

# THE HORACE MANN HISTORY JOURNAL

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Spencer Cohen

Daniel Elkind

Gabriel Grand

Michelle Kim

Caroline Kuritzkes

Colin Mark

Jacob Gladysz-Morawski

Nathan Raab

Jake Swinghamer

# *The Horace Mann*

History Journal

*Volume II    Issue I    February 2014*

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## Letter From the Editor

Welcome to Volume II of *The Horace Mann History Journal*! The primary intention of the history journal is to provide a forum in which members of the Horace Mann student body are able to share their works in history. The wide range of historical topics is a true testament to the diverse interests and passions of students at Horace Mann.

I would like to thank our writers for their exceptional contributions. The production of this publication would not have been possible without their remarkable insights into historical topics. Our writers have provided the impetus for further exploration of historical subject matters through thoughtful and rational discourse. Additionally, the editorial staff and associate editors have worked to ensure that each paper has articulated arguments and that the layout of each paper is in place. Our faculty advisor, Mr. Bienstock, has put in a great deal of time to develop the publication. He has been incredible throughout the process, and *The Horace Mann History Journal* would not be the same without his contribution.

Lastly, I would like to thank Dr. Milkes and the members of the history department for encouraging the production of the *History Journal*. Without actively engaging students in developing their own ideas on particular historical topics, the publication would not be in existence. I am extremely grateful for the opportunity to share these historical works with the members of the Horace Mann student body, and I am proud to present the first issue of *The Horace Mann History Journal*. Enjoy the issue.

Sincerely,



Sahej Suri  
Editor-in-Chief

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# The New York Times, the Holocaust, and a Conflict of Jewish Identity, 1939-1945

*Written by Gabriel Grand, winner of the Robert A. Caro Award for Literary Excellence.*

## I. All the News Unfit for Print How *The New York Times* Quietly Obscured the Holocaust

November 26, 1940. To the average American, sitting at the breakfast table and reading the morning edition of *The New York Times*, it was a typical day in the news-- if any day could be considered typical with the storm clouds of World War II looming to the East. Although it was just over a year until the United States would officially join the worldwide conflict, the country was already brimming with patriotism, eager to hear the latest news of the war. On the front page, the Greeks were making progress against Italian forces in Southern Albania, the British city of Bristol had just fallen victim to a German bombing run, and the first wave of Army recruits was off to training camps throughout the nation.<sup>1</sup> Inside the newspaper, the upcoming Army- Navy football game had sold out Municipal Stadium in Philadelphia, while the Broadway play, "The Corn is Green," starring Ethel Barrymore, was starting its run at the National

1 A. C. Sedgwick, "Greeks Closing In; Fall of Second Vital Fascist Center in Albania Near," *New York Times*, November 26, 1940; Percival Knauth, "Wide Bristol Ruin Pictured in Berlin," *NYT*, November 26, 1940; "1,937 Trainees Go to Camp in Nation; 17% Rejected Here," *NYT*, November 26, 1940.

Theater.<sup>2</sup> Only a particularly committed reader would have noticed on page eight, tucked away below the fold, the headline "Walls Will Enclose Warsaw Jews Today; 500,000 Begin 'New Life' in Nazi-Built Ghetto."<sup>3</sup> The following article, written not by a *New York Times* reporter but by the Associated Press, revealed that Warsaw's Jews had been "required to take up residence in the ghetto" by the Nazis, "with as many as seven persons living in one room in some buildings."<sup>4</sup> This ten- sentence piece was easy to miss among the dozen other stories that appeared on page eight that day.

The placement of the Warsaw ghetto story was not an isolated incident. Instead, it is representative of the way in which the *New York Times* regularly treated stories about Jewish suffering during the Holocaust as second-tier news, choosing to place them not on the front page, but rather to allow them to be buried on the inside pages of the newspaper among the flood of other wartime articles. Many historians, with a few notable exceptions, are content to excuse the *Times* and other American media by insisting that information about Hitler's Final Solution was not available during World War II, that it was unreliable, or that newspapers simply were not able to see the trend of Jewish persecution until it was too late.<sup>5</sup> Yet the *New York Times* alone published 1,186 articles that dealt with the Holocaust between September 1939 and May 1945.<sup>6</sup> The real issue is not that there was a lack of information, or even that the information was suspected to be inaccurate and therefore was not published, but that only twenty-six of these stories appeared on the front page of the *Times*, and all but six obscured the fact that the primary victims were Jews.<sup>7</sup>

The main reason that the *New York Times* failed to adequately draw attention to the Holocaust is directly related to the newspaper's origins and lineage. At its core, the *Times* was created, published, and owned by a family of German Jewish descent whose members wanted to both cultivate and preserve the perception that the newspaper was unbiased and to assimilate into American society. In doing so, they often avoided publishing stories that were too favorable to Jews so that the *Times* would never be seen as a "Jewish newspaper." As a result, between 1939 and 1945, *The New York Times* consistently downplayed Jewish suffering during the Holocaust in an effort to distance itself from its Jewish heritage and to maintain an

2 Allison Danzig, "Service Rivalry, Bowl and Title Races Keep Football Flame Alive; Army-Navy Clash Still a Big Show," *New York Times*, November 26, 1940.; "The Corn is Green Will Open Tonight," *NYT*, November 26, 1940

3 Associated Press, "Walls Will Enclose Warsaw Jews Today," *New York Times*, November 26, 1940.

4 AP, "Walls Will Enclose Warsaw Jews Today."

5 See Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin, 1999); William D. Rubinstein, *The Myth of Rescue: Why the Democracies Could Not Have Saved More Jews from the Nazis* (New York: Routledge, 1997).

6 Laurel Leff, *Buried by The Times: The Holocaust and America's Most Important Newspaper*, reprint ed. (Cambridge: Cambridge University Press, 2005), 2.

7 *Ibid*, 2-3.

image of impartiality in the eyes of the American public.

In examining how the Times obscured news of the Holocaust, it is important to understand the crucial role that the front page played (and continues to play) in the dissemination of information for a newspaper. It is the goal of a newspaper to publish headlines that catch a reader's attention. As a result, it has always been the practice of newspaper editors to pay special attention to what appears on each edition's front page, a practice to which the Times' staff during the late 1930's and 40's was well accustomed. Max Frankel, a former executive editor at the Times, said the paper "took great pride in ranking the importance of events each morning."<sup>8</sup> Aside from helping sell newspapers, the front page was used to show the reader which news stories the New York Times deemed important. Between 1937 and 1945, the Times published over 23,000 stories on its front pages, averaging between twelve and fifteen per day.<sup>9</sup> In the six years between the Nazi invasion of Poland and the opening of the Nuremberg Trials, in only six instances did the Times' front page mention Jews as Hitler's central target for total annihilation.<sup>10</sup> Although there are several other ways in which the Times underplayed the Holocaust which will be discussed later, the failure to emphasize Jewish suffering on the front page set the tone for the newspaper's Holocaust coverage throughout the war. As Frankel concludes, "the ordinary reader of [the Times'] pages could hardly be blamed for failing to comprehend the enormity of the Nazis' crime."<sup>11</sup>

One of the primary arguments which justifies the Times' lack of front page Holocaust stories is that information concerning the murder and mistreatment of European Jews was not available and/or was mistrusted by the newspaper's staff. Laurel Leff, leading historian of the New York Times' reporting during the Holocaust, writes, "World War I's fake atrocity stories bred skepticism about death factories and mass gassings, especially among hard-bitten editors who had been young journalists during the war two decades earlier."<sup>12</sup> Coupled with the extensive use of atrocity stories as propaganda in the media during the recently terminated Spanish- American War, this abundance of false horror stories led Time magazine to dub news of civilian killings from Ger-

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8 Max Frankel, "150th Anniversary: 1851-2001: Turning Away from the Holocaust," *New York Times*, November 14, 2001, late, final edition, <http://www.nytimes.com/2001/11/14/news/150thanniversary-1851-2001-turning-away-from-the-holocaust.html?pagewanted=all>.

9 Leff, 6.

10 Max Frankel, "Turning Away From the Holocaust: The New York Times," in *Why Didn't the Press Shout?: American and International Journalism During the Holocaust*, ed. Robert Moses Shapiro (New York: Yeshiva University Press, 2003), 80.

11 Ibid.

12 Leff, 6.

man-occupied Poland in 1939 the "atrocity story of the week."<sup>13</sup> Yet during World War II, the New York Times published multiple stories about the Holocaust which stated that the information they contained was unconfirmed. This implies that in the hundreds of other articles which it published inside its pages, journalists and editors did not significantly doubt the validity of their facts, most of which proved to be accurate and were confirmed later by the State Department, the United Nations, the president, or other reporters. In fact, the Times' most prominent non-front page Holocaust story of 1943, an account of the slaughter of 50,000 Kiev Jews on page three, was published with the disclaimer, "On the basis of what we saw it is impossible for this correspondent to judge the truth or falsity of the story told to us."<sup>14</sup> Although the true gravity of the Holocaust would not sink in for many Americans until the end of World War II, it is clear that the Times did not lack information about the Holocaust. Furthermore, whether or not this information was in doubt, the newspaper was willing to publish Holocaust stories, so long as they were not placed conspicuously.

In 1942, as some of the first reports claiming the deaths of millions of Jews were reaching the American press, the New York Times placed Holocaust stories on its inside pages just as other newspapers featured them, all the while reaffirming the credibility of its sources. On June 27, the Times ran a United Press article in a page five column detailing the separate shootings of five Polish natives who had struck back after being physically attacked by Germans in Poland. Attached directly below the story appeared the following three sentences:

According to an announcement of the Polish Government in London, 700,000 Jews were slain by the Nazis in Poland. The report was broadcast by the British Broadcasting Corporation and was recorded by the Columbia Broadcasting System in New York yesterday. "To accomplish this, probably the greatest mass slaughter in history, every death-dealing method was employed-- machine-gun bullets, hand grenades, gas chambers, concentration camps, whipping, torture instruments and starvation," the Polish announcement said.<sup>15</sup>

Three days later, on June 30, the Times ran a similar story, again by the United Press, which reported that "the Germans have massacred more than 1,000,000 Jews since the war began in carrying out Adolph Hitler's proclaimed policy of exterminating the people,' spokesmen for the World Jewish Congress charged today."<sup>16</sup> The article, which quoted a report that "about one-

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13 Deborah E. Lipstadt, *Beyond Belief: The American Press And The Coming Of The Holocaust, 1933-1945*, paperback ed. (1986; repr., New York: Free Press, 1993), 137.

14 Leff, 172.

15 United Press, "(title unknown)," *New York Times*, June 27, 1942.

16 United Press, "1,000,000 Jews Slain by Nazis, Report Says," *New York Times*, June 30, 1942.

sixth of the pre-war Jewish population in Europe... had been wiped out in less than three years” and that “Jews, deported en masse to Central Poland from Germany, Austria, Czecheoslovakia and the Netherlands, were being shot by firing squads at the rate of 1,000 daily,” appeared on page seven.<sup>17</sup> In attempting to explain why a story revealing the death of one million Jews was so obscured by the Times, historian Walter Lacquer writes that because the editors were not certain of the information in the story, “they opted for a compromise: to publish, but not in a conspicuous place.”<sup>18</sup> Yet in other instances, the New York Times published stories on the front page which it openly acknowledged could not be confirmed.<sup>19</sup>

The Times demonstrated remarkable reluctance to feature some of the first reliable Holocaust reports in 1942 even as other newspapers and organizations vigorously affirmed their validity. The information contained in the two Times articles actually originated from a report that a Polish Jewish Socialist organization called the Bund had sent to the Polish government in exile in London.<sup>20</sup> In contrast to the Times’ two short, inside stories which were not reported or written by Times reporters but rather by the United Press, the Herald Tribune published a much longer story about the Bund report which it ran on its front page on June 30.<sup>21</sup> The Times had little reason to doubt its sources, which included CBS, the BBC, the World Jewish Congress and the Polish Government in London. It even ran third a story about the Bund report two days later on July 2 in which it quoted Polish National Council representative Szmuel Zygielbojm in saying that the sources for the Bund report were “absolutely reliable, although the story seemed too terrible and the atrocities too inhumane to be true.”<sup>22</sup> In the article, which was placed on page six, Zygielbojm made a plea for immediate action on the part of the Allies, which he called “the only way to save millions of Jews from certain destruction.”<sup>23</sup> Zygielbojm committed suicide the following year, having written in a suicide note, “Perhaps by my death I shall contribute to destroying the indifference of those who are able and should act in order to save now, maybe at the last moment, this handful

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17 United Press, “1,000,000 Jews Slain by Nazis, Report Says.”

18 Leff, 4.

19 See Leff, 4 footnote 4.

20 Leff, 138.

21 Ibid, 140.

22 *New York Times*, July 2, 1942. The Bund Report went on to list the numbers of thousands of Jews killed at certain locations in Poland. Upon receiving the report in London, the Polish government in-exile passed the information on to the BBC, which broadcast the information on radio on June 2, 1942. Historian Martin Gilbert writes that “The details given in the Bund Report were precise, and, as we now know, accurate.”

23 London Bureau, “Allies Are Urged to Execute Nazis,” *The New York Times*, July 2, 1942.

of Polish Jews who are still alive from certain annihilation.”<sup>24</sup> The Times ran a story about his death on page seven.

Still others argue that the flood of military and political news during World War II made the Holocaust difficult to separate from the deaths of millions of Allied and American soldiers throughout the war in the minds of the Times’ editors. It is true that the New York Times devoted at least several of its twelve to fifteen front page articles per day to war news, going so far as to cut advertisements to make room for more wartime stories (a fact that the newspaper proudly announced on several occasions).<sup>25</sup> But there were countless instances in which the New York Times relegated Holocaust stories to the inside pages while the front page contained news that was seemingly trivial. On September 12, 1939, the Times ran a story on a “special report” from the German News Bureau in Poland revealing that “‘a solution of the Jewish problem’ in Poland is on the German-Polish agenda.” The story, which appeared on page five, warned that the “implications... were it carried out on the German model, are ominous,” and observed that it was hard to see how the “removal” of Jews would alter the situation “without their extermination.”<sup>26</sup> Meanwhile, a story about a retired steel manufacturer’s decision to continue living in Switzerland in protest of federal tax policies appeared on the front page.<sup>27</sup> In fact, war news was so slow during this period that in October, one article carried the headline “38 Reporters Search for a War/ Correspondents with British in West Do Not Expect a Nazi Offensive this Fall/ RAIN STEADY IN WIDE AREA.”<sup>28</sup> Similarly, On March 5, 1944, as the war was dragging into its sixth year in Europe, Times correspondent Ralph Parker reported from Ukraine, “With horrifying precision, the German anti-Semitic policy had been applied to this region of cherry orchards and fields of sunflowers.”<sup>29</sup> Under the headline “Many Jews Killed in Cherkassy Area/ Tour of Ukraine Reveals How Nazis Followed Plan to Exterminate them,” the article

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24 Leff, 174.

25 Owing to a recent one and a half inch decrease in the width of the printed newspaper and changes in its layout, the New York Times now carries fewer stories on its front page than it did during World War II. See Katharine Q. Seelye, “Times to Reduce Page Size and Close a Plant in 2008,” *New York Times*, July 18, 2006, <http://www.nytimes.com/2006/07/18/business/media/18web.html>. For information on the Times’ wartime advertising cuts, see Leff, 9.

26 Berlin Bureau, “Nazis Hint ‘Purge’ of Jews in Poland,” *New York Times*, September 13, 1939.

27 Expatriated U.S. Tax Foe Won’t Return During War,” *New York Times*, September 13, 1939.

28 Harold Denny, “38 Reporters in Search for a War,” *New York Times*, October 22, 1939.

29 Ralph Parker, “Many Jews Killed in Cherkassy Area,” *New York Times*, March 5, 1944.



prediction of the suffering that would be reserved for all who dare to stand against Hitlerism.”<sup>36</sup> Still other editorials concerning the Holocaust did not even mention Jewish involvement whatsoever. Six months after the Warsaw ghetto uprising, the Times published an editorial titled, “Supermen at Warsaw,” extolling the “men who resolved that if they had to die they would die free, with arms in their hands.” Nowhere did the October 28, 1943, piece mention that the Warsaw ghetto and its “defenders” were almost all Jewish.<sup>37</sup> Such a conspicuous absence of information did not go unnoticed. In a December 31 editorial, the Jewish Times of Philadelphia criticized the New York Times for portraying “the news in a way as if no Jews were involved in the tragic fray.”<sup>38</sup>

Arguably the most pronounced lack of attention to the Holocaust in the Times, however, took place in the newspaper’s review sections, which it would publish at the end of each week and each year to summarize notable events in the news. On September 3, 1944, the New York Times’ review section ran a full page titled, “Outstanding Events and Major Trends of the Second World War” without mentioning Jews.<sup>39</sup> The mass murders at concentration camps in Auschwitz and Maidanek never appeared in the paper’s “Highlights of the Week In Review,” even after their respective liberations at the end of the war.<sup>40</sup> Jews were neither included in “Fifty Memorable Dates in the History of 1944,” nor were they referenced in “A Chronology of the War in Europe: 100 Outstanding Dates,” both of which also made no reference to the concentration camps at Dachau, Auschwitz, Maidanek, Bergen-Belsen and others, even when the camps were liberated.<sup>41</sup> Following Hitler’s suicide, a Times review story remembered the “civilian toll” that his murder agenda had caused. Despite the fact that historians have estimated that nearly six million Jews were killed by Hitler’s Nazi regime, the Times chose to remain silent about Jewish victimhood.<sup>42</sup>

Despite the overwhelming evidence, it is not fair or accurate to say that during the course of World War II there were no instances in which the New York Times took steps to expose Jewish suffering to its readers. Some shining exceptions include: a short but passionate essay by novelist Sholem Asch in the Times Magazine which pleaded for Jewish aid published in 1942, and a front page article on Kristallnacht in 1938. Also noteworthy is a striking half-page article by Times correspondent Anne O’Hare McCormick about a rally at

36 “The First to Suffer,” *New York Times*, December 2, 1942.

37 Editorial, “Supermen at Warsaw,” *New York Times*, October 28, 1943.

38 Leff, 221.

39 Ibid, 292..

40 Ibid, 292.

41 Leff, 293, 312.

42 Martin Gilbert, *The Holocaust: The Jewish Tragedy* (New York: William Collins and Sons, 1985), 18.

Madison Square Garden to “Save Doomed Jews” which warned:

If the Christian community does not support to the utmost the belated proposal worked out to rescue the Jews remaining in Europe from the fate prepared for them, we have accepted the Hitlerian thesis and forever compromised the principles for which we are pouring out blood and wealth.<sup>43</sup>

Yet stories like Ms. McCormick’s, the first three paragraphs of which appeared on page one of the Times on March 3, 1943, under the smallest of 11 headlines, were anomalies in a paper otherwise devoid of accessible information about the Jewish Holocaust.

None of the reasons offered so far seem to explain the extent to which The New York Times so severely and uniformly downplayed Jewish suffering during the Holocaust. As previously demonstrated, a lack of information cannot account for the more than 1,000 articles about the Holocaust which contained news of the Nazi murder of Jews in explicit detail, but never received any prominent position. Furthermore, the Times professed the accuracy of its facts in Holocaust stories on inside pages, and was simultaneously willing to publish and feature unconfirmed reports. The theory that these stories were overshadowed by war news does not explain why, when genocide stories did appear on the front page, the Times went out of its way to de-emphasize the roles of Jewish victims, hesitated to follow up in the editorial section, and almost never mentioned the word “Jew” in connection with World War II in its review sections.

To truly understand why The New York Times would have minimized the Holocaust during World War II, we must look to the newspaper’s connection to Judaism, starting with its roots.

## **II. “Not a Jewish Newspaper” Ochs, Sulzberger, and Jewish Identity at The New York Times**

Adolph Simon Ochs was born March 12, 1858, on the eve of the Civil War. His parents, Julius and Bertha Levy Ochs, were Jewish immigrants from Germany who had arrived in Knoxville, Tennessee prior to the war. Ochs began his career in the industry at age eleven as a paper boy for the Knoxville Chronicle in an effort to support his family. Susan E. Tifft and Alex S. Jones,

43 Sholem Asch, “(Title unclear),” *New York Times Magazine*, February 7, 1943.; Otto D. Tolischus, “Bands Rove Cities/Thousands Arrested for ‘Protection’ as Gangs Avenge Paris Death,” *New York Times*, November 11, 1938.; Anne O’Hare McCormick, “Save Doomed Jews/ Huge Rally Pleads,” *New York Times*, March 3, 1943.

authors of *The Trust*, the definitive source on the history of the New York Times' family ownership, write, "As the oldest son of a nearly impoverished Jew with a distinct German accent, Adolph... learned to value compromise, work harder than anyone else, and seek harmony whenever possible."<sup>44</sup> By age fourteen he had dropped out of school, and by seventeen he had risen through the ranks of both the *Chronicle* and the *Tribune*, earning the nickname "Muley" Ochs, a pun on his work ethic and the Americanized pronunciation of his last name. His role model was Horace Greeley, the owner of the influential New York *Tribune* who had struggled up from rural poverty in New Hampshire. After moving briefly to Kentucky to work as a typesetter at *The Courier-Journal*, Ochs returned to Tennessee and, at the age of nineteen borrow \$250 to purchase a controlling interest in the *Chattanooga Daily*, becoming publisher.<sup>45</sup>

Although Adolph's father Julius was "deeply pious and a student of the religious writings of the Hebrew faith," none of his three sons grew up in a particularly religious household, largely because in Knoxville, the Ochs family was more focused on earning a living than on Judaism.<sup>46</sup> However, Adolph's religious views shifted when, in 1883, he married Iphigenia "Effie" Miriam Wise, daughter of the Cincinnati Rabbi Isaac M. Wise, founder of the Union of American Hebrew Congregations and the leading proponent of Reform Judaism in the United States.<sup>47</sup> Through his wife, Ochs learned and came to embrace the beliefs of Reform Judaism. He gave credit to his Jewish home life and the Jewish religion for his high moral standards and strong work ethic.<sup>48</sup> In addition, this brand of Reform Judaism, which was widely embraced among German Jewish immigrants in the late nineteenth-century, compounded upon Ochs' pre-existing desire to assimilate into American culture. Sociologist Ewa Morawska writes, "Reform Judaism's philosophical and practical purpose was to modernize Jewish religion by eliminating the characteristics that set apart its practitioners from mainstream (Christian) society."<sup>49</sup> As a Classical Reform

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44 Susan E. Tifft and Alex S. Jones, *The Trust: The Private and Powerful Family Behind The New York Times* (Boston: Little, Brown and Co., 1999), 10.

45 Tifft and Jones, 11, 13.

46 *The New York Times*, "Adolph S. Ochs Dead at 77; Publisher of Times Since 1896," *The New York Times Learning Network*, last modified April 9, 2010, <http://www.nytimes.com/learning/general/onthisday/bday/0312.html>.

47 <http://www.nytimes.com/learning/general/onthisday/bday/0312.html>. Neither Iphigenia Wise nor her father Isaac have any direct relation to Rabbi Stephen S. Wise of the World Jewish Congress.

48 Stephen J. Whitfield, "The American Jew as a Journalist," *Brandeis University Online*, accessed March 4, 2012, <http://www.policyarchive.org/handle/10207/bitstreams/10113.pdf>, 169.

49 Ewa Morawska, "Assimilation in the United States: Nineteenth Century," in *Jewish Women: A Comprehensive Historical Encyclopedia* (Jewish Women's

Jew, Ochs sought to reconcile ancient traditions with the values and social norms of contemporary America. Key to this effort was the assertion that Judaism did not represent a culture; it was merely a set of religious beliefs. Ochs would later state, "I know nothing else, no other definition of a Jew except religion." This definition of what it meant to be Jewish became a fundamental part of Ochs ideology, which would later steer the course of development of *The New York Times*.

Adolph Ochs, like the more than 200,000 German-Jewish immigrants who came to the United States between 1820 and 1880, worked hard to minimize the public attention that he, as a Jew and a foreigner, drew.<sup>50</sup> A 1944 book about the history and changing nature of the American newspaper business described Ochs as "naturally a very timid man, kindly, well meaning, but above all else anxious not to get into many personal controversies and not to offend many readers."<sup>51</sup> For Ochs, political visibility was a luxury that could not be afforded by Jews seeking to fit into the American lifestyle. Like many other assimilationist German Jews, he saw turn-of-the-century Eastern European Jewish immigrants, with their Orthodox customs, thick accents, full beards, and long, black frock coats, as an immediate target for stereotype and ostracization by the American public. Paula E. Hyman, professor of modern Jewish studies at Yale University, writes, "The new immigrants were so numerous and visible in their Yiddish-speaking ghettos, so conspicuous in their radical politics, that they threatened to displace the prosperous, respectable German Jewish banker or merchant as the representative Jew in the popular imagination."<sup>52</sup> The same ethnic group which would later bear the brunt of the suffering during the Holocaust created a new reason for American Jews of German descent to be self-conscious of their religion by undermining their efforts to fit unobtrusively into American culture. "We should live quietly, happily, unostentatiously," Ochs once advised the Jews of Chattanooga's Mizpah congregation. "Don't be too smart. Don't know too much."<sup>53</sup> Ironically, however, he would come increasingly close to violating his own wisdom as he strove to gain a footing in the industry. By 1895 Ochs had set his eyes on acquiring a newspaper in New York, and in 1896 he negotiated a deal to pur-

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Archive, 2005), last modified March 11, 2012, <http://jwa.org/encyclopedia/article/assimilation-in-united-states-nineteenth-century>.

50 Morawska.

51 Oswald Garrison Villard, *The Disappearing Daily* (1944; repr., New Hampshire: Ayer Company Publishers, 1969), 84, Google Books.

52 Paula E. Hyman, "Eastern European Immigrants in the United States," in *Jewish Women: A Comprehensive Historical Encyclopedia* (Jewish Women's Archive, 2005), accessed March 13, 2012, <http://jwa.org/encyclopedia/article/eastern-european-immigrants-in-united-states>.

53 Tifft and Jones, 25.

chase the bankrupt New-York Times.<sup>54</sup>

The moment that the paths of Adolph Ochs and the Times crossed was the beginning of an era in which the newspaper would be shaped and guided by the beliefs and goals of its publisher: to assimilate in the face of a nation's harsh anti-Semitism, to adhere to the principles of Reform Judaism, and above all, to remain unbiased and publish a "clean, dignified, trustworthy and impartial" newspaper, as Ochs announced in the Times on August 18, 1896.<sup>55</sup> For Adolph Ochs, the fear of racial and religious judgement by the American public and the objective of journalistic neutrality gave rise to a strong reluctance to feature Jewish issues in his publication; he was "determined not to have the Times ever appear to be a 'Jewish newspaper.'" <sup>56</sup> During the Dreyfus affair of the late 1890s, in which the Jewish French army captain Alfred Dreyfus was wrongly court-martialed and imprisoned on Devil's Island, where he was subjected to inhumane treatment, Adolph Ochs refused to let his paper take the lead in reporting the story. "I thought it would be unwise for The New York Times to begin the campaign, as it would be at once attributed to a Jewish interest," he later explained.<sup>57</sup> Tift and Jones write, "When other papers took up Dreyfus' plight, the Times followed suit, carefully avoiding the use of words such as Jew, Jewish, or anti-Semitism in headlines."<sup>58</sup> Garet Garrett, a younger member of the Times' editorial council, wrote in his diary in 1915, "Mr. Ochs is a non-Jewish Jew. He will have nothing to do with any Jewish movement."<sup>59</sup>

With the death of Adolph Ochs in 1935, the job of New York Times publisher carried over to his son-in-law, Arthur Hays Sulzberger; along with it came Ochs' attitude toward the role of Judaism and Jewishness in the Times, which Sulzberger not only perpetuated, but also intensified throughout his term as publisher until 1961. Although Sulzberger was not raised in a particularly Jewish family environment, he found himself nonetheless occasionally forced to confront his identity when faced with anti-Semitism during his early life. After graduating from the Horace Mann School, Sulzberger attended Columbia University, where he was refused entrance into multiple fraternities because of his Jewish lineage, evident from his last name. Though bitterly hurt, he declined an invitation to Zeta Beta Tau, Columbia's Jewish fraternity because to him Judaism was "a religion, and a religion only, and... should not

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54 Ibid, 28-30.

55 The New York Times, "Adolph S. Ochs Dead at 77; Publisher of Times Since 1896," The New York Times Learning Network, last modified April 9, 2010, <http://www.nytimes.com/learning/general/onthisday/bday/0312.html>.

56 Tift and Jones, 95.

57 Tift and Jones, 95.

58 Ibid.

59 Ibid, 94.

be a common denominator of social intercourse or political activity."<sup>60</sup> This conviction strengthened when, in 1917, Sulzberger married Iphigene Ochs, Adolph's daughter, thus inheriting not only the spot of heir to the Times publisher position, but also a direct tie to Reform Judaism.

As publisher of the Times, Sulzberger was even more adamant than Ochs that the newspaper not seem to be biased in favor of Jews. According to Leff, "If other publishers worried about appearing neutral with respect to Republicans or Democrats, business or labor, the Dodgers or the Giants, Sulzberger worried about the Jews."<sup>61</sup> Max Frankel, a former executive editor at the New York Times who wrote and edited at the newspaper from 1952 until his retirement in 1996, said in an interview, "Jews were kept from some conspicuous jobs in Washington and abroad as a gesture to the publisher's fear of having too many Jews in prominent positions."<sup>62</sup> Yet Jews held key news jobs at the Times, such as Sunday Editor Lester Markel, Washington Bureau Chief Arthur Krock, and cable editor Ted Bernstein, who was responsible for editing foreign correspondence during World War II. "There were always a lot of Jews, but they were for the most part on the inside," Mr. Frankel explained in a later interview.<sup>63</sup> Of Bernstein, Frankel said, "He literally made up page one after the meetings; he was the one who designed it... In another era he would have become top man. It was precisely because of this fear of moving a Jew up to the number one spot that he was kept [as] number two."<sup>64</sup>

Sulzberger was especially conscious of how small details could affect the newspaper's image. Adolph Ochs had already imposed strict rules in 1912, at the insistence of the Anti-Defamation League, that governed the use of the word Jew, deeming it inappropriate to use the word in the context of phrases like "Jew boy," "Jew store," and "to Jew down."<sup>65</sup> As publisher, Sulzberger strengthened these rules. In a memo to his editors, he wrote, "Thus, when the American Jewish Congress meets our headline does not say 'Jews Meet' but emphasizes the fact that it is the Congress. When the Zionists meet it is not Jews, but Zionists."<sup>66</sup>

Even before the anti-Semitic press made much of the fact that Times spelled backwards was Semit(e), [Sulzberger] was vigilant about correcting any suggestion that he or the paper might represent Jewish interests. When Time [magazine] referred to the paper as the 'Jewish owned New York Times,' Arthur complained to the proprietor, Henry Luce, alleging that the phrase implied that the

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60 Ibid, 215-216.

61 Leff, 21.

62 Max Frankel, e-mail interview by author, December 20, 2011.

63 Max Frankel, telephone interview by author, December 22, 2011.

64 Ibid.

65 Ibid, 94. Whitfield comes to a similar conclusion about Bernstein's religion preventing him from becoming managing editor.

66 Leff, 30.

Times was biased.<sup>67</sup>

From examining the history of the New York Times, it becomes evident that the newspaper was particularly sensitive about its relationship to Judaism. Ochs' and Sulzberger's shared desires to assimilate; beliefs that Judaism was a religion, not an ethnicity; and principles of journalistic impartiality resulted in a tendency to minimize the appearance of and deny the Times' connection with Judaism. This attitude was primarily responsible for the New York Times' failure to emphasize the Holocaust during World War II.

Yet there is still one missing connection. Although Sulzberger held the highest position at the New York Times during World War II, as publisher he was not directly responsible for the decisions about writing, editing and placing stories made on a daily basis in the newsroom. How did his distinct feelings about Judaism carry over to the Times itself? As Max Frankel puts it, "Arthur Hays Sulzberger created the atmosphere in which those decisions were made and made no secret of his desire to avoid having the Times judged or criticized for being a 'Jewish' newspaper."<sup>68</sup> Neil MacNeil, the night managing editor at the Times, along with Ted Bernstein, was one of three men who made up the "bullpen," which was exclusively responsible for deciding which stories to place on the front page during World War II.<sup>69</sup> In 1940, he wrote:

There is a tendency, even on the best newspapers, for the economic, political, and social views of the owners to seep down through the entire organization. Reporters viewing the event and editors passing judgement on it are inclined, be it ever so slightly, to see it from the publisher's angle... Few will bite the hand that feeds them. Almost without knowing it the news favors the owner's viewpoint. The story in which the publisher is interested becomes a 'good story,' and vice versa.<sup>70</sup>

Similarly, Turner Catledge, who worked at the Times from 1929 to 1968 and held the position of Managing Editor for twelve years immediately after World War II, wrote in his autobiography,

Sulzberger made his likes and dislikes known via memoranda which we called the 'blue notes' because they were written on blue paper. Hundreds of these blue notes rained down on me over the years, on great matters and small. Since James (referring to Edwin L. James, the Managing Editor during World War II) passed on the publisher's instructions, as well as his own, a code had been worked out to denote Sulzberger's requests. If James said in a memo, 'It is desired that...,' the bullpen editors understood the particular instruction came from Sulzberger, and was not to be ignored.<sup>71</sup>

The influence of the publisher on the content of the New York Times is undeniable; Sulzberger's and Ochs' very presence at the New York Times cre-

67 Tift and Jones, 217.

68 Max Frankel, e-mail interview by author, December 20, 2011.

69 The "bullpen" was the nickname for the corner of the Times' newsroom which contained the desks where the night managing editors sat

70 Harrison Salisbury, *Without Fear or Favor*, 367.

71 Turner Catledge, *My Life and The Times*, 189.

ated what Times reporter and author Gay Talese has called "a sensitivity to Semitism... within the institution."<sup>72</sup>

Although no written record of a policy to minimize Jewish issues at the Times has been discovered, another explanation is that such a rule would not have even needed to be in writing. Leff argues, "Such a memo might not have been included in the Times' less-than-comprehensive files, or the policy may have been communicated verbally... but the more likely explanation is that no record exists because there was no need for an explicit policy."<sup>73</sup> Leff's conclusion is supported by Frankel's statement, "[Sulzberger] had very good friends in charge of both the news and the editorial departments, and so they would have known his mindset."<sup>74</sup> Sulzberger's friendship with Charles Merz, whom Sulzberger convinced Ochs to hire and named editorial director in 1938, was well known at the Times. "Sulzberger and his editorial page editor vacationed together, did jigsaw and crossword puzzles, and played backgammon, Chinese checkers, gin, and canasta."<sup>75</sup> Sulzberger and Merz's propinquity led to an almost telepathic relationship between the two. "They thought alike, they talked alike," said Daniel Schwarz, who started at the Times in 1929 and eventually became its Sunday editor. "Sulzberger wouldn't have to say to Merz what he should do and not do. They could have talked about it while playing cards. They would have traded feelings about it. But nothing had to be told."<sup>76</sup> On this subject, Max Frankel said, "There was a spoken attitude... 'where possible we do not want to feature Jewish suffering except in the context of larger, more widespread suffering.' I think that was close to a policy."<sup>77</sup>

Sulzberger's personal beliefs clearly penetrated the Times on multiple levels, and it is impossible to fully understand the newspaper's treatment of the Holocaust without viewing it in light of the conflict between the Jewish and American identities of its publishers, Adolph Ochs and Arthur Hays Sulzberger. Nevertheless, it is important to understand how both men's views were ultimately the product of the predominant American anti-Semitism of the era. In 1939, an Elmo Roper poll found that fifty-three percent of Americans felt Jews were "different" and therefore "deserved... social and economic restrictions."<sup>78</sup> In June of 1944, a poll asked Americans which groups represented the greatest threat to the United States. While six percent responded "Germans" and nine percent "Japanese," twenty-four percent said that the

72 Gay Talese, *The Kingdom and the Power*, 114.

73 Leff, 190.

74 Max Frankel, telephone interview by author, December 22, 2011.

75 Leff, 31.

76 Ibid, 32.

77 Max Frankel, telephone interview by author, December 22, 2011.

78 *The Journalism of the Holocaust*, Marvin Kalb lecture at the US Holocaust Memorial Museum, <http://www.ushmm.org/lectures/kalb.htm>

greatest threat to America was posed by the Jews.<sup>79</sup> It is therefore unsurprising that a successful man like Sulzberger would have wanted to minimize his “Jewish-ness” in order to be perceived as more American, and that this desire that extended to the Times. “When you’re running a big enterprise and you want to be a significant newspaper in Wall Street and with influence in Washington and so on, the idea that you might be called, as you probably were called by anti-Semites, just a ‘Jewish newspaper,’ that was a reputation to be lived down,” said Frankel.<sup>80</sup>

While he ultimately succeeded in preserving the Times’ image of impartiality, in the process Sulzberger failed to alert Americans to the greatest genocide in human history. By 1940, the New York Times was one of the of the largest newspapers in the world in terms of circulation and influence.<sup>81</sup> “What Harvard is to U.S. education, what the House of Morgan has been to U.S. finance, The New York Times is to U.S. journalism,” announced Time magazine on April 12, 1943.<sup>82</sup> A 1944 book comparing American newspapers said of *the Times*,

In the years that have elapsed since the death of Adolph S. Ochs in 1935, the New York Times has more than ever established itself as the foremost daily of the world. As an institution it outshines the London Times... In America no other journal approaches it in the volume of news and coverage of the world... it has literally made itself indispensable to anyone who desires to be thoroughly informed as to what is happening on this globe.<sup>83</sup>

The American public looked to the New York Times to inform it of “All the news that’s fit to print.”<sup>84</sup> Because the newspaper never emphasized the

79 Charles H. Stember, *Jews in the Mind of America*, 127.

80 Max Frankel, telephone interview by author, December 22, 2011.

81 In May 1946 the circulation of the Sunday New York Times reached 1 million copies, surpassing that of the Los Angeles Times, New York Daily News, and the Chicago Tribune. Furthermore, that year for the first time, the Times’ advertising took the lead over the Herald Tribune. See Tifft and Jones, 236, 316. In 1944, the Times bought the radio station WXQR and began broadcasting an hourly newscast in 1946. 1948 marked the start of the publication of the New York Times international edition. See New York Times Company, “New York Times Timeline 1941-1970,” The New York Times Company Online, last modified 2012, [http://www.nytc.com/company/milestones/timeline\\_1941.html](http://www.nytc.com/company/milestones/timeline_1941.html).

82 “The Press: Jimmy James’ Boys,” Time Magazine, April 12, 1943, <http://www.time.com/time/magazine/article/0,9171,802675,00.html>.

83 Oswald Garrison Villard, *The Disappearing Daily*, 1944. From Google Books.

84 The slogan “All the news that’s fit to print” was coined by Adolph Ochs in 1896 after a public contest failed to produce a better one. The slogan first appeared on the front page of the newspaper on February 10, 1897, and has remained there ever since. See New York Times Company, “New York Times Timeline 1881-1910,” The New York Times Company Online, last modified

Holocaust, all but the most careful readers were barely aware of its existence. In 1943, a Gallup poll asked Americans whether they believed that 2,000,000 Jews had been killed since the start of World War II. Despite the fact that the Allied governments had publicly confirmed this number at the end of 1942, 28% said it was a rumor, 24% had no opinion, and only 47% thought it was true.<sup>85</sup>

The Times’ underplaying of the Holocaust affected not only its readers’ understanding of the genocide, it also influenced that of other American and foreign media. David Wyman, author of *The Abandonment of the Jews*, writes, “Other newspapers recognized the Times’ guidance in foreign news policy. A perception that the Jewish-owned Times did not think the massive killings of Jews was worth emphasizing could have influenced other newspapers.”<sup>86</sup> Deborah Lipstadt adds, “various dailies subscribe(d) to the New York Times foreign wire service and reprint(ed) important stories from the paper. Only rarely were stories concerning the Jews treated in a way that would have prompted other papers to think them significant or worthy of reprinting.”<sup>87</sup> A 1944 survey of Washington correspondents found that more than five in six believed the Times to be the nation’s most “reliable, comprehensive, and fair paper.”<sup>88</sup>

Given the improbability of finding direct evidence to prove that the lack of emphasis on the Holocaust by the New York Times resulted in a corresponding lack of effort to stop the suffering of Jews in Europe, it is unreasonable to conclude that the Times prolonged the Holocaust. However, like the millions of other bystanders in the American public, the State Department, the White House, and abroad, it made little attempt to reach out to help Europe’s Jews. Unlike most other bystanders, however, the Times had a responsibility to make others aware of the genocide. “If the systematic campaign to annihilate European Jewry was a critical story, it should have been on the front page regardless of whether Jews could have been rescued as a result,” writes Leff.<sup>89</sup> Instead, the way the New York Times relegated stories of Jews’ suffering to the inside pages and diluted Jewish victimhood in its reporting during World War II provided no opportunity for the public to take note. The only reasonable conclusion is that of The Trust: “Had the Times highlighted Nazi atrocities against Jews, or simply not buried certain stories, the nation might have awakened to the horror far sooner than it did.”<sup>90</sup>

2012, [http://www.nytc.com/company/milestones/timeline\\_1881.html](http://www.nytc.com/company/milestones/timeline_1881.html).

85 Kalb, <http://www.ushmm.org/lectures/kalb.htm>.

86 David S. Wyman, *The Abandonment of the Jews*, 323.

87 Lipstadt, 220.

88 Lipstadt, 171.

89 Leff, 16.

90 Tifft and Jones, 218.

There is, however, one benefit which arose from the tragedy of the New York Times; the failure to draw attention to the Holocaust catalyzed several positive changes for the newspaper. After the departure of Arthur Hays Sulzberger, Jewish correspondents at the Times began to receive equal treatment in assignments in Washington and abroad.<sup>91</sup> Several Jews, including Max Frankel, ascended to prominent jobs, including managing editor. Led by Arthur Hays Sulzberger's son and grandson, the Times abandoned its sensitivity to its Jewish roots and supported Jewish issues, including Israel, in stories and editorials.<sup>92</sup> Finally, the determination to avoid its past mistakes has driven the Times to take the lead on genocide stories in Darfur, Rwanda, Bosnia, Uganda, and Kosovo. As Nobel Peace Prize winner Elie Wiesel has stated, "There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest."<sup>93</sup> The New York Times seems to have taken this wisdom to heart.

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91 Max Frankel, telephone interview by author, December 22, 2011.

92 Frankel, 85.

93 Elie Wiesel, "Hope, Despair, and Memory" (Nobel Lecture, Nobel Peace Prize, Oslo City Hall, Norway, December 10, 1986), [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1986/](http://www.nobelprize.org/nobel_prizes/peace/laureates/1986/).

# “Bind Him Down From Mischief”

## The Bricker Amendment and the Politics of Judicial Review, 1952-1954

Written by Nathan Raab '13, independently  
submitted to the Concord Review.

HOW VIGOROUSLY OUGHT the judiciary police the boundaries of state and federal power? Are unelected judges, as Alexander Hamilton argued in *The Federalist*, “the bulwarks of a limited Constitution against legislative encroachments,” the chains which Jefferson hoped might keep legislators from mischief? Or, as John Randolph argued four years after Jefferson’s comment, ought the courts defer to elected officials, faithful that “responsibility to public opinion...can and will check [their] aberrations from duty?” This question is not academic. Taken to extremes, Jefferson’s attitude might lead judges to overturn Social Security, the minimum wage, and child labor laws. Waite’s would permit segregation in public schools, bans on sodomy, and censorship of political speech.<sup>1</sup>

1 Alexander Hamilton, “Federalist #78: the Judiciary Department” (1788), in the *Federalist Papers*, ed. Clinton Rossiter (New York: Signet Classics / Penguin, 2003), 466; John Randolph, “Debate of Friday, January 8, 1802, on the Judiciary System; Statement of Rep. Randolph,” in *Abridgement of the Debates of Congress, from 1789 to 1856*, ed. Thomas Hart Benton (New York: D. Appleton and Co., 1856), 626, <http://books.google.com/books?id=6sQ4AAAIAAJ>. The Supreme Court authorized Social Security through a broad vision of the spending power in *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937), and *Helvering v. Davis*, 301 U.S. 619 (1937), but only over the vigorous dissents of four justices who thought the program went beyond the spending power. Minimum wage laws were struck down in *Adkins v. Children’s Hospital of the District of Columbia*, 261 U.S. 525 (1923), as violations of the 5<sup>th</sup> and 14<sup>th</sup> Amendment’s guarantees of due process, and federal prohibitions on the use of child labor were deemed to be beyond the powers granted to Congress by the Commerce Clause in *Hammer v. Dagenhart*, 247 U.S. 251 (1918). Both *Adkins* and *Dagenhart* were later overturned. The Court invalidated segregation of public schools in *Brown v. Topeka Board of Education*, 347 U.S. 483 (1954), based upon the 14<sup>th</sup> Amendment’s Equal Protection Clause and laws against sodomy in *Lawrence v. Texas*, 539 U.S. 558 (2003), on a broad reading of the 14<sup>th</sup> Amendment’s Due Process Clause. Laws punishing speech critical of the government were challenged and upheld under a narrow view of the First Amendment’s restrictions on federal power in *Abrams v. United States*, 250 U.S. 616 (1919). *Abrams* was overturned by *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

As should be obvious from the list above, modern jurisprudence is neither entirely Jefferson’s nor Waite’s. In a system which dates from the 1940s and 1950s, most disputes over governmental power – those which deal with property rights or concerns of federalism – are subject to what is called “rational basis review,” which gives “strong deference” to the legislative and executive branches. Only laws which restrict individual rights undergo “strict scrutiny,” which has been dubbed “strict in theory, but fatal in fact” for its tendency to put strong limits on the legislative reach. As Hamilton also noted in the *Federalist*, however, “the judiciary...has no influence over either the sword or the purse,” and in consequence Congress, the President, and eventually the voting population must approve of a system of jurisprudence if it is to survive in the long term. It would thus follow that sometime in the 1940s or 1950s the elected branches of government signaled to the courts their approval of the rational basis/strict scrutiny dichotomy.<sup>2</sup>

The now obscure fight over the Bricker Amendment in 1953-1954 – the time period in which the Supreme Court was finalizing this system – can be read as a grudging approval of the new, bifurcated American jurisprudence. Senator Bricker, an Ohio Republican, probably did not mean to pose a referendum on judicial review when he drafted his Amendment, which only intended to impose restrictions on the popular branches’ power to implement international agreements that might violate Constitutional guarantees. When the dust settled, however, Bricker had provoked a dispute over whether America should entrust primary protection of its freedoms and system of government to the legislature or the courts. The outcome of this constitutional confrontation was a grudging compromise on the Supreme Court’s new theory of judging: while there was consensus

2 *National Federation of Independent Businesses et al. v. Sibelius*, 567 U.S. \_\_\_\_\_, (2012), Opinion of Ginsburg, J. at 15; Gerald Gunther, “In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,” *Harvard Law Review* 86, no. 1 (1972): 8. The beginning of rational basis review, and thus strict scrutiny and other forms of heightened scrutiny, is usually considered to have begun with the Supreme Court’s decision in *United States v. Caroline Product’s Co.*, 204 U.S. 144 (1939), especially the third and fourth footnotes therein. Strict scrutiny was first applied (ironically enough) in *Korematsu v. United States*, 323 U.S. 214 (1943); it grew more and more restrictive throughout the 1940s and 1950s, and was applied most notably through that period in *Brown v. Board of Education*, 347 U.S. 483 (1954). Rational basis review grew to become a smaller and smaller hurdle throughout that same time period; the consensus seems to be that it hit rock bottom with *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). More information on the history of strict scrutiny and rational basis can be found in Stephen A. Siegel, “The Origin of the Compelling State Interest Test and Strict Scrutiny,” *American Journal of Legal History* 48, no. 4 (October 2006): 355-407, and Barry Friedman, *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution* (New York: FSG Books, 2009), 235 et seq; see also *St. Joseph Abbey v. Louisiana State Board of Funeral Directors and Embalmers*, No. 11-30756, slip op. at 8 (5th Cir. March 20, 2013), <http://www.ca5.uscourts.gov/opinions/pub/11/11-30756-CV1.wpd.pdf>. The notion that the Supreme Court must at some level bow to popular opinion is also advanced in Christopher Casillas et al., “How Public Opinion Constrains the U.S. Supreme Court,” *American Journal of Political Science* 20, no. 10 (2010): 1-15, and in the sources cited therein.

that it was the providence of the courts to protect basic individual rights vigorously, proposals that the courts do more lacked more than partial support from the President, Senate, and the American people.<sup>3</sup>

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THE BRICKER AMENDMENT'S proponents argued that all three of the major issues with which federal courts concern themselves – individual liberties, federalism, and property rights – merited strong, Jefferson/Hamilton style protection from the courts against threats posed by treaties or other diplomatic agreements. American Bar Association president Frank Holman, the original supporter of a Bricker-style amendment, was first to raise the alarm on the dangers of so-called “treaty law.” According to Holman, because the Constitution only requires treaties to be made “under the authority of the United States” (as compared to statutes, required to be made “in pursuance to the Constitution”), Constitutional provisions “could be changed and even destroyed by international pacts, covenants, treaties, and agreements.” While Holman might have seemed like a crank alone, soon to be Secretary of State William Foster Dulles validated his concerns in 1952. “The treaty power,” Dulles warned, “is an extraordinary power liable to abuse.” Treaties, said Dulles, “can take powers from Congress and give them to the President...take powers from a State and give them to the Federal government or to some international body...and cut across the rights given to the people by the Bill of Rights.”<sup>4</sup>

3 It is misleading to use the phrase “Bricker Amendment Fight of 1953-1954” because the Bricker Amendment, as debated, was not entirely the amendment of Senator John Bricker, nor was the debate confined to the 83<sup>rd</sup> Congress. Bricker’s amendment first received a congressional hearing in 1952; it continued to hover as a political issue until Bricker’s retirement from politics in 1959. I focus here primarily on 1953-1954 fight because the Amendment achieved by far the most political prominence at this time; after 1954, it became largely the project of those outside the political mainstream. Similarly, I will for the most part ignore the complex drafting history of the Amendment, which was actually a combination of Bricker’s original amendment, as submitted to the Senate Judiciary committee, and another amendment by Republican Senator Arthur Watkins, which was sponsored by the American Bar Association. Although the finished product was a hybrid of the Bricker and Watkins Amendments, it became known to the public as the “Bricker Amendment.” For the gory details, see Duane A. Tannabaum, “The Bricker Amendment Controversy: Its Origins and Eisenhower’s Role,” *Journal of Diplomatic History* 9, no. 1 (January 1985): 73-94.

4 U.S. Constitution, Article 6, §2; Frank E. Holman, *History of the Bricker Amendment: the First Phase* (New York: Committee for Constitutional Government, 1954), at 8; Dulles is quoted at 14-15. Was the threat *actually* real? There is no clear answer as to whether, based upon 1954 precedent, it was possible for a treaty to negate American rights specifically enumerated in the Constitution (e.g. freedom of speech, freedom of religion, etc.) The 1923 case of *Missouri v. Holland*, 252 U.S. 416, allowed the federal government freedom to pass legislation outside its enumerated powers in order to fulfill treaty obligations, reasoning that such legislation was a “necessary and proper” extension of the federal government’s power to negotiate treaties and conduct foreign relations. I sidestep this more technical, legal aspect of the debate over Bricker’s Amendment because that debate occurred mainly out of the public eye in law journals and bar associations, separately from the public debate over the substantive impact of the Amendment. It is worth noting, however, that in 1957 the Supreme Court ruled that a treaty could not overrule any *specific* constitutional provision, and further stated that “this Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty.” It distinguished *Holland* on the basis that there, “the Court was concerned with the Tenth Amendment, which reserves to the States or the people all power not delegated to the National Government. To the extent that the United States can validly make treaties, the people and the States

Holman saw the threat encompass basic individual rights, federalism, and property alike. All sorts of international agreements, from the newly drafted Genocide Convention to the Universal Declaration of Human Rights, threatened “the domestic rights of the American people.” The U.N. Charter, by pledging the United States federal government to work towards “higher standards of living, full employment, and conditions of economic and social progress and development,” threatened to “change our form of government from a Republic to [that of] a socialistic state,” in which federal power was plenary. Meanwhile, “socialists and communists and international planners and ‘do-gooders’” hidden within the United Nations were plotting to “undertake to impose a... collectivist economy,” upon the United States, and “fasten on” to it “the concept that the right to own private property is not a basic individual right.”<sup>5</sup>

Salvation lay in the judiciary. The United States was a “Republic and not a Democracy,” and as such, the powers of government were exercised “within the framework of constitutional guarantees and judicial precedents.” Those guarantees and precedents were “Americans’ only bulwark against loss of individual liberty and even the loss of the American form of government.” Thus, when confronted with an “extraordinary power liable to abuse,” it was almost inevitable that Holman would seek the protection of the judiciary – a constitutional amendment – to protect America from that abuse.<sup>6</sup>

As the text of Bricker’s proposed Amendment will shortly make clear, Senator Bricker conceptualized the problem the way Holman did. He also saw the same solution. As early as 1936, in the heat of the debate over Roosevelt’s Court-Packing “scheme,” he had written an article in the *Journal of Political Science* warning America that “any curbing of power on the part of the courts... would place the country at the mercy of legislative experimentation,” and place “individual liberty...safeguarded by the Constitution,” (including that era’s notion of property rights as “liberty of contract”) exposed to “assault after assault.” This position did not change over time. After learning from Holman of the dangers treaties posed, Bricker decided to propose a constitutional amendment to solve the problem, and thus, he explained to the Senate Judiciary Committee, “keep the rights of the American people in the spiritual realm and not place them in the temporal power of government.” By government, he clearly meant the executive and legislative branches, and by spiritual he evidently meant the judicial branch – those who

have delegated their power to the National Government, and the Tenth Amendment no barrier.” See *Reid v. Covert*, 354 U.S. 1, at 17 *et seq.* Of course, that the Supreme Court would grant *certiorari* to hear *Covert* indicates the existence of a real and viable legal question; see Robert Braucher, “The Supreme Court, 1954,” *Harvard Law Review* 69 (November 1955): 120-131.

5 Holman, *History*, *supra* 6, at 8, 22, 2; Frank E. Holman, *The Increasing Need for a Constitutional Amendment on Treaties and Executive Agreements* (Seattle, Washington: Argus Press, 1955), 6.

6 Frank E. Holman, “Forms of Government,” *ABA Journal*, April 1946, 190; American Bar Association, “Frank E. Holman Receives Bar Association Metal,” *ABA Journal*, November 1953, 997.

would be tasked with interpreting his Amendment.<sup>7</sup>

Bricker having begun the amendment process, conservatives – mainly Midwestern Republicans, Southern Democrats, and business leaders – flocked to it to secure individual rights, federalism, and property from a perceived left-wing menace. Midwestern Republican senators, eighteen of nineteen of whom initially supported the Amendment, were as a group deeply conservative and isolationist, traits which led them to fear a supposed communistic influence from abroad. As such, many of them wanted to close a constitutional loophole which, as Senator William E. Jenner (R-IN) warned, socialists would exploit to “impose their ideas of human rights, of full employment, of compulsory labor, [and] of government management of the press” onto the American people – a rights concern. Southerners felt the same way, also hoping that, in the words of historian Duane Tannabaum, the Bricker amendment would “prevent the courts from ruling that the UN Charter invalidated segregation...and would prohibit Congress from enacting civil rights legislation under its authority to implement international agreements” – a federalism concern. To these two concerns, business owners added a third one of property rights, with the Chamber of Commerce expressing fears that treaties proposed by the International Labor Organization might subject American property owners to “international socialistic laws,” eventually leading to realization of “the Socialist scheme for tomorrow...[in which] government runs everything, government regulates production, distribution and prices.” By pressing for a Constitutional amendment, these groups demonstrated their “confidence in constitutional restraints over confidence in individuals,” and thus placed the Constitution on a plane superior to that of the legislative or executive branch.<sup>8</sup>

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THE TEXT OF the Bricker Amendment, and the rhetoric surrounding each section of that text, made further clear the three-fold threat to rights, federalism and property and further advanced Jefferson/Hamilton judicial review as a remedy. Bricker’s first section concerned rights, and Bricker’s supporters demanded that the judiciary, acting through the

7 John W. Bricker, “Shall the Powers of the Supreme Court Be Abridged?” *Proceedings of the Academy of Political Science* 16, no. 4 (January 1936): 49, 50; *Treaties and Executive Agreements: Hearings before a Subcommittee of the Committee on the Judiciary on S.J. Res. 1, Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements, and S.J. Res. 43, Proposing an Amendment to the Constitution of the United States Relating to the Legal Effect of Certain Treaties*, 83<sup>rd</sup> Cong. (1953) (statement of Sen. John W. Bricker, R-OH), 11-12.

8 Philip A. Grant, “The Bricker Amendment Controversy,” *Presidential Studies Quarterly* 15 (Summer 1985): 573; *Congressional Record*, 1954, 2125-2126, quoted in David Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy* (Oxford: Oxford University Press, 2005), 357; Tannabaum, *supra* 5, at 79; Statement of Alfred Schweppe, Hearings, *supra* 9, at 68; Statement of William McGrath, Hearings, *supra* 9, at 545. On the appeal of the Bricker Amendment to segregationists, see also Malcolm E. Jewell, “Evaluating the Decline of Southern Internationalism through Senatorial Roll Call Votes,” *Journal of Politics* 21 (November 1959): 641.

Constitution, protect individual rights. His second section concerned federalism, and it entailed strict judicial enforcement of the federalist system. His third concerned judicial vindication and protection of property rights. Bricker and his allies did not trust legislators or politicians to protect these concerns – but they trusted judges. Thus, implicitly or explicitly, a strong form of judicial review, in which the Court regularly struck down laws contrary to principles of federalism or capitalism as well as basic rights, undergirded the case for Bricker Amendment.

The first section of the Bricker Amendment read, “A provision of a treaty which conflicts with this Constitution shall not be of any force or effect.” As Bricker explained in his testimony to the Senate Judiciary Committee, this provision would ensure that “no treaty or executive agreement [would] be effective to deny or abridge their fundamental rights,” rights, Bricker continued, like “freedom of speech, press, and the rights of persons accused of crimes.” The rights concern was not Bricker’s alone, for of the over one-hundred and fifty voluntary organizations which published resolutions supporting the Bricker Amendment, nearly all of them mentioned human rights as a key component of their support. Explained one of those resolutions, from the National Society of Women Descendants of the Ancient and Honorable Artillery Company, American liberty was in danger from pending treaties “superseding the Bill of Rights.” Those treaties needed to be barred, continued the American Medical Association, in order to “avoid any abridgement of the rights enumerated in the Constitution.”<sup>9</sup>

The reason a constitutional amendment was needed to protect these rights was because advocates did not trust legislatures to protect them. Some fears were general; the Women’s Patriotic Conference on National Defense warned that a “lack of moral integrity in high places” exposed American citizens to violations of “rights or freedoms specified in the Constitution of the United States.” Others had political motivations. One letter to the editor in the Wall Street Journal warned Americans “in four years from now we may have an administration such as we had in the last twenty years,” (i.e, a liberal one) which might “violate or nullify our Constitution.” Still others saw the issue as communist infiltration of dip-

9 Grant, *supra* 10, at 581; Statement of Senator John W. Bricker, Hearings, *supra* 9, at 2, 5; Statement of Mrs. William Leech, in Hearings, *supra* 9, at 29; Statement of George F. Lull, in Hearings, *supra* 9, at 16. One should be skeptical of Senator Bricker’s sudden conversion to the cause of human rights at this point in time. As Tannabaum has recounted and Bricker’s biographer Richard Davies has confirmed, Bricker had at best a lackluster record of respect for human and civil rights for white Americans, and an abysmal record in terms of minority rights. Notable especially was Bricker’s support of Joseph McCarthy and his opposition to First Amendment rights for accused Communists. See Tannabaum, *supra* 5, at 78-79, and Richard O. Davies, *Defender of the Old Guard: John Bricker and American Politics* (Saline, MI: Ohio State University Press, 1993), at 138. The concerns of other groups, however, seem to be nothing but sincere, although their definitions of ‘human rights’ often conspicuously excluded minorities as well.

lomatic posts. Reverends DeLoss Scott and Claude Bunzel, for example, warned the Senate Judiciary Committee there was a “communist influence at work” in the United Nations, including from America – “Alger Hiss,” Scott reminded the committee, “had a hand in drafting the U.N. Charter.” Even then, though, distrust in American government in particular was paramount. The Chicago Tribune made this explicit: “those previously delegated to represent this country in [the] U.N,” it advised, “have devoted their efforts to using the agency to undermine the Constitution and plot against their own country.” With the elected branches not to be trusted, Brickerites would turn to the judiciary to protect rights.<sup>10</sup>

The second section of the Bricker Amendment read, “A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty.” As the Chicago Tribune explained, this section would keep the federal government’s powers from being “enlarged by treaty beyond what the Constitution grants.” Protecting states’ rights and federalism bore special meaning for Southern segregationists, who feared a federal power to enforce civil rights legislation, but was not exclusive to them. Federalism would prevent tyranny, for as conservative pundit Clarence Manion explained, “centralization of power...is the first step towards Communist victory in the United States.” Reduction in the powers of local government, according to ABA leader Eberhardt Deutch, would “set[] a course towards world totalitarianism.”<sup>11</sup>

As before, the elected branches of the federal government would set that course towards disaster. As New York Times columnist Arthur Krock explained, without the Bricker Amendment, “a determined President, and a pliant Senate,” would be able to gut the American, federalist form of government with but a few “international contracts.” Already, Krock noted, the Truman Administration had attempted to pass a civil rights bill—an attempt arguably not within the enumerated powers of

10 Statement of Mrs. Ernestine Howard, Hearings, *supra* 9, at 20; James W. Beckman, letter to the editor, *Wall Street Journal*, April 30, 1953; Statement of Rev. DeLoss Scott, Hearings, *supra* 9, at 260; “The Bricker Amendment,” editorial, *Chicago Tribune*, January 10, 1953.

11 “The Bricker Amendment,” editorial, *Chicago Tribune*, February 15, 1953; Clarence Manion, *The Conservative American: his Fight for National Independence and Constitutional Government* (New York: Devin Air Corporation, 1964), at 123 (quoting his own editorial in 1953); Statement of Mr. Eberhardt Deutch, Hearings, *supra* 9, at 116. The legal mechanism by which a treaty could otherwise expand the powers of the federal government was given in *Holland*. Simply put, because the President’s power to make treaties was not constitutionally restricted, the federal government would be able to enforce the treaty *whether or not* that power was granted elsewhere in the Constitution, as part of its power to make and enforce treaties. This theory, promulgated in the 1920s, ran into trouble with so-called “aspirational” treaties like the U.N. Charter, which, in its Chapters IX and X, pledged nations to work toward “higher standards of living, full employment, and conditions of economic and social progress and development... and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” If the federal government were to be given the power to work towards those goals, it would wreak havoc with federalism – working towards “conditions of economic and social progress and development” is not an enumerated power of Congress.

Congress—with the U.N. Charter as legal justification. Such dastardly deeds demonstrated that elected representatives, unless constitutionally restrained, could not be trusted to preserve the American, federalist system. As Otto Schoenrich of the New York State Bar Association explained, Amendment supporters were not “content to entrust... [a] vast grant of power to the central government,” and thus “to the President and two-thirds of the senators present.” After all, Americans had “seen disloyal persons reach high influential positions in our Government,” and elected high officials “whose idealism induced them to approve or suggest measures harmful to the Republic.”<sup>12</sup>

Bricker Amendment’s third and final operative clause—which read, “Congress shall have power to regulate all executive and other agreements with any foreign power or international organization” – was written to prevent the President from using or negligently allowing the treaty power to create socialism on U.S. soil or assist it abroad. Such a threat, Bricker and his companions explained, was real. Under the International Labor Organization treaty, for example, “the United States would be obligated to socialize the practice of medicine.” The Economic and Social Council of the United Nations, according to Holman, was “the organ or agency by and through which the socialists and communists propose to reform and remake the world [through]...socialistic programs” like a proposed Universal Covenant on Human Rights, whose guarantees of social security and basic economic rights were “a blueprint for socializing the world.” U.S. ratification of these treaties, warned William McGrath on behalf of the Chamber of Commerce, “would of necessity force [American] government into a socialistic mold.”<sup>13</sup>

By no means did the pro-Bricker forces concentrate only on domestic economic policy; they also concentrated on the expansion of the Soviet Union abroad, especially via the reviled Potsdam and Yalta agreements. Even then, however, the major impact of their arguments—no doubt reflecting the McCarthyism of the time—was that the Bricker Amendment would prevent the strengthening of socialism at home and abroad. The Senate could not be trusted to stop such treaties, for, as Senator Everett Dirksen (R-IL) noted, many Senators “took on faith” the

12 New York State Bar Association, “Report of Committee on International Law and Discussion of Resolution Presented by the Report, in Opposition to the Proposed Amendment to the Federal Constitution Limiting the Power of the President to Make Treaties and Executive Agreements, etc.” (minutes of discussion of the resolution held at the annual meeting of the New York State Bar Association, New York, January 30, 1953), 79; Manion, *supra* 13, at 122-123; Arthur Krock, “In The Nation: The Effort to Limit ‘Supremacy of ‘Treaties,’” *New York Times*, February 26, 1953. Under the Civil Rights Cases, 109 U.S. 3, a civil rights bill would be invalid if based upon the 14<sup>th</sup> Amendment; other avenues for a civil rights act, namely the commerce power, were still viable, and indeed the Civil Rights Act of 1964 was upheld as a lawful exercise of the commerce power (see *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241).

13 Treaty Powers Peril Liberty, Bricker Warns,” John Fisher, *Chicago Tribune*, March 14, 1953; Holman, History, *supra* 6, at 2; Hearings, *supra* 9, at 537, 266.

Administration's position on a treaty, and according to Reverend Scott, many Senators "voted for treaties [they] have never read." Executive agreements, meanwhile, required the president's approval alone, and the President might be "ambitious," or "conceited," or of "dictatorial propensities." As such, the Brickerites felt it best for the judiciary to assume that supervisory role.<sup>14</sup>

When the supporters of the Bricker Amendment put the responsibility to protect rights, federalism, and capitalism on the shoulders of the judiciary – which they did by definition, as they were transferring powers from the executive and legislative branches into the text of the Constitution proper, to be interpreted by judges —they implicitly espoused an expansive notion of judicial review, assuming that, as Alfred Scheppe wrote in the *New York Times*, "the American people have confidence in constitutional restraints, enforceable by an independent judiciary, above all confidence in men." Under the Bricker Amendment, the courts were not only supposed to settle disputes and protect basic individual rights, but also required to intervene to protect property rights and limit the sovereignty of the federal government. This was a far cry Randolph's, or Waite's, notion of judicial restraint.<sup>15</sup>

THE BRICKER AMENDMENT'S opponents argued Randolph's point of view. Firstly, they argued that the Amendment would inhibit effective policymaking. Senate Minority Leader Lyndon Johnson explained this issue vividly: "one day," he told an assistant, "a president will be sitting around waiting for the Senate wind tunnel to close down and while the wind's still blowing he'll get a telephone call from the Pentagon saying 'Sorry, Mr. President, but we just lost New York.'" President Eisenhower also, though less dramatically, warned his brother Edgar that the Amendment would handcuff American foreign policy, explaining that "the President has to make frequent arrangements with other governments," in order to arrange diplomatic meetings and otherwise grease the wheels of day-to-day diplomacy, and "unless this authority resided with the President, much of our business would come to a standstill." As Secretary of State Dulles explained to the Senate Judiciary Committee, the Amendment "would so detract from the office of the President of the United States that his ability to deal currently with international affairs would be gravely compromised." Opponents claimed that the Amendment would prohibit the United States from participating in an alphabet soup of important agencies and initiatives, including the IMF, the ICJ, the ICAO, and the recently proposed Baruch Plan for international control of atomic energy. In total, Eisenhower concluded in his diary, the Bricker Amendment would "damage the United States materially in its

14 New York State Bar Report, *supra* 14, at 80. On the rhetoric of Yalta and Potsdam in the Bricker Amendment fight, see Robert A Caro, *Master of the Senate*, vol. 3 of *The Years of Lyndon Johnson* (New York: Alfred A. Knopf, 2002), at 535 *et seq.*

15 Alfred J. Scheppe, letter to the editor, *New York Times*, May 30, 1953.

efforts to lead the world in support of a free way of life."<sup>16</sup>

Opponents also argued that the political process would suffice to protect Americans from 'bad treaties.' Eleanor Roosevelt assured Americans in her syndicated column *My Day* that "we have entered into no agreement that impinges on our rights at home," while Eisenhower's Attorney General, Herbert Brownell, dismissed Bricker's claims of impending doom from treaty law as "outlandish." The United States, they noted, had ratified or put forth for ratification exactly none of the treaties of which the Brickerites complained: the President had not signed or even formally proposed the UN Covenant on Human Rights, while the Senate had held up the Genocide Convention in the ratifying process. In the words of U.N. supporter Albert Edelman, "no one [had] condemn[ed] or even question[ed] any treaty that an American President signed or a United States Senate ratified."<sup>17</sup>

Opponents attributed America's success to the extreme caution that the President and Senate supposedly used in negotiating and ratifying treaties and executive agreements. As the Catholic Association for International Peace claimed, "the President and the Senate could be relied upon to see that the treaty power was wisely exercised." After all, "the Senate and the President, and later the Congress as a whole, ha[d] an opportunity to reject, modify, or nullify an international agreement insofar as it affects internal law." Eisenhower even admitted that he would support the Amendment if he could not trust future presidents. As he told his Secretary of State John Dulles, if "with a different kind of administration, it might be a good thing to adopt such a Resolution... *then I am for the Resolution* [italics in original]." Only because he regarded the risk of a "bad administration," combined with a "bad Senate," as what Roy Valance for the American Bar Association called "one of the slightest that we would ever have to assume," was he willing to support the Amendment.<sup>18</sup>

That opponents' first argument entails lax, or at least laxer, judicial review is only logical: if questions of policy outweigh questions of constitutionality, then *Marbury v. Madison*, in establishing judicial review, was wrong to claim that "a law repugnant to the Constitution is void"

16 Robert Gene Baker, *Wheeling and Dealing: Confessions of a Capital Hill Operator* (New York: WW Norton, 1978) *the Middle Way*, no. #118, vol. 15 of *The Papers of Dwight D. Eisenhower* (Baltimore: Johns Hopkins University Press, 2005), <http://www.eisenhowermemorial.org/presidential-papers/first-term/documents/118.cfm>; Dwight David Eisenhower to Edgar Newton Eisenhower, March 27, 1953, Eisenhower Papers; Statement of Secretary of State John Dulles, Hearings, *supra* 9, at 828; Samuel B. Quel, letter to the editor, *Wall Street Journal*, May 11, 1953.

17 Eleanor H. Roosevelt, "My Day," editorial, *United Feature Syndicate*, February 21, 1953, [http://www.gwu.edu/~erpapers/myday/displaydoc.cfm?\\_y=1953&\\_f=md002464](http://www.gwu.edu/~erpapers/myday/displaydoc.cfm?_y=1953&_f=md002464); Statement of Albert Edelman, Hearings, *supra* 9, at 657; William Maslow, "Treaty Curbs Opposed: Catholic Association Calls Plan a Restriction on U.S." *New York Times*, April 5, 1953.

18 Statement of William Maslow, Hearings, *supra* 9, at 307; Dwight David Eisenhower to John Dulles, Eisenhower Papers, *supra* 12; NYSBA Report, *supra* 14, at 62.

without adding, ‘unless really good things would happen were the law adopted.’ Additionally, President Roosevelt had made this very same argument in his attempt to pack the Supreme Court to relax the Court’s standard of review for New Deal legislation. Like Eisenhower, Roosevelt felt concern that the Constitution, as interpreted, might not allow the government to “protect us against catastrophe by meeting squarely our modern social and economic conditions.” Just like Eisenhower, he believed that “means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world.” Whether the “means” was a court-packing scheme or a treaty, the concept was the same: the Constitution must give way to modern social and economic concerns. Thus, in arguing that pragmatism trumped fidelity to the constitutional text, Bricker’s opposition aligned itself with against strict judicial review.<sup>19</sup>

Meanwhile, the Supreme Court had repeated the anti-Brickerites’ second argument—that it was the responsibility of the people, not the courts, to police the legislative process—every time it had opted not to strike down a piece of legislation. As early as 1877, in the well known case of *Munn v. Illinois*, Chief Justice Morrison Waite had remarked, “for protection against abuses by legislatures, the people must resort to the polls, not to the courts.” 1941’s *Minersville v. Gobitis*, which refused to strike down a mandatory flag-salute law, sermonized that “to fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people.” Bricker’s foes would have wholeheartedly agreed. By asserting the value of the people over the judiciary, they hoped that the people could be trusted to avoid the Presidents with ‘dictatorial propensities’ Bricker and his followers had discussed.<sup>20</sup>

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WITH THE BATTLE lines drawn, Bricker entered into negotiations with Eisenhower, and, after those dissolved, engaged the Administration in combat. Both sides’ attempts at compromise, followed by their tactics in the following debate, revealed their sharply divergent positions on constitutional scope. By the time the Amendment finally came to a vote, in February of 1954, Eisenhower and his allies had capitulated to agreeing that individual rights, but nothing else, deserved heightened protection – the modern hybrid – while Bricker was left advocating for a more muscular, Jefferson/Hamilton view of Constitutional protection.

While the Eisenhower Administration did enter into negotiations with Bricker, it never seriously considered adopting anything but the very

<sup>19</sup> *Marbury v. Madison*, 5 U.S. 137, at 180; Franklin D. Roosevelt, “Fireside Chat on Reorganization of the Judiciary” (radio address), <http://www.hpol.org/fdr/chat/>; Homer S. Cummings, “Reasons for President’s Plan and the Remedy” (radio address), <http://newdeal.feri.org/court/cummings.htm>.

<sup>20</sup> *Munn v. Illinois*, *supra* 2, at 124; *Minersville School Dist. v. Gobitis*, 310 US 586, 600 (1941).

first section of the Bricker Amendment. President Eisenhower thought as late as July that Bricker was out to, in his own words, “achieve at least a faint immortality in American history” by putting something in public with the Bricker name appended. As such, Eisenhower thought he could convince Bricker to accept the creation of a “Bricker Commission” to study the issue, giving Eisenhower a few months extra to lobby against Bricker and sap his movement of momentum. After learning that Bricker would not accept such a stopgap solution, Eisenhower began to take what administration insider Sherman Adams later called “a series of delaying actions,” negotiations in which cabinet officials lobbied Bricker, sometimes quite heavily, in order to eliminate all but the first section of the Amendment.<sup>21</sup>

Yet even the Eisenhower camp was willing to embrace the first section of the Amendment, which protected basic rights. As Eisenhower’s Attorney General Herbert Brownell noted in his memoirs, “at one of the early cabinet meetings, [Eisenhower] had expressed his own concerns about altering the Constitution through international agreements” himself. While willing to “allay fears,” however, that “treaties could be used to limit individual rights or deny other constitutional guarantees,” the Administration did not wish to adopt the other two clauses. Giving the judiciary the ability to help determine the scope of government power and economic policy would, in the words of Adams, “disturb the President’s constitutional powers” and prevent the elected branches from effectively conducting their business.<sup>22</sup>

In order to reach out for a possible compromise and stall Bricker’s forward motion, the Eisenhower Administration on July 15<sup>th</sup>, 1953 put forth and gave its “unqualified support” to an alternative amendment, which would make clear the Administration’s support for constitutional protection of basic, enumerated rights and rejection of constitutional guarantees of economic or social policy. Named after its chief Senate sponsor Republican Majority Leader William F. Knowland, the substitute amendment read, in relevant part:

Section 1: A provision of a treaty or other international agreement which conflicts with the Constitution shall not be of any force or effect...

Section 2: When the Senate consents to the ratification of a treaty the vote shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the Journal of the Senate.

Section 3: When the Senate so provides in its consent to ratification, a trea-

<sup>21</sup> Sherman Adams, *Firsthand Report: The Story of the Eisenhower Administration* (New York: Harper & Brothers, 1961), 105-107; Diary of Dwight David Eisenhower, July 24, 1953.

<sup>22</sup> Eisenhower Papers, *supra* 18; Herbert Brownell and John P. Burke, *Advising Ike: the Memoirs of Attorney General Herbert Brownell* (Lawrence, Kansas: University Press of Kansas, 1993), 268-269. The lobbying probably just antagonized Bricker and cemented his opposition to Eisenhower. Later, Bricker would complain that Eisenhower had attempted to “brainwash” him. See Davies, *supra* 11, at 150.

ty shall become effective as internal law in the United States only through the enactment of appropriate legislation by the Congress.

Both the Knowland Amendment and the original Bricker Amendment protected basic enumerated rights in their first sections, but after that they parted ways. The Knowland Amendment entirely struck Bricker's second provision, which protected federalism by requiring treaties to be implemented by "legislation which would be valid in the absence of treaty." It also emasculated Bricker's third section – preventing the President or the Senate from enacting a self-executing treaty, presumed to be socialistic – by requiring the Senate to trigger the requirement. In other words, the Administration was willing to entrust the judiciary with the power to protect basic rights only.<sup>23</sup>

Knowland's amendment did not entirely escape critique; some in the Eisenhower administration, especially Dulles, fretted that the Knowland Amendment would mislead the courts into thinking that Congress had made a large, structural change in the Constitution. Many others thought it redundant: Eisenhower, for example, called it "an amendment to the Constitution that says you can't violate the Constitution," Most Republicans, however, applauded the Knowland Amendment as a clever way to avoid an inter-party split and punt the issue to the second session of Congress. Few, Republican or Democrat, raised substantive objections to the Knowland Amendment itself.<sup>24</sup>

Eisenhower's new position was extremely similar to the modern hybrid. 1938's *United States v. Caroline Products Co.*, the first case to advance modern jurisprudence's separation between individual rights and everything else, asserted that "legislation appears on its face to be within a specific prohibition of the Constitution" would receive more exacting regulation than other legislation. As a practical matter, this doctrine meant that violations of explicitly granted Constitutional rights took (and take) high priority on the modern Court. It is thus not an aberration that Eisenhower would have been willing to give the Court more power to protect rights. After all, the Supreme Court in *West Virginia v. Barnette* had noted, "the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy," i.e., from legislation. In attempting compromise with Bricker, Eisenhower bound himself closer to a position of advocacy parallel to that of those justifying

23 Dwight D. Eisenhower, "Statement by the President on a Proposed Amendment to the Constitution Relating to Treaties" (press statement), American Presidency Project, <http://www.presidency.ucsb.edu/ws/index.php?pid=9648#axzz1mKDbHOnT>; Brownell, *supra* 24, at 270.

24 Adams, *supra* 23, at 108; Emmet John Hughes, *The Ordeal of Power: A Political Memoir of the Eisenhower Years* (New York: Athenium, 1963), 143-144. Requiring the Senate to trigger the Section 3 requirement of course defeated the entire purpose of the Amendment – imagine if Congress were able to decide whether the Bill of Rights applied to each and every law it passed. In any case, a Congress negligent enough to enact a socialistic treaty would most likely also be negligent enough to forget to trigger the Section 3 requirement.

only limited, post-1937 judicial review.<sup>25</sup>

Not surprisingly, Bricker and his supporters rejected the Knowland Amendment, demanding a version with much more robust constitutional protections. They then went on to rebut the anti-Bricker camp's first set of arguments, about policy implications. Eisenhower's claims that the Amendment would irreparably damage American interests were incorrect, supporters argued. In what *New York Times* columnist Arthur Krock called a series of "impressive rejoinders," Bricker's supporters answered each criticism of the Amendment individually. Johnson need not have worried about national defense treaties because such treaties could be executed without Senate intervention through the President's power to provide for national defense. Requiring legislation to be valid in absence of treaty could not be overly cumbersome because "the only other nations in which treaties may be ratified with the advice and consent of the Senate only are Mexico, Cuba, Liberia and the Phillipines." In any case, most treaties and international organizations harmed, not helped, American citizens; the ILO, for example, did not actually benefit America, but instead incubated schemes to "impose upon us the whole program of Socialist and semi-Socialist governments abroad" including government-subsidized medical care and inflation-adjusted minimum wages. Similarly, executive agreements, far from being effective foreign policy tools, had most recently produced Yalta, Potsdam, and the Cold War.<sup>26</sup>

Anti-Bricker commentators then responded to Bricker's responses, garnering responses in the process, until the nation's newspapers had been filled to the brim with Bricker-related writings. With such complex nets of claims, counter claims, and even counter-counter claims – comprising "a debate which," wrote the *New Yorker's* chief Washington correspondent Richard Rovere, "compared favorably in length and wordage, if not in eloquence," to the original Constitutional Convention – it is not surprising that the general public and even some Senators grew weary and confused. Senator Kenneth Keating of New York joked that he could not understand the Bricker Amendment, and a series of Gallup polls from October 1953 to January 1954 demonstrated as much for the rest of the nation. Three in four Americans had, even at the end of January, never heard or read about the Bricker Amendment. Of the rest, only forty percent could accurately summarize what it was intended to do. One can only imagine what percentage of Americans

25 *United States v. Caroline Products Co.*, 304 U.S. 144 (1938), 152; *West Virginia Bd. of Ed. v. Barnette*, 319 US 624 (1944), 638.

26 "Would Bricker Bar Any Arms Treaty?" editorial, *Chicago Tribune*, August 22, 1953; "Study of ILO Shows Dangers," editorial, *Los Angeles Times*, November 3, 1953; Arthur Krock, "In the Nation: Sources of Strength of the Bricker Amendment," *New York Times*, September 29, 1953; Nancy E. Wessell, letter to the editor, *Los Angeles Times*, December 21, 1953; Arthur Krock, "In the Nation: Reverse of the Coin Minted by Bricker," *New York Times*, October 6, 1953; Theodore K. Remsey, letter to the editor, *Los Angeles Times*, October 29, 1953.

accurately understood the debate surrounding the Amendment.<sup>27</sup>

Perhaps as a result, as the new year of 1954 began, the anti-Bricker forces refocused their stream of argumentation from the practical to the philosophical. Their new argument was, as James T. Brand expounded to the Commonwealth Club of California in January, that a “basic change in our form of government...should not be made on the unproven theory that the government will be run by traitors or crackpots.” Trust in the people was valid and paramount. “Our nation will survive,” Alexander Holmes assured readers of the Los Angeles Times, “without the Bricker Amendment,” for Americans were “quite capable of restraining future Presidents by Congressional acts and of evaluating each treaty on its special merits.” As a letter written to the Wall Street Journal on January 26, with the beseeching title of “trust our Presidents,” noted, “this world will be saved or destroyed by the decisions of men. We cannot retreat from that fact by Constitutional Amendment.” An article in the Journal of International Law summed up the point. As J. Edward Fowler wrote: “What is actually proposed...is a notification to the world that the word of the President is not to be trusted.” His article closed with a quotation from Supreme Court Justice Joseph Story:

A power, given in general terms, is not to be restricted to particular cases, merely because it may be susceptible of abuse.... Every power, however limited, as well as broad, is in its own nature susceptible of abuse. No constitution can provide perfect guards against it. Confidence must be reposed somewhere; and in free governments, the ordinary securities against abuse are found in the responsibility of rulers to the people, and in the just exercise of their elective franchise; and ultimately in the sovereign power of change belonging to them...

On this he – and the rest of the opposition – rested his case. Perhaps the treaty power was, in Dulles’ words, “liable to abuse”: but preventing abuse was up to the people, not the courts. Although the judiciary could appropriately act to protect basic rights, federalism and property rights were the responsibility of the polity.<sup>28</sup>

The Brickerites felt otherwise. “I would not place the destiny of our nation,” J.J. Castillo wrote to the Wall Street Journal in January, “in

27 Herbert S. Parmet, *Eisenhower and the American Crusades* (New York: Macmillan, 1972), 309; Richard H. Rovere, *The Eisenhower Years: Affairs of State* (New York: Farrar, Straus, and Cudahy, 1956), 115; George Gallup, “Informed Voters Reverse Bricker Amendment Stand; Most Oppose Plan Now,” *St. Petersburg Times*, January 27, 1954. The issue is not that three of four Americans had no clue what the Bricker Amendment was – ignorance of political events was common in the 1950s and has remained common since. See Bernard Berelson et al., *Voting: A Study of Opinion Formation in a Presidential Campaign* (University of Chicago Press: 1954); Angus Campbell et al., *The American Voter* (John Wiley & Sons, 1960).

28 James T. Brand, *In Defense of the Constitution* (San Francisco: Commonwealth Club of California, 1954), 2; Alexander Holmes, “The Eve of Battle Over Bricker’s Amendment,” editorial, *Los Angeles Times*, January 15, 1954; Frank A. Sieverman Jr., letter to the editor, *Wall Street Journal*, January 26, 1954; Whitton, John B., and J. Edward Fowler, “Bricker Amendment--Fallacies and Dangers,” *American Journal of International Law* 48, no. 1 (January 1954): 56.

the hands of one President and ninety-six Senators.” Ferdinand Mayer agreed, arguing in the New York Times that “an ounce of Constitutional protection” from executive malfeasance or legislative incompetence “was worth a pound of legislative cure.” In the end, the Brickerites settled on a quotation of Thomas Jefferson, prominent throughout the debate, as their final argument, which they posted, among other places, in a full page display advertisement in the Wall Street Journal: “in questions of power,” Brickerites pleaded, “let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution.” In the three key areas of rights, federalism, and economics, they wanted basic Constitutional guarantees, not merely legislative assurances, whether or not those assurances caused trouble for other branches of government.<sup>29</sup>

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AND SO AT last, with the nation’s punditry spent from almost a year of heated constitutional debate, the Senate moved onto voting procedure on the Bricker Amendment. As part of a complex series of political machinations, both sides had introduced various alternative amendments for Senate consideration. Voting on all of them (by the end of the process there were at least five) proved time consuming. Bricker’s original proposal failed with a vote of 50-42, a majority, but not the two-thirds supermajority he needed to send his constitutional amendment to the House.

Another substitute, advanced by Democratic senator Walter George, came within a whisper of passage. On the procedural motion to consider the George Amendment, sixty one Senators voted for and thirty one voted against, the exact margin needed for it to pass. On the actual ballot, it looked as if the margin would be the same – until in walked a notably intoxicated Harvey Kilgore, Senator of West Virginia, supported by minority leader Lyndon Johnson and an aide. When asked for his vote, the tipsy Senator mumbled something sounding like a “no” – and the count was 60-31. It was a stereotypical moment of LBJ drama, but one without consequence. George’s amendment, like Knowland’s, only contained Bricker’s first section. Judicial protection of enumerated rights had already been proven acceptable to everyone, and Bricker’s full amendment had failed to pass.<sup>30</sup>

29 J.J. Del Castillo, letter to the editor, *Wall Street Journal*, January 26, 1954; Ferdinand L. Mayer, letter to the editor, *New York Times*, January 29, 1954; Arthur Svenlen, letter to the editor, *Chicago Tribune*, February 1, 1954; Committee for Constitutional Government, “You Must Act Today to Plug Loophole Treaty Law Tears in Constitution,” advertisement, *Wall Street Journal*, February 15, 1954.

30 Caro, *supra* 16, at 538-539. There seems to be some dispute as to whether Senator Kilgore was drunk at the time of his vote – which apparently would not have been unprecedented – or ill instead. Kilgore was a vociferous opponent of the Bricker Amendment and his vote was not seriously in question, so it is extremely unlikely that the George Amendment passed the Senate.

The Bricker Amendment fight was not just about the Bricker Amendment; it served as a proxy for a broader controversy about the legitimacy and advisability of judicial review. Bricker marshaled popular and policymaker support for a strong, Hamiltonian form of judicial review, and succeeded in affirming a consensus that individual rights were within the judicial sphere of protection, though he failed to expand that sphere to federalism or property. In a fine example of historical irony, a coalition of conservatives cleared the way for the expansively liberal jurisprudence of the Warren Court.

# “Martin Luther vs. the People: the Reformation and the Peasants’ Uprising of 1525”

*Written by Jacob Gladysz-Morawski ‘13, for his Advanced Placement European History course taught by Mr. Devito.*

On the Eve of All Saints Day, 1517 a young Augustinian monk named Martin Luther nailed a list of Ninety-Five theses to the doors of the Castle Church (All-Saints Church) in Wittenberg, a quiet University town in Saxony. It had experienced no violence of the kind that occurred in Franconia in 1476, no young drummers riling up the peasantry. Little the burghers of Wittenberg know that their town was to become the center of a radical transformation not seen since the fall of Rome. The young monk, though perhaps he did not know it yet, had initiated the Protestant Reformation. His Ninety-Five theses - a litany of grievances against the entrenched establishment of the unam, sanctam, catholicam et apostolicam Ecclesiam - did not fall on deaf ears.<sup>1</sup> Luther proclaimed that salvation could not be attained through the purchase of indulgences, or through benefices, or through any other forms of simoniacal alienation. In the context of the thriving business of trading salvation, his calls for a clergy of the everyman and his insistence on the doctrines of salvation sola scriptura, sola fide, and sola gratia represented a theology of radical spiritual equality attempting to recall the supposed purity of the earliest Christians.<sup>2</sup> When bands

<sup>1</sup> The idea of the “One, Holy, Catholic, and Apostolic Church” derives from the Fourth Century Nicene Creed.

<sup>2</sup> The appeal to the text made in the doctrine of Sola Scriptura is strikingly similar to the constitutional originalism of many of today’s conservative legal establishment (Justices Scalia and Thomas). In many ways originalism is an application of Sola Scriptura to temporal

of Peasants in Swabia and Franconia rose up under the banner of the fundamental dignity of all men in 1525, Luther was quick to explain that spiritual equality does not translate into temporal authority. Despite the ideal of spiritual equality, Luther would never extend this egalitarian spirit to the temporal state of man. Instead, he reinforced and perpetuated the old hierarchical structures: princes remained princes, townspeople remained townspeople, and peasants remained peasants. Only the bishops, the last vestiges of religious hierarchy were expunged.

Prior to the uprising of 1525, it would be easy to excuse the peasants for believing that Luther was on their side. From the beginning Luther’s works contained language that condemned the oppression of existing power structures (the Papacy and abusive landlords) and unfairness of the existing economic orders (Indulgences, Tithes, and Fuggerei).<sup>3</sup> As Hans J. Hillerbrand notes, thesis 86 stated “Why does the pope, whose wealth is greater than that of the wealthiest banker, not build a basilica of Saint Peter from his own means?”<sup>4</sup> Luther’s Sermon von dem Wucher criticizes the exploitation of the “common man.”<sup>5</sup> His An der christlichen Adel, one of his most popular tracts, put an emphasis on religious equality but simultaneously attacks the Fugger house.<sup>6</sup> He also attacks fanciful clothing through which so much nobility and people are impoverished.<sup>7</sup> But Luther perhaps expressed his views most clearly in Von der Freiheit eines Christenmenschen in which he proclaims, “A Christian is a perfectly free lord of all, subject to none.”<sup>8</sup> Friedrich Engels even claims Luther included direct calls to arms in his writings: “If thieves are being punished with swords, murderers with ropes, and heretics with fire, why do we not seize, with arms in hand, all those evil teachers of perdition, those popes, bishops, cardinals, and the entire

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law. Both make the case that the text - for Luther, the Bible, for originalists, the Constitution - is immutable, and omnipotent within its jurisdictional purview, and should therefore, be interpreted strictly as statute.

<sup>3</sup> Fuggerei was a common term used during the reformation to describe the perceived exploitation of the people (craftsmen in particular) by the powers of finance, represented by the incredibly wealthy Fugger family of Augsburg. The use of the term became all the more complicated when the Fugger and other banking families remained Catholic and loyal to the Holy Roman Emperor, in contrast to the craftsmen and townspeople who converted to Lutheranism. For a more detailed discussion see Eugene F. Rice, Jr. and Anthony Grafton, *The Foundations of Early Modern Europe*, (New York: Norton & Company, 1970 [1994]), 184.

<sup>4</sup> Hans J. Hillerbrand, “The Reformation and the German Peasants’ War”, in *The Social History of the Reformation*, ed. Lawrence P. Buck and Jonathan W. Zophy (Columbus: Ohio State University Press, 1972), 108.

<sup>5</sup> Ibid, 108

<sup>6</sup> Ibid, 109

<sup>7</sup> Ibid, 109

<sup>8</sup> Martin Luther, “The Freedom of a Christian Man” (1520), in *The Protestant Reformation*, ed. Hans J. Hillerbrand (New York: Harper & Row, 1968), 4.

crew of Roman Sodom?"<sup>9</sup> According to H. G. Koenigsberger, Germany was ready for radical transformation even before Luther posted his Theses.<sup>10</sup> From 1476 and the peasants' rebellion in Niklashausen, the abuses of the clergy and of the landowners was front and certain. And it became yet more prominent during the bunschuh (tied peasant shoe) movement starting in 1493. With a population boom following the plague, peasants were finding it increasingly difficult to find work.<sup>11</sup> Moreover, the irregularly employed landsknecht (mercenary army) stayed in the villages, further adding to resentment and explosive social conditions.<sup>12</sup> By 1517 Germany had seen at least four peasant uprisings (none of which were successful).<sup>13</sup> The combustible atmosphere of Germany in the early sixteenth century no doubt fed the enthusiasm with which local people embraced as a bringer of emancipation, and everybody saw in Luther the emancipation that they wanted to see. The Peasants and craftsmen saw Luther as defending their rights from the oppression of the small landowners. The small landowners and knights saw Luther as the key to further independence from the increasingly powerful princes. And the Princes saw Luther as freeing them from obligations to the Holy Roman Emperor and indeed to Rome itself. Therefore, it was not just the peasants who were incited to action against the state by Luther's social teachings. In 1523 the knights, led by Franz von Sickingen, rallied against the Archbishop of Trier.<sup>14</sup>

After the Sickingen rebellion was quashed, it came time for the peasants, inspired by the writings of Luther and the incendiary sermons of Thomas Müntzer, to mount their most significant rebellion yet. Peasants everywhere from Trier to Salzburg took up arms in 1524 in popular revolt. Some even allied with merchants and townspeople in at least five towns and formed meaningful brotherhoods of peasants and protestant communities.<sup>15</sup> Indeed, in many places, the aspirations of burgher and bauern coincided in the call for a return to the fantasy of ancient Christian equality. This is the same sort of language that Luther used. Across Germany, the Peasants drew up no fewer than 1500 articles of grievances, only seventy of which dealt with religious matters.<sup>16</sup> In 1525 in the towns of Rheinfelden and Württemberg, peasants (or more likely sympathetic burghers) produced their most important and widely circulated list of demands;

9 Friedrich Engels, *The Peasant War in Germany*, accessed November 13, 2012, <http://www.marxists.org/archive/marx/works/1850/peasant-war-germany/index.htm>

10 H. G. Koenigsberger, "The Reformation and Social Revolution", in *The Reformation Crisis*, ed. John Hurtsfield (New York: Harper & Row, 1965), 87

11 Ibid, 86.

12 Ibid, 86.

13 Ibid, 87.

14 Ibid, 88

15 Bernd Moeller, "Imperial Cities and the Reformation", in *Imperial Cities and the Reformation*, ed. and trans. H. C. Erik Middlefort and Mark U. Edwards, (Durham, NC: Labyrinth Press, 1982), 56.

16 Hillerbrand, "The Reformation and the German Peasants' War", 55.

namely, the "Twelve Articles of the Peasants."<sup>17</sup> The articles called for every thing from a clergy determined by the people to the abolishment of serfdom to the common ownership of fields, woods, and streams. Armed with their most formidable weapon, Luther's German Bible, the Peasants included the sanction of scripture in order to bolster their arguments. They say in the third article, "... [I]t is consistent with scripture that we are free and we wish to be so."<sup>18</sup>

Despite the Peasant appeal to the text, and the inclusion of many Lutheran doctrines in the Twelve Articles, Luther himself never came to the support of the peasantry. Instead he actively opposed it. Luther was a supporter of the state and the established social order even before the Peasants' Uprising. In *On Governmental Authority* Luther provides a clear overview of his views on the "law of the temporal sword."<sup>19</sup> Luther claims that because not all are true Christians—if all were true Christians there would be no need for law—there needs to be a governmental authority. For Luther, it is as Timothy (1 Tim. 1 [:9]) says, "The law is not laid down for the just but for the lawless."<sup>20</sup> Governing solely in the realm of the spiritual would be like freeing a savage beast from his chains.<sup>21</sup> In the end, Luther's allegiance to the state trumped his calls for spiritual equality. When it finally came time for Luther to weigh in on the Peasants' Revolts, he invoked the Peasants to stop their campaign against the nobility in the *Friendly Admonition to Peace Concerning the Twelve Article of the Swabian Peasants*. Though operating under the veneer of cordiality and sympathy with the peasants, he has choice words for their actions. He first taps the wrists of the landowners saying, "you do nothing but flay and rob your subjects, in order that you may lead a life of splendor and pride, until the common people can bear it no longer."<sup>22</sup> Despite this criticism of the nobility he even more harsh of the peasantry: "[T]he peasants are mustering, and this must result in the ruin, destruction, and desolation of Germany by cruel murder and bloodshed, unless God shall be moved by our repentance to prevent it."<sup>23</sup> The sin that the nobility must repent for, according to Luther, is not repression of the peasants, but support for the Pope. The entire peasants' rebellion is a result of God's punishment for noble support of Rome. In Luther's eyes the rebellion has hellish undertones. "Satan has raised up many

17 Bernd Moeller claims that the author was Lotzer von Memmingen, *Ibid*, 56.

18 "The Twelve articles of the Peasants, in *The Protestant Reformation*, ed. Hans J. Hillerbrand (New York: Harper & Row, 1968), 65.

19 Martin Luther, "On Governmental Authority", in *The Protestant Reformation*, ed. Hans J. Hillerbrand (New York: Harper & Row, 1968), 44.

20 *Ibid*, 46.

21 *Ibid*, 47-48.

22 Martin Luther, "Friendly Admonition to Peace concerning the Twelve articles of the Swabian Peasants", in *The Protestant Reformation*, ed. Hans J. Hillerbrand (New York: Harper & Row, 1968), 69.

23 *Ibid*, 69.

evil spirits of disorder and murder.”<sup>24</sup> Luther then proceeds to respond to the Twelve Articles of the Peasants one by one. He like, the peasants, uses scripture to justify his arguments. In response to the third article (On the abolishment of Serfdom) he claims that freeing the serfs on the basis of Christian equality and the universality of Christ's redemption is “making Christian liberty an utterly carnal thing.”<sup>25</sup> He continues,

“Did not Abraham and the other patriarchs have slaves? Read what St. Paul teaches about servants, who at the time were all slaves. Therefore this article is dead against the gospel. It is a piece of robbery which everyman takes from his lord the body, which has become his lord's property. For a slave can be a Christian, and have Christian liberty, in the same way that a prisoner or a sick man is a Christian, and yet not free. This article would make all men equal, and turn the spiritual kingdom of Christ into a worldly, external kingdom; and that is possible. For a worldly kingdom cannot stand unless there is in it an inequality of persons, so that some are free, some imprisoned, some lords, some subject.”<sup>26</sup>

Clearly, Luther was not the friend of the people that the Peasants thought he was. But Luther had yet harsher thing to say about the revolt in *Against the Robbing and Murdering Hordes of Peasants* who “rob and rage like mad dogs.”<sup>27</sup> He ends his short polemic with an invocation to the nobility. As Engels notes, “Compared with the hordes of peasants, the servants of Roman Sodom were innocent lambs.”<sup>28</sup> He begs them, “Dear Lords, here is a place where you can release, rescue, help. Have mercy on these poor people! Stab, smite, slay whoever you can.”<sup>29</sup>

Luther though he was a promise of the hope of equality to the Peasants, he ultimately betrayed their trust. Like the Hussite rebellion and other previous peasant uprisings, the Peasants' Revolt of 1525 was mercilessly suppressed. But unlike previous rebellions, it was ended, not by those whom it declared its enemies but those whom it declared its friends. The Peasant rebellion passed and did not radically alter the progress of history because it remained wholly of the Peasants. Though in Some Alsatian towns, it sped up the reformation, in other Thuringian towns, the widespread disorder spurred a stronger allegiance to the Roman church.<sup>30</sup> The effect was on net, neutral. Thanks to the sanction of Luther, the position of the lower class remained largely untouched. The peasants

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24 Ibid, 72.

25 Ibid, 83.

26 Ibid, 83.

27 Martin Luther, “Against the Robbing and Murdering Hordes of Peasants”, in *Reformation and Authority: The Meaning of the Peasants' Revolt*, ed. Kyle C. Sessions (Boston: D.C. Heath and Company, 1968), 38.

28 Engels, *The Peasant War*. Perhaps an overdone comparison, but nevertheless poignant.

29 Luther, “Against the Robbing and Murdering Hordes of Peasants”, 39.

30 Mueller, *Imperial Cities and the Reformation*, 56.

remained peasants and the princes remained princes. Life for the common man, despite the radical change of the reformation, went on as usual.

# The Highest Laws:

## The Great Transformation of Thomas Jefferson and James Madison and the Rise and Fall of Early Republican Ideals

*Written by Daniel Elkind '13 for his AP US History Class taught by Dr. Link.*

“The question you propose, whether circumstances do not sometimes occur, which make it a duty in officers of high trust, to assume authorities beyond the law, is easy of solution in principle, but sometimes embarrassing in practice. A strict observance of the written laws is doubtless one of the high duties of a good citizen: but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.”<sup>1</sup>

Thomas Jefferson, 1810

As the political party system emerged during the Early Republic and political factions began to form, national politics began to develop around two disparate and seemingly irreconcilable visions of the American future. The Republican vision of small government, strict construction of the Constitution, individual liberties, an agrarian society of virtuous small farmers, and limited executive power clashed dramatically with the Federalist agenda of broad federal control over the economy and greater industrialization. As the leading proponents of the Republican view, Thomas Jefferson and James

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<sup>1</sup> Letter from Jefferson to J.B. Colvin dated September 20, 1810, from *Memoir, Correspondence, and Miscellanies, From the Papers of Thomas Jefferson*, ed. Thomas Jefferson Randolph (2005), Project Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H\\_4\\_0092](http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H_4_0092) (accessed May 5, 2012)(“Gutenberg”).

Madison responded with scathing rhetoric to the initiatives of the Federalist Treasury Secretary Alexander Hamilton and to the administrations of George Washington and John Adams. Both Jefferson and Madison believed the Federalist ideal of expanding federal power to be a threat to the Republic and an almost certain invitation for Constitutional degeneration at the hands of monarchy and tyranny.

Only about a decade later, however, Jefferson had himself adopted a philosophy of broad Presidential prerogative and the right to ignore strict construction when the ends justified the means. Similarly, Madison came to radically alter his philosophy of governance by proposing a Second Bank of the U.S., calling for tariffs to protect industry, and recognizing that the future of the nation lay in industry rather than in farming. What had driven this astonishing about face in the positions of Jefferson and Madison and led them to adopt policies and philosophies resembling those of the Federalists they had so harshly criticized and so greatly feared? Could it have been that the aspirations of Jefferson and Madison were weighed down by practical considerations? Indeed, the presidencies of Jefferson and Madison demonstrated that many of the Federalist ideals which the Republicans had criticized -- such as a broad interpretation of the Constitution, extensive Executive power, increased federal control over the economy, and support for industry -- became necessary in actual governance.

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The dramatic transformation of Jefferson and Madison can only be appreciated in light of their earlier rhetoric, their objections to the Hamiltonian program of development, and the bitterness of their invectives against the Federalists, whom Madison so scathingly referred to as the “Anti-Republican Party.”<sup>2</sup> During the administrations of Washington and Adams, Jefferson and Madison championed the Republican ideals of small government, careful protection of civil liberties, strict construction of the Constitution, and severely limited executive authority and denounced what they believed to be a vast and unconstitutional expansion of federal and executive power espoused by Hamilton and the Federalists, whose policies benefitted industry at the expense of small farmers. To Jefferson and Madison, the Federalist program was a “danger to republicanism.”<sup>3</sup>

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<sup>2</sup> James Madison, *Writings*, ed. Jack N. Rakove (New York: The Library of America, 1999), 531 (“Madison, Writings”).

<sup>3</sup> Neal Riemer, “The Republicanism of James Madison,” *Political Science*

a movement that wholly disrespected personal liberties and promised to corrupt the new nation by projecting tyrannical or monarchical powers where there should be a restrained and democratic federal system.

The acerbity of Jefferson and Madison's rhetoric reflects just how profound a threat they perceived the Federalist agenda to be. In the *National Gazette*, Madison decried the Federalists as "those, who from particular interest, from natural temper, or from the habits of life, are more partial to the opulent than to the other classes of society, and having debauched themselves into a persuasion that mankind are incapable of governing themselves ... [believe] that government can be carried on only by the pageantry of rank, the influence of money and emoluments, and the terror of military force."<sup>4</sup> Likewise, Jefferson characterized the Federalist economic program as one that "flowed from principles adverse to liberty, & was calculated to undermine and demolish the republic, by creating an influence of his department over the members of the legislature."<sup>5</sup>

Jefferson and Madison objected to Hamilton's program on multiple grounds, first and foremost Constitutional ones. Perhaps the most central tenet of Republican philosophy was the belief that the Constitution was to be strictly construed. This principle of strict construction asserted that the powers of the federal government were limited to only those expressly granted by the language of the Constitution and rejected the idea that Congress or the President could exercise "implied" authority or extend the "necessary and proper" or "general welfare" provisions to powers not specifically delineated by the Constitution. In the words of Jefferson in 1791, "To take a single step beyond the boundaries thus specifically drawn ... is to take possession of a boundless field of power, no longer susceptible of any definition."<sup>6</sup>

This principle of strict construction comprised the central Republican objection to much of the Hamiltonian program, most notably the proposal for a National Bank. Since there was no express provision in the Constitution authorizing the federal charter of a bank, the Republicans argued that the government had no authority to establish one.<sup>7</sup> In another example, when

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*Quarterly*, vol. 69, no. 1 (1954): 52.

<sup>4</sup> Madison, Writings, 531.

<sup>5</sup> Letter from Jefferson to George Washington dated September 9, 1792, Library of Congress, *The Thomas Jefferson Papers* at The Library of Congress, [http://memory.loc.gov/cgi-bin/query/r?ammem/mtj:@field\(DOCID+@lit\(tj070029\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mtj:@field(DOCID+@lit(tj070029))) (accessed May 12, 2012).

<sup>6</sup> Jefferson Opinion to Washington on the Constitutionality of the National Bank (1791), The Avalon Project, Yale University, Documents in Law, History, and Diplomacy, [http://avalon.law.yale.edu/18th\\_century/bank-tj.asp](http://avalon.law.yale.edu/18th_century/bank-tj.asp) (accessed May 19, 2012).

<sup>7</sup> Madison Speech to Congress Opposing the National Bank, February 2, 1792,

Washington issued the Neutrality Proclamation of 1793 in response to the conflict between Britain and France, both Jefferson and Madison protested that the Proclamation exceeded the powers afforded to the President by the Constitution because the Constitution granted the President no power to establish foreign policy. The President's action, pro-claimed Madison, had "the appearance of being copied from a Monarchical model."<sup>8</sup> Upon encouragement from Jefferson, Madison wrote five essays under the title "Helvidius" in which he sought to expose the unconstitutionality of Washington's actions.<sup>9</sup> Jefferson and Madison also applied a strict constructionist view to the Sedition Act passed during the Adams administration, which they viewed as a violation of the Constitution largely for the reason that only the states had the Constitutional authority to pass laws regarding libel and sedition. In the Kentucky Resolve of 1798, Jefferson seized the opportunity to articulate the general view that actions of the federal government not expressly authorized by the Constitution were "unauthoritative, void, and of no force."<sup>10</sup>

Further objections to measures such as the Sedition Act came from the decisive position that Jefferson and Madison took on the issue of civil liberties. Both Jefferson and Madison, the author of the Bill of Rights, claimed to be strong defenders of personal liberties against Federalist attacks. The 1798 Virginia and Kentucky Resolves, drafted by Jefferson and Madison themselves, denounced the Alien and Sedition Acts as representing a blatant assault on free speech and free press -- institutions safeguarded by the First Amendment -- and as providing authorization for the President to imprison or deport aliens without a judicial hearing and in violation of due process of law. In the words of historian Neal Riemer, the Re-publicans judged the acts as measures that "stifled liberty under the guise of controlling the licentiousness of the press."<sup>11</sup> In 1787, Jefferson had stated of freedom of the press, "Were it left to me whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."<sup>12</sup> In the Virginia Report on the Alien and Sedition Acts, Madison took the radical position that the Constitution protected the press not only against "prior

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Madison, Writings, 482; Jefferson Opinion in fn. 6.

<sup>8</sup> Madison Speech to Congress Opposing the National Bank, February 2, 1792, Madison, Writings, 482; Jefferson Opinion in fn. 6.

<sup>9</sup> Madison, "Helvidius No. 1," Madison, Writings, 537-46.

<sup>10</sup> Resolutions of 1798 Adopted by the Kentucky Legislature, *The Papers of Thomas Jefferson*, Princeton University, <http://www.princeton.edu/~tjpapers/kyres/kyadopted.html> (accessed May 5, 2012) ("Jefferson Papers").

<sup>11</sup> Riemer, 53-4.

<sup>12</sup> Letter from Jefferson Colonel Edward Carrington dated January 16, 1787, Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16782/16782-h/16782-h.htm#2H\\_4\\_0043](http://www.gutenberg.org/dirs/1/6/7/8/16782/16782-h/16782-h.htm#2H_4_0043) (accessed May 5, 2012).

restraints” on publication, but also against any “subsequent punishment” after publication for what it had published.<sup>13</sup>

So strong was his belief in individual liberties that Jefferson professed great faith in the cleansing effect of revolution, taking the position that the people had the right to rebel against government policies which were unjust and that periodic rebellions were essential to the preservation of civil liberties.<sup>14</sup> “What country before ever existed a century and a half without a rebellion?” asked Jefferson. “And what country can preserve its liberties, if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms ... The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.”<sup>15</sup>

This extreme defense of individual liberties was strongly intertwined with almost all of Jefferson and Madison’s positions. As summarized by historian Charles Merriam, Jr., Jefferson and Madison believed in a small federal government and in states’ rights largely because they saw “energetic government” at the federal level, the level most distant from the people, as “necessarily oppressive.”<sup>16</sup> To this end, Jefferson and Madison strongly opposed the development of standing armies in peacetime, which the Republicans viewed as instruments for the expansion and simultaneous concentration of power in the hands of the Chief Executive. In addition, they vigorously denounced the buildup of the navy during the Quasi-War, which they claimed to be a Federalist plot to seize tyrannical power, and, in the words of historian Leonard Levy, “wailed that the troops would destroy liberty at home” when in 1798 the Federalists raised twelve regiments in response to the French destruction or seizure of hundreds of American ships at sea.<sup>17</sup>

Jefferson and Madison viewed the independence of the judiciary as an important element of preserving individual liberties, and, as Madison wrote in the Virginia Resolves, objected to any measure which “by uniting legislative and judicial powers, to those of the executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the federal constitution.”<sup>18</sup> Jefferson feared the fact that the Alien Act gave

the President the power to “be the accuser, counsel, judge, and jury” and placed judicial power in what was supposed to be a separate branch of government, concentrating legal authority in the hands of a single individual.<sup>19</sup> Thus, they feared that the Federalists were vastly expanding the powers of the President and threatening to destroy the vital separation of powers on which the stability of the national government depended.

Moreover, the Jeffersonian concept of liberty extended to a fervent Republican belief in the virtue of the small farmer. Jefferson and Madison considered farming to be God’s work, whereas they believed that the development of industry -- a mainstay of the Hamiltonian scheme -- would erode civil liberties and corrupt the fabric of society. In his Notes on the State of Virginia, Jefferson rhapsodized that farmers were the chosen people of God ... whose breasts he has made his particular deposit for substantial and genuine virtue.”<sup>20</sup> Jefferson considered small farmers the “most valuable citizens, for they are the most vigorous, the most independent, the most virtuous and ... tied to their country and wedded to its liberty and interest by the most lasting bonds.”<sup>21</sup>

In contrast, Jefferson stated, “the class of artificers [are] the panders of vice, and the instruments by which liberties of a country are generally overturned;”<sup>22</sup> and the cities which they bring with them “pestilential to the morals, the health, and the liberties of man. Moreover, Jefferson and Madison opposed protective tariffs for industry, viewing such tariffs, in the words of Madison, as “commercial shackles ... generally unjust, oppressive, and impolitic.”<sup>23</sup>

Thus, the polarities in American politics developed around two completely different visions. Jefferson and Madison repudiated the Hamiltonian vision of a country with a future in manufacturing and urban development, fueled by big government, protective tariffs, and a National Bank. Instead they envisioned a Romantic and distinctly American future, consisting of a so-called “Empire

13 The Virginia Report on the Alien and Sedition Acts, Madison, *Writings*, 608, 645.

14 C. E. Merriam, Jr., “The Political Theory of Jefferson,” *Political Science Quarterly*, vol. 17, no. 1 (1902), 24.

15 Letter from Jefferson letter to Colonel Smith dated November 13, 1787, Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16782/16782-h/16782-h.htm#2H\\_4\\_0116](http://www.gutenberg.org/dirs/1/6/7/8/16782/16782-h/16782-h.htm#2H_4_0116) (accessed May 5, 2012)

16 Merriam, 24.

17 Leonard W. Levy, *Jefferson and Civil Liberties, The Darker Side*, paperback ed. (Chicago: Elephant Paperback, 1963), 109-10.

18 Virginia Resolves of 1798, Madison, *Writings*, 590.

19 Kentucky Resolves of 1798, Jefferson Papers, <http://www.princeton.edu/~tj-papers/kyres/kyadopted.html> (accessed May 5, 2012).

20 Thomas Jefferson, Notes on the State of Virginia, Query XIX, *Manufacturers*, pp. 164-65, ed. William Peden (Chapel Hill: University of North Carolina Press, 1955), 164-65 (“Notes on the State of Virginia”).

21 Letter from Jefferson to John Jay dated August 23, 1785, Electronic Text Center, University of Virginia Library, <http://etext.virginia.edu/etcbin/toc-cer-new?id=JefLett.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=33&division=div1> (accessed May 5, 2012) (“University of Virginia Electronic Text Center”).

22 Ibid.

23 Statement by James Madison on Import Duties in Congress on April 9, 1789, *The Founders’ Constitution*, ed. by Philip P. Kurland and Ralph Lerner (University of Chicago Press and Liberty Fund), [http://press-pubs.uchicago.edu/founders/documents/a1\\_8\\_1s18.html](http://press-pubs.uchicago.edu/founders/documents/a1_8_1s18.html) (accessed May 12, 2012).

of Liberty” built around the prosperous and virtuous farmer, a small and democratic government, and a land of individual liberties. “Let our workshops remain in Europe,” Jefferson insisted. “The loss by the transformation of commodities across the Atlantic will be made up in happiness and permanence of government.”<sup>24</sup>

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Despite his bitter criticisms of the Federalists, Jefferson came to disregard many of his earlier principles when he became President. In a letter to J. B. Colvin dated September 20, 1810, Jefferson expressed support for the power of the President to ignore the strict limits of the Constitution and took the radical position that it could be both necessary and proper for the President to take actions which violated the law when the ends justified means. In the letter to Colvin, Jefferson made the following statement:

“The question you propose, whether circumstances do not sometimes occur, which make it a duty in officers of high trust, to assume authorities beyond the law, is easy of solution in principle, but sometimes embarrassing in practice. A strict observance of the written laws is doubtless one of the high duties of a good citizen: but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.”<sup>25</sup>

What had brought Jefferson to this point? How could the leader who had argued so zealously for strict construction and who had feared a “monarchical” and “tyrannical” expansion of federal power change his views so dramatically and come to espouse such an extreme position? Two major examples from the Jefferson administration -- the Louisiana Purchase and the Embargo Acts -- illustrate the recognition by Jefferson that a very different philosophy of governing and the power of the President was a necessary to achieve his goals and that a rigid strict constructionist attitude was impractical.

The first major example of this development is the Louisiana Purchase. Despite Jefferson’s strong belief in strict construction, Jefferson quickly realized that he had to bend his principles in making the purchase. Jefferson was highly committed to the expansion of the nation as a means of providing an Empire of Liberty in the West for virtuous small farmers but conceded that the Constitution did not specifically provide Congress with the power to acquire new territories and that, under a strict construction, a constitutional amendment was necessary to complete the purchase. Jefferson acknowledged

24 Notes on the State of Virginia, 164-5.

25 Letter from Jefferson to J.B. Colvin dated September 20, 1810, Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H\\_4\\_0092](http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H_4_0092) (accessed May 5, 2012).

that “the constitution has made no provision for our holding foreign territory, & still less for incorporating it into our Union.”<sup>26</sup>

Initially, Jefferson intended to seek a constitutional amendment to ratify the acquisition of the Louisiana territory. In a letter to Senator Wilson C. Nicholas on September 3, 1803, Jefferson rejected the suggestion that the acquisition of the Louisiana territory be done without a constitutional amendment and wrote, “I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless.”<sup>27</sup> However, Jefferson soon received word that Napoleon might soon abandon the agreement to sell the territory, and he hastily abandoned the idea of getting a constitutional amendment to complete the purchase so as not to give Napoleon a reason to reconsider the offer.<sup>28</sup> Jefferson even took the position that, because of the urgent need to finalize the purchase, there should be as little debate as possible about the constitutional issue in Congress.<sup>29</sup> Thus, Jefferson recognized in the case of the Louisiana Purchase that the practical necessities required him to act even though he believed he was acting without specific authority from the Constitution.

Unquestionably, the most extreme example of Jefferson’s willingness to abandon his previous Republican principles centered around the Embargo Acts, passed by Congress at Jefferson’s urging to bring a halt to trade with Europe in response to British and French attacks on American ships, the impressment of American sailors, and the British attack on the U.S.S. Chesapeake off the coast of Virginia. In the words of historian Leonard Levy, the Embargo Act “remains the most repressive and unconstitutional legislation ever enacted by Congress in time of peace.”<sup>30</sup> The acts represented an extreme assault on personal liberties, an enormous expansion of the use of the military to enforce domestic laws against U.S. citizens, and an unprecedented amplification of Presidential power.

26 Letter from Jefferson to John Dickinson dated August 9, 1803, Envisaging the West, Joint Project of Center for Digital Research in Humanities at the University of Nebraska and the Virginia Center for Digital History at the University of Virginia, [http://jeffersonswest.unl.edu/archive/view\\_doc.php?id=jef.00004](http://jeffersonswest.unl.edu/archive/view_doc.php?id=jef.00004) (accessed on May 5, 2012).

27 Letter from Jefferson to Senator William C. Nicholas dated September 7, 1803, Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H\\_4\\_0002](http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H_4_0002) (accessed May 5, 2012).

28 John Yoo, Jefferson and Executive Power, 88 B.U. L. Rev. 421, 439 (2008), <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/YOO.pdf> (accessed May 5, 2012).

29 Letter from Jefferson to Senator William C. Nicholas dated September 7, 1803, Gutenberg, [http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H\\_4\\_0002](http://www.gutenberg.org/dirs/1/6/7/8/16784/16784-h/16784-h.htm#2H_4_0002) (accessed May 5, 2012).

30 Levy, 139.

The first of the Embargo Acts, passed on December 22, 1807, banned exports to Europe, and the second of the acts, passed on January 8, 1808, extended the ban to fishing and whaling vessels which were believed to be circumventing the embargo by carrying goods up the coast to Canada. The third Embargo Act, passed on March 12, 1808, banned the export of almost all goods of any kind bound either by land or by sea to Europe or to countries from which the goods might subsequently travel to Europe, including land shipments to Canada. The effect of the Embargo Acts was to bring trade to a near halt, to cause huge economic hardship on shippers and businesses that had engaged in commerce abroad, and to spark civil disobedience throughout the Northeast and Great Lakes regions. The acts imposed heavy penalties on violators, including the seizure of their ships and large fines.

Nevertheless, the most egregious element of the Embargo Acts was their utter disregard of civil liberties. On April 25, 1808, a fourth Embargo Act was passed which concentrated tremendous power in the hands of the President and allowed for the seizure of vessels upon the mere suspicion that cargo for export was on board. The navy was authorized to seize ships without search warrants and on mere suspicion, and no ship having any cargo aboard whatsoever could depart for even an American port adjacent to a foreign territory “without the special permission of the President.”<sup>31</sup>

The Embargo Acts not only infringed personal liberties and Fourth Amendment rights by allowing the seizure of ships on mere suspicion that they might carry their goods to Europe, but represented an enormous expansion of executive power. The acts gave the President extensive powers over the day-to-day administration of their provisions, and Jefferson used these powers to require the detention of vessels and goods without warrants and on mere suspicion.<sup>32</sup> Moreover, in response to growing protests and evasion, Jefferson undertook extreme and continuously escalating measures to enforce the acts, perhaps most ominously by using the navy and army to enforce the Embargo Acts against U.S. citizens on an unprecedented scale. Never before had the federal government used the federal army or navy to enforce the laws of the U.S. against Americans, although state militias had been used to put down the Whiskey Rebellion and other uprisings prior to the Jefferson administration.

Jefferson was so convinced that he was in the right that he ignored a Supreme Court ruling declaring some of his Embargo Act regulations illegal. His administration had encouraged the detention of all vessels carrying certain types of goods, regardless of whether or not customs inspectors actually believed the goods were headed to a foreign port. Instead of abiding by Justice William Johnson’s decision striking down such measures as part of

an “unsanctioned infringement upon individual liberty,”<sup>33</sup> Jefferson had his Attorney General publically criticize the ruling and refused to abide by it. In fact, a fifth Embargo Act was passed in January of 1809 giving the President the express power to use military force to enforce the acts and further expanding the power of the federal government to seize, without a warrant, merchandise in transit within the U.S. on the mere suspicion that it might be headed to a port abroad.

What had happened to the Jefferson who worried that the expansion of the federal government under the Federalists, the mere presence of a standing army, and the blatant infringement on personal liberties of the sort that the Alien and Sedition Acts embodied would lead to the decay of the republic and the rise of a tyranny in its place?

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Though Madison never espoused the radical view that the President had the right -- and sometimes even the obligation -- to ignore the laws and disregard the Constitution, he, too, came to the realization that the nation had changed, and that the necessities of actual governance required him to reverse many of his earlier positions. In spite of his steadfast opposition to the First Bank, protective tariffs, and efforts to promote manufacturing, Madison presided over the establishment of the Second National Bank in 1816, signed into law the protectionist tariff of 1816, and eventually decided that the future of the nation lay in industry rather than in farming.

The first example of Madison’s change in position was his support for the Second Bank. The War of 1812 had left the nation with a significant amount of war debt it could not fund, and the First Bank of the U.S. had since expired. Despite his strong opposition to the First Bank of the U.S. on strict constructionist grounds, Madison now realized that a national bank was necessary to fund the nation’s war debt. In his Seventh Annual Message to Congress on December 15, 1815, Madison advocated the need for a national bank, a national currency, and a national management of the economy to manage the debt created by the War of 1812. “It is... essential to every modification of the finances that the benefits of a uniform national currency should be restored to the community... If the operation of state banks cannot produce this result, the probable operation of a national bank will merit consideration.”<sup>34</sup> Madison had thus come to realize that the practical considerations of governance required him to compromise his strict constructionist view, and the Second Bank was chartered in 1816.

By 1815, Madison had also dramatically reconsidered his earlier positions on manufacturing and tariffs. By 1815, international trade and industry were

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31 Levy,102.

32 Levy,104-5.

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33 Levy,126-8.

34 Madison, *Writings*, 714.

becoming increasingly important to the U.S. Madison realized that industry was necessary for the American economy and that tariffs were needed to enable American industry to survive against international competition. Madison abandoned the opposition to protective tariffs, and in his Seventh Annual Message to Congress, stated the following:

“. . . experience teaches that so many circumstances must concur in introducing and maturing manufacturing establishments, especially of the more complicated kinds, that a country may remain long without them, although sufficiently advanced and in some respects even particularly fitted for carrying them on with success. Under circumstances giving a powerful impulse to manufacturing industry it has made among us a progress and exhibited an efficiency which justify the belief that with a protection not more than is due to the enterprising citizens whose interests are now at stake it will become at an early day not only safe against occasional competitions from abroad, but a source of domestic wealth and even of external commerce.”<sup>35</sup>

As a result, Congress adopted the Tariff of 1816 protecting a wide range of American industry. While Congress had previously enacted tariffs to retaliate against those of other countries, the 1816 Tariff was, in the words of historian Douglas A. Irwin, “the first truly protectionist tariff in U.S. history.”<sup>36</sup>

By 1816, even Jefferson had recognized that the world was a different place and that earlier Republican ideals praising the virtues of a farming nation and criticizing industrial development had been long since outdated. In a letter to Benjamin Austin dated January 9, 1816, Jefferson wrote:

“You tell me I am quoted by those who wish to continue our dependence on England for manufactures. There was a time when I might have been so quoted with more candor, but within the thirty years which have since elapsed, how are circumstances changed! . . . We have experienced what we did not then believe, that there exists both profligacy and power enough to exclude us from the field of interchange with other nations: that to be independent for the comforts of life we must fabricate them ourselves. We must now place the manufacturer by the side of the agriculturist.”<sup>37</sup>

Just as Madison and Jefferson had abandoned their hopes for an Empire of Liberty completely devoid of “pestilent” industrial development, so too had both leaders reversed the intransigence of their earlier views on the size of the federal government. Madison came to recognize the need for the national government to play a large role in building roads and infrastructure, and called

for what were effectively the beginnings of the American System. Infrastructure development, said Madison to Congress in 1815, “can best be executed under national authority.”<sup>38</sup> In the same speech, Madison demonstrated that he had overcome his qualms about the role and size of the military by recommending that Congress establish new military academies and declaring the military to be the “safeguard of a free state.”<sup>39</sup> In Madison’s revised philosophy of government, the army was far from the tool of tyranny and oppression that he had declared it to be only a decade or so before; the military now became the great guardian of liberty and the democratic system of government established by the Constitution. Here, too, Madison’s experience in actual governance had been an astonishingly transformative one.

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Thus, it was the realities and necessities of actual governance that had led to the dramatic transformation in the political views of Jefferson and Madison and to the great rise and fall of the Republican vision for America’s future as a nation of small government, farming as opposed to industry, strict construction of the Constitution, limited Executive authority, and complete respect for individual liberties. In the end, the tyranny that destroyed Jefferson’s vision of the Republic was not that of the military dictator or political faction he had always feared; rather, it was the tyranny of reality and the inescapable practical considerations of governance that frustrated Jefferson and Madison’s idealistic vision of the American future and led to the ultimate recognition that their original positions would need to evolve with the times.

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35 Madison, *Writings*, 715-16.

36 Douglas A. Irwin, *The Aftermath of Hamilton’s “Report on Manufacturers,”* (Washington, D.C.: National Bureau of Economic Research 2003): 24. <http://www.nber.org/papers/w9943>.

37 Letter from Jefferson to Benjamin Austin dated January 9, 1816, University of Virginia Electronic Text Center, <http://etext.virginia.edu/etcbin/toccer-new?id=JefLett.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=236&division=div1> (accessed May 23, 2012).

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38 Madison, *Writings*, 714.

39 Madison, *Writings*, 714.

# “Martin Luther and the Formation of the German State”

*Written by Spencer Cohen '13 for his Advanced Placement European History course taught by Mr. Devito.*

In pre-Reformation Germany, opposition to the corruption of the Roman Catholic Church was rampant. Many Germans published tracts denouncing clergy and church ceremonies, though never wanting to split with the Church. At the same time, German princes were attempting to gain power in the Holy Roman Empire—through “Reichsregiment.” Charles V failed to grant them more power. Martin Luther arose into this early 16th century Germany with ideas of a split with Rome. Due to other priorities rather than Germany, Charles V sided with the papacy and not Germany. Charles V, then, was in direct opposition to both Luther and Germans. The struggle against Charles and the struggle against the Church became linked together in the early 16th century. The movement—Protestantism—had a distinct German tone, and in many ways resembled an early form of German nationalism.<sup>1</sup> Protestant princes—forming the League of Schmalkalden—outlined an early German state. Protestantism and the ideas of Luther defined such early German state.

## *The Holy Roman Empire Under Charles V*

In the early 16th century, Germany was ruled by the Holy Roman Empire. Though as Roland H. Bainton in *The Life of Martin Luther: Here I Stand* argues, it only “approximated a German national state because it was at once too large, since any European prince was eligible to the

1 Nationalism will be treated as it is defined in the Stanford Encyclopedia of Philosophy: “The actions that the members of a nation take when seeking to achieve (or sustain) self-determination”

highest office, and too small, because actually the Hapsburg dynasty was dominant.” The state was not truly German, and encompassed too many other lands to be called a true “German state.”<sup>2</sup>

The Holy Roman Empire, as dictated by the Golden Bull of 1356, would have its ruler chosen by a vote of seven princes. In 1519, following the death of Emperor Maximilian I, Charles V ascended to the throne. He was to rule an empire that reached “over the hereditary Hapsburg possession in Germany.”<sup>3</sup> These included Luxembourg, Netherlands, parts of Spain, namely Castile and Aragon, parts of Italy, notably Naples, Sicily, and Sardinia, and Burgundian lands. Before his rule of such vast territory, he was the king of Spain, a position he acquired at the age of 16.

In 1527, German mercenaries sacked Rome. Charles V placed Pope Clement VII in a prison in San Angelo for seven months. Eventually, Clement abdicated, and “conferred the imperial crown on Charles V in the Cathedral of Bologna in 1530, this being the last coronation of a German emperor by a pope.”<sup>4</sup> Charles, as conferred by the Pope, was given a mandate to rule by the divine right of the Roman Catholic Church. Charles’ role as the ruler of Italy along with Germany was solidified with the 1529 Treaty of Cambrai. Eventual opposition to the Catholic Church could in some ways be used as opposition to Charles V due to his leadership under Catholic providence and right.

## *German Nationalism Develops*

During this time, opposition to the Catholic Church by those in Germany was rampant. At the same time, Charles’ actions aligned himself with the church and alienated him from the German people. Both princes and the general populous had reason to oppose both the Catholic Church and Charles.

An important factor to the development of German nationalism was that, as Reinhardt argues, Charles was “handicapped...by the fact of his never ceasing to be a foreigner on German soil.”<sup>5</sup> He was to rule over the German empire by a mandate of the Holy Roman Empire, but he was not a German. He was a Spaniard.

At the same time, Charles’ rule was also marked by war with France under the rule of Francis I. The war was over the lands of Burgundian,

2 Roland H. Bainton, “A Life of Martin Luther: Here I Stand,” (Nashville: Abingdon Press, 1977), 100.

3 Kurt F Reinhardt, “Germany: 200 Years, Volume 1” (New York: Frederick Ungar Publishing Co., 1982), 205.

4 Reinhardt 1982, 207.

5 Reinhardt 1982, 209.

along with areas in Italy. Most of these wars were on foreign soil, meaning that Charles was often away from Germany. His absence, according to Reinhardt, allowed princes to gain power and influence, turning into what Barraclough has coined the “Age of Princes.”<sup>6</sup> In this period, several separate principalities defined Germany. Each was run as a near sovereign—or “estate”—though they were all under the rule of the Holy Roman Empire.

The lead-up to this period—under Maximilian was marked by conflict between the “estates” of the princes and the imperial government as Germany made the “transition from medieval to modern times.” The princes, yearned, as Barraclough argues, for reform. They wanted a change to the system of rule, even “mak[ing] the election depend[ent] on the acceptance of a ‘capitulation’” by Charles.<sup>7</sup>

The most pivotal part of the capitulation agreement was the creation of ‘Reichsregiment.’ Based in Nuremberg, the heads of the “estates”—the princes—would meet under the auspices of the emperor to discuss policy and rule. Essentially, the system, if enacted as planned, would have given the princes a direct role in the rule of the Holy Roman Empire. The system failed to fully come to fruition and give power to the princes. The princes were unhappy with rule by the Holy Roman Empire, in which they had no strong role.<sup>8</sup>

At the same time, a growing rift between Germany and Rome developed. After Charles V took office, and even before, several notable tracts and pamphlets criticizing Rome developed. In 1514, Ulrich von Hutten published *Epistolae obscurorum virorum*, which criticized Romans along with Germans for the “betrayal of their country for their own selfish interests.”<sup>9</sup> Those in Germany began to have slight opposition to Rome and the papacy in general, due primarily to growing corruption.

The most prominent and important work against Rome was that of *Gravamina nationis Germanicae et Sacri Romani Imperii Decem*, or “Ten Grievances of the German Nation and Holy Roman Empire.” The work was published in 1455, but began to gain popularity in the early 16th century. The work outlined grievances of the German people against Rome. The work was not arguing for a split with Rome, but rather a reform of the church, as the preface to the first English edition outlined:

It must be borne in mind that this detail of “Grievances” is not an attack made on the Church of Rome and her priesthood by seceders, by “Protestants”, anxious to chronicle and exaggerate abuses to strengthen their

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6 Term coined by Barraclough in Geoffrey Barraclough, “The Origins of Modern Germany,” (Oxford: Basil Blackwell & Mott LTD, 1957), 249-352. and Reinhardt 1982, 207.

7 Barraclough 1958, 367-368.

8 Outline of “Reichsregiment” in Barraclough 1958, 367-368.

9 Barraclough 1958, 368.

own position, but they were the “grievances” of those who, having no desire to leave the Roman Church, felt how grievously the corruptions complained of pressed upon its members and impaired its efficacy.<sup>10</sup>

Most of the grievances were those against the organization of the Church. For example, they stated “The administration of the churches is entrusted (at Rome by it observed) to unworthy persons, more fit to manage mules than men.”<sup>11</sup>

#### *Luther’s Ideas and Appeal and Charles V’s Opposition*

Into this period, stepped Martin Luther. With the positing of his Ninety-Five Theses in Wittenberg in 1517, Luther was attempting to reform the Roman Catholic Church, akin to general German ideas of the time. Charles V, though, was a figure that was set in direct opposition to Luther due to two primary principles.

First, Charles was in opposition to Luther in the eyes of Germans, because Pope Clement gave Charles power in a coronation in 1530. Charles was a strong, Catholic ruler who, despite calls for reform of the Catholic Church, sided with the papacy. He was linked, in the consciousness of the loosely defined German people under principalities, as one inexplicitly intertwined with the papacy and Rome.

The second and most crucial reason for Charles to be in opposition to Luther and his followers rests with the argument of Barraclough. Charles V’s most important territory was not within Germany, but outside of it.<sup>12</sup> When a movement against the Catholic Church developed in Germany—the Protestant Reformation—Charles “could not compromise his position outside of Germany by placing himself at the head of a German movement directed against Rome.”<sup>13</sup> He sided against those of Germany, causing him to even further be lamented as an outsider, one not of German blood. Nationalist tensions in Germany could, as such, be directed against him.

Charles V placed himself in direct opposition to Luther most publicly with the Edict of Worms in 1521. Luther was put on trial at Worms—one of many trials, such as those in Augsburg and Leipzig. Luther was heavily prosecuted and pushed to recant his statements. He did not recant, but most importantly Luther stated: “It is for you Germany, that I seek salvation and sanctity.” He invoked Germany in his efforts to reform the Catholic

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10 Charles Hastings Collette, “The History of Pre-Reformation Days,” (London: S. W. Partridge, 1869), 2.

11 Collette 1869, 92-93. (Page 92 has the original *Gravamina nationis Germanicae et Sacri Romani Imperii Decem* in Latin and page 93 has the translation)

12 Barraclough 1958, 370.

13 The thesis is presented by Reinhardt 1982, 208-212.

Church.<sup>14</sup>

One of Luther's major ideas was that one's inner soul was the basis of religion. This idea can be traced back to Meister Eckardt, Dietrich of Strassburg, and Thomas a Kempis, all people who were heavily associated with the "German tradition," invoking the idea of a unique German state separate from Rome.<sup>15</sup> The result of the meeting was the "strengthening the adherents of Luther and of further weakening the authority of the emperor."<sup>16</sup>

A major defining facet of a state is that of a uniform language. In Germany, the different principalities or "estates," spoke different dialects of German. Though previously done by another German anonymously in 1466, Luther translated the bible into German. According to Reinhardt, the book became the "most widely read book in the German lands." Even further, the dialect used in the translation by Luther became the eventual, dominant, German language.<sup>17</sup> Luther helped to give Germany a national character—a common voice to which they could all speak.

As Luther's beliefs developed, according to Barraclough, they manifested themselves in a "peculiarly German flavour."<sup>18</sup> Such is proven by his statement during the Edict of Worms. His ideas began to manifest opposition to the Catholic Church and so, in opposition to Charles V.

#### *The Invoking of Luther's Ideals by Nationalists*

In one of many manifestos produced in Germany in the early 16th century to praise the Knight Franz von Sickingen and Martin Luther, a short anecdote is presented.

A poor German peasant approaches Sickingen, a fervent German nationalist, telling him that he is unable to pay his dues to the Catholic Church. The peasant is only able to pay half. He looks to Sickingen for guidance, who responds that the fines should not be paid due to "the word of Christ to the disciplines to take neither scrip nor purse." Sickingen justifies his statement through Mathew 10, Luke 9 and 10, and Mark 6. The peasant responds, "Sir Knight, how did you learn so much scripture?" The peasant is told by Sickingen that is through the work of Luther.<sup>19</sup> German nationalism and Luther are clearly connected.

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14 Generally essay to access quote. Can be found in James Atkinson James, "The Trial of Martin Luther," (London: Willmer Brothers Limited, 1971).

15 Barraclough 1958, 368.

16 Reinhardt 1982, 209.

17 Translation of bible outlined in Reinhardt 1982, 232.

18 Barraclough 1958, 368.

19 The story is outlined in Bainton 1977, 100.

German nationalists opposed Rome, as was clearly presented by such pamphlets as *Epistolae obscurorum virorum* or *Gravamina nationis Germanicae et Sacri Romani Imperii*, Decem, as stated above. Luther, however, gave them grounds on which they could oppose Rome.

Countless historians, such as Joseph Lortz, have argued that the peasant revolts in Germany that began in 1524 heavily invoked the ideas and rhetoric of Luther. According to Lortz, these revolts by the peasants were "reformation sparked" movements.<sup>20</sup>

The movements had, at the same time, a nationalist backbone. A slogan, primarily utilized by princes involved with the revolt, read "German money for a German church." They were arguing that Germany needed its own separate church. Effectively, displaying German nationalism in that it does not state a Protestant church, but a church defined by a German state.

Several Protestant princes in Germany formed the League of Schmalkalden to oppose the "imperial regime" of Charles V.<sup>21</sup> The League eventually encompassed a substantial portion of Germany, loosely defining a German state in direct defiance of the Holy Roman Empire. This loosely defined German state was outlined by the principles of Luther in that it was Protestant, but even more so, was that it opposed Charles V. In opposing Charles to receive one's own autonomy—in this instance, for religious freedom—the League can be labeled as nationalist.

Luther's ideas, though seemingly only religious in nature, had renowned political impact. His split with the Roman Catholic Church appealed to the general German Empire, and once Charles V opposed Luther and his allies, the Germans used Luther's ideas to oppose the empire and begin to form a new sovereign state.

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20 Kyle C. Sessions, "Reformation and Authority: The Meaning of the Peasant's Revolt," (Lexington: D. C. Heath Company, 1968), 9. Essay used is by Joseph Lortz.

21 Reinhardt 1982, 210.

# “European Zeal and the Demise of the African Proto-State in the Late 19th Century”

*Written by Colin Mark '13 for his Advanced Placement European History course taught by Dr. Oldham.*

The boundaries of modern African states were drawn in large part during the thirty years following the Berlin Conference of 1884-5, at which Europe's colonial powers formally divvied up the “Dark Continent.” On the whole, these boundaries were artificial constructs, described by Ieuan Griffiths as “drawn by Europeans, for Europeans.”<sup>1</sup> They certainly were not created with the sovereignty of African states in mind, and they had little or nothing to do with the de facto political boundaries of uncolonized Africa. According to Griffiths, “At the continental scale, the widespread use of physical features and astronomical lines largely de-humanized the boundaries of Africa. Although sometimes based on treaties between Europeans and local rulers, only rarely did colonial boundaries coincide with tribal areas.”<sup>2</sup>

Given that European imperialists were able to wholly usurp existing political divisions in Africa, we might reasonably conclude that these precolonial African polities were rather weak. After all, with the notable exception of Ethiopia, no modern African state is a direct descendant of a precolonial African polity. However, a number of African proto-states were actively engaged in Western-style state-building by the 19th century, but they were systematically cut down by European powers that denied them their statehood and transformed them into colonies. European ambition, often manifest in the personas of key imperialists, undermined the formation of Sovereign Territorial States

<sup>1</sup> Ieuan Griffiths, “The Scramble for Africa: Inherited Political Boundaries,” *The Geographical Journal* 152, no. 2 (July 1986): 204.  
<sup>2</sup> Griffiths, 205.

(STSs) in Africa.

In her article “Sovereign States and Their Pray: The New Institutional Economics and State Destruction in Nineteenth-Century West Africa,” Carolyn M. Warner presents and then discredits the New Institutional Economics (NIE) interpretation of the rise of the STS and the fall of most other political entities. NIE “is an interdisciplinary enterprise combining economics, law, organization theory, political science, sociology and anthropology... to explain what institutions are, how they arise, what purposes they serve, how they change and how - if at all - they should be reformed.”<sup>3</sup> When applied to the dominance of the STS, NIE argues that the STS was more effective and efficient than other forms of political arrangement, so it ultimately dominated those other forms and eliminated them. In particular, NIE emphasizes the ability of an STS to organize economic activity, guarantee commitments to external actors, ensure property rights, monopolize law and order within its borders, and raise funds for war and other purposes. The institutional superiority of the STS creates an incentive for weaker polities to join or to become an STS. Furthermore, states interact most efficiently with other states, so each STS has an incentive for other political entities to become STSs.<sup>4</sup>

It follows from these principles that all African polities were institutionally inefficient and needed to be turned into the institutionally superior colonies of some STS or other – had those polities met the standards of STS-hood, surely they would have been recognized as such and legitimated by their peers, or so NIE predicts. However, Warner argues that there were a number of African polities that reached the cusp of STS-hood but were systematically denied legitimation as states by European powers. She writes, the West African Kingdom of Asante “was no less hierarchical and territorially defined than some of the German principalities which were granted sovereignty by the Peace of Westphalia.”<sup>5</sup> Asante had an extensive, developing economy that included reliable international trade, most importantly with the British. It had an intricate judicial system, respect for property rights, and military dominance over its neighbors. Seen through the lens of European state-building, the Kingdom of Asante seemed to have all of the ingredients of statehood.<sup>6</sup> However, after decades of tension, the British finally conquered Asante in 1896 and turned it into a colony in 1901.<sup>7</sup>

Warner stresses that the destruction of Asante was a deliberate act of the British crown. Moreover, Asante was not colonized to ensure efficient British trade or to protect compromised British property rights; “the Asante were not expropriating British

<sup>3</sup> Peter G. Klein, *New Institutional Economics* (Athens, GA: University of Georgia, 1999), 1.

<sup>4</sup> Carolyn M. Warner, “Sovereign States and Their Pray: The New Institutional Economics and State Destruction in Nineteenth-Century West Africa,” *Review of International Political Economy* 5, no. 3 (Fall 1998): 510-11.

<sup>5</sup> Warner, “Sovereign States and Their,” 517.

<sup>6</sup> Carolyn M. Warner, “The Political Economy of ‘Quasi-Statehood’ and the Demise of 19th Century African Politics,” *Review of International Studies* 25, no. 2 (April 1999): 248.

<sup>7</sup> John Merriman, “The Age of European Imperialism,” in *A History of Modern Europe*, 3rd ed. (London: W. W. Norton & Company, 2010), 849.

investments or violating transnational contracts, but merely proving to be successful rivals to British commercial and territorial interests.<sup>8</sup> In short, the British waged war against Asante not because it was an indirect threat to British economic interests, but because it was a direct threat to them – Asante was competing with the British for economic domination of the Gold Coast. Furthermore, Asante did not simply crumble before the institutional superiority of an STS; the British restricted the flow of arms to Asante, coerced its allies into abandoning it, and on the whole dedicated themselves to whittling away the sovereignty of the king of Asante. “In sum, the British were actively dismantling a nascent sovereign territorial state.”<sup>9</sup>

This case study flies in the face of the NIE interpretation of colonialism. In particular, Asante is a counterexample to the principle that STSs will empower other STSs by recognizing them as legitimate entities that can be efficiently interacted with. Although Asante was capable of becoming an STS, instead of welcoming it into the interstate community, Great Britain actively robbed Asante of its sovereignty. As we have seen, although militarily inferior to Great Britain, Asante was far from a weak power. In 1863, the Asantes defeated the British forces in a war that crippled British West African trade.<sup>10</sup> It would take the British almost forty more years to turn Asante into a colony. If Asante was such a bona fide rival of the British in West Africa, why did the British refuse to validate it? They were certainly capable of crushing and subduing Lichtenstein or any of a number of small European countries, but they would never have done such a thing. What made Asante different that gave the British permission to crush it? Warner provides a revelatory insight:

Not sharing the cultural, religious and racial heritage of the Europeans, African polities, despite their internal organization, would and could not look like potential STSs to European states. Indeed, Ethiopia, the one country to remain independent until after World War I... had a largely Christian elite and history, and very little of economic interest. Research indicates that those non-European countries which undertook ‘defensive Westernization’ were more likely to remain independent.<sup>11</sup>

The legitimation of Asante was entirely in the hands of the British, specifically in the hands of British imperialists – individuals. These decision makers could not possibly have focused exclusively on maximizing the efficiency of their institutions. More strikingly, the application of NIE to New Imperialism is destined to fail, because it fundamentally assumes that New Imperialism was economically motivated. This view of imperialism is far too literal. Let us return once more to the map of Africa. As Griffiths noted, the Europeans who drew those borders “paid scant regard to Africa, let alone Africans.”<sup>12</sup> In the minds of those decision makers, Africa is a chess piece in a zero-sum game played by the West, and the ambitions of African polities are unruly disruptions to this game. Most economic motives for imperialism were simply pretexts for conquest, projection of power, and subjugation of the inferior races. As John S. Galbraith notes in his article “Gordon, Mackinnon, and Leopold: The Scramble for Africa, 1876-84,” the evidence for riches in

8 Warner, “Sovereign States and Their,” 521.

9 Warner, “Sovereign States and Their,” 522.

10 Warner, “Sovereign States and Their,” 521.

11 Warner, “Sovereign States and Their,” 525.

12 Griffiths, 204.

Africa was tenuous at best. “Sir John Pope Hennessy in 1890 wrote an article titled ‘Is Central Africa Worth Having’ and had no difficulty convincing himself that the answer was ‘no.’”<sup>13</sup> In reality, most imperial ventures were economic catastrophes, the British conquest of Asante – particularly following the 1863 war – not excepted. Galbraith argues that the realities of imperialism are inextricably tied to the individuals behind them, and any meaningful model of imperialism must take their actions into account. According to Galbraith, imperialists cannot be treated as rational actors. He writes:

“[Leopold II of Belgium] was preaching the religion of Africa to those who were already believers. Those who were not caught up in this passion frequently commented upon the effect of Africa on men’s critical powers. Charles Dilke noted ‘the influence of that climate of Central Africa which acts upon the sanest man like strong drink.’ But the Afromaniacs were not the ‘sanest of men’ even by the standards of Victorian England. They were aberrants in their initial attraction to Africa, and their aberration was increased by their emotional involvement with that continent.”<sup>14</sup>

Galbraith’s descriptions of the actions of these Afromaniacs presents the Scramble for Africa, in no uncertain terms, as a political game between emotionally invested individuals. “New Imperialism was characterized by power politics between key European players: “Like Cecil Rhodes, Leopold had great visions. Like Rhodes, he devoted himself ruthlessly to the achievement of his ambitions. But Leopold surpassed Rhodes as a player in the game of power politics.”<sup>15</sup>

It should be noted that not all historians agree that New Imperialism boils down to a game of power politics between key players. A. G. Hopkins rejects the notion that the history of nineteenth century Africa can be described in terms of the actions of “Top People.”<sup>16</sup> However, ignoring the personalities who shaped European imperial policy and attempting to apply economic models to the relationship between imperial powers and African polities in a vacuum is equally unproductive.

Given that the individuals who had the power to decide whether or not to legitimize Asante were ambitious, power-hungry, and irrational, it is little wonder that they did not see the signs of a budding STS in West Africa as a positive step for the global political economy. Fundamentally, these decision makers were not concerned with the health of the global political economy, or even of their own economies a few decades down the line. Warner writes:

While in the long run the overall economic benefit of colonialism to the metropolises may have been less than the costs of formal imperial rule, the short-term economic interests of European traders in Africa, supplemented by pressure from interest groups in the metropole, impelled the European powers to take actions resulting in the destruction of African proto-states.<sup>17</sup>

These short-term economic interests were caked with an undeniable crust of eurocentrism. The domination of Asante was as much an effort by the white man to conquer the darkness as it was an effort by the Englishman to fill his coffers.

13 John S. Galbraith, “Gordon, Mackinnon, and Leopold: The Scramble for Africa, 1876-84,” *Victorian Studies* 14, no. 4 (June 1971): 370.

14 Galbraith, 388.

15 Galbraith, 372.

16 A. G. Hopkins, “‘Blundering and Plundering’: The Scramble for Africa Relived,” *The Journal of African History* 34, no. 3 (1993): 490.

17 Warner, “The Political Economy of ‘Quasi-Statehood,’” 235.

# Benjamin Franklin: A Man to Remember

Written by Jake Swinghamer '14 for his English 11 course taught by Mr. Wilson.

On a stormy day in June 1752, Benjamin Franklin conducted one of the most well known scientific experiments. Once he fashioned a kite from “two light strips of cedar” and a “large thin silk handkerchief,” attached it to a metal wire, and tied a metal key near his hand, Franklin ventured into the turbulent weather, unknowingly risking his life for the sake of science.<sup>1</sup> After he hoisted the kite in the air, lightning eventually hit the kite, causing electricity to pass all the way down the wire to the key. Curiosity overtook Franklin, and when he touched the key, electricity coursed through his body. As if jolted with a shot of knowledge instead of electricity, Benjamin Franklin had “discovered” electricity.

The above paragraph, regrettably, summarizes the first thing that comes to mind when many people think of Benjamin Franklin. Despite the fact that this story is often hyperbolized in this manner to make Franklin look like a hero, the tale itself might even be completely apocryphal. In fact, there were no other witnesses to this historic event besides Franklin and his son, nor did Benjamin himself ever publish the results or his part in the experiment.<sup>2</sup> More importantly, though, does this story epitomize who the real Franklin was? Is it fair for us to remember him in this way? The answer to both of these questions is no. Arguably the most famous American polymath, Franklin was much more than a crazy and daring scientist, much more than his other inventions such as bifocals

<sup>1</sup> Benjamin Franklin, “The Kite Experiment,” in *Franklin* (New York: The Library of America, 1987), 375.

<sup>2</sup> Walter Isaacson, *Benjamin Franklin* (New York: Simon & Schuster, 2003), 141.

or the Franklin stove, even much more than his collection of witty sayings. He had a profound social influence on everyday life in the early years of the United States and beyond. He was the first and greatest American international celebrity who represented the new country to the world.<sup>3</sup> Benjamin Franklin defined and invented what American society would strive to be: a society full of impactful, democratic, successful, self-made men.

Benjamin Franklin had an immeasurable impact on the betterment of society. The value he placed on disseminating knowledge to all reaches of society was a main component of Franklin’s philanthropic attitudes and would motivate many of his aspirations throughout his lifetime.<sup>4</sup> As much as Franklin was obsessed with the idea of improving his own life and worth, mostly by stretching his intellectual capabilities, he also desired to spread this ambition to the public. By instilling knowledge—from witty quotes to promoting education—Franklin resolved to make the world a better place.

Even as a teenager, Franklin was present in the public eye. Spurred onwards when he was denied the opportunity to write for *The New-England Courant*, his brother’s newspaper, at the ripe age of sixteen, Franklin created the pseudonym of Ms. Silence Dogood, a widow who wrote to shed advice upon all readers. Determined to make a splash, Franklin wrote about topics from education to women’s rights.<sup>5,6</sup> It is truly remarkable that a young, inexperienced Franklin was able to create a series of entertaining letters from the viewpoint of a woman. Clearly, he was destined to have an impact in the world.

But this was just the beginning of what was to become a most illustrious life. At the age of 21 (in 1727), Franklin created the Junto group and headed it for thirty years.<sup>7</sup> This is perhaps the quintessential example of Franklin’s desire to disseminate knowledge. Created for an intellectual group of people to discuss topics ranging from philosophy, current events, and means self-improvement, the Junto club worked to not only enlighten the members but also to help out the community as a whole by spreading ideas they espoused.<sup>8</sup> For example, Franklin was able to debate his ingenious ideas of volunteer fire fighters, hospitals, militias, and various other

<sup>3</sup> Fred Anderson, *Crucible of War* (New York: Alfred A. Knopf, 2000), 706.

<sup>4</sup> Edmund S. Morgan, *Benjamin Franklin* (New Haven, CT: Yale University Press, 2002), 55.

<sup>5</sup> Benjamin Franklin, “Silence Dogood, No. 4,” in *Franklin* (New York: The Library of America, 1987), 10.

<sup>6</sup> Benjamin Franklin, “Silence Dogood, No. 5,” in *Franklin* (New York: The Library of America, 1987), 14.

<sup>7</sup> Benjamin Franklin, *The Autobiography of Benjamin Franklin with Related Documents*, ed. Louis P. Masur (Boston, MA: Bedford/St. Martin’s, 2003), 45.

<sup>8</sup> Isaacson, *Benjamin Franklin*, 55.

economic models to this prestigious group of men.<sup>9</sup> Interestingly, to be initiated as a member of this club, one had to swear that he loved mankind and loved truth “for truth’s sake.”<sup>10</sup> Therefore, it should come as no surprise that the heavily intellectual members in the club loved to read. By pooling their resources together, they created a small communal library. However, in Franklin’s genius, this small library slowly morphed into the first subscription based library ever, the Library Company of Philadelphia.<sup>11</sup> Franklin was able to propagate one of his favorite pastimes to the public.

Franklin’s true desire to disseminate knowledge cannot be stressed enough. There are myriad examples of his passion. In 1743, Franklin led the way in developing The Academy and College of Philadelphia, which would eventually become known as the University of Pennsylvania.<sup>12</sup> What stood out about this idea was that the University would become the first one to teach students about the skills necessary to earn a living. At this time, all other American colleges educated only clergy and did not have practical educational purposes besides a continuation with the church. Also, the University focused on opening its doors to both the wealthy and the common citizens, allowing Franklin to spread knowledge to more types of people. In fact, his disdain for elitist education was displayed as early as his Dogood letters where he stated that Harvard is “guarded by two sturdy porters named Riches and Poverty” and that only the former could attend.<sup>13</sup>

In 1743, Franklin founded the American Philosophical Society to further the advancement of knowledge. A group very similar in style to the Junto club, differing only in its broader reach, the American Philosophical Society connected scientists and “thinkers” amongst all of the colonies.<sup>14</sup> This was one of Franklin’s first attempts to unite the separate colonies for a single purpose, but this time for the purpose of creating a more educated society.

While Franklin’s prowess in the scientific field was highly respectable and did indeed garner him much fame, the motives behind his research are particularly interesting when taking in account his attitude towards his civic duty. In fact, Franklin believed that public service was a much more time worthy activity than scientific research, and therefore was always conscious of public utility for his experiments.<sup>15</sup> As a result of these convictions, Franklin eschewed monetary benefits from his inventions, declining a patent for one of his most famous inventions, the Franklin stove. International recognition was

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9 Franklin, *The Autobiography of Benjamin*, 6.

10 Isaacson, *Benjamin Franklin*, 56.

11 Morgan, *Benjamin Franklin*, 56.

12 Morgan, *Benjamin Franklin*, 60.

13 Isaacson, *Benjamin Franklin*, 30.

14 Isaacson, *Benjamin Franklin*, 122.

15 Morgan, *Benjamin Franklin*, 26.

just a byproduct of Franklin’s inherent curiosity and philanthropic attitudes.

Most importantly, however, was Franklin’s creation of Poor Richard’s Almanack. As Walter Isaacson says, the Almanack “combined two goals of [Franklin’s] doing-well-by-doing-good philosophy: the making of money and the promotion of virtue.”<sup>16</sup> First, although Franklin did have some material aspirations in addition to his more philanthropic ones, it was primarily because he was always trying to better himself. Earning money from the Almanack was not as important to Franklin as was the social consequences of doing so, even though sometimes they went hand in hand. The second part of the above quote more accurately shows the means of this publication. As Franklin said:

“I consider’d my Newspaper also as another Means of communicating Instruction, & in that View frequently reprinted in it Extracts from the Spectator and other moral Writers, and sometimes publish’d little Pieces of my own which had been first compos’d for Reading in our Junto.”<sup>17</sup>

Franklin was always looking for ways in which he could further the common good and teach common citizens valuable lessons. Some of this advice came through the form of the pithy proverbs that are still used in our vernacular today (i.e. “A Penny Saved is a Penny earned,” “Early to bed and early to rise makes a man healthy, wealthy, and wise,” etc.<sup>18</sup>). As historian Walter Isaacson states:

Through his self-improvement tips for cultivating personal virtues and through his civic-improvement schemes for furthering the common good, he helped to create, and to celebrate, a new ruling class of ordinary citizens who learned to be tolerant of the varied beliefs and dogmas of their neighbors.<sup>19</sup>

As redundant as it might seem at this point, Franklin’s contribution to the betterment of society by promoting knowledge cannot be understated. At the age of 20, at the mere beginning of his didactic aspirations, he used himself as a model of exemplary living. He decided to create a list of thirteen virtues and rigorously charted his adherence to these principles.<sup>20</sup> Ranging from topics like temperance, justice, and frugality, the list exemplifies his quest to improve himself. For example, number two on this list, silence, demonstrates his desire to listen first and gain knowledge from others. Or, number six, industry, shows that Franklin always wanted to be “employ’d in something useful.”<sup>21</sup> By setting an example of how to improve oneself, he believed that others would follow suit.

Benjamin Franklin was America’s first international celebrity. Although for the most part he gained worldwide recognition from his scientific achieve-

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16 Isaacson, *Benjamin Franklin*, 94.

17 Franklin, *The Autobiography of Benjamin*, 107.

18 Franklin, *Benjamin Franklin: Wit and Wisdom*, [14, 32].

19 Walter Isaacson, “Citizen Ben’s 7 Great Virtues,” *Time*, July 7, 2003.

20 Franklin, *The Autobiography of Benjamin*, 95.

21 Franklin, *The Autobiography of Benjamin*, 96.

ments, Franklin also quickly garnered fame and recognition for his work ranging from being a diplomat to helping relations with France. As soon as our fledgling colony broke away and declared itself a nation, Franklin was always at the forefront of the movement towards independence. As a result, not only the newly formed states, but also the world would know his name.

Even though Franklin's time abroad clearly demonstrates how much the world was enamored by him, one must first examine his popularity in the states to fully understand his rise to fame. One element of his popularity arose from his skill as a printer, particularly with Poor Richard's Almanack. The Almanack sold roughly ten thousand copies a year, reprinted in 145 editions and seven languages and was widely disseminated.<sup>22</sup>

Franklin's political pursuits added to his publicity in the United States. He insinuated himself into Philadelphian politics with relative ease and rapidly transcended the ranks. He became an active member in the Pennsylvania Assembly and even went to the Albany Congress in 1754.<sup>23</sup> There, he proposed the very important Albany Plan of Union—a proposal to unify the separate colonies for the first time—which, despite its failure, laid the groundwork for colonial unification. Franklin's political stature continued to grow with his influence in the creation of Declaration of Independence. Finally, Franklin played a pivotal role in the Constitutional Convention, and thus, the very creating of our nation. In sum, Franklin was very much in the limelight during the creation of America and its formative years. He was well known in a wide spectrum of classes: from the people in power to the average newspaper reader.

Franklin also garnered fame from all around the world mostly as a result of his scientific experiments. In particular, his famous experiment in lighting notably made waves all around the world and caused the French Monarch to order his scientists to conduct similar experiments to Franklin's.<sup>24</sup> He was the first person living outside of Great Britain to receive the gold Copley Medal from London's Royal Society.<sup>25</sup> Lightning rods started to appear all around Europe from Franklin's suggestion. His theory about electricity was translated in French, Latin, and German, spreading all the way from Spain to Russia.<sup>26</sup>

However, Franklin's popularity in the United States and around the world is nothing when compared to the near religious devotion he received in France. His time there, from 1776 to 1785, clearly demonstrate his evolution as an international celebrity. There, representing the American people as the country's first diplomat, Franklin was met with overwhelming enthusiasm.

<sup>22</sup> Isaacson, *Benjamin Franklin*, 100.

<sup>23</sup> Morgan, *Benjamin Franklin*, 80.

<sup>24</sup> Isaacson, *Benjamin Franklin*, 140.

<sup>25</sup> Isaacson, *Benjamin Franklin*, 143.

<sup>26</sup> Joyce Chaplin, *The First Scientific American* (New York: Basic Books, 2006), 132.

Why should a unfit, middle aged, American man be met with such enthusiasm in France? Franklin embodied a persona different from what the French were used to, which increased his appeal. While the French society was constructed of an absurdly wealthy elite with the rest living in poverty, the democratic Franklin represented the absolute antithesis of that.<sup>27</sup> With the French Revolution looming in 1789, the public was acutely against the nobility and other signs of wealth. This is why Franklin, who represented this dressed-down type of American, was instantly appealing to the French.<sup>28</sup> However, Franklin's popularity was not limited to just the middle and lower classes. In fact, Franklin spent nearly all of his time in France with the upper class.<sup>29</sup> Even though he and the upper class drastically differed in ideology, Franklin was such a mesmerizing character that, through his wit and modesty, he was even able to charm all. Franklin was therefore able to captivate the general public through his democratic and anti-elitist attitudes, while associating himself with the upper echelons of society through his intellect and humility.

When Franklin arrived in France, every aspect of him became a source of fascination, even the way he dressed. Instead of the English wig that he wore in the early part of his life, the fur hat that became associated with Franklin in the 1760-80's actually became a fashion symbol.<sup>30</sup> Stephen Kaufman wrote that:

Franklin's mission was to secure French financial and military support against Britain; in doing so, he found himself the object of a personality cult. His portrait soon appeared on French medallions, rings, watches and snuffboxes, and fashionable ladies adopted the "coiffure a la Franklin" to imitate his fur cap. America's first diplomat was also its first superstar.<sup>31</sup>

Furthermore, the French even had icons of Franklin that were exhibited in people's homes.<sup>32</sup> It may seem odd to venerate such a man as Franklin to the level of celebrity status when looking from today's view, but because Franklin embodied all that the French lacked, natural simplicity and social equality, it does indeed make sense.<sup>33</sup> They essentially idolized him. In fact, Franklin reached such a level of fame that even bottoms of beer tankards displayed pic-

<sup>27</sup> Gordon S. Wood, *The Americanization of Benjamin Franklin* (New York, NY: Penguin, 2004), 172.

<sup>28</sup> Gordon S. Wood, *Revolutionary Characters* (New York: Penguin Press, 2006), 87.

<sup>29</sup> Wood, *The Americanization of Benjamin*, 172

<sup>30</sup> Isaacson, *Benjamin Franklin*, 328.

<sup>31</sup> Stephen Kaufman, Meet Benjamin Franklin, *America's First International Celebrity: His range of interests and influence still astonishing after 300 years* (Lanham, US: Federal Information & News Dispatch, 2006).

<sup>32</sup> Liberty, narrated by Pauline Maier, Bernard Vincent, and Gordon Wood, PBS Home Video, 1997.

<sup>33</sup> Isaacson, *Benjamin Franklin*, 173.

tures of Franklin.<sup>34</sup>

Another example of his fame is the degree of which he is represented in French art. Franklin was depicted in sculptures created by leading sculptors like Jean-Antoine Houdon or Jean-Jacques Cafféri. In fact, Franklin was asked to sit so many times for painters and sculptors that he said, “I am perfectly sick of it.”<sup>35</sup> He was depicted not only as the humble, democratic man he represented, but even as a noble, robed man, seated amongst the clouds.<sup>36</sup> The true quantity of the artistic productions of Franklin is hard to fathom.

Franklin’s popularity in France had huge implications in the foundations of our society. In addition to his aptitude in politics, Franklin was able to use his popularity to deftly navigate the politics surrounding his purpose of his visitation—a treaty with France during the Revolutionary War. Walter Isaacson writes that because Franklin was able to successfully wield his fame, he was able to persuade French aristocrats.<sup>37</sup> The French’s support reinvigorated the colonists and ultimately shifted the tide of the war. His popularity, which heavily influenced the signing of the Treaty with France, created the reinforcement the colonists need to win the war.<sup>38</sup>

In conclusion, one cannot overstate the widespread influence of Benjamin Franklin. Indeed, Franklin was a celebrity in part because of his scientific inventions, but his fame was more multifaceted. He was arguably one of the first “well publicized celebrities,” and, more importantly, symbolized what America was to the French. When Franklin eventually passed away in 1790, the National Assembly in France grieved the loss of their cultural icon for three days, resulting in one of the first national, cross class, mourning.<sup>39</sup> Their grieving and national recognition of Franklin far surpassed that of the Americans.<sup>40</sup>

There is no denying that Benjamin Franklin was instrumental in the founding of the United States of America. Because he was at the forefront of many colonial resistance movements, he spearheaded the way to independence and directed America in conjunction with his vision. His manners and ways created what would become to be defined as “American.” Moreover, he embodied the country’s beliefs to the world. In more ways than one, Franklin created and shaped what American society was and would become.

Ever since he headed the Pennsylvania delegation at the Albany Congress and proposed his Albany Plan of Union, Franklin was always at the center of colonial and American politics. In fact, even though the colonies were not

as unified as Franklin hoped and had rejected this plan, parts of the Plan of Union would eventually be replicated in the Articles of Confederation—another one of the documents that shaped several years of American history. He believed that the unification of colonies would be of importance and tried to align the colonies with his vision early on.

In 1764, Franklin traveled to England with the intent of a quick business trip for Pennsylvania. However, his duties swiftly evolved into the representation of all the colonies, causing him to stay there for the next 11 years. In 1765, England issued the notorious Stamp Act, sparking colonial protests. At first, Franklin did not recognize the full colonial opposition to the Stamp Act, and his tardiness to protest the Stamp Act himself was one of his few political missteps.<sup>41</sup> Nevertheless, Franklin still was able to use his direct access to the nobility and politicians to orchestrate attacks on the Act. Franklin used the press to sway English governmental leaders and even threatened them with colonial boycotts if the tax were not repealed.<sup>42</sup> In 1766, he was called to testify in front of the House of Commons where he argued the colonists’ position to have the tax repealed. In large part because of Franklin, the Stamp Act was repealed one month later. Franklin was now representing the colonists and the colonists’ ideals to the rest of the world.

After his trip to England, Franklin arrived back in the U.S. just at the start of the Revolutionary war, despite his best efforts to maintain peace.<sup>43</sup> He would yet again lead the path that our country would follow with his role in the Declaration of Independence. Franklin was elected to be the delegate for Pennsylvania and part of the Committee of Five who would write the Declaration.<sup>44</sup> Albeit it was mostly Jefferson’s work and Franklin only made a couple changes, these modifications were nonetheless very significant. For instance, Franklin altered one of Jefferson’s sentences, thereby creating one of the most famous lines in American history: “We hold these truths to be self-evident.”<sup>45</sup> It is hard to deny that Franklin’s influence and oversight were extraordinarily invaluable in molding a document that would fundamentally affect American society for centuries.<sup>46</sup>

Franklin was also instrumental at the Constitutional Convention in 1787. At the ripe age of 81 years old, fifteen years older than anyone else in the convention, Franklin mostly held an honorary position and oversaw the events

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34 *Liberty*.

35 Wood, *The Americanization of Benjamin*, 177.

36 Wood, *The Americanization of Benjamin*, 176.

37 Isaacson, *Benjamin Franklin*, 326.

38 Wood, *The Americanization of Benjamin*, 200.

39 Chaplin, *The First Scientific American*, 340.

40 Wood, *The Americanization of Benjamin*, 230.

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41 Anderson, *Crucible of War*, 706.

42 Morgan, *Benjamin Franklin*, 157.

43 Thomas A. Rider, “Benjamin Franklin: An American Life,” review of a book, ProQuest, last modified 2004, <http://search.proquest.com.ezy.hmsl.sirsi.net/docview/198173386/13B96B18E1555893DB7/5?accountid=11478>.

44 Isaacson, *Benjamin Franklin*, 309.

45 Isaacson, *Benjamin Franklin*, 312.

46 Morgan, *Benjamin Franklin*, 238.

leading up to the creation of our nation's Constitution.<sup>47</sup> He added a calming presence to the room full of men who would determine the nation's fate and, because of his respectability, was able to infuse some of his beliefs into debate. Most notably, Franklin added elements of democracy and of compromise to debates.<sup>48</sup> Through the tremendous respect he received from his colleagues and his foresight, Franklin was able to steer the United States once again towards his vision.

All these examples prove that Franklin not only was at the forefront of almost every major American movement towards independence, but, by being so, he created the America of his vision. Creator of the Albany Plan of Union and a leader in the Declaration of Independence, Alliance with France, Peace Treaty with England, and the Constitution of the United States, Benjamin Franklin was in a true position of power to lay the foundation for the United States. The democratic, self-made man who was idolized in France helped to raise a country that would share his same virtues. Franklin defined what it was to be American because he was the very first one to create such an identity.<sup>49</sup> Benjamin Franklin was able to shape a nation that encouraged the "pursuit of happiness" through his aforementioned democratic ideals.

Moreover, because Franklin achieved the level of celebrity status, he represented what this new nation was to the world. To the French, this refreshing self-made man who wore fur hats and was the exact opposite of the aristocracy embodied the idea of America. Because of his prevalence in French society, from beer tankards to sculptures, Franklin was the American icon and became synonymous with the term "American" for European countries. As Gordon Wood says, "The eight years he spent there helped mold his image as the symbolic American."<sup>50</sup>

Finally, Franklin helped form America through his social initiatives. He created the first college in the colonies that was not for the clergy but rather to promote people to learn. He encouraged people, through the publishing of *Poor Richard's Almanack*, to better their lives. He aspired to serve the people through groundbreaking scientific experiments. Franklin was a true visionary who defined what civic activists tried and still strive to be.

Born into a poor family with seventeen siblings, Franklin was the definition of a self-made man pulled up by his bootstraps.<sup>51</sup> Forced into an apprenticeship in the printing trade when he was twelve, Franklin worked there for

five years until he decided to run away. Always a scholar first, Franklin used his intellect to navigate his way to becoming one of the most important people in the history of the United States, in spite of his upbringings. He defined the goal of American mobility and the aspirations to reach the upper echelons of society through the Puritan work ethic and determination. Indeed, he constructed and actively portrayed a persona for Americans to resemble.<sup>52</sup> He was the quintessential American.

On that stormy summer night in 1752, Benjamin Franklin created a legend larger than himself. A scientific hypothesis turned into one of the most well known discoveries of all time. However, there was much more to this Franklin.

There is a reason why Benjamin Franklin is one of only two people—he and Alexander Hamilton—to be featured on denominations of currency without ever having been President. Without Franklin, it is hard to imagine the colonists winning the war without aid from the French, which Franklin single-handedly mustered. Without Franklin, the whole creation of our country would have had a different path. Without Franklin, the U.S. would have lost a figure of incalculable impact who encouraged us to strive for success, embodying the democratic persona. Benjamin Franklin was one of the most important figures in American history and is truly a remarkable character.

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47 Isaacson, Benjamin Franklin, 445.

48 Isaacson, Benjamin Franklin, 449.

49 Isaacson, Benjamin Franklin, 2.

50 Gordon S. Wood, *Revolutionary Characters* (New York: Penguin Press, 2006), 85.

51 Gordon S. Wood, *Revolutionary Characters* (New York: Penguin Press, 2006), 68.

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52 Isaacson, Benjamin Franklin, 2.

# “Anything But the Pacific Idyll of His Dreams: Gauguin’s Appropriation of His Imagination in His Paintings”

*Written by Michelle Kim '14 for her History  
Seminar course taught by Dr. Wallach.*

In the years after James Cook’s exploration of Polynesia in the eighteenth-century, artists like Paul Gauguin (1848-1903) sought a pastoral world there as an instrumental influence for their own works of art. Gauguin’s own cultural perspective shifted; his initial imagining of Tahiti as an idyllic paradise was not what he discovered in the reality of the island. He soon saw the influence of European markets and colonization in the region, which was exactly what he had attempted to avoid. Gauguin viewed Tahiti as an escape from Europe, and he represented Polynesian mythical traditions as edenic utopias rather than what he actually saw with his physical eye. He appropriated the few lasting impressions of Tahiti’s past, such as those from the art of tattooing, to interpret “the primitive.” These factors within Gauguin’s background and within Tahitian traditions helped mold the greater character in Gauguin as a diverging artist from the Post-Impressionists. Gauguin used his imagination as if it were the brushstrokes across his paintings, allowing his romantic vision of the indigenous people and Polynesia to be altered from the environment around him.

Gauguin’s interest in Polynesia showed a reaction against his own culture. He struggled through his life in France where he was a stockbroker, a tarpaulin salesman and a laborer. These experiences acted as catalysts for Gauguin to leave European civilization because “he wanted to develop his own style and not imitate the Impressionists.”<sup>1</sup> As a

<sup>1</sup> Howard Greenfeld, *First Impressions: Paul Gauguin*, First Impressions

symbolist, he wanted to link the traditional and individual settings with more esoteric subject matters from the untamed nature in the Pacific. In April 1, 1891, more than 120 years after Cook’s first voyage, he sailed to for Papeete, Tahiti, French Polynesia’s capital, because he was convinced the Pacific would be a place of “self-recognition and individuality.” He initially imagined a place free of “everything that is artificial and conventional.”<sup>2</sup> In addition to the desire to get away from the physical European economic change and industrial revolution, Gauguin also wanted to leave the unconventional and recurrent Impressionist styles in nineteenth-century Europe. Since then his art appeared as a flight from his known European civilization, and as a search for new ways of raw life.

With this reaction against the European culture he resided in, Gauguin sought the importance of identity as a painter among his contemporaries. Gauguin was associated with the Post-Impressionists, a group of revolutionary artists who challenged traditional methods to mainly focus on the intransient moments of the natural world. Van Gogh, for instance, was a friend of Gauguin’s whose paintings played with images of silhouettes and time. Van Gogh painted *Café Terrace at Night* (1888), which shows the warm glow of the starry night and the relatable night scene. In contrast, Gauguin wanted to stay away from the every day “en plein air” scenes and the exaggerated impasto painting techniques where oil paint was heaped on top each brushstroke. Gauguin believed European Impressionist paintings lacked symbolic meaning, and so he traveled to find a place and a model as a muse for himself and his paintings. He thought that Tahiti would offer him some manner of personal and creative freedom. Gauguin was experiencing his own coming of age as an artist by “critique[ing European culture] as he elevated the [Tahitian culture] for its beauty, simplicity, and authenticity.”<sup>3</sup> His travel to Polynesia and fascination with the “art of the other” conveyed his initial thirst of individuality and difference amongst the bulk of the traditional Europeans.

Although Gauguin traveled to Tahiti in search of this “primitive” style in painting, the irony behind his venture was that most of the Tahitian traditions had long been lost. Tahiti was annexed as an overseas territory of France at the end of the Tahitian War of Independence (1844-47). In 1890, Papeete became a part of the Republic of France, and one year later,

Series (New York City, NY: Harry N. Abrams, 1993), 22.

<sup>2</sup> Paul Gauguin, *Noa Noa: The Tahitian Journal*, trans. O.F. Theis (Mineola, NY: Dover Publications, 1985), 32.

<sup>3</sup> Elizabeth C. Childs, “Eden’s Other: Gauguin and the ethnographic grotesque,” in Frances Connelly, ed. *The Grotesque and Modern Art* (Cambridge, UK: Cambridge University Press, 2003), 175.

Gauguin sailed for Papeete. Christian missionaries like Henry Nott and John Williams, both from the London Missionary Society, converged at this unexplored land. This influence of Christian missionaries had led to the disappearance of traditions such as folk dances and mythic tattooing. One of these traditions, Tahitian tattooing, from which we find the origin of the word “tatau,” “hitting repeatedly,” emphasized the process of identification and beautification of a coming-of-age native. Gauguin, too, searched for his own identity in art by exploring Pacific nature. So, there is some incongruity in Gauguin’s traveling to Tahiti. Gauguin reached for Tahiti as his French Polynesian escape in seeking a new identity from those of his Post-Impressionist contemporaries, yet the means of self-expression through tattooing by the natives in Tahiti already disappeared. I noticed this paradox of identity between Gauguin and the Tahitian tradition that I wanted to explore further by researching Gauguin’s initial reactions towards the real reality of Tahiti.

Gauguin was quite surprised to see the lack of native diversity and genuine Tahitian customs. In fact, what he found was a deteriorating society full of warfare, illness, famine, and a debarment on traditional art customs enforced by the Catholic Church and the colonial bureaucracy. He experiments with a superficially pure paradise in which he alone can use the natives as imagined muses for his paintings. He wrote, “It was the Tahiti of the former times which I loved. That of the present filled me with horror.”<sup>4</sup> National Gallery Curator Mary Morton notes the undressed beauty in his paintings came from his imagination and understanding of past Tahitian women. Although “Tahiti had been thoroughly Christianized and colonized, [and the women] tended to be wearing Christian missionary gowns,” Gauguin painted some women completely nude or wearing traditional Tahitian outfits weaved from hibiscus bark of trees, banana leaves, and coconut fiber.<sup>5</sup> Hence, Gauguin’s inspiration lay in the past, since the Tahiti that had been in front of him was not able to withhold its traditions from European colonization. Gauguin continued “...looking for a primitive idyll, free from vice and baseness of all kinds, in contrast to the money-grubbing rancor he associated with Europe.”<sup>6</sup> He did so by combining his preconceived notions of Tahiti with the few enduring Tahitian traditions he experienced during his stay. Because Gauguin was so taken aback

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4 Gauguin, *Noa Noa: The Tahitian Journal*, 11.

5 Robert Bruce Inverarity, “Anthropology in Primitive Art,” *Yearbook of Anthropology*, 1955, 383, accessed February 4, 2013, <http://www.jstor.org/stable/3031156>.

6 Pola Gauguin, *My Father Paul Gauguin* (New York, NY: Alfred A. Knopf, 1937), 169.

by the present Tahiti and the lack of native culture, my first conclusion was that he must have used his imagination of Tahiti to paint the land and people.

Still, I wondered if there were any lasting remains of the Tahitian tradition that possessed any influence on Gauguin’s paintings. Firstly, the background on the art of Polynesian tattooing must be examined before any connections can be established by Gauguin’s paintings that show the disappearing Tahitian traditions. Tattooing was an integral part of ancient Polynesian culture, marking one’s genealogy and rank in society. Some symbols signified ancestors while others represented various roles such as protection. For men, it was mainly a symbol of strength and wealth; for women, body ornaments connoted sexual maturity. An early observer reported, “The young females...may remain perhaps for a Twelvemonth after before [the tattooing] is finished, till which time they never conceive themselves Company for Woman -- being only Counted as Children till they have their tattooing done.”<sup>7</sup> Again, there is a present trend of the search for identity between Gauguin and tattooing. During the tattooing rituals, the Tahitian women passed through a mental and physical state of maturity. The women experiencing the tattooing recognize this woman versus child significance in understanding an internal discovery of selfhood and character. However, the arrival of missionaries nearly killed this art form that the Europeans, like Cook, considered to be a “sinful glorification of the skin.”<sup>8</sup> Gauguin painted the indigenous people’s bare skin when he arrived there, and no figures in his works of art were shown with any body ornamentation. Regardless of depicting the current state of Tahiti condition with its lack of tattoos, Gauguin still colored his paintings with a rich array of Polynesian history.

He manipulated Polynesian symbols and décor of the past because he used them as instruments of his imaginative island of serenity in his works of art. The legend of Tohu, the god of tattoo, describes painting all of the sea’s fish life in intricate colors and patterns. Curvilinear tattoo lines around the thighs depict spears and flower patterns as well. Gauguin similarly appropriates from the Tahitian tattoos in the rich color palette and designs in his paintings. He exaggerated tropical flora to embroider across Tahitian clothing in his paintings, gaining inspiration from the physical Tahitian world as well as the tattoos of flowers. In addition, tattoos include island histories, revitalizing the mythical ancestor of humans in a *Tiki* or *mango-pare* form. The *Tiki*, referring to woodcarvings of figures, is a great totem

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7 Juniper Ellis, *Pacific Designs in Print and Skin: Tattooing the World* (New York: Columbia University Press, 2008), 45.

8 Kathlyn Gray and Christine Whittington, *Body Marks: Tattooing, Piercing, and Scarification* (Brookfield, CT: Millbrook Press, 2002), 101.

of worship that marked the boundaries of sacred sites. The mangopare is a decorative design of a hammerhead shark representing the symbol of tenacity and strength applied to achieve a certain goal.<sup>9</sup> Such tattoo designs are descendants of designs found on Lapita pottery, revealing the collective trends and stories of Tahitian tradition through multiple mediums.<sup>10</sup> The spiraling and geometric thick ink lines of tattoos resemble Gauguin's loose woodcarvings like *Be in Love, You Will Be Happy* (1889). In the lower right corner, unfurling plant foliage foreshadow the Art Nouveau style by portraying the vegetation in Tahitian tattooing. Thus the stylistic concerns between Tahitian practice and Gauguin's painting were quite similar, yet Gauguin did not depict the traditional Polynesian tattoos on the bodies of his subjects in his paintings. Gauguin "ignor[ed] the flaws and the realities of the Tahiti he saw...[and] showed the land and people" who were the core of his imagination.<sup>11</sup> Gauguin's imagination repeats itself with the Polynesian symbols in the paintings to further add onto the "primitive" culture he was harvesting on the canvas.

Even though Gauguin stressed the influence of Tahiti's rich history through the Polynesian symbols in his journals and works of art, he still possessed a tinge of European discrimination in his paintings. Gauguin's paintings of Tahiti are thus a fusion of various Western and Eastern sources, creating a new synthetic style that combined decorative abstract motifs with Christian narratives. His main focus on traveling to Tahiti was to explore the raw "primitive" nature of the Pacific Islanders, yet he "creat[ed] new hybrids of the ideal and the real, the beautiful and the ugly, the familiar and the strange, the modern and the anti-modern [from European and exotic ideas, respectively]."<sup>12</sup> Gauguin illustrated paintings full of fecundity and nature, yet he continued to hide himself behind the mask of European expectation of what this paradisiacal Tahiti was supposed to appear as. He portrayed the Tahitian physiognomy with a set European taste of religion and beauty. For instance in *Te Faaturuma*, otherwise known as *La Boudeuse* (1891), the contemporary setting reveals a colonial-style room that opens onto a flat porch that stretches above a brilliant fertile green lawn in the landscape beyond. Gauguin depicts the figure in a triangular, compact organization where she is flattened and pushed towards the front of the painting. Her composition and the uniform, wide space behind her sug-

9 Ellis, *Pacific Designs in Print*, 214.

10 Adrienne L. Kaeppler, Christian Kaufmann, and Douglas Newton, *Oceanic Art* (New York City, NY: Harry N. Abrams, 1997), 137.

11 Ziva Amishai-Maisels, "Gauguin's Early Tahitian Idols," *The Art Bulletin*, June 19, 1978, 335, accessed January 31, 2013, <http://www.jstor.org/stable/3049786>.

12 Childs, *The Grotesque and Modern Art*, 182.

gest that Gauguin employed inspiration from Japanese woodblock prints as well as his contemporaries such as Degas. Similarly in *I Raro Te Oviri* (Under the Pandanus- 1891), Gauguin uses the symbols of basic life in abstracted colors, making the figures appear flat. *Oviri* translates to "savage," suggesting Gauguin's implications on this Polynesian mythical figure. However, Gauguin claimed that the portrayal of the "Oviri" in the painting was actually a Tahitian goddess who represented the goddess of life, death and mourning. Gauguin labels the woman as an uncivilized barbarian rather than titling her a Tahitian goddess. Like *Te Faaturuma*, Gauguin suppressed spatial illusionism and instead constructed the landscape with bands of monotone colors that reinforce the two-dimensionality of the canvas and the two-dimensionality of Gauguin's perspective on this exotic world. He presents "his primitivizing rendering of figures" by the subjects of the painting and even its title, "savage."<sup>13</sup> He envisions a world of undomesticated nature filled with European symbols, whether intentional or not. Gauguin "sought to confuse and destabilize the boundaries between European ideas of modern and civilized on the one hand, and primitive and exotic on the other," in his own attempt to sketch his identity and style of painting. For instance in *Ia Orana Maria* (Hail Mary), Gauguin paints the first major Tahitian canvas covered in Christian symbols. Two praying figures along with an angelic figure flank the painting with their hieratic poses and celestial salutations, standard Catholic themes. The fruits and blossoming background portray Tahiti's tropical luxury and Tahitian refinement. Nevertheless, the title of the painting depicts the irony behind the loss of tradition with the introduction of the Christian missionaries as "Mary" dons the customary native garb, the pareo. So overall, Gauguin takes that which he sees in nature and manipulates it by manifesting a clear European influence in his paintings. Whether he fully agreed with Polynesian practices and culture such as the tattooing mentioned earlier is left unanswered in Gauguin's journals. We see his depictions of European influences in his paintings, but did he ever come face to face with the Catholic Church and colonial authorities on the island? These questions are not fully revealed in Gauguin's writings.

However, we do know of Gauguin's own disillusionment that originally lead him and others to even travel to Tahiti and explore its enigmatic jungles. He wished to visit this "empty Garden of Eden," but he did not expect the depopulated Tahiti Island and the little traditional art that he saw upon arrival.<sup>14</sup> "There he [thought he would find] both the real and

13 Inverarity, "Anthropology in Primitive Art," 362.

14 Gauguin, *Noa Noa: The Tahitian Journal*, 47.

psychological distance to pursue his radical aesthetic goal of an art that does not copy nature,”<sup>15</sup> but these cultural practices, like tattooing, in Tahiti’s “nature” that would have enabled Gauguin to visualize the customs disappeared after the late 18<sup>th</sup> century missionaries. The prohibitions on traditional carving, tattooing, and dancing thus constrained Gauguin’s interpretation of Tahiti’s symbols; however, even through Gauguin’s own mythical imagination and individual stylistic creations, Gauguin still added Christian motifs and European influences in his paintings. He did so as a means of self-expression and his own background because he was searching for a completely new identity in Tahiti that he imagined would greatly differ from that of the post-Impressionists. The initial steps in the research began from my believing Gauguin solely depended on his imagination to interpret the Pacific ideal to secondly, understanding that the native art form of tattooing had a significant influence on his paintings, and lastly, that Gauguin still presented European style in his works of art. The process guided for a greater insight onto his personage and his surroundings. Gauguin paved the way for the coming Primitivism art historical trend in the late nineteenth-century and how he did so was through his search of an individual style personal to his desire as an artist capturing the native in an elusive paradise.

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15 Kaepler, Kaufmann, and Newton, *Oceanic Art*, 158.

# “New Imperialism: Evolving Classic Interpretations”

Written by Caroline Kuritzkes '14 for her Advanced Placement European History course taught by Dr. Oldham.

During the late 19<sup>th</sup> Century, Europe reaped the rewards of capitalist development. Heightened industrial production, improved standards of living, and rapid technological innovation inspired a population with an unfamiliar sense of optimism. At the same time, capitalism magnified competition between European nations, stirring anxiety in the face of apparent progress. Nationalistic rivalries escalated to new heights as Britain, Germany, and France increased their own manufacturing output, thus obviating trade with other European states producing the same goods. As expansion in European markets became more difficult, European powers looked to regions of Africa and Asia for sources of raw materials that they believed could stimulate domestic industry. European states invested in colonizing abroad with the prospects of upholding and transcending newfound standards of industrial performance and dominating lesser developed foreign markets, setting in motion the era of new imperialism.

Historians have debated the extent to which capitalism was the driving force for new imperialism. While fin-de-siècle political thinkers such as John Hobson, Rudolf Hilferding, and Vladimir Lenin placed capitalism at the center of the new imperialism, revisionist historians, such as Joseph Schumpeter, have challenged this classic, neo-Marxist interpretation and minimized new imperialism's economic drivers.

In the classic interpretation, John Hobson (1858-1940) largely ascribed the causes of new imperialism to the development of the capitalist system. An English radical economist, Hobson was a passionate champion of equal opportunity, progressive taxation, welfare

benefits, and education for the masses.<sup>1</sup> He dedicated his career to publishing works that expounded this “New Liberal” prototype, arguing against Britain's unequal distribution of income in *The Industrial System* (1909).<sup>2</sup> Hobson's new liberal perspective influenced post 1906 Liberal Party welfare reform and framed his *Imperialism: A Study* (1902), which became his most famous work.<sup>3</sup> In this analysis, he criticized British imperialism on the grounds that expansion was caused by, and contributed to, the growing inequality gap induced by capitalism.<sup>4</sup> He reasoned that wealthy investors with excess savings capitalized on investment opportunities overseas so that they could reap profits while the masses suffered the difference in increased taxes.<sup>5</sup> In Hobson's disparaging view, only a small segment of the British population - big business investors, military equipment manufacturers, textile producers, engineers, and emigrants who secured government posts abroad - actually benefited from imperialist expansion.<sup>6</sup> According to Hobson, Britain's 15% investment of capital overseas in 1893 “shed clear light upon the economic forces that [were] dominating [British imperialist] policy,” while Britain's external trade profits comprised only a tiny percentage of the country's income.<sup>7</sup> Therefore, Hobson claimed that the costs of imperialism far exceeded its small financial gains. The system was detrimental to both the British government and Commonwealth because of the higher taxes thrust upon the population to finance military expansion.<sup>8</sup>

1 Peter Cain, “Hobson, John A.,” in *Europe 1789-1914: Encyclopedia of the Age of Industry and Empire.*, ed. John Merriman and Jay Winter, 7th ed. (Detroit: Charles Scribner's Sons, 2006), 1075, accessed May 12, 2013, [http://go.galegroup.com.ezy.hmsl.sirsi.net/ps/i.do?id=GALE%7CCX-3446900383&v=2.1&u=nysl\\_me\\_horman&it=r&p=GVRL&sw=w](http://go.galegroup.com.ezy.hmsl.sirsi.net/ps/i.do?id=GALE%7CCX-3446900383&v=2.1&u=nysl_me_horman&it=r&p=GVRL&sw=w).

2 Cain, “Hobson, John A.,” in *Europe 1789-1914: Encyclopedia of the Age of Industry*, 1075.

3 Ibid, 1075.

4 Ibid, 1075.

5 Ibid, 1075.

6 John. A. Hobson, *Imperialism: A Study* (New York: James Pott & Company, 1902), 60, accessed February 20, 2013, <http://books.google.com/books?id=d-jwQAQAAMAAJ&printsec=frontcover&dq=imperialism:+a+study+hobson&hl=en&sa=X&ei=jnslUblDJsnp0gH9joDQDg&ved=0CDUQ6AEwAA>.

7 Hobson: *Imperialism: A Study*, 60.

8 Thomas Benjamin, ed., *Encyclopedia of Western Colonialism since 1450* (Detroit: Macmillan Reference USA, 2007), 3: 1179, accessed February 20, 2013, [http://ic.galegroup.com.ezy.hmsl.sirsi.net/ic/whic/ReferenceDetailsPage/ReferenceDetailsWindow?failOverType=&query=&prodId=WHIC&windowstate=normal&contentModules=&mode=view&displayGroupName=Reference&limiter=&currPage=&disableHighlighting=false&displayGroups=&sortBy=&source=&search\\_within\\_results=&action=e&catId=&activityType=&scanId=&documentId=GALE%7CCX2587300439&userGroupName=nysl\\_me\\_horman&jsid=720fa70fec6d382bc3cc9e07e412819b](http://ic.galegroup.com.ezy.hmsl.sirsi.net/ic/whic/ReferenceDetailsPage/ReferenceDetailsWindow?failOverType=&query=&prodId=WHIC&windowstate=normal&contentModules=&mode=view&displayGroupName=Reference&limiter=&currPage=&disableHighlighting=false&displayGroups=&sortBy=&source=&search_within_results=&action=e&catId=&activityType=&scanId=&documentId=GALE%7CCX2587300439&userGroupName=nysl_me_horman&jsid=720fa70fec6d382bc3cc9e07e412819b).

Hobson concluded that though Britain faced economic pressure to maintain its capitalist system by colonizing lesser developed countries and dominating markets abroad, paradoxically, its economic motives were counterproductive.<sup>9</sup> Furthermore, Hobson acknowledged that imperialism was characterized by a change in nationalism itself: from territorial and dynastic rivalry to deep-rooted cultural competition.<sup>10</sup> He was conscious of the anxiety of his age, as he realized that colonized peoples built strong resentments towards their imperial governors.<sup>11</sup> “A constant agent of menace and perturbation to the peace and progress of mankind,” imperialism’s creator was brute capitalism, its byproduct ardent nationalism.<sup>12</sup> Hobson’s historical analysis thus established imperialism’s failure on both an economic and moral basis.

While Rudolf Hilferding’s argument served less to criticize new imperialism and more to outline and explain its causes, he similarly emphasized imperialism’s economic motives. Hilferding (1877-1941), a Jewish theorist and socialist politician, was a member of the German Socialist Party during World War I and served as finance minister for the German Social Democratic Party twice in the 1920’s.<sup>13</sup> He claimed that capitalism produced monopolies, supported by high tariffs, that encouraged states to draw raw materials from and export finished products to lesser developed countries.<sup>14</sup> In this way, capitalist countries became both the producers, and the suppliers, of manufactured goods. Great Britain, for instance, took advantage of the cotton grown in India but discouraged Indian textile manufacturing through protectionist tariffs.<sup>15</sup> As a result, Britain gained access to India’s raw materials, transformed those resources into manufactured goods, and profited from exporting textiles to the very same imperialized Indian markets.<sup>16</sup> Hilferding also identified impe-

9 Hobson, *Imperialism: A Study*, 60.

10 Hobson, *Imperialism: A Study*, 3.

11 Hobson, *Imperialism; A Study*, 9.

12 Hobson, *Imperialism: A Study*, 11.

13 “Hilferding, Rudolf,” in *Encyclopaedia Judaica*, ed. Michael Barenbaum and Fred Skolnik, 2nd ed. (Detroit: Macmillan Reference USA, 2007), 9: 106, accessed May 12, 2013, [http://go.galegroup.com.ezy.hmsl.sirsi.net/ps/i.do?id=GALE%7CCX2587508944&v=2.1&u=nysl\\_me\\_horman&it=r&p=GVRL&sw=w](http://go.galegroup.com.ezy.hmsl.sirsi.net/ps/i.do?id=GALE%7CCX2587508944&v=2.1&u=nysl_me_horman&it=r&p=GVRL&sw=w).

14 Keith Griffin and John Gurley, “Radical Analyses of Imperialism, the Third World, and the Transition to Socialism: A Survey Article,” *The Economic Journal* 91, no. 364 (December 1981): 1098, accessed February 20, 2013, <http://www.jstor.org/stable/2232538>.

15 Martin D. Lewis, ed., *The British in India; Imperialism or Trusteeship?* 3, Problems in European Civilization (Boston: D.C. Heath and Company, 1962).

16 Gale Brunelle, “The World Economy and Colonial Expansion,” in *Encyclopedia of European Social History*, ed. Peter Stearns (Detroit: Charles Scribner’s Sons, 2001), 1: accessed February 5, 2013, <http://find.galegroup.com/gic/>

rialism as the era of finance capital - “capital supplied to industrial monopolies through financial intermediaries” – and labeled imperialism as “the latest stage of capitalist development.”<sup>17</sup>

Inspired by Hobson and Hilferding, Vladimir Lenin (1870-1924) expanded on their analyses in his 1917 essay *Imperialism: The Highest Stage of Capitalism*, which viewed the nationalist tensions in late 19<sup>th</sup> Century Europe within the context of capitalist development. Lenin, who became the leader of the Russian Revolution and creator of the Bolshevik party and Soviet state, condemned imperialism as a contest between capitalist nations and argued that imperialist expansion was inherently anti-socialist.<sup>18</sup> Like Hilferding, Lenin credited imperialism’s development to the transition from free trade capitalism to the emergence of capitalist monopoly and finance capital and the desire for Europeans to invest abroad in raw materials that were cheaper and more accessible.<sup>19</sup> He argued that imperialism was a “direct continuation” of capitalism, its aims rooted in “the necessities of the capitalist mode of production.”<sup>20</sup> But Lenin went beyond Hobson’s explanation of nationalism, asserting that by gaining access to raw materials, nations strived not only to profit economically but also to undermine the hegemony of other nations looking to do the same.<sup>21</sup> What is more, Lenin articulated that the nationalistic rivalries that powered imperialist expansion manifested themselves through capitalist economic competition. Lenin also expressed the same disdain as Hobson for new imperialism, noting that it could only take place once the “division of all territories of the globe among the biggest capitalist powers [had] been completed.”<sup>22</sup> Like Hobson, Lenin therefore recognized that imperialism was a disruptive force that deepened political tensions, but it was Lenin who developed Hobson’s viewpoint to reconcile rising nationalism with capitalist economic competition.

[infomark.do?docType=EBKS.Article&prodId=GIC&tabID=T001&type=retrieve&version=1.0&idigest=e9c07c19ebc3fbcee46eacdba165f23b&userGroupName=nysl\\_me\\_horman&docId=CX3460500053&contentSet=EBKS&source=gale](http://infomark.do?docType=EBKS.Article&prodId=GIC&tabID=T001&type=retrieve&version=1.0&idigest=e9c07c19ebc3fbcee46eacdba165f23b&userGroupName=nysl_me_horman&docId=CX3460500053&contentSet=EBKS&source=gale).

17 Griffin and Gurley, “Radical Analyses of Imperialism,” 1096.

18 Vladimir Lenin, “Imperialism: The Highest Stage of Capitalism,” in *From Early Modernity to the Present*, by Richard Lim and David Kammerling Smith, vol. 2, *The West in the Wider World: Sources and Perspectives* (Boston: Bedford/St. Martin’s, 2003), 253.

19 Lenin, “Imperialism: The Highest Stage,” in *From Early Modernity to the Present* 253.

20 Griffin and Gurley, “Radical Analyses of Imperialism,” 1098.

21 Lenin, “Imperialism: The Highest Stage,” in *From Early Modernity to the Present*, 253.

22 Lenin, “Imperialism: The Highest Stage,” in *From Early Modernity to the Present*, 252.

Writing after Lenin and the others, Joseph Schumpeter (1883-1950), by contrast, offered a revisionist interpretation of the classic historical analyses, reducing the emphasis of economic factors in the emergence of new imperialism. Schumpeter, an Austrian economist and sociological theorist, challenged the scope of capitalist influence on imperialist development by alleging that capitalism itself was a peaceful force, geared towards compromise and non-violent international exchanges (diplomacy), rather than hostile warfare.<sup>23</sup> He pointed out, for instance, that capitalists “gained more by peaceful trade than by war, conquest, and expansion” and concluded that imperialism demonstrated a cultural regression: that in contrast with Lenin’s argument, monopoly capitalism was not capitalism’s highest stage but instead a historical inconsistency and deviation from what capitalism stood for.<sup>24</sup>

Moreover, Schumpeter claimed that not all capitalist countries are imperialistic, and that some socialist countries are expansionist, undermining Lenin’s implication that imperialism and socialism are fundamentally incompatible. Schumpeter also offered alternative explanations (other than the sway of capitalism) for the development of new imperialism. While Hobson dismissed the idea that imperialism was the result of Social Darwinist ideology or the militaristic whims of certain leaders, asserting that “aggressive imperialism is not in the main the product of blind passions of race or of the mixed folly and ambition of politicians,” Schumpeter argued that the classic interpretation does not leave enough room for “ineptitude, errors, blunders, chance, [and] personal idiosyncrasies.”<sup>25</sup> In contrast with Hobson’s argument, Schumpeter maintained that the aggression and greed for power of the historical figures in control were often the main agents of imperialist expansion, and that these factors are frequently ignored in historical analyses of the subject.<sup>26</sup> He therefore concluded that though the classic analyses overplayed capitalism’s role as a cause of new imperialism, the “theory that imperialism is the last stage of capitalist evolution fails quite irrespective of purely economic objections.”<sup>27</sup>

While the classic interpretation identified capitalistic features like finance capital, monopoly capitalism, and the desire for raw materials to fuel an industrial economy as the roots of new imperialism, the theory has since evolved as

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23 Griffin and Gurley, “Radical Analyses of Imperialism,” 1098.

24 Griffin and Gurley, “Radical Analyses of Imperialism,” 1098.

25 Griffin and Gurley, “Radical Analyses of Imperialism,” 1103.

26 Griffin and Gurley, “Radical Analyses of Imperialism,” 1098.

27 Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (n.p.: George Allen & Unwin, 1976), accessed February 20, 2013, <http://books.google.com/books?id=ytrqJsworCC&printsec=frontcover&dq=schumpeter+capitalism+socialism+and+democracy&hl=en&sa=X&ei=2LEjUcn5Bq3h0wG--IDYB-g&ved=0CDgQ6AEwAA>.

the revisionist interpretation downplays capitalism’s role in imperialist expansion. Furthermore, the classic interpretation is simplistic because it constrains Europe’s deep rooted nationalistic rivalries to an economic framework and underplays the importance of the political nationalism that characterized the fin-de-siècle. Schumpeter rightly points out counterarguments that reveal how the classic interpretation overdramatized capitalism’s role.

At the same time, we must bear in mind the inherent unfairness in comparing contemporary and revisionist interpretations. Firstly, the classic analyses are contemporaneous sources, seeking not merely to explain the factors driving new imperialism but to condemn imperialist expansion and stop its spread. It is logical, therefore, that Hobson’s perspective emphasized imperialism’s economic motives because his argument aimed to criticize and influence the political outcome of his day. As a radical economist reacting to the inequality gap in early 20<sup>th</sup> century Britain, Hobson was appalled by the sheer futility and immorality of an imperialism spurred by capitalistic ideals. To that end, we must also consider the fact that the classic theories rely on predictions about capitalism’s development; Schumpeter formed his interpretation from a wider range of factors partially because he outlived the earlier theorists and thus, had witnessed capitalism’s evolution beyond Hobson’s, Hilferding’s, and Lenin’s era. Despite these limitations, the classic interpretation is still groundbreaking because it exposed the immorality and destructiveness of capitalism during an age when Europeans were blinded by the system’s exterior rewards. Ultimately, Hobson, Hilferding, and Lenin will be remembered not for accurately predicting capitalism’s evolution but for denouncing and revealing its connection to imperialism, transcending the optimistic thought of their era, and tapping into the underlying anxieties of late 19<sup>th</sup> and early 20<sup>th</sup> century Europe.

## Guidelines for Submission

The *Horace Mann History Journal* invites Horace Mann students to submit their essays, research papers, and analytical works to be considered for publication. Although your works do not need to meet these standards, we encourage potential candidates to present original research that includes primary source analysis. Papers written in any school course, as well as papers written independently, are all eligible for submission, so long as they relate to a historical topic. There are no page length requirements, and students have the opportunity to send in their work at multiple points throughout the year. Because of issues related to plagiarism, we cannot accept papers written in freshmen and sophomore year classes, as specified essay topics have the potential to be reassigned in subsequent years. Please include your footnotes and/or endnotes and email your submissions to [hmhistoryjournal@gmail.com](mailto:hmhistoryjournal@gmail.com). We look forward to publishing your work!

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