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DELEGATION OF TRADE AUTHORITY TO THE PRESIDENT UNDER UNIFIED AND DIVIDED GOVERNMENT: THE INSTITUTIONAL SIGNIFICANCE.

by

DAVID BROWN

Under the Direction of Daniel Franklin and Charles Hankla.

ABSTRACT

This study examines the effect that divided or unified government, in the United States of America, has on the delegation of trade authority to the President. Using a qualitative analysis approach, I examine competing views and formulate an independent opinion based on the peoples' preferences and evaluation of the principles of America's Constitutionalism. I conclude that overemphasis on the impact of divided government is misleading because trade issues provide the primary mechanism which determines the implementation of America's trade policies, and the principles of Constitutionalism are valuable guidelines. Blended with the discussion is the awareness of an American ethos which challenges formulation of trade agreements in an era of increased globalization.

INDEX WORDS: Divided Government, Unified Government, Presidential Trade Authority, Literalism, U.S. Constitution, Globalization.

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DAVID BROWN

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Most importantly, I thank our Heavenly Father for His guidance in all things. Indeed, it is the grace of our Lord and Savior, Jesus Christ, which will help the American Republic to implement the provisions of the American Constitution, and adhere to its ethos of enduring freedom, as the 21st century progresses.

DEDICATION

Dedicated to my Beautiful Wife, Christine.

Who can find a virtuous woman? For her price is far above rubies.

-- Proverbs 31. 11

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Introduction

International trade involves the marketing of goods and services across national borders and also sustains a nation's economic health. Hence, American trade relations require the keen attention of policymakers of the world's most powerful economy. Prior to the twentieth century, responsibility for the Republic's trade resided primarily in Congress, but the negative impact of high tariffs, which contributed to the Great Depression of the 1930's, led to the passage of the Reciprocal Trade Agreements Act (RTAA) of 1934 (Brainard and Shapiro 2001), which essentially gave the President a degree of independence to conduct trade.

This paper provides an assessment of the delegating of trade authority to the President and the impact of the configuration of the federal government on America's trade policies. Although trade politics occupy less of Americans' attention than issues like crime, economic prosperity and national security, the impact of international trade, not only on the nation's internal, but also its external affairs, warrants analysis. The dependent variable, in this study, delegation of trade authority to the President, will be examined in relation to two independent variables: unified government and divided government. The significance of America's political framework for executing this important constitutional responsibility will be examined via three political prisms: the international system, executive branch politics and congressional-executive relations. American foreign policy involves dealing with friends and competitors in varying interactions. While the use of military force against external enemies is necessary to secure the Republic's interests, effective management of U.S. trade relations is of greater consequence for national prosperity. Thus, trade relations are a vital component of U.S.

foreign policy. Therein, issue dynamics within the constitutional construct of shared government must be appreciated. The joint responsibility of the executive and legislature, inherent in various delegations of congressional authority, illustrates the need for pragmatic policy initiatives in a transforming global economy. Thus, the research question to be examined is the extent to which unified or divided government impairs America's leaders' ability to implement trade policies that are beneficial to the health of the Republic. I will also briefly examine trade legislations of two presidential administrations as case studies: the presidency of Ronald Reagan will be examined with reference to divided government and trade policy and the presidency of Bill Clinton will be examined with respect to unified government and trade policy. As a backdrop to the central issue of interaction between the independent and dependent variables, the Reciprocal Trade Agreement of 1934 (RTAA), and its antecedents will be highlighted.

This concise study is primarily qualitative in content and its limitation is acknowledged. While it is not an exhaustive exposition of the subject, I will assemble relevant information and proffer an opinion on the merits of unified or divided government's impact on America's trade policies. If in part the discourse sounds tautological, or repetitive, a distinct appeal is made to the reader's willingness to think outside, as well as within the academic box, particularly in a post September 11, 2001 epoch, thereby, if possible, augmenting this rudimentary analysis. Thus, I will posit, as my hypothesis, that regardless of the dynamics between Presidential trade authority and unified or divided government, policy outcome is more issue dependent than configuration dependent, reflecting the importance of the preferences of the American public at any given moment.

The Dependent Variable

Delegation of trade authority to the President is the dependent variable in this study. The purpose of the dependent variable is to determine the effect of the different configuration of government on the President's ability to negotiate trade agreements. If more or less authority is delegated under either form of government, then the President is better equipped on one hand, and less equipped on the other, to lead the United States, the world's most powerful nation, in crafting trade policies that affect Americans. The President is the most important elected official in the Republic and although Article II, Section 2 of the *Constitution of the United States of America* (Cato 1998) states: "He shall have power, by and with the Advice and Consent of the Senate, to make treaties…," trade agreements do not fall in the category of treaties. Hence, given that foreign policymaking is the province of the Chief Executive, the need to negotiate trade agreements with other nations naturally falls within the realm of Presidential interactions. However, Article I, Section 8 of the *Constitution of the United States of America* (Cato 1998) also states: "The Congress shall have Power…To regulate commerce with foreign nations…" Therefore, in order for the President to conduct trade agreements, Congress must delegate its Constitutional responsibility to the President. Accordingly, it is within this nexus of the institutional configuration of the federal government, impacted by the electoral process, that the delegation of trade authority to the President will be assessed.

The Independent Variables

Unified and divided governments are the independent variables that will be used to determine the nature of the delegation of trade authority to the President. Unified

government occurs when the same party controls the executive and legislative branches, and divided government occurs when control is split between both parties. Each type of configuration of the federal government exerts a limited or significant, or at least a degree of, impact on the formulation of trade polices by the executive branch. The intent is to determine the importance of the configuration of the federal government to the delegation of trade authority to the President, given the salience of issue dynamics and the principles of Constitutionalism. Notwithstanding the federal government's joint responsibility to protect the welfare of Americans, the Presidential oath, or affirmation, in Article II, Section 2, highlights the principles of the founding document in facilitating the federal government's task: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Background

In addressing the main aspects of the research question, it is informative to share a brief historical highlight of America's trade story with reference to the passage of one trade agreement, The Reciprocal Trade Agreement Act of 1934. The RTAA, as an example of America's trade policy, and delegation of trade authority to the President, is referenced as demonstration of the interaction among institutional variables that produce trade policy. During the late 1920s and early 1930s, the world economy sank into depression as a result of tariff wars. The Great Depression provided context for American policymakers' decision to move away from protectionist policies toward trade liberalization. During the interwar years, America was not only the world's dominant

military power, but also the strongest economy. However, lack of international leadership stemmed from Great Britain's inability to effectively address interwar years trade policy as well as America's unwillingness to lead (Haggard 1988). Spurred by resurgent Wilsonian liberalism and enlightened self-interest, Congress passed the RTAA in 1934.

The significance of the RTAA can be examined via two political lenses: the international system and congressional-executive relations. The Act authorized the President to negotiate reciprocal reductions of tariffs, within a limited range and time period, implemented by proclamation and without implementing legislation (Sek 2003). American failure to respond to the negative impact of the ensuing trade war would have ensured worsening of the global economy, a situation detrimental to U.S. interests. Notwithstanding the maladies of the international arrangements, which precipitated American response, it can be argued that the RTAA, per se, was less the product of changes in the international structure and more the result of changes in the norms of international trade (Haggard 1988). President Roosevelt's Secretary of State, Cordell Hull highlights this outlook:

> …it is manifest that unless the Executive is given the authority to deal with the existing great emergency somewhat on a parity with that exercised by the executive departments of so many other governments for purposes of negotiating and carrying into effect trade agreements, it will not be practicable or possible for the United States to pursue with any degree of success the proposed policy of restoring our lost international trade. (Haggard 101, 1988)

Undoubtedly, international concerns produced the RTAA as an important foreign policy instrument, but its ultimate significance, as a brainchild of America's constitution, warrants emphasis on the legal process that facilitates a dynamic American trade policy.

In evaluating the impact of the RTAA on U.S. trade policy, scholars have provided enlightening inquiries into the congressional-executive relationship which facilitated passage of the RTAA and their literature arrives at varying conclusions, as a result of different research methods. An overriding interest, however, is the impact of divided government (the executive controlled by one party and the legislature by another) or unified government (the executive and legislature controlled by the same party) on the delegation of trade authority. If divided or unified government exerts substantive influence on U.S. trade decisions, then the delegation of trade authority in 1934 is significant not only on account of the practical and psychological value of its period, but also as a political undertaking indicative of constitutional tools by which the Republic's buoyancy can be maintained, amidst challenges of domestic politics and unfavorable international norms. In focusing on this aspect of congressional-executive relationship, I suggest that the democratic oasis of ideas and competing needs that anchored the RTAA, will decidedly guide the trajectory of U.S. trade policy. That the American founders provided an institutional mechanism via which to distill political conduct ultimately profitable to the Republic's longevity, is a signal quality that weaves itself into any facet of Presidential responsibility to keep America prosperous in a changing international political economy.

Article 1, Section 8 of the *Constitution of the United States of America* (Cato 1998) gives Congress the power "to lay and collect Taxes, Duties, Imposts, and

Excises…" Juxtaposed with Sec 8's provision for Congress to "regulate commerce with foreign nations," Congress' delegation of power in 1934 is an instance when the legislature recognized that it can be more advantageous for parochial interests to defer to national interests. The guiding logic is based on responsiveness to constituency. Members of Congress are accountable to their respective constituents and this obligation limits their decisions on trade policy. Conversely, the President represents a national constituency and has more latitude for a liberal trade policy. Attempts by Congress to lower tariffs in 1934 would have encountered strong resistance by protectionist constituents. Typically, in trade legislation, whenever each member of Congress accommodated protectionist interests, reciprocal agreements were made among colleagues and the cumulative effect, occasioned by this practice, described as logrolling, was a trade policy more protectionist than intended. Although congressional delegation of authority, in trade policy, began as early as 1890 (Epstein and O'Halloran 1996), conventional explanation of the RTAA "focuses on how delegating authority to the president eliminated protectionist logrolling and made more salient the costs of tariffs to consumers that would otherwise have been neglected because they were dispersed across electoral districts" (Hiscox 1-2, 1999).

Further assessment will be made of the divided/unified government impact on trade relations, but the RTAA was, undoubtedly, "a profound structural shift in the balance of trade decision making that had an equally profound impact on the substantive outcome of the policy process" (Wittkopf and McCormick 239, 2004). The RTAA, as a simple institutional reform with revolutionary consequences (Hiscox 1999) laid the legislative groundwork for Presidential tariff-cutting authority over decades (Sek 2003)

and extension of the RTAA, 11 times through 1962 (Brainhard and Shapiro 2001), maintained Presidential authority to lower tariffs. Its offshoot, the Trade Expansion Act of 1962, expanded the President's authority to negotiate and facilitated reductions in tariff levels in the Kennedy Round (1964 - 67) of negotiations under the General Agreement on Tariffs and Trade (Sek 2003). The 1974 Trade Act of 1974, which granted the President "fast track authority," the implementation by Congress of trade agreement negotiated by the President without amendment and with limited debate, was designed to address negotiations on tariffs, as well as nontariff barriers. Hence, by constitutional sanction, the RTAA was simultaneously a product of earlier delegation of trade authority and a primer for subsequent trade liberalization legislations.

While constitutionality of the RTAA is moot, it is useful to take a brief historical look at the legal parameters of Congress' responsibility for trade, which can flexibly respond to political imperatives, regardless of the existing congressional-executive power balance. The Tariff Act of 1890, which authorized the President to impose duties on certain imports was passed by a protectionist Republican Congress and approved by the Supreme Court in *Field v. Clark* (Larkin 1937). The protectionist provisions were diluted by a Democratic Congress, in the Tariff Act of 1894, but restored when the Republicans returned to Congress in 1897 (Larkin 1937). However, with their return, the Republicans also granted authority to the President to reduce duties, and Presidential tariff reductions continued until repealed by the Tariff Act of 1909 (Larkin 1937). In 1922, the Fordeney-McCumber Act delegated to the President authority to change tariff rates, as much as fifty percent, according to his judgment (Larkin 1937), and the 1934 amendment to the

Tariff Act of 1930 was a continuation of Congress' practice of utilizing the influence of the Executive in trade relations.

Although the Democratic minority of the 1920s challenged the constitutionality of the delegation of trade authority, the Democrats' fear of excessive delegation subsided with Roosevelt's election. However, litigations were initiated by protectionists, in the Customs Court, during the months following passage of the RTAA, but failed to eliminate the Supreme Court's sharp line of distinction between the Chief Executive's discretionary powers in foreign affairs and those in internal matters, a precedent articulated by Mr. Justice Sutherland in *United States v. Curtiss-Wright Export Corporation* (Larkin 1937).

Technical arguments made by protectionist, that the Senate's treaty function was violated because the agreements under RTAA were tantamount to treaties, were dismissed on the basis that the supreme legislative authority is Congress, and, in revenue matters, the whole Congress is not inferior to the Senate (Larkin 1937). Thus, a bare majority of both houses can lay down a policy and plan as a guideline for the Administration, and should a litigant succeed in getting the Supreme Court to rule the RTAA unconstitutional on mere technicality, Congress could pass a resolution reinstating the tariff levels agreed to under the RTAA (Larkin 1937). In short, legal obstacles can be resolved because of the *elasticity of constitutional provisions* for shared government and the outcome of trade policy decisions, while shaped by the political dictates of any given moment, are best crafted, pursuant to national economic health, within the sound wisdom and creativity of legislative-executive synergy.

It is indisputable that the significance of the congressional-executive relationship, vis-à-vis divided or unified government, cannot sway the elastic constitutional construct, wherein the fluidity of politics expeditiously produces unusual alliances. Nonetheless, academic analysis of the impact of divided or unified government is of tremendous import. Despite scholars' divergent conclusions, a practical understanding of the strength or weaknesses of variables and their influence on theoretical formulations is necessary for an open-minded approach to America's trade policies. One Scholar, David Mayhew, sees no pattern between the control of the executive and the legislature and the delegation of trade authority, and argues that major trade legislation has occurred under both divided and unified government (Karol 2000). While Mayhew's basic observations are reasonable, they provide little understanding of legislators' political motivation to delegate trade authority, thereby obscuring the existence of patterns, unusual or unexpected. Other scholars contend that Congress delegates less authority under divided government, resulting in more protectionist trade policy and less trade liberalization (Epstein and O'Halloran 1996). Partisanship, also informs some theorists' support of the impact of divided government in that the majority party in Congress may constrain the President as part of an overall design to make the Executive responsive to its trade agenda (Lohmann and O'Halloran 1994). These viewpoints are credible within an institutional assessment of legislators' motivations. Consistent with I.M. Destler's argument that legislators deliberately escape the pressures of special interests groups by delegating trade authority to the President (Lohman and O'Halloran 1994), these scholars confine their analysis to congressional electoral maneuverings.

The proposition, however, that divided government naturally impedes liberalization, or consistently impacts trade, is flawed on the basis that protectionism and divided government do not produce a natural fit (Karol 2000). If congressional districts remain unchanged in attitudes toward trade, then legislators from the free-trade party will support Presidents of either party (Karol 2000). The pattern that emerges, when the balance of force in Congress is examined, reveals that Presidents from protectionists' parties gain from divided government because Presidents are more liberal in trade outlook and, while co-partisans of the protectionist party will not support the President, members of the free-trade party will support the President (Karol 2000). Presidents such as Eisenhower, early Nixon, and Clinton gained from divided government (Karol 2000). Conversely, Presidents of free-trade parties, such as Truman, Reagan and G. H.W. Bush, who gained support mainly from co-partisans, are harmed by divided government, according to this theory (Karol 2000). This focus is less simplistic than cultivation of party agenda. According to this nuanced analysis, neither inter-branch relations nor divided government can fully explain the outcome of trade policy. Instead, the make-up of Congress, in terms of number of protectionists and free-traders of either party, is of greater significance.

Relevant to the RTAA, a galvanizing force of America's free trade policy, which cannot be overlooked, is based on "exogenous changes in trade party coalitions that altered the preferences of Republicans and Democrats enough to cement the new system in place" (Hiscox 690, 1999). Changes in international trade norms are indeed important to U.S. policy makers. In the aftermath of the Great Depression, reciprocity in trade agreements with other nations engaged the attention of American exporters and, as I.M.

Destler indicates, the Democrats "shifted the balance of trade politics by engaging the interests of export producers since tariff reductions could now be defended as direct means of winning new markets for American products overseas" (Hiscox 678, 1999). The post World War II boom in America's trade sector, the shift in the Republican Party's base to more export-oriented constituencies and the long-term shift in U.S. comparative advantage in capital-intensive production affected inter-branch politics, as well as the congressional balance of force. It is the evolution of trade dynamics, supported by the evolution of America's constitutionalism which is central to America's trade legislations. It cannot be overemphasized that the mechanism facilitating American creativity to mitigate collision of domestic and international political processes is the evolution of constitutional principles, without which the strain of competing international economic forces, in the future, can dwarf the socio-economic tensions of America's Civil War.

Thus, seen through the prisms of the RTAA, the international system, executive branch politics and congressional-executive relationship provide explanations for the decision to delegate trade authority to the President, as well as highlight long-term impact on U.S. foreign policy. While the international system and executive branch politics' perspectives afford substantive information, it is the executive-congressional relationship, undergirded by an elastic Constitution, which defines the parameters for continued engagement among American policymakers and interest groups in the area of trade. This interaction is complex, not only within the context of divided or unified government, but also as a result of the transformation of the American economy. The endeavor herein is a basic examination of a seminal dimension of America's vibrancy. While a full understanding of the forces, integral in the development of America's trade polices, will

not be easily acquired, I will further examine the relationship between the independent variables, divided and unified government, and the dependent variable, delegation of trade authority to the President.

Perspectives: Unified or Divided Government and Trade

Already, we have gleaned, from the significance of the RTAA, an understanding of various approaches concerning the impact of the federal government's configuration on trade policy. Yet, what is the essence of the political construct? Is it a configuration haphazard in structure or is it more reflective of the genius of America's separation of powers? Unified or undivided government has been a feature of American national politics during the nineteenth century until the mid-twentieth century (Reuss 1996-97).

> Undivided government accounts for the unruffled conservatism of Republican administrations from the Civil War to 1900, the whiff of Republican populism under Theodore Roosevelt, the modest activism of Democrats in Wilson's first term, the triumph of Republican conservatism in the 1920s and of the New Deal in the 1930s and 1940s. (Reuss 2, 1996-97)

Prior to the mid-twentieth century unified government has occurred the majority of the time. The emergence of strong political parties facilitated unified government and "until 1950 divided government occurred only 25 percent of the time" (Reuss 2, 1996-97).

Divided government, a post World War II feature, emerged in the mid-twentieth century and, between 1946 and 1990, "party control of the U.S. government has been formally divided for twenty-six years and unified for eighteen" (Mayhew 637, 1991a). These contrasting periods of party control of the U. S. government has led to the variety of

scholarly opinions on unified versus divided government in general, as well as their implications for U.S. trade policy. The early scholarly view of this question, from the perspective of the impact of divided government on U. S. trade policy, contended that divided government has no discernible impact on trade policy, as major trade legislations occurred under both unified and divided government (Mayhew 1991b), and challenged conventional wisdom. This view is supported by the argument that public policy generally responds to changes in public opinion, so political actors only have a marginal impact on the passage of legislations (Mayhew 1991b).

Other scholars responded to Mayhew's view and formulated their own concepts. As the RTAA example illustrates, divergent views have merit and warrant due analysis. A counter-veiling opinion holds that divided government significantly impacts presidential and congressional policy-making (Lohmann and O'Halloran 1994). Protectionism is argued to be the result of divided government not merely on account of direct legislations, but also by indirect influence, via administrative agencies (Epstein and O' Halloran 1996). The importance of executive branch politics is central to the analysis of these theorists. They contend that in the modern administrative state, much important policy is made not by direct legislation, but by administrative agencies. These agencies are located in the executive branch, but they are overseen by Congress. "One important question to ask, then, is how divided government alters the preferences, institutions, and incentives that shape agency decision making" (374). Their claim that divided government impacts trade policy, through administrative procedures designed by Congress for executive agencies, is a practical and enlightening approach to U. S. trade policy-making. In fact, given the decline of America as a hegemon and the continued

evolution of a new global order, facilitated by the institutions of the international political economy, any indirect influence which significantly affects U. S. trade policy warrants insightful analysis. If administrative procedures can determine the nature of America's trade and a political entity can design procedures that impact the economic fortunes of the United States, then Epstein and O' Halloran's thesis can be extrapolated to affirm the central proposition being advanced in this essay: trade policy outcome is issue dependent and effective harnessing of the Constitutional principles of the United States is essential to America's prosperity and security. Constitutional integrity is the framework which facilitates the requisite executive-legislative synergy to implement trade agreements compatible with market dynamics of the international political economy, yet beneficial to America's national needs. The spirit of effective governance is Constitutional integrity.

The institutional factor which adheres to the rubric of this study should not be viewed as solely national in perspective, because trade among nations is subject to international norms and procedures, which are per se institutions wherein conflicting interests are addressed. Hence, any attempt to challenge current and future American policy-makers vis-à-vis interactions between domestic and international imperatives of trade, constrained within unprecedented global interdependence, can be graciously countenanced and appropriated by capable and astute Americans. Indeed, with the inevitability of increased globalization, comes the need to construct prudent, wholistic, policies, which preserve America's economic and national interests. The significant relationship between the dynamics of trade policies and international economic activities is an undercurrent woven into potential global economic conflicts. "Among scholars of foreign economic policy making, there is now widespread agreement on the importance

of combining international and domestic factors of explanation through a synthesis of structural and systemic, society and state-centered, and ideational approaches" (Shoch 113, 1998).

Parsimony and limited scholastic capacity restrict in-depth evaluations of the ramifications of subtle, indirect influences on America's trade policy, but the motive force which undergirds this academic enquiry compels a response to the necessity to advocate a multifaceted approach to secure America's institutions of Democratic Republicanism. That divided government leads to protectionism in U.S. trade policy, as a result of Congress' configuration of agencies within the executive branch is the major point being made by Epstein and O' Halloran is evident, yet it is a provocative institutional analysis relevant to the trajectory of America's trade policies and the international political economy.

The rhetoric herein is not the province of misguided, unreasoned pessimistic clamor. It does not foresee the effacing of America's grandeur, akin to the demise of Greece and Rome of ancient times. It is a timely and respectful exercise of Constitutional liberty flowing within the stream of competing ideas and deposited within an institution, the foundations of which embraced ennobling aspects of the American Republic, to wit: engagement in the Judeo-Christian enterprise of industry and prosperity on earth; vigorous commitment to peace and goodwill, at home and abroad; judicial improvement of politico-social contradictions; and patient preparation for the long-awaited second Advent. Wise, patriotic observers, with carefully measured awareness, can respond to idiosyncrasies that might contain a grain of truth, sufficient for effective delegation of trade authority to the President, regardless of configuration of the federal government. In

any event, it is the principles of the Constitution of the United States that must be preserved, protected and defended. Ancient wisdom teaches: "…there is no new thing under the sun" (Prov. 1. 9, Holy Bible)). Repetition can be instructive, given the cliché, 'history repeats itself.' The prophetic reaffirmation, in St John 3 vs. 14 –18, of America's dominant spiritual ethos, which declares:

> And as Moses lifted up the serpent in the wilderness, even so must the Son of man be lifted up: That whosoever believeth in him should not perish, but have eternal life. For God so loved the world that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life. For God sent not his Son into the world to condemn the world; but that the world through him might be saved. He that believeth on him is not condemned: but he that believeth not is condemned already, because he hath not believed in the name of the only begotten Son of God. (Holy Bible)

reflects Solomon's observations in Ecclesiastes 3 vs. 14 – 18:

> I know that, whatsoever God doeth, it shall be for ever: nothing can be put to it, nor any thing taken from it, that men should fear before him. That which hath been is now; and that which is to be hath already been; and God requireth that which is past. And moreover I saw under the sun the place of judgment, that wickedness was there; and the place of righteousness, that iniquity was there. I said in mine heart, God shall judge the righteous and the wicked: for there is a time for every purpose and every work. I said in mine heart concerning the estate of the sons of men, that God might manifest them, and that they might see that themselves are beasts. (Holy Bible)

Allegories and metaphors do enhance communication, yet, in the spirit of liberty, and in deference to literalism, when, accordingly, a penultimate political construct, in congruence with the international political economy, manifests the deceptive apocalyptic beast, America's trade policies must be therein streamlined. The awareness herein is crucial. Doomsday prophecies are common, yet an encouraging word in due season is useful. That international trade tensions will increase is simply a fact of global economic competition, driven by new technology. America's ability to effectively engage in trade depends on judicial handling of the latitude of its Constitution. "Trade conflicts are a reflection of converging, not diverging, political relations" (Nau 101, 1995) among nations and, although trade is a significant facet of America's national security, policymakers must not "advocate a drastic reconfiguration of America's security interests that ruptures America's relations with other democratic societies" (Nau 101, 1995). It is of utmost importance for civic-minded Americans to appreciate that a multidiscipline approach by American scholars, (secular and sectarian) and policymakers can guide the United States through inevitable trade conflicts and future challenges, including the apocalyptic time of trouble that will engulf all nations, as globalization progresses.

Realistically, American Constitutionalism can facilitate the right of the inhabitants of the United States to freely engage in trade within a changing global economy, regardless of international political configurations, while simultaneously executing the Sovereign virtues bestowed by the Constitution to: "…provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our posterity…" (Cato 1998).

Helen V. Milner and B. Peter Rosendorff provide another perspective of the impact of divided government on international trade negotiations. Their analysis is a relative of the legislative-executive dialectic. Specifically, they examine the influence of elections on government configuration and trade agreements. Arguing that the uncertainty of election outcomes restricts the chief executive's ability to negotiate trade agreements, they further claim that under divided government, the uncertainty of elections "makes divided government more negative for cooperation" (140) and "more divisions in government before an election make agreements more protectionist" (140). Thus, by diminishing the chances for the ratification of trade negotiations, divided government, they contend, is less efficient than unified government. The stifling of U. S. trade liberalization is a constant feature of the critique of divided government and the focus on the institution of elections highlights the importance of Constitutional provisions. In America, election cycles are predictable, thus trade negotiations can slow down in anticipation of an upcoming election and its outcome. Lobbyists in the behalf of foreign interests, as well as foreign negotiators, are often conversant with the trade preferences of important legislators. Although Presidents are more inclined toward free trade, given the proposition that divided government is more protectionist than unified government, the outcome of Presidential and Congressional elections seems an important determinant of U. S. trade policies.

In an effort to address the negative impact of divided government, or gridlock, on the effectiveness of government, members of the 1981 Committee on the Constitutional System, proposed a two-part constitutional amendment:

> 1. Adopt four-year terms for House members and eight-year terms for members of the Senate, with elections in presidential years for all House members and half the senators…With all the House and one-half the Senate elected at the same time as the President, the chances of cooperation between the two branches would seem to be improved…
>
> 2. The second part of the amendment would empower either the Congress or the President, in the case of gridlock, to call for prompt presidential and congressional elections for new, full terms… (Reuss 3, 1996-97).

This proposal has not been accepted and, although the 1987 committee report held the view that "our hope that Congress will soon initiate a study to determine whether the Constitution in its present form can provide effective, accountable government for a third century" (Reuss 4, 1996-97), such a change is unlikely. Divided government is an acceptable way of life for the American electorate. Its braking-effect on the federal government seems to be a desirable aspect of American politics (Reuss 1996-97). In fact,

> …the American people seem to want divided government at times like the present, when the great domestic issues of increasing inequality of incomes and wealth, health care, Medicare, and Social Security, and the great foreign policy issues of our role as a superpower have not yet developed party-wide solutions by either the Republicans or the Democrats. To prevent either from going too far in this era of government-without-a-mandate, the brake of divided government may not at all be bad. (Reuss 5, 1996-97)

The acceptance of divided government by Americans is significant for U. S. trade policy. Despite Milner and Rosendorff's accurate analysis on the effect of elections, during

divided government, on trade negotiations, consensus on the best trade policy for America is in flux. Whereas, free trade is beneficial for all nations and its benefits are acknowledged by most Americans, there are sectional winners and losers of trade agreements. If divided government inhibits trade liberalization and Americans accept the compromise of divided government, then the continued transformation of global trading, with new and efficient competitors, might not necessarily ensnare American policy-makers into agreements that are not in the best interests of American consumers and workers. Since the 1980's, protectionist legislations that passed Congress responded to "demands for fair trade" (Oatley 246, 2006) from Americans. The challenge, therefore, will be less the effect of the configuration of the federal government on Presidential trade authority and more the facilitating of the "demands" and wishes of the American people, while simultaneously maintaining American democracy and global influence:

> Trade policy is both an expression of a country's own domestic society and an instrument for safeguarding the security of that society. America practices freer trade because its domestic society favors consumers and freedom of choice and because open international markets add to transparency and tolerance in foreign relations. How far can America go in compromising its commitment to freer trade without restricting freedom at home and reducing tolerance abroad? (Nau, 98, 1995)

The crux of the issue is that strategic and effective trade policy for America is issue driven and devolves on the joint constitutional responsibilities of the President and Congress, whether or not the federal government is unified or divided. The Constitution's Framers did not anticipate party formation, yet their flexible guide for governance transcends political dichotomies. Wherein "trade policy becomes increasingly hostage to

special interests that care little about national security or, for that matter, comprehensive national economic interest" (Nau 6, 1995) great care must be made, by policy makers who hold the nation's best interests at heart, to proactively craft trade policies that foster prosperity and security.

Essentially, global trade is merely reflective of mankind's accomplishments in areas such as technology and civility. Unfortunately, greed is a vice that attends the acquisition of material wealth. Hence, America's trade policy must reflect the desires and best interests of the American people, and, accordingly, compromises with foreign competitors might at times be required. America's future, as a constitutional Republic is definitely safeguarded within the framework of separation of powers and the benefits of trade policy are vested in the interaction between the peoples' representatives and the nation's chief executive, pursuant to issue dynamics. Indeed, it is in the capacity of delegated officials, or trustees of the people's best interests, that Congress can accordingly delegate, or not delegate, trade authority to the President, whether or not the government is divided or unified.

An interesting perspective on gridlock, an alternate description of divided government, is presented by Sarah Binder (1999). Examining the issue via the legislative-executive prism, she emphasizes that intrabranch rivalry is most crucial in causing gridlock. Binder identifies bicameralism, the division of Congress into the House and the Senate, as the principal cause of intrabranch disagreement. This is an important consideration. The House of Representatives is a large and diverse body and its policy interests will be less nationally oriented and more constituency-based. The Senate is smaller body, collegial in nature, with a more conservative and national outlook than the

House. Though partisan and electoral factors shape the nature of divided government, intrabranch rivalry will occur under both divided and unified government. Binder argues that: “treating bicameral bodies as if they were unicameral risks overlooking important differences. House-Senate differences, not simply legislative-executive conflicts, have structured patterns of giridlock in postwar American politics” (530). The implications of interbranch rivalry for trade policy can be seen in the different nature of representation of both branches. The House, with its smaller constituency, focuses on parochial interests and is more protectionist in policy formulation, while the Senate, with its larger constituency, is more likely to support trade liberalization. This dynamic exists under both unified and divided government. Given Binder’s acknowledgement that separation of power and bicameralism were central to the beliefs about the proper construction of political institutions in 1787, the focus on the effect of the configuration of the federal government on the delegation of trade authority to the President, must appreciate the impact that trade issues have on representative politics.

David Karol’s **Divided Government and U.S. Trade Policy: Much Ado About Nothing?** reiterates the proposition that overemphasis on the effect of divided government on U.S. trade policy is needless. Karol’s view, previously referenced, is an appropriate paradigm by which to advance the issue dynamics thesis, central to this paper. In presenting his case that generalizations about divided government’s effect on U.S. trade are unfounded, Karol makes three assumptions:

1. Political parties differ in the extent to which they support trade liberalization.
2. Postwar presidents favor freer trade (presidential liberalism), so delegation of authority to them leads to liberalization.

3. Members of Congress know that granting authority to the president results in freer trade. Consequently, their support for presidential authority is a function of their interest in trade liberalization. (826)

Karol refutes the assumptions that divided government leads to protectionism and argues that divided government need not reduce delegation of trade authority to the President and can increase it under certain circumstances. Karol argues that congressional parties differ on trade, which affects the legislative process and, by presenting permutations of government configurations, such as unified protectionist government, unified liberal government, divided protectionist government and divided liberal government, Karol also shows that divided government can be "sticky" (829) and prevent much change from occurring. Yet, given the extremes of protectionism, under one form of unified government and of free trade under the other, divided government's moderating effects are not impediments, but benign.

The claim that divided government inhibits trade liberalization is further weakened by Presidential liberalism, asserts Karol. While acknowledging the incorporation of Presidential liberalism in other studies on the effect of divided government, he critiques their inadequacy. Regardless of party affiliation, postwar Presidents are free traders and supported by congressional liberals on trade issues. In highlighting that "divided government will increase delegation for a president from the protectionist party as liberals replace the president's recalcitrant co-partisans" (829), Karol emphasizes the need for examining the presidential liberalism variable. He rejects Milner and Rosendorff's argument that "divided government…occurs when the preferences of the executive and legislators are far apart" (829). In other words, a

President from a protectionist party and a congress controlled by trade liberals are not automatically estranged in the trade policy making process.

That trade liberalization, and Presidents from a protectionist party can benefit from divided government, seriously wounds contrary argument is the result of failure to carefully examine all available factors. In fact, Karol posits that the "fatal flaw in theories linking divided government and protectionism is their failure to connect party affiliation to trade policy preferences among legislators" (830). Karol's analysis reflects the extent to which constituency imperatives shape the contours of divided government and make it less easy to articulate an established principle concerning the phenomenon of divided government. Karol aptly states:

> For divided government to reduce delegation, congressional parties must reverse relative positions depending on the president's party. For this model to be credible, empirical inquiry must show not only that legislators defer to "their" presidents but also that this tendency outweighs any "party constituency effect" driving legislators to support protection or free trade. (831).

It is not that scholars such as Lohmann and O'Halloran (1994) and Milner (1997) do not discuss partisanship; it is their failure to make the connection that assails their efforts. Karol also contends that the premise that parties do not affect trade policy cannot be supported empirically. He provides a compelling example of representation in the Senate. A Democratic and a Republican senator from the same state frequently hold different trade policy positions, which Karol attributes to a difference in "constituency" (831) representation. Unions are more inclined to support Democrats, while "export-oriented corporate and agricultural interests" (831) are more inclined to support

Republicans. Regardless of government configuration, partisan interaction in trade policy is indeed vital to the type of policy enacted: “Trade policy is one of the most important and contentious issues faced by the modern state. In addition to its impact on national economic welfare, trade policy is highly distributive in nature, and thus often controversial” (Hankla 1134, 2006).

Karol’s strong conclusion that “assertions that divided government impedes liberalization, or indeed has any consistent effect on trade policy, are groundless,” (841) fortifies the argument for issue dynamics. The interaction between institutional and constituency-based preferences, highlighted by Karol, is crucial for an appreciation of the main issue. Karol aptly concludes: “Advances in explaining policy outcomes will come not from focusing on interbranch relations and divided government but from more closely examining the changing balance of forces in Congress and the country” (842). It is from “the changing balance of forces” that all else exudes and the signal dynamic of America’s political life is the ongoing adaptation of the Constitutional Republic to emerging challenges.

The Reagan Presidency

President Ronald Reagan took office in 1980, under divided government and the Reagan Presidency remained an era of divided government. While, the Republicans controlled the White House, under Reagan, the Democrats controlled both branches of Congress. During Reagan’s second term, Congress passed the Omnibus Trade and Competitiveness Act of 1988. The passage of such important trade legislation under divided government mutes the claim that divided government hinders delegation of trade

authority to the President. Yet, it still might be argued that the protectionist elements of the Act prove that divided government hinders trade liberalization. A closer examination of the circumstance surrounding the origin and intent of the Act reveals that claims about the negative effect of divided government on trade liberalization are seriously flawed. The prisms of the international system, executive branch politics and legislative-executive relations are all reflected herein. The years being considered under the Reagan Presidency are 1987-1988.

In April 1987, a trade dispute developed between Japan and the United States. Allegedly, the Toshiba Machine Company, along with Kongsberg Vaapenfabrik, a company from Norway, sold submarine technology to the Soviet Union, in violation of export rules (Rothgeb 2001). This sale enhanced the capabilities of Soviet submarines and made it difficult for America to track the Soviet fleet. The Japanese government denied that the Toshiba Company violated export rules. The situation developed when Congress was considering a new trade bill delegating authority to President Reagan to increase trade liberalization. This trade debacle also developed at a time when the U.S. was experiencing an increase in trade deficit and trade policy had public salience. Some members of Congress desired other nations to reduce their trade surplus with the U.S. and many members of Congress were angry with the discovery of Japan's trade impropriety. Swift response by Congress resulted in an amendment to the trade bill that banned Toshiba and Kongsberg products from America for a period of two to five years. However, the bill was not passed that year and, in 1988, with the passage of the Omnibus Trade and Competitiveness Act, the penalty was reduced to three years in which the U.S. government could not purchase products from these companies.

The premise that divided government impedes trade liberalization can be advanced on account of two provisions of the Omnibus Trade and Competitiveness Act. Section 301 of the 1974 Trade Act was rewritten and expanded with Super 301 and Special 301, two new provisions (Rothgeb 2001). Under Super 301, U.S. trade representatives should establish market priorities for 1989 and 1990 and identify violators and violations of fair trade, which must be rectified by negotiations within three years. (Rothgeb 2001). Special 301 required U.S. trade representatives to identify countries violating the intellectual property rights of American exporters and conduct negotiations to resolve the problem (Rothgeb 2001). Retaliatory measures could be taken by the President under both provisions if negotiations failed to resolve the problems (Rothgeb 2001). The protectionist nature of these two provisions seems to give credence to the claim concerning the negative effect of divided government on trade liberalization. However, the mitigating effect of the Omnibus Trade and Competitiveness Act 1988, on the more stringent penalties on Toshiba and Kongsberg, serves to preserve, rather than to restrict, free trade. A previous amendment by Democratic Rep. Richard Gephardt, to reduce trade surpluses, was also eliminated by the Omnibus and Trade Competitiveness Act of 1988. Moreover, far from being protectionist, the Act was actually an aggressive effort to promote free trade, in that America was using retaliation to convince other countries to reduce their own trade barriers (Shoch 2001). Even before the Toshiba debacle “Congress was considering a new trade bill, intended to give the president more power to pry open foreign markets and to eliminate unfair trade” (Rothgeb 190, 2001).

Undoubtedly, it can be accepted that the Omnibus Trade and Competitiveness Act of 1988 effectively refutes the contention that divided government is bad for trade

liberalization. In fact, the "final bill emerged as a bipartisan compromise, both between the congressional parties and between the Reagan and the Democratic congressional leadership" (Shoch 128, 1998). Repetition, can be an insightful theme, thus the "changing balance of forces," (Karol 2000) by which history repeats itself, provide irrefutable evidence that academic insight into the trends of divided government must be informed by issue dynamics which facilitate unpredictable politicking in the shared interests of political actors and the best interests of the Republic. The Reagan case adequately substantiates the theory that policy outcome is more issue dependent than configuration dependent. Public salience of trade issues influenced the interaction between Congress and the President and produced a reasonable trade policy outcome under divided government.

In sum, the Reagan example establishes that divided government does not necessarily inhibit trade liberalization. Economic consequences of free trade, such as the rising trade deficit and Japan's growing economic strength engaged lawmakers' attention and produced a nuanced bill that, in effect, promoted trade liberalization. Trade issues and not configuration of government provided the driving force.

The Clinton Presidency

President Bill Clinton took office in 1992 under unified government, yet only his first two years in office were under unified government. In 1994, the Republicans took control of Congress. During President Clinton's first two years, the North American Free Trade Agreement (NAFTA) was passed. Although NAFTA was successfully passed, in 1993, the premise that unified government facilitates trade liberalization was not

fortified. The debates surrounding NAFTA were intense and President Clinton faced huge opposition from his own partisans. The prisms of the international system, executive branch politics and legislative-executive relations are also reflected herein. The years being considered under the Clinton Presidency are 1992-1993.

NAFTA originated under divided government, during the Republican Presidency of George H.W. Bush. In 1991, President Bush informed Congress of his intention to negotiate a regional trade agreement with Mexico and Canada (Shoch 2000). Multinational corporations, competitive agricultural exporters and high technology and other manufacturing exporters favored NAFTA, while opponents of NAFTA were labor-intensive, import-competing agricultural and industrial interests (Shoch 2000). The bill went through both the House and the Senate and was completed in August 1992 (Shoch 2000). In November 1992, a new type of Democrat, free-trading, Governor Bill Clinton, became President. An important concern of labor regarding NAFTA was a guarantee for effective enforcement of labor and environmental laws and supporters of labor hoped that a Democratic Presidency, with a new Congress, under a unified government, would not support NAFTA. President Clinton became embroiled in conflict between business and labor, with the AFL-CIO, strong supporters of the Democratic Party, mobilizing heavily against NAFTA. An unusual set of alliance emerged against NAFTA, including: environmentalists, human rights activists, Ross Perot, Pat Buchanan, Jesse Jackson and Ralph Nader (Shoch 2000). Even influential Democratic leaders such as, House Majority Leader Richard Gephardt (D-MO) and House Whip David Bonior (D-MI) opposed President Clinton’s support for NAFTA.

Initially, Clinton was hesitant about being fully engaged in supporting NAFTA. Eventually, however, he gave full support to implementing NAFTA. His commitment caused the pro-NAFTA forces to rally together. Business coalitions, media elites, Republican Congressional leadership and moderate and free traders of the Democratic Leadership Council convinced Congress of the importance of the legislation (Shoch 2000). In November 1993, NAFTA passed the House and Senate by votes of 234 - 200 and 61 - 38, respectively and the President singed the legislation. (Shoch 2000)

NAFTA was a significant legislation in trade liberalization and also important in establishing that claims about unified or divided government's effect on trade can be simplistic. The details of NAFTA were structured under the divided government of President Bush. Unified government's hypothesis required the Democrats to support NAFTA and delegate authority to the President. However, variables of partisan preferences and ideology demonstrate that there are no natural fits relative to configurations of the federal government and policy outcomes in general, and trade policy in particular. Although 40% of House Democrats voted in favor of NAFTA (Shoch 2006), more than three-quarters of House Republicans voted in favor (Shoch 2000). Clearly, policy outcome is more issue dependent than configuration dependent. Significantly, it is difficult to predict the outcome of an initiative merely on the basis of whether or not the government is unified or divided. Indeed, the NAFTA vote was a big win for President Clinton – "the biggest of his presidency" (I.M. Destler 228, 1995), yet it was made possible, under unified government, not by overwhelming support from his congressional partisans, but by support from Republicans.

The passage of NAFTA, despite unified government, instead of because of unified government, effectively supports the hypothesis that policy outcome is more issue dependent than configuration dependent. The importance of NAFTA's irony resides in situational dynamics that can never be effectively predicted in politics. NAFTA's intersection of aspirations vis-à-vis domestic and national interests is a microcosm of globalization's challenges and emphasizes the tension inherent in the unfolding of a New World Order, wherein principles of representation must support issue dynamics' cogency.

In sum, the Clinton case proves that unified government does not naturally produce trade liberalization. Opposition by members of Clinton's own party demonstrates the significance of issue dynamics. Labor's influence on Democrats impeded NAFTA's passage. Thus, even under unified government, Congressmen are influenced by the policy preferences of their constituents and issues are the main determinant of policy formation.

Conclusion

In this paper I have discussed America's interaction with free trade, using the RTAA as a focal point to initiate discussion. I examined some scholars' opinions of the effect of the independent variables, unified and divided government, on the dependent variable, delegation of trade authority to the President. In support of the thesis that it is the dynamics of trade issues which provide more meaningful insight into the federal government's design of trade policies, I proffered a particular theme: although history repeats itself, the past provides a guide for the future. The passage of two trade bills, under the Reagan and Clinton Presidencies, were also used as case studies to establish the indeterminacy of assertions concerning effects of the independent variables.

The purpose of this study is a basic evaluation of the dynamics of the configuration of the federal government vis-à-vis America's trade policies. Its guiding logic is neither jingoist nor unduly alarmist. It acknowledges that the lessons of history can guide the inevitable transformation of America's global supremacy. Interwoven in its academic objective is a spiritual salience, a subset of issue perspectives, perhaps best expressed by more competent researchers.

While the issue driven importance of trade policies is clear, evaluation of the principles of America's Constitutionalism deserve latitude. Although the Constitution sets the stage for inter branch politics by giving Congress control over trade and the President control over foreign policy, modern trade policy is not addressed by the document. In fact, it is true that Congress and the President have been creative vis-à-vis separation of powers in formulating trade policies and over the last 225 years trade policy has been dynamic under the same Constitution. Yet, it is the pragmatic spirit of innovative thinking that the Framers applied to the framing of the Constitution which guides modern trade policies. While this paper is limited in scope and scholastic range, I hope that the reader's mind has been sufficiently engaged to appreciate the responsibility of the federal government and the American citizenry to effectively engage in daily interactions with the benefits of the lessons of history and, as an element of a work blended with America's dominant ethos, hope in the good news for the future. Trade policies affect all Americans and the interaction among nations in an era of unprecedented globalization, and intricate trade issues, makes relevant an academic exercise flavored with the sacred awareness that, indeed, "we know in part…" (1 Cor. 13 v. 9, Holy Bible).

Thus, the constitutional framework of dynamic and adaptable principles, which the American founders established, though imperfect, provides a visionary structure -- *a legacy of sorts for future generations* -- which can facilitate the desires of some while protecting the rights of others. Freedom to trade is as important as freedom of speech and religion. America's political synergy will be tested by changing winds of time, but, as an eagle resiliently soars above contrary winds, so it is, by God's grace, and prudent implementation of constitutional principles, that the American Republic will be resilient.

In essence, America's Constitutionalism is structured on established principles to guide policymakers in uncharted territory and provides elasticity to preserve the Republic and innovatively accommodate volatile trade issues. Herein is a relevant view:

> To expect the Constitution to guide decision making in all situations is impossibly naïve. By the same token, to suggest that all actions taken by government officials in emergencies not traceable to constitutional text are simply actions taken outside the law, is more than a little dangerous. The Constitution as writ large was designed to guide the government in the normal course of policy making as well as in the breach. (Franklin 137, 1991)

Clearly, configuration of the federal government is not an overarching determinant of America's trade policy. Pursuant to issue dynamics, even when Americans choose to put their trust in God, during challenges of biblical proportions, political participants can also elect to say:

> In the end we have to put our trust in the rough-and-tumble of politics. To ensure that this rough-and-tumble would not create too radical a result, the framers created a political balance which remains vital to this day…The adherence to and nurturing

> of that system through the protection of the process of representation and the promotion of the principle of process is the surest path to constitutional intent. (Franklin 138, 1991)

Various facets of trade will continue to affect daily living, and, until the Creator dispenses with imperfect political constructs, we must continue to make life better for our loved ones and ourselves. Undoubtedly, it is difficult to see beyond tomorrow's dawn, yet, if the Messianic promise holds true for a better world, then changes in trade politics are simply part of the prelude. Even so, despite the complexity of trade issues and regardless of public policy challenges, within the principles of American Constitutionalism exists a significant opportunity to access God's grace for future generations.

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