

“THE EPISTEMOLOGICAL FOUNDATIONS OF POLITICAL
DECISION MAKING”

by

MICHAEL J. ACKERMAN

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ABSTRACT OF THE THESIS

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By MICHAEL J. ACKERMAN

Dissertation Director:

Gordon J. Schochet

The first section explores the epistemological similarities between postmodern and conservative thought. I attempt to show the underlying similarities between the assumptions made by each school of thought. The primary focus is on similarities in how each school of thought views the role and limits of reason. Each school of thought is highly conscious of how complex our environment is relative to our cognitive capacities.

The next section is an overview of political science literature that addresses the decision making process and the role of various sorts of expertise (policy, political, and cultural) within situations of great complexity. The focus is primarily on foreign policy decision making, especially the Vietnam War. The themes raised are tentatively applied to the current situations in Afghanistan and Iraq. However, the general themes discussed and the questions raised are applicable to domestic politics (on the local, state, and federal levels).

In both of these sections, I raise practical and theoretical questions and I argue that an interdisciplinary approach, borrowing much from social and cognitive psychology, would be useful in furthering this research. In addition to helping us

achieve a greater understanding of past events, this interdisciplinary approach would be of modest (but significant) prescriptive value by offering policy makers advice on how to best avoid major policy mistakes.

The final section examines the Mt. Laurel housing cases and how the judicial branch was assisted by land use experts who were appointed as special masters to the courts. This section gives an example of decision makers (in this case, judges) in a complex situation and how the New Jersey political system has seen fit to supplement the judges' legal expertise through the advice of experts in housing and land use policy. As in the previous sections, questions are raised about how to best calibrate the roles of the educated generalists and the policy experts to achieve more satisfactory policy outcomes.

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Michael J. Ackerman, Astoria, NY October, 2007

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Introduction

While an undergraduate at Oberlin, I had a sneaking suspicion that I would have been best suited to life in the 19th Century. I had such faith in reason and of the ability of mankind to apply this reason in a manner than will make the world a better place (in a utilitarian kind of way). This progress wouldn't be linear, of course, but it will be consistent. Sure, there were some blips, occasional backsliding—two world wars, purges, five year plans, and such. But more consistent application of rationality would gradually lead to a corresponding decrease in such behavior. I wasn't totally deluded—in moments of clarity, it occurred to me that the degree of my confidence in the salutary effects of what I perceived to be wholly rational behavior were overstated—but this faith had a comforting effect. Indeed, I had a great deal of faith in reason. I still do.

I was becoming aware of my own limitations (cognitive, emotional, social) but I still had faith that if one only worked hard enough and learned and retained enough data, the world would make more sense. And then this sensible and rational person could convince others of his correctness. They'd agree with such a rational and informed person if only she knew enough and could assault them with a large enough number of facts that would be placed within a consistent theoretical context. And the people who had greater cognitive skills, they could understand and organize even more of the most challenging data. So these brilliant people can understand the world even better than the less brilliant (provided they work hard enough). This comforted me—not only would rationality inevitably enlighten all corners of the world, but there are also obvious

hierarchies of ability, and if the world is rational and fair, of well-earned influence.

Such broad world-views, however flawed, serve as heuristics (###define a bit further—look back to political psych) to help organize a world that has far more variables than any of us can even begin to identify, let alone retain and organize. That fear of ignorance and loss of control when confronted by an environment that has no concern for one's existence (other than the most narrow sphere) can make one cling these heuristics even in the face of mounting evidence indicating their obsolescence. World historical events such as the rise of Hitler or the Lisbon earthquake (#correct?#) can shake a society's beliefs to their core.

But what of those individuals that compose these collectives? What about the lives they lead apart from the major events that influence great numbers of people? What subjective experiences undermine their heuristics, reinforce others, and create new ones (I'm not implying a "neat" process of thesis, antithesis, synthesis)? The small, idiosyncratic events can chip away at the façade, at least when one is secure enough to look a little more closely.

In 1994, I worked as an assistant to the regional coordinator (a 14 county region in the northwestern part of the state, including the county of my birth) in the Illinois Gubernatorial race. After contacting both parties, the Republicans got back to me first and I took the position (and I voted for the Republican incumbent Jim Edgar, too—to my Democratic readers, I confess that I remember this period fondly—that brief high-water mark for secular, socially moderate, even sometimes kinda socially liberal, Midwestern Neo-Conservatives). A bunch of

us campaign workers for Edgar and other Republican campaigns in the Rockford area (some of those candidates weren't such pleasant, socially libertarian types) would occasionally get together and drink and talk politics and drink some more and tell each other about the ways in which the candidate they worked for was an asshole (politically, personally—it was all fair game).

As election day drew closer, we started paying even more attention to the polling done out of Rockford College. It's a liberal arts college with a respectable regional polling operation. These polls have a history of being quite reliable. Among our group was a local volunteer. Gary was not one of us young, college educated, and oh so politically sophisticated types. But he probably enjoyed elections more than the professionals and he'd volunteered in a lot of them over the years. It gave him a chance to bond with old friends and meet new people. Gary never bowled alone.

Gary had it in his head that Dave Winters (a gentleman farmer with a bachelor's in history from Dartmouth and a master's in agricultural economics from the University of Illinois) would defeat the Democratic incumbent to win a seat as a state representative. I don't remember the Democrat's name, but he was well-funded and had bipartisan appeal. The rest of us tried to poke and prod Gary into explaining just why he thought that Dave would overcome what appeared to be a large deficit (that hadn't budged in over a month) in the last week against a strong candidate. Dave was an awkward guy who moved like Lurch from the Adam's Family. And he couldn't create a coherent sound bite to save his life. Ask him about gun control and you'd get a 20 minute speech that goes into the

minutiae of calibers and terminology about which only the most dedicated gun owners had any significant knowledge. And he was no different on other policies. Maybe that's the reason us professionals liked Dave. He didn't seem like a politician. He was so awkward he had an anti-charisma. He put on his black tennis shoes and walked the entire district and tried to introduce himself to and shake hands with everyone he met. He hired extra people to take care of the farm so he could campaign full time. But, at least superficially, he seemed poorly suited to be a politician and the polls seemed to reflect this.

So how did Gary explain his conviction that Dave would win? Yard signs. Look at all the yard signs. Dave had more yard signs than the incumbent on the handful of roads within the district that Gary drove. Gary even kept some Dave Winters yard signs in the back of his truck so he could put some up where he didn't think there were enough yard signs (I hope he got permission from the property owners—that part of his story was sketchy). Yes, we professionals had to admit that Dave had a fetish for yard signs. But the polls weren't budging and the other guy seemed to have a lot of yard signs, too. And he appeared to have Dave beat in every other way of creating name recognition. But Gary remained convinced that Dave would win even though he struggled to articulate the reasons (beyond the yard signs and his walking around the district a lot).

Come election day, who was right? In fact, who called every close race correctly, including the ones where the polls were so close that the race was considered a dead heat? Gary, of course. None of the professionals equaled Gary's predictive success. We professionals were surprised. We had questioned

Gary about his methodology and, quite frankly, it didn't sound all that impressive. In retrospect, we weren't nearly as smart as we likely thought we were, but the objections we raised to Gary's opinion were legitimate. In my (overly?) rationalistic mind, this disconnect between knowledge and cognitive capacity and predictive capability caused cognitive dissonance. It pissed me off. The world made a little less sense.

There is no shortage of brilliant people who have said dumb things about their area of expertise. Plenty of once accepted explanations sound stupid in hindsight. And prediction becomes even riskier than explanation. What do you do when the person who knows what he is talking about is wrong? And the relatively ignorant one predicts correctly? What if Gary has more than a self-proclaimed history of calling close races correctly? What if he really does have a track record better than the experts? Was there some sort of calculation going on that he couldn't quite articulate to us at that time? If you are an executive and in the process of making a decision in a situation of complexity, are you best served by placing primary importance on the views of the technical experts or on that confidant who has a history of good hunches?

In the social sciences, explanation is the primary focus. In the American Proseminar back in the fall of 2004, we worked hard to learn how political scientists explained their findings. But in the class just before the election, the mood lightened. We read articles that involved predictions. The authors realized that prediction was far riskier than explanation. When enough things are adequately explained, one would hope that predictive capacity would improve by

some statistically significant degree. In the process of living our lives, we have to predict. However imperfect, it's necessary to evaluating potential plans of action. And it can also be a lot of fun.

Whether the question at hand involves explanation or prediction, it is this conversation between the "expert" and the "generalist" that interests me. By expert, I am referring to someone who has some combination of experience or training within a particular area of knowledge. Oftentimes, this area of knowledge involves an area of knowledge with an established and accepted framework of rules and a system of peer review. The idea of a generalist is, admittedly, a vague concept. Compared to the expert, the generalist would be ignorant of specific, technical issues of a discipline or area of knowledge. For instance, Gary wouldn't know much about what the political professionals were talking about when we discussed polling methodology. However, he had a general knowledge, however selective, of the Rockford College poll's history and of local electoral politics. I suspect his understanding of this area of knowledge was not methodologically coherent, but I suspect the experts in the room too easily dismissed his decades of experience with Rockford-area politics. To complicate matters further, the line between the generalist and expert can be hazy. For instance, what of the political operative? This person has no particular area of policy expertise, but this person has a great understanding of political dynamics. Rather than considering this person a generalist, is it better seen as an area of expertise even if it lacks the methodological discipline of many branches of technical knowledge? Can one go as far as seeing Gary's decades of experience

in area politics as a sort of expertise, at least relative to the decontextualized methodological sophistication of the political experts who only came to Rockford less than a year earlier?

I am borrowing the concept of “conversation” from Michael Oakeshott. I have no intention of offering an intensive critique of his theories, but it will be obvious that his work has influenced my thought. I’ve scavenged what I can from him and have integrated it into my own theories. I know that much of the elegance of his thought will be lost in my words, but I hope I have something modest to add to it by integrating a sort of “rational-choice lite” brand of political psychology into my observations.

Throughout this project, the concept of conversation will be explored in the context of the individual, the discrete group (or a political administration), and even on the international stage. My particular focus in this conversation is how the individual (a person, a country, a culture) acts and reacts to the other participants in the conversation. Looking back at the individuals in the conversation with Gary and the political operatives, I remember how quickly we dismissed his observations rather than trying to encourage him to articulate the foundations of his predictions. Is it possible that through the many elections he witnessed that Gary picked up on a tendency of the polls to underestimate Republican candidates? Did Rockford College polls have a history of occasionally concentrating too heavily on the more Democratic city proper while undervaluing the suburbs and rural area? Was it a reasonable guess that they would do the same thing again in 1994? This example of a polling error is just a

hypothetical explanation, but was Gary picking up on something like this (even if he was unable to coherently articulate his theory to the group)? Were the experts too quick to dismiss Dave Winters' emphasis on personal contact with the voters while being seduced by the more superficially impressive media barrage of the incumbent?

Although this informal conversation between friends and acquaintances was simple relative to other conversations that will be discussed in this project (such as the second Iraq war), note how no individual in that room had a comprehensive understanding of all of the data that was relevant as to whether or not Dave Winters would win that election (let alone the winners in other close races). Even the person who worked for Winters was pessimistic as to his chances. Collectively, our pool of knowledge was greater, but there were still significant gaps in our understanding of what was actually happening in the last weeks of the race. These "chunks" of data can be seen as variables. We were blind to some of the variables (Which candidate was winning the yard sign battle? How many yard signs were of equal significance to a radio ad on an AM news talk station? How strong is the correlation between yard signs and public opinion?). Some of the data that we had access to (the most recent polling data, for instance) had significant margin for error. And, in the case of the polling data, we could offer only a minimally educated guess as to whether or not there were significant methodological shortcomings in the performance of the pollsters in this particular election cycle and race. And even if the data that we had was accurate, there are the even more subjective questions of how to value and organize this data. Even

this relatively simple conversation had more relevant variables than our group could hope to define and integrate into a coherent whole.

To make matters more complex, there are the emotional and psychological elements of the conversation. These interactions between individual human beings add another long list of variables that can cloud our understanding of this conversation. What about the gulf between Gary and his less cynical view of politics as a form of intensive social interaction (and pleasure!) and the political operatives who came at politics with a more technically informed but cynical view? I remember what seemed to be frustration between those on different sides of the chasm. Were each reacting against the other and pushing each other into ever more diametrically opposed opinions? As each had a heuristic involving a view of politics in which each had an emotional investment, was each party pushed into a defensive position that caused individuals to overstate their own knowledge and unfairly diminish the understanding of the other? If there were an honest broker between the parties, could the arguing parties have found something relevant in the others' opinion?

These subjective, emotional reactions to the introduction of data created by empirically acceptable methods of research shows the difficulty of contextualizing even the most accurate information. Indeed, what happens to data supplied by technical experts when it is passed on to the decision makers, whether these decision makers are considered generalists or whether they possess what could be considered as different sorts of expertise? Each variable introduced into the conversation, whether "objective," empirical data or the emotional reaction of

an individual within this conversation, supplies another layer of complexity that can have a significant effect upon the course of the conversation.

When one examines a video recording of a people conversing, one can slow down and freeze footage to examine what appears to be a subtle ballet of body language. People lean in and lean away from each other, eyebrows are raised and mouths smile or frown. Are the smiles emotionally “genuine” or faked? The volume and pitch of voices raise and lower. If this much is apparent visually, even in situations when those conversing are trying to maintain a degree of inscrutability, consider the calculations and reactions that are occurring internally. The number of relevant variables is greater than human cognition can reliably detect, organize, and interpret. Rather than get bogged down in the minutiae, we rely on heuristics—an educated (however minimally) guess is usually the best we can do. *****Cognitive Miser—introduce here? Where is it in the upcoming paper?*****

Given the complexity of even the most basic conversation, I don’t want to imply that a decision reached within a conversation is necessarily some kind of discrete event. Oftentimes, probably increasingly likely in more complex situations, decisions are an ongoing process of incremental shifts in policy and implementation of that policy. Of course, the apparatus involved within the conversation gets feedback from participants involved within the discussion and the implementation. This feedback loop is ongoing. And I don’t mean that reaching a decision necessarily involves finding common ground and arriving at a comfortable synthesis. That’s much too pat and comfortable. I mean that

something modest can be found that could slightly shift the opinion of one of the parties. Even small shifts can be significant. If someone was a bit less exasperated by the tenacity with which Gary presented his opinions and was willing to draw his reasoning out and explore it further, could Gary have inspired a solid paper written by one of the experts on the role of yard signs in local campaigns (whether the signs were viewed as a sign of existing support or actually serving as a sort of persuasion to previously indifferent voters)? Again, just a hypothetical. But this friction between individuals in this particular conversation could, with a small difference in the circumstances, have led to something creative rather than a crystallization of existing beliefs that led to the frustration of the participants.

And in the world of action and implementation, where prediction that informs the choice of alternative plans of action is a necessity (whatever the methodological and epistemological conundrums that theorists can raise in this process), which voices in the conversation do you listen most closely to? When the executive is struggling in deciding which predictions to trust, do you go with the trusted, long-time confidant's hunch or with the expert who makes the most logically convincing argument? What roles within the conversation do these different sorts of expertise play? Is it the final recommendation itself that sways the executive? Or should it be something different—should one pay more attention to the process of how the recommendation was reached?

My goal in this project is not to belittle the value of reason and empirical research. I still believe that reason, however flawed, is the best option we have to

help us understand our world. My exposure to Augustine was a major factor in encouraging me to examine the issues raised in this project. I'm not sure whether I consider myself atheist or agnostic (I am indecisive...) and I don't see myself as a "spiritual" person (whatever the hell that means). I'm not one of those atheists/agnostics who spends a lot of his time thinking about god. But however we characterize our vision of what we should aspire toward (whether as God, a natural law, a Platonic ideal, a moral principle, etc.), there remains this chasm between what we can imagine and what we can achieve in our actions. To be continued in the conclusion...

Chapter 1

The Epistemological Similarities of Seemingly Dissimilar Schools of Thought

The following section is an attempt to compare the epistemological and psychological underpinnings that form the foundation of two schools of thought. My goal was to show how important these concerns can be to the ideological foundations of political action and to give an example of how even superficially dissimilar schools of thought can spring from similar anxieties and assumptions.

It is the epistemological assumptions underlying competing voices within a given conversation that pique my interest. Are there truly profound differences, or are the apparent differences “merely” different reactions to similar anxieties and conflicts? Are there unexpected psychological and epistemological affinities between superficially different expressions of a similar anxiety? Are there fundamentally different views and valuations of reason and faith? Are fundamentally different ways of reconciling realism and idealism present in the conversation? Are there different values attached to human life? Are there different values attached to the importance of the group and the individual?

A running theme throughout this project is the “cognitive miser.” Our cognitive abilities are miniscule relative to the complexity of our environments. To compensate for our limitations, we try to recognize patterns and form heuristics to aid our decision making (I admit that I use the term “heuristic” loosely throughout the paper—I wouldn’t want to frustrate Rick Lau and I’d tighten it up

considerably if I were to continue with this toward a Ph.D.). Trying to peer inside of the “black box” of cognition to gain an understanding of how our assumptions of the workings of our environment shape the creation of these heuristics remains an interest of mine. To make the creation of heuristics even more complex, there is the issue of our anxieties when confronted with forces that we fear are outside of our perceived sphere of control. This sense of limitation can be scary. How do we explain it well enough that less of our cognitive and emotional energy is used struggling with this anxiety? Can a deity bring us some degree of peace? Can we derive a feeling of peace through the belief that reason or science can explain our environment? How many people can consistently stand alone and stare into the abyss of our limitations and honestly say, “World, bring it on!” Even that embrace of uncertainty often needs to be placed into some sort of universal context—I’ll leave it to people who have a greater understanding of world religions to explain these varying contexts.

These epistemological assumptions will affect the creation of our heuristics. The explanations are subjective and self-reporting isn’t terribly reliable. Trying to look into the black box rather than focusing on actions quickly leads to diminishing returns. What if an elegant equation can explain 40% of variance in a large N study when a 700 page biography only appears to raise confusing questions in one case study? That’s frustrating. This qualitative stuff is awfully inefficient. I don’t think that there need to be many political theorists...probably fewer than we have now. But this qualitative work, at least when done well, is also fertile. It raises issues that more empirical and quantitative methods can

address (or at least that can be addressed more effectively when the tools are created). We may not have a need for many philosophers, but I sure hope that the ones we have are damn good (and actively involved in a conversation with the empiricists and quantitative specialists).

When I explore how the epistemological assumptions and anxieties of two seemingly different views have a similar foundation, I don't want to imply that such broad underlying causes directly lead to particular views on the political and social issues of the day. And I don't want to get bogged down with the idea that potty training strategies or even profoundly important events within the context of an individual life consistently lead to a certain type of social or political identity. The heuristics themselves tend to be messy and logically contradictory. And when these heuristics are actively applied to our environment...well, all hell breaks loose. We are inconsistent and hypocritical little animals. And even the stupidest people are complex in their motivations, actions, and intentions.

If I were to continue with this project in any formal way, I would enjoy exploring the concept of conversation and the competing views of what this concept legitimately entails. To what degree is the concept of conversation best restricted to some kind of face-to-face process? Can it be constructively used for social/political processes within a collective? Can it be used for exchanges between reasonably discrete collectives? Is conversation best defined by particular boundaries or processes that have an empirical basis? Or does too broad of a conception of conversation undermine any usefulness? At this point, I

see the concept of conversation being useful for smaller, reasonably discrete collectives (such as the conversation over policy in regard to Afghanistan and Iraq within the Bush administration, for example). However, I don't find the concept of a "national conversation" over Iraq to be fruitful (at least not in any sort of logically organized philosophical or empirical manner). In groups small enough and well-defined enough that an individual and this individual's active role in the debate remains relevant, the concept of conversation can be illuminating. This scope seems to be about the same parameters that I'd apply to the concept of "groupthink." Concern about groupthink in the formation of Bush administration policy can be investigated in a logically and empirically coherent manner. Concern about groupthink (or some nebulous theme of conversation) in the American public shortly before the invasion of Iraq is a poorly conceived op-ed piece.

Such an exploration of conversation would not focus on technological advances (virtual conversation?—not only am I ignorant of current technological advances, but a lengthy work that goes into a great deal of technological detail would likely be obsolete by the time it's completed). I would focus on a review of the intellectual history of this concept placed within the context of an empirically informed understanding of social, cognitive, and political psychology. Admittedly, genuine expertise of all of these fields flies in the face of the principle of cognitive miser. But I would have tried to be a little more empirically informed than some of the modern voices engaging in this debate. That's part of the frustration and charm of the interdisciplinary—in some fields, you are indeed

the dilettante. At least be honest that all one can do is learn a basic outline...maybe the equivalent of a few good college courses. But this can be enough to, however imperfectly, raise issues that have not been adequately addressed in one's "home field" of expertise. And the talented dilettante can be less bogged down in the disciplinary controversies that may constrict debate in the home field or the field he's "visiting." Overemphasis on minutiae can cloud one's vision.

The following paper (I wrote for Bronner) is an attempt to deal with these questions in way that fits pretty comfortably within the boundaries of contemporary political theory (at least in my limited understanding—I never become adequately socialized within the discipline of political science). That said, I also found the confines of contemporary theory quite limiting. To attempt to create any sort of primary work, however rudimentary, without significant reliance upon contemporary empirical work strikes me as a foolish idea. The problem is, at least from the perspective of my attempt at a political science Ph.D., I never figured what sort of compromise between empiricism and philosophy would be realistic in the creation of a doctoral thesis.

I also had some success creating hypothetical research designs for studying judicial decision making in a paper I wrote for Rick in his political psychology course. He liked the general framework, but thought that they would be way too expensive for a doctoral thesis. Also, there were some ethical concerns that he had about the sort of questioning that I would do may influence a judge's thought

process on the particular case at hand and would go beyond observation to causing a subtle shift in the performance itself.

I tried to do a practical small N study involving special masters and their interactions with the judges they assisted in the Mt. Laurel cases. If I continued to pursue that line of research, maybe more time spent with the masters and some access to the courts could have led to some kind of fruitful look inside of the black box of cognition as the judges and masters worked together. It would have been exciting to see how these professionals with very different sorts of expertise defined their roles and created some sort of operational heuristic that would assist with such complex questions of public policy.

My work for the paper in the Land Use course (with Gordon, Frank, and Don) disappointed me the most. I had no intention of becoming an expert on the minutiae of affordable housing law and zoning ordinance, but I had hoped to make a little more headway into understanding the sort of tensions created by autonomous individuals with differing areas of expertise who are compelled to work together on a common project. But self-reports are unreliable...and much of the most interesting stuff cannot be said (at least not if one cares about his or her career). This raises difficult questions regarding research design and access. Had I continued to use Public Law as my milieu for studying decision-making, I would have focused on lower court judges and/or “supplementary” personnel such as special masters. At least I would have a better chance at access to observe the decision-making process in action. It is this kind of empirically informed theory that I had hoped to eventually create. At least for the limited purposes of a Ph.D.

dissertation, I should have focused either on the empirical elements of such questions (with a heavy dose of psychology) or written a more traditional theory thesis and focused on my epistemological concerns. By not making a decision to accept that one of these possibilities must be in the background, at least for now, I wound up accomplishing neither.

Anyway, here is what I wrote for Bronner.

“Unexpected Common Ground:
Parallels between Conservative and Postmodern Thought”

This project will explore elements of the conservative tradition, with a primary emphasis on the work of Michael Oakeshott. Special attention will be placed upon the epistemological underpinnings of his writings. His work (and the epistemological foundation of his work) will be compared and contrasted with the thought of Edmund Burke and Joseph de Maistre. This project is not meant to be a comprehensive examination of conservative political philosophy, as other significant facets of the conservative tradition stress universal, unchanging values. The comparisons of Oakeshott with Burke and de Maistre are meant to show that his work is identifiable as representative of a major branch of thought within the conservative tradition. These comparisons will lead to an examination of the relativistic impulses within this particular current of conservative thought. To put these relativistic impulses into sharper focus, this paper will compare and contrast conservative thought with postmodernism. Particular attention will be paid to the epistemological foundations of both schools of thought.

In **The Philosophy of Michael Oakeshott** (Terry Nardin, University Park, PA, The Pennsylvania State University Press, 2001), emphasis is placed upon the importance of modes within Oakeshott’s philosophy, especially in his earlier writings. At times, there is a bit of confusion in his discussion of modes, as

Oakeshott has a tendency to use the terms “mode” and “language” interchangeably and to use the term “mode” informally “to mean any manner, style, or idiom of thought or behavior” (33). To quote Nardin on Oakeshott’s formal understanding of a mode:

Oakeshott’s theory of modality includes the following claims: that a mode is all of experience as understood from a certain point of view, that there exists an indefinite plurality of modes, that every mode is a historical creation, that each is independent of the others, and that none is fundamental. (33)

Nardin quotes Oakeshott from **On History**:

A mode of understanding, he writes in **On History**, is “not merely an attitude or a point of view.” It is “an autonomous manner of understanding, specifiable in terms of exact conditions, which is logically incapable of denying or confirming the conclusions of any other mode of understanding, or indeed of making any relevant utterance in respect of it. (Nardin 33 from **On History** 2)

Nardin emphasizes that modal differences are “...differences in kind, not degree” (Nardin 33). In addition, many modes (such as science and history) serve an explanatory, not a prescriptive, purpose (Nardin 134). Oakeshott makes it clear that modal confusion exercises a negative influence on political discourse. To quote Oakeshott:

These ‘languages’-the ‘languages’ of history, of philosophy, of science and of mathematics-are all of them *explanatory* languages; each of them represents a specific mode of explanation. But the language of politics is not a language of explanation, any more than languages of poetry or moral conduct are languages of explanation. (211-2)

The independence of the different modes and the inherent lack of a fundamental basis of a mode raise the issue of how one can form a comprehensive view of our environment based upon a modal form of discourse. Oakeshott claims that philosophy is a way of going beyond modal discourse. The purpose of philosophy is not to show how the modes are interdependent, as they not. And one must keep in mind that a mode “...does not question the organizing assumptions that define that mode, and it cannot question those assumptions without abandoning its modal character (Nardin, 45). The purpose of philosophy is to “transcend the bounds of modality (Nardin 46)” and at least attempt to approach a more general understanding of a broader reality for which modal

thought is inherently unsuited. As with the modes themselves, philosophy will provide an understanding of an explanatory nature rather than of a prescriptive or practical nature.

On the subject of philosophy and its relationship to modal languages, there is considerable evidence of Oakeshott's ability to reconsider his earlier work. After *Experience and Its Modes*, he has a tendency to refer to philosophy as another sort of "language" rather than as a way to go beyond modal language. Nardin believes that Oakeshott gradually moved away from a vision of philosophy as a method for comprehensive explanation and toward a more modest view of philosophy's explanatory potential. To quote Nardin:

In several essays written between the mid-1930's and late 1940's, Oakeshott emphasizes the inherently dialectical character of philosophy while renouncing the idea that philosophy seeks total coherence in experience. Philosophical inquiry is still critical and autonomous, but it no longer aims at comprehensive understanding, even as an ideal. And in *On Human Conduct* he concedes that philosophy is not, in fact, categorically different from other kinds of theorizing. All theorizing is to some degree dialectical; philosophy is simply more single-minded in its commitment to the criticism of presuppositions. (45)

In **Rationalism in Politics and Other Essays** (Michael Oakeshott, Indianapolis, IN, LibertyPress, 1991. Citations for Oakeshott's writing will be from this work, unless otherwise specified.), which focuses on the middle and latter stages of his career, the concept of modal languages is a secondary focus of his writing. It remains in the background in many of the essays and he tends to revert to an informal usage of the term "mode." As this paper tends to focus on his later work, it also adopts an informal usage of the term.

The consideration of the historical mode of thought remained one of Oakeshott's main interests throughout his career. Oakeshott's view of history is important from an epistemological perspective in that his perceptions give insight into the way that he believes that human reason is able to identify and process variables. His conception of the activity of the historian shows us the degree of confidence that he has in the ability of reason to recognize and coherently manipulate data. The process of thinking historically is an activity that requires making sense of a multitude of variables. Oakeshott's skeptical attitude toward

reason is based upon an awareness of how difficult it is for the human mind to process such a multitude of variables. The properly engage in the historical mode of language is a great challenge since the past is only reflected through artifacts that have survived into the present. Any seeming intelligibility gained through historical inquiry is necessarily dependent upon the judgement and the particular context in which the historian is working. To quote Oakeshott on his perception of what qualifies as an “historical” view of the past:

It is a complicated world, without unity of feeling or clear outline: in it events have no over-all pattern or purpose, lead nowhere, and point to no favoured condition of the world and support no practical conclusions. It is a world composed wholly of contingencies and in which contingencies are intelligible, not because they have been resolved, but on account of the circumstantial relations which have been established between them: the historian’s concern is not with causes but with occasions. (182)

This view of an historical past contrasts sharply with his description of a “practical,” “scientific,” or “contemplative” view of the past. Indeed, Oakeshott’s views are the mirror image of the practical view of the past. He believes that it is the duty of the historian to “loosen the tie between the past and the ‘practical’ present” (181). The contingencies of today are so different from the past that practical man, being concerned with the particular concerns of the day, is ill-advised to look to the past to justify current schemes.

The scientist, according to Oakeshott, is “concerned with general causes and with necessary and sufficient conditions” (171). However, this method of understanding has been mistakenly adopted by some of those with an interest in the past. Oakeshott believes that those who advocate a scientific view of the past have “...forgotten...that the condition of these concerns of the ‘scientist’ was their application to hypothetical situations, a condition which should at once have been recognized as separating his activity from any that could be properly attributed to an ‘historian’ (171-2). Oakeshott was quite relieved that the scientific view of history gradually waned in influence.

In the historian's task of loosening the tie between the past and the present, the historian creates a "peculiarly tentative and intermediate kind of intelligibility" (174).

However, rather than indulging a tendency to search for concrete answers to the issues of contemporary life, we must accept the limitations of what the historian is able to offer. Oakeshott uses an example of an historian writing about war. The "true" historian, according to Oakeshott:

...leaves us in no doubt that he knows of no set of conditions which may be properly called the necessary and sufficient conditions of war. He knows only of a set of happenings which, when fully set out, make the outbreak of *this* war seem neither an 'accident' nor a 'miracle,' nor a necessary event, but merely an intelligible occurrence. (172)

At least superficially, this perception of the proper task of the historian seems modest relative to more practical or scientific goals. But the seeming modesty of this conception of the historian's craft is deceptive. The intellectual is easily seduced by the power of ideas and opinions. The imagination can get away with answering only to itself. If unchallenged, the imagination will ignore the full array of variables in the concrete world and simplify its vision to match transitory aesthetic and emotional needs. Such a solipsistic imagination can become the slave of the passions. It will no longer be a trustworthy guide in the pursuit of inquiry or action. The exquisite beauty of the imagination and its creations can blind one to the relevance of the inherently flawed and often inelegant environment that mankind has created. There is no way for the individual mind to account for even a tiny fraction of the contingencies that have played a role in forming the world around us (this passage is based upon a section of *Hegel and the Limits of Metaphysical Thought*, a paper for the Political Theory Pro-Seminar, by Michael J. Ackerman). For someone to successfully engage in Oakeshott's conception of historical analysis, he needs to develop an appreciation of the inherent limitations of reason. Even though Enlightenment Reason has been criticized from a variety of points across the ideological spectrum, such recognition of limitation is often quite an assault to the ego of the individual. This

is especially true when much of the individual's identity (and career) is based upon the ability to reason.

Although thinkers that are within the conservative tradition often criticize the Enlightenment's emphasis on reason, this conservative skepticism can be inconsistently applied. Oakeshott's view that history is not meant to provide prescriptive policy advice for contemporary society is consistent with the epistemological assumptions of his critique of reason and his conception of modal languages. However, other major thinkers of the conservative tradition, although skeptical of human reason, abandon this skepticism when they make reference to the use of history as a possible guide to political action.

As with Oakeshott, Burke finds the notion of basing social and political order on the tenets of Enlightenment Reason to be quite distasteful. Burke is also dismissive of the possibility of metaphysical thought having any sort of reliable prescriptive use for political action. To quote Burke:

These metaphysic rights entering into common life, like rays of light which pierce into a dense medium, are, by the laws of nature, refracted from their straight line. Indeed in the gross and complicated mass of human passions and concerns, the primitive rights of men undergo such a variety of refractions and reflections, that it becomes absurd to talk of them as if they continued in the simplicity of their original direction. The nature of man is intricate; the objects of society are of the greatest possible complexity; and therefore no simple disposition or direction of power can be suitable either to man's nature, or to the quality of his affairs. (**Reflections on the Revolution in France**, London, New York, NY, Penguin Books, 1968, p. 152-3)

Burke has an exquisite understanding of the impossibility of mankind (whether an individual or a collective) developing the ability to identify, comprehend, and manipulate an array of variables as complex as the "objects of society" or mankind's own "intricate nature" (152-3). Burke understands that reason is oftentimes disembodied from the social context of a community. The individual or collective engaged in the application of reason is too easily seduced by the beauty of its own imagination. It is easy for this entity to ignore or rationalize away variables within his environment that may undermine the explanatory and the prescriptive (especially the prescriptive) value of the ideas. Burke

understands that the ideas of the philosopher and the rules of the technician are always going to be insufficient for the tasks at hand. To quote Burke:

We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations, and of ages. (183)

Burke's understanding of the limits of human reason instill within him with a cautious attitude regarding the manner and pace in which change is to be initiated. The danger of the unintended consequence looms large in his thought. To quote Burke:

...the real effects of moral causes are not always immediate; but that which is in the first instance is prejudicial may be excellent in its remoter operation; and its excellence may arise even from the ill effects it produces in the beginning. The reverse also happens; and very plausible schemes, with very pleasing commencements, have often shameful and lamentable conclusions. In states there are often some obscure and almost latent causes, things which appear at first view of little moment, on which a very great part of its prosperity or adversity may most essentially depend. (152)

However, this skepticism of reason and his appreciation of the importance of contingency desert Burke when he makes reference to the purpose of history. Burke sees the careful use of history as of great prescriptive value. To quote Burke:

We do not draw the moral lessons we might from history. On the contrary, without care it may be used to vitiate our minds and to destroy our happiness. In history a great volume is unrolled for our instruction, drawing the materials of future wisdom from the past errors and infirmities of mankind. (247)

From history, mankind can learn how the "train of disorderly appetites" such as "pride, ambition, avarice, revenge, lust, sedition, hypocrisy, [and] ungoverned zeal" (247) have wrought misery upon us. The disorderly appetites are the causes of our misery and, from history, Burke believes that we can learn to mitigate, although not eliminate, their negative effects upon humanity.

There is significant confusion of different modes (modes in the "Oakeshottian" conception) within Burke's writing. But, as sins go, this is not a great one. Burke was a political practitioner. His writings had a rhetorical

element because they were intended to persuade rather than serve as dispassionate explanations. And it's not fair to expect Burke to have anticipated philosophical or historical concepts that were constructed generations later. However, given Burke's appreciation of the importance of contingency and the particular, it is quite legitimate to criticize the contradiction inherent within his belief that history offers reliable, prescriptive political advice. However one conceptualizes history, the totality of the subject remains exponentially more complex than human reason can ever hope to comprehend. This complexity tends to be brazenly ignored by the political practitioner who tries to use an historical parallel to justify a particular political policy. Even the intellectual or the practical technician who has spent a career studying a narrow facet of a complex issue quickly moves out of his area of legitimate expertise when he tries to offer generalizations based upon his work. And it needs to be remembered that offering prescriptive policy advice, with the element of prognostication inherent within offering such advice, is even more difficult than serving a descriptive or explanatory role. It may be that Burke proclaimed the prescriptive importance of history largely as a rhetorical device while actually holding little confidence in this prescription. He was an outstanding stylist with a well-developed understanding of what would persuade his audience.

Should Burke have taken this prescription seriously, it is possible that his attachment to Christianity may have played a role in creating a tendency within him to want to believe that some kind of greater order exists within the world than can be perceived by reason alone. Granted, Burke respects individual choice and agency. He believes that our traditions, passions, and reason can create, for practical purposes, an infinite variety of outcomes. But, if he takes seriously this view that history can somehow be understood in a manner that provides prescriptive lessons for mankind, it implies some sort of belief in an order or a law that contradicts his appreciation of the particular and contingency. It could be nothing more than simple inconsistency. Or it could be a kind of recognition that forces greater than man's traditions, passions, and reason are shaping the world. However, consistent application of his skepticism of human reason and of our

general cognitive aptitude would deny humanity's ability to access and draw such specific lessons from this higher order.

In Oakeshott's work, religion receives "careful" but "brief" treatment, according to Hardin (60). However important religion may have been within Oakeshott's personal life, his commitment to the integrity of the modal method of inquiry required that religion, which he sees as a practical activity, not directly intrude upon other modes of discourse. According to Nardin, Oakeshott views religion as a method of inquiry that seeks "coherence within the world of practical experience" (61). If morality serves as the process of searching for a "perfect good," then "we need a conception of that good toward which to strive, and it is religion that provides this conception" (Nardin, 63). Religion is practical in nature, as it is guided by faith rather than by reasoned argument (62). Within this framework, it is coherent, even expected, that Oakeshott would not look to a higher power to justify a belief in a kind of correspondence between variables that would seem incoherent when addressed through other modes of discourse.

Joseph de Maistre's skepticism of the power of human reason and agency exceeds that of Oakeshott and Burke. Indeed, de Maistre believed that the divine replaced human action and worked alone during the French Revolution (**The Works of Joseph de Maistre**, translated by Jack Lively, New York, NY, The MacMillan Company, p. 48. My photo-copy of this work was flawed and some of the page numbers are missing, hence the occasionally vague citations.). The Revolution and counter-revolution are "miracles" that are "produced by a divine or superhuman cause which suspends or is inconsistent with an ordinary cause" (47). This divine "purification" must administer far harsher punishment than a human tribunal could legitimately dispense because the "French metal, cleared of its sour and impure dross, must become cleaner and more malleable to a future king" (54). De Maistre's rhetoric shows a sadistic glee as he considers how the revolutionaries will get what they deserve. He makes it clear that "there will be no disobedience until the judgement is fulfilled" (54). To quote de Maistre:

Would the sacred sword of justice have fallen as relentlessly as Robespierre's guillotine? Would all the executioners of the kingdom and every artillery horse have been summoned to Paris in order to quarter men? Would lead and tar have

been melted in vast boilers to sprinkle on limbs torn by red-hot tongs? Moreover, how could crimes be characterized? How could punishments be graduated? And above all how could punishments be imposed without laws? It might be said that *some of the most guilty would have to be chosen and all the rest would have to be pardoned*. This is precisely what Providence would not wish. (54)

In de Maistre's worldview, religion is rightly intertwined with politics and the state. Human reason and endeavor are far too fragile to serve as a foundation for the institutions that are needed to maintain order. To quote De Maistre:

Every conceivable institution either rests on a religious idea or is ephemeral. Institutions are strong and durable to the degree that they partake of the Divinity. Not only is human reason, or what is ignorantly called philosophy, unable to replace those foundations ignorantly called superstitions, but philosophy is, on the contrary, an essentially destructive force. (71)

De Maistre believes that it is the God-given nature of man to be a "cognitive, religious, and sociable animal" (Ch II. Origins of Society). De Maistre is contemptuous of Rousseau's attempt to conceive of man in a state of nature because it creates an image of an isolated being that is no longer recognizably human. De Maistre believes that questions of human nature "must be resolved by history" rather than by "a priori reasoning" (Ch. II. Origins of Society). The "cognitive" element of our humanity must be placed within the historical and social context of man living in his "natural," sociable condition. To quote De Maistre:

The more human reason trusts in itself and tries to rely on its own resources, the more absurd it is and the more it reveals its lack of power. This is why the world's greatest scourge has always been, in every age, what is called *philosophy*, for philosophy is nothing but the human reason acting alone, and the human reason reduced to its own resources is nothing more than a brute whose power is restricted to destroying...(Ch. VIII. The Weakness of Human Power)

The arrogance of reason without restraint undermines the faith and tradition that mankind needs to provide stability.

In spite of his intense devotion to a reactionary Catholic theology, de Maistre did not have a particular vision of what a given state must look like. Granted, he was partial to monarchy, as he saw it as the most natural form of government. To quote de Maistre:

It can be said in general that all men are born for monarchy. This form of government is the most ancient and the most universal...Monarchical government is so natural that, without realizing it, men identify it with sovereignty. They seem tacitly to agree that, wherever there is no king, there is no real sovereign...(113-4)

However, in spite of this predisposition, he agreed with Rousseau in that there was no form of government that was inherently superior in the range of possible circumstances. To quote de Maistre:

The general objects of every good institution must be modified in each country by the relationships which spring as much from the local situation as from the character of the inhabitants. It is on the basis of these relationships that each people should be assigned a particular institutional system, which is the best, not perhaps in itself, but for the state for which it is intended...For one nation, despotism is as natural and as legitimate as democracy is for another. (Ch.IV. Particular Sovereignities and Nations)

As with Burke and Oakeshott, de Maistre had a well-developed appreciation of the range of contingencies that could affect the political and social order.

The relativism that De Maistre brings to politics also extends into the realm of private agency. He believes that the particular circumstances surrounding an action are of greater relevance than is conventionally realized when judging the appropriateness of that action. De Maistre claims that “our ideas on good and evil, on innocence and guilt, are too often affected by our prejudices” (51). Rather than a rigid adherence to a universal ethical framework, he believes that we need to consider the contingencies of the particular situation. Indeed, the “same action is by no means equally culpable when committed by two different men” (51). De Maistre offers a vision of a slippery, fluid moral universe.

In spite of his appreciation of the inability of reason to recognize and manipulate the multitude of variables that are present in our environment, De Maistre believes that history “is the first and indeed the only teacher in politics” (114). As with Burke, he ignores his skepticism of reason as an ordering force to proclaim that we have the ability to somehow make coherent sense of all of human experience and distill this information into some kind of general truth that gives us prescriptive advice for our course of action.

Although Oakeshott saw the historical mode of explanation as potentially relevant in the investigation of subject matter that pertains to past political decisions, he did not believe that history could provide general laws of political behavior or development. To quote Oakeshott on the subject of the utility of information commonly used in political discourse:

...the more generalized this information is (that is to say, the more it tends to satisfy the intellectual urge to explain), the less it will provide anything relevant to political information or discourse; and the more it is concerned with specific and local conditions, the more it is likely to provide us with the kind of information useful in political deliberation. (93)

The inability of De Maistre and Burke to anticipate and answer Oakeshott's views of modal integrity are to be expected. As with Burke, the rhetorical component of De Maistre's work and his religious beliefs may have predisposed him toward searching for some kind of order that likely would not be as valued by someone engaged in an academic specialty. Their belief in history's ability to offer prescriptive advice on contemporary political issues is in contrast to their general skepticism of the reason's ability to understand and order the environment. This contradiction in the logic of Burke and De Maistre would have been unlikely to surprise Oakeshott. Oakeshott recognizes that in political discourse, we "...must allow...some degree of crudity; political discourse, concerned with persuasion, can never be a very refined engagement" (439).

All three authors are examples of a strain of conservative thought that exposes the difficulties of using rationalism as the primary ordering principle in politics. However, Oakeshott's conception of the explanatory integrity of particular modes helps him avoid the overreaching and inconsistency that Burke and De Maistre show in proclaiming history to be of prescriptive value. Oakeshott's conception of modes is consistent with his view of the limited ability of the human mind to recognize, comprehend, and manipulate variables. If the ideal language of a mode is adhered to, it serves as a kind of "enforced modesty." By this, I mean that the mode guides the individual into a more limited scope of investigation and explanation. By limiting the scope of the investigation, one is

able to engage in a manner of discussion that is more reflective of man's true ability to comprehend the world. Because of this limitation of scope, the provisional findings reached (hopefully) will be a more reliable basis for future investigation.

Considering the thought processes and principles that Oakeshott uses to explain an idealized version of the historical process, his conception of politics and civil society are logically coherent. Oakeshott defines "politics" as the "activity of attending to the general arrangements of a collection of people who, in respect of their common recognition of a manner of attending to its arrangements, compose a single community" (56). Oakeshott does not view politics as a discrete mode of explanation. As of yet, those who profess to study politics have not created a language of explanation that is distinctive. To quote Oakeshott:

There is no specifically 'political' explanation of anything: the word 'politics' stands for holding certain kinds of beliefs and opinions, making certain kinds of judgements, performing certain kinds of actions, and thinking in terms of certain practical, not explanatory, considerabilities. (212)

Oakeshott believes that any attempt to teach politics within the realm of the university should not concern itself with the practical and quotidian elements of politics. If politics is to be taught at all, the instructor should "bring to bear upon it one or more of the recognized modes of explanation" (212). He believes that the explanatory languages of philosophy and history would likely be the most illuminating (212).

Even though politics is not an explanatory mode, Oakeshott's vision of civil society has important parallels with his conception of modal languages. Oakeshott is dismissive of a vision of the state as an "association of human beings related to one another in terms of their joint pursuit of some recognized substantive purpose" (450). When the conception of a state is based upon purposive concerns, the citizens become means to a pre-determined end rather than individuals free to take part in the "conversation" of politics (58). The idea of basing a state on purposive concerns is counter to the logic inherent within Oakeshott's conception of modal languages. The mode, like the state, is a

“mutable, historical” creation (Nardin, 2). The particular mode, like the state, does not progress toward a pre-determined end or any kind of higher understanding or manner of being. Indeed, some modes and languages (such as science, history, and philosophy) have no prescriptive purpose at all.

Oakeshott sees the state as a manner of association involving non-instrumental rules of conduct called “the law” (454). In this context, Oakeshott defines “non-instrumental” as follows:

“...[these rules do not] specify a practice or routine purporting to promote the achievement of a substantive purpose. They are more like (although they are not exactly like) the rules of a game which are directions, not about how to win but about how to play, or the rules of public debate, which do not tell a speaker what to say and are wholly indifferent to any particular conclusion. These non-instrumental rules specify and prescribe, not choices to be made or actions to be performed, but conditions to be subscribed to in choosing and acting. (454)

A state that is understood as operating upon these non-instrumental principles would be recognized as a “civil association” (454). This civil association respects the “moral imagination” of the associates. The moral imagination is concerned with civil obligations, but moral perfection is recognized as impossible and there are no unconditional, universal standards of civility or justice. Given Oakeshott’s belief that modes are a conditional, self-contained manner of understanding a tiny facet of a much broader world (which itself can never be comprehensively understood), it should be expected that he would be skeptical of a state understood as a purposive association. The idea that some sort of “enlightened” management would be able to somehow comprehend the myriad of different explanatory languages and then somehow synthesize these explanations into a prescriptive political agenda that could serve as the very basis for a state would be hubris of the highest order. Indeed, making this sort of comprehensive leap from explanatory languages to political practice far exceeds Oakeshott’s conception of the abilities of human cognition. No claim of this sort can be genuine—such a claim can only be deception or delusion.

As Oakeshott sees a modal language as an ideal, so he sees this version of civil association as an ideal. He does not wish to ignore the fact that practical, prescriptive policy measures are a necessity. However, by using philosophy and

other explanatory languages to help us re-examine our conception of politics in a manner that is removed from everyday usage, we are better able to understand the inconsistencies and inaccuracies that have muddled political discourse.

According to Oakeshott, members of a civil association would best serve themselves by recognizing that “[politics] springs neither from instant desires, nor from general principles, but from the existing traditions of behavior themselves” (56). It must be this way, as our reason cannot recognize and organize all, or even most, of the variables that constitute our world. Humanity will never be able to eliminate negative, unintended consequence from our attempts to address our needs and desires.

This conservative vision of political philosophy shares significant similarities with postmodernism. Both conservatism and postmodernism are critical of Enlightenment rationality. Both share a skepticism of humankind’s ability to recognize and process the multitude of variables that compose our world. As expected, given their skepticism of Enlightenment rationality, both conservatism and postmodernism are generally dismissive of the concept of “progress.” Postmodernism is at the ready to expose the contradictions within the principles espoused by the dominant power. Postmodernism is also at the ready to champion the cause of those who have been left behind by this supposed “progress.” The conservative tradition is explicitly aware of the tendency of grand plans to be derailed by contingency. Fear of the unintended consequence is an important theme that runs through much of the conservative canon, including the work of Burke, de Maistre, and Oakeshott. Rather than rely on universal and unconditional grand narratives involving metaphysics or natural law, conservatism and postmodernism choose to narrow their frame of reference.

Given this skepticism of reason, it is to be expected that conservatives and postmodernists should emphasize the role of behavior and action in creating community and morality. Both currents of thought are skeptical of the possibility of capturing the complexity of the self and of our interactions in something as simplistic as a series of written or spoken rules. Such practical concerns as morality, politics, or religion are not seen as languages that can be quantified or

explained in a technical manner. Our behavior is what defines the practical concern, not the maxims that we use in our inherently imperfect attempts to define or explain our behavior. In this sense, elements of both conservatism and postmodernism are concerned about the trend toward logocentrism within contemporary society.

Conservatives react to the perceived shortcomings of rationality by evaluating behavior and policy according to the standards of existing traditions of behavior within the community. However, conservatism (as reflected within the writings of de Maistre, Burke, and Oakeshott, among others) is aware that different circumstances can produce states with vastly different institutions, traditions, and standards of behavior. De Maistre takes this skepticism of reason and the resultant relativism further than Burke and Oakeshott. In his vision of the world, the hand of God is responsible for a higher morality that can seem inexplicable to humankind. God, in His infallibility, can rightly use His creation in ways that seem diametrically opposed to any conception of justice or mercy that has been articulated by humanity. We simply do not have the ability to understand such complexity.

Although secular in his approach to the critique of reason, Oakeshott leaves no doubt that he is disturbed by the arrogance shown by those who wish to re-order society according to wholly rational principles which he sees as being disembodied from the political capital accumulated over generations. Although Oakeshott has been influenced by the Idealist tradition, he makes it clear that these ideas are historical and mutable creations. This philosophical framework forms the basis for his conception of politics and the state. In the work of de Maistre, Burke, and Oakeshott, conservatism can be seen as sharing a significant degree of similarity with the relativism of postmodernism.

Although the current of conservative thought explored in this paper eschews grand narratives, postmodernism is more overtly subjective and relativistic. The frame of reference for evaluating behavior within postmodernism is narrower than within conservatism. As opposed to Oakeshott's conception of a community of people who share common attitudes about authority and ways of attending to

arrangements, postmodernism has a tendency to develop a frame of reference along more specific cultural or even demographic lines. To quote Stephen Bronner:

In the poststructuralist view, political activists should deal with problems emanating from 'where their own condition of life and work situates them.' Women must primarily speak for women, gays for gays...Genuine interaction is subsequently seen as taking place less between strangers in a public sphere than between "brothers" or "sisters" of any group whose members share a common experience. (**Ideas in Action**, Lanham, Maryland, Rowman and Littlefield Publishers, Inc., 1999, p. 196)

Indeed, the reference point of postmodernism can become even more specific within general categories such as ethnicity, gender, sexual preference, and class. Given the myriad of potential combinations and the importance that postmodernism places on each trait, even the individual human being becomes fractured. Bronner expresses concern that the point of poststructuralism "...is to alter existing power relations in order to affirm any given subjective desire. And such affirmation occurs continuously" (196). A seemingly unending attempt to gain some sort of ill-conceived emancipation based upon an ever-narrowing frame of subjective experience is the likely result of this tendency.

What accounts for the differing standards of reference between postmodernism and conservatism, in spite of significant epistemological similarities? We will continue by examining the broad similarities between conservatism and postmodernism and then recognizing their points of departure from each other. Both currents of thought are preoccupied with power. Conservatism and postmodernism are both acutely aware that power is of great importance in many kinds of social and political relationships. Human beings differ in abilities, opinions, and status. There are practically innumerable combinations of variables that formulate a person's identity and the character of their community. And some of these personal and communal potentialities cannot be expressed by people occupying the same physical space at the same time. The attempt to express a particular potentiality may restrict the options available to others or even cause great harm to others. So how do we choose what are

acceptable expressions of human potentiality? According to Oakeshott, there are no specific and necessary courses of action within politics. However, some kind of choice must be made, even if the choice is to do nothing.

Oakeshott defines power in a straightforward manner. To quote Oakeshott:

The word 'power' in a political vocabulary stands, properly, for a human relationship. It means the ability to procure with certainty a wished-for response in the substantive conduct of another. And, since it is a relationship of human beings, and thus depends upon both the ability and the disposition of the respondent to make the wished-for response, this certainty can never be absolute and power can never be irresistible. (445)

His matter-of-fact definition of power and his discussion of its role in the state point to an ease that he feels when he deals with the application of power. It is a necessity that a state possess a durable apparatus of power. And for this state not to devolve into tyranny, this apparatus of power must be "annexed to the office of authority" (446). Of course, there are conditions which must be met for the legitimate use of this power. To quote Oakeshott:

The only legitimate use of this apparatus is to enforce subscription to the rules and arrangements to which the associates are already obligated to subscribe; and the threatened disadvantageous consequences are penalties and not merely injuries. In short, what turns a person into a subject of this apparatus is not merely his fears or needs but his failure to fulfil an obligation. (446)

Oakeshott understands that power also touches our relationships with non-state actors. Power is something that people cannot avoid addressing in their vocational and business dealings. However, there is a facet of our lives that, at least ideally, is a refuge from the demands and effects of power. Our relationships with friends and lovers, at least ideally, are not based upon whether or not someone behaves in a certain manner or whether that person supplies certain wants (417). To quote Oakeshott:

[A friend is]...someone who engages the imagination, who excites contemplation, who provokes interest, sympathy, delight and loyalty simply on account of the relationship entered into...the tie is one of familiarity, not usefulness; the disposition engaged is conservative, not 'progressive'...(417)

As with his description of a modal language as a kind of ideal, this description of friendship and love is also an ideal. Just as Oakeshott accepts that even the finest historian will occasionally fail to remain in the historical mode, I assume that Oakeshott recognized that these relationships are not free of coercion and punishment. It is accepted that the potential application of power will always be there, hence, there is no reason to keep reminding the reader of its presence. Although we are advised to remain vigilant toward the use and potential abuse of power, there is nothing about the exercise of power that is inherently unjust, provided certain conditions are met. However, a mature acceptance of the wide-ranging effects of power combined with a dismissal of utopian impulses allows the subject of power to recede into the background throughout most of his work. Oakeshott's clear-headedness allows him to differentiate between the unprincipled exercise of power and the use of power by legitimate authorities.

Tied into this matrix of power and authority is the obligation of the associate toward the greater community. As Oakeshott sees community and morality as composing of action itself rather than of the enumeration and recitation of maxims, it should be expected that he views the world as an accumulation of capital that has been created through generations. To quote Oakeshott:

The world into which we are initiated is composed...of a stock of emotions, beliefs, images, ideas, manners of thinking, languages, skills, practices, and manners of activity out of which these 'things [physical, practical objects]' are generated. And consequently, it is appropriate to think of it not as a stock but as a capital; that is, something known and enjoyed only in use. For none of these is fixed and finished; each is at once an achievement and a promise. This capital has been accumulated over hundreds of years. And in use it earns an interest, part of which is consumed in a current manner of living and part reinvested. (187)

By asking the associate within the community to look outside of his own life and time,

Oakeshott raises the possibility that the associate will develop a better understanding of his obligation toward the community. Indeed, one gains greater respect and affection for the present by better appreciating what past generations have done to create it. By attempting to focus on what one has in the present rather than on what is lacking, there is the possibility of a greater attachment to

this social capital. Oakeshott's emphasis on the present is to be expected considering his conception of historical knowledge as "present knowledge concerned exclusively with a past inferred, according to an appropriate procedure, from present evidence" (Nardin, 152).

A sophisticated and politically relevant conservatism is not defined by a wish to relive the past, but by an appreciation of what previous generations have bequeathed to the present generation. By appreciating that one has something to lose, one becomes skeptical of the promises made by reformers. Oakeshott is not saying that the reformer should be automatically dismissed. However, any proposals offered are more likely to achieve something remotely close to the intended effects if they are a reflection of changes already underway within the community rather than maxims derived from the socially and politically decontextualized reason of the philosopher or the technician.

By contrast, postmodernism reacts to the realization that power permeates so many human relationships with a kind of hysterical fear. This fear of power both repels and seduces the postmodernist. The repulsion felt towards power leads to the postmodernist tendency to neglect (or refuse?) to differentiate between "power" and "authority." This lack of differentiation between power and authority leads to a tendency to regard any institution within the society as an instrument of repression and coercion. This tendency to see the apparatus of power as inherently illegitimate is made even stronger by the postmodernist tendency to narrow the frame of reference to include only those of similar cultural traits. If one does not believe that one's group played a meaningful role in the creation and legitimation of a particular apparatus of power, then that apparatus is perceived as unjust. The narrower an individual defines his or her frame of reference, the more likely that the apparatus of power will be seen as illegitimate.

The combination of ever-narrower frames of reference and a refusal or inability to differentiate between power and authority undermines the sense of obligation that the individual feels toward the greater community. As the sense of obligation is undermined, the postmodernist moves away from the view (a view which Oakeshott shares) of human activity and intercourse as a sort of

conversation and toward a metaphor of battle, where the goal of human activity is to “explode the discourse” (Bronner, 196). Given the great variety of combinations of different traits (and the fluidity of some of these traits) that compose the individual, this narrow frame of reference creates a practically unlimited source of inspiration for someone to attempt to affirm his or her subjectivity within the context of the perceived (and fluid) self. If it is perceived that there is license to attempt to change the existing power relations in order to “affirm any given subjective desire” (Bronner, 196), then there will be no stability of tradition or law. The conservative tradition understands that the exercise of the apparatus of power wears not only on the apparatus itself, but also on the authority that legitimates the apparatus, and, perhaps most of all, on the emotions of the associates within the community. The associates become fatigued from adjusting their manner of existence to meet the whims of the authorities. And this lack of stability gradually undermines the legitimacy of that authority.

Although Oakeshott accepts that such fatigue from constant changes in the organization of the law or the public authority is a legitimate concern, he is dismissive of any attempts to locate a predisposition against change in a concept of human nature. Indeed, he is concerned that we have developed a tradition of being too quick to embrace change. To quote Oakeshott:

Indeed, if he were to judge by our conduct during the last five centuries or so, an unprejudiced stranger might plausibly suppose us to be in love with change, to have an appetite for innovation and to be either so out of sympathy with ourselves or so careless of our identity as not to be disposed to give it any consideration. In general, the fascination of what is new is felt far more keenly than the comfort of what is familiar. (414)

Oakeshott’s primary concern with unfettered change is that it undermines the conservative values that support relationships such as friendship, love, and patriotism.

These relationships are entered into for reasons that are not rational. They are not entered into for reasons of utility. Once these irrational and subjective relationships are undermined, there are no avenues left for what Oakeshott would consider a meaningful expression of individuality. He is concerned that European

society has already created a kind of “mass man” who has fled from the exercise of choice to embrace a bastardized sort of security. To quote Oakeshott:

He [the mass man] had no use for the right to ‘pursue happiness’ -that could only be a burden to him: he needed the right to ‘enjoy happiness’. And looking into his character he identified this with Security-but again, not security against arbitrary interference in the exercise of his preferences, but Security against having to make choices for himself and against having to meet the vicissitudes of life from his own resources. In short, the right he claimed, the right appropriate to his character, was the right to live in a social protectorate which relieved him from the burden of ‘self-determination.’ (378)

It is the genius of Oakeshott’s political thought that he has been able to carve a meaningful expression of subjectivity and individuality from a frame of reference that remains true to basic conservative principles. The ways that conservatism and postmodernism view the emotional life of the associates within the community also help us understand why Oakeshott was able to create this space for the expression of subjectivity within a conservative framework. Although both conservatism and postmodernism appreciate the emotional, even the erotic, elements of politics, the object of this emotion is quite different. With conservatism, one learns (and it is admitted that it is often an acquired taste) to love what one has in the present. With postmodernism, much of this desire is channeled toward the future and the emancipatory effect of the repressed desire becoming manifest (Bronner, 196). A concern is that in a multicultural, technologically driven contemporary state, the postmodernistic impulse to either reestablish an atavistic cultural legacy or “explode the discourse” and create some kind of new cultural expression will lead to a suppression of subjectivity. Relationships become instrumental to guiding the self toward future emancipation rather than as something to enjoy and value in the present. Rather than an individual with quirks and flaws and idiosyncratic passions, a human being becomes a sociological and political conundrum.

Postmodernism desires to break down barriers between what one could consider, broadly speaking, to be different modal languages (such as boundaries between “culture and politics, philosophy and science, art and criticism” [Bronner 189]). This intention raises concerns that, in spite of its skepticism of reason,

postmodernism still has an overly optimistic view of human cognitive potential. Granted, this exploding of barriers may be by intuition or desire or something other than pure reason, but it still demonstrates an immodest view of humanity's ability to accurately perceive, organize, and manipulate the variables in the environment. That postmodernism and its embrace of the particular could actually work to suppress subjectivity is not such a surprise when one considers the wish of postmodernist thought to destroy the boundaries between different modes of thought and activity. These theoretical preoccupations create the groundwork for the postmodernist tendency to blur the boundaries between the personal and the political.

Oakeshott also engages in a certain kind of fragmentation of the individual, but it is not along the typical postmodern fault lines of ethnicity, class, sexual orientation, gender, etc. With Oakeshott, the different attributes, potentialities, and limitations of the individual are highlighted when two or more people form some kind of association. This sort of "fragmentation" of the individual is inherent within the nature of the particular relationship entered into (whether it is a business partnership, a friendship, or family, among others) and doesn't necessarily have anything to do with the personal limitations of the particular individuals involved.

To quote Oakeshott:

[Two or more persons are] related to one another in terms of some recognized conditions of association that they may make for themselves or accept readymade. These conditions may be displayed in somewhat vague customs of conduct, they may be spelled out in a rule-book, or they may be declared in an acknowledged common purpose. Thus associates are never whole persons. They are *personae*; that is, persons in their relation to one another in some sort of specified conditions...No one such relationship can exhaust the associational potentialities of any man; there can be no unconditional human relationship (that is, persons related but not by particular conditions)...(449)

Given Oakeshott's conception of discrete modal languages, it is not surprising that he would also be exceptionally aware of the differences between the myriad of potential social associations. The postmodernist also sees many of the particular differences between these different types of relationships, but the

reaction to these differences is based upon a different frame of reference. And this frame of reference does not necessarily fully acknowledge the differences between, for example, a personal friendship and the relationship between an individual and some manifestation of a political authority. Oakeshott's reaction to his understanding of the differences between types of relationships makes it more likely that he will uphold boundaries between different methods of interaction. This preservation of boundaries will better allow the expression of subjectivity where such expression is appropriate.

In spite of the considerable differences between conservative and postmodern thought, one can see where these two extremes share common ground. This common ground is found primarily in the foundational assumptions of the two schools of thought. The differences between them are primarily in their reaction to these foundational assumptions. Although Oakeshott is not above the occasional rhetorical flourish, the writings of Burke and de Maistre are especially rich with displays of the kind of passion that one usually associates with the progressive revolutionary rather than with the conservative. In Conor Cruise O'Brien's introduction to the Penguin Classic edition of **Reflections on the Revolution in France**, he mentions that Mary Wollstonecraft "...saw in Burke a man who might have been 'a violent revolutionist'" (75). O'Brien himself believes that this revolutionist which "smouldered" within Burke was especially poorly concealed "in relation to Irish matters" (75). And one need not stretch his imagination to picture, had his circumstances been different, a violent revolutionary behind the sadistic glee with which de Maistre describes the divine guidance behind the counter-revolutionary forces within France. Maybe it's easier to recognize the passion and youthful exuberance in the stereotypical image of the progressive postmodernist, but that sort of eros, for better or worse, is oftentimes close to the surface of the conservative.

Chapter 2

Decision Making in Situations of Complexity—A Review of the Literature (With a Focus on Foreign Policy)

Hopefully, the above discussion gives a little idea/example of the sort of factors that I would hope to explore in the context of a small N study. Such theoretical concerns can be studied empirically across the subdisciplines of political science. I was initially drawn to studying these questions within the context of Public Law. A judge, or a small group of judges, offer what can be a good series of case studies for a small N study. I would have been better served focusing on cognitive or social psychology rather than political science...my interests involve questions of how the individual operates within the context of uncertainty and how that individual responds to stimuli from others. The process interests me much more than the practical results. Should have done more quant training from undergrad on, too.

I hope that the above paper helped to explain my interest in how our emotional lives influence what we perceive to be largely rational processes. Understanding these influences is a concern for all subdisciplines...when I see American politics, the executive and judicial branches especially interest me—focusing on the executive or a judge may remove some of the variables and make the decision-

making process more self-contained (but remember how large the executive branch has become)...the Congress is a conundrum for me...seeing the individual struggle within his/her environment is my interest...but the larger the body, the more variables to consider...but this is likely my individualistic bias rather than a major methodological/epistemological shortcoming of this sort of psychological focus.

The major question in my mind is the problem of access to higher level administrators. The President is aiming far too high for the sort of scrutiny that interests me...what about small state governors or mayors? What has been done in the study of the corporate world in industrial/organizational psychology?

The imperfections of heuristics...and how do we decide when to abandon them, practically speaking (even if we maintain our emotional attachment to the heuristic)? What is that external push? What are the “internal movements” that accompany the external stressors? When what is needed to overcome cognitive dissonance when one is considering compromising on principles that have served us well in ordering our lives? Is this flexibility of principle necessarily greater as one seizes greater power and responsibility? Does it become easier with practice? How do high level executives differ ethically and epistemologically from those with more average or typical responsibilities? Is the greater complexity of variables faced by those with greatest responsibility reflected in the epistemological and ethical frameworks of the powerful? Is something that may

strike the average person as arrogance or lack of an ethical compass properly seen as a necessity for operating in such a complex environment? I think that's a straightforward "yes"...but how intense is that "battle" within the powerful decision-maker? Does one quickly acclimate to the ethical demands to avoid wasting energy and time dwelling on cognitive dissonance? I would hope so...And could any executive answer such questions honestly (especially in real time)? Self-reporting so unreliable...

This "ethical stuff" keeps popping up—back to Lawrence Kohlberg! Moral principles as some of our most valued heuristics...maybe the most valued. But they are subject to the same imperfections as other grand principles, facing similar struggles with a fluid and unpredictable environment. Did Kohlberg really, deeply address this? I suspect her understand, but was it too much to integrate (at least to integrate adequately) into his work? The limits of our cognition...cognition and reason and ethics...the inherent limitation of our ethical frameworks...looking for/creating something beyond reason to offer us comfort and aid in our struggle with cognitive dissonance/loneliness/failure. Limits of our will, energy, ethics, reason, expectations, bodies...

Need to read more Tetlock...that's the empirical work by which I've been most impressed. Keep that up even if not within context of political science program...remember his newish book—"Expert Political judgment" (2005)—buy

it and enjoy it! Remember, these ideas/concepts are useful for whatever I'll do...at least they interest me, quite apart from practical considerations.

I.--Time constraints—and how Presidents use their time—their most precious resource! Although regularly mentioned, still undervalued by Janis? Is “presidential time” getting shorter, hence, time constraints becoming even more relevant (with increased use of polling, internet and information saturation and lack of greater context)? Contemporary forms of information dissemination—but is there any better understanding of the context within which to place this information?—our inherently flawed heuristics and principles—and our ability to find more and more ways to critique the methodology of the heuristics we have developed...emotional effects of undermining our heuristics?

The most basic stuff...phone calls, emails, briefings, meetings, time alone to study—24 hours a day and more information that could be of assistance than anyone could ever scan, let alone contextualize. What values are shown in the setting of priorities/agendas? What gets ignored?

And questions of access to see how the executive uses time? Limited access to President, but lessons to learn from less important executives and how they set priorities and form heuristics. How do initial heuristics change as time passes on the job?

Limitations! External, internal factors, frustration, discretion, satisficing—it is this limitation of time that I would focus on in empirical research. Time as a constant—24 hours a day. We can make sacrifices—eating at the desk while answering emails...we can sleep less. We can see family and friends less often. We can become more efficient-read faster, write faster...but the clock still ticks. We watch our health and live and work longer...we still die. We still have to eat and sleep and shit. The pressures of the ticking clock and the passing of days, months, years...and the impulse to make an imprint in the world, to achieve, to remain active. Even activity for its own sake.

How do we prioritize how we spend our time and energy? Agenda setting...studying agenda setting at a more micro level than policy preferences. How micro can agenda setting go? “Value” (epistemologically speaking) setting in an administration? Compare Clinton v. Bush II and what sort of justification one needs to form a policy? Ideology v. Pragmatism? Ideals and how does an administration value them relative to empirical information? What level of “proof” is good enough? When does loyalty become primary? What values underlie not only the stated policies themselves, but what values underlie the PROCESSES that are deemed acceptable to those in the administration? These epistemological assumptions are what I find exciting...

The above plays a role in how time is used...is time and energy used for more research? How much resources (time, energy, money) is used for “education” or

research—broadly speaking—within an administration? Whose opinions are most valued? More debate? More wonky policy stuff? Or is that time and energy used for politics? Coalition building? Importance of the policy and how importance affects the processes within the same administration? Little stuff—throw supporters a political bone? Big stuff? Crisis? When does principle become more important? When does it become less important?

Even less emphasis on the context that an educated public needs? Cognitive miser—cross-issue context of the generalist, intraissue expertise of the specialist—one doesn't consistently find both within the individual expert.

--Combine cognitive miser with constraint theory, for greater order to cognitive miser concept.

A. Cognitive Constraints

B. Affiliative Constraints

1. The institution of the presidency

C. Egocentric Constraints

D. The psychological and epistemological relevance of the cognitive miser and constraints-the theory underlying this project

II. Educated Generalists and Specialists—or “political experience (a political “expertise,” in a way” and “technical expertise”)?—how to define terms and narrow them and remain consistent? ***It is a different sort of expertise, not just

generalist. Maybe not as formalized a sense of specific or technical knowledge, but it's still a kind of expertise.***

A. Relevance of cognitive miser and constraints to this “division of labor”

B. Generalists “v.” Specialists and potentially conflicting or complementary roles within a given administration

--Indeed, “forces” and “voices” are circular, chicken and egg, but dive in!—

DIFFERENT KINDS OF EXPERTISE! DIFFERENT ROLES!

III. Field of Forces

A. The perceived field of forces and how it affects the balance struck between the generalists and specialists

1. This balance between experts and generalists and the “field of voices”—those who take a significant role in the decision-making process on a given issue

a. difficulties of understanding who is truly listened to in the decision-making

process—it takes more than mere presence and verbiage—higher level cognitive processing by the audience?

E. Issues in Research Design

1. Difficulty of access—whether it involves real-time observation or difficulties in finding relevant archival sources that frankly detail the “tough” and controversial decisions—is this becoming more difficult in recent presidencies?

a. Applying the main themes in the study of decision-making to executives that are “inferior” to presidents—governors, mayors, heads of public and private bureaucracies.

2. Applying these themes to other areas of political science, such as public law and judicial decision-making

3. “Satisficing” of “black box” issues in psychology—however mushy, what is good enough? Adds something significant to the debate...inspiring other researches...flawed but thought-provoking and fertile.

How much criticism of our ordering principles can a person stand, emotionally speaking? In effect, the criticism of our most cherished principles is self-criticism...these principles help make us who we are. Constant undermining of the self, however well-intentioned, is too much for an individual to bear. At some point, every collective becomes ill-served by excessive questioning. At some point, the cumulative effects and pluses/minuses of such self-criticism (and rarely does an individual or collective reach this point), ceases to make one stronger. Instead, it leads to undermining our better natures...some stability/predictability is needed, and this includes a self-image and ethical frameworks...an inherently conservative principle.

Secondary Thesis Outline—Clean this up as well as you can while doing it quickly. Integrate those articles you’ve read in February of 2007 to give it an empirical gloss.

- I. Do the Presidential stuff.
- II. Then go to the Poli Psych paper with the general stuff on judicial decision-making. Create a transition of how the epistemological basis is still relevant.
- III. Then go to the Land Use paper to show how it's useful in that regard.
- IV. Then briefly discuss Congressional stuff...field of forces still relevant...but admit that I don't understand all of the "variables" of the Congress and how this becomes a composite. I understand the individuals within this context far better...understanding the parts greater than the whole...but raise questions!
- V. Throughout this, try to create some sort of transitions and tie it together.
- VI. And concentrate on theory...tell stories...make it personal and enjoy what you've learned...admit to being a scavenger.

What about the "imperfections" inherent within human frailty and their effect upon the conversation? Error is inevitable, so error's role within the conversation is inherent. In a situation of complexity, errors of perception, fact, quantification, and context are inevitable. The scope of error of even the best informed and best intentioned can, in hindsight, seem downright disturbing. But errors are part of the conversation. We usually expend good faith effort to avoid error.

But what of deceit? The immediate, practical effect of a given act of deception is often far less disruptive than the effect of honest errors. But what of the long-

term effects of deception? It becomes more dangerous because it undermines the legitimacy of the conversation. No encouragement toward deception or excuses for deception are needed from me or other critics. Unfortunately, ethical shortcomings (in addition honest errors born of cognitive limitations) will happen within a complex decision-making process. The realistic expectation is to minimize deception. In morally ambiguous situations, a certain utilitarian approach weighing means and ends is inevitable. Within an administration, there will be varying degrees of individual honesty and various methods of utilitarian calculation. Motivation and intention are complex phenomena—good and bad exist within all of us. While the critic can sound worldly and wise acknowledging human frailty, what else should be said to excuse it? The noble lie of ethical purity (or at least excellence) is worth preserving, at least as aspiration.

Is this the shortcoming of relativist/postmodern view of ethics?—Is the relativist stating in too blunt of a manner what perceptive observers have always understood?—What perceptive observer hasn't known that compromise of ethics and principles are necessary once a second autonomous individual is introduced into the environment? Indeed, this necessary compromise shows that ethical purity cannot be sustained when one takes an active role in a social environment...this messiness is inherent in being fully human. But just because compromising our most exalted principles is necessary is different than saying that it must be broadly encouraged or embraced. Imperfection of humankind and our creation (whether metaphysical or steel and concrete) will remain part of the conversation. We need no encouragement to make honest mistakes or to mislead.

We are wonderfully capable of both. That said, a degree of forgiveness and recognition of our own flaws (cognitively and morally) is to be encouraged.

Iraq...and conversation--*****just a little more? One more bout with the poli sci stuff?*

--individual—internal conversation

--Bush administration—conversations between principals (and see prior administrations)

--international community, especially the “conversation” between the lone superpower and other nations, including (especially?) presumptive allies...

Build this complexity while retaining the theme of conversation.

Bush

--technical, subject expertise v. a different sort of expertise...the political operative (not “just” generalist—give this understanding the credit it deserves)

--W’s leadership type/personality-how could he, organizationally, done better challenging his “worse” impulses/tendencies (make clear that we all have them—blind spots—trade-offs

Rice-potential

Powell-potential

Cheney, Rumsfeld, Wolfowitz-difficulties, given Bush’s personality/management style

See your Epistemology paper and how the “pristine ideal”—see the individual above—is morphed into something else in the messy world of action. See the inherent compromises and inefficiencies and how, on balance, this is a good thing. The cognitive miser and epistemological concerns! See the individual in terms of the collective—and what are the assumptions I made in this emphasis? A classical liberal concern with the individual? A concern with one’s freedom of choice, however constrained it is...just because it’s not entirely free does not mean one is merely “riding a wave”—Successes may be more or less grand and failure may be more or less likely, but there is plenty of room for individual talent or ineptitude to shine through! A little Skowronic?

Ideals and ideology—not the same...how to tie into heuristics without getting too woolly? Ideals—even broader—different ideologies can, generally speaking, overlap in the ideals that they reinforce. Examples? A concern for the poor does not mean one is politically left...one can argue that one opinion is more coherent and, empirically, better serves this idea, but the ideology does not cancel the intention of the holder of the ideal.

Conversation as an over-riding theme in this project.—bring up Oakeshott, and get away from him. See history, too...see the conversation between the collectives...get away from the idea of verbal conversation and polite

conversation. Hegel had a point, with history as a slaughterbench. See conversation as sleights and feign (sp?)—a dance—modeling and reacting (I wonder which is stronger?—esp. raise issues in the international sphere).

*****Next—get the administration part out of the way while it's sort of fresh!! Just a few pages (since it doesn't excite me that much).

Neutral Broker—Rice, Powell, Rumsfeld, Cheney, Wolfowitz—the potential to influence the conversation differently.

Policy v. Political and conflating the two...

W and his management style, psychology—how to counteract his worst impulses?

We all have those impulses...trade offs...

Assumptions of these two focuses?

1. The individual within the group...The inherent compromises within any collective...an aesthetic choice, too
2. The concept of Conversation as inherently conservative? Oake...?

****Part I

The Courts and Social Policy played a major role in inspiring my interest in the decision-making process and the institutional constraints that shape public

policy. In a series of case studies, Donald Horowitz shows how courts struggle to decide cases that involve broad social policy. He explores the epistemological ramifications of what happens when people trained in legal decision-making are confronted with issues drawn from social science and public policy and are placed within the context of ongoing, fluid political developments.

It is a short step from analyzing these decision-making processes within the context of judicial decision-making to analyzing them within the context of executive decision-making. In *How Presidents Test Reality*, Burke and Greenstein explore the decision-making processes and institutional constraints that shaped America's escalation of its military role in Vietnam. This project will attempt to build on B and G's theoretical underpinnings by placing it in a more explicitly psychological (*or cognitive?*) framework...

At a broader level, the empirical study of executive decision-making can serve as a fascinating case study for how people respond to the demands of the evaluation of large quantities of oftentimes conflicting information that may require different modes of analysis. The goal of this research is to better understand the array of factors (both institutional and cognitive) that are relevant to the process of executive decision-making (this array of factors will occasionally be referred to as the "field of forces," to borrow a phrase coined by John Kingdon [*Congressmen's Voting Decisions*, 245]). In this particular project, the focus will be on the roles played in the decision-making process by

various categories of actors within the institution of the presidency. (*too vague?*)

An important theme in this project is the examination of how those who possess technical, specialized information assist the decision-making of the generalists. What sort of a balance does a given administration reach in balancing roles of the specialists and the generalists? To assist in evaluating the relative advantages and disadvantages of the expert and the generalist, assume for simplicity's sake that a given issue has 100 units of information. If one looks at a complex issue such as Social Security reform or an issue that involves significant amount of classified material (such as national security issues), how many units of knowledge would an average member of the general population possess? The exact ratio isn't important, but that knowledge is a miniscule proportion of available knowledge (and how much potential information remains unavailable, even to the experts?).

And if even a relatively well-informed member of the general population possesses such a tiny fraction of available knowledge, how many units of information could any single expert (or even panel of experts) actually possess? People who have spent a significant part of a career working in a particular area will likely have ready command of exponentially more units of data than even well-informed members of the general public, but how much can these experts realistically be expected to understand about complex situations? One must keep in mind that these units of data are not necessarily "stationary targets," that once

initially accounted for, will remain in consistent relation to other units of data (*singular or plural—data, datum?*).

There is no difficulty in finding competing experts with vastly different views on a broad spectrum of public policy issues. Indeed, there is no difficulty finding those who are considered “experts” on a given subject who have only fragmentary knowledge of the issue at hand. For instance, look at a foreign policy issue such as the war in Iraq. There are “experts” whose expertise focuses on regional history. There are those whose primary expertise is in the last generation of Iraqi political development. There are those whose primary expertise is in military strategy. There are those who are experts on the economy of the region. And many of these experts have little knowledge in common. So how much do experts really understand in complex issues involving public policy or geopolitical intrigue?

When an executive asks for an expert opinion on how a given strategy could be expected to play out, even the expert is making a guess, albeit a better educated guess, than the average person or the well-informed generalist. Horowitz claims that, “on many matters...the expert may know nothing of the particulars before him; what he does know, however, is the general context, and then he can locate the issue in its proper place on the landscape” (31). Although the generalist will gradually increase his or her knowledge through reasonable utilization of competent expertise, the generalist’s knowledge of the particulars of the issue will not approach the understanding of the expert *(but what of the generalist’s sense of context?—interissue context? Can the generalist utilize a greater sense of

interissue context? Next section—get into division of labor between generalists and specialists—and its cognitive basis.)*.

Underlying the notion that our cognitive processes are educated guesses (some guesses much better educated than others), is the hypothesis that human beings are productively categorized as “cognitive misers. By this, it is meant that we possess a finite amount of cognitive skill and memory which we use in our attempts to make sense of an environment which is (for practical purposes) infinitely complex. As greater amounts of data are absorbed, it is not necessarily apparent how connections between units of data are to be organized and how a coherent whole is to be created.

As one absorbs more data, the task of organizing the data becomes more complex. As more units of data are absorbed, the individual must make a greater number of connections between the units of data to create a coherent whole. As more connections need to be made between units of data, there are more opportunities to make faulty connections between units of data and fail to prioritize the data in a manner that would lead to the formation of a reliable information processing heuristic. The individual, although he has an increased amount of information potentially available for recall, may make spurious connections between data that lead to a warped perception of the whole. The connections can become increasingly idiosyncratic in the sense that they represent the unique prejudices and experiences of the person making the observations. In short, by having access to more data, one is not necessarily simplifying one's

understanding of a situation (Ackerman, “Components of Judicial Decision Making,” 6).

The expert’s command of selected data is not necessarily representative of the facets of the issue that are of greatest concern to the institution being served by that particular expert. The professional socialization of the expert may lead to an inordinate attachment to information possess heuristics (*explain?*) that may have served well in the past, but which do not necessarily fit the task at hand or which may even have been undermined by further research within the field. It is theoretically possible that the generalist, in being less attached to a given information processing heuristic, may be more flexible in dealing with fluid, complex situations. My point is not to claim relative ignorance as a reliable advantage, but to make clear that the expert has ample opportunity to, bluntly, screw up. In addition, on must keep in mind that too great of an awareness of the complexity of a situation can lead to paralysis rather than to prudent action.

In *Crucial Decisions*, Janis does not specifically use the term “cognitive miser.” However, his reliance on constraint theory implies that the basic themes underlying the concept of the cognitive miser inform his work. Indeed, I will utilize themes from constraint theory in order to impose greater theoretical rigor on the term of cognitive miser (*?*). In addition, constraint theory is useful as an introduction to the discussion of the institutional characteristics that constrain the actions of the executive (with the focus on the presidency in this project).

Cognitive constraints “include all the salient external factors that restrict cognitive inputs (such as limited organizational resources for intelligence gathering and analysis) as well as internal factors (such as the executive’s own limited knowledge about the ramifications of the technological issues involved in a problem such as nuclear arms control) that restrict the amount and quality of cognitive activity that executives can devote to working on a given policy question” (17).

Although Janis consistently emphasizes time constraints throughout the book, I question whether he fully recognizes the impact that such constraints have on the decision-making process. I think that the primary reason I emphasize the time constraints (an external cognitive constraint) even more than Janis is because of the epistemological basis of the concept of the cognitive miser that I have outlined above. Supplementing the general theme of limited cognitive capacity with a theoretical understanding of the complexity and flexibility of variables (and the combination of these variables) involved in decision-making leads to an even more developed understanding of the difficulties presented by trying to address even a significant minority of potentially significant issues that present themselves for analysis in complex situations. In crisis situations where the immediate physical security of lives is at stake, the likelihood of utilizing technical expertise competently (especially with long-term repercussions of actions in mind) becomes even more problematic (*More satisficing in such immediate crises, however important they are perceived to be? How to determine importance, especially when there is no time for polling?*). In this sense, a more

“purely” theoretical/philosophical epistemology is a worthy supplement to a more empirical social science.

Are time constraints becoming more severe with developments in contemporary information dissemination technology?—data heretofore only known to the expert, but without the context that expertise brings—something like that*** When I refer to time constraints in this manner, I am not only referring to the perceived pressure to make a decision, but I am also concerned about the time frame in which the policy measures chosen must show some sort of positive effect. In fact, the latter form of time constraint may be even more important (and more likely to be becoming even more severe) to the decision-making process, as long-term planning becomes more likely to be sacrificed to perceived political necessity. A more stringent standard for determining the short term results, while increasing the likelihood of “satisficing” for the long-term? No long-term, at least not for one’s administration, unless the shorter-term is guarded (at least at certain times, such as just before elections)***An issue to raise, but not necessarily to try and answer in this paper—raising good questions will have to suffice sometimes.***

Affiliative constraints “include all the various kinds of needs arising from the policymaker’s affiliation with the organization as a whole, with a particular division or section of the organization, or with whatever face-to-face committees or informal work groups he or she belongs to” (17).

The concept of “affiliative constraint” can be combined with the study of the particular institutional history, resources, and limitations surrounding the decision maker being observed. As the institution of the presidency continues to expand, understanding the affiliative constraints on presidential decision-making becomes increasingly complex. A greater number and complexity of variables is created by the expansion of the institution.

In addition to organizing George’s constraints into the above categories, Janis adds third category—“egocentric constraints” (18). Egocentric constraints “pertain to the president’s emotional needs and personal motives that can also play an influential role in the policymaking process...[this includes] essential personal needs that chief executives share with other people—to realize personal ambitions, to counteract frustrations, to avoid damage to self-esteem, and ‘to cope with the anxiety, fear, or guilt that they experience from time to time’ when dealing with decisional dilemmas” (ibid.). **What do I do with these quotes within a quote?—see CMS**

It may be these egocentric constraints that give rise to much of the variation between administrations within what would be considered to be “reasonable” decision-making parameters. Of course, even if given decisions are considered to be within the parameters of reasonableness, the “quality” of results of this array of “reasonable” decisions often vary considerably.

I agree with Skowronik (sp?) in that there is significant room for presidential agency, but this agency operates within particular circumstances. Speaking

generally, I agree that there are circumstances where no administration, however competent, could be reasonably expected to perform so well as to be granted a place among the pantheon of great chief executives. And there are circumstances where achieving at least the perception of greatness is more likely (although there will never be a dearth of opportunities to fall short of greatness). It is within these parameters that egocentric constraints may play such a significant role.

However fascinating egocentric constraints can be, they are likely the most difficult of these three broad categories to be reliably examined--

Political psychology—outside of the controlled experiment, behavior is a “best guess” as to what actually motivates it. Self-reportage of motivation is always questionable, as people struggle to understand the motivations of their actions. One can look for behavior consistent with a given theory (an ordering principle?), but one cannot know with certitude as to whether this theory was actually involved in the creation of the behavior in question. ...Looking for a logical consistency between a given behavior and a given theory. The impossibility of fully comprehending what goes on inside of the “black box” of cognition. Even understanding the motivations of a single actor (for example, why did this man beat his wife?) is inexact. Now just imagine how complex understanding the motivation of a public policy choice must be (the invasion of Iraq, for example), especially since we are dealing with the institution of the Presidency (P or p?), not the “mere” decision of an individual.

Alexander George-Presidential Decisionmaking-and how Janis builds on A.G.

end of part I

Part II and more specific questions of research design

IV. Case Studies (in this project, these examples are used for illustrative and theoretical purposes rather than for significant empirical relevance)

A. Burke and Greenstein—the same issue (Vietnam) over two administrations—a great research opportunity

1. Ike and LBJ and the balances they struck between experts and generalists

B. Bush and Iraq—an over-reliance on the generalists at the expense of relevant expertise? Marginalizing those who disagree, who offer expertise that contradicts the plans and expectations of the generalists? marginalization even more important than firing....firing as the tip of the iceberg?

C. Possible comparisons and issues raised by these comparisons

1. Crisis situations v. policies that address ongoing situations

a. how is it determined whether or not something is a crisis? Who constitutes the “field of voices” in making this determination? How are priorities set?

b. does the balance between the experts and generalists (field of voices) shift depending upon the type (crisis v. ongoing) of policy problem at hand?

2. Foreign policy v. domestic issues—are different decision-making processes used? Is different balance struck between experts and generalists (that “field of voices” that takes part in decision-making)?

D. Increasing the N

1. A large number of decisions over the months and years in one issue

a. The differences between Middle East policy (an awfully broad categorization) pre-9/11 and post 9/11 in the Bush administration?—the transition from ongoing issue to crisis. Or, for great specificity, the transition in Iraq policy pre and post 9/11? How did the (perceived) field of forces change? The field of voices involved in the decision-making process?

2. Comparisons within a given administration across policy areas

a. Bush administration in Iraq v. prescription drug plan or No Child Left Behind

3. Comparisons between administrations that involve a related policy issue (see Vietnam in A above). What are some other possibilities? Education policy across the Bush and Clinton administrations (for a comparative study involving an ongoing issue?). Health care in these two administrations?

“Case studies”—note the quotation marks—will be offered, but they are basic, simplified studies that will be instrumental in illustrating certain concepts and theories. They are not intended to be inherently valuable as additions to the political science literature. The most detailed look at an actual executive will be

the comparison of Ike and LBJ offered by Burke and Greenstein in “How Presidents Test Reality.” In particular, I will focus on how each executive attempted to strike a balance between those with specialized knowledge on the particular question at hand (“specialists”) and those political operatives who can be categorized as “educated generalists.” A contemporary illustration (“case study” seems to formal for what I’m trying to do at this point) would be looking at Iraq and the Bush administration’s reliance on educated generalists such as Wolfowitz, Rumsfeld (is he really the generalist? Find out more about his history and knowledge of defense policy—Or is he an example of the expert who dismisses other expertise—a common problem with experts who are wedded to their particular heuristics—are experts especially susceptible to this? When one’s professional existence is seen as dependent upon the accuracy of a particular view, it seems reasonable that one would fight for it, sometimes going beyond what is reasonable from the standpoint of the common good and the contradictory evidence at hand—not an example of evil, just fallible humanity), and Bremmer during the run up and aftermath of the initial invasion while distancing itself from those members of the military and intelligence communities who could be described as specialists in the particular issues faced by the invasion and occupation. ***In particular, I am critical of the distance that the administration kept from these sources of information. A question that I am not yet comfortable answering involves what the source of this distance may have been—were the specialists kept at arms length “simply” because the administration disagreed with their opinions? Or was it a general skepticism of expertise? Was it a particular

statement of a sort of “collective epistemology?” Janis also offers us the concept of “groupthink,” but I want to avoid using this in an example that is only supposed to be illustrative.***

The examples that I will use in this section are not to be seen as genuine “case studies.” These examples are presented as merely plausible readings of political issues and are used only for the illustration of general principles presented elsewhere in this project. **flesh out introduction**

In *How Presidents Test Reality*, Burke and Greenstein compared the decision-making processes of the Eisenhower and Johnson administrations during the Vietnam conflict. Of course, no comparison of this sort can be controlled like in a laboratory. The different administrations were at different stages of the conflict and stages in America’s involvement. However, such a comparative study across administrations and how they deal with an issue of policy that is both ongoing and has times that can be plausibly categorized as “crises” sets a “gold standard” for comparative case studies. It would also be fascinating to go one step further with this comparison and see how the Nixon administration attempted to deal with the end-game of the conflict. ***date of official disengagement?***

A facet of such comparisons that I find especially interesting is how different administrations balance their use of generalists with those who possess specialized, technical expertise within a given subject. These generalists to whom I am referring could be classified as political operatives. Strictly speaking, this

experience with determining the political ramifications of decisions across a wide range of policy issues and, possibly, long-term knowledge of the particular preferences and limitations of the executive for whom they serve, also constitutes a type of expertise. However, these generalists/political operatives do not necessarily possess in depth knowledge of any particular area of public policy. If they once possessed this knowledge, it is likely to be somewhat antiquated as their responsibilities shift away from technical issues to the political operations of the administration). Sticking with the theme of the cognitive miser, it is unlikely that an individual can operate at the highest levels as both a political operative and a technical specialist. The specialist possesses contemporary expertise of a particular issue of public policy (or a set of related issues). For the purposes of this project, the specialist can cultivate this knowledge as a hands-on practitioner or as an observer/researcher with a more theoretical bent (or as a combination of both). Of course, I don't mean to imply that the generalist and the expert are entirely exclusive. Generalists possess widely divergent amounts of knowledge on a given issue of public policy, and their knowledge, in some instances, can be quite impressive. And the expert need not be politically naïve. I'm merely saying that an individual with significant status within an administration (especially within the institution of the presidency) has almost certainly had to make a choice at some point in his or her career to choose one emphasis over the other.

In the comparison of Eisenhower and Johnson, Burke and Greenstein make a plausible case that the Eisenhower administration was able to more effectively utilize the advice of those who possessed the greatest expertise of military

strategy and East Asian policy. By contrast, the Johnson administration struggled to integrate those with expertise into the decision-making process. Although those with expertise were often heard by the Johnson administration, B and G make a case that they were not really listened to. In short, although they were within the field of voices, their inclusion was only in a superficial sense.

something on non-responsive responses, both within a given meeting and more generally

At this point, it may still be too early to do a detailed and reliable exegesis of the Bush administration's decision-making process leading up to the invasion of Iraq. However, questions have been raised about the role of particular actors within the field of voices. Indeed, were generalists (Paul Wolfowitz, for example) without understanding of Middle Eastern policy in general (and Iraq, more specifically) and without detailed knowledge of military capabilities and readiness given a prominent role in the decision-making process? ***Gaps in Rumsfeld's understanding, beyond a lack of familiarity in Iraqi politics? Check background of Bremmer, Wolfowitz, Rumsfeld*** Were those with relatively greater contemporary knowledge of military capabilities and readiness and of Middle Eastern policy marginalized (within the Department of Defense or the State Department—check Monday 3/13 NYT!) and forced to take a secondary role in the decision-making process? ***See the major themes of the Janis book and give a couple examples of how this could distort the decision-making process***

An important concern for research following the general guidelines which I am proposing involves the size of the N. One cannot simply view Vietnam as one N and then Iraq as a second N. One must, whether formally or informally (for a more historically-based research), enlarge the number of units of comparison. The general technique that must be followed involves breaking the ongoing progression of events into a series of interactions and progressive decisions. Even in a crisis situation, there is likely to be a series of incremental decisions (even if the pace of interaction and decision-making is faster than during creation of what would be considered, relatively speaking, ongoing policy). In B & G, the authors looked at the traits (with an eye toward consistencies and inconsistencies within the composition of staff involved and the dynamics of the interactions) that were present within dozens of meetings of presidential staff and advisors. B & G informally addressed the concept of the “field of voices” substantively involved in meetings addressing policy in Vietnam during both the Eisenhower and Johnson administrations. Generally, they show that the decision-making process under Eisenhower was more consistent in substantively integrating the views of those with contemporary expertise in military capabilities and understanding of political developments in Southeast Asia.

As far as Iraq, one can envision a three-way comparison of administrations—Bush I, Clinton, and Bush II. Indeed, in spite of the different circumstances that lead to military action within the three administrations, this may be every bit of plausible as the administrative comparison made by B & G. With Bush I, one can look at the decision-making process leading up to the initial invasion and the

support of internal Iraqi attempts to destabilize the Hussein regime. The Clinton administration had articulated a policy that was sympathetic to change of regime in Iraq and had consistently maintained military surveillance and action against the Hussein regime. With Bush II, one can examine the continuation of a decision-making process conducted within a domestic political environment long sympathetic to regime change in Iraq (although of differing levels of support for a substantive and direct American role in changing the regime). Although the Clinton and Bush II administrations did not face a situation that could plausibly be regarded as a crisis directly involving the Hussein regime (at least not a direct crisis relative to the invasion of Kuwait), they faced an ongoing situation in which the United States, practically speaking, was expected to take a lead role in a coalition ostensibly committed to containing the Hussein regime. Across all three administrations, there are numerous opportunities to examine the field of forces that influenced Iraqi policy and the field of voices that were involved in substantive decision-making involving Iraqi policy.

Indeed, one can even look at the Bush II administration pre-9/11 and post-9/11 and compare how the perceived field of forces and the field of voices changes in regard to Iraq policy (granted, the N will be much larger post-9/11). Granted, this raises particular difficulties regarding what actually constitutes a “crisis.” The attacks of 9/11, directly in regards to Iraqi policy, may have honestly been seen as a genuine crisis in the minds of some of the relevant voices in the field of forces. But this raises the issue of at what point difficult choices, but nonetheless a choice to attack Iraq, can or cannot be considered a crisis. ***Forgive the waffling***

Another form of comparison that can increase the N and illuminate the actions of a given administration involves comparison between two different actions or campaigns. In this case, I am referring to a comparison between Afghanistan and Iraq and the decision to take military action. I believe that there are people of good intention who claim that these actions are indeed related within a broader goal that has been described as a war on terror and a war against Islamic fundamentalism. However, for the purposes of this project, I will treat these two military campaigns as, for practical purposes, separate events not necessarily based upon a judgment for or against either campaign, but based upon the vastly different nature of the military action in each campaign. In Iraq, the initial invasion was a more traditional military campaign featuring large numbers of soldiers and a hell of a lot of heavy equipment. In Afghanistan, they relied far more heavily on special forces and local militias.

In the decision-making process, were the “experts” given a greater say in Afghanistan? In particular, note the nature of the military strategy that was reflected in the decision to rely heavily (for better or worse) on Afghan militias. Were those who warned against the potential costs of a guerilla war in the process of removing the Taliban given greater attention? Were they closer to the inner circle of the field of voices than the critics of the military action against the Hussein regime? Did this result in a decision-making process that, could be termed incremental in that feedback critical of a more “robust” use of regular American ground forces was taken into account and resulted in a more “nuanced”

plan of action where care was taken to minimize the role of American ground forces?

Incremental, ongoing v. crisis and epistemological differences and difficulties—but still a degree of incrementalism in crisis situations...still usually relying, to some degree, on existing heuristics in crisis situations—institutional and bureaucratic factors necessitating a lag in response to even acute crisis...feedback...and a piecemeal aspect to planning and action. Perennial satisficing? Lag in response to 9/11? Is that worth mentioning?

Comparisons within the Bush administration—see Medicare prescription policy (ongoing) v. Afghanistan and Iraq. Crisis v. ongoing. More comparison.

1. LBJ and Medicare, Medicaid (*check*) and Bush prescription drug benefits—can one compare decision making processes from different eras? Is that still relevant? Also, LBJ was recommending the more radical change, whereas Bush's policy is more incremental. But each is an ongoing domestic policy initiative. Differences between administrations--Larger institutions, more complex, more variables, greater reliance on incremental decision-making?

2. Bush v. Clinton (more similar institutions) on similar areas of policy (health care or education)—This comparison could be especially interesting in giving us a glimpse into the character of these administrations. Clinton's administration has

the reputation of being more “wonky” than the Bush administration in how it made use of expertise. Bush’s administration has been criticized by ex-members as relying more on overtly political calculation rather than an emphasis on the substance of policy (**the UPenn prof. and faith based initiatives, and Richard Clark?**) If one were to compare the two administrations’ decision-making processes in areas of ongoing domestic policy initiatives, to what degree would these views actually be confirmed? Would there be significant similarities? Because of the passage of time, there is probably more reliable and detailed work done on the Clinton administration’s decision-making processes by this point.

3. Bush comparison on domestic ongoing v. foreign policy

This comparison can show the difference in decision-making processes between very different areas of policy. As foreign policy is seen as the arena for bold initiatives by the President, how will the perceived field of forces and the field of relevant voices be different from issues of domestic policy? As the N of such comparisons continues to grow, will it become apparent that domestic policy change is more likely to be incremental in nature? Will domestic policy be the arena of “perennial satisficing?” Where will the experts and the political operatives be granted relatively greater or lesser reign?

4. Bush and domestic crisis (Katrina) v. domestic ongoing (No Child Left Behind or prescription drug benefits)

I'm fascinated by seeing how the field of relevant voices shifts when one makes a comparative study between ongoing and crisis situations involving domestic policy. As the comparison involves domestic policies, the cast of characters likely remains similar, even in divergent areas of domestic policy, relative to comparisons made between domestic and foreign policy. But to what degree does the field of voices still shift? Even if the political operatives take center stage in the media during times of crisis, are they unusually dependent upon the experts who are working behind the scenes? Or do the political operatives still have the President's ear and they compel the experts and practitioners to work within the parameters defined for them? During crises, who actually has the ear of the President and is exercising primary influence upon his decision-making process? And how broadly does this emphasis shift between administrations when one compares a broad range of policy decisions? The decision-making process also raises the issue of the political operatives who are more or less influenced by expertise and the substance of the policy relative to the estimated political repercussions of the policy. Within a given administration, how consistently are those political operatives with either more or less use for expertise either embraced or marginalized within the decision-making process? Or is there a consistent trend across administrations that favors expertise and operatives who embrace expertise to a greater degree in particular areas of policy or kinds of situations (i.e. ongoing v. crisis). These bridges between political operatives and experts will shed light in a quest to better understand what sort of

relationships a particular administration has with the role of the expertise in government.

The experts inherently having a more complex dialogue than even the most inclusive administration...sheer numbers of people, sheer amount of variables that a field of experts can cover (even if they don't have access to classified information-which may or may not be of dubious value). The importance of this expertise being consulted, even if one decides that they experts are wrong. The difficulty of finding both political and topical expertise in the same person—I discussed this, right?—Yes, I did-p. 7-8

No individual comparison or set of related comparisons will provide any sort of definitive answer as to the most likely decision-making process and field of voices to yield desirable policy results. However, all of these variations on this theme—deciphering the perceived field of forces and the field of voices which were substantively relevant to the decision-making process—will increase the collective N that will gradually give us a better idea of the decision-making processes that improve our chances of desirable policy results in a category of related areas of policy. ***Review my short paper #2 and its conclusion and the modest hopes that I have for this research—include some of that as my conclusion for this work***And what about Rudy? And his modest hopes?***

Crisis—Afghanistan, Iraq...Afghan and “rolling process” to military action? Air strikes, then relying on native militias-reducing the number of U.S. troops in harm’s way. What was process in Iraq? Was Rumsfeld trying to introduce a new paradigm? Or was something similar to the plans used already filed away somewhere?

Limits of “lessons of history”—Iraq as Vietnam, Algeria, and Lebanon...now Vietnam again by default and by what America understands?

Bureaucratic complexity and the ability to better understand ongoing situations and using the “lessons of history” more productively. LBJ and implementing Medicare and Medicaid-both? A greater change than Bush’s prescription drug plan, but done relatively smoothly. Contrast this relatively smooth process (historical revisionism?) with the confusion of Bush’s prescription drug benefit plan and its implementation. Only a modest part of the whole of medical care, but problems. More realistic be able to sidestep problems of implementation in such ongoing policy issues...too many choices, too many variables, both for the bureaucracy and for the citizens who must choose among the options.

---Issues/Questions raised by case studies—foreign policy v. domestic, crisis v. non-crisis, important/unimportant--how it is decided what is important or crisis?

How are policy questions prioritized? Cases within particular administrations v. comparative studies between administrations (plusses and minuses), broad application of these principles (a nod to my Public Law interests, too).

This design is not specifically designed for the Presidency. In fact, the degree of access needed makes this design better suited for lower level executives. ... (name?) brings up the difficulties in finding archival sources that explains the decision-making process and how finding reliable sources (especially in controversial situations) is becoming more difficult. I believe that real time access to the chain of command in an executive (combined with archival resources) would work far better than reliance wholly on archival sources and “after the fact” interviews. But I suspect that this sort of access is simply is not realistic with the Presidency. That said, it would likely take some time to be able to release this potentially sensitive information even though it involved “inferior” executives, too. There is the possibility that if it were a lower level executive, the information could have enough particulars removed so that it could be anonymous while retaining enough detail to make the conclusions useful. Such a study is best seen as a part of a greater whole, best supplemented by other similar studies. This can give us a better understanding of the range of variation in executive decision-making.

An in-depth study of one administration? Or a very small N (as far as administrations)? But I’m looking at a series of specific occurrences and

decisions within a particular administration, and this significantly increases the N. The goal is to get access and follow that administration over time and through various decisions and “crises” (or at least what passes for a crisis) to see how the chain of decision-making varies over time and circumstances. What are the commonalities as time passes? What circumstances are most likely to “upset” the usual decision-making processes? Are there differences between “normal” and “crisis” decision-making? If so, what are those differences? Does the administration expand or contract the circle of relevant actors during times of crisis? Does expansion or contraction offer the greatest likelihood of successful administration during crisis? Kingdon’s work in “Congressmen’s Decision Making” is an influence on this research design. In effect, I’m trying to discover how variations in the field of forces faced by an executive leads to changes in the decision-making process.

Some sort of case study? The Bush II administrative and its secrecy relative to other administrations-is it indeed more of a closed circle than other administrations? Did this circle of relevant decision-makers changes between the invasion of Afghanistan and the invasion of Iraq? If so, what were the specific changes and what drove these changes? How do these decision-making processes during military action compare to other important (but less overtly crisis-driven decisions)? The differentiation between foreign and domestic policy and the circle of relevant decision-makers? What faces overlap between these two general facets of policy? What about the circle of relevant decision-makers in the implementation of No Child Left Behind or in the attempt to set up private

retirement accounts? Which decision-makers played a role in all of these decisions? Which took a significant part in one “type” of decision but not the other? What seemingly “important” names were totally shut out of the loop (at least as far as meaningful contribution) on one or both?

Field of forces—field of voices—different areas of policy—crisis v. on-going issues.

*See the importance of charting the processes (see Greenfield) and who is speaking to whom and who is influenced by whom. Of course, this is subjective and there will inevitably be misdirection and withholding of information during such studies when done in real time. Of course, the historical record will be incomplete and oftentimes inaccurate, but that is the case with sort of archival research. Does real time actually offer advantages to archival research? It looks like trade-offs, more than anything. The combination of real time access with archival research looks like the best path.

***What about the Clinton administration and the circle of relevant decision-makers? Did the public intellectuals supposedly valued by the Clinton administration actually have an impact on policy? Or were they largely ornamental—a way to appease intellectuals and knowledge workers who they viewed as important to their base? Or is the supposed openness of other administrations to debate and different opinions largely for show? Is it an image that is useful to project? What about the Clinton administration during times of

crisis (even self-inflicted crisis). How to compare and contrast the avenues of decision-making? For example, what about Clinton's decision-making during the Lewinski scandal when he decided to significantly increase the intensity of military action against Iraq? How large was the circle of relevant decision-makers (or "voices"-field of voices? Too cutesy and cheesy?) during this action? How does that compare to the circle of relevant voices during their attempt to implement health care reform? What was their perception of the field of forces and how was this discerned? When is an administration most likely to circle the wagons and when is an administration most likely to seek additional sources of information and new voices? Of course, there will be considerable differences between administrations and even between "successful" and "unsuccessful" administrations. But as the N continues to grow, maybe greater sense can be made out of relative advantages and disadvantages of decision-making "active models." To what degree has this been done in Psychology and the Business schools-at least in corporate and public bureaucratic milieus? I'm sure that much can be learned from other disciplines...interdisciplinary, empirical, and a mixture of qualitative and quantitative methodology. A rational choice-lite sort of model?

What about domestic v. foreign policy voices across administrations? How significant is the overlap? I am especially interested in those who play a significant role in a broad array of public policy decisions within an administration. What expertise do they have? Or are they generalists who are trusted for their "horse sense" quite apart from specific formal qualifications?

This gets to the role of the expert within different administrations. ***And I'm also interested in two different kinds of expertise—there is the intellectual or policy person who has a greater reservoir of theoretical sophistication. Then there is the person who has political or administrative experience with the subject(s) at hand, but may not have any sort of theoretical and/or academic training in the issue—the educated generalist who was thrown into a difficult situation and learned to survive and even thrive. Who do particular administrations most value? What sort of mixture? Are there really any discernable advantages or disadvantages to favoring one sort of expert over the other, whether generally or in any particular facet of policy? Will a large enough N yield any way to differentiate between these relative advantages and disadvantages?

Linear decision-making on unilateral action? Multilateral action? Or more of a policy-making cycle or circuit? Yes, more of a circuit! YES-feedback and adjustment! The “18 point plan” doesn't work-but it's a good framework because at least it addresses some of the potential problems and possibilities, even though you will likely be significantly adjusting the steps by stage 2.—Janis addresses feedback/loop. Not a simple hierarchy.

Larger N within one executive administration? Or a comparative study between administrations? Would this comparative study (oftentimes, in spite of Greenfield's example—who at least had a single ongoing policy issue), because of complexity and practical necessity, oftentimes have to be two different studies?

Maybe the ideal is that ongoing policy issue that carries over to another administration. Greenfield found the best case study one could imagine!

**Generally, I would suspect that the generalists play a far greater role in the institution of the presidency and the decision-making process across different administrations. Is this actually the case? Seems like a rational necessity, as the true, “hands on” specialist would be too busy to be a major political player. Ex-specialists, sure, but not “contemporary” specialists.

Vigilant v. “seat of pants” decision-making.

Part III and what this means for my research, in general

Is presidential decision-making fundamentally different from legislative or judicial decision-making? We can look to constraint theory to get a better idea of whether there are fundamental differences. Is there justification for the tendency of scholars to “hermetically seal” their research on particular institutional settings from research involving other institutional settings? *expand this intro*

The cognitive constraints and the concept of the cognitive miser are the foundation of this particular project. Both external factors (such as the institution’s “limited resources for intelligence gathering and analysis” [17]) and internal factors (the decision maker’s limited cognitive capacity and the complexity of our environment) play a role in limiting the information processing

capability of all decision makers. To wax theoretical for a moment, this theme of our flawed, imperfect reason and our limited ability to understand the world around us has been eloquently addressed in the history of political thought from the days of Plato through St. Augustine through Burke to contemporary postmodern thought. In the 20th century, the tools of social science had matured enough so that this theme of cognitive limitation in a complex environment could be constructively explored empirically. Whether the inspiration of a particular thinker is the canon of Western philosophical thought or developments in contemporary social and cognitive psychology, the conundrum of the cognitive miser has, on occasion, been addressed with great profundity. Indeed, the ability of empirical physical, biological, and social science to be able to shed light on some of the most perplexing questions of philosophy is to be applauded. But let us not forget that the theme of human cognitive limitation has been systematically explored in some fashion, using whatever tools available at the time, for millennia.

In this broad sense, the themes contained within the concept of the cognitive miser are nothing original. And the consideration of these cognitive constraints is similarly valid across political institutions. Whether the decision maker is a computer illiterate judge who is trying to muddle through the Microsoft anti-trust case (my understanding is that the judge, at least at the beginning of the trial, had very limited knowledge of anything computer related), whether it is an executive “inferior” to the President (a mayor for example) dealing with a catastrophe (whether Giuliani on 9/11 or Nagen *sp?* after Katrina), or whether it’s a

legislator trying to gain some kind of rudimentary understanding of the political landscape and questions of public policy for upcoming votes involving a wide array of oftentimes unrelated issues, the impossibility of retaining and organizing any more than a small fraction of available data is a common thread. The concept of the cognitive miser serves as a great equalizer.

But differences...are the issues confronted by the executive and legislature more of a “moving target” than those faced by the judiciary? Does this mean that the complexity is even greater? Does this make the judicial branch more of a “controlled” experimental setting (at least relative to other branches of government?).

Affiliative constraints—In my initial judgment, this appears to be the major source of differences between the experiences of decision makers in different institutions. Relative to the executive and legislature, the judicial branch is shielded from external political pressure. Of course, judges still have to consider the degree of public support (and from which groups they will receive public support) when decisions are made in a minority of complex cases that involve issues of public policy and civil rights. But their field of forces is less complex than those faced by the legislator and the executive. To a significant degree, the formalism inherent in the law (*whatever the legal realists claim—what did I say in the paper for Lisa?—I actually took a stand for legal formalism—the realists often going too far*) offers a certain “cover” for the judge during the decision-making process. Granted, this supposed cover may be overestimated by the

public (who don't necessarily realize how ambiguous legal language can be), but this overestimation on the public's part still serves to simplify the field of forces of the judge. If the public had a better understanding of how much discretion a judge can wield, this would be another set of variables that judges would have to consistently address in legitimating their decisions.

Generally speaking, most judicial decisions are discrete—once the decision is made, it is over. In this sense, the judge offers a sort of controlled experiment in that the finality of the decision is similar to experiments that are created in a laboratory setting. Epistemologically speaking, the judge is able to take aim at a “stationary” target—the relevance of most decisions is restricted to the parties involved in the case and do not require ongoing oversight involving the judge. Because of this lack of ongoing involvement, the judges are largely shielded from the political ramifications faced by the executive and legislator.

However, more complex cases that involve significant and ongoing judicial and administrative oversight are becoming more common. It is these cases that I find most interesting in my research. In particular, the use of special masters in informing courts and assisting with the implementation of rulings is especially fertile territory for research. In such cases (the Mt. Laurel decisions involving low and middle-income housing in New Jersey, for example), the New Jersey State Supreme Court and the state judges involved in decided cases that fall under the Mt. Laurel doctrine had to be address political concerns in significant ways similar to those typically addressed by executives and legislators. In cases such as this, the field of forces faced by the judge becomes far more complex. By

extension, the field of voices that informs judges in such complex cases and influences their decisions becomes more crowded.

In especially difficult cases, the complexity of the field of forces and voices can rival those faced by the executive and the legislator. In having to become more conscientious of public perception in a handful of complex and relatively high profile cases with a significant effect on public policy, the judges must take aim at, epistemologically speaking, a “moving” target. The judge must become more attuned to public support (not just the general level of support, but support from whom) and how this support waxes and wanes during the ongoing process of implementation of the ruling. The particular circumstances surrounding the implementation of policy and the combination of data that the judge must analyze becomes less predictable because of the passing of time and the public scrutiny. The judge must be attuned to this feedback and will likely have to subtly adjust the content of future component decisions related to the general policy. Because of this feedback and adjustment process, this is why I believe that the judge is forced to take aim at a moving target (which constitutes a fundamental similarity with many of the decisions typically made by executive and legislators). In these circumstances, decision-making is no longer a linear process, but, rather, it becomes a circuit, where the decision-maker has to factor feedback into the decision-making process. *Epistemological similarities and similarities involving research methodology*

*Even in relatively simple and discrete cases, the judge is still subject to the constraints faced by the cognitive miser. Although the decision is relatively

insulated from outside political pressures, the judge still faces a complex field of forces. The minutiae of the law that informs the case must be addressed (Of course, the executive and legislator oftentimes have to take the law into consideration, but, even then, they are able to seek out legal experts to assist with that portion of the deliberation.). If the law relevant to the case is vague (and it often is), the judge addressed the case within the greater legal/social/and ethical context created by the long process of legal education and practice. To further complicate the issue, the judge faces barriers to the effective collection and analysis of information. Although it varies considerably by jurisdiction, the admission of data from sources independent of the litigants (sources from the academy or institutions involved in formulating public policy) is oftentimes significantly restricted by rules of procedure and discovery. Because of these restrictions, the judge is sometimes unable to supplement his or her oftentimes meager understanding of the issues at hand, even if the judge has the time and energy to explore outside sources.*Is this paragraph important for the purposes of this project?*

Generally speaking, executive has a more extensive history of having to address decisions that involve moving targets.

address the legislator in another paragraph--groups dynamics? But these must be addressed with the [expanding] institution of the presidency—must even be addressed in a handful of especially complex court issues with the administrators and experts involved in court rulings and implementations. Some similarities

between judges in complex cases and executives (don't overstate these similarities), but the legislators and those particular group dynamics still perplexes me...but the legislators can still be studied using many similar methodologies that are useful in studying the executive and the judicial.

Group dynamics of legislature? Even executive decision making more concerned with group dynamics than the judiciary??* The legislator has to make individual decisions, but within the context of the institution and the collective. A different field of forces and voices than the executive or the judge, but still methodological similarities. Granted, the president still has to make decisions within the context of an expanding executive institution, but this is different group dynamics than the legislator. Methodological similarities, yes, but the answers found with these methodological tools may be significantly different...I'm not sure what to make of the legislator (in regard to epistemological underpinnings), relative to the executive and the judge, even though the concept of the field of forces was designed with the legislator in mind.

*Political parties—a meaningful similarity between the field of forces and field of voices between the executive and the legislature—good, another reason why the study of these two institutions should not be hermetically sealed off from each other. The relationship, the dialogue between the two institutions—yes, here is a reason for them to be studied in tandem. I get the “superficial” similarities between the executive and the legislative, but, epistemologically, I'm struggling with this comparison.

****expand on this****The field of forces (and the field of voices) is a flexible concept—the flexibility of these concepts means that the methodological process of “mapping out” the institutional settings can remain similar across institution, even if the specific factors and findings will change. Again, are deep seated (methodological and epistemological similarities) more important than superficial differences?

Details change, of course (especially in regard to affiliative constraints, but similarities in research methodology even in exploring the affiliative constraints...in cognitive and egocentric constraints). Indeed, even if one focuses on presidents, those affiliative constraints can change significantly from one administration to the next and they certainly have changed dramatically across generations. If one focuses more generally on executive decision-making, then affiliative constraints change considerably depending on the particular executive one observes (comparing mayors v. governors, comparing different mayors or different governors, etc.). Indeed, even comparing different decisions within the same administration will not only lead to the discovery of different decision-making processes, but, on occasion, it may necessitate slight shifts in research methodology. The point of this is not to obscure the process of research, but to point out how often and to what degree one must adjust expectations and methods even when trying to deal with similar (or even the same) research subjects.

Moving from the study of the decision-making process of an executive to the study of the decision-making process of a judge is not necessarily (*inherently?*) any more difficult than doing a comparative study between executives or even a

comparative study between different decisions made by the same executive. Even within the same executive administration, the field of forces and the field of voices can change considerably depending upon the particular decision being made. The degree of variation of the field of forces and the field of voices may be significant enough within the study of one institution to show significant overlap with comparative studies of two or more institutions. In this sense, the study of the executive is not fundamentally different (methodologically and epistemologically) from the study of the judicial or the legislative.

The question of egocentric constraints and how they function across different political roles and institutions is likely the most conjectural of the three forms of constraints. Even if the researcher is presented with a self-aware subject who makes a reasonable effort to give an honest accounting of his or her motivations, there are good reasons to be skeptical. Once again, it's the question of getting inside the black box. In these sorts of questions, it's a question of the observer satisficing. At some point, one has to work with what is available, however flawed the data (hmmm...shouldn't this be a lesson for the observer and critic as to how difficult the situations presented to the political actors can oftentimes be?). —people who have served in multiple branches of government...significant overlap? Is there enough of an overlap that it is splitting hairs to talk about different personality types being drawn to different political roles? Or is it more of a question of different ability levels “settling” for different levels of

achievement or taking what avenues are open to them? Is it reasonable to talk about different personality types drawn to different branches?

Stanley Renshon

Michael Nelson-Psychological Presidency--The President and the Political System

CQ Press

Intersubfield and interdisciplinary—not just across institutions within political science, but across boundaries in the social sciences and humanities.

Maybe focus more on general literature, like Renshon and Nelson, and “skimp” a bit more on case studies—remember, the case studies are only illustrative...just get them “in the ballpark” as far as accuracy—mere plausibility is the goal for that part of the project

****end of Part III****

I want to place this research design within a theoretical context. I will begin with a brief explanation of the term “cognitive miser” and how it is relevant to the questions that I am asking. The relevance of this term will be explained in both an epistemological and psychological manner. Constraints in Janis’s book. Explain how all three sorts of constraints are relevant and serve to make decision-making more difficult.

Secondly, I will attempt to give a basic explanation the institutional constraints of the institution of the presidency. This will be conducted as a general review, focusing on elements that are particularly relevant for the needs of this project. It is not intended to be a comprehensive literature review. It will serve as a supplement to the previous section in that it will give further evidence of the complexity with which the executive must deal.

Thesis? How do changes in the perceived “field of forces” in executive decision-making affect the “field of voices” that substantively affect the decision-making process? Would adding anything else just muddle it? Sure, I’m interested in the generalists v. experts...that can be a secondary question that helps answer the “so what” of the main thesis. Al’s comments on 11/7 and how the MBA’s (generalists) run roughshod over the engineers (experts) in any large organization, public or private.

Am I basically proposing an empirical, but more qualitative, supplement to “Rudy’s” work? Indeed, would this sort of design work best within a single

administration or would it be best with a single area of policy, but across administrations? Or is it about as good for both? One could compare and contrast conservative and liberal presidents (or, more simply, Republican and Democrat). One could compare wartime and peacetime presidents or fiscal deficit/surplus presidents, etc.—whatever sort of dichotomy you want.

What about the surprising findings of “Rudy” in crisis? What defines a crisis? Was this overdetermined by domestic/foreign? Just how much can such institutional factors shift in crisis? Not a phase shift, but are there extremes of short-term changes in crisis?

Start with a theoretical introduction on decision making and epistemology, but keep it short and sweet—a few pages—see Land Use and Poli Psych—revise this stuff. Explain why the theory matters! Emphasize the importance of process over result in a specific case—see my second reaction paper. Do more empirical research, even if the paper is quite theoretical.

Janis-Crucial Decisions

Vigilant problem solving v. “seat of pants” decisionmaking—and internal and external constraints

Alexander George-Presidential Decisionmaking

Groupthink as an especially important (but easily overused and abused) concept from Janis.—the internal psychological dynamics of groupthink, ego and self-esteem, the emotional attachment to the group—and the advantages of groupthink (primarily for decisions of lesser importance).

p. 91—Figure 5.1. Main Steps Characterizing a Vigilant Problem-Solving

Approach to Decisionmaking—Closure—this is my main criticism—how often is there an obvious closure? Of course, Janis recognizes this (on what pages does he address this best? Mentioned on 111, feedback loop—p. 331-4), but, nonetheless, his models often stop short of reflecting this knowledge (is that a necessary evil for parsimony?). Does he underestimate the importance of incremental decision-making? Page 95 and logical incrementalism. He recognizes that incremental decisionmaking can be done well or poorly. But incrementalism, especially important in public policy, is not well-reflected in his models.

99--Importance of moderate heterogeneity in the decisionmaking group.

172-4—Problems of traditional professional policy analysts—the list of 4. No way to solve questions of values and interests. Limits of rationality and how so many problems are beyond a wholly rational cost/benefit analysis.

96-97 and limitations of vigilant problem solving and 175-8 and the four shortcomings of vigilant problem solving

Problems with too much information...p. 93-4 and distraction from core issues (cognitive miser).

Emotional difficulty of criticizing one's own ideas...how one grows attached to and invested in one's idea. Vigilant problem solving is a lot to ask emotionally, not just in time and financial resources. Ideology as a way of placing a complex world in a coherent order and the possibility that one's self-esteem (and livelihood, whether politically or in academia) becomes tied to this ideology. One needs to appreciate how painful it can be when this way of ordering the world is undermined. It can be an important loss for the individual, group, or institution.

How is the importance of the given decision determined?

Tetlock and accountability and changing one's mind-104.—Lau said to read more Tetlock!! He's right!!!

Cognitive, affiliative, and egocentric constraints.—see table on 149.

Time constraints heavily emphasized in this book, can't be emphasized too much. An advantage of a sort of "groupthink" is that it allows the group to move on to the next decision...eventually some sort of agreement (or at least toleration of the agreement) needs to be reached. Then on to another step or another problem...

"Communication and Group Decision-Making"—see Greenfield and how these principles/mechanisms discussed below make the question of opposing views and their affects on decision-making all the more complex...raises issues about who was actually being listened to?

280-1—Lightening the cognitive load both of searching memory and "streamlining" the number and complexity of variables when one decides as to an appropriate solution and lightening the cognitive load of social interaction by engaging in egocentric speech—see examples of baby talk and cocktail party chatter—turn taking, vacuous acknowledgments, relying on purely structural resources ("structure" and earlier chapter in this book? Structure underlying what? Underlying Systems!-246)

282-3 examples of this "vacuous" acknowledgment/turn taking-not directly addressing the prior comment, at least not in a manner that gives overt evidence that you are doing some sort of higher level processing of the specific content of that statement.

283-reducing the individual talk loads within the context of group decision-making

283-a direct challenge to the view that decision-making is strongly affected by communication.

287-Lack of empirical evidence that substantive communication matters as much as is so often believed. Are these “noninteractive” inputs of primary importance in determining the outputs?

See my “vacuous acknowledgments” in my recitation sections-I substantively respond to very few comments, probably don’t really listen to most comments, as I oftentimes tune out if a few code words sound familiar so that I can plan the next step in the discussion/information presentation. Difficulties of “making sure” someone is actually being considered, as far as higher level cognitive processing, when one is talking. Just because a member is presenting this information to the group, just because the group appears to be listening and seems to be responding to the information in a general fashion and interacting at some level with the presenter, even if that presenter holds a certain amount of social capital within the group, how likely is it really that the presenter is actually being listened to in a manner that may influence the output of the group? In what situations is the presenter most likely to influence the outcomes of the group? Is it structural? To what degree do the traits of the individual matter in increasing his or her “social, intellectual, political” capital within the decision-making unit? Or is this influence actually based mostly upon the “breadth and depth” of the

prevailing opinions of the group on the particular policy issue being addressed? If the prevailing view is held strongly enough by enough people, if enough people hold this view/preference strongly enough, is that person shut out of influencing the decision-making process whatever structures are used and however well respected the person is by other members of the group?

Decision-making and implementation—very different animals (especially in an institution as complex as the presidency). How to best bridge these points? See Wilson and Lewis and bureaucracy/agency work.

123—Mancur Olson-costs, even when collective benefits are at stake, the individual group members want to avoid costs-the importance of facilitation (The Logic of Collective Action, 1965). I should have this somewhere...the Xerox copy in my “big stack” in my desk.

136—Social comparison theory (SCT) and reevaluating one’s arguments in light of other’s choices/preferences.

263—structural theory and incorporating the role of institutions-strategic adaptation-241?

245-good table

246-systems v. structure—structures are inferred, not directly observable.

Structures are rules and resources involved in the production and reproduction of social systems.

1). The constraints on the president and the institution of the presidency (insulation and responsiveness, or lack thereof, of agencies to executive wishes and “demands”) that are detailed in this Lewis’s work point to the degree of constraints that are often placed upon the options available to the president and the presidency. That said, the psychology of decision-making is still my primary focus. These institutional constraints serve as context, but I do not have the time (for this assignment) to go into too much detail on this subject.

2) “field of voices”—and how this changes depending on the policy questions at hand...getting a larger N within a particular administration—foreign policy v. domestic, crisis v. “regular” decision-making—who is speaking to whom? And is anyone really listening? Or is the conversation more “ornamental”? Important sub-question—role of policy experts v. the role of more overtly political operatives (technical info. v. generalists and their “common sense”)—tie this in with Janis and “Crucial Decisions”

***Thesis—How would changes in the perceived “field of forces” affect the “field of voices” that are included within and substantively affect the decision-making process?—review Greenstein—but I am trying to go a bit more theoretical and trying to get closer to the “black box” of cognition, even though I won’t be able to reliably enter into it.

a) theoretical underpinning—epistemological questions—variables of data and cognitive miser

Hacker—“Road to Nowhere” and Theda Scotchpole—both on Clinton healthcare plan

***check handbook of political psychology for any relevant articles and Rick’s syllabus

Now that I’m getting into the Lewis book (and the Wilson soon), what does this mean for me?

1. Operators and managers? Does this have anything to do with James Q. Wilson and “Bureaucracy” (Norton publisher).
2. Organizational culture and power structure-concepts and categories
3. Stephen Skowronik-Building a New American State
4. David Lewis-Presidential agency and design
5. Take a look at Groupthink, 2nd edition, by Irving Janis

See how easily education is corrupted into becoming vanity when the City of God is forgotten and aesthetic considerations become an end in themselves...aesthetic considerations as a celebration of the glory that is God and His creation. Note Augustine and how he believed that the practical facets of his education were the most important, the others turned out to be just another temptation drawing him away from serving God and his fellow man...

Don’t forget Dewey’s reflex arc model and his seminal article!

Chapter 3

Epistemological and Jurisprudential Concerns Raised by the Inclusion of Non-Judicial Technical Experts in Judicial Decision-Making

The Courts and Social Policy played a major role in inspiring my interest in judicial decision-making. In a series of case studies, Donald Horowitz shows how courts struggle to decide cases that involve social policy. He explores the epistemological ramifications of what happens when people trained in legal decision-making are confronted with social science, public policy, and ongoing, fluid political developments. Building upon this concern with judicial epistemology, it is a short jump to the consideration of how judges evaluate and organize data when they make decisions. Empirical study of the actors involved in the judicial system can serve as a foundation for the consideration of theoretical issues of jurisprudence.

At a broader level, the empirical study of judicial decision-making can serve as a fascinating case study for how people respond to the demands of the evaluation of large quantities of oftentimes conflicting information that may require different modes of analysis. The goal of this research is to better understand the array of factors (both jurisprudential and cognitive) that are relevant to the process of judicial decision-making (this array of relevant factors will occasionally be referred to as the “field of forces,” to borrow a phrase coined by political scientist

John Kingdon [*Congressmen's Voting Decisions*, 245]). In this particular project, the focus will be on the roles played in the decision-making process by court appointed special masters in zoning cases involving the Mt. Laurel doctrine.

I. Social and Historical Facts and Epistemological Concerns

The traditional process of adjudication has characteristics that oftentimes conflict with the expectations and analytic processes utilized by the outside experts who present extralegal information for the consideration of the court. Of particular concern is the research presented by the social scientist or policy analyst that attempts to inform the court of the social facts relevant to the case at hand. *Social facts* are defined by Horowitz as “the recurrent patterns of behavior on which policy must be based” (*Courts and Social Policy*, 45). When the courts shift from their traditional role of deciding cases which are based largely upon *historical facts* (defined by Horowitz as “the events that have transpired between the parties to a lawsuit” [Ibid.]) to more frequently deciding cases which have a relatively greater emphasis on social facts, the courts take upon themselves an ever more complex challenge. The Mt. Laurel cases are an example of how the New Jersey Supreme Court placed itself within an ongoing social policy dispute.

An important theme in this project is the examination of how the technical, specialized knowledge of the masters assists the decision-making of judges. Outside of the realm of their legal expertise and within the realm of public policy, the judges are best categorized as educated generalists. To assist in evaluating the relative advantages and disadvantages of the expert and the generalist, assume for

simplicity's sake that a given issue has 100 units of information. If the average member of the general population knows one unit of information, then how much does the expert know? Maybe 20 units? Although the ratio in this hypothetical is not important, one must realize that even the expert, although far better informed than the average person, cannot realistically be expected to understand the substance of or interaction between most of the variables that pertain to a complex issue. Even the expert is making a guess, albeit a better educated guess, than the average person or the well-informed generalist. Horowitz claims that, "on many matters...the expert may know nothing of the particulars before him; what he does know, however, is the general context, and then he can locate the issue in its proper place on the landscape" (Ibid., 31). Although the judge will increase his knowledge of the issue at hand during the trial, the judge's knowledge (and sense of context) will not approach the understanding of the expert.

However, the expert's 20 units of information are not necessarily representative of the facets of the issue that are of greatest concern to judges, administrators, legislators, or the general public. The circumstances of a particular case are not necessarily representative of what would be seen in the majority of cases that contest the same or similar points of law. In addition, only a tiny portion of the data potentially relevant to the case will be introduced within the context of a given case. This leaves ample opportunity for the expert to guide the discussion and deliberation in ways that may be in agreement with his ideological or policy preferences, but which may poorly serve the needs and

expectations of the judge or the parties in a given case (Ackerman, “Components of Judicial Decision Making,” 3).

Underlying the notion that our cognitive processes are educated guesses (some guesses much better educated than others), is my hypothesis that human beings should be categorized as “cognitive misers.” By this, I mean that we possess a finite amount of cognitive skill and memory which we use in our attempts to make sense of an environment which is (for practical purposes) infinitely complex. As greater amounts of data are absorbed, it is not necessarily apparent how connections between units of data are to be organized and how a coherent whole is to be created. As one absorbs more data, the task of organizing the data becomes more complex. As more units of data are absorbed, the individual must make a greater number of connections between the data to create a coherent whole. As more connections need to be made between units of data, there are more opportunities to make faulty connections between units of data and to fail to prioritize the data in a manner that would lead to the formulation of a reliable information processing heuristic. The individual, although he has an increased amount of information potentially available for recall, may make spurious connections between data that lead to a warped perception of the whole. The connections can become increasingly idiosyncratic in the sense that they represent the unique prejudices and experiences of the person making the observations. In short, by having access to more data, one is not necessarily simplifying one’s understanding of a situation (Ibid., 6).

The professional socialization of the expert may lead to an inordinate attachment to information processing heuristics that may have served well in the past, but which do not necessarily fit the task at hand or which may even be undermined by further research in that discipline or subdiscipline. It is theoretically possible that the generalist, in being less attached to a given information processing heuristic, may be more flexible in dealing with fluid, complex situations. My point is not to claim relative ignorance as a reliable advantage, but to make clear that the expert also has ample opportunity to, bluntly, screw up. In addition, one must keep in mind that too great of an awareness of the complexity of a situation can lead to paralysis rather than to prudent action.

The fluidity of the events considered in the Mt. Laurel cases (and the degree of administrative oversight necessary to implement decisions) presents a situation that is especially challenging for those trained in the adversarial methodology of legal decision-making. Not only does the judge oftentimes lack understanding of the technical knowledge that informs the actions of the litigants, but the judge is also a product of a particular style of professional education and socialization that best prepares the recipient to understand the historical facts of a particular case (as opposed to the social facts of an ongoing public policy debate). According to Horowitz, “judges are...likely to be doubly uninformed, on particulars and on context. This makes the process by which they obtain information crucial, for social policy issues are matters far from the everyday experience of judges” (31).

The traditional conception of litigation is that the courts concentrated on the historical facts of the particular case before them. By focusing on what transpired between the parties, the court then tries to construct a decision that is limited to addressing the particular points raised in the case. Ideally, there is finality to this decision rather than the decision serving as just another chapter in an ongoing discussion of the issues raised. Chayes refers to the traditional conception of the lawsuit as a “self-contained episode” because the “entry of judgment ends the court’s involvement” (“The Role of the Judge in Public Law Litigation,” 1283). The combination of the specificity of the particular case before the court and the limited scope and the finality of the decision (at least relative to the sort of dialogue found in public policy debates or the social sciences) gives adjudication a sort of “piecemeal” quality (Horowitz, 35). Horowitz describes the lawsuit as “the supreme example of incremental decision-making” (Ibid.). In adjudication, where the historical facts surrounding the litigants in a particular case are not necessarily representative of others who are contesting similar laws and legal principles and where the court is dependent upon the litigants to initiate proceedings, such incremental decision-making seems appropriate.

The American legal system, at least in trials, is accurately categorized as an adversarial system. However, the vast majority of cases never come to trial because some sort of plea bargain or compromise is reached. Considering that the vast majority of cases are already dispatched in a manner that involves plea bargaining and compromise rather than trial, I am not concerned that a judicial branch which is increasingly involved in ongoing public policy issues somehow

undermines the adversarial components of our legal system. That said, I have other concerns about courts that are expanding their roles to include duties that have been traditionally seen as legislative, administrative, or executive. Although the Mt. Laurel cases demonstrate just how flexible a court can be in defining public policy and meeting its administrative responsibilities, I am still skeptical that courts are the best branch of government for long-term administrative oversight. Indeed, even the New Jersey Supreme Court seemed to admit this in Mt. Laurel III when it concluded that the Fair Housing Act was “both a constitutional and appropriate legislative response, despite its numerous infringements on previously articulated and exercised judicial power” (Haar, *Suburbs Under Siege*, 94).

Indeed, the Mt. Laurel cases are the antithesis of the “self-contained episodes” that are traditionally seen as the courts’ primary concern. From Mt. Laurel I in 1975 until Mt. Laurel III in 1986, the New Jersey Supreme Court was at the forefront of trying to enforce a requirement that “every municipality, through its regulation of land use, to ‘presumptively make realistically possible an appropriate variety and choice of housing’” (Ibid., 20). Even after Mt. Laurel III, the New Jersey superior court system remains an important secondary actor within the debate over land use policy.

II. Fields of Forces and Roles: Special Masters and Judges

The special masters that I interviewed were in agreement that they felt a commitment to the low and moderate income people that the Mt. Laurel decisions

were designed to serve. The commitment to this population was seen as an important component to a concern with the “public interest.” To a significant degree, the masters believed themselves to be advocates for this population. One master said, “People living in the housing are, at base, the clients and the people paying the bills are the ‘intermediate clients’” (Ackerman, telephone interview). However, this sense of advocacy was tempered by their responsibility to other actors within their field of forces.

Of course, masters feel a sense of responsibility to the judge whom they assist. A master said that, although the judges aren’t a client in the “substantive sense,” the master “must keep the judge’s confidence and confidences...the judge leans heavily on the master, so a great deal of trust needs to be cultivated” (Ibid.). The masters noted that the amount of assistance needed by judges tended to be inversely proportional to the judge’s experience in Mt. Laurel cases. The novice judges needed considerable assistance, especially in highly quantitative facets of the deliberation (such as the calculation of the gross share obligation). The most experienced judges develop a degree of expertise that dramatically reduces their reliance upon the master.

A sense of esprit de corps develops between the masters. Although they share a sense of advocacy, consistency in the application of the regulations is greatly valued. The masters realize that the stakes are high in Mt. Laurel decisions and what could be categorized as unprincipled advocacy would, in the long term, undermine support for policies which they believe to be in the public interest. In addition to this esprit de corps among the masters themselves, individual masters

are concerned about the reception of their work in the “audience” of planners and related professionals who follow the progress of the Mt. Laurel doctrine. Because of the high profile of the Mt. Laurel cases, this audience of planners is actually national in scope. Once again, consistency in the application of the rules is the regarded as a professional necessity.

In addition to the importance of the principle of fair play, there are practical reasons for the masters’ concern with consistency in the application of Mt. Laurel regulations. In addition to assisting the judge as a master, the land use expert (In Mt. Laurel cases, this is almost always a planner. On rare occasions, however, lawyers are appointed as masters.) can be hired by a municipality or a developer in other projects. Although none of the masters that I interviewed were quite this blunt, it was apparent that being seen as an unprincipled advocate for a particular party or position in the debate would be very bad for business. Even the most active masters are dependent on other projects for at least half of their billable hour over the long term (although this proportion has risen to over half for the busiest masters during shorter periods of time). One master went so far as to decline to take cases from municipalities and developers at the beginning of his (or her) service as a special master because of a concern over perceived conflict of interest. However, this policy was discontinued with the establishment of COAH when it became apparent that the center of gravity would shift from judges to an administrative agency. This master believes that the “universe” of masters is so small and they are so good at what they do that a conflict of interest clouding judgments is not a concern (Ibid.).

One master made an especially comprehensive statement about the field of forces, at least at a particular stage in the deliberations. The master said, “When a tentative settlement is agreed upon, then all parties become clients” (Ibid.). The master explained that settlement is the goal, as all parties hope to avoid lengthy, expensive litigation. This explanation raises the issue of what roles the masters see themselves as inhabiting during deliberation. It has already been made clear that the masters interviewed for this project see themselves as advocates for those who need low income housing. In addition, the role of “technical expert” has been introduced. As contradictory as these roles may initially seem, the complexity of the field of forces faced by the masters compels them to fulfill the role of advocate in a manner that honors the principled use of their technical expertise. Several masters explained that they often see themselves as mediators (“facilitator” and “negotiator” were other descriptions of their role commonly used during my interviews and other research) within the deliberative process, helping to find common ground between the parties. In this role, the master needs to function as an expert politician. To quote Haar:

The master provided the disgruntled with an ear and an outlet for concerns, especially important with so intensely emotional an issue as land-use regulatory ordinances affecting the character of the community. Astuteness and political antennas were in order in dealing with the many parties involved directly in the litigation, as well as with the outside pressure groups. (82)

The political skills of the masters are especially important, as they are given a complex task with minimal guidance. A master quoted by Haar summarized the guidance given to him from the Mt. Laurel trial judges as follows: come up with

the fairest, the best, the most intellectually sound decision you could come up with (76).

Depending upon the qualities of the particular judge the master is working with (these qualities involve issues of experience and expertise in Mt. Laurel cases and, to a lesser extent, personal characteristics such as assertiveness) and the circumstances presented by the personnel representing the municipality or the developer, the master will often have to vary his or her role from case to case and during the course of the deliberation in a given case.

While the judge is confined to his quarters, the master is far more visible in the communities involved in the dispute. Being granted this degree of discretion and responsibility in such a sensitive task would likely be gratifying for the person involved. But such responsibility places a premium on the operative's ability to understand the technical and political dynamics of the situation. The master needs to be adept at changing strategy and demeanor from a reassuring role designed to entice suspicious parties back to the negotiating table (a sort of "hand holding," according to one master) to taking a more overtly assertive role (sometimes to remind the parties involved of the stakes should months of painstaking negotiation fall apart). And the master has to maintain the appearance of evenhandedness and the trust of the parties involved during this balancing act. Considering the political stakes, the large sums of money, and the emotions involved in Mt. Laurel cases, being consistently regarded as a "voice of reason" in the deliberations seems like it would be quite difficult. As one master said (I suspect tongue only slightly in cheek), "For a decision to be successful, everyone

has to be pissed off” (Ackerman, interview). Fortunately, there was agreement that the judges understood how politically sensitive a role the masters inhabited. There was general agreement that, because of the consistent and close contact that was necessary between the masters and the parties in the dispute, if some sort of “bad cop” was needed, the judge would almost always take it upon himself to operate in this role.

The use of special masters and other experts has long been accepted in the judicial branch. Rule 53 of the Federal Rules of Civil Procedure (passed in 1938) discusses the situations that are appropriate for the appointment of a special master. Rule 53(b) states that “a reference [to a master] shall be made only upon showing that some exceptional conditions requires it.” As time has passed, the definition of “exceptional” has become increasingly flexible. Haar describes the New Jersey rule as “more expansive” (p. 225, Note 11) than the federal rule, as it “provides for appointment of a master upon approval by the Chief Justice...or under extraordinary circumstances” (New Jersey Civil Practice Rule 4:41-1, quoted in Haar, *Ibid.*).

The debate as to the legitimacy of masters in what are regarded as truly “exceptional” or “extraordinary” circumstances appears to have long since been settled. The question we face now is how broadly to define “exceptional” or “extraordinary.” In the Mt. Laurel cases, leaving aside the question of the wisdom of the decisions themselves, it strikes me that these are, indeed, exceptional circumstances. As the New Jersey Supreme Court was determined to

assume an active role in land use and zoning policy, some method of integrating technical expertise into the decision-making process was a practical necessity.

In the Mt. Laurel cases, the masters are an important part of the settlement process and they play a major role in overseeing the implementation of complex remedies (Deason, "Managing the Managerial Expert," 8-13). In addition, masters play an important role in monitoring compliance with decisions (Ibid., 23-25). Haar states that "more often than not, they wound up monitoring projects through construction" (81). In the settlement process, the judge is already heavily taxed by the legal complexities of the case (to say nothing of the technical and policy issues which will be far more familiar to the master). As people are cognitive misers (with finite cognitive capacity, emotional and physical energy, and time), there is simply a limit to the judge's ability to absorb and organize more material. These practical, cognitive limitations, even more than theoretical concerns of jurisprudence, strike me as the most convincing reasons for the legitimacy of the increasingly common appointment and expanding responsibilities of special masters.

In addition to the limits of the judge's cognition, expertise, time, and energy, the judge needs to be concerned about his role in the legal process. As with the master, the judge faces a complex field of forces. The judge is concerned about his professional reputation (and the possibility of having a decision appealed and overturned), the reception of the decision by the parties of the case and the general public, the legitimacy of the Mt. Laurel doctrine, and the legitimacy of the

judicial branch within society. How does a judge best balance these relevant factors and arrive at an acceptable interpretation of the proper judicial role?

Even in such complex cases, it best suits the judge to maintain a fairly traditional role with as much consistency as is possible. Of course this “traditional role” can be plausibly defined in several ways—as objective, a referee, above the fray, and being perceived as primarily guided by legal principles rather than political considerations (among others). But however a particular judge defines his role, consistently remaining in this interpretation of the role is important as the judge does not want to risk somehow “diluting” the legitimacy of the role and the decisions that are handed down. Although it best suits the master to be seen as “evenhanded” or as a “voice of reason,” the master, in the course of close, sustained contact with the parties, has to have the flexibility to take a number of different roles. By contrast, exhibiting this degree of flexibility may undermine the perception of judicial prestige and power and dilute the respect accorded to judicial directives. Haar quotes a special master as acknowledging the following:

There are things the man in the black robe can accomplish that I can't; I've seen parties change positions in front of a judge where I've been trying everything to coax them and beat them into changing—it just doesn't happen until they're in front of a judge. (75)

Such political capital needs to be protected, as it serves the greater enterprise (including the special master) quite well. In helping to protect the judge's political capital, the master is useful beyond the expertise he or she brings to the case.

As for overseeing the implementation of complex remedies and the monitoring of decisions, similar arguments in favor of utilizing the masters hold sway. Innate human limitations involving lack of time, energy, cognitive capacity, and the limits of expertise all weigh against effective, long-term oversight, implementation, and monitoring of complex remedies by a single judge or a small panel of judges. They need assistance. Keep in mind the traditional conception of a case as a “self-contained episode” in which the decision signals the end of the court’s involvement (Chayes, 1283).

Admittedly, the contradiction of jurisprudential principle does not excite me all that much in and of itself. But, in the cases of the role of judges in the settlement process and in the oversight of remedies, there are strong empirical and theoretical justifications for the integration of non-judicial experts into these processes. If one believes that a more activist court is a proper response to the public choice problems faced in cases such as Mt. Laurel, the delegation of significant functions (in processes such as settlement, implementation, and monitoring) to non-judicial experts strikes me as the most reasonable compromise.

Although masters are assuming a variety of roles in complex cases involving social policy, there need to be some limits on what they can legitimately do. For example, the judicial process would likely be ill-served by appointing masters as, in effect, private tutors for judges. In defining the role of the master as a sort of tutor, it increases the likelihood that the master could develop an undue influence over the judge. In addition, one must keep in mind that the data most valued by

the non-judicial expert is not necessarily the most relevant to the satisfactory resolution of the case. Considering that, depending upon the nature of the case in which they serve, masters can be intimately involved in any stage from pretrial discovery to serving as monitors for years after the decision is handed down, it is reasonable that few formal limitations are imposed upon the role of masters (and that existing formal limitations [which can vary depending upon the jurisdiction] are often interpreted flexibly). Indeed, it is the transparency of the relationships between the master, the opposing parties in the case, and the judge that are most important in legitimating the presence and assistance of the outside expert. This transparency should be emphasized over the enumeration of detailed, formal rules.

One formal rule that is almost always ignored in Mt. Laurel cases is the restriction of ex parte communication between judges and special masters. Footnote 40 of Mt. Laurel II states: “Given the sensitive nature of the function, the master should not communicate privately with the court.” From what I’ve seen in my research, judges have been open about what is seen by most as the practical necessity of engaging in ex parte communication with the masters. I agree with Haar that the “Mount Laurel model bears a greater resemblance to conflict resolution than to traditional adjudication” (84). Haar cites an “experienced master” as stating that “in all of the cases that I’ve dealt with, the parties agreed that the master has leave to contact any one of them independently to discuss anything that the master thinks is appropriate” (Ibid.). Almost all of the judges (in varying degrees of detail) want some sort of regular updates from the

masters about developments between the parties to the lawsuit. From a practical standpoint, ex parte communication is eminently reasonable because it reduces the vulnerability of all parties to “disconcerting surprises at the end of the road” (Ibid.). The last thing anyone wants is the judge’s “last minute rejection” of a “carefully hammered-out deal...” (Ibid.).

III. Principles and Flexibility in a Complex World

When we choose between competing principles, there are inevitable trade-offs. Searching for an organizing principle that will give definitive answers for a wide array of political, social, or ethical questions is like trying to create a perpetual motion machine. The world inevitably proves more complex than our ability to categorize and organize variables into a coherent vision of the whole. Indeed, it may be our contradictions and inefficiencies that save us from even greater error.

The New Jersey Supreme Court was presented with difficult jurisprudential and political conundrums in the Mt. Laurel cases. On one hand, it was apparent to the justices that issues of land use and exclusionary zoning presented a public choice problem that made it unlikely that these questions would be adequately addressed by the legislature or executive branches unless some sort of additional attention was brought to these issues. To quote Span:

...there is good reason to believe that the normal course of politics will not adequately address the issue of exclusionary zoning. Local politics cannot be trusted to adequately weigh the costs and benefits involved because the costs are almost completely externalized, while the benefits are almost completely internalized. State and national politics cannot be trusted because those harmed by exclusionary zoning are diffuse, unorganized, and lacking in resources, while

those benefited by it have greater resources and are represented by local governments under their control. (“How the Courts Should Fight Exclusionary Zoning,” 8)

This raises the question as to what is the best way to bring attention to these issues. The justices on the New Jersey Supreme Court decided that it was worth investing their political capital on bringing this issue before other branches of government and the public. Evidently, they believed that the chance of positively affecting land use policy made it worth the effort and risk.

In addition to these political considerations, the court was presented with the question of how to justify their decision from a doctrinal standpoint. Haar categorizes the Mt. Laurel decision as a “doctrinal free-for-all with a minimal linkage to prior case law” (19). By interpreting Article 1, paragraph 1, of the New Jersey Constitution to “make realistically possible an appropriate variety and choice of housing,” the court was able to create a constitutional justification for the decision (Justice Hall, quoted in Haar, 20). However, the vagueness of Article 1, paragraph 1 (which states that “all persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.”) could be used to justify the court becoming actively involved in the administration of a wide array of policy disputes. And some of these policies could be the mirror image of the perception of the public interest that defines the Mt. Laurel doctrine. For example, a “natural right” to “acquire, possess, and protect” property could be used, in the hands of justices with different perceptions of what constitutes the

public interest, to justify any number of forms of exclusionary zoning. A blithe acceptance (and I consider Haar's acceptance to be quite blithe) of such creative interpretations of the penumbra of a document (such as a constitution) undermines one's principled arguments against those who desire to creatively interpret the penumbras of the document in an alternative fashion.

In spite of this concern about methods of constitutional interpretation, our federal and state constitutions leave considerable room for debate and alternative interpretations. Our federal and state constitutions are products of compromise and, as documents produced in a given time and place by people of limited understanding, they cannot foresee all challenges that will eventually confront them. Creative interpretations that involve inferences from the penumbras of the text are inevitable, whatever one's place on the legal and political spectrum. As much as I am concerned about the loose tie of the Mt. Laurel decisions to the text of the constitution and previous case law, I am left with an even greater concern that, without the exercise of such judicial discretion, those with little access to mainstream of the political debate would be even less likely to have their problems addressed (or even considered) by the government. I say this as someone who is, on balance, underwhelmed by the judiciary's grasp of social and public policy and who believes that the courts are, on balance, less suited to long-term oversight of the implementation of policy than legislatures and bureaucracies.

Judges and courts have to decide what degree of trade off between the "sanctity" of legal doctrine and principle and a more expansive flexibility in

addressing issues of social and public policy is most preferable. There are positive and negative elements to any decision that can be made. Trade-offs and unintended consequences are inevitable. I am willing to trade enough of the “sanctity” of legal doctrine and principle to create the political and doctrinal flexibility that is necessary for occasional, measured judicial innovation (of which the Mt. Laurel decisions are an example, albeit one on what I consider to be the outer reaches of legitimacy).

Such decisions are and will forever remain a subjective, inexact sort of jurisprudential, legal, economic, and moral calculus. Granted, this does not mean that such decisions are capricious. What may strike some as an unprincipled decision may, in fact, be the messy result of the collision of several justifiably revered principles. The difficult part of the process is figuring out how to prioritize and organize these principles into some sort of acceptable compromise. In Mt. Laurel, for example, the justices had to figure out just how far from precedent and the text of the constitution they were willing to drift. They had to weigh the nature and extent of the public choice problem presented by the issues at hand. I admit that I know nothing of the background of the justices who created the Mt. Laurel doctrine, but there are few (if any) judges in the United States who stand outside of the liberal tradition. Their version of a liberal framework may be more or less influenced by factors such as egalitarianism or utilitarianism. Their version may be more or less libertarian or communitarian. It’s a safe bet that the members of the New Jersey Supreme Court still had a significant degree of attachment to the concept of home rule. It’s also a safe bet

that they had significant sympathy with the aspirations and concerns of property owners (it's a safe bet that they all own their own homes). And it's a safe bet that they all have some concept of an "undesirable" element that they don't want in their own neighborhoods. These are only several of the (at times contradictory) principles and attitudes that are weighed in their decisions.

Decision making is an inefficient and inexact process. But it may be this inefficiency and contradiction which saves us. This inefficiency and contradiction allows us to temper the inevitable shortcomings of our principles. It also helps us to recognize and adapt to the inevitable unpredictability of our environment. Keep in mind how the view of human beings as cognitive misers informs this view. Remember, we are not smart enough to account for every variable and to synthesize these variables into a comprehensive worldview or decision-making heuristic. We can strive to create a new principle or revise an existing principle so that we have something that (at least on a provisional basis) appears to be more effective than what we had before. But perfection in our unpredictable world is beyond us. Principles can be worth sacrifice. They can even be worth dying for. However, at some point, the principle at issue needs to start serving flesh and blood humanity. We shouldn't continue to serve the principle indefinitely.

IV. Principles and How They Inform the Separation of Powers Doctrine

In our federalist system, there is considerable debate about the proper roles of different branches of government. Whatever position one defends, it will have

both empirical and theoretical shortcomings. We have no choice but to make trade-offs. But in spite of the inevitable shortcomings of our principles and policies, society is ill-served if the debates devolve into relativism. That said, I believe that one's conclusion is often less important than the considerations that informed the decision-making process. This process of discussion and debate, whether it takes place within the individual citizen, a broad cross-section of the citizenry, or between the branches of government, serves a critical function in our society's creation of an acceptable compromise in the interpretation of the separation of powers doctrine. Even though a definitive answer to such complex questions cannot be reached, this discussion helps to shape a political culture's response to the particular necessities and desires of that time and place.

To an uncomfortable degree, this explanation drifts close to saying that the legitimate role of a branch of government is whatever power it can get away with seizing. Well, honestly, that's pretty accurate. But it needs considerable qualification. The legislative, executive, or judicial branches (the bureaucracy can even be seen as a fourth branch in this circumstance) can easily overstep what is considered by a broad and diverse cross-section of society as its legitimate bounds in a discrete instance or a series of incidents over what constitutes, historically speaking, a short time. If other branches of government have means of attempting to counteract what is considered by some to be the overreaching branch, but they consistently fail to protect their turf, at what point do the new roles assumed by the expansive branch become a legitimate part of our political culture? At what point, if you can seize power, maintain that power, and exercise

that power in a manner that placates resistance and, ideally, wins converts, does it become legitimate (Just to be clear, I am referring to placating resistance, as opposed to slaughtering resistance...Which also raises fascinating, albeit somewhat different, questions of legitimacy.)?

In a case such as Mt. Laurel, at what point did the court's willingness to take such an active administrative role in their attempt to address exclusionary zoning and land use become legitimate? Has the decision never gained legitimacy because of the manner in which the constitution was interpreted, combined with the degree of departure from precedent? Was it legitimate from the beginning because of the reticence of municipalities, the legislature, and the governor to address these issues? Did it become legitimate because the legislature delayed attempts to take substantive measures to address the issue (it eventually addressed the issue with the passage of the FHA)? Did the court's action become a legitimate form of "consciousness-raising" when the legislature grudgingly acknowledged responsibility for the issues at hand? Although I literally cringed as I read Haar's overblown (at least according to my democratic [with a small "d"] principles) enthusiasm for the interpretation of the New Jersey constitution that the court used as a framework for the Mt. Laurel decisions, I still kept in mind the wide array of principles and attitudes that informed the justices' views. They may have made different trade-offs than I would have made in that situation, but their decision still strikes me as a reasonable response to a difficult situation. In fact, on balance, I'm actually glad that they made the attempt to address the issue of low and moderate income suburban housing. Fortunately, the New Jersey

courts proved to be reasonably flexible in shaping their administrative responses to adapt tolerably well to the demands of the situation. Even though the justices ceded significant responsibility to the special masters, it was a reasonable (if imperfect) compromise.

Of course, the New Jersey Supreme Court did not have free reign to do whatever it wanted in creating low and moderate income housing in the suburbs. Municipalities, the legislature, and the governor challenged the court. Indeed, the court decided to (or felt pressured to) cede much of that power to the legislature and COAH in *Mt. Laurel III* (In future research, I would like to get a better understanding of the mixture of regret and relief that the justices likely felt as they crafted *Mt. Laurel III*). The pressure that the court may have felt to abandon a primary role in zoning and affordable housing policy may have been reflected in the difficulty faced by Chief Justice Wilentz in his reappointment (it barely passed the legislature shortly after *Mt. Laurel III*). That may have further chastened the court, as the reappointment procedures in New Jersey are significantly more favorable toward the justices than the procedures of most other states (Span, 21). Indeed, New Jersey's "court-friendly" reappointment procedure may have contributed to the confidence that allowed the justices to assume such an assertive role in these controversial issues.

Our federalist system of government acknowledges trade-offs. Our system trades centralization and efficiency for the potential to engage in smaller scale experimentation at the state and local levels. The *Mt. Laurel* decisions serve as both an example of this spirit of experimentation and a warning about how best to

approach such risky projects. To cast Mt. Laurel in a positive light, one sees a state supreme court risking its political capital to address an issue neglected by other branches of government. The court was able to make some sort of headway in addressing the issue and then receded into a secondary role when the legislature stepped up to address the issues at hand. This can be viewed as an example of an effective “dialogue” between different branches of a state government.

A significant number of those associated with the implementation of Mt. Laurel decisions (including the masters that I interviewed) express concern about what are seen as unnecessary delays in cases that come before COAH. One master was adamant that New Jersey got it right initially by using three judges who became experts in the Mt. Laurel regulations. This master believes that the three specialist judges were able to develop a level of technical expertise comparable to that of the masters and beyond the level of expertise shown by most of the superior court judges who now serve in Mt. Laurel cases. He said that most of the superior court judges must be heavily reliant on the master because they have not had the opportunities to develop the necessary expertise. That said, all the masters that I interviewed indicated that they had confidence in the judges’ abilities to constructively utilize judicial discretion in the implementation of complex, technical data into their decision-making processes.

Several masters that I interviewed explicitly stated a preference for a stronger judicial role relative to the COAH board. In addition, several masters even expressed a preference for increased judicial discretion in the cases which are still brought before the courts. There was general agreement that the decisions in Mt.

Laurel II and the COAH guidelines combine to severely limit judicial discretion on larger issues (such as the fair share calculations). However, two masters that I interviewed said that by the third round of a case (where the gross share obligation is calculated), judicial discretion increases. A master stated that, by the third round, a judge is able to become more assertive in “enforcing a timetable and hauling people into court” if it is deemed necessary (Ackerman, interview).

Many of those involved in the implementation of the Mt. Laurel doctrine have been disappointed by the extent of the doctrine’s practical effects, but there are thousands more affordable housing units in the suburbs than if the court had not chosen to risk its political capital (I’m not going to get into any sort of debate as to the approximate number of additional units that were built or renovated because of Mt. Laurel compared to what may have been expected with other potential responses [or nonresponses]). Whether or not the decision was primarily intended as a sort of consciousness-raising for other branches of government, the court was able to encourage the legislature to address exclusionary zoning and the need for more affordable housing in the suburbs. Even though there was a degree of hubris in their decisions in Mt. Laurel I and II, the court became acutely aware of its limited power to enforce its preferred principles. This example of what can plausibly be categorized as initial overreaching and the resultant retrenchment demonstrates how separation of powers can serve as a self-corrective mechanism. Because of such checks and balances, the initial overreaching that will regularly arise from a spirit of experimentation causes minimal practical damage to society and does not

necessarily undermine the broader practices and principles of our system of political organization.

The limitations of the court's actions are also apparent. The court focused on only one facet of a complex social issue. Exclusionary zoning is an important factor to be considered if one's goal is to increase the supply of affordable housing in the suburbs. But employment, transportation, and race relations were pushed into the background in the court's attempt to increase the supply of affordable housing. Just because you build it does not mean that "they" will come. Those who are skeptical of Mt. Laurel raise legitimate concerns about the ability of judges and a small cadre of technical experts to effectively address such a broad and complex web of technical, legal, social, and political variables. Because of what I believe to be the inherent shortcomings of any small group of legal or technical specialists to satisfactorily appreciate the range of political and social issues involved in such a complex enterprise, there is ample reason to be concerned that a policy which is spearheaded by such groups could be politically impractical and may result in a considerable waste of resources (to say nothing of a loss of political capital that could have been spent in a more productive manner). I do not mean to imply that the judicial branch is insulated from politics (or that socialization in legal or technical disciplines degrades one's sense of political sensitivity). However, I am concerned that those (as we are cognitive misers) who face considerable technical demands in their work have finite cognitive capacity, time, and energy to devote to appreciating the political conundrums presented by the most complex situations.

Whatever principle one chooses, whether one champions the courts, experts, a combination of courts and expert guidance, or the legislature, the executive, and the democratic process, one will likely have to settle for what is a marginally and subjectively justified preference. But in situations involving complex political and social concerns and in which there is no shortage of competing expert opinion, the seeming inefficiency of the legislature and the democratic process (with its imperfect access) will sometimes be the best available compromise, especially if one places great value on avoiding high profile failures. As uninspiring as it can be, muddling through with piecemeal addendums to policy and asking for “further research on the matter” will have to be the response to most problems, as there is a limit to the political “excitement” and mobilization that any polity can stand.

The painstaking analysis and creation of principles which address the appropriateness of roles and functions for a given branch of government is still relevant because it serves explanatory and critical functions that may identify and mitigate the effects of the more egregious attempts to expand the sphere of influence, especially if there are attempts to circumvent the usual checks and balances. Even if the policy choice eventually turns out to be generally regarded as wise, the role of a loyal opposition in raising the specter of unintended consequences and highlighting the inevitable trade-offs (in both practical effects and in principle) is still a critical part of the debate. In addition, one must keep in mind that a degree of redundancy of functions between different branches is

necessary “in order to fulfill the overall checking function that the system is designed to achieve” (Span, 28).

Rather than viewing a constitution or a body of constitutional doctrine as some sort of prescription for what constitutes the “proper” separation of powers, it would be more accurate to view federalism as a democratic process. The separation of powers doctrine is best understood as a dialogue and the full legitimacy of a decision or series of decisions may not be known until time passes and the results have become a functional and accepted part of our political culture. In this sense, many observers may grant legitimacy (or illegitimacy) to decisions (such as Mt. Laurel) only retroactively.

V. Further Reflections on the Advisability of Seeking Non-Judicial Expert Guidance in the Implementation of the Mt. Laurel Doctrine

Shirley Bishop, the former Executive Director of COAH, said that in most cases which come before COAH, all of the parties understand the complexities of the case well. However, in a minority of cases, the municipality had a planner or lawyer who did not have the opportunity to become well-versed in COAH regulations. Ms. Bishop said, “COAH regulations are too complex to just pick up a book and learn them before the case” (Shirley Bishop, interview by Michael J. Ackerman, August 4, 2005). With an inexperienced planner or lawyer before the board, the parties are ill-served. On occasion, Ms. Bishop has recommended that a municipality retain someone with greater expertise in COAH regulations. These

occasions contrast with her perception of the court appointed masters. She said that she has never met a court appointed master without a high degree of professionalism and competence.

Ms. Bishop's perspective on the necessity of integrating technical expertise that goes far beyond what the educated generalist has to offer into the decision-making process (whether the decision is made by the COAH board or in a courtroom) reinforces the importance of granting the administrative machinery the flexibility to diagnose what is needed to supplement the decision-making process. Because of the complexity of cases involving ongoing disputes of public policy (such as Mt. Laurel), the special master may be called upon to play a number of different roles. The discretion that the special master utilizes means that the transparency of the relationship between the master, the judge, and the parties in the case is of paramount importance.

Because of the likely importance of the master's expertise in reaching a satisfactory result, every effort must be made to assure the parties involved that the master, in addition to providing technical guidance, also makes an honest effort to appreciate the political complexities of the situation. No amount of technical expertise gives us the ability to eliminate the possibility of unintended consequences resulting from our actions. And all decisions in such complex cases involve compromises of practice and principle. After the implementation of remedies and after the monitoring is finally through, it is up to the community to make the best of the situation. A positive outcome is more likely if the

community eventually accepts the legitimacy of the process, even if it is never quite satisfied with the results.

Conclusion

The City of God (to use Augustine's language) is the end point to our labors, yet we set out on this journey equipped with imperfect senses, cognition, and memory. This is the crux of man's dilemma. One would hope that the recognition of this imperfection of faculties would lead to humility in man. Making mistakes is inevitable, but the rest of the world won't come to a halt just because we have to deal with our internal conflicts and conscience. Decisions must be made and actions must be taken (or a decision is made not to decide or act). Augustine would say that our only reliable comfort in all of this is our reliance upon God. At its best, mankind's relationship with God teaches us two seemingly contradictory lessons. It always reminds us of our imperfection and leaves us no choice but profound humility in His presence while it also emboldens us to carry on when we are confronted with concrete evidence of our flawed nature. If we have pride rather than humility, we have mere exercise of power rather than genuine, legitimate authority.

In the education of the individual and in the manner in which the individual becomes fully human by joining in the conversations that create our society, an appreciation of the inherently flawed nature of man and his creation must be a focal point. It will remain our struggle to be strong enough to deal with our shortcomings in a constructive fashion. Indeed, the knowledge that we can never be perfect can be liberating rather than paralyzing once we accept that striving for spiritual and ethical growth is all that can be expected of us. And this striving will oftentimes yield few, if any, tangible results. An individual human being or

even a given collective may be caught within circumstances that frustrate their attempts to influence their environment in a particular manner. Such striving can be a lonely, even terrifying, process. Hegel was right—history is a slaughterbench. Many millions have made the great accomplishment of facing their destruction with a sense of dignity. Facing that end, however it may arrive, may be the primary battle for everyone. But for so many, the possibility of destruction is so imminent, there is precious little time and energy left for other struggles. Much effort is expected of us during this process, but at least we need not concern ourselves with the delusion (or even the sacrilege) of believing we can achieve perfection.

Even within the individual, one experiences the conflict between our internal movements. We have conflicting motivations and intentions. To further complicate these forces, there is the question of when cognition spurs action and when action may spur conscious cognition as a kind of post hoc justification for the action. We experience the conflict of wills between individual human beings (and the communities to which we belong) within the city of man. At the next level of complexity, we find the conflict between the various communities that mankind has created (from the prepolitical family and clan to the modern nation state). History is witness to the ephemeral, constantly shifting nature of man's custom and law against the eternal and perfect nature of God. Our free will, when combined with imperfect senses, memory, and cognition leads us to undertake actions that so often create different consequences than we had intended. Yet it is a necessity to accept our limitations and make judgments because we have no

choice but to act within the context of our environment. Man is a social being, and whether a decision is made by another man or men to act in opposition to or in concert with other individuals, the struggle to remain true to an ideal (whether God's law or a secular characterization of the ideal) while compromising with the circumstances at hand will remain an imperfect process.

During the discussion of contemporary political decisions in this project, keep in mind that the judge who botches a case is not necessarily wicked. What sort of conversation led up to that decision? What voice took precedence in the mind of the decider? Did the voices of utilitarian calculation dominate the voices that cautioned against violating ethical aspirations (or vice versa)? Did real politic ***Politik?***** overwhelm custom or aspiration (or vice versa)? There are trade offs and unintended consequences to a primary reliance upon any voice. In this sense, one is often left to satisfice, to play around the margins in an attempt to pick the best (or the least bad) option.

To complicate the evaluation of events further, one must remember to examine the methods in which the decision (remember, a decision is not necessarily a discrete event—****did I already mention the decision, and the implementation thereof, as a sort of feedback loop?****) was implemented. The institutional context will inevitably cause compromise and inefficiency however forcefully articulated the policy and however dynamic the executive. The combination of the inner movements of the decision-makers and the mechanics of implementation create a process much more complex that we can reliably understand. Unintended consequences regularly lay waste to decisions that were the result of a functional

decision-making processes. The most literate conversation between decision-makers and implementers does not guarantee success.

I don't mean to imply some sort of postmodern relativism (just what does "postmodern" mean?) of what constitutes success in action or in weighing competing principles and ideals. I am counseling modesty as far as our expectations of the consequences of our actions and even in the rightness of even our most deeply held ideals. It is the "forced acceptance" of our imperfections that is at the root of modesty. ***Augustine would say that this acceptance is at the root of accepting a divine order—or just drop this line because of the difficulty ahead...***But what does it give the secularist? Beyond new agey and therapeutic speak?*** I don't want to overvalue the importance of these inner movements (love that Augustinian language). ****Actually, they are very important...it's just that they remain largely beyond our ability to comprehend them...diminishing returns of time and effort, limitation***** All of the good intentions in the world and a dollar will only get you a copy of the New York Times. As far as I know, iron-clad confirmation of honorable intent is impossible. The inner movements of the black box of emotion and cognition will likely always remain, to some degree, a mystery. And self-reports of our intentions are unreliable. We are left with a sort of educated guess in evaluating the decision-maker. One could even say a faith—whether it is faith in the decider or in our own heuristic that provides context to events.

What about modesty in evaluating the judge who badly botched a case? Not to deny the possibility of both evil intent and the reality of death and destruction, but

what will the proclamation of evil add to a given conversation? Will it steel the resolve of those on the right side of history? When we choose to act, we place bets, however hedgingly, on right on wrong (however diluted the terminology we may use to categorize our alternatives). We may undermine our commitment to the point of neurosis and even embrace limitations and distrust of our motives to the point where predictions of defeat become a self-fulfilling prophecy. But we are still left with the necessity of action.

However real evil can be, however possible it is that what is regarded as evil may eventually be seen as an ideal, when should modesty be shown in categorizing the other as evil? When are those in seemingly intractable opposition to each other actually displaying “merely” different manifestations of the same uncertainties and fears? In what circumstances does the declaration of evil have a disruptive effect upon the conversation? How does one converse with evil? How does one compromise with evil? At what point is it acceptable to one or both parties that the conversation moves from the verbal persuasion to physical force? ****how far does Oakeshott carry the metaphor of conversation? What did Oake say about violence? Check paper...

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Interviews

David Kinsey, telephone interview by Michael J. Ackerman, April 9, 2005.

Elizabeth McKenzie, telephone interview by Michael J. Ackerman, April 16, 2005.

Creigh Rahenkamp, telephone interview by Michael J. Ackerman, April 24, 2005.

Art Bernard, telephone interview by Michael J. Ackerman, April 27, 2005.

Phil Caton, telephone interview by Michael J. Ackerman, August 3, 2005.

Shirley Bishop, telephone interview by Michael J. Ackerman, August 3 and 4, 2005.