows there are new ideas to implement an effective voting registration process. Individual states are now taking matters into their own hands and offering ideas. For instance, in New York, there is a bill before the Senate that will allow for automatic voter registration. According to the Brennan Center for Justice, “The bills offer individuals the opportunity to decline registration at the point-of-service and contain statutory protections for vulnerable populations” (Brennan Center for Justice, p.1, 2019).

It also appears that political parties are realizing that restricting voter laws and registration are having an impact on voter participation. In other words, turnout is their main objective. Fredrickson argues, “In an analysis of Obama voters who stayed home in 2016, a group of political scientists found that these voters have strong progressive values and “four out of five....identify as Democrats, and 83 percent reported they would have voted for a Democrat down-ballot” (Frederickson, p. 219, 2019).

Grumet suggest that we implement the Election Day Registration (EDR) to those individuals with a government issued identification. He argues, “By restricting same day voting

to people with sanctioned identification, this approach also addresses integrity concerns and improves the accuracy of voter lists” (Grumet, p. 178, 2014). There are many suggested reform initiatives to preserve the civic liberty to vote for a candidate of one’s choice but there are clear loopholes within our processes that others will attempt to exploit for their own political interests.

The idea of gerrymandering dates back to the 1800’s but there is clear evidence that it remains a highly debated issue. Grumet argues, “There is one form of strategic redistricting that is not only sanctioned, it is required by federal law. The Voting Rights Act, adopted in 1965, is designed to increase minority representation by drawing lines to create “majority-minority” districts. These districts often elect minorities and almost always elect progressives. The necessary result of these policies is to concentrate conservative voters in the surrounding districts” (Grumet, p. 41, 2014).

The Brennan Center for Justice has debated the idea of partisan gerrymandering for some time and they have argued:

“The U.S. Supreme Court has recognized the harms of partisan gerrymandering, but has long struggled to outlaw it. Without strong laws against gerrymandering, the problem has gotten worse. This decade, politicians equipped with reams of voter data, fast computers, and precision redistricting tools have created a new breed of extreme partisan gerrymanders that have locked in majorities—or even supermajorities—for one party, regardless of how voters actually vote. These new, extreme maps have given rise to legislatures that do not represent the diverse interests of voters and do not respond to changing opinion” (Brennan Center for Justice, p.1, 2019).

There have been several studies and analysis conducted to examine the impacts of partisan gerrymandering. For example, a study called *Drawing the Lines* by Seabrook. The analysis argued,

“during the period from 1992 to 2010, partisan gerrymanders had their intended seat gain effect, but only marginally, while these plans increased electoral competition in comparison with bipartisan, commission, or judicial plans. Thus, Seabrook puts himself at odds with the conventional strain of writing on the topic, urging academics and journalists to move past their fixation on limiting partisan gerrymandering and instead push for competition-enhancing reforms, regardless of whether a state legislature or a commission has redistricting authority” (Born, p.572, 2019).

The case of partisan gerrymandering is still very relevant in today’s political landscape. In the case of racial gerrymandering, the Supreme Court recently struck down an attempt by the Virginia House of Delegates to redraw their redistricting based off of race. According to *The Economist*, “The substantive legal question in *Bethune-Hill* was whether Virginia Republicans violated the Equal Protection Clause of the Fourteenth Amendment when they packed black voters into a number of majority-minority districts. The House of Delegates claims it was only trying to comply with the Voting Rights Act of 1965 in sketching a map that allowed minorities to elect their choice of candidates. But the challengers saw the House’s target of 55% black voters in these districts as excessive and designed to dilute black voting influence in surrounding areas” (*The Economist*, p.1, 2019).

The final element on the overarching topic of free and fair elections is the impact or appearance of outside interference from State, Non-State, and Violent Extremist Organizations (VEO’s). The use of technology and the media is also interconnected. The unprecedented

interference from Russia during the 2016 Presidential Election has had a direct impact on America's domestic and international creditability. Russia's attempt to undermine our democratic process has caused many to offer their own opinions, research, and recommendations to vehemently oppose such aggression in the future.

According to the U.S. Intelligence Report, "Russia's effort to influence the 2016 U.S. presidential election represented a significant escalation in directness, level of activity, and scope of effort compared to previous operations aimed at U.S. elections. We assess the 2016 influence campaign reflected the Kremlin's recognition of the worldwide effects that mass disclosures of U.S. Government and other private data — such as those conducted by WikiLeaks and others — have achieved in recent years, and their understanding of the value of orchestrating such disclosures to maximize the impact of compromising information" (USIC, p.1, 2016).

The Department of Justice, in-particular, the outside Special Counsel Robert Mueller conducted a two year investigation on the 2016 Russian election interference. As part of that investigation, Mr. Mueller also conducted an extensive investigation into whether anyone, including the President of the United States, had any contact with Russian nationals. Additionally, Mr. Mueller investigated on whether or not the President obstructed justice as it pertained to his investigation. The House Judiciary Committee is still conducting their own internal investigation on the obstruction of justice topic.

Regardless of the outcomes of the above mentioned investigations, there is no doubt that a foreign nation conducted a very detailed and exhaustive social media/cyber campaign to purposely impact the 2016 election. It is also clear that this attempt by the Russians have challenged the very fundamental principal to conduct free and fair elections. In the coming months and maybe even years, there will more written on this topic. There will also be more

congressional testimony, statements, and policy recommendations as America learns from this breach of democracy.

The use of social media and technology as a whole seems to be a great tool to reach voters, but it should also be a point of concern. The ability to conduct cyber-attacks on our voting systems and the use of the overarching media will challenge our credibility. There is extensive research, even among other nations hoping to conduct free and fair elections that have directly impacted their ability to do so. Ironically, even the opinions of Russia's own election have caused concern that their elections were free and fair.

According to PEW study, "Views on the fairness of the election are more mixed. Just 47% believe balloting was free from manipulation, while roughly a third (35%) disagree and 18% are uncertain. The perceived fairness of the March 4th vote is a key factor influencing satisfaction with the outcome. Nearly nine-in-ten (87%) who think the election was fair say they are satisfied with the outcome. By contrast, only one-in-five who believe the vote was unfair say the same. Russians who are unsure whether the election was fair, meanwhile, tend to be somewhat content with Putin's victory (46% satisfied vs. 23% dissatisfied)" (PEW Study, p.1, 2012).

Having a clear understanding of the various topics surrounding the principle of free and fair elections will better enable scholars to ascertain why preserving this element is essential to our democratic beliefs. It will also help shape how America will be better able to advance their strategic interest globally. There is much written on this topic from all perspectives that should cause concern for all Americans. That being said, there are also clear opportunities for our elected officials, policymakers, and judicial appointees to explore.

## **Methodology/Data**

The data and methodology utilized for this chapter will once again be the case study and comparative approach. The case study will attempt to explore the essential elements that have been posed in the literature review that America's democratic idea of free and fair elections is without flaws. There are clear signs that our electoral processes have loopholes and there is an autocratic element within our system. The case study will examine the 2000 and 2016 Presidential Election. Given the hypothesis that America's credibility is predicated on the idea of free and fair elections, this case study will also determine what this means to the international community.

## **Data Presentation**

The ability for America to advance their own strategic interests hinders on our own credibility to effectively have free and fair elections. America cannot share its values or principles for democracy to other inspiring nations if there are questions to their own legitimacy of their very governing institution. There perhaps have never been two elections that have challenged this premise more than in 2000 and in 2016. Both elections challenged the fundamental idea of the rule of law, public opinion, electoral credibility, and national security. In the 2016 election, the role of technology fully immersed into a formidable element for our electoral process. This case study will examine how these two elections have impacted the credibility of our electoral system and help determine its meaning as we progress throughout the 21st Century.

The 2000 Presidential election was perhaps the narrowest election in our constitutional republic. Never before was the world so captivated on one state, Florida. This election would

have historical impacts and prove that the quote “elections have consequences” to a whole new level. The election would come down to the rule of law, in-particular, what is and isn’t constitutional with respect to elections. It would also come down to public opinion and of course politics. This election would also have impacts on the global landscape. After all, it was two very different foreign policy strategies that would be implemented. The stakes couldn’t be higher for both candidates.

On election night, George W. Bush led Al Gore by 1,800 votes in the State of Florida. Because of the slim margin, Florida law mandated an automatic recount of the vote. After the automatic recount was conducted, the lead narrowed by a margin of just 327 votes. That left Gore an option to select a manual recount in the counties of his choosing. He chose to select Broward, Miami-Dade, Volusia, and Palm Beach. These were all counties that reported problems or challenges with their voting ballots and would likely produce more democratic voters in Gore’s favor. That being said, the results of the recount had to be certified by the Secretary of State’s office within seven days. The majority of the counties could not certify within the time period, stipulated by Florida law. Therefore, Gore filed an injunction to the Florida Supreme Court which was upheld that prevented the Secretary of State from certifying the election until all the counties could conduct a successful recount. At least one of the counties stopped completed from the manual recount simply because they were not going to meet the new suspense of November 26th. After the recount was conducted, the margin of votes between the two candidates was only increased by 200. Therefore, with only a gap of 537 electoral votes (less than 0.05%), the Secretary of State certified the election in favor of George W. Bush.

Gore immediately filed an appeal to a local level court, which was dismissed. He then appealed to the Florida Supreme Court which ruled that under votes (votes casts but not

manually counted by voting machines) should be counted manually. There were several issues with “hanging chads” that the voting machines were encountering. Bush immediately appealed the ruling to the United States Supreme Court.

The United States Supreme Court attempted to answer whether or not the Florida Supreme Court established new standards for Presidential elections, whether it violated Article II, Sec 1, cl 2 of the U.S. Constitution, and whether or not that the manual recounts upheld by the Florida Supreme Court violated the Equal Protection Clause. The Supreme Court ruled in a 5-4 “per curiam” in favor of George W. Bush.

With respect to the Equal Protection Clause, the Supreme Court ruled, “Because it is evident that any recount seeking to meet 3 U. S. C. § 5's December 12 "safe-harbor" date would be unconstitutional under the Equal Protection Clause, the Florida Supreme Court's judgment ordering manual recounts is reversed. The Clause's requirements apply to the manner in which the voting franchise is exercised. Having once granted the right to vote on equal terms, Florida may not, by later arbitrary and disparate treatment, value one person's vote over that of another. See, e. g., Harper v. Virginia Bd. of Elections, 383 U. S. 663, 665” (Supreme Court, p.1, 2000).

Mcbride expanded the intent of the Courts decision by saying, “This clause forbids states from denying "to any person within their jurisdiction the equal protection of the laws." The Court argued that voting for a president constituted a "fundamental right" strictly guarded by the Equal Protection Clause, and that the Florida Supreme Court's order violated this right because it was "arbitrary." The Court alleged that the order contained standardless and unequal processes to divine the "intent of the voter" that were above and beyond the settled processes required by Florida election law” (Mcbride, p.1, 2019).

The impacts of the Supreme Court's decision called into question the credibility and precedents that this case would set. According to Professor Wesson, "Precedents are a key element of the complex web of history and culture and that constrains courts and maintains their legitimacy in the eyes of those who have to live with those decisions in all of this. And for the most part, we do live with the court's decisions willingly. But if that perception of legitimacy, and hence that willingness should be lost, not just our legal culture but our entire political system are in grave trouble" (Thomas, p.1, 2017).

Public opinion and the legitimacy of the rule of law in our democratic republic was also called into question. A Gallop poll conducted after the Bush vs Gore decision found that, "65% of Americans expressed confidence in the Court as an institution in September 2000 and 62% expressed confidence in June 2001" (Chemerinsky, p.3, 2019). Even in academia today there is still constant debate over the politicization of the Supreme Court and for the overarching rule of law topic. Hamilton argues,

"Academics continue to debate how much politics actually influences the Court, but Americans are excessively skeptical. They do not know that almost half of the cases this Term were decided unanimously, and the Justices' voting pattern split by the political party of the president to whom they owe their appointment in fewer than seven percent of cases. Why the mistrust? When the Court is front-page, above-the-fold news after the rare landmark decision or during infrequent U.S. Senate confirmation proceedings, political rhetoric from the President and Congress drowns out the Court. Public perceptions of the Court are shaped by politicians' arguments "for" or "against" the ruling or the nominee, which usually fall along partisan lines and sometimes are based on misleading premises that ignore the Court's special, nonpolitical responsibilities" (Seabrook, p.1, 2017).

The impact of the 2000 Presidential Election were immense. It challenged the American principles of the rule of law, equal rights, and creditability. It was unprecedented that a U.S. election could ultimately be decided by nine Supreme Court Justices. It immediately called into question the whole entire election process. It also set a precedence for many more additional legal cases. Regardless of the outcome, the case highlighted real concerns within our electoral processes that needed to be addressed. Ensuring the confidence and integrity of our processes should be at the highest priority for all Americans.

The 2016 Presidential Election was another unprecedented election that called into question our own credibility. The rise of social media platforms such as Facebook, Instagram, and Twitter had a direct impact on voter engagement. The constant media attention surrounding the candidates was extremely polarizing. This factor coupled with the cyber hacking of the Democratic National Committee (DNC), the impact of Wiki-leaks, Russian interference, scandals of classified emails, Department of Justice corruption, and allegations of sexual abuse all lead to severe concerns not only in this country but the global landscape.

The two candidates were Washington insiders or at least knew how the game was played within the beltway. Money, power, and interference were all themes throughout the election cycle. There is clearly an appearance that if you have money or power, then you have the ears of the politician. With respect to Super PACs and money in the 2016 election, Van Es argues, “The one bit of good news in the midst of the obscene amounts of money being spent is that the US has relatively tight disclosure requirements. You can’t see necessarily who is donating to Super PACs per se. However, you can see exactly which super PACs are giving to which candidates and how much, with only a one-month delay on having this information publicly available” (Van Es, p.1, 2016).

The role of money was immense and powerful. According to Allison, “Clinton and her super-PACs raised a total of \$1.2 billion, less than President Barack Obama raised in 2012. Her sophisticated fundraising operation included a small army of wealthy donors who wrote seven-figure checks, hundreds of bundlers who raised \$100,000 or more from their own networks, and a small-dollar donor operation modeled on the one used by Obama in 2012” (Allison, p.1, 2016). Both candidates raised an enormous amount of money to fund their campaign. There is no question that this is clear evidence that the field is stacked in favor of the political and social elite in this country. In no way does this suggest the playing field is level to the average citizen.

The role of media and especially social media was extremely effective. However, it also opened the door for outside interference. The impact of the Russian interference had the biggest impact on our overall idea of free and fair elections. According to the Robert Mueller report, “As set forth in detail in this report, the Special Counsel's investigation established that Russia interfere~ in the 2016 presidential election principally through two operations. First, a Russian entity carried out a social media campaign that favored presidential candidate Donald J. Trump and disparaged presidential candidate Hillary Clinton. Second, a Russian intelligence service conducted computer-intrusion operations against entities, employees, and volunteers working on the Clinton Campaign and then released stolen documents. The investigation also identified numerous links between the Russian government and the Trump Campaign” (Mueller, p.1, 2019).

The allegations of interference in our electoral process undermined the credibility of the entire democratic process and hinders the ability for the U.S. to advance their interests. There is clear evidence that this is exactly what the Kremlin was trying to achieve. According to Dr. Gvosdev, “Russia is less concerned about regime type (authoritarian versus democratic) and

more concerned with how a foreign power advances its strategic interests. While many governments that advance Russia's interests tend to be authoritarian, this is not always the case. Dr. Gvosdev cited Poland, Ukraine, and Georgia as examples of governments that have turned less democratic, yet still maintain strained relationships with Russia. In addition, the democratic countries that Russia allies itself with tend to be non-Western" (Foreign Policy Research Institute, p.1, 2019).

The 2016 Presidential election called into question the many concerns highlighted throughout the literature review. There was and still is serious credibility concerns throughout our election process. Our social media platforms and the rise of "trolls" or "fake news" will become even more ramped. The idea that "no one is above the law" and corruption is challenged and is covered throughout the daily media. The role of money is still very much a real factor in the success of many candidates. There is also clear evidence that the threat of outside interference from other nations will continue to be a real challenge for America.

### **Analysis/Discussion**

The case study examined two Presidential elections that had similar outcomes but yielded different consequences with respect to our strategic interests. They both challenged the very foundations of our values and principles. The very fundamental idea of free and fair elections were challenged immensely. The rule of law, equal rights, legitimacy, and trust of the system were all essential characteristics for both elections. They did yield different consequences in that our global standing was certainly impacted. The world would like much different if Bush and Trump had not been elected. We would have never had the "Bush Doctrine" or you could argue never would have been in Iraq. With respect to Trump, our allies and adversaries have been tested in uncharacteristic ways and the global instability of the world challenges the U.S.

strategic interest. This is simply due to the very unique and different ideologies of the opposing candidates.

There was clear empirical evidence throughout the literature review that proved to be correct in the case study. Although America aims to be the guiding light for democracy and attempts to share that idea with other inspiring nations, we are not flawless. There are serious loopholes within our electoral process that if not corrected appropriately, could be dire to the American idea of democracy. There is evidence and the case study proves that there are autocratic tendencies within the electoral process as well. The role of money, super PAC's, politicizing the legal system in ones favor all point to signs of autocratic behavior by the society's elite. The fundamental system should be free and fair for all citizens. The integrity of that system should also be protected at all cost.

The current system is flawed and opens the doors for autocratic individuals to exploit the system. There is also clear evidence that shows this trend moving in the same direction. Throughout the studies, polls, and articles, there is no question that the American electorate is polarized more than ever but is also very weary of our elected officials. There is too much corruption, power, money, and self-interest in Washington. That being said, there are solutions to the problem that many have laid out. The question for our elected officials and appointees is will they have the political courage or will to stand up for what is right and level the playing field for everyone. America talks a great game about democracy and upholding our ideals, but if we are not careful, we may become the kind of country that we often consider our adversary.

## **Conclusion**

The element of free and fair elections is the bedrock of our democracy. It ensures that everyone has the civic duty to cast a vote of their own choosing. This element should be safeguarded at all costs. The integrity of our system allows for a peaceful transition of power when required. Our system is one that is emulated in many aspiring nations. The ability to hold a free and fair election allows America to advance their own strategic interests abroad. It shows the world that we are still the beacon of freedom and is what sets us apart from everyone else. American Exceptionalism has never been more tested than in today's political and global landscape. Our adversaries will continue to threaten our ideals in the hopes of advancing their own strategic interests. America needs to stand ready to protect and preserve the basic human rights of liberty.

## Thesis Conclusion

There is no question that American Exceptionalism is being tested both internally and externally more than ever before. The growing threats to our democracy will only continue throughout the 21st Century. There is no doubt that the democratic framework constructed by our founders is extremely fragile but there are clear warning signs that if we are not careful, will lose the country as we have come to know. The world is unstable and disordered. The entire international landscape is looking for leadership and America has always provided that role. If we are to continue to be that “shining city on a hill,” we must accept that we are not immune from becoming authoritarian in nature. We must take the lessons learned highlighted throughout this thesis and implement safeguards to ensure our values are protected. The credibility of the United States is always being tested but there are clear opportunities for us to continue being that beacon of hope for aspiring democratic nations.

The first major finding in this thesis is that there is empirical evidence that suggests the United States is becoming too autocratic with respect to its policies, governance, and institutional framework. There is no question that the past three Presidential administrations have utilized the Executive Order option in order to implement their own agenda. The rise of the administrative state is very real. The solution to the problem is simple, at least on the surface. Congress must reassert its role in developing and passing meaningful legislation. They must effectively collaborate and sometimes compromise on their legislation without compromising their principles. The AUMF was a classic example of how Congress gave broad power to then-President Bush after 9/11. This had major consequences with respect to the rule of law and perceptions seen throughout the world during Iraq and Afghanistan. There is a reason why there is language in our Constitution that states that the Senate is to give: “Advice and Consent” to the

President. Congress must simply do their job and provide appropriate accountability/oversight of our Constitutional framework.

The rule of law is an extremely sensitive topic. We always hear politicians exclaim “No one is above the law.” But actions speak louder than words. All too often, we hear this phrase but there is no accountability (regardless of political affiliation) that follows. Undoubtedly, the Constitution itself is and always has been open to interpretation. There is even debate amongst some scholars and elected officials as to whether we should offer amendments to the document. This debate will continue for the foreseeable future. Perhaps, further analysis would need to be conducted to determine how (if any) Amendments would provide value to our current environment.

Our overarching election system has clear holes and loopholes for potential autocratic candidates to exploit. A potential safeguard lies within the Parties and the voting electorate. Party leadership must properly vet candidates who display autocratic behavior. It is their sole responsibility to put viable candidates on the ballots at the federal, state, and local level. Each citizen has a right to run for any public office but we as a nation share in the responsibility to properly vet candidates that will serve our best interests and not the interest of individual donors. There is simply too much money, especially dark money from Super PACs within our election system. Congress must reign in these very powerful elite and corporate donors. Some 2020 Presidential candidates have even suggested making elections public, taking money out of politics all together.

Regardless of the options or recommendations, words are just words until there is some action taken to prevent big donor’s interests over that of the average citizen. Partisan gerrymandering is another major topic that needs Congressional attention. The Supreme Court recently ruled that

the Federal Courts have no business in partisan gerrymandering. Therefore, Congress must take action and come together to ensure civil liberties and voting rights are upheld.

The second major finding in this thesis is that empirical evidence suggests that political polarization is increasing. A 2014 PEW study found,

“Republicans and Democrats are more divided along ideological lines – and partisan antipathy is deeper and more extensive – than at any point in the last two decades. These trends manifest themselves in myriad ways, both in politics and in everyday life. And a new survey of 10,000 adults nationwide finds that these divisions are greatest among those who are the most engaged and active in the political process” (PEW, p.1, 2014).

This survey was conducted in 2014, and much has occurred since then. In fact, political polarization has skyrocketed in the last few years alone. According to Foran, “The divisions between Republicans and Democrats on fundamental political values—on government, race, immigration, national security, environmental protection, and other areas—reached record levels during Barack Obama’s presidency.....In Donald Trump’s first year as president, these gaps have grown even larger” (Foran, p.1, 2017). We are constantly surrounded by the political in everyday life. The advancement of technology to include social media has furthered our access to political topics. We not only get political information from the Main Stream Media (MSM) but we get it using Facebook, Twitter, Instagram, radio, movies, books, magazines, Youtube, Hollywood, Sports shows. Political discussions are occurring everywhere and 24/7. There seems to be no end in sight. Social issues such as NFL players kneeling during the national anthem, police brutality, gun violence, abortion rights, protests, the LGBTQ+ community, democratic socialism-capitalism, and race relations are all contributing factors to this polarization. We are more divided along ideological differences than ever before. The failure at the federal level (i.e.

Congress) has led to many states acting in extreme mini-authoritarian government in order to achieve their ideological goals? For example, legislatures in New York, Alabama, and Virginia have essentially implemented their own abortion legislation to fill the gap of leadership that Congress should be doing. We also see several states challenging the federal law on many fronts. The Immigration policies are a big example of this. These are all results of not having safeguards in place. Congress and the public must reassert itself and recognize these challenges. There is no clear sign that any collaboration or compromise will occur between the two major political parties in Congress. The signs are there but our elected officials and the Courts for that matter must take action to safeguard our principles.

So what does all this mean for the United States globally? The international community is watching and waiting to see. The third finding found in this thesis proves that our policies have impacted our standing throughout the world. The United States will continue to face persistent challenges abroad but we need to do some self-reflection and take action. This is the first step if we are to restore credibility throughout the globe. Domestic and Foreign Policy are mutually-reinforcing. The best way to ensure credibility with our allies, oppose our adversaries, and protect democracy is to implement these safeguards. Democracy is fragile but there are courses of action that many have offered to ensure we continue to advance our strategic interest.

American exceptionalism will continue to evolve throughout the 21st Century. In order for the United States to continue to prosper, it will require some hard decisions. Members of Congress, the Courts, and the Executive should all have the political courage to put Country first over Party ideologies. This is easier said than done however. Outside interest located on K Street is getting bigger, money in politics has reached astronomical levels, and even common respect for each other has declined. But if we are to be that leader the world has known us to be, it is

going to take some sacrifices in terms of our legislative proposals and collaboration. This thesis was intended to be a guide to provide warning signs that America is becoming too autocratic. The empirical evidence discussed in all three chapters certainly illustrates that fact. That being said, there is no question that democratic institutions although fragile in nature, are still the best idea for any society. Democracies are better postured to advance their own strategic and domestic interests.

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## BIOGRAPHICAL SUMMARY

Sacks, Jeffrey L.

Major (P), Acquisition Corps, Active Duty

Place of Birth: Baltimore, MD

Commission: Army ROTC at Norwich University, Northfield, VT 05663 15 May 2003

**Objective:** Continue to embrace the “Servant Leadership” mentality and understand what it means to be a Citizen-Soldier. My top priorities are to stay active in the community and help to shape the minds of the future generation. Additionally, I will continue to help solve the many complex challenges our Nation faces from a National Security perspective.

### **Civilian Education**

- (1999) Howard High School (Ellicott City, MD); HS Diploma
- (2003) Norwich University (Northfield, VT); BA Bachelor’s in Arts in Political Science
- (2015) Norwich University (Northfield, VT); MBA Masters in Business Administration
- (2019) Johns Hopkins University (Baltimore, MD); MA Masters in Government

### **Military Awards and Decorations**

- Bronze Star Medal (BSM)
- Combat Infantryman’s Badge (CIB)
- National Defense Service Medal
- German Proficiency Badge (Gold)
- Army Staff Identification Badge
- Global War on Terrorism Service Medal
- Global War on Terrorism Expeditionary Medal
- Afghanistan Campaign Medal
- Iraq Campaign Medal
- Army Superior Unit Award
- Army Meritorious Service Medal (ARCOM)
- Army Achievement Medal (AAM) 2x AWD
- Overseas Service Ribbon
- NATO Medal
- Order of the Saint Maurice (Infantryman)

### **List of community engagement activities**

- **(2000)** U.S. House of Representatives Congressional Intern (**Personal Staff**) for then Representative Benjamin Cardin (District 3-MD); Helping to solve several concerns from Maryland's constituents
- **(2005-2006)** Deployed in support of Operation Iraqi Freedom III; conducting security patrols for the Balad Area of Responsibility, training the Iraqi Army, and securing freedom to the people of Iraq
- **(2011-2012)** Deployed in support of Operation Enduring Freedom-Afghanistan
- **(2013-2016)** Baltimore Orioles DH (Ambassador for the Orioles across MD)
- **(2016-2018)** President, Lynette's Foundation (501 (c) (3) Non-Profit)-Shared interests with The Johns Hopkins Children's Hospital Institute of Genetic Medicine. Raising awareness for all children with rare chromosome conditions and providing information for medical, education, and financial assistance to families
- **(2017)** Received the Baltimore Ravens QB Community Award for Lynette's Foundation
- **(2017-Present)** Norwich University Leadership Mentor/Ambassador for Alumni and Students
- **(2010- Present)** Member of the Grand Lodge of Texas Masonic "Blue Lodge"
- **(2017-Present)** Member of the Washington D.C. Scottish Rite (Southern Jurisdiction) 32<sup>nd</sup> Degree Freemason
- **(2019-Present)** Member of the United Methodist Ebenezer Church (Stafford, VA). Serving the community through the "No Hunger Campaign"/Food Banks
- **(2019-Present)** Member of the Stafford County School Advisor Committee (Capital Improvement Planning and Special Needs Education Advisor Committee)
- **(2019-Present)** Member of the Ravens Scouts Team (working as an Ambassador for the team across MD); Highlighting the many community engagement activities the organization is involved in and promoting the positive side of the City to all Baltimoreans
- **(2019)** Participating in the Huddle for 100: "Caw to Action" On **Monday, September 23rd, 2019**, we are teaming up with the United Way of Central Maryland and a variety of charitable organizations for a community-wide day of service. So, answer the *Caw to Action*, give us 100 minutes of your time and help us shape what our community will look like for the next 100 years!