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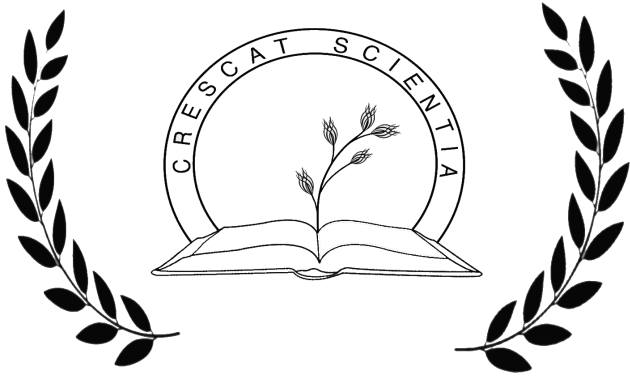
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# CRESCAT SCIENTIA

Journal of History

C R E S C A T   S C I E N T I A



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Dear Reader,

For the thirteenth volume of *Crescat Scientia*, Colten Sponseller and his editorial staff have produced a bold testament to undergraduate scholarship, bringing together articles on ancient, Renaissance, and modern history. The collection of student papers exhibited on these pages amounts to more than a cabinet of curiosities. Here is a record of minds attempting to make sense of the human experience. You should bear in mind that it is anything but easy; what is achieved is hard won.

Cooperation with the UVU Center for Constitutional Studies (CCS), bolsters this year's volume, as prize-winning entries from the CCS essay contest are incorporated. Many thanks to Interim Director Dr. Andrew Bibby and everyone associated with CCS for promoting collaboration between history and political science.

As you peruse the contents of this volume, give some thought to the many people behind the words. The words symbolize meaning, but meaning comes from a shared humanity. That is what I hope all those involved have come to know more fully in the process of realizing this journal.

May knowledge grow, or, as the Romans would have said, *crescat scientia!*

Dr. Keith Snedegar  
Faculty Advisor

History is a journey.

Many of the paths are wide and familiar; others are forgotten, broken, or undiscovered. We don't all start from the same place, and choosing our various destinations is almost as problematic as knowing when we've arrived.

Ultimately, we study history to learn more about ourselves. An honest study of history will sometimes lead us to confront difficult, unexpected, and controversial ideas, with which we must grapple and against which we must eventually reconcile what we thought we knew. This exercise places students of history in the position to do a tremendous amount of good—it is also, however, a position of great responsibility.

These pages contain some of those difficult topics. I commend the authors for their honest efforts to shed light in dark places so that we may all learn and benefit. Thank you for your work and your willingness to share with the journal.

This effort would have undoubtedly failed without this year's editorial staff. I express my gratitude and my awe for their incredible work. In particular, I would like to thank Jeremy Ruppe, my managing editor, for his patience in keeping us all on track and his good sense in the execution of tasks; and Haley Gibson, my technical editor, for her brilliant implementation of essential skills—skills that, I am convinced, she alone possesses.

Additionally, I was thrilled to be able to collaborate with the Center for Constitutional Studies in the expansion of their important work.

Finally, I express my thanks to Dr. Keith Snedegar, the faculty mentor for the journal. His positive attitude and openness to new ideas enabled the staff to expand their vision and have experiences that might otherwise have been stifled.

I invite all who read to let knowledge grow.

Colten Sponseller, Editor-in-Chief  
Crescat Scientia

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# FOREWORD

## The Importance of Applied History

Joshua J. Eaton

History is an inherently interpretive subject. Generally speaking, we who study history have not lived during the eras we examine. As a result, each person will have their own interpretation of the documents and records that past generations have left behind. We study history to understand the past, so that we may know where we came from and perceive where we might be going. Historical analysis on these terms affords us a sense of belonging, a meaningful past, and places our roots before our eyes. For many here in Utah, the pioneers constitute an important aspect of personal history. Mormons across the United States share a collective history of the events that pushed the pioneers west. They have a common past of being engaged in a strong community centered on faith and, often, being rejected by others. This common past has no doubt helped to shape the Mormon community into what it is today.

More broadly, let us examine the American Revolution, which lends a common past to all Americans. This shared history has shaped America into what it is today. That is, after all, what history does: it forms links within communities and nations—at times, even the world—by creating access to a common past. We study history so that we may better understand our past, so that we may see where our future lies.

To further accommodate our search for shared history, we must have the proper motives when we study the past. Specifically, we must seek to understand history on its own terms. The people who lived a century ago—much less the ancient world—had no concept of cell phones, which allow us to communicate around the world in near real time. They have no concept of planes that allow us to fly anywhere in the world in a matter of hours. Thus, when we are studying the cultures and people of the past, we must put our modern perceptions aside. Importantly, this act of putting aside includes our system of values; our values can be and usually are radically different from those who lived in earlier times. Our values influence our interpretations of historical documents. We will never experience true understanding of the past if we insist on seeing it with our eyes instead, we must look at the world the way that the people who lived



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then saw it. Very simply, this is how applied history works: understand the past by understanding the people who lived it.

Applied history is not only possible, it is essential to the study of history. For applied history to work, we must view the events that we study through the eyes of those who experienced them. We must view history on its own terms, not our own. It is important to keep our modern day values separate from the historical events we study; in so doing, we can avoid being influenced by feelings or ideas that did not exist in that world.

The only way to be a true student of history is to practice applied history. I want to do more than just know my past and the lives of my forefathers; I want to truly understand. To do this, I attempt to see historical events the way *they* would have seen them, so that I can better understand their motives and actions. This affects the way I read Roman history: why did Caesar seek to become dictator? Why did Brutus betray his friend? As we use applied history to examine the past, the answers we seek will become clearer than they otherwise could have been.

Recently, I have been researching the Boston Massacre and the events preceding it. In popular history, the event is simply known as a bloody massacre committed by the armed British soldiers. But when I dove deeper into the records, I found evidence of a labor dispute between the soldiers and the citizens of Boston. Because the soldiers were not being paid by the British crown, they needed to find jobs as laborers. The citizens, who were already feeding and quartering the soldiers, were understandably alarmed by the prospect of the soldiers invading the workforce. On the day of the infamous event, the citizens began to violently protest, even taunting the soldiers to fire. In the confusion, and amid the colonists' threats, one of the soldiers thought the order to fire was given. Soon all the soldiers began to open fire. In the aftermath, the Sons of Liberty created a story that was carefully engineered to stir up feelings of patriotism and unite the citizens.

The same process applies when studying Roman history. At first glance, we see that Caesar was the first dictator, part of the first triumvirate, and that his adopted son was the first emperor of Rome. These can easily become merely names, dates, and facts. If we are not careful, we lose the intricacy of how the Roman political system worked and how many people—like Caesar, Antonius, and Brutus—used this political system to their advantage. Applied history not only helps us to understand the past, it keeps the human part of history alive. Through applied history, we glimpse

how these people might have felt or thought. This brings history to life.

The practice in–depth analysis that comes with applied history was used by America’s Founding Fathers. These men used applied history when creating the revolutionary American system of government. Anciently, Polybius spoke of “the distribution of power between the several parts of the state [and] [t]he mutual relation of the three. I must now show how each of these several parts can, when they choose, oppose or support each other.”<sup>1</sup> From this excerpt alone, we can see a model of our system: the legislative, judicial, and the executive branches. Likewise, the Roman system had three separate powers: the Consul, the Senate, and the People.

The Founding Fathers knew and understood Polybius. They interpreted his ideas, shaping them into form that fit their conception of government. They agreed with Polybius that the result of this power of the several estates for mutual help or harm is a union sufficiently firm for all emergencies, and a constitution than which it is impossible to find a better. For whenever any danger from without compels them to unite and work together, the strength which is developed by the State is so extraordinary.<sup>2</sup>

Applied history is at the very foundation of our nation. The framers of the U.S. Constitution understood how the Roman system worked and then sought a way to tweak that system for their own use, improving it perhaps, but still maintaining the framework that Polybius describes.

History is important. Applied history is more important. It allows us to connect with our past and form a common link or identity with others. Applied history allows us to learn lessons from the past, just as the Founding Fathers did as they applied their knowledge of Polybius’s ideas. History is not just a set of names and dates; rather, it something that should be examined, questioned, and interpreted through the eyes of those who lived it. We can each bring history to life and preserve aspects of the past that would otherwise be lost to time and ignorance.

(Endnotes)

1 Polybius book IV, 15

2 Polybius book IV, 18

#### Bibliography

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# The Experiences of Women and Girls at Auschwitz

Krista Mosbacher

The Nazi concentration or death camps were a major aspect of the implementation of Hitler's Final Solution. Over a million people were murdered at Auschwitz, one of the largest of these camps. Although it was difficult for every prisoner, female prisoners in the Auschwitz-Birkenau death camp went through additional challenges that the men never had to face. Female prisoners not only had the stigma of being Jews or Gypsies, but, in a male-dominated society, they were also stigmatized just for being women. Immediately after entering the camp—if they weren't sent to the gas chambers—they were defeminized by certain entry procedures: being forced to undress in front of SS men, having all their hair shaved off, and being forced to undergo body searches. Often just to survive, some were forced to sell their bodies for extra food, clothing, or other comforts. They endured further physical defeminization through violence such as rape by Kapos, SS men, and even SS women. This violence affected menstrual cycles, pregnancy, and motherhood, all of which made their time in the camp that much more intolerable.

Myrna Goldenberg, a Holocaust expert, vividly described the distinct conditions of women in prison camps in an article titled, "Lessons Learned from Gentle Heroism: Women's Holocaust Narratives."

Although an enormous amount of material has already been generated about the Holocaust, most of it has focused on the historical events, whether from German, American, or Russian sources, and most of it has assumed a male-centered

perspective. That is, the experiences of Jewish men have been documented and generalized as if they were as true for women as they were for men . . . The examination of the literature of women Holocaust survivors suggests that we are confronted with a unique genre, one that is driven by the twin circumstances of racism and gender . . . It can hardly be over-emphasized that the literature about and by Jewish women who lived under Nazi control reflects a double vulnerability as both Jews and women.<sup>1</sup>

They weren't just Jews, Gypsies, or some other "lesser" race—they were also women; to the Nazis, that merely added to their inferiority. She goes on to explain that this idea was in the Nazi ideology from the beginning. Even Aryan women were thought of as inferior to the Aryans: "Although Hitler praised the prolific Aryan mother as the equal of the Aryan soldier, National Socialism rendered German women invisible except as child bearers and child rearers. The ideal Nazi wife was the wholesome, athletic, peasant type—a domestic mother and helper to her husband."<sup>2</sup> If this was how Hitler thought of Aryan women, his view on women of an "inferior" race must have been very low indeed. Some scholars argue that this is the reason why more women were killed during the Holocaust than men. Goldenberg quotes Raul Hilberg's book, *Perpetrators, Victims, and Bystanders*: "Because of the need to develop a huge slave labor supply for concentration and work camps, far more women than men were gassed immediately upon their arrival at Auschwitz and other camps."<sup>3</sup> Goldenberg goes on to explain that "men were more valued as laborers than were women."<sup>4</sup> However, there were other reasons why more women may have been gassed right away than men.

If a woman was pregnant or refused to leave their children, they were sent immediately to the gas chambers. If they made it through the selection without being sent to the gas chamber, their hell was just beginning. Goldenberg also wrote about the process that the Nazis had perfected to solidify their power over and to defeminize their female prisoners: "Girls and women who, on their arrival at a camp, were not chosen for immediate death underwent a gamut of humiliations, including exposure, crude body searches for hidden jewelry, painful body shaves, and sexual ridicule."<sup>5</sup> She goes on to write that SS men were known to grope and push their fingers into the sexual organs of the women as they passed.<sup>6</sup>

Many women wrote about these experiences in their memoirs. Some

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mentioned the watchful eyes of the SS men as they were going through it. Eva Brewster was one of these women:

On either side of us SS guards lined up. "Get ready for de-lousing! Clothes Off!" their officer shouted. Nbody moved. The first SS men advanced menacingly on the frightened girls in the front row and, grabbing their dresses, tore off their clothes until the girls stood naked and shivering with fear and shame . . . My mother's clothes were torn off, but not before she had withdrawn her hairpins, allowing her long black hair to cover her like a silky coat down to her thighs. I stripped my dress off before the men could get their hands on me and felt no shame. We had to parade through the double line of leering guards to a row of chairs and there the "de-lousing" began. Our hair was cut off and our heads shaved so close to the skin that our skulls were grazed. We then had to lift our arms and the hair under the arm pits was shaved. Last and worst indignity of all, we were hoisted on to the chairs and had to submit to the shaving of pubic hair while the guards looked on with sneers and obscene remarks. This went on all night.<sup>7</sup>

Olga Lengyel described similar experiences, with additional details. Most of the women who wrote about this event discussed body searches, but none have described with Lengyl's level of detail:

I lined up in my row, completely naked, my shame engulfed in terror. At my feet lay my clothes, and, on top, the pictures of my family. I looked once more at the faces of my loved ones. My parents, my husband, and my children seemed to be smiling at me . . . I stooped and slipped these dear images into my crumpled jacket on the ground. My family should not see my horrible degradation . . . Now we were compelled to undergo a thorough examination in the Nazi manner, oral, rectal, and vaginal—another horrible experience. We had to lie across a table, stark naked while they probed. All that in the presence of drunken soldiers who sat around the table chuckling obscenely.<sup>8</sup>

After all this, how could anyone truly feel like a woman? In those times, besides obvious anatomical differences, a woman's hair was an important aspect that distinguished her from men.

Some of the women described their reactions to the situation. Judith Isaacson provided a more vivid description of this : "Without hair, even

in women's clothes, everybody looked man. For two days, we could not get accustomed to it and we always told each other—please, Mr. or—hallo, my little boy.”<sup>9</sup> Berta Fredreber describes another reaction to what they had gone through:

After standing for several hours, we were led to a block, where we found ourselves in a huge crowd of bald women. All of us stared at each other; no one recognized her neighbor. Among several thousand women there were about twenty or thirty whose hair had not been totally shaved off, and I was one of them. Those who still had a bit of hair on their heads were looked upon with great envy. We were a terrible sight, more appalling than death itself. At first we were shocked by our looks, but then suddenly, all at once, we broke into hysterical laughter. After a while we slowly began to absorb the reality of our new surroundings, and our initial hysteria dissolved into a sinking depression.<sup>10</sup>

With these methods, women were defeminized and became more firmly entrenched in the Nazis' view of being mere animals that they could play with.

After enduring all of that humiliation, female prisoners suffered additional pressures as they tried to survive the harsh environment of the death camp. Many women were forced prostitute themselves for things they would not have gotten otherwise. Dr. Gisella Perl wrote in her journal about her experience when she was faced with this decision. Having gone months with bare feet, and knowing that she would not survive the winter if she did not get a pair of shoes, she traded two rations of her bread to get some. The shoes she received, however, were too large for her feet. Someone told her that the men working in the latrines in the women's camp would be able to trade with her to get some string so she could still make use of the large shoes. She saved up some more of her rations and met one of the men to do the trade:

I stopped beside him, held out my bread and asked him, begged him to give me a piece of string in exchange for it. He looked me over from head to foot, carefully, then grabbed me by the shoulder and hissed in my ear: “I do not want your bread . . . You can keep your bread . . . I will give you a piece of string but first I want you . . . you . . .” For a second I did not understand what he meant. I asked him again, smiling, gently, to give me a piece of string . . . My feet were killing

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me . . . The shoes were useless without string . . . It might save my life . . . He wasn't listening to me. "Hurry up . . . hurry up . . ." he said hoarsely. His hand, filthy with the human excrement he was working in, reached out for my womanhood, rudely, insistently. The next moment I was running, running away from that man, away from the indignity that had been inflicted on me, forgetting about the string, about the shoes, about everything but the sudden realization of how deeply I had sunk . . . How my values had changed . . . How high the price of a piece of string had soared . . .<sup>11</sup>

Later in her account, Dr. Perl addresses this in a more clinical manner, indicating that women often used their bodies as commodities to get the things they needed to survive. She notes that, at first, she was shocked and revolted by this practice, but when she saw what extra rations or a pair of shoes did for survival, she began to understand and forgive what she was witnessing.<sup>12</sup> Lengyel describes this same thing in her memoir as well.<sup>13</sup> Women were even pulled from the camp to work inside the brothel that serviced the SS men, and choice prisoners.<sup>14</sup> In her book, Sybil Milton said the following about this practice: "Occasionally, flirtation and sex were used to buy food or a better work situation; even sex could have served as a strategy for survival. Traditional anxieties and guilt about sex were not applicable in the world of total subservience reinforced by terror in the camps."<sup>15</sup> It did not matter what society thought of the practice: it was necessity of survival for many of these women. In her memoir, Mira Kimmelman recalled how the commandant of her work detail took one of the younger girls as his personal servant with special privileges. She became known as the commandant's sweetheart.<sup>16</sup> In most cases, the women could choose whether or not they would behave this way, but it was still a choice they never would have faced had it not been for their situation as prisoners in a Nazi death camp.

These women had to endure further defeminization by acts of violence such as rape. Goldenberg wrote that, although autobiographical Holocaust fiction deals with rape, very few memoirs or other nonfiction sources discuss actual rapes: "Though seldom written about, forced sexual activities were common in ghettos and in partisan camps and were not infrequent in concentration camps."<sup>17</sup> What is written about, however, is the fear of rape, which is almost as terrifying as the act itself. In her memoir, Judith Isaacson, on multiple occasions, refers to her fear of being raped by the SS

men, or being sent on a girls transport to the front to serve as a prostitute for the soldiers there. She recounts an instance when a Nazi doctor was separating all the young and pretty girls, placing them to one side. She was worried that it was a girl's transport to the front, and bravely followed her mother to the other side and somehow managed not to get shot for not listening to orders.<sup>18</sup> Olga Lengyel told a story in her memoir of her fear of being raped just before she was to get her hair shaved:

Long before my turn, a German officer singled me out. "Do not clip that one's hair," he said to a guard. The soldier moved me aside, then forgot about me. I tried to analyze my predicament. What did the officer want from me? I was fearful. Why should I have been the only one whose hair was not cut? Perhaps I would get better treatment. But no, from this foe one could expect no mercy, except at an ugly price. I did not want to be preferred; it was better to stay with my companions. So I disregarded the order, and got into line to be shorn. Suddenly the officer reappeared. He gazed at my bare skull, grew angry, and slapped my face as hard as he could. Then he reprimanded the guard, and ordered him to give me a few lashes with his whip.<sup>19</sup>

Lengyel preferred to take the beating rather than put herself in the situation where she might have been raped. There are even stories about specially trained dogs that the Nazis used to rape women and girls.<sup>20</sup>

Female prisoners needed to worry about SS women as well as SS men. There are many stories in the memoirs about one particular SS guard named Irma Griese. Olga Lengyel had the following to say about her:

The heads of the camp were noted for their aberrations. The Griese woman was bisexual. My friend, who was her maid, informed me that Irma Griese frequently had homosexual relationships with inmates and then ordered the victims to the crematory. One of her favorites was a Blocova, who survived as Irma's slave a long time before the camp chief tired of her . . . I was afraid of Irma Griese. Once I offered my margarine ration as a bribe to keep from appearing before her . . .<sup>21</sup>

Many women in the camp feared Irma Griese and her perversions, as Gisella Perl put it in her memoir.<sup>22</sup> Isabella Leitner mentioned a story in her memoir of the torture that Irma Griese inflicted on her sister because she denied Griese what she wanted. Griese made her sister stand outside for hours holding up heavy buckets out to the side of her body



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with her arms extended.<sup>23</sup> Female prisoners were not safe from anyone in the camp: they lived in constant fear of rape and reprisal.

Among the difficulties women alone faced was the menstrual cycle, whether missing or present. Olga Lengyel wrote in her memoir about the scientific experiments conducted on newly arrived women during their menstrual cycle: "During their periods, they were told roughly, 'You will be shot in two days.' The Germans wanted to know what effect such news would have on the menstrual flow. A professor of histology in Berlin even published an article in a German scientific periodical on his observations on hemorrhages provoked in women by such bad news."<sup>24</sup> More often than not, however, when a woman wrote about her menstrual cycle in her memoir, it was to remark that it was missing and to detail the worries that went along with realization. Livia Bitton Jackson wrote:

Three weeks pass and I do not menstruate. Neither does anyone else. With amazement we all realize that menstruation ceased in the camps. The first week after our arrival there were many menstruant women, even in the wagon on our way to Plaszow there were several girls who bled profusely. Then, menstruation ceased abruptly. There is bromide in our food, we are told by old-timers. Bromide is supposed to sterilize women. The Germans are experimenting with mass sterilization. The information causes panic among the inmates and at first many refuse to eat the cooked food, determined to survive on the bread ration alone. Soon hunger wins, and the food is consumed as before. The whole sterilization story may be just rumor anyway. I am secretly grateful for the bromide. Avoiding the fear, pain, and embarrassment of menstruation is worth any sacrifice to me at the moment. But the topic does not die. Married women keep wondering about the bromide in their food again and again. Will they bear children again? What will their husbands say when they find out? Perhaps less of the food will cause less of a damage. Some try to eat less and the conflict is painful. Rejection of a means of survival for the sake of a dubious gain.<sup>25</sup>

What added torture this must have been for these women, now worried about whether or not they would be able to have children if they survived the war.

Women also had to deal with pregnancy and childbirth while prisoners in the camp. Women who were physically showing signs of pregnancy

when they arrived at the camp were immediately sent to the gas chambers. However, women who were not showing or did not know that they were pregnant at the time had to deal with the added stress of hiding their pregnancies from the guards. Dr. Gisella Perl recalled that when a new transport would come in, the guards would ask all pregnant women to step forward, promising them that they would be sent to a special place to be cared for. After they stepped forward, they were marched from the camp. As she was running an errand later near the crematories, Dr. Perl saw the pregnant women surrounded by SS men and women. They were being beaten, attacked by dogs, and kicked in the stomach with heavy military boots. After the women had collapsed, they were then thrown into the crematory alive.<sup>26</sup> Dr. Perl then wrote her response to the sight that she had seen:

I stood, rooted to the ground, unable to move, to scream, to run away. But gradually the horror turned into revolt and this revolt shook me out of my lethargy and gave me a new incentive to live. I had to remain alive. It was up to me to save all the pregnant women in Camp C from this infernal fate . . . I ran back to camp and going from block to block told the women what I had seen. Never again was anyone to betray their condition. It was to be denied to our last breath, hidden from the SS, the guards and even the Blocova, on whose good will our life depended.<sup>27</sup>

If it was dangerous to be pregnant in the camp, it was just as dangerous to bear the child in the camp. There were many issues when it came to childbirth in the camp. There was the problem of hygienic conditions, if you could hide the pregnancy, then the problem of hiding the birth and the baby afterwards. It was very rare for babies to live through birth, let alone be successfully hidden from the guards.<sup>28</sup> More often than not, the babies either died at birth or were killed at birth by prisoner doctors and nurses who were trying to save the mothers. If both mother and child survived, both were thrown into the crematory alive. Dr. Perl vowed to save the mothers: "It was up to me to save the life of the mothers, if there was no other way, than by destroying the life of their unborn children."<sup>29</sup> She goes on to describe how she went about doing this, and her feelings about it.

No one will ever know what it meant to me to destroy these babies. After years and years of medical practice, childbirth

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was still to me the most beautiful, the greatest miracle of nature. I loved those newborn babies not as a doctor but as a mother and it was again and again my own child whom I killed to save the life of a woman. Every time when kneeling down in the mud, dirt and human excrement which covered the floor of the barracks to perform a delivery without instruments, without water, without the most elementary requirements of hygiene, I prayed to God to help me save the mother or I would never touch a pregnant woman again. And if I had not done it, both mother and child would have been cruelly murdered. God was good to me. By a miracle, which to every doctor must sound like a fairy tale, every one of these women recovered and was able to work, which at least for a while, saved her life.<sup>30</sup>

Under those conditions it was a miracle what she accomplished, but at the same time a tragedy for all those innocent lives that were lost in the process. If the mothers were saved, and if they survive the camp then later in life they would be able to have more children. That was the general though process.

Dr. Perl is not the only woman with an account of childbirths in Auschwitz. Olga Lengyel, who worked in one of the camp hospitals as a nurse, wrote about this in her memoir as well:

One day we decided we had been weak long enough. We must at least save the mothers. To carry out our plan, we would have to make infants pass for stillborn. Even so, many precautions must be taken, for if the Germans were ever to suspect it, we, too, would be sent to the gas chambers—and probably to the torture chamber first . . . Unfortunately, the fate of the baby always had to be the same. After taking every precaution, we pinched and closed the little tike's nostrils and when it opened its mouth to breathe, we gave it a dose of a lethal product . . . As far as the camp administration was concerned, this was a stillbirth. And so, the Germans succeeded in making murderers of even us. To this day the picture of those murdered babies haunts me. Our own children had perished in the gas chambers and were cremated in the Birkenau ovens, and we dispatched the lives of others before their first voices had left their tiny lungs . . . The only meager consolation is that by these murders we saved the mothers. Without our intervention they would have endured

worse sufferings, for they would have been thrown into the crematory ovens while still alive.<sup>31</sup>

These two accounts demonstrate how difficult it was, not just for the pregnant women, but also for the women who tried to save their lives. For the rest of their lives, these two medical professionals would remember all those tiny lives that they were forced to end, and the mothers of those children were left to wonder: “What if?”

Looking at these accounts, there seems little doubt that women endured more pressures as prisoners in Auschwitz than men. However, they also had better ways to cope with their situation and surroundings than men did. Sybil Milton has the following to say about this:

Women appear to have been more resilient than men, both physically and psychologically, to malnutrition and starvation . . . Men ‘were selfish and undisciplined egoists, unable to control their hungry stomachs, and revealed a painful lack of courage.’ Women also shared and pooled their limited resources better than did men. . . women’s traditionally domestic roles as wives, daughters, and mothers aided them under conditions of extreme duress . . . women fought against the primitive conditions. “They fought the dirt and lassitude with cleaning, scrubbing, and orderliness.” This cleaning apparently lowered the spread of disease and consequently decreased mortality in the women’s barracks.<sup>32</sup>

It was not just the sharing of food and the cleaning that aided women’s survival. Many memoirs tell stories of how women bonded together to help each other survive. In her article, Goldenberg touched on this subject. She explained that if women did not have their own families to help each other then they formed surrogate families to help them.<sup>33</sup> Mira Kimmelman attributes her survival partly to this: “How did I survive? With the help of God, the support of friends, kind deeds by those who shared food with me.”<sup>34</sup> There are stories of women sharing recipes with each other that helped them get through the long and terrible days they faced. They would also share with each other ways they had learned in the past to help extend what limited food supplies they had.<sup>35</sup>

In the memoirs, stories are told of games, concerts or storytelling sessions in the barracks, or simple conversations to help each other and themselves cope with the stresses of the day. Dr. Perl spoke of how she started to talk to the women around her at night just so that she could keep herself feeling human, and not the animal that the Nazis were trying

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to convince her she was:

Instead of going to sleep as usual, I began talking in a low voice to the women lying close to me. I told them about my old life in Maramaros Sziget, about my work, my husband, my son, the things we used to do, the books we used to read, the music we used to listen to . . . To my surprise they listened with rapt attention, which proved that their souls, their minds were just as hungry for conversation, for companionship, for self-expression as mine. One after the other, they opened up their hearts, and from then on half our nights were spent in conversation. Later, as we came to know one another better, we invented games to keep our minds off the sordid present. We recited poetry, told stories of the books we had read and liked, and sang songs, in a low voice, with tears in our eyes, careful that the Blocova should not hear us.<sup>36</sup>

She goes on to write about a game that she and the other women in her barracks would play called “I’m a Lady.” They would talk and pretend that they were out of the camp, just going about a normal day before all of this horror, pretending they were out shopping or having lunch with friends.<sup>37</sup> Sara Selver-Urbach told a story in her memoir of a concert that they were allowed to hold in her barracks. She spoke of a singer whose voice was so beautiful that she had the whole barracks in tears, including the normally abusive Kapos, who were crying and asking for an encore.<sup>38</sup> Women showed that they could be resilient through all the horrors they faced in Auschwitz–Birkenau.

Throughout time, women have always been seen as the weaker sex, the ones that need to be constantly coddled and protected. However, these stories demonstrate that women really were amazing, considering what they suffered and were forced to overcome, to finally come out of Auschwitz alive and ready start their lives over again. It took courage, perseverance, family, friends, and, oftentimes, a bit of luck to get them through their trials. They are amazing examples of what women can do when no alternative is available.

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## The Limited Freedom of Motherhood in Renaissance Italy

Jacinda Dietrich

The primary role for women in Renaissance Italy was motherhood. The role was rooted partially in Christian conceptions of Eve and the Mother Mary. It also stemmed from the classical writings of Aristotle, Plato, and other male philosophers. A woman was expected to be chaste, obedient, and virtuous—raising her sons to be future citizens, and her daughters to be future mothers.<sup>1</sup> While these moral theologies existed about motherhood, a woman needed a sizeable dowry in order to enter into matrimony. Women who possessed acceptable dowries entered into marriage by patriarchal agreement, giving these new wives control over their dowries as they proliferated their husband's family by producing offspring.<sup>2</sup> A mother's dependency on the patriarchal system in every aspect of her life, from the first years of marriage to widowhood, portrays the conceptualization of a mother's inferiority, or a mother's limited freedom in the domestic, social, and financial realms that existed within the control of the patriarchal society.

Conceptions of womanhood were deeply connected to motherhood. The Renaissance was a period of belief in Eve's great sin, which occurred because women were thought to be naturally inclined to temptations. A woman's inferiority also resided in her physical inadequacies. Scipione Mercurio, a Dominican physician and friar, commented that "so as woman is naturally weak, she suffers greatly in extremely painful childbirth."<sup>3</sup> Mercurio went on to reference God's punishment of Eve: "In your

suffering you will bear children, and I will multiply your births, but also will multiply your sufferings.”<sup>4</sup> Thus, the mothers of Renaissance Italy were subject to the pain and suffering of childbirth, because they were naturally weak.

As Eve conveyed weakness in women, the Virgin Mary—the sublime example of a mother—portrays one who is “stable and firm.”<sup>5</sup> The Franciscan Bernardino de Siena spoke of Mary’s redemption for women in 1427: “Mary is the one who has restored you from all these disgraces. She has lifted you from shame . . . A woman who picked us up and revived us.”<sup>6</sup> Mary’s exemplary attributes included modesty, humility, faithfulness, and obedience. These attributes were expectations for women who would be good mothers.<sup>7</sup> Catherine of Siena wrote to her daughter, entreating her to follow Mary’s sublime example: “Never let it leave your heart nor memory nor soul: you and all your daughters were offered and presented to Mary.”<sup>8</sup> It was not until the mid-1600s that a devout nun wrote a biography on Mother Mary, drawing upon her successful roles outside of motherhood where she taught and governed. She argued that Mother Mary was both an obedient mother, and an active woman, taking on masculine roles.<sup>9</sup>

Another of Mary’s great attributes was her virginity. This attribute, combined with the divine role of motherhood, presented Renaissance women with an unfeasible example to follow.<sup>10</sup> This propagation of chastity as the paradigm of ultimate purity in women directly conflicts with the divine role of motherhood presented to women. Thus, women could never achieve the high moral state of Mother Mary, which continually kept them under the moral guidance of patriarchy. This contradiction between patriarchal control over a woman’s choices and the moral theologies that reside in motherhood will be discussed later on.

Not only was the inferior sex subject to the role of a mother, but they were also kept there. Women could not rise up into other roles, because other roles were manly roles.<sup>11</sup> A learned and well-read woman, Isotta Nogarola, attempted to enter the educational sphere and study humanism, the prevailing philosophy of the time.<sup>12</sup> Ultimately, her attempts to study proved ineffective due to the control of the patriarchy over her education. The humanists with whom she sought scholarship, who were only men, believed women to be talkative, simple-minded beings with no ability to grasp complex topics in philosophy and other studies. Lisa Jardine assessed the records of the letters between Nogarola and the intellectuals.

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She concludes that, “It proved almost impossible in practice, as it turns out, to sustain the identity of Isotta Nogarola’s humanistic competence and her supreme virtue as a woman.”<sup>13</sup> Because Isotta was a woman, no amount of credentials would be accepted so that she could enter into the humanist sphere. Isotta was instead exiled to a life outside the public sphere, her only solace a library in her home. Isotta was rejected because the patriarchal ideology of the inferior role of females; a woman held no place in the academic sphere because she belonged in the home.

After marriage, and the entrance of a woman into the home of her husband, the woman was expected to fill the role of mother. Francesco Barbaro spoke of “the upbringing of children, which is surely a rewarding and by far the most serious of a wife’s duties.”<sup>14</sup> This role required women to produce as many children for the lineage as possible and stay in the home to raise those children. Producing children propelled the patriarchal lineage, as well as producing good, active citizens in society. Matteo Palmieri stated that women were contributing to lineage and society by “procreating children, increasing the population, and giving citizens to the mother country”<sup>15</sup> This was the right and best thing for a wife to do; it was the purpose of marriage.

A woman best served her husband by birthing children, because it made him a father, which propagated the family lineage. In effect, the purpose of procreation was not necessarily to make women into mothers, but rather men into fathers. In Machiavelli’s play, *La Mandragola*, Nicia, an elderly husband, wishes to have a child with his wife, Lucrezia, who has yet to conceive. Through a complicated endeavor, Nicia convinces Lucrezia to take a mandrake that will make it so the first man who sleeps with her will impregnate her. The entirety of this scheme resides in the motive to make Nicia into a father.<sup>16</sup> Thus, woman did not exist to be a mother, but rather to serve her husband, and in serving her husband become a mother.

A mother was granted freedoms that resided in the household. Dolce wrote on the duties of a mother in the home, “The wife must be most diligent in the care of everything that comes into the house.”<sup>17</sup> Men were often concerned with spending their time fostering their own interests in credibility and honor. Because these patriarchal husbands spent their time wisely in business and academics, the needs of the house were left to the mother.<sup>18</sup> Women were granted relative freedom over the household

and in raising the children. Women were also able to bring up their children, instructing them in certain matters of education.<sup>19</sup> Dolce goes on to write: “Education, or upbringing, consists of two parts, that is, manners and literacy, one common concern of both father and mother, the other more suited to the father.”<sup>20</sup> The wife was responsible for manners and moral education, but not for schooling. While she did have the responsibility and freedom to raise her children, matters of academia were left to the husband.

These household roles, however, were limited by patriarchal management and separation from the public sphere. Dolce also discusses a wife’s needful obedience to her husband, “She should, however, always act according to his orders and his consent, in the way she knows agreeable to him, keeping her eye on his wishes.”<sup>21</sup> Not only was a woman limited in her management of the home, but she was also kept from expanding any freedoms beyond the domestic sphere. As stated previously, Isotta Nogarola, the attempted humanist, had been unsuccessful in reaching beyond the defined roles of women, which illustrates the patriarchal grip on women to remain in the home.

A widow was considered to be capable of raising her children if she was the only parent. Bernardino da Siena commented, “It’s possible that a son brought up by a good widow could then govern a city or a province, and also the contrary, that he could ruin a province if badly brought up.”<sup>22</sup> Even after the husband’s death, the main duty of the widow was the correct upbringing of any children. And, it was her duty to bring them up the correct way.

While a widow was granted freedom in the upbringing of her children, masculine influence over a son’s education was necessary in order to bring him up correctly. This system is shown in the writings of Dolce, “I think it wise if the males, once they have reached a certain age, go to live with their father’s brothers, or hers, or any learned man of good repute.”<sup>23</sup> Even though a woman had a responsibility to raise her children, she was not considered completely capable of raising children in the mind of society. Society dictated that the divine qualities in a man were necessary to raise a child into a good citizen. A woman’s freedom did not expand through the home, but was rather limited by the confines of patriarchal supervision.

A woman did, however, possess relatively more financial freedom in passing wealth on in wills and testaments, even compared to men. To

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ensure the increase of the family lineage, husbands and sons were in control of the finances of the family for the benefit of that lineage. This control over family finances limited men to spending and managing their money for the benefit of their descendants. A mother, on the other hand, could bequeath her dowry to daughters, sons, and towards herself, however she desired. In taking care of her children, a mother would often bestow a portion of her dowry upon a daughter's dowry, or a son's entrance into society and business. Because a woman had a choice in the matter, she obtained most of her freedom as a mother because of her dowry.<sup>24</sup> In writing her will, Cinzia Spada bequeathed a significant portion of property to her mother and father, and another portion to her husband, "so that he can pay with this the alms for the hundred masses be-fore [she is] buried."<sup>25</sup> Women did not have their wills tied to one specific place. Women wrote more wills than men because they had more freedom with the money in their wills.<sup>26</sup> A father, however, had a responsibility to uphold the patrilineal finances. Because men were responsible for upholding the family in the public sphere and taking care of family decisions, they held a limited range of freedom. In writing his will, a father would follow a format that kept the money in the male line.<sup>27</sup> Upon the death of a husband, a woman was left with a portion of her dowry in her widowhood.

Motherhood did come with a position of authority over familial affairs and mothers could negotiate their children's futures largely because of her dotal influence. For example, Fiorenza Capello Grimani wrote to her aunt in 1605 to discuss the option of removing her daughter from a convent against her husband's wishes. Fiorenza drew upon her dowry and support from other family members, both male and female, as a means of negotiation with her husband, who had placed their daughter in the convent. Finally, she redrafted her will, diminished the allocations to her sons, and placed a large sum of money in her daughter's hands if she decided to leave the convent and get married. After Fiorenza's death, her daughter chose to leave the convent and enter into marriage. Unfortunately for Fiorenza, after she died her other children did not receive such freedom: her husband had regained complete patriarchal control over the finances.<sup>28</sup>

Certain circumstances necessitated that a woman adopt roles usually controlled by men. These situations most often occurred in widowhood.<sup>29</sup>

When the husband died, it was a mother's duty to take over for her husband in some fatherly roles. Alessandra Strozzi wrote to her children to outline the decisions she and other male members of the family had made in her husband's absence. She spoke of her decision for her daughter to marry a worthy suitor and other financial affairs.<sup>30</sup> She writes: "We have arranged a marriage for our Caterina...So far as the Commune is concerned, I must tell you that I owe them two hundred and forty florins and that I've been persecuted by no less than four Offices trying to recover [money] for the Commune."<sup>31</sup> Widows like Alessandra Strozzi were required to aid in the primary roles of financial security for the family, and decisions for the children in a husband's absence, so that male finances could continue.

Widowhood was a status of relative freedom for women. Bernardo Trotto wrote on the opportunity of widowhood, "Consider . . . the many and various benefits that may result from the humility and liberty of widowhood."<sup>32</sup> Trotto further explained the religious and familial devotion a widow could have as she pursued her motherly and familial responsibilities, such as a choice in where she lives, whom she lives with, and what she does with her dowry. In cases of widowhood, a woman had the freedom to choose if she wanted to go back to her parents' family (usually to get married again if she was young enough), live on her own, or stay with her husband's family.<sup>33</sup>

While a widow did have the freedom to choose what she did after her husband's death, each choice brought its own moral inclinations for the widow, and fiscal inclinations for the family. If she chose to live on her own, her morals were in question. A woman's identity resided in the patriarchal home she lived in. If she lived alone, matters of temptation and sin would result from her inferiority, particularly without male influence to keep her on the straight path.<sup>34</sup> Instead of living alone, a widow could stay with her husband's family. This was the morally correct decision for a good mother, because a single widow risked dishonor upon the family with which she was connected to. A good mother would be one who refused to remarry, so that she would not abandon her children. She should stay with her husband's family, seeing to her primary duty of motherhood. And, as a widow, she also took on fatherly roles, such as the bequeathing of wealth that belonged to the children.<sup>35</sup> Despite what was considered moral, her kin family often pressured her, if she was young, to

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go back and enter into another marriage. Even though this abandonment of her husband's home was not considered honorable, this was the custom in Florence.<sup>36</sup>

In leaving her husband's family, the widow had the right to take her dowry with her, but not her children. Because her children were considered part of the patrilineal line, they were generally raised by the husband's family. If a woman wanted to raise her children in a step-home when she remarried, she would have to pay the patrilineal family a fee. Motherhood was then limited by the presence of her dowry, being the only thing she truly owned. She did not even have the right to raise her own children.<sup>37</sup>

In cases like these, a woman was considered flighty, abandoning her children both physically and financially. Even in the abandonment of her children, if she chose to do so, her abandonment existed as financial more than motherly care. Giovanni Morelli accused his mother of abandoning him as a child when she remarried. She did not just leave with her maternal love, but she left with her dowry.<sup>38</sup> The contradiction between a good mother and a cruel mother had to do with what she did with her dowry, not necessarily herself as a mother. A dowry was worth more to society than motherhood itself. These socially established roles of women are founded in their philosophical and theological inferiority to men.

Though a woman possessed freedom during this time, any freedom she did have was contingent upon the presence of a suitable dowry. Consequently, the contradiction between patriarchal lineage priorities and moral mothers proved to be focused on the dowry. A mother, then, was essentially limited by the presence of a dowry and the moral statutes of motherhood; because a dowry determined if she got married, a dowry determined what she should spend on her children and where she should go after her husband's death. And, because a woman was subject to a system of dowries run by a patriarchal society, her power would always be checked by males. Author Stanley Chojnacki concludes, "However dependent on or even subject to this or that woman an individual male patrician might have been in practical matters, his sex gave him a share of the formal stature and prescriptive dominance that belonged exclusively to men as men . . . female power does not dislodge male authority."<sup>39</sup> The social hierarchy was secured, thus the male authority determined every aspect of freedom given to women.

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# Aristotle's Numerological Decision: Aristotle as an Exemplar of the Common People

Ethan Drake Johnson

In Hellenic–Hellenistic intellectual culture, there was a reverence placed upon the idea of Number (the Greek *arithmos*) that seems to be absent from our own intellectual culture. In modern times, using ‘lucky numbers’ is a neat cultural oddity, and there is definitely something to be said about prevalence of nice round numbers (e.g. 10). The use of these numbers, however, could hardly be said to extend beyond this innocent fascination. It would be incredibly bizarre to the modern mind for this symbolic use of numbers to extend beyond mere symbolism. As such, we do not use this form of Number symbolism in scientific, philosophical, or historical discourse to prove points. In other words, the symbolic use of numbers itself does not provide a causal account in modern culture; the quality of Number does not innately hold causal efficacy.

In Hellenic–Hellenistic discourses, however, Number has the ability to provide a legitimate casual explanation for various entities. Casual power is granted to Number—this numerology, this science of Number—within the *Weltanschauung*<sup>1</sup> of Hellenic–Hellenistic culture. It ultimately stems from the Pythagorean belief that Number is the grounds for reality, that Number is the purest form of existence. This idea likely originated sometime in the sixth or seventh century BCE. Existing in various forms beside the Pythagorean formulation, numerology continued to appear in the culture until the ‘dark-ages,’ following the Odoacer’s proclamation of himself as king of Italy in 476CE. While numerology continued to be used in the east, it is unclear to what extent—if at all—numerology

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remained a part of western European culture following the so-called fall of Rome. In the Renaissance, however, there was a resurgence of numerological methods in Western Europe.

While the use of numerology in western culture as such is not limited to the Greeks, Romans, and their contemporaries,<sup>2</sup> there seems to be a certain lack of research on the use of numerology in the ancient world. While it is acknowledged that numbers had special properties in the ancient world, the fact that these special properties allowed numerology to be constituted as a legitimate form of knowledge is often ignored. Further, the questions as to what role numerology played within the intellectual culture of the Hellenic–Hellenistic world, how this role effected and shaped the various discourses of the time, which segments of the population were most numerological, and to what extent the use of numerology may be seen as the driving force behind both academic cults<sup>3</sup> (e.g. Pythagoreanism, Plato's Academy, Aristotle's Lyceum) and religious sects (e.g. Gnosticism, Mithraism) have been rarely—if ever—broached. For our purposes, let us privilege a rare critique of numerology—the critique Aristotle gives of the Pythagoreans—and show how this critique, to a certain extent, mirrors the way in which the general populace at Aristotle's time would have seen the esoteric, cultic dealings of the Pythagoreans. In other words, let us use Aristotle's critique of numerology vicariously, as a critique from the common people directed toward the arcane and mysterious Pythagorean rites. This analysis reconstructs the role numerology played during Aristotle's time within the intellectual culture and assists in a better understanding of what, from our modern perspective, is so bizarre as to be unrecognizable.

We will define the many ways in which numerology appeared—over the long period from Pythagoras to Proclus—before focusing on the time surrounding Aristotle's critique. Overall, at the beginning of the period, one finds numerology only within intellectual cults or in relation to intellectual cults. Moving toward the end of the period, this tendency of numerology to be confined within the upper echelons of learned society dissolves: more and more, numerology comes to be used both by and directed toward the common people.

The signs the Greeks used for letters were also the signs they used for numbers. Thus any Greek text also contained a numeric value. A tradition then developed using numerological interpretative techniques which guided the meanings of both intellectual (e.g. religious,<sup>4</sup> ethical,<sup>5</sup> and

philosophical<sup>6</sup>) texts as well as more common media such as graffiti<sup>7</sup> and satire.<sup>8</sup> Poetic exegeses<sup>9</sup> display some numerological instances. For our purposes, it is important to note that media of numerology that are more accessible to the common people—graffiti and satire—are notably absent from the earlier part of the period. While the Greeks likely had been using their alphabet to do arithmetic for as long as they had had a written alphabet,<sup>10</sup> the use of the numeric values of words, phrases, or sentences to guide interpretation does not occur until around the 3rd century BCE. Though it is theoretically possible for earlier figures, notably Pythagoras, to have used this method of numerology, there does not appear to be any extant fragments of this being the case.

Each letter in Greek was given a numerical value. The practice of using the sum of each letter of a word, and then relating this sum to other words or phrases is called *isopsephy*. The word comes first from the Greek *isos*, which means “equal in size, strength, or number,” and second from *psephos*, which was a small round pebble the Greeks used for counting, arithmetic, voting, and occasionally for divination.<sup>12</sup> Thus, *isopsephy* may be said to mean that the words are by count equal. Isopsephic numerology is mirrored by the use of the first letter of each word to give that word or sentence value. This species of isopsephy is termed *notarichon*. Regardless of which method one prefers when interpreting, the use of Number—numerology—as a causing or guiding factor for interpretation, textual or otherwise, exists as an intriguing facet of Hellenistic culture.

The use of numerology, the use of Number as somehow causally underlying the nature of reality, didn't exist solely in the case of isopsephy. Rather, there is a whole history both predating and existing alongside the use of isopsephy that uses numbers to govern the sense of Hellenic–Hellenistic reality. For example, in the Hellenic period, the Pythagoreans famously thought the most fundamental aspect of existence was nothing else but Number. Following Pythagoras, a whole school of doctors presumably based their knowledge of medicine on numerology.<sup>13</sup> Later on, Gnostic writings displayed reverence for Number.<sup>14</sup> Even some church fathers at times can be seen using numerological techniques.<sup>15</sup> Thus numerology didn't represent just a tangential facet of Hellenic–Hellenistic culture; rather, in the ancient Greco–Roman world, numerology took up a central position in our understanding of the time's intellectual culture.

Although one may find myriad critiques of numerological reasoning

in the last portion of the Pythagoras–Proclus period, the Hellenic portion of this period suffers from a lack of extant opposition to the numerological tradition. Thus, it is particularly hard to gauge the role that numerology played in this period within both intellectual culture in particular and Greek culture in general. There is, however, one notable exception to this lack: In the end of his *Metaphysics*, Aristotle critiques the notions of numerology found in Pythagoras and that his teacher Plato espouses. The following excerpts come from the end of Aristotle's *Metaphysics* in "Nu" (Book XIV). This critique establishes for us the relationship between the intellectual class and the common class in regards to numerology.

Before discussing the actual content of the passages, let us discuss some of the details of just *Metaphysics*. It is important to note the meaning of the word itself. A compound word consisting of "meta" and "physics," the term "metaphysics" was actually coined to describe Aristotle's work long after he had died. The word itself is not attested until the sixth century CE in Boethius' *De Interpretatione Aristotelis*. However, the word has a history of being used uncompounded, which originates with Aristotle's follower, Eudemus of Rhodes. Though the term later became associated with its more literal meaning—the study of something transcending the natural realm—the term originally described the order in which Eudemus chose to compile Aristotle's works: he called the metaphysics "the book(s) after the physics" (τὰ μετὰ τὰ φυσικὰ βιβλία) or simply "after the physics" (μετὰ τὰ φυσικὰ).<sup>16</sup> Prior to being known as metaphysics, the content of Aristotle's work was simply known as first philosophy or—sometimes—theology. The fact that the title originally designated the order (and not the content) is important. Considering both that the *Metaphysics* is philosophically and linguistically dense, and that Eudemus ordered it such, it is likely that the *Metaphysics* would only have been studied by those who were already familiar with Aristotle's work in particular and philosophy in general. This means that the audience of the *Metaphysics* was likely other scholars, not the common people.

In responding to both the numerological tendencies of his teacher Plato and the famous numerological cosmology of the Pythagoreans, Aristotle attempts to show that thinking of numbers as causes of beings is fundamentally flawed logic. His argument stands in direct contradiction to the Pythagorean tradition, which held that numbers were the most real entities and thus the truest causes. Placed at the end of the

*Metaphysics*, Aristotle's critique of numerology can also be seen as a final break with Plato. He notes: "If the same number had belonged to certain things, these would have been the same as one another, since they would have had the same form of number [εἶδος ἀριθμοῦ]; e.g. sun and moon [ἥλιος καὶ σελήνη] would have been the same. But on account of what are these numbers causes [ἀλλὰ διὰ τί αἴτια ταῦτα;]"<sup>17</sup> Here Aristotle is rejecting the notion that the numerological symmetries that appear in physical objects—like both the sun and the moon being one—are a cause of those objects themselves Aristotle does not use our sense of causation when talking of causes.

The Greek word here translated as cause is *aitia*. *Aitia* is a technical term in Aristotle denoting one of his "four causes" or "four *aitia*." When taken with a genitive, it can also mean "responsible for" (though that is not the case here), and, in some more common usages of the term, even "occasion."<sup>18</sup> It is sufficient for our purposes to note that sharing in Number would not have been completely foreign to the Greek conceptualization of cause. For example, the material that an object is composed of was thought even by Aristotle to have 'caused' that entity: e.g. the material *aitia* of a wooden pencil is wood. Thus, Aristotle is breaking with the Pythagoreans before him by not including the form of a number (*arithmou eidos*) as an *aitia*. This signifies a major shift in Greek intellectual culture.

Following his condemnation of numbers as causes, Aristotle gives us a nice outline of some of the features of this numerology which he positions himself against. He summarizes the position: "There are seven vowels [φωνήεντα], the scale has seven harmonies [ἑπτὰ δὲ χορδαὶ ἢ ἀρμονία], the Pleiades are seven, at seven animals lose their teeth (at least some, though some do not) [ἐν ἑπτὰ δὲ ὀδόντας βάλλει (ἔνια γε, ἔνια δ' οὐ)], and those who were against Thebes are seven [ἑπτὰ δὲ οἱ ἐπὶ Θήβας]" (1093a14–17; translation modified). By 'those who were against Thebes' Aristotle is referencing the play *Seven Against Thebes* by Aeschylus. At first glance, it appears that Aristotle is simply noting everything that happens to be related to seven; however, he is summarizing a much stronger claim: In the Hellenic world, there was a power associated with things that share the same Number. If Aristotle were simply noting the fact that many entities have seven in common, he would grace that relationship with a lengthy rebuttal, *unless* he was responding to a



tradition who holds these semblances to be meaningful.

What might this meaning be? By way of an example, let us use seven. There were seven vowels in the Greek alphabet (Alpha, Epsilon, Eta, Iota, Omicron, Upsilon, and Omega). These vowels were associated with a scale of seven harmonies, eventually resulting in our modern musical notation system. Within modern society, we think of music as a fine art; while this is not necessarily false, in ancient Greece music had a far more mathematical nature than it does now. Each of the harmonies was determined by a mathematic ratio. This ratio would have been considered every time its corresponding vowel was uttered. One could use this ratio to guide interpretation of religious or philosophical texts. In the *Timaeus*, Plato uses ratios such as these to construct a whole cosmology of hidden numerological meanings. Conversely, one could also use the numerology to inform the creation of a piece of music. Seven, according to this passage, is also associated with the Pleiades. The Pleiades were a group of stars that, in addition to their mythological significance, were used for naval navigation.<sup>19</sup> Since Greece was a seafaring culture, knowing the way in which musical harmonies and vowels relate to seafaring was essential. Though I could go on (*ad infinitum*), I think the point is clear enough: there were a potentially infinite number of meaningful semblances that could be formed using the numerological techniques that Aristotle condemns.

If, one might ask, these numerological operations of knowledge were so prevalent in the ancient world, why is it that Aristotle rejects them? And, more importantly, what within the nature of Aristotle's rejection can we say about the extent to which these techniques were practiced? Aristotle notes: "Is it, then, that the number has been naturally brought forth [πέφυκεν], that on account of this those against Thebes were seven or the Pleiades were turned into seven stars? Surely those against Thebes were seven on account of the seven gates or some other cause [αἰτίας], and the Pleiades we number [ἀριθμοῦμεν] as seven, as we number the Bear as twelve, while others number them more [οἱ δὲ πλείους]" (1093a17–20; translation modified). *Pephuken* is the third person singular perfect indicative active of the verb *phuo*. *Phuo* means bring–forth, produce, or birth. It is related to the word *phusis*—"nature"—from which we get the word "physics"; this word can also mean essence or Being. With this in mind, Aristotle is saying it is not the *nature* of the Pleiades that they are seven;

rather, it is because *we*—as humans apart from nature—impose Number onto the Pleiades or the Thebans. This is why Number is not an *aitia*. Since Aristotle's text is above all a *response*, the theory he is responding to may be taken as roughly congruent with the theory championed by the Pythagoreans and others sympathetic to numerological discourse. This would explain why Plato, one who is sympathetic to the Pythagoreans, would place mathematics higher on the divided line than physical reality and would also, in the *Timeaus*, construct a whole cosmology based on mathematical ratios.

The Pythagoreans, in addition to their use of numerology and their love of math, are also known for their exclusivity: being a true Pythagorean required one to go through secret initiation rites. It also required one to keep a strict lifestyle in accordance with Pythagoras' teachings. Likewise, Plato's academy also had a high degree of exclusivity. A person needed to be formerly educated in order to participate in every portion of the academy uncensored. Thus, within these two major locuses of numerology, we find a lack of the common classes of Greeks: it was only the learned and the initiated who had access to numerology. On the other hand, Aristotle, though there was also a certain degree of elitism also found in his Lyceum, was more closely aligned with the common people in his views on numerology. He generally opposed anything he saw as odd or unnatural. The difference between Aristotle and the common people, however, is that Aristotle could mount an educated attack against numerology, whereas the common people—due to the lack of access to numerology—remained ignorant.

Thus, Aristotle rejects the tradition of Pythagorean numerology because he views Number as something inherently unnatural, but rather as something that is imposed on nature by humankind. This indicates, in turn, that the Pythagoreans held the opposing view. Considering that there are still people who hold that Number is something inherent within nature and not imposed by humanity, the essence of the Pythagorean view should not appear as foreign to our modern mind at all. Now, since the Pythagoreans were a secluded cult, and since the audience of the *Metaphysics* was primarily well-learned scholars, the prevalence of these numerological mechanisms was restricted to a select few: that is, for the most part, it was only the learned people who used these numerological techniques to synthesize knowledge. And, since Aristotle is one of

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the few thinkers who rejected numerology at this time, we can conclude that most (or at least a significant minority) scholars affirmed the usage of numerology as a legitimate technique to gain meaningful knowledge. Since instances of these numerological techniques among the common classes are not extant until around the first century CE, it is likely that numerology around the time of Aristotle and the Pythagoreans was known only by the scholarly class. Further, since Aristotle is often found agreeing with the common classes on other issues (e.g. Aristotle, unlike Plato, preserves a certain amount of the common Greek's misogyny), Aristotle's opposition to numerology, then, can be taken as a response on the part of the common people against what would appear as the bizarre practice of numerology. The common people, if they had any knowledge of numerology, would likely have viewed it as something foreign or exotic. In this way, then, Aristotle can be taken as a voice of the common people speaking against the hegemonic language of the cultic Pythagorean numerologists.

(Endnotes)

1 Weltanschauung is a German word meaning, roughly, world-view. The prefix "schau" is a cognate with the English "show". Thus, it has a more all-encompassing meaning than the corresponding English phrase.

2 See, for example, Pico de Mirandola, *Oration of the Dignity of Man*. Within the first couple of lines, Mirandola mentions Hermes Trismegistus, the namesake of Hermeticism, a movement perhaps known for their number mysticism. Mirandola is also influenced by neo-platonic philosophy. Both of these movements contain numerological interpretive techniques.

3 The word "cult" used throughout this paper is not meant in any pejorative or derogatory sense. Rather, it is merely used to indicate a specific group of people who belong in a tightly-knit society which requires or shares certain beliefs or customs needing to be fulfilled. In this respect, the word is perhaps more akin to its etymological meaning than its current modern day usage. The word "cult" comes from the Latin *colere* which means, among other things, to live in, to cultivate, to worship, or to dwell. A cult, then, is a commonly shared way of dwelling. See *Oxford English Dictionary*, 3rd ed. s.v. "cult".

4 For a mainstream Christian use of numerology, see Augustine, *City of God*, XVIII 23. See also John 21:11 for the parable of the 153 fish. See also the *Book of Revelations* 13:18 for the famous number of the beast. For a discussion on Augustine's more overtly numerological interpretation of the passage from John, see Jason Byassee, *Praise Seeking Understanding: Reading the Psalms with Augustine*, 130. For a more Gnostic strain of numerology, see Celsus in the fragments of his

Words of Truth which appear in Origen's *Against Celsus*. For a Christian refutation of some forms of numerological reasoning, see the aforementioned Origen.

5 Pythagoras, the numerologist, was famed for being wise in both ethical and practical issues and in philosophical and religious issues. See, for example, Kirk, Raven, and Schofield, *The Presocratic Philosophers*, 219. For a stronger view emphasizing the practical nature of the Pythagoreans, see Kingsley, *Ancient Philosophy, Mystery, and Magic*, 157. For a view that sees Pythagoreans as essentially impractical, see Lloyd, *Magic, Reason, and Experience*, 146.

6 E.g. Plato, *Republic*, 546b–d. For an early criticism of numerology, see Aristotle, *Metaphysics*, 1093a–b.

7 See Suetonius, *The Twelve Caesars*, “Nero”, XXXIX. The name “Nero” equals the phrase “killed his own mother”. For notes on numerological graffiti at Pompeii, see Fiorelli, *Descrizione di Pompei*, 441.

8 See Lucian, *Alexander the False Prophet*.

9 For the use of poetic numerology, see Leonidas of Alexandria usage in *Pythagoras, Isopsephy and the Magic Number KZ*, 179.

10 See *ibid.* for a discussion of the Greek alphabet and its relation to numerology.

11 I have in mind Apollonius of Perga's numerological techniques. See *Psychology, Isopsephy and the Magic Number KV*, 178. While this seems to be true for the vast majority of cases, there is, according to Ifrah, the statement of Sargon II that his name equaled the palace perimeter. This would qualify as numerology. See Ifrah, *Universal History of Numbers: From Prehistory to the Invention of the Computer*, 159.

12 Liddell–Scott: *A Greek–English Lexicon*, s.v. “ψῆφος”. It is interesting to note that power associated with the cosmos that numbers held—here in the form of divination—is already present in the meaning of the word itself.

13 For a description of the Crotonate school of medicine, see Kirk, Raven, and Schofield, *The Presocratic Philosophers*, 131–2.

14 For an interesting genealogy of the Roman emperors using numerology, see *Sibylline Oracles*, V, 11–45.

15 In addition to the above Augustine, see Jerome, *Amos*, I.

16 *Oxford English Dictionary*, 3rd ed. s.v. “metaphysic”

17 Aristotle, *Metaphysics*, trans. H. G. Apostle (Grinnell, Iowa: Peripatetic Press, 1979), 1093a11–14 trans. mod. All future citations of Aristotle's *Metaphysics* will appear, as per the norm of the sub-field, in the in-text citations of the official Oxford line numbers.

18 Liddell–Scott: *A Greek–English Lexicon*, s.v. “αἰρία”. All further Greek etymologies are from this source.

19 *Oxford English Dictionary*, 3rd ed. S.v. “Pleiades”. Pleiades likely comes from the Greek verb *plein*, meaning “to sail”. This verb is related to the noun *plouion* meaning “a ship or transport”.

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Jeffersonian Nationalism vs.  
Enlightenment: Securing American  
Core Values amidst the Barbary  
Wars, 1801–1809  
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The tension between the United States and the Barbary States of Tunis, Tripoli, and Morocco in the late nineteenth and the early twentieth centuries presents an ideal case to contrast Jefferson's enlightenment thought with the realist conception of diplomatic relations.

As minister to France, Jefferson recommended negotiations with the Barbary States regarding free access to Mediterranean trade routes rather than paying tribute for uninterrupted passage of United States merchant ships. John Adams disagreed and urged meeting the tribute demands of these states. This essay focuses on Jefferson's position on the Barbary States both in the early years of the tension with these polities and into his Presidency when he takes the United States into war with the North African states. This essay incorporates Jefferson's consistent opposition to Adams' policy of paying tribute in every case. Jefferson preferred war to surrender and his aggressiveness demonstrated his commitment to a growing United States nationalism.

Jefferson's strident opposition to tribute reinforced his diplomatic, cultural, and economic philosophy—in effect, Jeffersonian Nationalism. He remained fiercely committed to the sovereignty and independence of the United States in an era of balance of power, and he was determined to maintain the integrity of the United States at all costs. This notion of Jeffersonian Nationalism is mostly derived from James Sofka's essay, "Jeffersonian Idea of National Security," which serves as the basis of this analysis. Jeffersonian Nationalism as referred to in this essay directly refers to Nationalism by means of national security. Enlightenment refers

to values such as freedom of religion, freedom from slavery, and freedom of free trade, which all are found in Jefferson's philosophical writings. Jefferson believed in American principles of freedom, their codification, and their defense. This concept is paramount considering that America at this time was a relatively small, relatively poor state facing major European powers and the North African Barbary States, all of whom enjoyed easy access to the Mediterranean.

Slavery, however, serves as a major point of contrast. First, slavery was embodied in the Constitution and, in some measure, protected by it. Somewhat bewilderingly, Jefferson's Nationalism is a condemnation of slavery in the Barbary States, while Jefferson himself owned slaves. Considering slavery's prominence, the United States did not universally embrace freedom to the full extent Jeffersonian Nationalism conveyed. Certainly Jefferson, one of the major slaveholders in the western world, demonstrated his own principles. Second, the United States continued diplomatic relations with African states that ran the slave trade in Africa. So, in a perverse sense, Jefferson condoned slavery in his diplomatic policy.

This essay will also describe Jefferson's efforts to uphold the American value of freedom of a sovereign government. He was willing to go to war to defend freedom of the seas for the United States and for all nations, regardless of challenges and risks. The codification of this policy in U.S. diplomatic history assumed a place of centrality for the United States since it depended on maritime trade. However, as an opposing argument, Jefferson and other "Americans considered Barbary beliefs and practices in a cultural mirror that reflected on the United States,"<sup>1</sup> which revealed the United States' involvement in the very same atrocities against which they were fighting.

Jefferson's foreign policy centered, for the most part, on what Joseph Wheelman defined as a "winner's peace."<sup>2</sup> While Jefferson's philosophies stipulated that peace was a higher-minded solution, he would fight a war to be on the winner's side when the peace was made. The aim in this strategy was to quell the opposition with unrelenting force until it is completely demolished, then only thereafter to offer peace. This diplomatic policy still largely dominates U.S. wartime relations.

### **Thesis and Counter-Thesis**

A number of historians, and the Federalists led by Alexander Hamilton, sought to establish Jefferson as a pacifist president who lacked the



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mettle<sup>3</sup> to fight for Nationalism. Historically, Jefferson earned a reputation as an idealist appealing to philosophies of the Enlightenment.<sup>4</sup> Allison asserts, “Jefferson meant to prove that the Americans were going to behave differently from the Europeans, that they could fight a war without creating a military machine or sacrificing republican values.”<sup>5</sup> However, this essay will counter this argument by highlighting several actions taken within the Barbary conflict. These show Jefferson as possessing a realistic and powerful strategy for quelling the Barbary threat.

Moreover, Jefferson played a vital role in establishing religious freedom and United States economic stability within the world in a fragile time—and he did so by force. Religious freedom comes into play as we examine the reason for the attacks that led up to the Barbary Wars. In summation it is jihad: The pervasive reasoning behind the history of terror in the Muslim World.

Explained in this analysis will be Jefferson’s idea of religious freedom through an appeal to the Virginia Bill for Establishing Religious Freedom, in which he states that forcing religion on another is wrong. This is key to diplomatic relations as it deals with Jefferson’s vision of a nation that would not cower to the imposition of an Islamic state.

Historians have interpreted the conflict between the Barbary States of North Africa and the United States in multidivinous ways. They emphasize diplomatic intrigue, economic trade, cultural conflicts, and freedom from terror as central elements to the conflict. The wars stand as a witness for American ideals of free trade, freedom of religious worship, and freedom from religious and economic oppression. It also stands as a testament for those who fight against those values. In his diplomatic efforts and policies, Jefferson displays nationalism to establish free trade, cultural supremacy, and religious freedom. Some important questions of this analysis include: What was Jefferson’s philosophical mentality in his diplomatic decisions? Was the belief of United States superiority at play? Was his approach to the Barbary States idealistic or realistic?

The various analyses of the Barbary Wars range from national security and terrorism to a focus on the Muslim world, its culture, religion, and economics. Joseph Wheelman’s book, *Jefferson’s War: America’s First War in Terror 1801–1805*, poignantly compares the Barbary War to the terrorist attacks exactly two centuries later on September 11th, 2001. Wheelman contends that the Barbary War mirrors America’s current war on terror

in that it “resonates most deeply in its assertion of free trade, human rights, and freedom from tyranny and terror.”<sup>6</sup> He highlights the idea of Jeffersonian Nationalism as his central idea: “Jefferson was willing to send a largely united squadron across the Atlantic to go to war with a people whose customs, history, and religion were alien to the early American experience.”<sup>7</sup> He also lays groundwork for the treaties the United States entered into starting in the late eighteenth century, which continued into the early nineteenth century. Because the United States was no longer backed by the Treaty of Paris that the British had with the Barbary States, the U.S. was unprotected against piracy and demands for tributes: “Over the treaty’s life, the United States had paid Algiers \$500,000 or more in tribute, gifts, and military stores.”<sup>8</sup> Under John Adams, the United States capitulated the Barbary States.

One of the central works in this field is *The Crescent Obscured*, by Robert J. Allison. This book gives a detailed account of United States’ relations with the Muslim World from 1776 to 1815—the length of the Barbary conflict. In the name of jihad (one justifying principle behind Muslim terrorism), Muslims carried out acts that discriminated and, in effect, terrorized Americans and Christians. Jihad and sharia—or, Muslim law—dictates that Muslims must spread Islam to the entire world and neutralize anything opposed to Islamic ideals. Thus, the cultural influences of the Muslim world conflict with those of the Christian world. For these reasons, the war on terror, as we know it today and as Wheelman alludes to, did not start on the morning of 11 September, 2001. It has always existed in some form, even before the founding of America and the first Mediterranean trade conflicts.

Allison also discusses the situation of slavery for American citizens. Americans deplored the Muslim world’s “political, religious, and sexual tyranny”<sup>9</sup> toward the capture of some sailors taken from ships between 1785 and 1793. The author poses a penetrating question about this that reveals hypocrisy of the then—United States citizenry. He asks, “How could Americans condemn Algiers for enslaving Americans when Americans themselves were busily enslaving Africans? If participation in slavery was wrong for white Americans, was it right for black Africans?”<sup>10</sup> In Notes on Virginia, Jefferson softens his view on this topic stating that God’s justice would condemn this dichotomy. Allison’s book rejects Wheelan’s assertion of the wars as a clear defense of superior U.S. values.

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He declares, “Had Americans really escaped from tyranny, had they avoided the mistakes other people had made, if they forbade all forms of oppression except this one, which seemed to be the most severe?”<sup>11</sup>

Americans fought against the tyranny of others but did not fight their own form of it until the Civil War. This is but one example of the problems within Jeffersonian Nationalism in the conflict of the Barbary Wars. It was acceptable to fight against the enslavement of Americas for African economic purposes; at the same time, it was also acceptable for Africans to be enslaved for American economic purposes.

*The Barbary Wars*, by Frank Lambert, focuses on the economic and political aspects of the Barbary conflict as “the forefront of [his] study.”<sup>12</sup> He discusses the trade restrictions that were established before the Barbary conflict. Disputations regarding treaties played a role in the escalation to war. England had the Treaty of Peace and Commerce with the Mediterranean states, and, “after the war, the United States tried to reenlist Britain’s [government] in protecting American ships in the Mediterranean. However, in the Treaty of Paris, British Parliament decided that ‘was not in Britain’s best interest.’”<sup>13</sup> As a result, inevitable troubles plagued the United States and free trade was not a term U.S. traders used often in the Atlantic.

In *The Jeffersonian Idea of National Security*, James R. Sofka provides an excellent insight into the mind and diplomatic workings of President Jefferson. A telling line from the first paragraph indicates that “Jefferson was guided by the idealistic and pacifistic approach to international politics,” but his practices show that he was willing to fight a war to gain the balance of power and defend the trade routes of the United States. He argues that the Barbary conflict was fueled by Jefferson’s idea of national security, the balances of power, and commerce. Jefferson’s principal goals, according to Sofka, were: “Securing the nation’s trade routes, protecting its rights as a neutral power to undertake commerce between European belligerents, and building a naval force sufficient to defend and advance these commercial interests.”<sup>14</sup> Sofka argues against the idea that Jefferson’s policies were guided by the philosophies of the Enlightenment and replaces it with the idea that he was guided by practicality and realism.

In *Jefferson and the New Nation*, Merrill D. Peterson praised Jefferson as “one of its [the Enlightenment] legitimate children.”<sup>15</sup> He stipulates that the “paramount themes of Jefferson’s career . . . [were] Enlightenment,

Democracy, [and] Nationality.”<sup>16</sup> However, he then offers a counterpoint to these themes by stating, “His [Jefferson’s] philosophy was eclectic, dynamic, and pragmatic. Any attempt to give it the logical coherence of a finished system would be to rob it of the freedom and flexibility essential to its mission. So his philosophy was left in fragments . . . comparable but strangely dissimilar.”<sup>17</sup> It was dynamic in the sense that it was forceful and pragmatic in the sense that it was practical. This adds to the argument that Jefferson “was remarkably inarticulate about the processes of thought that conducted him to the revolutionary event. Perhaps he did not understand them himself.”<sup>18</sup> While Jefferson was an essential figure in the evolving thought of the Revolution, it must be remembered that that thought itself was evolving. At times, Jefferson had to test possible strategies in the realm of realism in order to codify this evolving thought even further.

Whether the Muslim culture, trade and commerce, or American ideals of freedom, the study of Barbary War is rich with scholarly insights that leave us with valuable information about America’s war on terror and one president who fought it. In contrast, however, it also provides a mirror prism to the ideas of United States Nationalism and Jeffersonian Enlightenment.

### **Diplomatic Nationalism**

Jefferson wanted to exhibit Enlightenment ideals in his actions, but they largely manifested as pragmatic. Sofka captures this idea perfectly in *The Jeffersonian Idea of National Security* when he says, “While Jefferson’s philosophical statements are clear and frequently quoted, their relationship to his practical diplomatic initiatives remain open to question.”<sup>19</sup> While Jefferson is portrayed in the books of history as a “pacifist president,”<sup>20</sup> his actions and statements indicate something to the contrary. “On March 23 Jefferson issued the astonishing order to ready a squadron of warships to sail the Mediterranean.”<sup>21</sup> He aggressively pushed for military force against the Barbary States—he had been doing so for years, in fact—and acted on it just three weeks into his presidency in 1801.

Jefferson had long been a proponent of fighting the Barbary States with force; he thought it would be more a more economically sound solution. To John Adams, Jefferson wrote, “I acknowledge, I very early thought it would be best to effect a peace through the medium of war. Though it is a question with which we have nothing to do, yet as you propose some discussion of it, I shall trouble you with my reasons.”<sup>22</sup>

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Jefferson agreed with the first three positions Adams gave him:

The good offices of our friends cannot procure us a peace, without paying its price; that they cannot lessen that price; and that paying it, we can have the peace in spite of the intrigues our enemies . . . that the longer the negotiation is delayed, the larger will be the demand . . . if it is decided that we shall buy a peace . . . I think it ought to be hastened.<sup>23</sup>

Jefferson then gives his reasoning:

1. Justice is in favor of this opinion 2. Honor favors it 3. It will procure us respect in Europe; and respect is a safeguard to interest. 4. It will arm the federal head with the safest of all instruments of coercion over its delinquent members, and prevent it from using what would be less safe.<sup>24</sup>

Jefferson felt strongly about a long-term solution in the conflict with the Barbary States. He felt that it would earn respect from the world, which in effect would solve many more potential problems in the future for the United States. He was wise in the sense that he knew how to get the United States more involved in international relations and affairs. War could also be a way to prove the United States was powerful—a form of coercion. However, on the next points Jefferson states he differs from Adams: “5. I think it less expensive. 6. Equally effectual.”<sup>25</sup>

As introduced earlier, Federalists at the time thought Jefferson lacked the gall and ability to fight against the Barbary powers. They regarded him as a “dreamy philosopher who lacked the mettle to advance American interests abroad.”<sup>26</sup> They drew from his political career as governor of Virginia, where he “flew from his home at the first sign of a British invasion.”<sup>27</sup> However, Jefferson’s actions reveal that he was wrongly accused. He had always been an advocate of using force to repel the Barbary threat, and disagreed with John Adams’ acquiescence to paying off the pirates through tributes. Furthermore, he stated this same thought to James Monroe, quoted in the Lambert work. In a letter to Monroe, Jefferson asserts, “I am an enemy to all those doceurs, tributes and humiliations . . . I know nothing that will stop the eternal increase from these pirates but the presence of an armed force.”<sup>28</sup> Jefferson believed that it would be the only thing that would permanently quell the Barbary threat.

In the beginning, Jefferson stated to Congress that he sent the *Enterprise* (the first naval ship to be sent to Tripoli) as solely a defensive measure.<sup>29</sup> However, after a short time, it escalated to force. Lambert states: “Jefferson

hoped to avoid actual warfare though an ‘awe and talk’ strategy.”<sup>30</sup> He hoped that American ships in the Mediterranean would scare the Tripolitans into negotiating a peace treaty.<sup>31</sup> This complements the belief that Jefferson was an idealist and a pacifist. However, Jefferson shows a different side of himself in a letter to John Adams, wherein he states that he was going to send more ships “to cut them [Tripolitans] to pieces.”<sup>32</sup> These are the times when the belief in the superiority of the United States was at play. Furthermore, legislation from Congress granted Jefferson the rights and power to take out the Barbary threat by any means or force necessary. Congress stipulated:

It shall be lawful fully to equip, officer, man, and employ such of the armed vessels of the United States as may be judged requisite by the President of the United States, for protecting effectually the commerce and seamen thereof on the Atlantic Ocean, The Mediterranean and the adjoining seas.<sup>33</sup>

Jefferson was now at liberty to show his pragmatic and dynamic side in an evolving manifestation of American Nationalism.

Jefferson spoke of “securing peace thro’ the medium of war”<sup>34</sup> which he “considered the only long-term solution”<sup>35</sup> against the threat of the Barbary States’ terrorism. In a letter to John Jay in 1785, Jefferson sets forth his diplomatic thought that the United States should not take any insult without retributions.

American property will be violated on the sea, and in foreign ports, their persons will be insulted, emprisoned, &c. for pretended depts., contracts, crimes, contraband, &c. &c. These insults must be resented, even if we had no feelings, yet to prevent their eternal repetition. Or in other words, our commerce on the ocean and in other countries must be paid for by frequent war...Justice indeed on our part will save us from those wars which would have been produced by a contrary disposition. But how to prevent those produced by the wrongs of other nations? By putting ourselves in a condition to punish them. Weakness provokes insult and injury, while a condition to punish often prevents it. This reasoning leads to the necessity of some naval force, that being the only weapon with which we can reach an enemy. I think it to our interests to punish the first insult: because an insult unpunished is the parent of many others. We are not at this moment in a condition to do it, but we should put ourselves into it as soon as possible.<sup>36</sup>

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In short, Jefferson did not want to turn the other cheek any longer; any act of turning would be considered an idealistic approach to diplomatic relations. However, that the first insult did not “become the parent of many others,” meant that he did not let others to continue to trample on core values of the United States. As he stated before, justice required an American naval force in the Mediterranean.

In these circumstances, it should not be surprising that, when Yusuf Karamanli, the bashaw or leader of Tripoli, declared war on the United States on February 26, 1801, Jefferson immediately took action. Karamanli had given the United States an ultimatum on 22 October, 1800, “that if the United States did not meet his demands for more tribute within six months,”<sup>37</sup> Algeria would declare war. This was Jefferson’s chance to prove to the Federalists that he could, and would, fight a war.

However, at this moment, we must pause to note that Jefferson, in other writings, stated that war was cognitively unsound. In *Notes on Virginia*, he stated: “Never was so much false arithmetic employed on any subject, as that which has been employed to persuade nations that it is their interest to go to war . . . And, perhaps, to remove as much possible the occasions for making war; it might be better to abandon the ocean altogether.”<sup>38</sup> However, this philosophical idealism was not manifest in his practical diplomatic policies.

As we will see, Jefferson did not remove the occasions for making war; he sent “a naval squadron against the Tripolitans aimed at ‘cutting them to pieces,’ as he put it in 1786,”<sup>39</sup> demonstrating a strong ferocity that would was notably absent in his philosophic writings. Conversely, Jefferson used the force necessary to formalize the United States’ presence on the world stage as a power that the world should respect. The tenets of Jeffersonian Nationalism often buried idealistic philosophy like a tidal wave. Sofka boldly claims: “At no discernable moment during the war was [Jefferson] influenced by the pacifist and idealist philosophy of the Enlightenment frequently—and erroneously—scribed to his diplomatic strategy.”<sup>40</sup>

Jefferson’s idealist philosophies did, however, come through at other points in the conflict: “[Jefferson] was as determined as ever to not to submit to the demands of the Barbary Powers, anxious to prove both to the North Africans and to the Europeans that the Americans were not going to play the same power games other nations did. But Jefferson was

also determined not to create a military machine in the United States.”<sup>41</sup> For example, he politicized the Officer Corps of the United States and removed Federalists and replaced them with his member of his own party. He also cut the military budget and largely reduced the Navy to brown-water gunboats. He did this by refusing bribery and standing up to the Barbary States.<sup>42</sup> The reasoning behind this is that he was facing militarily weak powers operating in a regional context. In this way, the United States could challenge such states. For example, when the United State challenged a major power, Great Britain, in the War of 1812, it barely survived, despite the fact that Britain was engaged in a life and death struggle with Revolutionary and Napoleonic France. Jefferson fostered a high-minded philosophical reason for fighting: To “direct the energies of our nation to the multiplication of the human race, and not its destruction.”<sup>43</sup> He wanted the maxim to be: “Americans would fight, [and] only did so to secure peace.”<sup>44</sup> Yet his part and that of his successor, Madison, took the United States to war in 1812.

There was also a practical side to Jefferson, and the Republicans backed him on it. A newspaper, *National Intelligencer*, contained the headline, “Millions for Defense, but not a Cent for Tribute.” It was reported that Jefferson had “asked Congress to authorize the construction of a fleet of small ships and gunboats suited for fighting in the harbor of Tripoli.”<sup>45</sup> Two of the gunboats were estimated to cost \$1 million. The Republicans used this to combat the Federalists’ arguments that Jefferson was unwilling to fight against the Barbary States. They hailed these actions to show Jefferson’s “patriotism and energy.” They added that Jefferson’s decisiveness should permanently quell any thoughts that Jefferson lacked vigor.<sup>46</sup> He had stated in *Notes on Virginia* that “to persuade nations that it is their interest to go to war . . . [was] false arithmetic.”<sup>47</sup> However, when his political party needed strength against their opponents, he acted with “vigor and promptness” to prepare for naval warfare.<sup>48</sup>

### **Economic Nationalism**

In an ironic twist—very fitting for the subject matter—the United States was fighting for the same thing the pirates were: Economic stability. Jefferson knew trade in the Mediterranean was important: “About one-sixth of the wheat and flour exported from the United States, and about one-fourth in value of their dried and pickled fish, and some rice, found their best markets in the Mediterranean ports.”<sup>49</sup> Thus, Jefferson stated



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there were “three principle goals for American foreign policy: securing the nation’s trade routes, protecting its rights as a neutral power to undertake commerce between European belligerents, and building a naval force sufficient to defend and advance these commercial interests.”<sup>50</sup> The words advance and interests seem to indicate something other than pacifism. Sofka continues:

Jefferson’s use of commerce as an instrument of foreign policy has long been interpreted by students of his political thought as an illustration of his supposed idealism and pacifisms . . . In reality however, Jefferson viewed commercial exchanges largely in material terms. The balance of power was to him a means of fortifying national power and exerting greater leverage for the state in the international system.<sup>51</sup>

He idealized at his inauguration in March of 1801: “Peace, commerce, and honest friendship with all nations, entangling alliances with none;”<sup>52</sup> in that same month, however, he ordered the deployment of warships.

The Mediterranean states often obtained economic stability by piracy—the act of capturing foreign ships and sailors and demanding tributes for their release. The term piracy was defined differently by different parties—in this case, by Americans and by the Mediterranean nations. Americans defined it as, “robbers on the high seas and thus pirates . . . Moroccans [believed] they were at worst privateers sailing under the king’s flag and at best commercial capitalists seeking profit in the highly competitive Atlantic.”<sup>53</sup> In the Atlantic, this sort of thing was not unusual. In fact, the practice of state-sponsored piracy and ransoming of captives was not wholly unusual for its time.

Many European states commissioned privateers to attack other nations’ shipments, often also participating in transatlantic slave trade.<sup>54</sup> The United States was no different until 1808, under Jefferson: “During its War of Independence, for example, the United States relied heavily upon privateers to disrupt British supply ships.”<sup>55</sup> The US captured the British supply ships in order to gain economic and military advantages. The US and Europe performed acts of piracy under the auspices of state-sponsored privateering. Even though the US stopped the practice of privateering at the conclusion of the war, it’s still worth noting that the Jeffersonian brand of Nationalism sometimes justified beating the enemy at his own game, if necessary. If the act of piracy or privateering was not uncommon for both sides, in what way was America defending core values?

Another factor in Mediterranean economic stability was tribute money flowing in from other parts of the world. The United States had always, since its independence, paid tribute to the Barbary States in order to use the trade routes in the Mediterranean: "By the time Jefferson became president, those treaties had cost more than \$1 million."<sup>56</sup> This was something Jefferson wanted to stop by means of force, an act he thought would be more economically sound than paying tribute. Furthermore, on February 6, 1802, Congress enacted an important policy. Section IV of An Act for the Protection of the Commerce and Seamen of the United States, against the Tripolian Cruisers contains the following:

And be it further enacted, that any Tripolitan vessel, goods or effects, which shall be so captured and brought into port by any private armed vessel of the United States . . . may be adjudged good prize, and thereupon shall accrue to the owners and officers, and men of the capturing vessel, and shall be distributed according to the agreement which shall have been made between them, or, in failure of such agreement, according to the discretion of the court having cognizance of the capture.<sup>57</sup>

Congress passed legislation regarding taking Tripolitans captive and holding them for a prize. That opposed Jefferson's declaration that they were not going to descend to the tactics of their enemies in order to achieve their military purpose. He stated that they would prove they could wage war and continue to hold Republican values. When real conflict arose, Jefferson left his philosophical plateau and became a realist, one who would go to great lengths to codify his values.

On December 16, 1793, Jefferson presented to Congress a document entitled "Report on the Privileges and Restrictions of the Commerce of the United States." In this document, he defines some very powerful expectations and realistic theories for the defense of commerce:

As a branch of industry it is valuable, but as a resource of defense, essential. Its value, as a branch of industry, is enhanced by the dependence of so many other branches on it. In times of general peace it multiplies competitors for employment in transportation, and so keeps that at its proper level; and in times of war, that is to say, when those nations who may be our principle carriers, shall be a war with each other, if we have not within ourselves the means of transportation, our produce must be exported in belligerent vessels . . . But it is as a resource of defense that our navigation will admit nei-

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ther negligence nor forbearance. This not within ourselves the means of transportation, our produce must be exported in belligerent vessels . . . But it is as a resource of defense that our navigation will admit neither negligence nor forbearance. This position and circumstances of the United States leave them nothing to fear on their land-board, and leave them nothing to desire beyond their present rights. But on their seaboard, they are open to injury, and they have there, too, a commerce which must be protected.<sup>58</sup>

Sofka explains in clear terms Jefferson's theory of commercial policy outlined in aforementioned report this way:

Distilled to its fundamentals, Jefferson's theory of commercial policy held that a small but prosperous neutral power dependent on external trade for a large percentage of its national revenue could not compete in the global system as long as its trade was vulnerable to attack, seizure, or prohibitive duties.<sup>59</sup>

Furthermore, Jefferson, evidenced partly in referring to the United States as they instead of we, is giving the United States the right and privilege to defend and protect its commerce however it must do so. This theory is at the heart of Jeffersonian Nationalism.

### **Cultural Nationalism**

Taking captives for ransom was essentially a cultural staple for those of the Mediterranean. One work of literature by Daniel Defoe, Robinson Crusoe, helped to create this image of the Algerians. The story recounts a surprise attack against Crusoe's ship near the Canary Islands; it also convinced Americans to believe the pirates would wreak havoc on their trades.<sup>60</sup> It is true that Algerians captured American trade ships passing through the Mediterranean Sea and held them for ransom; what Americans did not consider is that this practice sustained their economy: "Piracy in the Barbary States was a capitalist enterprise."<sup>61</sup> However, Mathew Carey's Short Account of the Algiers was an effort to "render a more accurate and balanced portrayal of the Barbary pirates."<sup>62</sup> This "historical sketch" attempted to "explain rather than condemn cultural differences."<sup>63</sup> This, in effect, created a viewpoint of the Barbary pirates that did not overlook the existence of slavery in the United States.

Americans largely viewed Algiers through a lens that conveniently sidestepped their own cultural and economic staple: Slavery. In Short Account of the Algiers, Carey declares:

For this practice of buying and selling slaves, we are not entitled to charge the Algerians with any exclusive degree of barbarity. The Christian of Europe and America carry on this commerce and hundred times more extensively than the Algerians.<sup>64</sup>

Jefferson knew the ills of slavery; however, he did not see a way the economy of the new nation could survive without it: “Jefferson saw that slavery brought to America the very tyranny he had lead a revolution against, that slavery threatened to destroy the free society he had helped to create.”<sup>65</sup>

### **Religious Freedom**

The fundamental principle in Islam behind the attacks on American ships in the Mediterranean trade routes was jihad. Wheelan describes this term well:

Jihad is derived from the word jahada, meaning to strive. The Koran exhorts Moslems to strive to purify themselves spiritually and promote Islam in the world. The first is a battle fought and won within the heart by overcoming temptation, and the second is achieved by doing right in the world. In early Koran interpretations, jihad was nonviolent; the believer conquered his urges and peacefully disseminated Islam’s tenets throughout the world . . . As Islam exploded into a religion of conquest and contended with Christian Europe for territory during the Crusades, jihad took on a new meaning: It became a holy war to impose Moslem hegemony over nonbelievers.<sup>66</sup>

Muslims in the Barbary States used this doctrine to justify their seizure of American ships to stabilize their economy. Because the ships were Christian, they did it in the name of jihad. This situation—more or less a war—between Christian and Muslim powers in the Mediterranean spans from the 700s CE. to the period considered in this essay.

One of the ideals Jefferson and the Founding Fathers embraced was religious freedom. Jefferson wrote Statute on Religious Freedom and the Virginia Act. In these documents, he granted religious freedom “to the Jew and the Gentile, the Christian and the Mahometan, the Hindu, and infidel of every denomination.”<sup>67</sup> As a Deist, Jefferson was non-denominational in his diplomatic policies: “Jefferson would later regard this statute granting religious freedom as one of his greatest achievements.”<sup>68</sup> One can imagine that the idea of jihad was repulsive to Jefferson, despite its

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long tradition—one that was perfectly logical given the state of affairs in the Mediterranean Sea.

In 1786, Jefferson composed a document entitled, “Virginia Bill for Establishing Religious Freedom.” In it, Jefferson stated one should not compel another to follow or believe in any particular set of religious tenets:

The impious presumption of legislature and ruler, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.<sup>69</sup>

He clearly states that to force religion onto another is “sinful and tyrannical.”<sup>70</sup> However, in a historical context, it is important to note that tolerance was rarely if at all in present in this period. Jefferson, however, is attempting to advance as the American core values of religious freedom and tolerance.

### **Jefferson Ends the War**

Jefferson started to concede by degrees in 1802. On August 22, 1802, Jefferson’s secretary of state gave the U.S. Consul \$20,000 for “conciliating purposes” regarding Tripoli.<sup>71</sup> “Commodore Morris will receive for certain contingent purposes, about 20,000 dollars. Should a part of this money be indispensably required in any of your conciliating measures, he will open the resource to you, on being satisfied with the occasion of resorting to it.”<sup>72</sup> In short, “Jefferson’s administration [was] considering its options.”<sup>73</sup> Jefferson knew when to quit; this was a time when the United States knew that to achieve “winner’s peace,”<sup>74</sup> they would have to concede a little. At the conclusion of the conflict, the United States and Tripoli signed a treaty that the United States fought to create. The final treaty between the U.S. and Tripoli was signed in 1805. It “included ransom for American prisoners in Tripoli, but no provisions for tribute.”<sup>75</sup>

Jefferson finally and successfully overcame the Tripolitan threat. However, he did so by forgoing his stated philosophical and political theories.

### **Conclusion**

In the diplomatic affairs of the United States with the Barbary States,

Jefferson tried to live by an enlightened, peaceful, and quixotic political philosophy. However, the events of exigent wartime foreign policy drew out a distinction between Thomas Jefferson the citizen and Thomas Jefferson the president. For this, I find him ultimately successful in achieving his purpose the Barbary Wars: To establish this great nation. At times, Jefferson might appear hypocritical. Notwithstanding, we have him to thank, in part, for shaping the United States. Jefferson's actions outlined in this essay enabled a new nation to spring forth. For the part he played, Thomas Jefferson certainly deserves praise.

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3 Lambert, 123.

4 Sofka, 1.

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9 Robert Allison *The Crescent Obscured* (New York Oxford University Press 1995), 87.

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11 *Ibid.*

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14 Sofka, 1.

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## Jeffersonian Nationalism vs. Enlightenment

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# Contra Wars: The CIA and Its Own Definition of Terrorism

Oakley Hill

There is no single definition of terrorism. This is true even amongst different branches of the same government. There are, for example, several agencies within the United States government that function on different definitions of terrorism. Some of these differences can have substantial consequences. The FBI's definition includes the "use of force or violence against . . . property,"<sup>1</sup> a clause that is notably absent in any other agency's definition. This allows the FBI to categorize explicitly nonviolent groups like the Animal Liberation Front as terrorists while no other governmental organization could.

In some instances, this has led the US to recognize "their terrorism against us, while excluding our terrorism against them," despite the fact that US terrorism has often been "far more extreme."<sup>2</sup> One poignant example of this is the CIA's relationship with the Counter-Revolutionaries—also known as Contras—in Nicaragua. The Contras were a terrorist group organized, funded, and trained by the CIA to fight the new Sandinista government. In the middle of the Contra wars, Nicaragua took the US to court for illegal violence—or, as we would call it, terrorism. Nicaragua won the case and was supposed to collect substantial reparations. However, the US blocked enforcement of the judgment through the United Nations Security Council and never paid.

Because the CIA received a guilty verdict in an international court, it seems apparent that they were guilty of some form of terrorism. However, as mentioned, different agencies define terrorism differently. This paper

will address whether the CIA was guilty of terrorism in Nicaragua by its own definition.

### **Before the Contra Wars**

Beginning in 1904, the US had a neo-imperial relationship with Nicaragua, the Western Hemisphere, and many other parts of the world.<sup>3</sup> Troops were sent to tear down governments like those of Nicaragua (in 1909) and Chile (in 1973). Troops were sent to support pro-US governments and keep friendly regimes in power (Guatemala in 1954, Chile in 1973, and Nicaragua in 1912–1925 and again in the 1980s).<sup>4</sup> In each of these cases, the US overthrew democratically-elected governments and or buoyed up dictatorships. This seems to be the rule rather than the exception throughout the Western Hemisphere. President Coolidge, the 30th President of the United States, explained it this way: “Governments which we recognize and support stay in power, while those which we do not recognize and support fall.” He went on to say, “Nicaragua has become a test case.”<sup>5</sup>

In 1933, the US helped Anastasio Somoza Garcia rise to power, but after forty-six years in power, the Somoza family’s reign ended in a violent revolution. The Sandinista Liberation Front, also known as the Sandinistas, took their place. This new government was not backed by the US; rather, it was an “authentic Nicaraguan phenomena.”<sup>6</sup> The US Ambassador to Nicaragua at the time described the movement this way: “It is a pluralistic movement, led by people with a wide range of backgrounds . . . [and] includes a strong Christian element.”<sup>7</sup>

Upon obtaining power in 1979, the Sandinista party did a substantial amount of good and got to work very quickly. They provided access to land to 40,000 formerly landless farmers, increasing the production and consumption of crops; their literacy campaign reduced illiteracy from 50.3% to 12.9%; they established a democracy, including elections; and infant mortality rates were cut by one third. Although their economic system had a “socialist orientation,” it “allowed for private ownership and industry, religious tolerance, and abolition of the death penalty.”<sup>8</sup>

The Sandinista government was not flawless, however, and the US government found some of their actions suspicious. Of notable concern was humanitarian funding from Cuba. While such a relationship would be of relatively little concern today, the rise of a leftist government with ties to Cuba in 1979 was literally a red flag; the US had gone to war for

less.<sup>9</sup> The Carter administration decided to take a two-track approach: providing twenty million dollars in aid to the new government while simultaneously funding anti-Sandinista groups.<sup>10</sup> Aid to the Sandinistas ceased, however, when the administration discovered the new government was providing arms to Salvadoran guerrillas.

Had it not been for a change in US presidential administrations, the damage from the Salvadoran debacle may have been overlooked. The Sandinistas quickly ended arms trading in an effort to keep positive relations with the US. That same year; however, the relatively amicable President Carter was replaced by Ronald Reagan. The Sandinista government was now viewed through the lens of the Republican Party and became officially labeled Marxist.<sup>11</sup> Within his first three months in office, President Reagan authorized the CIA to form an anti-Sandinista guerrilla force that would come to be known as the Contras.

William Casey was the director of the operation. His long-term strategy was to “create conditions that would undermine popular support for the Sandinistas.”<sup>12</sup> On one occasion, Casey was quoted saying, “history shows that a combination of nagging insurgent military pressure and progressive withdrawal of domestic and international support is what brings down or alters an unpopular government.”<sup>13</sup>

Casey’s strategy eventually worked, but this was not due to the unpopularity of the Sandinistas. In fact, their rise to power was due in large part to their widespread popularity. While no one could say for sure, it seems unlikely that the Sandinistas would have lost the popular vote had the US not intervened. Weeks before the campaign began, the Contras received large amounts of funding and deployed considerably more troops. These troops killed fifty Sandinista political candidates. The US embargoed Nicaragua and threatened to continue the embargo unless Ortega’s opponent, Violeta Chamorro, won the election. Despite monumental pressure from the US, Ortega still won 41% of the popular vote. It should also be noted that twenty-six years later, when the Reagan Administration was long past, Ortega was reelected.

### **Who Are the Contras?**

When speaking to journalists, the Contras put their number at 15,000, though investigator Reed Brody speculated that a more accurate number was between 8,000 and 12,000.<sup>14</sup> While they are often referred to as one single group, this is an oversimplification. In the north were the

Miskito Indians, who joined the Contras after the Sandinistas attempted to relocate them by force. While President Ortega defended the relocation by saying it was done to “protect them from [the Contras],”<sup>15</sup> the Miskitos themselves asserted that the Contras had not threatened them. The Sandinistas on the other hand had reportedly burned down forty–nine Miskito villages and caused quite a bit of turmoil for the minority. The Miskito Indians eventually contributed a 1,500–member faction of the Contra force.

The Contras in the south were known as the ARDEs, or, as they called themselves, the Democratic Revolutionary Alliance. Like the Miskito in the North, the ARDE maintained ideological differences from the majority of the Contras. They disliked US influence and tried to operate as independently as they could. The ARDE were a 1,000–member faction of the Contra force.

The FDN or Nicaragua Democratic Force was the primary faction of the Contra movement. They were a combination of Guardsmen from the former Somoza regime and anti–Sandinista peasants. The Guardsmen made up the FDN leadership, while the peasants were foot–soldiers.<sup>16</sup>

From the very beginning, the CIA’s involvement with the counter–revolution was significant. They convinced the three main factions mentioned above to unite against the Sandinistas, provided training manuals and face–to–face instruction, funded them with tens of millions of dollars, and directly participated in “attacks against Nicaraguan economic targets.”<sup>17</sup> They also helped the Contras from the outside by making it look like the US was preparing to invade Nicaragua. The Reagan Administration contributed by instituting embargoes and threatening not to lift them until the people voted the Sandinistas out of power.

### **Contra Tactics**

Like most terrorist organizations, Contra tactics were brutal. Reed Brody, the leader of a fact–finding mission in Nicaragua, summed them up this way: “The Contras are directing their attacks against civilian targets—such as workers in the northern provinces attempting to harvest the coffee crop . . . these attacks have resulted in assassination, torture, rape, kidnapping, and mutilation of civilians.”<sup>18</sup> Notice that Brody mentions coffee farmers as the explicit target. Contra strategy, as directed by the CIA, consisted not only of terrorism focused on economic<sup>19</sup> and civilian targets. The goal was not to defeat the new government in a tactical mili-

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tary battle or win the hearts of the Nicaraguan people—the former being improbable and the latter having already been attempted. The goal was to make life harder on civilians so they would vote another party to power. We see this strategy realized in 1990 when Daniel Ortega, the Sandinista party leader and Nicaraguan President, was voted out of office. He was voted out not by a lack of popularity—he was ahead in the polls virtually the entire campaign—but because 75.6% of citizens believed the Contra war would not end until the Sandinistas were out of office.

Contra tactics and strategy are nearly identical to those of contemporary ethno-nationalist terrorists: Namely, to fight a government in a way that requires them to become increasingly totalitarian. The idea is to make the government's success contingent on the revocation of human rights and to damage the economy so conditions worsen generally. The more difficult conditions become, the more likely the citizenry will be to seek a new government. In this regard, the Contras were successful. As part of a large and illegal propaganda campaign, the Reagan Administration used Sandinista counter-terrorist measures as leverage, noting that they "periodically banned demonstrations, censored or closed down [radio stations] and jailed political opponents and suspected contra collaborators."<sup>20</sup> While this is all true, the Reagan Administration failed to recognize that these were reactions of a new government trying to combat a ruthless terrorist organization; a terrorist organization that the Reagan Administration was largely responsible for creating.

The American Watch report of 1989, titled *the Killings, in Northern Nicaragua*, illustrates Contra terror vividly. Gema Velasquez, one of the women interviewed by American Watch, was kidnapped by the Contra and held against her will for months. During her captivity she was beaten and tortured numerous times. Quoting from the report directly, she recalled that a Contra commander

blindfolded her, tied her hands behind her back and interrogated her . . . she was beaten and kicked when she did not give the right answers. They also placed a rain poncho tied tightly over her head so she could not breathe while they interrogated her. She was supposed to nod 'yes' or 'no'; if they liked her answer, she could breathe. In the course of an hour . . . they repeated this procedure four times . . . They also pointed a pistol at her, and shot it near her head. Later, she was placed in a cell with some twenty other women, one

of whom was only ten years old, and another who was pregnant . . . On the fourth day, she was first allowed to eat.<sup>21</sup>

The same commander that interrogated Velasquez was accused of raping some of the other women during interrogations.

While most of the violence was directed at economic targets and Nicaraguan citizens, there were others who were terrorized. John Paul Ledarach, an American citizen, conflict resolution scholar, and peace-builder, was in Nicaragua at the time trying to organize negotiations between the Contras and Sandinistas. Ledarach was fighting an losing battle, however, as the US government “believed wholeheartedly that the Sandinistas were communist ideologues with whom it was not possible to negotiate.”<sup>22</sup> In trying to organize negotiations, Ledarach was seen as a threat. He was pressured to leave the country when he learned of a plan to kidnap his daughter, Angie. Later a CIA operative named Felipe Vidal was contracted to assassinate Ledarach. While unsuccessful, the attempted assassination haunted Ledarach for some time.

Contra tactics were brutal and illegal, eventually catching the attention of the American public. Pressure from within and without caused the US Congress to end Contra funding. In a bold and illegal move, the Reagan Administration continued to fund the Contras through back channels. Amongst these unofficial methods were collecting private donations and selling arms to Iran. In the end, the CIA–Contra force inflicted \$9 billion in direct damages, and caused the death of roughly 30,000 Nicaraguans.<sup>23</sup> The majority of these were civilians.

### **CIA and the Definition of Terrorism**

As has been amply shown, the connection between the Contras and the CIA is strong. The CIA not only organized, funded, and trained the Contras, they also participated in attacks and outcome planning. The CIA was more involved with the Contras than Bin Laden was with Al–Qaeda; even the infamous Bin Laden did not participate in attacks. Thus, when we talk about one, we are invariably talking about the other.

The CIA defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”<sup>24</sup> With this definition and a bit of history on the conflict, we can now determine whether the CIA committed terrorism according to its own definition.

First, there is no question as to the attacks being premeditated. The CIA organized the Contras for the explicit purpose of ousting the

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Sandinistas. Second, there is also no question as to the political motivation of the attacks. From the beginning the CIA's goal was to "create conditions that would undermine popular support for the Sandinistas."<sup>25</sup> The strategy is evident from the words of CIA Director William Casey himself, as well as the eventual realization of that very goal. Third, as previously mentioned by Brody, "the Contras [were] directing their attacks against civilian targets,"<sup>26</sup> namely Nicaraguan coffee farmers. Fourth, a clandestine agent is one who works secretly and illicitly. CIA operatives cannot be considered clandestine agents during the entire conflict; however, after Congress's decision to end support of the Contras, the Nicaraguan operatives were exactly that. The CIA, in accordance with the Reagan Administration, continued funding the Contras by gathering private donations in the US and selling weapons to Iran. This was illegal at both ends—it was illegal to sell weapons to Iran, and illegal to use those profits to fund the Contras.<sup>27</sup> This categorizes the CIA in Nicaragua as clandestine.

The CIA's operations in Nicaragua during the Contra Wars meet the four qualifications of terrorism, not only by widely accepted definitions, but by the CIA's own definition. The attacks were "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents."<sup>28</sup> Consequently, the Reagan Administration is guilty of sponsoring terrorism through the state. I find it unlikely that the US had any legitimate reasons for vetoing the judgment of the International Court of Justice, particularly when a US agency is guilty of terrorism by its own definition.

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8 *Ibid.*, 22.

9 The US had gone to war for less in Vietnam specifically.

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## Journey over the Mountains: George Washington's Experiences with Virginian Colonization

Bractn Williams

The Seven Years' War was a global conflict that dramatically changed the relationship between Natives and Europeans in North America. In the Ohio country, the war was fundamentally fought for control over land. Roots of the conflict started before the war, because of land speculation and colonization. George Washington's involvement in this great game of land, military, and political power; benefited his social, military, and political career. The Seven Years' War is overlooked in American history, especially when compared to the American Revolution. Land speculation and frontier warfare greatly influenced George Washington's military and political career before and after the American Revolution.

Nationalism and pride towards the American Revolution overshadows the Seven Years' War as America's origin story. Without Virginia's colonization of the Ohio Valley, America would not have been a theater for the Seven Years' War, and America would dramatically be different—politically and socially. Similarly, without the Seven Years' War, Washington would not have been the military and political leader that he was for the early Republic. Fred Anderson argues that without the Seven Years' War, there would not have been an American Revolution. <sup>1</sup>

The experiences that Washington gained during the French and Indian War were key to his development as a military, and political leader, during the American Revolution. Frontier life as a land speculator, quasi Indian Diplomat, and Colonial militia leader—provided a well of knowledge that Washington was able to draw from. The colonial experiences that he gained

before and during the Seven Years' War contributed to his involvement and success in the American Revolution.

Quaker colonization of Pennsylvania in the late seventeenth and eighteenth centuries resulted in a westward exodus of the Lenape and Shawnee. The westward migration of these native tribes began the struggle for conquest in the Ohio Country. Unending colonization and displacement of Indians from their lands fueled a Native revival among the Shawnee, Lenape, and other Indian groups in the Ohio Valley. Native revivalists rejected European goods and wanted to reclaim the land that was taken from them, while fighting to preserve their autonomy. In the decades that followed, the Ohio Country became the central focus of British and French imperial claims.

The British often acted condescendingly to their Native partners. James Kenny, a Quaker storekeeper, shared his frustrations with the natives, stating that they need to "know their place, [and] their errors . . . [that they are] full of pride and ambition, but strangers to humility, but as dogs learn it [humility]." <sup>2</sup> Natives felt the same feelings that Kenny expressed towards the Europeans. The Wyandotts and the Six Nations gave French scalps to the Half-King as a sign of frustration towards the French. The Six Nations of the Iroquois and the Wyandotts claimed that the "French had tricked them out of their lands." <sup>3</sup> Colonization led to conflicts about land, politics, trade, and law, in the Ohio Country between the Natives and Europeans.

Not all Indian groups were united. The Iroquois claimed the Ohio Country by right of conquest, but sanctioned the British territorial expansion, and the removal of the Lenape and Shawnee into the region. The Ohio Country became a crucible of war, a melting pot of frustration and misunderstanding between natives and Europeans. Native tribes played off of the European powers to fight their battles for land and political power. European colonists, like George Washington, were too blinded by ambition to see who was really controlling the Ohio Country. The time had come for France and Britain to choose a native ally.

Virginia's territorial expansion was necessary for Virginia's elites and gentry, to maintain their social and political status. Land speculation was the vehicle that would ensure their position amongst the elites: "Virginia had to grow or die." <sup>4</sup> Virginia's provincial economy was based on tobacco, a crop that impoverished the soil. Therefore, Virginia's expansion was necessary to provide more land for the growing provincial power. A ter-

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ritorial war between France, Britain, and Natives Americans was fought over land, the wealth that it offered for the Europeans, and the cultural significance that it held for the Natives: “Tho’ the American plantations are of such importance to Britain, that the loss of any of them to another power, especially to France might be its own ruin.”<sup>5</sup> Virginia, along with Britain, feared the loss of “their” vast land to the west.

Virginian land speculation and surveying had begun the game for dominance in the Ohio Country. Virginia’s westward colonization over the Appalachian Mountains and into the Ohio Country forced the Natives to make a stand. Surveyors and land speculators hired by the Fairfax family to survey their lands became quasi “Indian diplomats.” George Washington wrote about his first experience with Indian diplomacy, noting that the Ohio company had given the Indians liquor, and that they had camped together.<sup>6</sup>

George Washington, leader of the Ohio Company, was sent by the Lt. Governor of Virginia, Robert Dinwiddie, to deliver a letter to the French Captain of Fort Le Boeuf. The letter called for the French to leave the Ohio for their “encroachments” were “within the majesty’s dominions.”<sup>7</sup> While delivering the letter to Captain Legardeur, Washington used his “surveyor’s eye”<sup>8</sup> to scout out the fort, looking for weaknesses and strengths, and the size and number of the French troops. This “surveyor’s eye” was a byproduct of Washington’s involvement in land speculation and surveying. These skills were a key component that would later contribute to Washington’s success in the American Revolution.

Dinwiddie took matters into his own hands and convinced the members of the House of Burgesses to listen to Washington’s account, and to have his account published. To stop further French expansion, Virginia promoted George Washington to the rank of Lieutenant Colonel. Washington was given over 200 men, and was assigned to “defend Virginia’s interests against further French encroachments.”<sup>9</sup>

As Washington continued to fight the French encroachment, he continued to strengthen his understanding of the native peoples and how diplomacy was to be conducted, but remained blinded to the diplomatic intent of the natives. Washington wrote a letter to Robert Dinwiddie in May of 1754, pleading that Virginia repay the natives for their services. He urged Virginia “to have goods out here to give for services of the Indians.”<sup>10</sup> This was because Washington learned first-hand that goods

were vital to conducting diplomacy with Native Americans. Washington sent a speech to the natives at Logstown seeking aid against the “French Indians” and those “who have taken up the Hatchet against us.”<sup>11</sup> The Natives showed their support of forging a relationship with Virginia by offering a string of Wampum.

Washington continued to enlist natives in the fight for the Ohio. Washington sent a speech in 1754 to the Indians at Wills Creek, in which he referred to the French as “treacherous,” acknowledging them as a common enemy. Virginia tried to earn the respect of the natives by winning them over; a Virginian wrote about the natives: “Our hearts burn with love and affection towards you.”<sup>12</sup> Virginians, like Washington, had no understanding of the natives’ plan and why they were allying with the British over the French.

French colonizers attempted to play the same game as the British, trying to win over the Wyandotts and the Twigtwees. Tribes would hop back and forth in their alliance with the European powers, playing off of whoever best fit their interest. The quasi-Indian diplomats, like Washington, were not providing the diplomacy that the British Empire had planned. They were in fact playing into the natives’ plan to fulfill their objective to claim the Ohio Country.

Washington’s fame grew among the native tribes as word spread of the Virginia colonizer. Native tribes gave Washington the name Conotocarious, which means devourer of villages. The title was first given to Washington’s great-grandfather, John, and was passed on to George.<sup>13</sup> The title was given to Washington because of his reputation for taking native lands and securing them for the crown. Virginia continued to expand, devouring the Indian’s homeland, forcing Natives further west. Relationships weakened as tensions increased. The natives had been backed up to a wall and were left with the decision to be exterminated, or to take a stand.

Pontiac’s war demonstrated to the British that, without the Natives, they couldn’t win the battle for the western lands. In 1763, Pontiac held a council to seek allies and to plan his attack against the British. Pontiac said to the council that “it is important for us, my brothers, that we exterminate from our lands this nation which seeks only to destroy us.”<sup>14</sup> Pontiac expressed his frustration that the British would not help them in time of need, and that they would be laughed at because of the fact that their

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people were sick and dying: “Nothing prevents us; they are few in numbers and we can accomplish it.”<sup>15</sup> Pontiac led a series of attacks that pushed the British back to the eastern coast. The British Crown responded to the near-loss of their colonies with the Royal Proclamation of 1763, which prohibited expansion west of the Appalachian Mountains. Colonists and members of Parliament experienced firsthand what native tribes could do when allied together. Their eyes were opened to the true rulers of the Ohio Country, and that colonization was impossible without diplomatic interaction with the natives on their terms.

Washington learned the consequences of underestimating the Native Americans from Pontiac’s War. Washington would not let the example of Pontiac’s War stand in his way of gaining political and social power within the empire. He learned from his mistakes and placed his reputation on the line in order to climb up the military and political and social ladder. The colonists would not abide by the proclamation of 1763 and soon begin to expand their borders, beginning again the battle for westward expansion. They had learned from their earlier experiences that they would need native allies to win, and they would need colonists who would be true Indian diplomats.

Virginia would not abide by the Royal Proclamation. It was seen as merely a hindrance to their expansion and a piece of paper that could not stop them. “Meanwhile, Washington’s esteem for the ‘mother country’ declined . . . for [Virginians], the ‘war was a lesson in the intractability of the home government and the incompetence of its agents.’”<sup>16</sup> Virginia’s willingness to stay in compliance with English law began to fade. This was a political shift away from mercantilism to the new ideology of individualism, and nationalism towards Virginia, not the crown: “Virginian designs on the Ohio country had led to war in the first place. Washington began to see the benefits of a ‘union to the [colonies] in this time of eminent danger.’ Thus, the French-Indian War may hold the key to Washington’s support of the American Revolution.”<sup>17</sup> Here, Peter Luebke is arguing that Virginian expansion and colonization led to the French-Indian War, and that the war was the beginning of the end for the colonies and their affiliation with the British Crown. Thus we see the importance of the Seven Years’ War and the role that it truly played in America’s origin story.

In popular and historical imagination, George Washington is often remembered and celebrated as our “founding father.” Recently however,

young Americans' view of Washington has changed. A presidential poll was taken asking Americans who the greatest president was. Six percent of those polled said that George Washington was the greatest. Washington was number seven in the poll, not his typical place as number one.<sup>18</sup> "Washington was truly a great man and the greatest president we ever had,"<sup>19</sup> Gordon Wood argues, positing that young Americans don't understand, know, or appreciate the leader that Washington was for this nation. Fred Anderson agrees with Wood, and further argues that, without Washington, the American Revolution would not have been a colonial victory. The understanding of Washington has shifted away from his typical "greatness" and his place as number one. American's understanding of the true founding father of America is decaying.

Washington was not a traditional military hero with military tactical genius. What made Washington great was his character.<sup>20</sup> Wood analyzed Washington's life and found that Washington was not the leader that he was because of his military or political background: "Washington became a great man and was acclaimed as a classical hero because of the way he conducted himself during time of temptation. It was his moral character that set him off from other men."<sup>21</sup> The moral integrity of Washington was a trait that placed him in a completely different category of leaders. He was obedient to his morals and true to his soldiers, both traits of a successful military leader. Wood claims that Washington's past contributed to his future success, but he takes his analysis of Washington further, examining how he was raised, and who his mentors were—such as the Fairfax family. These factors greatly inspired this future president.

George Washington is the embodiment of eighteenth century virtue and gentlemanly livelihood. *Arête*, the Greek word for virtue, was the idea that a man was born with greatness. Virtue was inherited not earned. Gentleman politics was a way that Washington showed his virtue in action.<sup>22</sup> Washington saw himself as a gentleman who did not work with his hands, which left him time to serve his interests, and to focus on his rise to social and political prominence in the empire. An imperialistic route was needed for Washington's rise because land was not the option for him; being the second oldest to his brother Lawrence, he would not inherit his father's estate. As he continued to ascend, Washington would bite the hand that was feeding his acceleration.

The Seven Years' War was the foundation of George Washington's rise.

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Without the Seven Years' War—the vehicle that quickened his climb—Washington would not have been the great landholder, political, or military leader that he was before and after the American Revolution. Similarly, the Seven Years' War was the foundation to the rise of the early American Republic.

George Washington's participation as a surveyor, colonizer, and soldier contributed to his political and military climb in Virginia's great game of social distinction. "How could a middling-class provincial Virginian have become the larger-than-life historical figure we know today?"<sup>23</sup> It was Washington's ambition as a surveyor, messenger, soldier, and quasi-diplomat in the Ohio Valley that laid the foundation for his unlikely rise to power: "Washington's work as a surveyor gave him an extensive knowledge of western land and frontier culture, which made him the right man to forge Anglo-American colonization."<sup>24</sup> Without Virginian expansion and colonization, America would not have been the battleground of the Seven Years' War, the American Revolution would not have happened, and George Washington would not have risen to become an propertied Virginian elite wielding both political and military power. The American continent, its people, and the world would not have been the same.

### (Endnotes)

1 Fred Anderson, *Crucible of War: The Seven Years' War and the fate of empire in British North America, 1754–1766*

2 *Major Problems in American Colonial History*, 414–15

3 The Writings from George Washington from the Original Manuscript Sources, 1745–1799. Ed. John C. Fitzpatrick (Washington D.C: U.S. Government Printing offices.1931, 71–72

4 Fred Anderson and Andrew Cayton, *Dominion of War: Empire and Liberty in North America, 1500–2000* (New York, NY : Viking Penguin, 2005) 109

5 Anderson and Cayton, *Dominion of War*, 100

6 Original Manuscript, 9

7 *Crucible of War*, 44

8 Anderson and Cayton, *Dominion of War*, 44

9 Anderson, *Crucible of War*, 45

10 Original Manuscript, 53

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14 *Major Problems*, 419

15 Major Problems, 419

16 Luebke, "A Provincial goes to war", in Legel, ed., *A Companion to George Washington*, 68

17 Ibid

18 Gordon Wood, *Revolutionary Characters: What made the Founders different* (New York, NY: Penguin Books, 2006) 29

19 Wood, *Revolutionary Characters*, 29

20 Wood, *Revolutionary Characters*, 34

21 Ibid

22 Government by gentlemen provides the means for men like Washington to show their virtue in action. This was the idea of giving back after an established life with little or no pay for the political work that you accomplished.

23 Jason Farr, "The unlikely success of a Provincial Surveyor: George Washington finds fame in the American Frontier, 1749–1754", in *A Companion to George Washington*, ed. Edward Lengel (Wiley, 2012), 15

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As debates continue over the place of faith in our society, the Center for Constitutional Studies invites students from Utah Valley University to consider the problem of religion and law in historical and Constitutional context. The theme for this year's inaugural essay contest, "Religious Liberty and the Common Ground," encourages students to think about religious liberty in a critical and academically rigorous way, focusing especially on the Constitutional and historical implications of religious freedom controversies that matter today. The following essays reflect a diversity of viewpoints on three controversies in particular.

Matt Nolte's "The Universal Nature of Freedom of Conscience Inherent in Freedom of Religion," analyzes the historical and legal dimensions of freedom of conscience in the United States. Nolte explores the ways in which freedom of religion has been misinterpreted, paying particular attention to the Constitutional changes to the meaning and interpretation of the phrase over time.

Lance Merrell's essay, "Pledging Allegiance," considers the historical development of the pledge of allegiance and attempts to show that the current mention of God in the pledge is Constitutional.

Brandon Springer's essay, "Universal Application of Religious Liberties in the United States," explores the difficulties inherent within the idea of equal application of religious liberty to all religious groups. Springer argues that although there must be limitations to religious liberty in order to protect the civil rights of all citizens, a proper understanding of the Constitutional foundation of religious liberty requires equal application of religious liberty to all groups in a pluralistic society.

The Center would like to extend its gratitude to supporting staff of the Center, members of the essay contest committee, and the student editors of *Crescat Scientia*. The Center would also like to thank a number of professors involved in the advising process, including Carl Scott, Richard Cho, and Dan Hone. We are especially grateful to anonymous reviewers for their helpful criticism and timely advice as the essay winners prepared their essays for submission.

Dr. Andrew S. Bibby, Interim Director  
Center for Constitutional Studies

II  
CENTER FOR  
CONSTITUTIONAL STUDIES  
SYMPOSIUM ON RELIGIOUS  
LIBERTY CONTEST



# Universal Application of Religious Liberties in the United States

Brandon Springer

Throughout the history of the United States of America, there has been a constant struggle for equal application of religious liberty. Many times since the founding of the United States, a religious majority has undermined the guarantees of religious freedom, leading to limitations on free exercise for minority religious groups and to various forms of state establishment of the majority religion's beliefs in the law. While there are many problems related to religious liberty to be concerned about in the United States, this essay will focus exclusively on the need for equal application of religious liberty to all religious groups. Although there must be limitations to religious liberty in order to protect the civil rights of all citizens, the historical foundations of religious freedom and contemporary rulings on religious liberty demonstrate that equal application of religious liberty rights to all groups is fundamental to ensuring religious liberty in a pluralistic society.

Any discussion of religious liberties in the United States must begin by clarifying the forms that religious liberty takes. In the United States, religious liberty is guaranteed both in the form of free exercise and non-establishment—both of which are derived from the First Amendment of the constitution. The meaning of these clauses is hotly contested, and it shifts slightly as the Supreme Court makes rulings on the scope and power of the First Amendment. Arguments surrounding the role of religion in schools, public places, and government are common in American society, and a strong understanding of the roots of religious liberty ensures that the citizenry can make informed decisions about

protecting their rights. The establishment clause is designed to prevent any religion from having too much control over the government and to prevent the government from favoring any specific religion. The effects of the establishment clause include preventing laws rooted solely in religious beliefs from being passed or enforced, preventing the establishment of a state or national religion, and ensuring that state resources are not used to empower any particular religious group over another. The free exercise clause guarantees individuals the right to worship whatever and however they wish, and it is a critical part of religious liberty in America. This means that the government cannot dictate to a religious group how they should pray, on which day they must practice, or how they should worship. One additional aspect of religious liberty guaranteed in the constitution is the promise found in Article 6 that “No religious test shall ever be required as a qualification to any office or public trust under the United States.” While this overlaps in some ways with the establishment clause, it is more explicit about the importance of ensuring that the role of governance is open to people of all faiths—or, importantly, no faith.

In theory, the guarantees of religious liberty found in the Constitution provide a clear-cut solution to the problems of a pluralistic religious society. Unfortunately, things are not always as clear in reality as they are on paper. At times, people’s religious beliefs may lead them to trample the civil rights of others. This is particularly problematic when beliefs that are antagonistic to human rights are held by a large group of people. It is important to note that religious liberty is not a license for radical or criminal behavior. As such, equal application of religious liberty does not mean that anyone should be allowed to do whatever they want so long as they do it for religious reasons. Equal application of religious liberty simply means that the rights that are granted to one religious group must be granted equally to another—there cannot be a different standard for minority belief systems. This concept is self-policing, as any violation of one group’s religious liberty by a religious majority undermines the sanctity of religious liberties for everyone. Equal application of religious liberty is therefore important because it is crucial to sustaining the sanctity of—and respect for—religious liberty in the United States.

American history is full of examples of why equal application of religious liberty is important. There are also many examples of times when

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equal application of religious liberty has been difficult to achieve. The predominance of Protestant religious groups in early American history led to an imbalanced system which threatened the religious liberties of the First Amendment for minority religious groups. Bruce T. Murray, in his book *Religious Liberty in America: the First Amendment in Historical and Contemporary Perspective*, writes that:

By enacting the First Amendment and ending established churches in the state, the early American leaders “deregulated” the religion market...The resulting “free market” was not neutral among the competitors; it favored those in a position to take advantage of its particular conditions. Those well-positioned entrepreneurs were the evangelicals, the revivalists, the pietists, the free-churches—the churches of the common man. Into the nineteenth century, the American Protestant majority developed a de facto Protestant establishment in government institutions and public schools, simply by virtue of their majority status. The majority ruled. Or, continuing the free market metaphor, “at the level of the national culture, one might say these protestant competitors were an oligopoly engaging in price fixing. They cooperated in an attempt to make a ‘Christian America’ By Christian, they always meant Protestant.”<sup>1</sup>

The dominance of Protestant religious groups created a situation that forbade the election of non-protestant government officials in many places, influenced the schools and courts, and built the foundations of American culture. Many non-Protestant groups including Catholics, Muslims, Hindus, and the non-religious may have had limited access to their religious liberties—in particular the disestablishment of government with religion. The exclusionary nature of the Protestant supermajority’s control over government made it almost impossible to truly uphold the promises of disestablishment and sometimes threatened the free exercise rights of minority religious groups. One of the foundational documents upon which the First Amendment’s religious liberty clauses are based is James Madison’s “Memorial and Remonstrance.” Madison wrote this document to address a bill that would have levied a tax on the population of Virginia in order to support “the Christian religion.” In this document, Madison placed special emphasis on the importance of equal application of religious liberty:

If “All men are by nature equally free and independent”, all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an “equal title to the free exercise of Religion according to the dictates of Conscience.” Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.<sup>2</sup>

While the above quote does not begin to cover the totality Madison’s contribution to religious liberty laws in the United States, this document contains one of the clearest and earliest arguments for supporting equal application of religious liberty in the United States. Madison’s writing would go on to be critical to the development of the First Amendment, but Madison was not the only founding father to be concerned with equal application of religious liberty. In a letter to the Hebrew Congregation of Newport written in 1790, George Washington describes his vision:

All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.<sup>3</sup>

Washington believed that the religious rights of all people should be respected regardless of majority or minority status. A key idea in Washington’s letter is that religious liberty is not just about merely tolerating the beliefs of minority religious groups while allowing the majority to monopolize governance. This has been a continuous problem throughout the history of the United States as is well demonstrated by a set of letters between Thomas Jefferson and the Danbury Baptists Association. The first letter, written to Jefferson, illustrates the problem of mere toleration at the root of religious liberty: “What religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights. And these favors we receive at the expense of such de-

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grading acknowledgments, as are inconsistent with the rights of free-men.”<sup>4</sup> In response, Jefferson wrote to the Baptist Congregation of Danbury to assure them that he would always support the separation of church and state:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature would “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State.<sup>5</sup>

Jefferson’s letter reinforces the importance of upholding equally the religious rights of all groups including minorities. Despite sometimes vast theological divides among American religious groups, Diana Eck, a well-known advocate of interfaith communication and professor of religious studies, concurs with Jefferson in her book, *A New Religious America*, that the key to America’s success as a modern, pluralistic nation is a shared commitment to religious liberty for everyone.<sup>6</sup> Bruce Murray also writes about the creation of the constitution’s religious liberty clauses, emphasizing the way the founding fathers created a system in which each religious group’s interest in preserving their own liberties would serve to protect the liberties of others.<sup>7</sup>

The history of equal application of religious liberty provides many examples of why it is an important principle, but modern religious demographics can lead to the same struggles faced by America’s founding citizens. The power of American Protestantism can still be felt in today’s political landscape, but the growth of other religious sects via immigration and changing religious demographics has created some changes. Beginning in the 1940s with the onset of World War II and continuing through the Cold War until today, there has been a consolidation of Judeo-Christian religious groups into a powerful political movement.<sup>8</sup> The original majority of Protestants is now a shared majority of Protestants, Catholics, Jews, and Mormons. This movement powerfully affects American culture, leads to the commonly stated belief that America is a “Christian Nation,” gives rise to many aspects of social conservatism, and creates laws which are rooted in the religious beliefs of

the majority. One example of a law rooted in the beliefs of a religious majority is a statute struck down in the *Epperson v. Arkansas* case in 1968, which applied criminal penalties to the teaching of evolution in public schools. According to the majority opinion written by Justice Fortas, the law was unconstitutional because “The sole reason for the Arkansas law is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis.”<sup>9</sup> It is because of the Judeo-Christian majority that the words “In God We Trust” were added to paper currency in 1956 under the governance of President Eisenhower.<sup>10</sup> Additionally, the words “Under God” were added to the pledge of allegiance just two years earlier.<sup>11</sup> Eck describes the consolidation of religious groups into a new supermajority:

Through these same decades since the liberalization of immigration policy in 1965, the Moral Majority and the Christian Coalition have raised the public profile of fundamentalist Christianity. The language of “Christian America” has been voluminously invoked in the public square. However, I sense in some of the most strident Christian communities little awareness of this new religious America, the one Christians now share with Muslims, Buddhists, and Zoroastrians. They display a confident, unselfconscious assumption that religion basically means Christianity, with traditional space made for Jews.<sup>12</sup>

Eck’s writing does not focus solely on the consolidation of Judeo-Christian religious groups into a vocal majority. She also makes it clear that the demographics of religion are changing in the United States. These changing demographics are a reminder that the United States is not exclusively a “Christian nation”; it is also a Muslim nation, a Hindu nation, a Buddhist nation, and a secular nation. In short, the United States of America is home to people of many religious traditions, and it is crucial that each has their right to religious liberty defended equally.

In order to understand precisely where the common ground of religious liberty for all groups is found, it is helpful to describe the extremes. The extremes can be measured on continuums related to the establishment and to the free exercise clauses, independently. When it comes to the establishment clause, the first extreme is a radical form of secularism in which religious icons and speech are made taboo. One



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example of this might be seeking to repress religious speech and remove religious iconography entirely from the public sphere. On the opposite end of the same spectrum is institutional establishment of religion. An example of this is the placement of religious monuments in public places if monuments of other religious groups are prohibited or discouraged. Both extremes are born of a lack of respect for religious liberties, especially of minority religious groups. A middle-ground solution to the problems of disestablishment of religion in a pluralistic society may be to encourage and allow free expression of all religious beliefs and encourage dialogue between religious groups.

On the continuum of free exercise there are also two problematic extremes. The first is unlimited religious liberty, allowing anyone to cite religious reasons for harmful, discriminatory, or unlawful behavior. In 1972, the Supreme Court reviewed *Wisconsin v. Yoder*, a case that addressed the rights of Amish citizens to refuse to send their children to school after the eighth grade in spite of a Wisconsin law that compelled them to do so. In the majority opinion, the court acknowledged that there are limits to religious freedom when it wrote that “activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers.”<sup>13</sup> This ruling and other rulings like it demonstrate that there are limits on what the free exercise clause can allow. The second extreme is when infringements on free exercise become too severe. An example of this would be to force religious leaders to lead their congregations in prayer a certain way or to force them to administer ordinances that are inconsistent with their religious beliefs.

There have been many court cases regarding religious liberties in recent years that provide illustrative examples of finding a middle-ground solution. The court system seeks to promote a balance between religious rights and other rights by using a series of tests which are designed to navigate difficult legal questions. The *Wisconsin v. Yoder* case made use of one such test when it weighed the religious rights of Amish parents to remove their kids from school against the state’s interest in providing children with education. The majority opinion gives a specific example of an attempt to balance these conflicting interests: “The State’s interest in requiring two more years of compulsory education in the

ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.”<sup>14</sup> Two other examples of cases which seek to find a common ground solution are the *Town of Greece v. Galloway* ruling of 2014 and the *General Synod of The United Church of Christ v. Cooper*, also of 2014. In both these cases, there is concern that the religious rights of minority groups being infringed by the religious majority, and in both cases the court ruled to uphold the religious liberties of everyone in question.

*Town of Greece v. Galloway* was a case surrounding the use of sectarian prayers to open town board meetings. Each month, a religious minister would be selected from the clergy on a local directory and asked to offer an opening prayer for the meeting. The town was sued by individuals who found the prayers exclusionary and requested that only non-sectarian prayers to a generic representation of God should be allowed. The court ruled that the practice was constitutional because the opportunity to give the prayers was open to any person—including a Wiccan minister who had been granted the opportunity to perform the opening prayer.<sup>15</sup> In this case, the court reached a promising middle-ground solution by protecting the freedom of religious expression of all groups, while emphasizing the point that the town would not have the freedom to prevent any religious groups from participating. The majority opinion claimed that

Our history and tradition have shown that prayer in this limited context could “coexist with the principles of disestablishment and religious freedom” . . . Congress continues to permit its appointed and visiting chaplains to express themselves in a religious idiom. It acknowledges our growing diversity not by proscribing sectarian content but by welcoming ministers of many creeds.<sup>16</sup>

The court’s ruling explicitly mentions both of the problematic extremes on the spectrum of Establishment: “Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy.”<sup>17</sup> This case is an example of protecting the religious liberties of the minority because it allows the free expression of minority religious groups in the public sphere. The court argued that establishing a requirement for generic, non-sectarian prayers would entangle the government in religious liberty far more than allowing free religious expression and that

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“Because it is unlikely that prayer will be inclusive beyond dispute, it would be unwise to adopt what respondents think is the next–best option: permitting those religious words, and only those words, that are acceptable to the majority, even if they will exclude some.”<sup>18</sup> The suggestion of allowing only those prayers which are acceptable to the majority is clearly problematic as it does not equally uphold the religious liberties of all people. The support of religious expression for all groups, including those who are minorities within their communities, is the solution that the court chose to uphold.

General Synod of The United Church of Christ v. Cooper was a case about repealing the ban on same–sex marriage in North Carolina in which the court ruled that the ban on same–sex marriage in that state was unconstitutional. This case took place at a time when there were many cases about repealing bans on same–sex marriage across the United States, but this case was exceptional because the plaintiffs included a group of ministers arguing that the government had violated their free exercise rights by criminalizing the performance of same–sex marriage ceremonies in their churches. The plaintiffs’ memorandum identified the religious ministers by stating:

Plaintiffs in this action are a religious denomination and clergy from various traditions whose religious teachings and beliefs embrace same–sex marriage and afford equal access to the marriage rites of their faith to all committed couples who wish to be married within their faith and community in North Carolina. Plaintiffs bring this action to challenge the constitutionality of, collectively, the “Marriage Laws” of the State of North Carolina.... Ministers authorized to conduct marriages in North Carolina are barred by the Marriage Laws from performing any ceremony of marriage between same–sex couples, even if their faith and religious beliefs allow them to consecrate same–sex unions in the same manner as opposite–sex marriages. A minister who, following his or her own religious beliefs, performs a marriage ceremony for a same–sex couple, commits a crime according to North Carolina law. Under threat of criminal sanction, and at risk of civil suit, these laws thereby attempt to bar clergy and same–sex couples from partaking in marriage rites in North Carolina that build the families and faith communities that are essential to the vitality of their religions.<sup>19</sup>

The argument of the plaintiffs was that the bans on performing same-sex marriage ceremonies in North Carolina enshrined the moral beliefs of the majority religions into the legal code, thereby restricting the religious practice of minority religious groups who wished to perform wedding ceremonies for same-sex couples. The memorandum goes on to explicitly claim that the free exercise rights of the clergy were being violated. Many statements of the clergy were provided to describe the nature of their complaint against the restrictions on their religious liberty. Among them, the statement of Reverend Mark Ward of the Unitarian Universalist Congregation of Asheville is representative: "I firmly believe that my deepest faith and my role at the Unitarian Universalist Congregation of Asheville includes solemnizing the committed relationship of any couple in the church, whether they are of the same sex or of the opposite sex."<sup>20</sup> The plaintiff's memorandum goes on to make a case that the laws represent an intrusion of the government into matters of religious dogma between churches and cites earlier rulings which dictate that "[t]he government may not . . . punish the expression of religious doctrines it believes to be false' or 'lend its power to one or the other side in controversies over religious authority or dogma."<sup>21</sup> This case is an example of a religious minority seeking to exercise their own religious right of free expression in the face of laws which had enshrined the moral and theological beliefs of the majority into the law. Ultimately, the court ruled that "North Carolina's laws prohibiting same-sex marriage are unconstitutional as a matter of law."<sup>22</sup> In this case, the court acknowledged the importance of not restricting the rights of clergy to perform religious ceremonies as dictated by their respective faiths but also made no move to enforce the practice of performing same-sex marriage ceremonies in unwilling religious organizations. This middle-ground solution allowed everyone to freely exercise their religious beliefs and prevented the state from favoring one religious group in matters of theology and morality, which are traditionally left to individuals within their congregations.

The task of defending religious liberties falls to every citizen—those of every religious inclination and those who have no religious beliefs. The foundations of religious liberty in the United States were established in a time when many of the issues America faces today could not have been foreseen, and opponents of equal application of religious liberty may point to group rights and the potential violation of civil rights by

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religious groups as reasons to oppose equal application. However, the tried and true principles of protecting free exercise and ensuring no establishment of religion by the government have proven to be effective guides to living in a pluralistic society. As time goes on, the demographics of the United States will certainly change. Many people are familiar with the metaphor of the United States as a melting pot of both culture and peoples; when it comes to religious beliefs, however, Diana Eck prefers to use the analogy of a symphony in which every religious group plays an important part in defending the religious rights of Americans and making America a successful pluralistic society.<sup>23</sup> The task of finding middle-ground solutions that protect the rights of all groups equally may be more important today than it has ever been in the history of the nation.

(Endnotes)

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- 13 *Wisconsin v. Yoder*, 406:205 (Supreme Court of the United States of America).
- 14 *Wisconsin v. Yoder*, 406:205 (Supreme Court of the United States of America).
- 15 *Town of Greece v. Galloway*, 12:696 (Supreme Court of the United States of America), 1–25.
- 16 *Ibid.*, 12.
- 17 *Ibid.*, 13.
- 18 *Ibid.*, 14.
- 19 *General Synod of The United Church of Christ v. Cooper*, “Plaintiffs’ Memorandum of Law in Support of Their Motion for Preliminary Injunction” 3:14 cv 00213 (Western District Of North Carolina Charlotte Division), 2–3.
- 20 *Ibid.*, 12.
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# Pledging Allegiance and the Constitutional Legitimacy of its Current Wording

Lance Merrell

**I**t is a school morning in America. School buses are making their routes, picking up children and taking them to class. The bell rings and teachers lead the children of the United States in the Pledge of Allegiance. Throughout a child's public education, from kindergarten through 12th grade, a child could be led through the Pledge over 2,300 times, reciting a claim that we are a nation under God. These words, as part of our nation's flag protocol, are seen by some as violations of the First Amendment to the Constitution, which declares that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." <sup>1</sup> Some Americans have questioned whether these two icons of our nation's identity, the Pledge and the Constitution, conflict. The historical development of the Pledge, along with subsequent and modern court cases, show that the current mention of God in the Pledge is constitutional. A full exploration of the development of the history of the Pledge, coupled with developments of legal jurisprudence regarding the Establishment Clause show that the Pledge is not in violation of the Constitution. Furthermore, developments in free exercise jurisprudence have also provided further evidence that the wording, "under God," does not violate the Constitution. Along with the clear legitimacy of the current Pledge, which shall be laid out, common ground for the future of the Pledge will be expounded, common ground which could appease everyone on either side of the wording debate.

The Pledge of Allegiance was originally written in 1892 by Francis Bellamy, writer for *Youth's Companion*. <sup>2</sup> It was adopted by Congress in



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1942, consistent with Bellamy's original text, without the words "under God."<sup>3</sup> It read: "I pledge allegiance to my flag and to the Republic for which it stands—one Nation indivisible—with Liberty and Justice for all."<sup>4</sup> The words "under God" were not added for another twelve years, when various groups—including the Sons of the American Revolution and the Knights of Columbus (who had begun including the phrase six years earlier<sup>5</sup>)—encouraged Congress to include it as well. The Knights of Columbus were especially strong advocates for the addition: "In 1952 their Supreme Council passed a resolution, urging Congress to add the words, 'under God,' to the Pledge."<sup>6</sup> Their lobbying was successful, and in 1954, Joint Resolution 243 was passed, adding a number of changes to the Pledge, most notably, the phrase "One nation, under God."<sup>7</sup>

Since the lobbying Knights of Columbus was a religious institution (a Roman Catholic men's group), secularists view the "Under God" phrase included in the Joint Resolution as being an arbitrary plug for religion—not only contrary to the First Amendment, but also to the history of the Pledge. What secularists overlook is that Bellamy was not the first to author a pledge to the flag. A different version by Col. George E. Balch, contemporaneous to or predating the Bellamy Pledge, reads, "We give our heads and our hearts to God and our Country. One country, one language, one flag."<sup>8</sup> In 1891, Balch began visiting schools to institute his flag salute and the pledge that went with it. This pledge is far more religious than Bellamy's contemporary version or even the revised version recited today. Balch's version was adopted by the Grand Army of the Republic and other national societies, and it was included with instructions in the *Teachers Magazine for Primary Grades* in the early 1900s.<sup>9</sup> Though Congress settled on Bellamy's Pledge, it is apparent that pledges in the United States were not historically devoid of religious sentiment.

The secularist argument for the removal of the wording, "under God," by a return to the historical roots of the Pledge generally ignores much of the historical development of the Pledge. With the Balch Pledge considered, there were other religious pledges being used and recited in the country. Adding the reference to God in the Pledge is, in many ways, an acknowledgement of the Balch Pledge and is in line with reconciling it with the Bellamy Pledge. The phrase "under God" is also consistent with a number of historical patriotic speeches. Lincoln, in his Gettysburg

address stated, “That this nation, under God, shall have a new birth of freedom.”<sup>10</sup> Likewise, Washington in his famous Inaugural Address said, “We ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained.”<sup>11</sup> These famous speeches, among others, show that the mention of God in the Pledge of Allegiance is in line with the history of America.

Secularists generally dismiss the Balch Pledge because it was not the version adopted by Congress. If one were to look at the original history of the Bellamy Pledge separately, returning to the historical roots of that, one would numerous revisions. The original Bellamy Pledge did not include a mention of the United States at all. Those words were added in 1923, making it, “I pledge allegiance to the flag of the United States of America.”<sup>12</sup> Additionally, the Bellamy Pledge was traditionally accompanied with what has been come to be known as the Bellamy Salute. This salute was done by using the military–style salute of the time, extending the arm towards the flag with the palm down. This salute was done away with officially due to the association the salute had developed with Nazi Germany.<sup>13</sup> This shift included a change designed to embody the patriotism of America. The salute was changed to having your hand over your heart, a part of the salute originally used by Balch.<sup>14</sup>

Consistent with ideological challenges America has faced, the addition of “under God” was added to differentiate American patriotism from the creed of the communist regimes that were threatening to sweep the world. The Knights of Columbus suggested the mention of God in the Pledge during the era of the Cold War. They believed that this would be an excellent addition to combat the ideological threat of communism.<sup>15</sup> Marx, the great communist leader, made this anti–religious statement: “Religious suffering is, at one and the same time, the expression of real suffering and a protest against real suffering. Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people.”<sup>16</sup>

The citizens of the United States responded in a number of ways distinguish themselves from the Communist movement, to show that Communism was far from Americanism. Their efforts included the mention of God in the Pledge. A year after that change, the religious statement “In God We Trust” was added to the United States currency.<sup>17</sup>

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Secularists point to the later addition of “under God,” claiming religious indoctrination and a violation of the Establishment Clause. This addition, they contend, was a push by the national government towards an illegitimate stance of establishing religion. However, it could be more appropriately labeled a return to and reaffirmation of religious sentiments that are consistent with America’s history and its people’s ideals. Additionally, the adaptation was consistent with previous changes to the Pledge to make it more distinctly American and to handle the challenges to American patriotism. The secularists’ argument for a removal of the phrase on the grounds of what the Pledge originally entailed would seem to also support a return to Bellamy’s original salute and leave out the mention of the United States of America. The history of the Pledge is one of adaptation and of a developing definition of patriotism. A devolvement back to its original state would seem to be contrary to American ideals.

Although a full view of the history and the development of the Pledge is important, secularists argue that the Pledge still lacks constitutional permission to include the mention of deity.<sup>18</sup> The major question that needs to be first considered is whether this inclusion of the word “God” violates the Establishment Clause. The historical development of the wording of the Pledge shows that change has been a constant over time. These changes have been for the purpose of declaring the formal expression of patriotism in the United States. Following the history of these changes shows a clear and logical path for the evolution of the wording. As shown, the wording, “under God,” was added for the same reason that the Bellamy salute was done away with. The purpose was not to establish a religion, but rather to encourage a patriotism distinct from that of fascism or communism. These two changes are particularly relevant because they were both made in the face of a foe.

Secularists could still argue that the wording of the Pledge is in violation of the Establishment Clause. However, the correct interpretation of this Clause is much less restrictive than many now view it to be. The correct view of the Establishment Clause can be found in the Justice Rehnquist’s opinion in *Wallace v. Jaffree*. As he explains, much of the opinion that has been perpetuated stemmed from a misinterpretation of the founding.<sup>19</sup> Many people attribute the original meaning to a statement made by Thomas Jefferson, that the words were intended to “erect a wall of separation between church and state.”<sup>20</sup> Jefferson was not

actually at the Constitutional Convention, and those at the Convention did not share his ideas, as pointed out by Rehnquist:

None of the other Members of Congress who spoke during the August 15th debate expressed the slightest indication that they thought the language before them from the Select Committee, or the evil to be aimed at, would require that the Government be absolutely neutral as between religion and irreligion. The evil to be aimed at, so far as those who spoke were concerned, appears to have been the establishment of a national church, and perhaps the preference of one religious sect over another; but it was definitely not concern[ed] about whether the Government might aid all religions evenhandedly.<sup>21</sup>

As Rehnquist explains, “it is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history.”<sup>22</sup> The wording in the pledge does not establish any state religion, nor does it favor one sect above another. It is clear that there is no violation of the Establishment Clause when the correct and original interpretation of this clause is considered.

Early on, secularists had reason to disagree with this interpretation of the First Amendment based on a mandate, as well as other regulations regarding the Pledge. However, developments in Free Exercise jurisprudence have further eliminated any trace of injustice. Furthermore, these developments show that secularists haven’t been the only group in history to have perceived injustice in the Pledge. Both the secular and the religious have taken offense at the Pledge and have sought recourse from the United States court system. The resulting decisions from the courts in a number of these cases have soundly quashed the secularists’ Establishment Clause argument.

Though the Bellamy Pledge and salute were not officially adopted by Congress at the time, the Supreme Court of the United States was deciding a case them in 1940. The question was in regards to whether it was constitutional to require students to salute and pledge allegiance to the flag, or whether this requirement violated the Free Exercise Clause of the First Amendment. The case was *Minersville School District v. Gobitis*, and it centered around religious liberty, even though the Bellamy Pledge did not include the religious wording at this point.<sup>23</sup> A Jehovah Witness student found it against his religious beliefs to be compelled to salute the flag, believing it to be a form of idolatry, regardless of the words. The

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country was on the brink of entering World War II, and the need for patriotism was high. Justice Frankfurter, writing for the court, balanced the need for patriotism and unity over that of religious freedom. Ultimately, saluting the flag was more important than religious liberty in his and the court's view point. He said,

A society which is dedicated to the preservation of these ultimate values of civilization may, in self-protection, utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties.<sup>24</sup>

Other justices at that time thought that, since war was impending, the country also needed to show its loyalty to their standard. As can be seen from the decision in *Gobitis*, the justices were defining patriotism as mandating a pledge to the country and flag. However, some of the other Justices on the court soon changed their minds. As noted by Feldman, "tolerance, not saluting, had become the American form of patriotism" to the American public.<sup>25</sup> This supports the idea that patriotism has changed through history, and that the Pledge had changed with it.

The case the justices took to fix this realized mistake, *West Virginia State Board of Education v. Barnette*, indicated that they intended to align themselves with this newer political viewpoint of the country, shifting more to protecting the rights of freedom of religion, speech, and expression of the individual. As such, the constitutional emphasis in *Barnette* was starkly different from the *Gobitis* opinion, switching instead to protecting the rights of the minority. Additionally, what was constitutionally emphasized in the latter case were these First Amendment rights. As stated in the majority decision of the court, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."<sup>26</sup> The *Barnette* case is crucial because it establishes a few vital components to the constitutional future of America. The court affirmed free exercise rights, as well as free speech rights. Ultimately, it eliminated a prescribed mandate to recite any religious or patriotic statement, but, as we shall see, the court did more to balance the scales.

A later court case, *Goetz v. Ansell*, righted another injustice. *Barnette* allowed for students to opt out of saying the Pledge, but in many instances they would be forced to leave the classroom during the Pledge.

In 1973, Goetz changed that—students were no longer required to leave the classroom.<sup>27</sup> “If the state cannot compel participation in the pledge, it cannot punish non-participation. And being required to leave the classroom during the pledge may reasonably be viewed by some as having that effect.”<sup>28</sup> There would be a degree of shame and could be some arbitrary punishment in being forced to leave your peers for the patriotic ritual. Goetz removed this burden, making it possible for a student to quietly decline to recite the Pledge, without excessive burden or social damage.

Since *Barnette* and *Goetz*, the Pledge has only been an optional—albeit encouraged—commitment to morals and patriotic ideals that the American people have decided upon. This Pledge of Allegiance represents a pledge of honor and support of the country and its banner; legally, however, it is nothing more than an encouraged ritualized form of patriotism. The wording of the Pledge is for a patriotic purpose, as has been affirmed by the court. In *Freedom from Religion Foundation v. Hanover School District*, the court stated in 2010: “The Pledge of Allegiance evolved as a common public acknowledgment of the ideals that our flag symbolizes. Its recitation is a patriotic exercise designed to foster national unity and pride in those principles.”<sup>29</sup> This purpose, outlined recently by the court, affirms that the Pledge is not an attempt to indoctrinate, enforce, or establish a religious belief, but rather to support the already established view of patriotism in America. Because of these developments in the free exercise jurisprudence and the removal of the mandates, there really is no religion being established. The Pledge, as now interpreted, is only optional; as such, it cannot be considered an establishment of religion.

All of these cases call into question the correct role of the courts in deciding changes to the Pledge to bring it in line with the Constitution. The appropriate role of the court is in removing injustice from the system. For example, the court ruled appropriately in *Barnette* and *Goetz* by developing free exercise to the point that they have eliminated unjust control in pledge recitation. The court acted correctly to eliminate this injustice, but it is not the court’s job to determine the people’s definition of patriotism. When *Gobitis* was overturned with *Barnette*, *Frankfurter*, who had written the decision in *Gobitis*, dissented. Strangely, his incorrect opinion can point us to a correct and guiding principle. In this dissent, he points out that he is not opposed to religion, but rather believes that it is

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not his place to go contrary to the elected officials in the matter. He shows that he is especially mindful of religious minorities by alluding to the fact that he was Jewish,<sup>30</sup> and by mentioning the injustice that members of his own religion had experienced:

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant, I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing, as they do, the thought and action of a lifetime. But, as judges, we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution, and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. The duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person.<sup>31</sup>

Though Frankfurter may have been wrong on the constitutional interpretation of the flag saluting policy and ruling, it appears that he was wrong for all of the right reasons. The principle of judicial restraint shows a great respect to the Constitution and the democratic principles that it endorses. Judicial restraint focuses on the idea that even if an idea is bad, it does not necessarily mean that it is unconstitutional. In accordance with this principle, Frankfurter believed that judges ought not to adopt the role of politicians on the bench: "Frankfurter fought long and hard for his position that the courts must not venture into what he called the 'political thicket.'"—<sup>32</sup> The ability to set aside one's own political views is crucial to impartial judgement under more broad principles of law. Although the court affirmed that the law cannot mandate compliance or recitation with the Pledge or flag code, Frankfurter's principle of judicial restraint—avoiding becoming a super-legislature—can still be applied to the wording of the Pledge, and it ought to be applied to preserve the notion of democracy still inherent in American patriotism.

The majority in *Barnette* declared that what they were doing was beyond the realm of politics. They claimed that: “Fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.”<sup>33</sup> However, the reversal in the course of only three years seems to indicate that fundamental rights can be submitted to a vote; in this case, fundamental rights were being determined at the whim of unelected judges. If the court had continued to restrict and define the Pledge with similar frequency, there would be no flexibility at this time for a changing view of patriotism, save only the flexibility of a changing court.

In the actions the courts have taken in regards to the Pledge, they have eliminated all major mandates which force a profession of belief. There is no fiat to recite the Pledge. There is also no court decision constitutionally cementing the controversial phrase into the Pledge: the mention of deity is just as subject to a redefining of patriotism as the rest of the Pledge has been throughout history. The common ground on the issue has been established by eliminating burdensome mandates, eliminating any requirement to recite the Pledge, and by leaving the future wording of the Pledge to the democratic decisions of the people and their duly elected leaders. The legitimacy of this course has been affirmed time and time again. The words are constitutional. If the American view of patriotism has shifted, is shifted, or will shift to exclude a mention of deity, a simple majority from the congressional bodies designed to represent the will of the people could remove the words that were added in 1954.

Our current definition of patriotism and the Pledge that accompanies it has followed a rational and consistent series of events, redefining patriotism over time and embodying American identity. Though public opinion is currently in favor of the phrase “under God” in the Pledge,<sup>34</sup> children of America could refuse to say the Pledge as many as 2,300 times throughout their primary and high school education years. There could also be a time when those children’s children will recite a pledge without the phrase at all. At some future date—if a consistent respect is kept for democracy in the courts—looking back at a history that is now our future, we will see a changing view of American patriotism and potentially to the Pledge itself.

(Endnotes)

1 U.S. Const. amend I (1788).

2 Martin, Leisa A, “Examining the Pledge of Allegiance.” (May 2008): 127–131.

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10 Lincoln, Abraham, *Gettysburg Address* (November 19, 1863).

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23 *Minersville Sch. Dist. v. Board of Educ.* 310 U.S. 586 (1940).

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26 *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

27 *Goetz v. Ansell*. 477 U.S. 636 (1973).

28 *Ibid.*

29 *Freedom from Religion Foundation v. Hanover School District*, 665 U.S. (2010).

30 Feldman, Noah, *Scorpions.*

31 *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

32 Feldman, Noah, *Scorpions*, 418.

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# The Universal Nature of Freedom of Conscience Inherent in Freedom of Religion

Matthew Nolte

Current events reveal increasing opposition toward the traditional freedoms as outlined in the U.S. Constitution. Opponents of this long-standing Constitutional system adhere to the belief that individuals could be liberated and greater national progress achieved if the constraints or exceptions in the system could be substantially updated or replaced to better facilitate the faster pace and demands of current society. While proponents of these arguments have grown in number and intensity, advocates for the permanence of traditional Constitutional structures have also increased in force.

Recent research has demonstrated that the American public is almost equally split on whether the nation's success is based on an adherence to principles or an ability to adapt to changes.<sup>1</sup> This nationwide polarization threatens the common ground upon which are established many of the freedoms that have been enjoyed by U.S. citizens for over 200 years. Foremost among these threatened freedoms is the Constitutional guarantee of Religious Liberty as expressed in the First Amendment. Negative sentiments toward this Liberty—based on the rise in tensions toward religious organizations and their beliefs, as well as the exceptions provided for such in the First Amendment—are equally as destructive to Freedom of Conscience as they are to Religious Liberty.

Freedom of Conscience is the right of each individual to think, believe, and do what they will, without being coerced by government actors or other social forces. All First Amendment freedoms are products of the

Constitutional implementation of Freedom of Conscience—Freedom of Speech, the Press, and Assembly are salient manifestations of the free exercise of conscience, while the right to petition ensures that these freedoms are guaranteed and held above government interference. None of these freedoms, however, are more directly related to Freedom of Conscience than the Freedom of Religion. Religious Liberty, with its defined limitations on government actions against conscientious belief, is the most critical guarantee of Freedom of Conscience in the Constitution. This paper will address the historical significance of Freedom of Conscience as it was understood by America’s founding generation. Further, it will discuss the ways in which Freedom of Religion has been misinterpreted and the waning Constitutional guarantee of Freedom of Conscience to every U.S. citizen as a result of this misinterpretation. After presenting these points, this paper will conclude by asserting that the Religious Liberty, and therefore the Freedom of Conscience, of each citizen—whether religious or not—to believe and do what they will, must be defended and protected by all—believers and non-believers—in order for this fundamental and all-encompassing freedom to continue to be protected.

In an address given at the Center for Constitutional Studies’ Constitutional Symposium on Religious Freedom, former Utah Supreme Court justice and revered religious leader, Elder Dallin H. Oaks, spoke of the continued relevance of Freedom of Religion coupled with Freedom of Speech. He stated, “The First Amendment guarantees of freedom of speech and free exercise of religion are the twin guarantees of the conditions of freedom that are at the foundation of our nation.”<sup>2</sup> The importance and significance of freedom of speech is almost universally understood, accepted, and even celebrated. However, the founders still gave more credit, weight, and even a sense of reverence to the first freedom written in the list. A careful study of the history and significance of Religious Liberty will show how closely it is related to Freedom of Conscience and why Oaks described it as such a critical guarantee of the condition of freedom, as well as why James Madison thought it necessary to pen this critical freedom first when compiling the U.S. Bill of Rights.

A brief and telling account of the influence of the desire for Freedom of Conscience in the history of America is found at a Library of Congress exhibit, “Religion and the Founding of the American Republic.”<sup>3</sup> It relates the accounts of some of the early American colonies and why

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they were founded—primarily to escape religious persecution. Rhode Island, founded by Roger Williams, was one such colony. According to the Library of Congress Exhibit:

Expelled from Massachusetts in the dead of winter in 1636, former Puritan leader Roger Williams (1603–1683) issued an impassioned plea for Freedom of Conscience. He wrote, “God requireth not an uniformity of Religion to be inacted and inforced in any civill state; which inforced uniformity (sooner or later) is the greatest occasion of civill Warre, ravishing of conscience, persecution of Christ Jesus in his servants, and of hypocrisy and destruction of millions of souls.” Williams . . . welcomed people of every shade of religious belief, even some regarded as dangerously misguided, for nothing could change his view that “forced worship stinks in God’s nostrils.”<sup>4</sup>

Roger Williams’ rejection of the traditional enforcement of ‘religious uniformity’ demonstrated above in favor of Freedom of Conscience was a common sentiment felt by many American colonists and was a primary motivator in the American experiment. In fact, most of the early American colonial settlers came to the New World in order to flee religious persecution, as stated in another segment of the exhibit, which reads:

Many of the British North American colonies that eventually formed the United States of America were settled in the seventeenth century by men and women, who, in the face of European persecution, refused to compromise passionately held religious convictions and fled Europe . . . Beginning in 1630 as many as 20,000 Puritans emigrated to America from England to gain the liberty to worship God as they chose.<sup>5</sup>

As demonstrated in this example, many of the initial North American colonies were formed and populated by those seeking to escape religious persecution, seeking a refuge where they could practice their conscientious beliefs free from persecution.

Early colonial examples of abuse of conscience show the intense need felt by the founding generation to safeguard this critical freedom for themselves and the future American citizens. Perhaps the significance and weight of this freedom can best be described by the author of the Bill of Rights himself, James Madison. One of the explanations we have of his sentiments on the subject comes in a document entitled “Memorial and Remonstrance against Religious Assessments,” published on June 20,

1785, <sup>6</sup> which was written in response to a proposed bill called “A Bill establishing a provision for Teachers of the Christian Religion.” In “Memorial and Remonstrance,” we can sense a intense reverence the founders had for the Freedom of Conscience, the zeal with which they defied government-sponsored establishments of religion, and why they would shortly thereafter seek to safeguard this freedom by including Freedom of Religion in the Bill of Rights. Those who expressed their remonstrance against the above mentioned bill believed government-sponsored religion and taxes in the name of religion to be “a dangerous abuse of power.”<sup>7</sup> This dangerous abuse was explained accordingly:

We remonstrate against the said Bill . . . Because we hold it for a fundamental and undeniable truth, “that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.” [Virginia Declaration of Rights, art. 16] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right . . . because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. <sup>8</sup>

From this document, we can be assured of three significant beliefs regarding the founders’ views of Religious Freedom. First, the beliefs of each person must be left to the conscience of each person. This view of an individual conscience that cannot be acted upon by other people or government forces is the core of Freedom of Religion. Second, Religious Freedom has always been one of a number of unalienable rights described by the founding generation. Freedom of Conscience was regarded as one of these rights; it was understood that no person or government could remove any such rights without consequences, as they were believed to be part of the natural order of a universe bound by Natural Law. Third, the founders expressed a belief that rights and freedoms are at the same time duties to a “Creator,” the true sovereign of the natural uni-

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verse.<sup>9</sup> Thus, by the founders' definition, the purpose of government is to preserve the liberties of its sovereigns, so that they may possess the right to fulfill their responsibilities to their ultimate sovereign, unfettered by the lower orders of man-made government or other inferior actors. Through this interpretation of the role of governments, the individual secures government and Civil Society in their place as secondary to his or her own purposes, in whatever way these purposes are individually understood.

The above three points have a monotheistic religious tone, yet the addition of these ideals into the First Amendment and fundamental law of the U.S. Constitution serves to benefit all U.S. citizens. These benefits apply regardless of individual beliefs, because Religious Freedom in the First Amendment is a guarantee of an unquestioned Freedom of Conscience for each individual—religious or not. This liberty is also the legal documentation of an unalienable right as it cannot, in any way, be restricted through government force or coercion. By placing Religious Liberty first in the U.S. Bill of Rights, James Madison asserts the position of the founders on the role of governments and their secondary place in the life and conscience of any and all U.S. citizens.

The initial lines of the First Amendment are: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." <sup>10</sup> These two phrases were originally meant to provide all the guarantees explained above—or simply to protect the Freedom of Conscience to fully embrace one's beliefs, yielding to government and laws only to maintain this and other freedoms. However, due to certain changes in the law and common understanding of the First Amendment, it has come guarantee far fewer rights and protections than originally intended. In fact, a common argument voiced today is that the only purpose of the religious clauses of the First Amendment is to guarantee "separation of church and state."

The origin of this well-known phrase in the American tradition may be surprising to some, as this commonly misapplied quote is not listed in the Constitution or Bill of Rights; rather, it comes from a letter by President Thomas Jefferson to the Danbury Baptist Association. The Danbury Baptists had written to Jefferson to request his thoughts on the maintenance of Religious Liberty, as they worried that the Constitution was not specific enough to truly guarantee Religious Liberty. The letter from the Danbury Baptists to President Jefferson demonstrates the need they felt

for an assurance from the nation's chief executive against abuse of the free exercise of their religion. The writing in this letter is another proof of the founding generation's understanding of the importance of Religious Liberty. A portion of the letter reads:

Our sentiments are uniformly on the side of Religious Liberty: that Religion is at all times and places a matter between God and individuals, that no man ought to suffer in name, person, or effects on account of his religious opinions, [and] that the legitimate power of civil government extends no further than to punish the man who works ill to his neighbor. But sir, our constitution of government is not specific.<sup>11</sup>

This letter from the Danbury Baptists states that no one should suffer "in name, person, or effects"<sup>12</sup> on the basis of religious opinion or conscience. In other words, any action against an individual's conscientious beliefs was understood to be legally prohibited.

Thomas Jefferson's reply to the Danbury Baptists reflects the familiar founding-era tone of James Madison<sup>13</sup> and of his own view "of the supreme will of the nation in behalf of the rights of conscience."<sup>14</sup> A segment of his reply reads:

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.<sup>15</sup>

Thomas Jefferson, one of the first American presidents, clearly afforded great authority to the founders' case for Freedom of Religion and Conscience and the limits of government power in relation individual conscientious expression. In the Supreme Court case of *Reynolds v. U.S.*, Chief Justice Waite interpreted President Jefferson's letter as follows:

Coming as this does from an acknowledged leader of the



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advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.<sup>16</sup>

Chief Justice Waite's statement is clear: there is no power in Congress to legislate against opinion or conscience. The only power that branch has in relation to religion is to prevent religious action that violates social duties or good order. Though this point was made clear in the referenced case, the oversimplified version of the First Amendment—as reduced only to a wall between church and state—has unfortunately become standard in popular understanding.

Later opinions in the Supreme Court cases of *Everson v. Board of Education* (1947) and *Lynch v. Donnelly* (1984) have aided in the restoration of the definition of the religious clauses of the First Amendment. In *Everson v. Board of Education*, we find a legally defined list of the many purposes entailed in the “Establishment Clause”:

The “establishment of religion” clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa.<sup>17</sup>

This list reinforces the understanding and intent of the founders in inscribing the ideals of Freedom of Conscience and Religion into the first lines of the Bill of Rights. From this quote, we can see that the purpose of government action in religious and conscientious matters cannot be misconstrued to mean only the creation of a wall of separation, which limits the rights and privileges of religiously motivated individuals and organiza-

tions. Religious Liberty and the implied Freedom of Conscience therein are a check on government power over individual conscience, but are not a check on religious individuals' interactions with government.

In *Lynch v. Donnelly*, the court further clarified that the First Amendment guarantees of protection of Religious Freedom extend far beyond merely a wall between government and religion:

The metaphor [of a "wall" of separation] is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state. No significant segment of our society, and no institution within it, can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. "It has never been thought either possible or desirable to enforce a regime of total separation . . ." Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.<sup>18</sup>

In the opinion of these court decisions, as in the many historical references previously noted, it is clear that freedom from coercion and hostility—and even tolerance and accommodation of religious views and institutions—was the true intent of the opening lines of the Bill of Rights. It is only through these protections, and not simply a mandate of "a regime of total separation,"<sup>19</sup> that Freedom of Conscience and the sovereignty of the individual is preserved. However, given 224 years since the Bill of Rights was ratified, these rights have been so entirely altered and confused in popular understanding as to become threatened with removal or replacement.

The results of a recent poll, "The 2015 State of the First Amendment Survey," conducted by the Newseum Institute, reveal alarming statistics.<sup>20</sup> According to the survey, "When asked to name the five specific freedoms in the First Amendment, 57% of Americans name freedom of speech, followed by 19% who say the Freedom of Religion, 10% mention the freedom of the press, 10% mention the right to assemble, and 2% name the right to petition. Thirty-three percent of Americans cannot name any of the rights guaranteed by the First Amendment." Given that one-third of Americans cannot list any rights in the First Amendment and only 19% can list Freedom of Religion, it is entirely feasible that the heated debates regarding this freedom are grossly misinformed, and that a great majority

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of the U.S. population does not understand the scope or intent of the inclusion of Freedom of Religion in the Bill of Rights.

These shocking statistics reveal a dangerous lack of understanding. Thomas Jefferson once stated: “Eternal vigilance is the price of liberty.”<sup>21</sup> Thus, a lack of understanding regarding one’s own liberties may very well produce outcomes that are dangerous to liberty itself. When misunderstood, Religious Freedom can be seen as only applying to a select few instead of promoting the general good, and even limiting the rights of those who are consciously opposed to some or all religious beliefs. This represents a misunderstanding of the scope and purpose of Religious Liberty—or, as we now know it, the Freedom of Conscience.

When considering the existence of religious exemptions and protections in U.S. law, the relevance of these concerns is obvious; conversely, the case of the *Little Sisters of the Poor v. Burwell* is an expressive example of why such exemptions should be vigilantly protected. The Little Sisters of the Poor is a religiously based service organization that serves “more than 13,000 elderly poor in thirty-one countries around the world.”<sup>22</sup> This service organization is currently facing legal action for defying a federal HHS mandate, which “forces ministries to allow the government to use the ministry’s employee healthcare coverage to provide contraceptives and abortion-inducing drugs and devices.”<sup>23</sup> Due to this mandate, the Little Sisters are forced to face a terrible moral dilemma: they must either choose to violate their religious vows or break the law. These religious vows, or “duties to the creator,” as the founders would understand them,<sup>24</sup> take precedence over government requirements and mandates. Why then are these mandates still enforced in this case? According to The Becket Fund: “Although the government exempts church and church-run ministries from the HHS Mandate, it argues the Little Sisters aren’t religious enough for the same exemption.”<sup>25</sup> The dangerous implication in this distinction that the Little Sisters “aren’t religious enough” violates their Freedom of Conscience, ostensibly protected under the First Amendment’s Religious Liberty clauses.

A number of other cases have been pled and laws written that concern abuses of Religious Liberty. For example, many U.S. states have laws referred to as “Blaine Amendments,” which are antagonistic to the Freedom of Conscience of religious organizations.<sup>26</sup> The Trinity Lutheran Church of Columbia, Missouri, was recently denied funding for a play-

ground renovation due to such a Blaine Amendment in the Missouri State Constitution. According to Noah Feldman, a professor of Constitutional and international law at Harvard University, “The [Missouri] state provision —Article 1, Section 7 —says ‘no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion . . . and that no preference shall be given to nor any discrimination made against any church, sect, or creed.’”<sup>27</sup> Professor Feldman continues: “For Trinity Lutheran to win, it probably needs the court to go into the seedy history of the Blaine Amendment and say that state Blaine Amendments violate federal equal protection laws because of the bias inherent in their adoption . . . [as] the Blaine history is certainly replete with nasty anti-Catholic bias reminiscent of today’s Islamophobia.”<sup>28</sup>

The express prohibition against religious groups requesting government funds, as exemplified in the case of the Trinity Lutheran Church, is contrary to the purpose of the Establishment Clause. This prohibition implies more tolerance or preference toward secular groups requesting funding than religious groups. The previously mentioned opinion of *Lynch v. Donnelly* proves that this was never the intention of the Establishment Clause: “‘It has never been thought either possible or desirable to enforce a regime of total separation’ . . . Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.”<sup>29</sup> It is shown here that the Establishment Clause was never intended to be a blanket prohibition against religious organizations requesting funding or legal exemptions, nor was it ever intended to grant preference in these matters to non-religious organizations or vice versa.

The above cases both reference the rights of religious organizations, yet Freedom of Conscience is not limited to such organizations. The recent case of *American Humanist Association v. United States* had the fortunate outcome of affording equal religious rights to humanist prison organizations as those granted to organizations representing traditional religious views. One critical statement of the court’s decision reflects the founders’ intent of Freedom of Conscience when enjoining Freedom of Religion: “The court finds that Secular Humanism is a religion for Establishment Clause purposes.”<sup>30</sup> Though brief and simply put, this statement portrays a principle of universal significance: that Freedom of Conscience as protected by Religious Liberty should include any and

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all belief systems, even those that are non-religious or expressly anti-religious in nature. Religious Liberty must protect the conscious beliefs of every individual, if the rights of religious individuals are to be maintained. Admittedly, it has been proven that the founding generation had less tolerance for contemporary equivalent viewpoints of modern humanism and atheism; nonetheless; however, it would be unjust of today's America to judge their level of tolerance by current standards. For the time period, the Freedom of Conscience the founders promoted, though imperfect, was progressive and revolutionary. As in the above case, Freedom of Conscience today can be expanded upon the foundation that the first American generation provided.

As just mentioned, Freedom of Conscience should and must be applied equally for it to maintain its Constitutionally-based significance. Unfortunately, violations of Freedom of Conscience are not only instigated by the misunderstanding of its proper scope or related legal terminology, but are also fueled by the fears of many in the general American public. Recent threats to national security have driven many to advocate for rash and imperfect solutions that would result in fundamental changes in American concepts of freedom. The dangerous notion implied by these changes is that security carries more weight than fundamental freedoms guaranteed in the Bill of Rights. For example, Yahoo News interviewed 2016 republican presidential candidate, Donald Trump, asking "whether his push for increased surveillance of American Muslims could include warrantless searches."<sup>31</sup> His response was, "We're going to have to do things that we never did before. And some people are going to be upset about it, but I think that now everybody is feeling that security is going to rule . . . And so we're going to have to do certain things that were frankly unthinkable a year ago."<sup>32</sup> The transcript of the interview continues, "Yahoo News asked Trump whether this level of tracking might require registering Muslims in a database or giving them a form of special identification that noted their religion." Donald Trump explained, "We're going to have to"<sup>33</sup>

Although this interview is primarily expressive of the politicized statement of a presidential candidate, its discriminatory tone is characteristic not only of Donald Trump, his constituency, or party ideology, but it is also felt to some degree by the majority of Americans. The NORC Center for Public Affairs Research conducted a recent survey on this subject, which found that, "while a large majority of Americans agree that Freedom of

Religion is important, some people do differentiate among groups. Eight in ten say it is important that Christians freely practice their religion; about six in ten say the same about Muslims.”<sup>34</sup> Though this idea may be accepted by a majority, national security or other factors are not justifiable reasons to infringe on the Freedom of Conscience of any individual or group. On the contrary, whether a minority or majority holds beliefs similar to those above, or such that may be even more intolerant, they are entitled to the freedom to believe in the manner they choose. A careful distinction must be made, however, between personal belief—which is protected under Religious Liberty—and unacceptable actions based on such belief. As Thomas Jefferson wrote to the Danbury Baptists, “The legitimate powers of government reach actions only, & not opinions.”<sup>35</sup> This rule should apply to all people in the exercise of their conscience: that the most abhorrent beliefs and theories of some must be protected in order to justify the more acceptable beliefs of others. The only limit to this equality of Freedom of Conscience has been stated above—when illegal action is taken as a result of personal beliefs.

As sovereigns of the Constitutional government of the United States, “we the people” can best safeguard our liberties and limit our government to its intended purposes by accepting the responsibilities implied by the rights we hold. When speaking on the previously mentioned occasion, Dallin Oaks put it this way:

I believe one important way to move forward is to minimize talk of rights and to increase talk of responsibilities. From the standpoint of religion, I urge my fellow believers to remember that the scriptures contain very little talk of rights, only commandments that create responsibilities. Others, who choose to reason in pragmatic terms, should remember that we strengthen rights by encouraging the fulfillment of responsibilities.<sup>36</sup>

One the subject of responsibility, James Madison explained his opinion in another section of the previously mentioned “Memorial and Remonstrance.”<sup>37</sup> He wrote:

We remonstrate against the said Bill . . . Because it is proper to take alarm at the first experiment on our liberties . . . We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had

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strengthened itself by exercise and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle.”<sup>38</sup>

The “first duty” of “prudent jealousy” mentioned by James Madison is the responsibility we each have to maintain our freedoms. That rights are equal to responsibilities was an understood and accepted fact during the American founding. Dr. Matthew J. Franck, a professor of Constitutional law and philosophy at Radford University, and a director at The Witherspoon Institute, explained it this way:

Properly understood, then, the American founding principles of natural rights . . . entail obligations, of a due respect for others, and a due respect for ourselves. This respect is otherwise known as responsibility, ultimately to the Creator who endowed us with our rights . . . Rights and obligations are brother principles, both owing their existence to the God who made us creatures of equal dignity, possessing the logos that makes our self-government possible.<sup>39</sup>

The obligation of mutual respect understood by the founders and spoken of by Matthew Franck<sup>40</sup> is best way to secure and strengthen the Freedom of Conscience. As the founders did, may we accept the obligation to defend the rights of each other and, by extension, our own rights as well.

All of the above mentioned historical references, court cases, and recent trends have focused on the Constitutional guarantee of Freedom of Conscience included in the guarantee of Religious Liberty. Polarization and political and ideological disagreements occur when the relationship of these fundamental freedoms is misunderstood, or worse, entirely unknown. Thus, it would be more beneficial for all Americans to see the religious text of the First Amendment for its original and true intent—as the written embodiment of the Freedom of Conscience. When shown in the context of its proper purpose, power, and scope, Freedom of Conscience is a model example of a common-ground Constitutional principle. This common ground can be strengthened when the definition of Freedom of Conscience is more widely understood, and when individuals accept the responsibility to defend the inherent Freedom of Conscience within Religious Liberty.

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## CONTRIBUTORS

Joshua J. Eaton graduated from Syracuse High School in 2009, and received his Associate's Degree from Snow College. He is a history major at UVU and is graduating this semester as the History and Political Science's Distinguished Graduate. He is also graduating with magna cum laude honors. He has served in many capacities of Phi Alpha Theta (the History Honor Society) and has attended many conferences for Phi Alpha Theta to present his work on the Boston Massacre, most recently the PAT National Conference. Josh plans to attend graduate school to obtain a doctorate, and then he plans to work for the LDS Church. He wants to express his thanks to his parents Thomas and Debra Eaton, and Hutch for their continually support and for believing in him. Josh can be reached at [eaton.joshuajames@gmail.com](mailto:eaton.joshuajames@gmail.com).

Krista Mosbacker is a single mom of a beautiful eight-year-old girl. Her daughter is the joy of her life, and the reason she is working so hard in school. Krista is working towards a BS in History Education and has about two years left before she graduates. She has loved history ever since she was a little girl when she often watched documentaries on TV with her mother. History fascinates Krista and she can't wait to share this passion with her own students. Krista may be contacted via email at [kristatwen@gmail.com](mailto:kristatwen@gmail.com).

Jacinda Dietrich is currently studying History Education at Utah Valley University. She grew up in Bluffdale, Utah, and is fifth of seven children. After discovering a love for books, she quickly found a home in history. She spent many hours exploring events she had learned about in her history classes and has taken a specific interest in Italian and United States history. Her dream is to travel the world—especially Europe with its rich history. Jacinda is currently a program director on the Service Council at UVU and serves as vice president of the UVU Special Olympics team. She also loves teaching her seven piano students. After graduating, she will pursue teaching and looks forward to sharing her passion for history. Jacinda may be contacted via email at [jacinda.lynne13@gmail.com](mailto:jacinda.lynne13@gmail.com).

Ethan Drake Johnson is currently pursuing a dual major in philosophy and history. He is primarily interested in the history of ideas, culture, art, and philosophy. Specializing in Ancient Greek philosophy, medicine, and science, Ethan seeks to uncover the bizarre aspects of ancient thought and to politicize it so as to point out that our contemporary culture is not as 'positive,' 'scientific,' or 'enlightened' as it appears to be. Ethan is currently a junior at UVU, and he intends to continue his academic career in graduate school, either in history of ideas or philosophy. *Crescat Scientia*, as the history journal at UVU, is the perfect fit for submitting his paper on the ancient idea and practice of numerology. Ethan can be reached at [ethansonofjohn@gmail.com](mailto:ethansonofjohn@gmail.com).

Jason Fuller is honored and pleased for his work to be accepted by *Crescat Scientia*. He came to Utah Valley University in 2012 after having earned a Bachelor's degree from Southern Virginia University. He is on track to earn an Associate's degree in Political Science and History from Utah Valley University and will graduate Phi Theta Kappa. Jason is active in the Honors Program and the LEAD program with the Center for the Advancement of Leadership. He is also currently a Political Science and Asian Studies major at the University of Utah, where he worked in two internships—one in China and one in Washington, DC, with the prestigious Hinckley Institute of Politics. He is currently awaiting an admissions decision for the PhD program in Political Science at George Mason University as well as the MFA in Acting Program at UCLA and two M.Arch programs in the Northeast. He wishes to thank UVU for all the opportunities and experiences that UVU gave him. Jason can be reached at [10340458@uvlink.uvu.edu](mailto:10340458@uvlink.uvu.edu) or [u0461622@utah.edu](mailto:u0461622@utah.edu).

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Bractn Williams is a first generation college student pursuing a major in history and a minor in classical studies at UVU. Bractn was born and raised in Provo and has always been fascinated with history —from local Utah history to ancient Egypt. Bractn's love for history began in the fifth grade when he first learned about the mysteries of ancient Egypt. Bractn plans to specialize in classical studies because of the impact that Ancient Greece and Rome had on western civilization. When studying history, Bractn focuses on three aspects; warfare, economics and politics and how they relate to one another and the impact they have on a civilization. Bractn may be contacted through email at [bractnwilliams@yahoo.com](mailto:bractnwilliams@yahoo.com).

Brandon Springer studied English at UVU with an emphasis in Writing Studies. He plans to travel to South America in order to work as a teacher of English and to learn the Spanish language. Brandon has spent most of his life in Utah, and loves to spend time with his family and learn new things. Brandon may be contacted via email at [bsbigspring@gmail.com](mailto:bsbigspring@gmail.com).

Lance Merrell is a senior at Utah Valley University where he is studying Political Science and Constitutional Studies. During his time at UVU, Lance spent a year at the Center for Constitutional Studies, assisting with research and presentations on federalism, the power of the executive, and religious liberty. Lance also was a member of the UVU track and field team, helping his team win a conference title. Lance served a two year LDS mission in Portland, Oregon. A Presidential Scholar at UVU, Lance has been on the Dean's list every semester he has attended the University. Lance is planning on attending Law School, and has currently been offered a number of scholarships from institutions around the country. Lance can be contacted via email at [lancemerrell@ymail.com](mailto:lancemerrell@ymail.com).

Matt Nolte is a senior in Political Science and Constitutional Studies at UVU. He defines himself by his love of writing, learning, and family,

and his devotion to his personal principles. Matt served a two year LDS mission in São Paulo, Brazil, during which time he developed a strong desire to study languages. Fluent in Portuguese and knowledgeable in Spanish, he has studied Latin and is currently studying French. Matt's academic interests are as varied as his linguistic interests; choosing a career path has proven an interesting dilemma. Ultimately, Matt has decided to focus on Constitutional Studies. He has completed a minor in the subject and also worked for a year and a half at the Center for Constitutional studies in various positions, including one year as the Center's Administrative Assistant—a rare privilege for an undergraduate student. His future plans include graduate school, but he has not yet decided between law and business. Regardless of his career choice, however, Matt will always maintain a passion for learning and a hobby in creative writing. Matt hopes to publish stories that will share a world of knowledge in ways that will interest others as much as it interests him. Matt may be contacted via email at [matthew.nolte@uvu.edu](mailto:matthew.nolte@uvu.edu).