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Thomas M. (Tom) Campbell was the driving force behind the creation of the Florida Conference of Historians, at that time called The Florida College Teachers of History, over 40 years ago. It was his personality and hard work that kept the conference moving forward. Simply put, in those early years he was the conference.

Tom was a professor of US Diplomatic history at Florida State University. The Thomas M. Campbell Award is in his name so that we may recognize and remember his efforts on behalf of the Florida Conference of Historians

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The Life of Joshua G. Clarke: Mississippi's First Chancellor

J. Calvitt Clarke III
Jacksonville University

Andrew Fede, who is following me on this panel, will place in the context of legal and slave history Joshua G. Clarke's two known decisions while serving on Mississippi's first Supreme Court from 1818 to 1821. These two decisions are important for fixing, at least for a while in Mississippi, some legal rights for slaves. *Harry and Others v. Decker and Hopkins* raised the issue whether slaves became freedmen by having lived in the Northwest Territory under the Ordinance of 1787.¹ Clarke said yes. In *State v. Jones*, Clarke asserted that killing a slave could be called "murder" because the term "reasonable creature" in defining "murder," means a human being, and embraces an idiot, lunatic, or unborn child, and a slave.² Clarke thus rejected the defense claim that slaves were outside common law, and he condemned the murderer to death by hanging on 27 July 1821.³

I want to look at those two decisions from the perspective of Judge Clarke's life and lay a foundation for asking a couple of basic questions. For example, were Clarke's decisions truly "liberal" in that they reflected a genuinely humane concern for individual dignity or did they merely reflect economic and class interests? After all, Clarke's family — his wife, children, nephews, and in-laws were slaveholders and even large plantation owners with many slaves. How did his liberal decisions sit with his family? With his own economic interests? After all, he was a relatively small slave owner himself. How did Clarke seemingly transcend the attitudes of friends and family to come to his legal judgments that offered some measure of humanity to slaves? There is enough information to ask these questions, but, sadly, answering them is no easy task because we know oddly little about Clarke, his life, or how his friends and family reacted to his verdicts.

Clarke was born about 1780 in Maryland and then moved to Pennsylvania.⁴ Despite his notable legal career in Mississippi, we know nothing of his early

¹ Robert J. Walker, *Reports of Cases, Adjudged in The Supreme Court of Mississippi* (Natchez: Printed at the Courier and Journal Office, 1834), 36-43; John Francis Hamtramck Claiborne, *Mississippi as a Province, Territory and State: With Biographical Notices of Eminent Citizens*, Vol. 1 (Jackson, MS: Power & Barksdale, Publishers and Printers, 1880), 470; Michael P. Mills, "Slave Law in Mississippi from 1817-1861: Constitutions, Codes and Cases," *Mississippi Law Journal* (Fall 2001): 178; Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publication, 1986), 35.

² Walker, *Reports*, 83; Thadious M. Davis, *Games of Property: Law, Race, Gender, and Faulkner's Go Down, Moses* (Durham: Duke University Press, 2003), 30, 83.

³ Thomas Szasz, *Liberation by Oppression: A Comparative Study of Slavery and Psychiatry* (New Brunswick, NJ: Transaction Publishers, 2002), 162. For an expansion of this paper including an extended discussion of the two cases see my "What Passes as a Liberal: Joshua Giles Clarke of Mississippi, Supreme Court Judge and Chancellor" at <http://users.ju.edu/jclarke/jgclarke.htm>. See Andrew Fede's paper in this volume, "Judging Against the Grain? Reading Mississippi Supreme Court Judge Joshua G. Clarke's Views on Slavery Law in Context." He is also working on a larger paper on Judge Clarke.

⁴ *Statesman and Gazette* [Natchez, Mississippi], July 6, 1831.

life, other than that he “received a competent education”⁵ in his birth state before making his way to the Mississippi Territory. Even after rising to prominence in a field reliant on letters, his papers have vanished and only two of his judicial opinions exist.⁶

Clarke Enters Mississippi’s Society

By the time Clarke moved to Mississippi, cotton and slavery were becoming the dominant notes in the state’s agricultural economy. When formed into a state in 1817, Mississippi was little more than an English-speaking outpost in a land surrounded by French, Spanish, and Native American cultures. Labor was essential for the state’s agricultural economy, and slavery was the common thread weaving together the early Mississippi frontier and plantation societies. Indians had enslaved Indians, the Spanish and French had enslaved Indians, and by the early 1700s, French colonials had begun importing Africans as slaves. Soon, all slaves in Mississippi were of African ancestry. Meanwhile, in the late 1700s and early 1800s, white immigrants from other states and other nations began seeking their fortunes in the Mississippi Territory, and they found opportunities for swift, upward mobility. By 1816 in Mississippi, there were 45,085 free whites and 30,061 slaves.⁷

Among those hoping to climb high in society, many lawyers also immigrated. Most of them, although informally trained, had met at least the minimum qualifications for admittance to the bar of their home states before going to Mississippi. There the law had become a profitable profession: Mississippi’s society was energetic and violent — fine fodder for attorneys. Further, land disputes arising from conflicting British, Spanish, and Georgia claims were common and profitable for those practicing law. Another source of attorney prosperity revolved around the efforts of early courts to reconcile the conflicting rules of civil law and English common law. In Natchez, their Mecca, between 1803 and 1805 attorneys filed 144 lawsuits. Put another way, statistically one of every ten people in Natchez faced suits — although the courts surely served some more than once.⁸

No one knows exactly how or when Clarke got to the Mississippi Territory, but he was clearly part of this larger lawyerly migration. He was in Mississippi and practicing law before the end of November 1804, when he filed an affidavit for

⁵ James Daniel Lynch, *The Bench and Bar of Mississippi* (New York: E. J. Hale & Son, 1881), 89; Mills, “Slave Law,” 176.

⁶ *Report of the Mississippi Historical Commission Publication, Vol. 5, Publications of the Mississippi Historical Society*, Franklin L. Riley, ed. (Oxford, MS: Printed for the Society, 1902), 265; Walker, *Reports*, 36-43; 83-86; John Ray Skates, Jr., *A History of the Mississippi Supreme Court, 1817-1948* (Jackson: Mississippi Bar Foundation, Inc., 1973), 69.

⁷ Dunbar Rowland, *The Official and Statistical Register of the State of Mississippi: Centennial Edition, 1917* (Madison, WI: Democrat Printing Co., 1917), 66-67; Mills, “Slave Law,” 154-55, 160.

⁸ Sylvester John Hemleben and Richard T. Bennett, “Beginnings of the Legal Profession in Mississippi,” *Mississippi Law Journal* (1964-1965): 155-58, 165; David F. Sansing, Sim C. Callon, and Carolyn Vance Smith, *Natchez: An Illustrated History* (Natchez, MS: Plantation Publishing Co., 1992), 49.

the Gideon Matlock estate. In August 1806, he became the administrator for that estate.⁹

Clarke quickly became enmeshed in Mississippi's slave-owning society. On 9 November 1807, in Natchez, Adams County, he married Martha (Patsey) Calvit of Jefferson County. She was the daughter of Joseph Calvit, a member of one of Mississippi's early families who had migrated to the territory after the American Revolution while it was still under Spanish control. Her family had become prominent plantation owners, slaveholders, and political figures. Frequently noted in the *Natchez Court Records*, the humdrum exchange of property — land, horses, slaves, and more — made up the rhythm of their private and business lives. Because of their many civil entanglements over money and property, presumably the Calvits welcomed the young attorney Clarke into their midst.¹⁰

Armed with Spanish land grants, the Calvit family had become significant plantation owners, slaveholders, and political figures. Joseph's brother, Frederick, who had survived an Indian scalping in 1777,¹¹ moved his family to a 600-acre grant, built a log house, bought some cows, pigs, and a broodmare, and he began to farm. Another brother, William, moved to a land grant on the Homochitto River. He later received the first divorce ever granted in the Mississippi territory.¹² Thomas was Joseph's youngest brother and he too moved to Mississippi. By 1790, these three were large tobacco growers, with Thomas the most prosperous of the four Calvit brothers.¹³ He was also a longtime friend of the infamous Aaron Burr, whom authorities temporarily imprisoned on Thomas' plantation after his arrest as a traitor.¹⁴

⁹ See *Grand Gulf Railroad and Banking Company, et al. vs. Kit Turah Bryan* in W. C. Smedes and T. A. Marshall, of Vicksburg, Reporters to the State, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the State of Mississippi*, Vol. 8: *Containing Cases for January-February 1847* (Boston: Charles C. Little and James Brown, 1847), 234-79, esp. 10-11, 246, 267, 271-74.

¹⁰ J. Calvitt Clarke III, "The 'I' in History: An Historian's Self-Indulgent Foray into Family History: The Calvit's from France to the American Frontier," *Selected Annual Proceedings of the Florida Conference of Historians*, 13 (Apr. 2006): 46-59; Skates, *History*, 69; Francis Stuart Harmon, *A Good Inheritance* (New York: P & D Press, 1960), 168-86; Latayne Colvett Stanfill, *Colvett Family Chronicles: The History of the Colvett Family of Tennessee, 1630-1990* (Glendale, CA: Heirloom Press, 1991), 348-57, 374-88. Also see the many abstracts in Wilson May McBee, comp., *The Natchez Court Records, 1767-1805: Abstracts of Early Records* (Baltimore: Genealogical Publishing Co., 1979). For a description of slavery in early Mississippi and a picture of the plantation life these Calvit settlers inhabited, see David J. Libby, *Slavery and Frontier Mississippi* (Jackson: University Press of Mississippi, 2004), esp. 30-59.

¹¹ James Gettys McGready Ramsey, *The Annals of Tennessee to the End of The Eighteenth Century* (Charleston: John Russell, 1853), 171-72; Latayne Colvett Stanfill, *Colvett Family Chronicles: The History of the Colvett Family of Tennessee, 1630-1990* (Glendale, CA: Heirloom Press, 1991), 312-15; Francis Stuart Harmon, *A Good Inheritance* (New York: 1960), 175, 175a, 175b.

¹² See in Wilson May McBee, comp., *The Natchez Court Records, 1767-1805: Abstracts of Early Records* (Baltimore: Genealogical Publishing Co., 1979), see Book G, p. 152, n.d. Natchez Court Records, 1781-1798, 320-21; Book E, p. 351, Natchez Court Records, 1781-1798, 202; and Book F, p. 452. n.d., Natchez Court Records, 1781-1798, 284-85. Harmon, *Good Inheritance*, 170; Stanfill, *Colvett Family*, 328-29.

¹³ Lawrence Kinnaird, ed., *Spain in the Mississippi Valley, 1765-1794* (Washington, U.S. Govt. Printing Office, 1949), 308, 310. Also see List of Tobacco Growers in 1790, <http://www.rootsweb.com/~msswtter/tobaccogrowers1790.htm>.

¹⁴ Marie T. Logan, *Mississippi-Louisiana Border Country: A History of Rodney, Miss., St. Joseph, La., and Environs* (Baton Rouge: Claiborne Publishing Division, 1970), 21; Stanfill, *Colvett Family*, 380-81.

Martha Calvit's father, Joseph, settled along Saint Catherine's Creek, having received a land grant east of Natchez in Adams County, close to where his mother, Mary Calvit Higdon, lived. Joseph sold the land on which Mississippians built the old town of Washington and Fort Dearborn. As had his brothers, Joseph became a successful planter, landowner, and slaveholder.¹⁵ The family, in fact, trafficked in slaves, and Clarke's wife, Martha, owned at least one:

Thos. Calvit, of this District, planter, of my own free will and accord, and account of great love to Patsy Calvit, dau. of Joseph Calvit, gift of negro girl "Phillis", aged 3, Joseph Calvit, father of said Patsy being present, accept the foregoing gift of his brother, Thomas Calvit, in her favor, receiving the said slave into his possession, binding himself to the care of same for his daughter, Patsy Calvit.¹⁶

The family was politically active. In 1799, for example, Joseph and Thomas Calvit were among the signers of a petition sent to Congress that eventually led to the removal of the territorial governor, Winthrop Sargent, from office.¹⁷

As had his in-laws, Joshua G. Clarke rose rapidly in Mississippi's society. Politically, he was a Jeffersonian Republican, and in July 1817, he became a founding member and first secretary of the Washington Lodge of the Freemasons in Port Gibson.¹⁸ A member of the territorial legislature, he represented Claiborne County in the Constitutional Convention convened on 15 August 1817 to form the State of Mississippi. Visible and involved, he "was one of the best legal minds in the Convention and did faithful service by his wise advice and counsel."¹⁹ The resulting constitution enshrined the intent of its founders, recent immigrants from the North and South — they had dedicated state law to creating wealth and wealth was inseparable from slavery.²⁰ As a sign of his success, about 1826, Judge Clarke built Claremont, among the first of the larger homes near Port Gibson.²¹

¹⁵ Dunbar Rowland, *The Official and Statistical Register of the State of Mississippi, 1908* (Nashville, TN: Brandon Printing Co., 1908), 171; Dunbar Rowland, ed., *Official Letter Books of W. C. C. Claiborne, 1801-1816*, Vol. 1 (Jackson MS: State Department of Archives and History, 1917), 44-45, 110-13, 131-33, 150-55, 225-27, 261-62, 268-69, 276; Dunbar Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798-1935* (Jackson, MS: State Department of Archives and History and The Mississippi Historical Society, 1935), 49; Skates, History, 69; Harmon, *Good Inheritance*, 168, 783-85.

¹⁶ Book C, p. 270, 2 May 1795, Natchez Court Records, 1781-1798 in McBee, comp., *Natchez Court Records*, 113; Stanfill, *Colvett Family*, 350-51.

¹⁷ Dunbar Rowland, *Encyclopedia of Mississippi History: Comprising Sketches of Counties, Town Events, Institutions and Persons*, 2 vols. (Madison, WI: Selwyn A. Brant, 1907), 1: 483; Claiborne, *Mississippi*, 210-17.

¹⁸ *A Committee of the Grand Lodge, Proceedings of the Grand Lodge of Mississippi, Ancient, Free and Accepted Masons, From Its Organization July 27th 5818 to Include the Communication Held in the Year 5852* (Jackson, MS: Clarion Steam Printing Establishment, 1882), 594-95.

¹⁹ Dunbar Rowland, "Mississippi's First Constitution and Its Makers," in *Publications of the Mississippi Historical Society*, Franklin L. Riley, ed., Vol. 6 (Oxford, MS: Printed for the Society, 1902), 89.

²⁰ Rowland, *Courts*, 49-50; Dunbar Rowland, *History of Mississippi: The Heart of the South*, 2 vols. (Chicago: S. J. Clarke Publishing Co., 1925), 1: 489-90, 499; Mills, "Slave Law," 164, 176; Lynch, *Bench*, 89-90, 533.

²¹ Ed Polk Douglas, ed., *Architecture in Claiborne County, Mississippi: A Selective Guide* (Jackson: Mississippi Dept. of Archives and History, 1974), 72. I thank John Geiser III, who has brought to my attention much information on Claremont and more.

Beyond politics, affairs of the soul also interested Clarke. On 17 May 1826, nine years after Mississippi's admission into the Union, clergy and lay delegates met at Trinity Church in Natchez, and together they organized an Episcopal diocese — Mississippi's first. Among the lay delegates from the state's four parishes, "probably the most distinguished was the Hon. Joshua G. Clarke, Chancellor of the State."²² The Convention formally acceded to the constitution and canons of the Protestant Episcopal Church in the United States.²³

Overview of Joshua G. Clarke's Legal Career

Turning to Clarke's legal career, Goodspeed's *Biographical and Historical Memoirs of Mississippi* describes him: "He was a lawyer of commanding ability, broad-minded, upright, skillful, and possessed the utmost confidence of his associates and the people of the state. His temper was always under control, yet was sufficiently strong to give zest and earnestness to everything he said. He possessed great learning, which he continued to improve until the time of his death."²⁴ And less panegyrically, Goodspeed's added, "Judge Clarke was not a brilliant lawyer, but was careful, well-read and solid. He was patient and amiable, and his opinions quite credible."²⁵

As an attorney, Clarke became involved with at least one of the many contentious land claims based on Spanish and French grants that bedeviled the territories of the Louisiana Purchase and crowded American courts. The case was *Winter v. United States*, which happened to become the longest lasting of these proceedings. Beginning in 1818, Commissioner of Land Claims in Louisiana investigated the Winter claims, and congressional committees later followed suit. In 1819, Clarke, acting as one of the claimants as well as their attorney, protested to the President of the United States, claiming that the Winter group had recorded their titles and had lived on the land since 1798. He further argued that a House of Representatives' select committee had reported in favor of their titles.²⁶ The case dragged on for a couple of decades after Clarke died, as one exasperated observer noted:

²² Arthur Howard Noll, "Bishop Otey as Provisional Bishop Of Mississippi," in *Publications of the Mississippi Historical Society*, ed. Franklin L. Riley, Vol. 3 (Oxford, MS: Printed for the Society, 1901), 139.

²³ "Convention of Mississippi," *The Christian Journal* 10 (Sept. 1826), 257; William Stevens Perry, *The History of the American Episcopal Church: The Organization and Progress of the American Church, 1783-1883* (Boston: James R. Osgood and Co., 1885), 213; A. A. Benton, ed., *The Church Cyclopaedia: A Dictionary of Church Doctrine, History, Organization and Ritual* (New York: James Pott & Co., 1883), 483; *Journal of the Proceedings of the Protestant Episcopal Church, in the Diocese of Mississippi held in the City of Natchez, On the 17th and 18th Days of May, A.D. 1826* (Natchez, MS: Printed by James K. Cook, at the Office of the Ariel, 1826), 3. Never a large percentage, Episcopalians and Catholics totaled only 3 percent of Mississippi's population in 1950. Mills, "Slave Law," 159.

²⁴ *Biographical and Historical Memoirs of Mississippi*, 2 Vols. (Chicago, IL: Goodspeed Publishing Co., 1891), 1: 555.

²⁵ *Ibid.*, 1: 112; Claiborne, Mississippi, 357. Also see Horace W. Fuller, ed., *The Green Bag: An Entertaining Magazine for Lawyers* 11 (Nov. 1899): 505.

²⁶ Lynn Foster, "Their Pride and Ornament: Judge Benjamin Johnson and the Federal Courts in Early Arkansas," *University of Arkansas at Little Rock Law Review* 22 (1999): 46-47; J. D. B. De Bow, *The Commercial Review of the South and West*, Vol. 5 (New Orleans: B. F. De Bow, 1848), 123-24.

The Winter claim, although supported by the influence and intrigue of the many individuals of wealth and standing in the Mississippi Territory . . . at length fell to the ground, burying in its fall, the hopes of the credulous, and the money of the avaricious. Congress persisted in rejecting the claim as unfounded and fraudulent; and those who took an interest in sustaining the pretensions of the claim, as their only recompense, shared the loss and disappointment.²⁷

Despite his lack of success in this case, Clarke soon moved higher in the legal profession. On 21 January 1818, Mississippi's General Assembly elected judges to fill district benches for the Supreme Court. For the first district, William Bayard Shields defeated Clarke by a vote of twenty-one to eleven. The court's personnel, however, changed even before the first session in June 1818, when Shields resigned to accept appointment as Mississippi's first federal district judge. Joshua G. Clarke replaced him and served on the Supreme Court until 1821.²⁸

In November of that year, the General Assembly created the Superior Court of the Chancery. Clarke resigned from the Supreme Court and legislators chose him as the state's first Chancellor, "where he presided for years with signal ability, purity of character and dignity."²⁹ Another observer equally praised him as a lawyer and man of,

sterling qualities. He possessed in a high degree that placid temper and amiable patience which comport so compatibly with the requisite character of a good chancellor and just judge; and it is to be regretted that his decisions have not been preserved. His learning and integrity first directed our system of equity jurisprudence into those channels through which it has flowed with increasing volume and utility. His career upon the supreme bench, though short, gave eminence to his judicial character. His opinions are marked with learning, dignity, and force; and had he lived longer his usefulness would have, no doubt, increased with his years.³⁰

Some have credited the high character Mississippi judicial decisions in the nineteenth century largely to Judge Clarke.³¹

²⁷ De Bow, *Commercial Review*, 127.

²⁸ Skates, *History*, 4-5; Rowland, *Official and Statistical Register, 1908*, 26, 33, 40, 1161; Rowland, *Courts*, 77.

²⁹ Mills, "Slave Law," 176; Skates, *History*, 6; Robert Lowry and William H. McCardle, *A History of Mississippi: From the Discovery of the Great River by Hernando De Soto Including the Earliest Settlement Made by the French, Under Iberville, to The Death of Jefferson Davis* (Jackson, MS: R. H. Henry & Co., 1891), 240; Rowland, *Courts*, 248; Rowland, *History of Mississippi*, 1: 489-90, 499.

³⁰ Lynch, *Bench*, 90.

³¹ *Biographical and Historical Memoirs*, 1: 555.

Joshua G. Clarke's Supreme Court Decisions

Before 1825, Mississippi's justices delivered most of their decisions orally, and only a single, written volume contains all the court's decisions from the June 1818 term to the court's last term in 1832. Scholars have approached Clarke's two known decisions — *Harry v. Decker* and *State v. Jones* — from different perspectives. Mississippi's post-Civil War historians wrote idolatrous paeans to their state, its judiciary, and to Clarke. Legal historians have shown an interest³² as well as have scholars in cultural and social history.³³ Others have found meaning in their rhetorical and oratorical form.³⁴ Even one writer on psychiatry has looked into their implications.³⁵

Mississippi's early high court often struggled to bring some civility and humanity to the institution of slavery — one author assures us.³⁶ Individual justices time and again made statements of kindness and concern for a people in bondage and acted with political courage as they struggled to fashion some justice within a culture founded on bondage. In words echoed in *Scott*, Clarke wrote forcefully in *Harry v. Decker*, "Slavery is condemned by reason and the laws of nature. It exists and can only exist, through municipal regulations, and in matters of doubt, is it not an unquestioned rule, that courts must lean 'in favorem vitae et libertatis.'"³⁷ Especially in the early days when Mississippi's statutes were sparse, judges often had to assess the facts of cases in the context of personal recollection and intuition. Fitting this mold in reaching his decisions, Clarke likely relied on his experiences in Pennsylvania and at Claremont and maxims of equity seemingly suited his nature, despite his economic activity as a slave holder. In fact, the high point of antebellum Mississippi judicial sentiments supporting human dignity within the system of chattel slavery "was clothed in the robe of one Joshua G. Clarke."³⁸ Another scholar, however, has lamented, "The moral philosophy expressed in . . . [Clarke's] opinion on the institution of slavery was only a romantic historical error of 1818, antagonistic to the forces at work in the state which were eventually to venerate slavery as one of the noblest inventions of man and consign [his decisions] . . . to oblivion."³⁹ In fact, the precedents provided in Clarke's two

³² See, e.g., Andrew Fede, *People Without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U.S. South* (New York: Garland Publisher, 1992), esp. 73-75; Finkelman, *Law of Freedom*, esp. see 169-71, 247-50; and Mills, "Slave Law," esp. 176-80, 234.

³³ See, e.g., Colin Dayan and Joan Dayan, *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, NJ: Princeton University Press, 2011), 54-55 and Davis, *Games*, 30, 83.

³⁴ William E. Wiethoff, *A Peculiar Humanism: The Judicial Advocacy of Slavery in High Courts of the Old South, 1820-1850* (Athens: The University of Georgia Press, 1996).

³⁵ Szasz, *Liberation*.

³⁶ Mills, "Slave Law," 176.

³⁷ Walker, *Reports*, 42.

³⁸ *Ibid.*; Wiethoff, *A Peculiar Humanism*, 68; Lynch, *Bench*, 89.

³⁹ Meredith Lang, *Defender of the Faith: The High Court of Mississippi, 1817-1875* (Jackson: University Press of Mississippi, 1977), 78; Mills, "Slave Law," 180.

significant decisions, in the end, fell to the economic, political, and social interests of Mississippi's slave owners.⁴⁰

Joshua Clarke died on 22 July 1828 in Natchez after an illness of seven days.⁴¹ Apparently Mississippians did not hold Clarke's tenure on the Supreme Court against him. They celebrated his life and contributions to the state by naming Clarke County, formed in 1833, after him.⁴² Over the next five generations, many of his descendants followed his example and became successful and respected attorneys and judges.

Conclusion

One legal writer has noted, "Clarke establishes that men of good will and fair minds can speak the truth, even in the worst of times. He refused to hide behind the accepted states' rights argument of his times. *Harry v. Decker* is one of the few decisions of record in antebellum Mississippi appellate case law where the apparent solicitude of the justices cannot be explained in terms of economics or fear."⁴³ Another, writing during the racial turmoil of the late 1960s and thinking of Clarke, drew a stark comparison: "It is not at all obvious that mid-twentieth-century Southern judges are as convinced of the humanity of the Negro as were their forebears in an age of slavery."⁴⁴ Andrew Fede has modified his earlier opinions, and now comfortably describes Clarke's decisions in *Decker* and *Jones* as "against the grain."⁴⁵

As for questions on Clarke's relations with his in-laws, there are few documents that allow confidence even in tentative appraisals. Joseph Calvit's brother, Thomas, named his son as his sole executor in his last will and testament in 1818, but he added Joshua Clarke to that position in his will of 1821.⁴⁶ Relations could not have been too strained, and even though the will involved the disposition of several slaves, Joshua had no problem acting as its executor.

Another bit of suggestive evidence regards one of his sons, Joseph Calvitt Clarke, who in 1821 and "still wearing Knee breeches,"⁴⁷ went for his education to Morristown, New Jersey, where slavery, although legal was in demographic decline. With two others, Joseph Calvitt Clarke later became a proprietor, publisher, and editor of New Orleans' most important business newspaper, the *Commercial Bulletin*. Although the editors were fervent anti-abolitionists, an editorial written

⁴⁰ Clarke, "What Passes as a Liberal," <http://users.ju.edu/jclarke/jgclarke.htm>.

⁴¹ *Baltimore Patriot*, Aug. 26, 1828.

⁴² Lowry and McCardle, *History of Mississippi*, 460-61.

⁴³ Mills, "Slave Law," 234.

⁴⁴ A. E. Keir Nash, "A More Equitable Past: Southern Supreme Courts and the Protection of the Ante Bellum Negro," *North Carolina Law Review* 48 (1969-70): 198-99, quote, 199.

⁴⁵ Fede, "Judging Against the Grain?" in this volume. In this paper, he delves deeply into the legal complexities of Clarke's two known decisions.

⁴⁶ Mary Louise Flowers Hendrix, *Mississippi Court Records from the Files of the High Court of Errors and Appeals, 1799-1859* (Greenville, SC: Southern Historical Press, 1999), 276-79.

⁴⁷ P. L. Rainwater, "The Autobiography of Benjamin Grubb Humphreys," *The Mississippi Valley Historical Review* (1934): 236.

in 1839 celebrated a meeting of the Colonization Society, a group dedicated to repatriating American blacks to Africa: “The cause is evidently gaining ground in Louisiana, and throughout the south generally. Our statesmen begin to regard this association as our only hope of escape from that which must be esteemed a great political and social evil. . . .” Rejoicing at the rapidly growing number of “advocates and promoters of their measures,” the editors longed for the day, soon to come, when “the cause is destined to become deservedly popular.” But they then reigned in their dreams. “Whether it will ever be effectual for the entire eradication of the evil it was designed to counteract, is not the question we care to ask, so much as whether it may not be the means of accomplishing important results, both in regard to the amelioration of our domestic institutions, and the civilization of Africa. That it may be made to answer such end, appears to us sufficiently evident.”⁴⁸

Adding weight to this editorial opinion that slavery was an “evil,” Joseph Calvitt Clarke was a lay preacher in the Methodist Episcopal Church. In fact, his obituary noted that he was “largely instrumental in originating and sustaining a church among the slaves of the city that now number a thousand members!”⁴⁹ Had Joseph learned the attitudes at his father’s knee? Certainly, the father’s words echoed in the son’s life.

Many questions remain. According to Mississippi’s state censuses for 1810 and 1816, Joshua Clarke’s household included six slaves.⁵⁰ It would have been, after all, impossible to run a home as large and as socially connected as his without such labor. How did the judge reconcile his life as a slave master with his Supreme Court decisions? Presumably he took solace that positive law permitted slavery even if natural law did not. At best, this seems a morally ambiguous solution.

Other questions arise. For example, in the *Scott* decision, no one knows who the murderer was. If he was a lower-class white, some might argue that Clarke’s decision in *State v. Jones* was merely a class-interested means to protect the property of the rich from depredations by the envious poor. Such a claim, however, is at odds with the sentiments expressed in *Harry v. Decker*.⁵¹ While, obviously, economics always play a significant role in explaining human behavior, many often and knowingly act against their economic interests for the sake of other values.

While granting the possibility of multiple and even conflicting motives, Clarke must have had a genuine concern for the humanity of slaves. He could have supported the motion for arrest of judgment in *Jones*. He did not have to appeal to natural law, as he did in both *Decker* and *Jones*. In his complicity elsewhere with the slave-owning class in Mississippi, we can charge Clarke with inconsistency

⁴⁸ *Commercial Bulletin*, 17 Jan. 1839.

⁴⁹ *Ibid.*, 4 Dec. 4, 1854; *Times-Picayune*, 27 May 1840.

⁵⁰ Mississippi State and Territorial Census Collection, 1792-1866, accessed through the Ancestry.com on-line database at <http://search.ancestry.com/search/category.aspx?cat=35> on 27 July 2012.

⁵¹ For an extended discussion of those “sentiments,” see Clarke, “What Passes,” at <http://users.ju.edu/jclarke/jclarke.htm>.

and even hypocrisy. But hypocrisy is the homage we pay to virtue as we struggle to free our better angels.

Judging Against the Grain? Reading Mississippi Supreme Court Judge Joshua G. Clarke's Views on Slavery Law in Context

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Mississippi Supreme Court Judge Joshua G. Clarke's 1821 opinion in *State v. Jones* asked: "Has the slave no rights, because he is deprived of his freedom?"¹ Clarke answered that the slave "is still a human being, and possess all of those rights, of which he is not deprived by the positive provisions of law," contained in the statutes adopted by Mississippi's "enlightened and philanthropic legislature. . . ."²

Slaves indeed were human beings, but they were by law defined as property.³ South Carolina Judge David L. Wardlaw summarized the prevailing antebellum Southern jurisprudence when he wrote, "a slave can invoke neither the *magna charta* [sic] nor common law. . . . In the very nature of things, [the slave] is subject to despotism. Law as to him is only a compact between his rulers, and the questions which concern him are matters agitated between them."⁴

It is not clear whether Clarke in other cases consistently would have enforced all of the common law rights not denied to slaves by statute law. *Jones* was Clarke's only published slavery law opinion, although he probably also wrote the opinion in *Harry v. Decker & Hopkins*.⁵ Unlike South Carolina jurist John B. O'Neall, Clarke did not publish slavery law reform proposals.⁶

¹ Miss. (Walker) 83 (1821).

² *Ibid.*, 84. Clarke defined "positive law" to include statutes, as did other antebellum judges. See John V. Orth, "When Analogy Fails: The Common Law & *State v. Mann*," *North Carolina Law Review* 87, no. 3 (March 2009): 980, n. 9.

³ See Andrew Fede, *Roadblocks to Freedom: Slavery and Manumission in the United States South* (New Orleans: Quid Pro Books, 2011), iii-iv; Andrew Fede, *People Without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U.S. South* (New York: Garland Publishing, Inc., 1992), 3, and the reprint edition (New York: Routledge, 2011). In *People Without Rights*, I advanced an interpretation outlined in Andrew Fede, "Toward a Solution of the Slave Law Dilemma: A Critique of Tushnet's 'The American Law of Slavery,'" *Law & History Review* 2, no. 2 (1984); see also Andrew T. Fede, "Gender in the Law of Slavery in the Antebellum United States," *Cardozo Law Review* 18, no. 2 (November 1996); Andrew Fede, "Legal Protection for Slave Buyers in the U.S. South: A Caveat Concerning *Caveat Emptor*," *American Journal of Legal History* 31, no. 4 (October 1987); Andrew Fede, "Legitimized Violent Slave Abuse in the American South, 1619-1865: A Case Study of Law and Social Change in Six Southern States," *American Journal of Legal History* 29, no. 2 (April 1985). I will refer to Southern law to include in the colonial period the six colonies south of Pennsylvania, and in the antebellum period the fifteen states that had not by the Civil War taken steps to abolish slavery. See Paul Finkelman, "Exploring Southern Legal History," *North Carolina Law Review* 64, no. 1 (November 1985), 85-87.

⁴ See *Ex parte Boylston*, 33 S.C.L. (2 Strob.) 41, 43 (1847).

⁵ 1 Miss. (Walker) 36 (1818). These opinions were not officially published until 1832. John Ray Skates, Jr., *A History of the Mississippi Supreme Court, 1817-1948* (Jackson: Mississippi Bar Foundation, Inc., 1973), 5.

⁶ See John Belton O'Neall, *Negro Law of South Carolina Collected and Digested by John Belton O'Neall* (Columbia: John G. Bowman, 1848) in Paul Finkelman, ed., *Statutes on Slavery: The Pamphlet Literature* (New York: Garland Publishing, Inc., 1988), 2:117-72; see also on O'Neall, Fede, *Roadblocks to Freedom*, 372-73.

This article will briefly discuss Clarke's biography, and will then analyze how the *Jones* and *Decker* opinions were inconsistent with both the evolving antebellum Southern common law of slavery and the overtly racist pro-slavery ideology that influenced this law. The article's conclusion will note how some historians have been misled by reading Clarke's views as if they were typical.⁷

We know little about Clarke, although a Mississippi county is named for him.⁸ He moved from Pennsylvania, a state that adopted a gradual emancipation law, to the Mississippi Territory, where slavery was permitted. This territory, which the United States Congress created in 1798, originally included the land that later became the states of Mississippi and Alabama.⁹

Clarke was among the Northern lawyers who moved to the Territory soon after it was created. The law was the "liveliest profession," and "a quick way to fame and fortune was the bar." Legal business "generally proved brisk[,] involving "many conflicting land claims, and the Mississippi frontiersman's appetites for lawsuits." The "aim of many lawyers . . . was a cotton plantation; hence many of the ablest members of the bar became, eventually, planter-attorney-politicians."¹⁰

Clarke achieved these ends. It is not known when he moved to the Mississippi Territory, but by 1804 he was a practicing lawyer there. He married Patsey Calvit in 1807. Calvit family members became plantation owners and slaveholders.¹¹ Clarke also served in the Mississippi territorial legislature, and he was a member of the convention that, in August 1817, ratified Mississippi's first constitution.¹² Clarke thus supported a constitution that has been called "the least democratic of . . . any state admitted after the War of 1812."¹³ It guaranteed rights of liberty

⁷See, e.g., Fede, *Roadblocks to Freedom*, 111-14.

⁸J. Calvitt Clarke, III, "The Life of Joshua G. Clarke: Mississippi's First Chancellor," paper presented at the Annual Meeting of the Florida Conference of Historians, Lake City Florida, February 24, 2012:1; see Dunbar Rowland, "Clarke County," in *Mississippi: Comprising Sketches of Counties, Towns, Events, Institutions, and Persons in Cyclopedic Form* (Atlanta: Southern Historical Publishing, Inc., 1907), 1:442.

⁹Clarke, "The Life of Joshua G. Clarke," 1-2; see John Ray Skates, *Mississippi: A Bicentennial History* (New York: W.W. Norton & Company, Inc., 1979), 54-55; Edgar J. McManus, *Black Bondage in the North* (Syracuse: Syracuse University Press, 1973), 160-61; Michael H. Hoffheimer, et al., "Pre-1900 Mississippi Legal Authority," *Mississippi Law Journal* 73 (Fall 2003): 198; Michael H. Hoffheimer, "Mississippi Courts: 1790-1868," *Mississippi Law Journal* 65 (Fall 1995): 102-06.

¹⁰Skates *Mississippi History*, 72; see Robert V. Haynes, *The Mississippi Territory and the Southwest Frontier, 1795-1817* (Lexington: University Press of Kentucky, 2010), 136-37; Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000), 22-30; Clarke, "The Life of Joshua G. Clarke," 6-8.

¹¹See Clarke, "The Life of Joshua G. Clarke," 2-3; *Grand Gulf Railroad & Banking Company v. Bryan*, 16 Miss. (8 S. & M.) 234, 271 (Err. & App. 1847).

¹²See Skates, *History of the Mississippi Supreme Court*, 4-5, 69; James D. Lynch, *The Bench and Bar of Mississippi* (New York: E.J. Hale & Son, 1881), 89-90; Sylvester John Hemleben & Richard T. Bennett, "Beginnings of the Legal Profession in Mississippi," *Mississippi Law Journal* 36 (1965): 159; Clarke, "The Life of Joshua G. Clarke," 4; see also, on the 1817 constitutional convention, Haynes, *Mississippi Territory*, 333-346; John W. Winkle, *The Mississippi Constitution: A Reference Guide* (Westport, Ct.: Greenwood Press, 1993), 2-5.

¹³Michael P. Mills, "Slave Law in Mississippi from 1817-1861: Constitutions, Codes, and Cases," *Mississippi Law Journal* 71 (Fall 2001): 164, quoting James W. Loewen and Charles Sallis, *Mississippi: Conflict and Change* (New York: Pantheon Books, 1974), 66; see also Haynes, *Mississippi Territory*, 346; Winkle, *Mississippi Constitution*, 2. The convention delegates approved the constitution 45 to 1. Haynes, *Mississippi Territory*, 344. "Historians attribute the lone dissent to Cato West, a former secretary of the territory who disapproved of several features of the proposed constitution." Winkle, *Mississippi Constitution*, 2; see Haynes, *Mississippi Territory*, 344.

and freedom to “all freemen.” But it also required that electors be qualified “free, white males,” it established property or wealth requirements for legislators and the governor, and it explicitly legitimized slavery.¹⁴

Clarke’s judicial career started on the Mississippi Supreme Court, beginning with the Court’s first term in June 1818. The state legislature elected the Court’s four judges who also were Superior Court judges who rode circuit as trial judges in one of four districts or circuits.¹⁵

Clarke resigned his Supreme Court seat to become Mississippi’s first chancellor. A chancellor is a judge who heads the chancery courts. These courts generally hear certain types of cases, such as those involving mortgage foreclosures, usually without juries. They apply principles of equity and order relief, such as injunctions, which may differ from the common law’s rules and remedies. The legislature in November 1821 created the chancery court and then selected Clarke to serve as chancellor, a position that he held until he died in July 1828.¹⁶

During Clarke’s first term on the Supreme Court, in *Harry v. Decker & Hopkins*, that Court affirmed a freedom verdict in favor of three plaintiffs. The opinion does not state the names of two of the plaintiffs. The defendants are identified by last name only.¹⁷ One of the defendants apparently was Luke Decker, a son of John Decker, or another Decker family member. Hopkins’s identity is unknown.¹⁸

The court stated that the facts “are not controverted[.]” The plaintiffs were enslaved in Virginia until 1784, when John Decker took them to “the neighborhood of Vincennes[.]” That area is in the western portion of what later became the State of Indiana where, after 1787, slavery was prohibited by the Northwest Ordinance. The plaintiffs remained there until July 1816, when they were moved to Mississippi, where slavery was permitted.¹⁹

¹⁴ See George Poindexter, ed., *The Revised Code of the Laws of Mississippi* (Natchez: Francis Baker, 1824), 540, 543-47, 554.

¹⁵ Poindexter, *Code of Mississippi*, 540, 543-47, 550-51; see Hoffheimer, “Mississippi Courts,” 116-24. Clarke served with John Taylor, John P. Hampton, and Powhatan Ellis until 1821, when Taylor was replaced with Walter Leake, Bela Metcalfe, and then Louis Winston. See Skates, *History of Mississippi Supreme Court*, 1-5, 10; Rowland, “Supreme Court – 1817-32,” in *Mississippi Sketches*, 2:755-56; Mills, “Slave Law in Mississippi,” 178. For descriptions of court weeks in the antebellum Mississippi, see Gross, *Double Character*, 22-46; Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana: University of Illinois Press, 1998), 6-36; Ariela Gross, “The Law and the Culture of Slavery: Natchez, Mississippi,” in Christopher Waldrep and Donald G. Nieman, eds., *Local Matters: Race, Crime, and Justice in the Nineteenth Century South* (Athens: University of Georgia Press, 2001), 92-124.

¹⁶ See Skates, *History of Mississippi Supreme Court*, 5-6, 69; Rowland, “Chancery Court – 1821-56,” in *Mississippi Sketches*, 1:392-93; Lynch, *Bench and Bar*, 90; Kate Margolis, “A Brief History of Mississippi’s Chancery Court,” (2012), accessed July 14, 2012, <http://www.caba.ms/feature3.html>; see also “An act, to establish a court of chancery in this state, and to prescribe the rules of proceeding therein,” in Poindexter, *Code of Mississippi*, 84-100; Hoffheimer, “Mississippi Courts: 1790-1868,” 125-26.

¹⁷ In many Southern slave law decisions the enslaved person “the most important person in the case isn’t identified in the caption[.]” or “isn’t named at all[.]” See Diane J. Klein, “Naming and Framing the ‘Subject’ of Antebellum Slave Contracts: Introducing Julia, ‘A Certain Negro Slave,’ ‘A Man,’ Joseph, Eliza, and Albert,” *Rutgers Race & Law Review* 9, no. 2 (2008): 244.

¹⁸ See Merrily Pierce, “Luke Decker and Slavery: His Cases with Bob and Anthony, 1817-1822,” *Indiana Magazine of History* 85, no. 1 (March 1989): 38.

¹⁹ See *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 36.

Decker and Hopkins moved these slaves to Mississippi most likely because the Indiana constitution prohibiting slavery was ratified on 29 June 1816.²⁰ Luke Decker was one of Indiana's pro-slavery partisans who sought to retain his indentured servants and slaves even after the 1816 constitution went into effect. He was served in Indiana with writs of *habeas corpus* seeking freedom for Anthony, a slave, and Bob, an indentured servant. Anthony and Bob escaped from Luke's control in July 1816, and sued for their freedom in a Quaker dominated anti-slavery area in Orange County, Indiana.²¹

The Mississippi *Decker* case apparently was filed under the 20 July 1805 Mississippi territorial act that required slaves claiming their freedom to file petitions "in the county or circuit court of the county" in which their masters resided.²² An amended 19 December 1815 version of this statute vested jurisdiction in "the superior courts of law and equity alone[.]"²³

The case came before the new state's Supreme Court on a motion for a new trial after a trial was held apparently in one of these territorial courts. A jury verdict favored the plaintiffs. The Supreme Court overruled the defendants' new trial motion. The opinion's author begins with this cryptic statement disagreeing with the trial court's decision: "Without making points, upon which the court below have unanimously agreed, but touching them incidentally, I shall confine myself, to such as have occasioned a difference of opinion."²⁴ The plural reference to the trial judges is consistent with the statutes providing that trials in the later territorial period were presided over by justices of the peace in panels of three or by superior court judges who sat in panels of one or more.²⁵

The passage above also implies that the opinion explains only in part why the plaintiffs prevailed. It appears that the plaintiffs' lawyers argued that the plaintiffs were freed by operation of the laws that were in effect in Indiana after 1784—the 1787 Northwest Ordinance and Indiana's 1816 constitution. The opinion's unstated assumptions were that if the plaintiffs lived on free soil from 1787 to

²⁰ See Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: The University of North Carolina Press, 1981), 228.

²¹ See Pierce, "Luke Decker," 31-32, 39-47. On slavery in the Northwest Territory, including Indiana, after 1787 and even after 1816, see, e.g., Christopher P. Lehman, *Slavery in the Upper Mississippi Valley, 1787-1865: A History of Human Bondage in Illinois, Iowa, Minnesota and Wisconsin* (Jefferson, North Carolina: McFarland & Company, 2011), 28-30; James H. Madison, "Race, Law, and the Burdens of Indiana History," in *The History of Indiana Law* David J. Bodenhamer and Hon. Randall T. Shepard, eds. (Athens, Ohio: Ohio University Press, 2006), 38-42; George T. Patton, Jr., "Political Pragmatism and Common Sense, Leading Cases in the Indiana Supreme Court," *Ibid.*, 326-29; Paul Finkelman, "Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9, no. 1 (Spring 1989): 22-40; Pierce, "Luke Decker," 32-39, 47-49.

²² See "An Act to Prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes," in Harry Toulmin, ed., *A Digest of the Laws of the State of Alabama: Containing the Statutes and Resolutions in Force at the End of the General Assembly in January, 1823* (Catawba: Ginn & Curtis, 1823), §2, 632.

²³ "An Act to amend the Act, entitled 'An Act to Prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes,'" in Toulmin, *Digest of the Laws of Alabama*, §1, 636.

²⁴ See *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 36.

²⁵ See Hoffheimer, "Mississippi Courts: 1790-1868," 113-16.

1816, they were free when they were brought to Mississippi, and that slavery could not reattach to them.

The opinion recited “a short history” of Indiana’s governments. The land was “subject to and claimed by France” until 1763, when it was ceded to Great Britain. It was later “conquered by the arms of Virginia” during the American Revolution. Virginia ceded the land to the United States, and the Congress accepted it in 1784.²⁶ The cession stated “[t]hat the French and Canadian inhabitants and other settlers” of the area of Vincennes “who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed, and be protected in the enjoyment of their rights and liberties.”²⁷

The court first enforced Article VI of the 1787 Northwest Ordinance, which stated: “There shall be neither slavery nor involuntary servitude” in the territory, except as punishment after a person was “duly convicted” for committing a crime.²⁸ The court held that Decker thus could not legally enslave the plaintiffs in the territory after 1787. It rejected the defendants’ argument that the Northwest Ordinance’s slavery prohibition applied only to slaves imported into the territory after the Ordinance became effective.²⁹

The court also enforced Indiana’s 1816 constitution’s anti-slavery provisions.³⁰ The first article, Section 1, declared: “That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which, are the enjoying and defending of life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.”³¹ The court primarily relied on Article 11, Section 7, which stated: “There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made, and executed out of the bounds of the state be of any validity within the state.”³²

²⁶ See *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 36-43.

²⁷ *Ibid.*, 37; see, on the Virginia cession, Charles Kettleborough, ed., *Constitution Making in Indiana: A Source Book of Constitutional Documents with Historical Introduction and Critical Notes* (Indianapolis: Indiana Historical Commission, 1916), 1:3-14; Peter Onuf, “Toward Federalism: Virginia, Congress, and the Western Lands,” *William and Mary Quarterly* 3rd series, 34, no. 3 (July 1977); Merrill Jensen, “The Cession of the Old Northwest,” *Mississippi Valley Historical Review* 23, no. 1 (June 1936).

²⁸ See “An Ordinance for the Government of the Territory of the United States Northwest of the river Ohio,” in *The Public Statutes at Large of the United States of America* Richard Peters, ed. (Boston: Charles C. Little and James Brown, 1845), 1:53, n. a. Slaves escaping from “any one of the original States” could be “lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.” *Ibid.*

²⁹ *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 37-40. For the Northwest Ordinance, article VI, see Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* 2nd ed. (Armonk: M. E. Sharpe, Inc., 2001), 32-80; Finkelman, *Imperfect Union*, 83-84; Robert C. Schwemm, “*Strader v. Graham*: Kentucky’s Contribution to National Slavery Litigation and the Dred Scott Decision,” *Kentucky Law Journal* 97 (2009): 356-57; Paul Finkelman, “Slavery and the Northwest Ordinance: A Study in Ambiguity,” *Journal of the Early Republic* 6, no. 4 (Winter 1986).

³⁰ *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 40-42.

³¹ Kettleborough, *Constitution Making in Indiana*, 1:84.

³² Kettleborough, *Constitution Making in Indiana*, 117; Finkelman, *Imperfect Union*, 93; John Codman Hurd, *The Law of Freedom and Bondage in the United States* reprint ed. (Boston: Little, Brown & Company, 1968) (1862), 2:127.

The court sustained these provisions by analogy to the first emancipations in the New England states, Pennsylvania, New Jersey, and New York.³³ This constitution, the court held, did not violate the treaty of cession between Virginia and the United States.³⁴ Apparently referring to John Decker, the court held that “old Decker’s” vested rights as a pre-1787 slaveholder would not prevail over the Indiana constitution’s terms prohibiting slavery.³⁵

The court also resolved any doubts on this constitutional issue in favor of liberty: “Slavery is condemned by reason and the laws of all nature. It exists and can only exist, through municipal regulations, and in matters of doubt, is it not an unquestionable rule, that courts must lean ‘in favorem vitae et libertatis [in favor of life and freedom].’” The court weighed property rights against freedom claims “in favor of liberty.”³⁶

The *Decker* opinion is remarkable for several reasons. It applied Chief Justice Lord Mansfield’s 1772 opinion in *Somerset v. Stewart*.³⁷ Mansfield stated that slavery “is incapable of being introduced on any reasons, moral or political; but only [by] positive law[.]”³⁸ The courts in the free states adopted a broad reading of *Somerset*’s preference for liberty.³⁹ Indiana’s Supreme Court in 1820 interpreted that state’s constitution consistent with the *Decker* opinion.⁴⁰ And the Illinois Supreme Court in 1845 adopted the *Decker* court’s reading of the Northwest Ordinance.⁴¹

But the Southern courts applied a slavery presumption in freedom suits when the freedom claimants appeared to be black.⁴² And the Southern courts, except for those in Louisiana, at first sustained freedom claims in travel cases like *Decker* only if

³³ *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 41. The opinion also states in error that Delaware abolished slavery. *Ibid.*; see Patience Essah, *A House Divided: Slavery and Emancipation in Delaware, 1638-1865* (Charlottesville: University of Virginia Press, 1996), 1-8, 37-39, 58-74, 161-79.

³⁴ *Harry v. Decker & Hopkins*, 1 Miss. (Walker), 41-42.

³⁵ *Ibid.*, 42.

³⁶ *Ibid.*, 42-43.

³⁷ Lofft 1, 98 Eng. Rep. 499, 20 How. St. T. 1 (K.B. 1772).

³⁸ See *Somerset v. Stewart*, Lofft, 19. On *Somerset*, see Fede, *Roadblocks to Freedom*, 153, 289-92.

³⁹ See Fede, *Roadblocks to Freedom*, 293-94.

⁴⁰ See *State v. Lasselle*, 1 Blackf. 60, 61-63 (Ind. 1820); see also Finkelman, *Imperfect Union*, 93, 228-29; Sandra Boyd Williams, “The Indiana Supreme Court and the Struggle Against Slavery,” *Indiana Law Review* 30, no. 1 (1997): 305-07.

⁴¹ See *Jarrot v. Jarrot*, 7 Ill. (2 Gilm.) 1 (1845), reversing a judgment against the freedom claimant. Four of the Justices in the majority wrote opinions. Justices Walter B. Scates wrote the “Opinion of the Court,” which apparently was joined by Justices Samuel D. Lockwood and Thomas C. Browne. Scates approved of the *Decker* decision’s reading of the Northwest Ordinance, as did Justice Richard M. Young in a “separate opinion.” Justice William C. Wilson based his two sentence opinion on the Illinois state constitution only. Justice John D. Caton’s one sentence opinion does not explain why he voted with the majority. The three dissenters did not offer an opinion. See *Ibid.*; see also N. Dwight Harris, *The History of Negro Servitude in Illinois and of the Slavery Agitation in that State, 1719-1864* (Chicago: A.C. McClung & Co., 1904), 116-18; Finkelman, *Imperfect Union*, 150-51; Newton N. Newhouse, “Judicial Decision Making and the End of Slavery in Illinois,” *Journal of the Illinois State Historical Society* 98, no.1-2 (Spring-Summer 2005): 17-21; Finkelman, “Evading the Ordinance,” 41-51.

⁴² See Fede, *Roadblocks to Freedom*, 247-85. The Mississippi courts applied the presumption of slavery for blacks. See *Sam v. Fore*, 20 Miss. (12 S. & M.) 413, 416 (Err. & App. 1849); *Thornton v. Demoss*, 13 Miss. (5 S. & M.) 609, 618 (Err. & App. 1846); see also *Heirn v. Bridault*, 37 Miss. 209, 231 (Err. & App. 1859) (“A negro, by the laws of this state, is prima facie a slave.”), citing *Coon v. State*, 21 Miss. (13 S. & M.) 246, 249 (Err. & App. 1849); *Randal v. State*, 12 Miss. (4 S. & M.) 349, 351 (Err. & App. 1845).

they believed that the masters intended to free their slaves by taking up permanent residence on free soil or by stating their intention to liberate their slaves.⁴³ But later decisions, and a Louisiana statute, disregarded or invalidated even clear proof of the masters' intent to free their slaves.⁴⁴ South Carolina Chief Justice John B. O'Neall, who resisted the anti-manumission trend, nevertheless wrote that *Somerset* "carries the law further than I should willingly acknowledge[.]"⁴⁵ The Missouri Supreme Court, which before 1852 sustained freedom claims in cases similar to *Decker*, applied the *Decker* approach only to slaves born after the adoption of the Northwest Ordinance.⁴⁶

The Southern antebellum courts also applied the ruling in an 1827 British case known as *The Slave Grace*.⁴⁷ That decision permitted slavery to reattach to slaves when they were brought from free soil back to slave states or colonies.⁴⁸

The *Decker* decision also was inconsistent with Mississippi statutes disfavoring manumission and freedom suits. Beginning with an 1805 territorial act, these manumission statutes required that the legislature adopt special laws approving all manumissions. In 1842, the Mississippi legislators prohibited all in-state manumissions. And in 1857, they prohibited all manumissions, even if the slaves were to be freed outside of Mississippi.⁴⁹

Moreover, the Mississippi legislators in 1822 reenacted the 1805 territorial freedom suit statute.⁵⁰ But the legislature added two new sections that appear to have been intended to discourage these suits. First, they provided that those who aided and abetted slaves in filing unsuccessful freedom petitions were to be liable

⁴³ See Fede, *Roadblocks to Freedom*, 294-337; Thomas R.R. Cobb, *An Inquiry Into the Law of Negro Slavery in the United States of America*, reprint ed. (Athens: University of Georgia Press, 1999) (1858), 127-37. For Cobb's critique of *Somerset*, see *Ibid.*, 163-81.

⁴⁴ See Fede, *Roadblocks to Freedom*, 308-25, 371-78.

⁴⁵ *Guillemette v. Harper*, 38 S.C.L. (4 Rich.) 186, 1850 WL 2766 at *3 (1850).

⁴⁶ See *Theoteste (alias Catiche) v. Chouteau*, 2 Mo. 144 (1829)(affirming judgment for defendant slave owner, slave claimant was born in 1782 in Northwest territory area that became a part of Illinois); *Merry v. Tiffin and Menard*, 1 Mo. 725 (1827)(reversing judgment for defendant slave owner, slave claimant was born after 1787 in Northwest territory area that became a part of Illinois); see also Fede, *Roadblocks to Freedom*, 308-14; Harriet C. Frazier, *Runaway and Freed Missouri Slaves and Those Who Helped Them*, 1763-1865 (Jefferson, N.C.: McFarland, 2004), 42-61; Finkelman, *Imperfect Union*, 218; Helen T. Catterall, *Judicial Cases Concerning American Slavery and the Negro*, reprint ed. (New York: Negro Universities Press, 1968) (1926-1937), 5:110, 135.

⁴⁷ 2 Hagg. Adm. 94 (1827).

⁴⁸ See Fede, *Roadblocks to Freedom*, 292-337.

⁴⁹ See William Lewis Sharkey, et al. eds., *Revised Code of the Statute Laws of the State of Mississippi* (Jackson: E. Barksdale, State Printer, 1857), ch. 33, art. 9, 236; A. Hutchinson, ed., *Code of Mississippi from 1798 to 1848* (Jackson: Price and Fall, State Printers, 1848), 523, 533, 537-40; "An Act to Prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes," in Toulmin, *Digest of the Laws of Alabama*, §1, 632; see generally Fede, *Roadblocks to Freedom*, 98-99, 104-05; Charles Sackett Sydnor, *Slavery in Mississippi* reprint ed. (Gloucester: Peter Smith, 1965)(1933), 216-17; Hurd, *Freedom & Bondage*, 2:149; Charles S. Sydnor, "The Free Negro in Mississippi Before the Civil War," *American Historical Review* 32, no. 4 (July 1927): 773-74, 780. For the manumission statutes in other states, see Fede, *Roadblocks to Freedom*, 87-138.

⁵⁰ See "An act to reduce into one, the several acts, concerning slaves, free negroes and mulattoes," in Poindexter, *Mississippi Code*, §76, 386. This was the only remedy available to Mississippi slaves claiming their freedom. *Sam v. Fore*, 20 Miss. (12 S. & M.), 415. Mississippi statutes permitted a slave owner to use the writ of *habeas corpus* to recover possession of a slave who was "taken or seduced out of the possession of the master, owner, or overseer of such slave, by force, stratagem, or fraud, and [was] unlawfully detained in the possession of any other person." Sharkey, *Revised Mississippi Code*, ch. 48, art. 18, 368; Hutchinson, *Code of Mississippi*, Chapter 65, §19, 1002-03; see Waldrep, *Roots of Disorder*, 48.

to the owners for a \$100 fine for each slave and for the slaves' owners' damages. Second, they prohibited anyone from sitting on a jury in a freedom suit if he was a "member of any society instituted for the purpose of emancipating slaves from the possession of their masters[.]"⁵¹

We do not know whether Clarke wrote the *Decker* opinion. The *Decker* and *Jones* opinions demonstrate a similar writing style. Both echo and apply Mansfield's *Somerset* opinion, without citing it. I agree with Judge Michael Mills that *Decker* "could only have been penned by Justice Clarke."⁵²

The *Decker* opinion's conclusion enforcing the anti-slavery clause in the Northwest Ordinance was contrary to one of the holdings of the United States Supreme Court's majority opinion in *Dred Scott v. Sandford*.⁵³ The *Decker* decision "was extraordinary for its explicit condemnation of slavery and its interpretation of the Northwest Ordinance . . . Unfortunately for Mississippi's slaves," this "was the first and the last case of this type to free slaves" in Mississippi based upon a free state's or free nation's laws.⁵⁴

Indeed, Mississippi's High Court of Errors and Appeals issued two decisions that did not follow *Decker*, even when the slave owners clearly intended to free their slaves. That three-judge court in 1833 succeeded the Supreme Court as Mississippi's highest court.⁵⁵

The first of these cases, decided in 1838, was *Hinds v. Brazaelle*.⁵⁶ Disgruntled would-be heirs challenged the will of Elisha Brazealle, a Mississippi slave owner. Elisha and a female slave were the parents of John Munroe Brazealle. In 1826, Elisha brought these two slaves to Ohio, where he signed a manumission deed. He then returned with these freed slaves to Mississippi, where he lived until his death. Elisha's will confirmed the manumission deed, and Elisha acknowledged John as his son. Elisha also devised to John all of his property.⁵⁷

Chief Justice William L. Sharkey's opinion affirmed the chancery judge's decision refusing to dismiss the heirs' will challenge. Sharkey did not attempt to distinguish or even cite the *Decker* decision. Instead, Sharkey disapproved of Elisha's attempt to free John and his mother. According to Sharkey, the manumission deed violated Mississippi's public policy and "had its origin in an offence [sic] against morality, pernicious and detestable as an example." Sharkey

⁵¹ *Ibid.*, §§77, 78, 387. For other procedural barriers to freedom suits, see Fede, *Roadblocks to Freedom*, 139-69.

⁵² See Mills, "Slave Law in Mississippi," 178.

⁵³ 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857). Justice John McLean cited *Decker* in his dissenting opinion. *Ibid.*, 60 U.S., 561, 15 L. Ed., 765. See Mills, "Slave Law in Mississippi," 178.

⁵⁴ See Finkelman, *Imperfect Union*, 229; see also Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publications, Inc., 1986), 69-71.

⁵⁵ See Skates, *History of Mississippi Supreme Court*, 14-15, discussing a statute adopted in 1833 pursuant to the state's 1832 constitution.

⁵⁶ 3 Miss. (2 Howard) 837 (Err. & App. 1838).

⁵⁷ *Hinds v. Brazaelle*, 3 Miss. (2 Howard), 841.

also condemned Elisha's intent "to evade the rigor" of Mississippi's laws, which "cannot be thus defrauded of their operation by one of our own citizens."⁵⁸

The Errors and Appeals Court also rejected the common law rights of a freed slave in its 1859 decision in *Mitchell v. Wells*.⁵⁹ Nancy Wells was a daughter of Edward Wells, a Mississippi resident, who also owned Nancy when she was a slave. Edward, in 1846, brought Nancy from Mississippi to Ohio where he freed her. Edward died in 1848. In his will, Edward left Nancy a watch, a bed, and three thousand dollars. In 1857, Nancy, then an Ohio citizen and resident, sued Edward's former executor to collect her inheritance under Edward's will.⁶⁰

On appeal, the court reversed a judgment in Nancy's favor. Chief Justice Cotesworth P. Smith and Justice William L. Harris voted in the majority. Harris wrote the majority opinion. He was a Georgia native and a "staunch secessionist" who joined the Court in 1858.⁶¹ He held, "both upon principle and the weight of authority," that slaves who once were domiciled in Mississippi, "can acquire no right, civil or political, within her limits, by manumission elsewhere."⁶² Harris equated Ohio's laws permitting free blacks citizenship with laws "confer[ing] citizenship on the chimpanzee or the ourang-outang [sic] (the most respectable of the monkey tribe)[.]" He concluded that slave states should not "lower their own citizens and institutions in the scale of being, to meet the necessities of the mongrel race thus attempted to be introduced into the family of sisters in this confederacy[.]"⁶³

Justice Alexander H. Handy's dissenting opinion did not cite *Decker*.⁶⁴ To the contrary, Handy expressed his own opposition to any manumission.⁶⁵ Nevertheless, Handy wrote that the Mississippi courts should retain comity principles and enforce Nancy's rights created under Ohio law to maintain the Union. Rather than violate the Union's "spirit and principles," Handy suggested, however, that it might be better for the South to dissolve "the compact[.]"⁶⁶ The *Decker* opinion thus was irrelevant to these judges. Indeed, the Court's new majority also overruled an 1858

⁵⁸ *Ibid.*, 843.

⁵⁹ 37 Miss. 235 (Err. & App. 1859).

⁶⁰ *Mitchell v. Wells*, 37 Miss., 236-37.

⁶¹ See Mills, "Slave Law in Mississippi," 223; see also Skates, *History of Mississippi Supreme Court*, 26-28, 79.

⁶² *Mitchell v. Wells*, 37 Miss., 238-39.

⁶³ *Ibid.*, 264.

⁶⁴ *Ibid.*, 265-88.

⁶⁵ *Ibid.*, 279.

⁶⁶ *Ibid.*, 286; see also *Heirn v. Bridault*, 37 Miss. 209 (Err. & App. 1859) (Harris opinion holding that free blacks cannot inherit property, with Handy dissenting). For decisions not following *Mitchell* and *Heirn*, see *Cowan v. Stamps*, 46 Miss. 435 (1872); *Berry v. Alsop*, 45 Miss. 1 (1871); *Matthews v. Springer*, 16 F. Cas. 1069 (C. C. S. D. Miss. 1871) (No. 9,277).

decision on point.⁶⁷ The court followed the late antebellum Southern trend denying common law rights to slaves and even to freed slaves.⁶⁸

Clarke's opinion in *State v. Jones* suffered a similar fate. The defendant, Isaac Jones, was found guilty of murdering a slave. Clarke did not state the deceased slave's name or how the homicide occurred.⁶⁹ Like Kenneth Stampp, I believe that Jones probably was a white stranger to the slave he killed.⁷⁰

The trial was held in the Adams County Superior Court. The official report does not identify the trial judge, nor does it state when Jones was indicted and tried.⁷¹ The Supreme Court decided the case during its June 1821 term on a "motion in arrest of judgment, transferred on doubts from Adams [County] superior court[.]"⁷² A motion in arrest of judgment asks the court to stay a judgment, alleging that the verdict differs materially from the pleadings or because the defendant cannot be convicted on the facts and the law.⁷³ The courts in *Jones* applied the procedure used by the territorial trial courts, which could refer to higher courts cases in which there was "doubt as to the law, rule or decision. . . ." ⁷⁴ The Supreme Court overruled Jones's motion. On 27 July 1821, Jones was sentenced to hang.⁷⁵

Mississippi generally received the English common law and not the civil law of its French and Spanish colonial past.⁷⁶ The English common law of crimes did

⁶⁷ *Shaw v. Brown*, 35 Miss. 246 (Err. & App. 1858). The Court's membership changed in 1858. Justice Handy wrote the *Shaw v. Brown* opinion, with Chief Justice Smith not participating. Justice Harris joined the Court later in that year. See Mills, "Slavery Law in Mississippi," 223.

⁶⁸ See Fede, *Roadblocks to Freedom*, 306-25. See, for a result contrary to *Mitchell*, with one justice dissenting, *Willis v. Jolliffe*, 32 S.C. Eq. (11 Rich. Eq.) 447 (S. C. 1860); see also Fede, *Roadblocks to Freedom*, 318-22; Fede, *People Without Rights*, 150-52; Bernie D. Jones, *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South* (Athens, University of Georgia Press, 2009), 98-150; John Wertheimer, et al., "*Willis v. Jolliffe: Love and Slavery on the South Carolina-Ohio Borderlands*," in Tony Freyer and Lyndsay Campbell, eds., *Freedom's Conditions in the U.S.-Canadian Borderlands in the Age of Emancipation* (Durham: Carolina Academic Press, 2011), 257-84.

⁶⁹ *State v. Jones*, 1 Miss. (Walker), 83-84.

⁷⁰ Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956), 221. "Because the defendant, . . ., has a surname and is not identified as a slave, we can conclude that he was a white man[.]" Mark V. Tushnet, *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest* (Princeton: Princeton University Press, 1981), 73.

⁷¹ Adams County included the Natchez District, Mississippi's largest population center in 1817. See Gross, *Double Character*, 25; see generally D. Clayton James, *Antebellum Natchez* (Baton Rouge: Louisiana State University Press, 1968). The judges who served in the second judicial district, which included Adams County, when the Jones case may have been tried, were John Taylor from 1818 until he died in office in 1820, Walter Leake and Bela Metcalfe in 1821, and Louis Winston from 1821 until 1824. See Skates, *History of Mississippi Supreme Court*, 1-5, 10, 81-82, 84, 99, 104-05; Rowland, "Supreme Court - 1817-32," in *Mississippi Sketches*, 2:755-56.

⁷² *State v. Jones*, 1 Miss. (Walker), 83.

⁷³ Bryan A. Garner, ed., "Arrest of Judgment," in *Black's Law Dictionary* deluxe 9th ed. (St. Paul: West, 2009), 125.

⁷⁴ See "An Act to regulate the several Courts in this Territory, and to create a Superior Court of Errors and Appeals," in Toulmin, *Digest of the Laws of Alabama*, §4, 162; Hoffheimer, "Mississippi courts," 115, n. 69. For the similar procedure authorized in a 29 June 1822 statute, see "An Act to establish and organize the supreme court, and to define the powers and jurisdiction thereof," in Poindexter, *Code of Mississippi*, §21, 154.

⁷⁵ *State v. Jones*, 1 Miss. (Walker), 86.

⁷⁶ See William Kernan Dart, "The Legal Partition of Louisiana and Mississippi," in *Minutes of the Ninth Annual Meeting of the Mississippi State Bar Association* (Jackson: Hederman, Bros., 1914), 70-91. Much of the land that became the State of Mississippi was at one time a colony of France, England, and Spain. By 1781, when Spain's rule began, the area "was thoroughly anglicized." Skates, *Mississippi History*, 43; see John Hebron Moore, *The Emergence of the Cotton Kingdom in the Old Southwest: Mississippi, 1770-1860* (Baton Rouge: Louisiana University Press, 1988), 1-5; Skates, *Mississippi History*, 22-78; Hembleben & Bennett, "Beginnings of the Legal Profession," 165.

not address slave killings because a common law of slavery did not exist when the British North American colonists established slavery.⁷⁷ The common law by then distinguished three classes of homicide: murder, manslaughter, and excusable or justified homicide. Murder was the killing of another person with malice aforethought. It was punishable by death. Manslaughter was a sudden killing based upon a legally adequate provocation, which did not extend to mere words or gestures. Manslaughter too was punishable by death, but with benefit of clergy on the defendant's first offense. The lives of defendants who were given this benefit were spared, but they were branded on the hand as evidence of their convictions. Excusable or justified homicide did not result in criminal liability. One example was a killing in self-defense.⁷⁸

The British colonists north of Virginia applied this common law of homicide to slave killers. They legalized the masters' right to moderately correct their slaves, but did not adopt provisions explicitly legitimizing slave killing or reducing the penalties for that offense.⁷⁹ Thus, Pennsylvania "never created a special list of justifications or excuses for the murder or beatings of slaves."⁸⁰

In contrast, the colonial statutes in Virginia, the Carolinas, and Georgia either mitigated the punishments for slave killing, modified the liability standards to legitimize slave killings that were deemed to be necessary, or they enacted both of these measures.⁸¹ But between 1788 and 1821, the Southern states adopted statutes defining slave murder as a capital offense. These laws generally continued

⁷⁷ See, e.g., Fede, *Roadblocks to Freedom*, 8-9; Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York: Cambridge University Press, 2010), 411; Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: University of North Carolina Press, 2006), 44-46; Fede, *People Without Rights*, 3-44; Sally E. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," in Michael Grossberg and Christopher Tomlins, eds., *The Cambridge History of Law in America* (Cambridge and New York: Cambridge University Press, 2008), 1:257; Jonathan A. Bush, "The First Slave (and Why He Matters)," *Cardozo Law Review* 18, no. 2 (November 1996); Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *American Journal of Legal History* 38, no. 1 (January 1994), 41-49; Jonathan A. Bush, "Free to Enslave: The Foundations of Colonial American Slave Law," *Yale Journal of Law & Humanities* 5, no. 2 (Summer 1993); Finkelman, "Exploring Southern Legal History," 88-97.

⁷⁸ See, e.g., Michael H. Hoffheimer, "Murder and Manslaughter in Mississippi: Unintentional Killings," *Mississippi Law Journal* 71 (Fall 2001): 37-52; Joseph L. Hyde, "The Common Law Cut Down: Homicide and Human Property in Post-Colonial North Carolina," paper presented at the Annual Meeting of the American Society for Legal History, Atlanta, Georgia, 12 November 2011: 2-6.

⁷⁹ See McManus, *Black Bondage in the North*, 90; see also A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978), 119, 123-24. For the common law of homicide on killings resulting from immoderate correction of servants or students, see Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996), 162-63.

⁸⁰ Higginbotham, *In the Matter of Color*, 306; see Edward Raymond Turner, *The Negro in Pennsylvania: Slavery, Servitude, and Freedom 1639-1861* (Washington: American Historical Association, 1911), 36. Convictions were not always easy to obtain. See, e.g., William H. Williams, *Slavery and Freedom in Delaware, 1639-1865* (Wilmington: Scholarly Resources, Inc., 1996), 91-92 (discussing four attempts to prosecute and convict defendants in Delaware for killing slaves between 1781 and 1827); McManus, *Black Bondage in the North*, 90-91 (discussing prosecutions in Pennsylvania, Massachusetts, and New York); see also Graham Russell Hodges, *Root and Branch: African Americans in New York and East Jersey 1613-1863* (Chapel Hill: University of North Carolina Press, 1999), 38.

⁸¹ See generally, e.g., Morris, *Southern Slavery*, 163-75; Fede, *People Without Rights*, 31-34, 62-65; David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), 255-56.

to legitimize the masters' right to kill their slaves resisting the masters' authority as well as killings by masters if the slaves' died as an unintended result of moderate correction.⁸²

Mississippi's territorial and state legislatures adopted homicide statutes that did not state whether slave killing was murder or manslaughter, nor did they legitimize killings in cases of slave resistance or moderate correction.⁸³ An 1805 Mississippi territorial law legitimated the masters' power only to correct their slaves when, in place of the law of assault and battery, it prohibited "cruel or unusual" slave punishment and imposed a fine not to exceed \$200.⁸⁴ Mississippi's state legislature later adopted a similar provision, and increased the maximum fine to \$500.⁸⁵

But these statutes said nothing about slave killings. Jones's lawyer thus raised one threshold legal issue, "whether in this state, murder can be committed on a slave."⁸⁶ Clarke answered that slave killings could be murder, stating: "Because individuals may have been deprived of many of their rights by society, it does not follow, that they have been deprived of all their rights." He acknowledged that "[i]n some respects, slaves may be considered as chattels, but in others, they are regarded as men. The law views them as capable of committing crimes. This can only be upon the principle, that they are men and rational beings."⁸⁷

Clarke rejected Jones's lawyer's argument that "much relied" on Roman law. According to Clarke, the law "giving the power of life and death over captives in war, as slaves," was "confined to the Roman empire," and "it no more extended here, than the similar power given to parents over the lives of their children."⁸⁸ He noted that "the civil law of Rome extirpated this barbarous privilege, and rendered

⁸² See generally, e.g., Morris, *Southern Slavery*, 171-74; Fede, *People Without Rights*, 66-70; Robert B. Shaw, *A Legal History of Slavery in the United States* (Potsdam: Northern Press, 1991), 162-63; Daniel Flanigan, *The Criminal Law of Slavery and Freedom 1800-1868* (New York: Garland Publishing, Inc., 1987), 144-49; Davis, *Western Culture*, 256-58; Stamp, *Peculiar Institution*, 218-19; George M. Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America*, reprint ed. (New York: Negro Universities Press, 1968) (2d ed. 1856), 20-28; Harriet Beecher Stowe, *The Key to Uncle Tom's Cabin*, reprint ed. (New York: Arno Press and The New York Times, 1968)(1853), 156-76.

⁸³ For the territorial acts, see "An Act for the Punishment of Crimes and Misdemeanors, originally passed in June 1802, but reenacted with some amendment in 1807," in Toulmin, *Digest of the Laws of Alabama*, §§1-5, 206-07; Hoffheimer, "Murder and Manslaughter," 54-57. For the Mississippi state laws, see "An act, for the punishment of crimes and misdemeanors," in Poindexter, *Code of Mississippi*, ch 54, §§2, 3, 297, which was passed on 14 June 1822 after the *Jones* decision, see also Hoffheimer, "Murder and Manslaughter," 57-60 for the 1822 act and an 1820 act. For the later antebellum statutes on homicide, see Sharkey, *Revised Code of Mississippi*, ch. LXIV, art. 165-183, 600-02; Hutchinson, *Code of Mississippi*, Title II, §§3-26, Title III, §§1-21, 954-59; Hoffheimer, "Murder and Manslaughter," 60-80. It is not possible to determine which statute was in effect when the killing occurred.

⁸⁴ See Hurd, *Freedoms & Bondage*, 2:143; "An Act respecting Slaves," in Toulmin, *Digest of the Laws of Alabama*, §16, 631, adopted March 6, 1805. On the legitimizing effect of these statutes and of cases including *State v. Mann*, 13 N.C. (2 Dev.) 263 (1829) and *Commonwealth v. Turner*, 26 Va. (5 Rand.) 678 (1827), see Fede, *People Without Rights*, 105-21.

⁸⁵ See "An act, to reduce into one, the several acts, concerning slaves, free negroes, and mulattoes," in Poindexter, *Code of Mississippi*, ch. 73, §44, 379, adopted 18 June 1822.

⁸⁶ *State v. Jones*, 1 Miss. (Walker), 83-84.

⁸⁷ *Ibid.*, 84.

⁸⁸ *Ibid.*

the killing a slave a capital offence.”⁸⁹ Clarke also rejected Jones’s common law argument, which relied on Judge John Hall’s dissenting opinion in an 1801 North Carolina case *State v. Boon*.⁹⁰ Hall opined that slave killing could not be common law murder.⁹¹

Clarke did not, however, cite any case holding that slave killing was common law murder.⁹² He instead relied on statutes that made slaves liable for their crimes “as reasonable and accountable beings,” asserting that “it would be a stigma upon the character of the state, and a reproach to the administration of justice, if the life of a slave could be taken with impunity, or if he could be murdered in cold blood, without subjecting the offender to the highest penalty known to the criminal jurisprudence of the country.” Then Clarke asked: “Has the slave no rights, because he is deprived of his freedom? He is still a human being, and possesses all those rights, of which he is not deprived by the positive provisions of the law, but in vain shall we look for any law passed by the enlightened and philanthropic legislature of this state, giving even to the master, *much less to a stranger*, power over the life of a slave.”⁹³

Clarke stated that a law giving to either the master or a stranger the right to murder a slave “would be condemned by the unanimous voice of the people of this state, where, even cruelty to slaves, much less the taking away of life, meets with universal reprobation.”⁹⁴ He repeated, without citation, Mansfield’s principle that the master’s right over the slave “exists not by force of the law of nature or of nations, but by virtue only of the positive law of the state[.]” Clarke found that although Mississippi’s positive law “gives to the master the right to command the services of the slave, requiring the master to feed and clothe the slave from infancy till death, yet it gives the master no right to take the life of the slave, and if the offence be not murder, it is not a crime, and subjects the offender to no punishment.”⁹⁵

⁸⁹ *Ibid.*, 86. Clarke added: “When the northern barbarians overran Southern Europe,” even “this savage people, [made] no distinction . . . between the killing in cold blood, a slave or a freeman.” *Ibid.* On the Roman law on slave killings, see Paul du Plessis, *Borkowski’s Textbook on Roman Law*, 4th ed. (New York: Oxford University Press, 2010), 92-93; Alan Watson, *Roman Slave Law* (Baltimore: Johns Hopkins University Press, 1987), 121-21, 124-25; William L. Westerman, *The Slave Systems of Greek and Roman Antiquity* (Philadelphia: The American Philosophical Society, 1955), 82-83; W.W. Buckland, *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1908), 36-38; Alan Watson, “Roman Slave Law: An Anglo-American Perspective,” *Cardozo Law Review* 18, no. 2 (November 1996): 595-98. On when homicide became a crime under Roman law, see Judy E. Gaughan, *Murder was Not a Crime: Homicide and Power in the Roman Republic* (Austin: University of Texas Press, 2010).

⁹⁰ *State v. Boon*, 1 N.C. 103, Tay. 246 (1801).

⁹¹ *State v. Jones*, 1 Miss. (Walker), 84. Clarke also rejected Hall’s reliance on Roman law and his “inference, . . . that a person cannot be condemned capitally, because, he may be liable in a civil action[.]” *Ibid.*; see *Fede, People Without Rights*, 70-77.

⁹² Clarke referred to the Virginia statutes that gave to masters “the power of life over slaves,” but he added “that as soon as these statutes were repealed, it was at once considered by their courts, that the killing a slave might be murder.” *Ibid.*, citing *Commonwealth v. Chapple*, 3 Va. (1 Va. Cas.) 184 (1811) (affirming conviction of defendant for maliciously stabbing a slave contrary to statute).

⁹³ *State v. Jones*, 1 Miss. (Walker), 84. [emphasis added]. In view of the emphasized language, I believe that Jones was a stranger to the slave.

⁹⁴ *Ibid.*, 85.

⁹⁵ *Ibid.*

Consequently, Clarke concluded that slave killing was murder, which applied to the killing with the required intent of any “reasonable creature.” He cited the English common law of villinage, also spelled villainage, which was “a form of serfdom superior to slavery.”⁹⁶ Clarke found that “killing a villain was as much murder, as killing a lord.”⁹⁷ He added that “the killing [of] a lunatic, an idiot, or even a child unborn, is murder, as much as the killing a philosopher. . . . All are in the king[']s peace, except alien enemies, flagrante bello [during war].” “[E]ven in Coke’s time, the killing [of] any rational being was murder. Jews were then regarded in a light more odious than the most abject slave, yet to kill them was murder. So to kill one attainted, or an outlawed felon, or even an alien enemy, except in battle, might be murder.”⁹⁸ All of these people were within the “king’s peace,” which “means the place where the crime is committed . . . and not a particular class of human beings.”⁹⁹

William Wiethoff suggested that Clarke’s rhetoric “reflects more his rearing in Pennsylvania than his planting in the Mississippi territory.”¹⁰⁰ Nevertheless, Clarke was not the only Southern jurist to assert that some slave killings could be common law murder. In a brief 1848 joint concurring opinion, Justices John B. O’Neill and John S. Richardson of South Carolina opined that slave killing was common law murder before the first South Carolina statutes on slave killings were adopted.¹⁰¹ Four North Carolina judges also asserted that slave killers could be common law murderers. These courts addressed an issue that Clarke did not, however, when they denied to slaves the equal protection of the common law’s standards of mitigation and justification.

North Carolina’s colonial statutes did not at first address slave murders. Chief Justice Martin Howard charged a grand jury in 1771 that a slave killer could be indicted for murder. The grand jury failed to indict the defendant, a vote that motivated Howard to publish his charge. Howard was born in either England or

⁹⁶ See Orth, “Analogy,” 987, n. 49. Villiens were either annexed to the land (regardant), or to the lord’s person (in gross or at large) who could be transferred by deed. The lord could beat his villiens, but he could not kill, maim, or rape them. William Blackstone, *Commentaries on the Laws of England* John Taylor Coleridge, ed. 16th ed. (London: A. Strahan, 1825), 2:*92-*93; see, e.g., Morris, *Southern Slavery*, 52-55.

⁹⁷ *State v. Jones*, 1 Miss. (Walker), 85. He called villiens “the most abject slaves,” who “could be bought and sold as chattels, but because slaves can be bought and sold, it does not follow that they can be deprived of life.” Ibid.

⁹⁸ Ibid., 85. Clarke refers to one attainted, a person who at common law had his or her civil rights extinguished when he or she was “sentenced to death or declared an outlaw for committing a felony or treason.” See “Attainder,” *Black’s Law Dictionary*, 146; see also Colin (Joan) Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, Princeton University Press, 2011), 44-49, 131.

⁹⁹ *State v. Jones*, 1 Miss. (Walker), 85.

¹⁰⁰ William E. Wiethoff, *A Peculiar Humanism: The Judicial Advocacy of Slavery in High Courts of the Old South, 1820-1850* (Athens: The University of Georgia Press, 1996), 146. For other discussions of *Jones*, see, e.g., Dayan, *White Dog*, 54-55; Thadious M. Davis, *Games of Property: Law, Race, Gender, and Faulkner’s Go Down Moses* (Durham: Duke University Press, 2003), 30-31; Thomas Szasz, *Liberation by Oppression: A Comparative Study of Slavery and Psychiatry* (New Brunswick, N.J.: Transaction Publishers, 2002), 162; Wiethoff, *A Peculiar Humanism*, 146, 157-58; Fede, *People Without Rights*, 3, 73-75; Finkelman, *Casebook*, 247-50; Meredith Lang, *Defender of the Faith: The High Court of Mississippi 1817-1875* (Jackson: University Press of Mississippi, 1977), 108-10; Mills, “Slave Law in Mississippi,” 176-78.

¹⁰¹ See *State v. Flemming*, 33 S.C.L. (2 Strob.) 464 (Err. & App. 1848).

New England. He was a Rhode Island legislator before securing a royal 1766 appointment as North Carolina's chief justice. His views may have been influenced by Northern slavery law.¹⁰²

The controversy about slave killings continued. A 1791 statute declared that a person, who "willfully and maliciously" kills a slave, was guilty of murder. A slave killer, on his or her first conviction, would "suffer the same punishment as if he had killed a free man, any law, usage or customs to the contrary notwithstanding."¹⁰³

The North Carolina Court of Conference in 1801 held that this statute was too vague in *State v. Boon*.¹⁰⁴ The Court granted the defendant Boon's motion in arrest of judgment after he was convicted for murdering a slave. Judges John Louis Taylor and Samuel Johnston also contended that slave killing could be common law murder. Taylor wrote that by definition murder was the "unlawful killing of a reasonable creature within the peace of the State, with malice aforethought. A slave is a reasonable creature; may be within the peace, and is under the protection of the State, and may become the victim of preconceived malice."¹⁰⁵ Judge Johnston asserted similar views.¹⁰⁶ Judge John Hall wrote an opinion that dissented on that question.¹⁰⁷

An 1817 North Carolina act followed, stating that slave killing was "homicide, and shall partake the same degree of guilt when accompanied with the like circumstances that homicide now does at common law."¹⁰⁸ North Carolina's Supreme Court, in the 1820 case *State v. Tackett*, nevertheless enforced different standards of mitigation and extenuation when slaves were killed.¹⁰⁹ Tackett was indicted, tried, and convicted for the murder of Daniel, a slave of Mr. Ruffin.

¹⁰² See Fede, *People Without Rights*, 63; Don Higginbotham and William S. Price, Jr., "Was it Murder for a White Man to Kill a Slave? Chief Justice Martin Howard Condemns the Peculiar Institution in North Carolina," *William & Mary Quarterly* 3d Ser. 36, no. 4 (October 1979): 597-601 (quoting the charge that was published in the Newport, Rhode Island *Newport News* of May 11, 1772). Howard, in February 1765, published a pamphlet favoring the Stamp Act. He became so unpopular in Rhode Island that, by August 1765, he and his family sailed to England. Howard was rewarded in July 1766 with an appointment as North Carolina's chief justice. He remained a Loyalist, and in 1778, returned to England. See William S. Price, Jr., *Not a Conquered People: Two Carolinians View Parliamentary Taxation* (Raleigh: North Carolina Department of Cultural Reserves, Division of Archives and History, 1975), 2-5, 14-33.

¹⁰³ "An act to amend an act, entitled, 'An act to prevent thefts and robberies by slaves, free negroes and mulattoes,' passed at Tarborough, in the year one thousand seven hundred and eighty-seven; and to amend an act, passed in the year one thousand seven hundred and seventy-four, entitled, 'An act to prevent the willful [sic] and malicious killing of Slaves,'" in Henry Potter, J.L. Taylor, & Bart. Yancey, eds., *Laws of the State of North Carolina* (Raleigh: J. Gales, 1821), ch. 335, 1:654; Fede, *People Without Rights*, 66-67.

¹⁰⁴ 1 N.C. 103, Tay. 246 (1801).

¹⁰⁵ *State v. Boon*, 1 N.C., 111-12.

¹⁰⁶ *Ibid.*, 110-11.

¹⁰⁷ *State v. Boon*, 1 N.C., 104-10. Judge Spruce Mccay addressed only the statute. *Ibid.*, 114. See *State v. Piver*, 3 N.C. (2 Hayw.) 247 (Sup. Ct. 1799)(vacating manslaughter verdict finding that 1791 act criminalizes only malicious killings). The Court of Conference made recommendations to the trial judges in pending cases. See Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009), 50-53, 208-09, 239.

¹⁰⁸ "An act to punish the offense of killing a slave," in Potter, et al. eds., *Laws of the State of North Carolina*, ch. 949, 2:1407; "An Act to Punish the offense of Killing a Slave" in *Laws of the State of North Carolina Enacted in the Year 1817* ch. XVIII (Raleigh: Thomas Henderson, State Printer, 1818), 18-19; see Fede, *People Without Rights*, 67, 72.

¹⁰⁹ 8 N.C. (1 Hawks.) 210 (1820), overruled in part by *State v. Watson*, 287 N.C. 147, 214 S.E. 2d 85 (1975).

Tackett was a journeyman employed by a Raleigh carpenter. Tackett admitted to shooting Daniel. Before Daniel's death, these men argued and fought because Daniel believed that Tackett "kept" Daniel's "wife" Lotty.¹¹⁰

The North Carolina Supreme Court reversed Tackett's murder conviction.¹¹¹ Chief Justice Taylor held that the trial judge should have permitted Tackett to prove that Daniel "was a turbulent man, and that he was insolent and impudent to white people" in general.¹¹² Taylor also held that the trial judge erred when he instructed the jury to apply "the same rules and principles of law as if the deceased had been a white man." Taylor explained that "in the nature of things. . . where slavery prevails, the relation between a white man and a slave differs from that, which subsists between free persons[.]" Therefore, "every individual in the community feels and understands" that a slave homicide "may be extenuated by acts, which would not produce a legal provocation if done by a white person."¹¹³

Justice Leonard Henderson later agreed that slave killings could be common law murder. He and Taylor, in the 1823 case *State v. Reed*, sustained Reed's slave murder conviction, over another Hall dissent.¹¹⁴ Henderson called slave killing common law murder "cut down, it is true, by statute or custom, so as to tolerate slavery, yet yielding to the owner of the services of the slave, and any right incident thereto as necessary for its full enjoyment, but protecting the life and limbs of the human being; and in these particulars it does not admit that he is without the protection of the law."¹¹⁵

¹¹⁰ *State v. Tackett*, 8 N.C. (1 Hawks.), 210-13. Southern law declared that slave contracts, including marriage contracts, were unenforceable. See, e.g., Shaw, *Legal History of Slavery*, 166; Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 129-33; Stamp, *Peculiar Institution*, 198; Darlene C. Goring, "The History of Slave Marriage in the United States," *John Marshall Law Review* 39 (2006): 306-10, 316. On poor white and slave fraternization and violence, see Jeff Forret, *Race Relations at the Margins: Slaves and Poor Whites in the Antebellum Southern Countryside* (Baton Rouge: Louisiana University Press, 2006), 157-83; Fede, *People Without Rights*, 72-77, 100-05, 116-21.

¹¹¹ *State v. Tackett*, 8 N.C. (1 Hawks.), 213-14.

¹¹² *Ibid.*, 216-17. See, applying this rule's modern version, *Evans v. United States*, 277 F.2d 354 (App. D.C. 1960).

¹¹³ *State v. Tackett*, 8 N.C. (1 Hawks.), 217-18. Taylor stated that "the sense and feelings of Jurors, and the grave discretion of Courts," would balance "the rights respectively belonging to the slave and white man -- to the just claims of humanity, and to the supreme law, the safety of the citizens." *Ibid.* Taylor cited, for example, the "rule of law, that neither words of reproach, insulting gestures, nor a trespass against goods or land, are provocations sufficient to free the party killing from the guilt of murder, where he made use of a deadly weapon." He wrote: "some of these provocations, if offered by a slave, well known to be turbulent and disorderly," could "extenuate the killing, if it were instantly done under the heat of passion, and without circumstances of cruelty." *Ibid.*, 218. The courts applied this "mere words" exception when slaves were accused of crimes against whites. See *State v. Jarrott*, 23 N.C. (1 Ired.) 76, 82 (1840); see generally Fede, *People Without Rights*, 167-76.

¹¹⁴ 9 N.C. (2 Hawks.) 454 (1823).

¹¹⁵ *State v. Reed*, 9 N.C. (2 Hawks.), 457. See, e.g., Edwards, *People and Their Peace*, 233-44; Finkelman, *Casebook*, 201-47; Tushnet, *Humanity*, 90-123; Hyde, "Common Law Cut Down;" Omar Swartz, "Codifying the Law of Slavery in North Carolina: Positive Law and the Slave Persona," *Thurgood Marshall Law Review* 29 (Spring 2004): 291-309; Reuel E. Schiller, "Conflicting Obligations: Slave Law and the Late Antebellum North Carolina Supreme Court," *Virginia Law Review* 78, no. 5 (August 1992): 1219-28; A.E. Keir Nash, "A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro," *North Carolina Law Review* 48 (1970): 200-19; see also the symposium "Thomas Ruffin and the Perils of Public Homage," *North Carolina Law Review* 87, no. 3 (March 2009).

The Southern courts followed *Tackett*.¹¹⁶ The Mississippi Errors and Appeals Court sustained manslaughter and murder convictions while suggesting that the *Tackett* doctrine was a given.¹¹⁷ And the Court did not even mention *Jones* in its 1860 decision in *Oliver v. State*, which reversed *Oliver*'s manslaughter conviction for killing his slave John.¹¹⁸ Justice Harris held that the trial judge should have instructed the jury that when a slave was in a state of "resistance and rebellion" the master could use force "to reduce his slave to obedience, even to the death of the slave, if that became necessary to preserve the master's life, or to maintain his lawful authority." He stated that this rule followed from the slave's "imperative duty" to afford "[u]nconditional submission and obedience" to the master's "lawful commands and authority."¹¹⁹ Harris traced this rule's "wisdom and origin . . . to the humane reason that upon its proper observance the happiness and welfare of both races, in that relation, necessarily depend."¹²⁰

No statute compelled the *Oliver* ruling. It was one of the many decisions by which the Southern antebellum courts were creating a common law of slavery that, contrary to *Jones*, denied to slaves rights that had not been denied to them by statutes. The Errors and Appeals Court confirmed this in its 1859 decision in *George v. State*.¹²¹ Justice Harris held that the "carnal knowledge" of a female slave younger than ten years by another slave was not a common law rape. He stated that cases referring to slave common law rights, including *State v. Jones* and "one or two early cases in North Carolina," were "founded mainly upon the unmeaning twaddle, in which some humane judges and law writers have indulged, as to the influence of the 'natural law,' 'civilizing and Christian enlightenment,' in amending *proprio vigore* [by their own force], the rigor of the common law, and on a supposed analogy between villianage in England and slavery here[.]" According to Harris, most judges and law writers agreed that "slavery, as it exists in this

¹¹⁶ See *Chandler v. State*, 2 Tex. 305 (1847); *State v. Cheatwood*, 20 S.C.L. (2 Hill) 459 (1834) (affirming manslaughter convictions, trial judge's charges were consistent with *Tackett*); see also *Fields v. State*, 9 Tenn. (1 Yer.) 156 (1829) (affirming manslaughter conviction but not commenting on standards to be applied); see generally Lawrence M. Friedman, *A History of American Law*, third ed. (New York: Touchstone, 2005), 162-64; Jenny Bourne Wahl, *The Bondsman's Burden: An Economic Analysis of the Common Law of Southern Slavery* (New York: Cambridge University Press, 1998), 149-51; Morris, *Southern Slavery*, 171-81; Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 92-93; Fede, *People Without Rights*, 72-75; James Oakes, *Slavery and Freedom: An Interpretation of the Old South* (New York: W.W. Norton & Company, 1990), 157-66; Cobb, *Inquiry*, 92. On non-fatal violence, see Fede, *People Without Rights*, 99-130.

¹¹⁷ See *Jolly v. State*, 21 Miss. (13 S. & M.) 223 (Err. & App. 1849); *Kelly v. State*, 11 Miss. (3 S. & M.) 518 (Err. & App. 1844).

¹¹⁸ 39 Miss. 526 (Err. & App. 1860).

¹¹⁹ *Oliver v. State*, 39 Miss., 539-40.

¹²⁰ *Ibid.*, 540. See also Mills, "Slave Law in Mississippi," 222-23; *State v. Weaver*, 3 N.C. (2 Hayw.) 77, 78 (Sup. Ct. 1798) (jury charge, if a slave resists his master or hirer by force, or offers to resist his master or hirer by force, and the slave is killed, the killing is justified).

¹²¹ 37 Miss. 316 (Err. & App. 1859).

country, was unknown to the common law of England, and hence its provisions are inapplicable to injuries on the slave here.”¹²²

I believe that Clarke would have dissented from Harris’s overtly racist jurisprudence. But we do not know if Clarke, like Taylor, would have denied to slaves’ lives the equal protection of the common law’s mitigation standards. Their biographies reveal interesting parallels. Taylor was born in 1769 in London to Irish parents. When he was 12 years old, he came to America with his older brother James. John attended the College of William and Mary, but because of his finances he did not graduate. Instead, he in 1788 began a North Carolina law practice. He served three terms in the state legislature in the 1790s, where he advocated the suppression of the slave trade and favored manumission. Taylor was elected to the state’s Superior Court in 1798, and served as the state’s first Chief Justice. He died in 1829.¹²³

Clarke’s holding in *Jones* also must be read in its broader legal context. By 1821, malicious slave killing was a capital offense in the Southern states. And a 1788 Pennsylvania decision upheld a common law indictment for malicious horse killing.¹²⁴ Horse killing was not murder. But, like horses, slaves were valuable property. Both slave killings and slave thefts were threats to individual slave owners and to the slave owning class. Thus, Mississippi’s territorial and state legislatures defined as capital felonies the theft of a “negro or mulatto slave” from his or her master’s possession and the knowing sale of free persons as slaves.¹²⁵ Even when masters killed their own slaves, lawmakers held, since the days of Ancient Roman slavery, that the state had interests to protect when masters used their property “badly.”¹²⁶

Moreover, while Clarke was on the Supreme Court, in at least one case it settled free peoples’ property rights embodied in slaves with ordinary property law concepts. Judge Powhatan Ellis’s opinion reversed a money judgment for the

¹²² *George v. State*, 37 Miss., 320, citing Cobb, *Inquiry*, 88-91; see Lang, *Defender of the Faith*, 110. An 1860 Mississippi statute made rape or attempted rape “by a negro or mulatto” of a “female negro or mulatto, under twelve years of age” a crime punishable by a whipping or death, as a jury may determine. See *George v. State*, 37 Miss., note, 320; Friedman, *Crime*, 92-93; Tushnet, *Humanity*, 85.

¹²³ See Max R. Williams, “John Louis Taylor,” in *The Yale Biographical Dictionary of American Law*, ed. Roger K. Newman (New Haven: Yale University Press, 2009), 539; Max R. Williams, “Taylor, John Louis,” in *American National Biography*, ed. John A. Garraty & Mark C. Carnes (New York: Oxford University Press, 1999), 21:386-87; Gertrude S. Carraway, “Taylor, John Louis,” in *Dictionary of North Carolina Biography*, ed. William Stevens Powell (Chapel Hill: University of North Carolina Press, 1996), 6:11-12; Walter Clark, “The Supreme Court of North Carolina,” *The Green Bag* 4 (October 1892): 457, 461-62; William H. Battle, “Memoir of John Louis Taylor,” *North Carolina University Magazine* 9, no. 7 (March 1860): 385.

¹²⁴ *Respublica v. Teischer*, 1 U.S. (1 Dall.) 335, 338 (Pa. 1788).

¹²⁵ See “An Act for the punishment of crimes and misdemeanors,” in Poindexter, *Code of Mississippi*, ch. 54, §§7, 8, 297; “An Act for the Punishment of Crimes and Misdemeanors, originally passed in June 1802, but reenacted with some amendment in 1807,” in Toulmin, *Digest of the Laws of Alabama*, §7, 207, §18, 208; see also *Friar v. State*, 4 Miss. (2 Howard) 422 (Err. & App. 1839) (affirming slave stealing conviction). The penalty later was reduced to a fine, but the theft of slaves remained a concern. See Fede, *People Without Rights*, 210-14; Sydnor, *Slavery in Mississippi*, 105-06, 160.

¹²⁶ Watson, *Roman Slave Law*, 120 [quotation omitted]; see Orlando Patterson, *Slavery & Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 190-96 (discussing approaches to slave killings in slave societies).

plaintiff in a suit between the two owners of a slave. He likened this joint ownership with the common law property concept of tenancy in common. The court relied on legal treatises by Littleton and Coke, which referred to the common law rules applying to disputes among the owners of personal property such as horses.¹²⁷

Scholars have been misled by Clarke's opinions that were not typical of the antebellum South's judges. For example, Ulrich B. Phillips cited only *Jones* for the proposition: "In the nineteenth century the laws generally held the maiming and murder of slaves to be felonies in the same degree with the same penalties as in cases where the victims were whites: and when the statutes were silent the courts felt themselves free to remedy the defect."¹²⁸ Carl Degler also cited opinions such as *Jones and Decker* to demonstrate what he called the "striking similarities in the legal definition of a slave" in Brazilian and North American slavery law.¹²⁹

Indeed, Thomas R.R. Cobb's 1858 slavery law treatise, citing the *Jones* opinion, complained that "learned judges in slaveholding States, adopting the language of Lord Mansfield, in [*Somerset v. Stewart*], have announced gravely, that slavery being contrary to the law of nature, can exist only by force of positive law."¹³⁰ Cobb denied this natural law principle to African-Americans because he argued that they were inferior to whites.¹³¹

Cobb's views were in the legal mainstream south of the Mason Dixon line and Clarke's views were not. Meredith Lang may have exaggerated when she stated that *Decker* "could have no sequel. The moral philosophy expressed in the opinion on the institution of slavery was only a romantic historical error of 1818," which was "antagonistic to the forces at work in the state" that eventually would "venerate slavery as one of the noblest inventions of man and consign *Harry* [*v. Decker & Hopkins*] to oblivion."¹³² Nevertheless, in both *Decker* and *Jones* the Court judged slavery law against the grain.

¹²⁷ See *Hinds v. Terry*, 1 Miss. (Walker) 80, 81-82 (1820); see also *Hutchins v. Lee*, 1 Miss. (Walker) 293 (1827) (equating runaway slaves with stray domesticated animals in suit between slave's former owner and the buyer at a sheriff's sale after the slave's escape and capture). In these and other cases "[t]he court's facile application of this property law cause of action illustrates how the slave's humanity was not deemed relevant in the business dealings among masters." Fede, "Gender," 415, n. 13.

¹²⁸ Ulrich B. Phillips, *American Negro Slavery: A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Regime* (New York: D. Appleton & Company, 1918), 509; see Alfred H. Stone, "The Early Slave Laws of Mississippi," in *Publications of the Mississippi Historical Society*, Franklin Riley, ed., (Oxford, 1899), 2:141-45.

¹²⁹ Carl N. Degler, *Neither Black nor White: Slavery and Race Relations in Brazil and the United States* (New York: Macmillan Company, 1971), 27-29.

¹³⁰ Cobb, *Inquiry*, 5.

¹³¹ *Ibid.*, 5-52.

¹³² See Lang, *Defender of the Faith*, 78.

Contending Political-Intellectual Approaches to the South African Border War 1966-1989

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Introduction

The objective of this essay is the identification of some important contending political-intellectual points of departure that were used to analyze, understand, and oppose as well as defend the South African “Border War.” For the purpose of the arguments in the essay, the Border War is demarcated as the period from 1966 to 1989, in the north of the current Namibia and the south of Angola, during which the armed forces of the Republic of South Africa were involved in armed conflicts with the People’s Liberation Army of Namibia (PLAN) and the *Forças Armadas Populares de Libertação de Angola* (FAPLA) as well as Cuban elements and advisors from the former Union of Soviet Socialist Republics (USSR) and its allied states, notably the German Democratic Republic (GDR).

The essay is structured as follows. A discussion of five different political-conceptual frameworks is presented, within which the Border War was analyzed, understood, and defended as well as attacked. Finally, a conclusion regarding the merit of each of the approaches is made. Because of the inherent space restrictions of an academic essay, the contending conceptual frameworks cannot be treated extensively. In essence, therefore, this contribution is an essay on five important interpretations of the Border War. The content of the competing approaches is reflected in the relevant literature. This paper is mainly a political science treatise to understand the diverse political-intellectual views regarding the South African Bush or Border War. One of the problems of contending disciplinary approaches in the humanities is that they tend to be mutually incommensurable and irreconcilable and this essay will explore this phenomenon and its consequences.

Political Intellectual Approaches used During the Border War: Warding off the Total Onslaught Against the Republic of South Africa

During the rule of Prime Minister Pieter Willem Botha (1978-1989), and the height of the Border War, a new approach to the security management of South Africa was launched. It was commonly known as the Total Onslaught Strategy of the governing National Party and its security services. This strategy was set out by the Chief of the South African Defense Force, General Magnus Malan in an address to the Institute for Strategic Studies at the University of Pretoria on 3 September 1980. Malan’s talk is one of the basic keys with which this approach can be unlocked and is enunciated in some detail below. Shortly after that address Malan became Minister of Defense and remained in the portfolio up to the end of the Border War in 1989. The Total Onslaught Strategy was used on all levels of the

body politic—by the Prime Minister, his Defense Minister and the cabinet, the state bureaucracy, the South African Defense Force, the South African Police Force and the governing National Party (NP). It was the accepted official political approach within which the Border War was justified and defended.

In Malan's judgment, aired in 1980, the citizenry of South Africa, fourteen years after the beginning of the Border War, still lacked clarity regarding the communist onslaught against South Africa. The South African people were not approaching the matter with the necessary seriousness. The attacks against South Africa were so serious and of such a magnitude that one could talk of a total onslaught. The concept Total Onslaught had been used by the public media in such a way, that he deemed it necessary to explain it once more and to focus the attention of South Africans on the seriousness of the situation. Malan was pessimistic. If South Africans were not willing to understand the magnitude of the onslaught and act accordingly, the country's national survival would be endangered.¹

According to Malan, Total Onslaught meant that the enemy (meaning the progressive black liberation movements such as the African National Congress [ANC]) would use all the methods at their disposal (coercion, persuasion and inducement) against the target country, South Africa. Over and above military action, these methods also included "action in the political, diplomatic, religious, psychological, cultural-social and sport areas."² According to Malan the onslaught was aimed at every activity of communities in South Africa and had as goal the destruction of the fundamental building blocks of national power. Trust in the political leadership was sabotaged; economic vitality was undermined by sabotaging facilities of production, transport and communication; military power was neutralized by terrorist gangs attacking national key points and last, but not least, the enemy was trying to make the economy collapse under the burden of the onslaught.³ For Malan the total onslaught was an ongoing and opportunistic endeavor with a strong revolutionary foundation as characteristic feature. In his view the problem for the military was the absence of a clear target for defense force action. Not being able to easily identify the target, it was difficult to "motivate the population to render resistance" and to let "everyone realize that we already were involved in a total conflict."⁴ It was Malan's opinion that classical diplomacy and negotiations could only play a small, if any, role to remove the hostilities that existed between the enemy and South Africa.⁵

In Malan's opinion the Republic of South Africa (RSA) was the target of a communist inspired onslaught which had as goal replacing the existing political

¹ Magnus Malan, *Die Aanslag teen Suid-Afrika* (Pretoria: ISSUP- Strategiese Oorsig, 1980):1.

² *Ibid.*, 3.

³ *Ibid.*, 4.

⁴ *Ibid.*, 5.

⁵ *Ibid.*, 6.

order with a subordinate communist oriented black government.⁶ The objective of the communist onslaught on South Africa was not only to get rid of the white government, but to establish control over the whole Western world. The RSA was the biggest obstacle to the communists' endeavors to establish control over the whole African continent. The battle for South Africa was not about the local establishment of the communist ideology, said Malan, it served as cover for the communists to gain control over the whole world.⁷

According to Malan, the communists focused their attention on the non-white section of the RSA population because there was an economical class difference between white and non-white in South Africa. The class differences played in the hands of the communists because the fundamental point of departure of communism is the struggle in which the capitalist class had to be annihilated. Unfortunately, in Malan's view, the world wide preoccupation with human rights was responsible for the fact that the West secretly supported the onslaught against South Africa.⁸ The West viewed South Africa's internal policies (apartheid) as a threat to Western interests in Africa. The West saw a sympathetic black government in the RSA as a solution to secure their interests in South Africa and in Africa. Malan said, "It can therefore be rightfully claimed that the Western powers make themselves available to serve as stooges in the destruction of capitalism and the establishment of world communism."⁹

In the remainder of his speech, Malan further illustrated the way in which the four power bases of the RSA were being attacked by the communist inspired Total Onslaught. He referred to the attack against the political power base, especially by the resolutions of the United Nations, against South Africa. The economic power base of the RSA was undermined by putting pressure on foreign companies to accept codes of conduct aimed at apartheid legislation by UN sanctions and an arms embargo. There were increasing efforts by pressure groups like the World Council of Churches and other international civilian activists to isolate South Africa. There were also onslaughts against the psychological-social basis of the RSA. It manifested in terrorist attacks to arouse peoples' fear and insecurities. Malan especially concentrated on the onslaught against what he called the "Security Power Basis."¹⁰ According to Malan, South Africa was involved in a low-intensity undeclared revolutionary war. The African National Congress (ANC) and the Pan Africanist Congress (PAC) played an important role in inciting the masses of the non-white population against the government and creating a revolutionary climate. In addition, the war on South Africa's borders was characterized by the delivery of

⁶ The acronym 'RSA' was widely used in the South African Defense Force of the time to refer to the Republic of South Africa.

⁷ Malan, 6.

⁸ Ibid., 7.

⁹ Ibid., 8.

¹⁰ Malan, 11.

huge quantities of weaponry in an effort to strengthen the Marxist governments of Angola and Mozambique. Malan then identified the forces of Cuba, the German Democratic Republic and the USSR as forces involved in the delivery of military ordnance and logistical support in the Border War.¹¹

In the last part of his talk, Malan explained the new (1980) national management system to his audience. It was aimed at managing the security and welfare functions as an integrated whole. In this approach a key role was going to be played by the State Security Council. He concluded by quoting Churchill: "What is our aim? Victory. Victory however long and hard the road may be, for without victory there is no survival."¹² In short, in 1980 Malan used the concept of the Total Onslaught Strategy in Cold War terms, to depict the black liberation movement in South Africa, the African National Congress, as conspiring with the USSR and its satellite states to install a communist state in South Africa.

Criticism Against the Total Onslaught-Approach by the Liberal Opposition¹³

During the period of the Border War in which the Total Onslaught Approach was dominant, the liberal white opposition, especially embodied by the Progressive Party (in various articulations) pointed out a number of anomalies in the approach.¹⁴ They agreed that the USSR and its surrogate states were conducting despicable internal policies and that these were inspired by a utopian communist ideology and that, from a liberal point of view, this ideology was unacceptable. The core of the oppositions' argument was, though, that the governing National Party evoked the so-called Total Onslaught against itself. The opposition pointed out that the system of apartheid of the then National Party government maintained an oppressive and unfair system which was often imposed using force of arms. They also pointed at apartheid legislation that separated people from one another on the basis of skin color. The liberals specifically argued that the following laws and policies were oppressive and irreconcilable with generally accepted Western values: the Prohibition of Mixed Marriages Act; the Group Areas Act, which separated people on the basis of race; the Population (race) Classification Act and legislation regarding job reservation for whites; the Bantu (black African) homeland policies; forced mass removals of mostly black people from so called white spots; making the Afrikaans language compulsory in schools and instituting separate universities based on skin color alone. All these laws were racist in essence and based on race and especially color prejudice.

¹¹ Ibid.

¹² Malan, 16.

¹³ This exposition is based on Frederik Van Zyl Slabbert, *The System and the Struggle: Reform and Revolution in South Africa*, (Johannesburg: Southern, 1989).

¹⁴ The liberal opposition was constituted by more than the official parliamentary opposition, the Progressive Party; e.g. the South African Institute of Race Relations, some organizations like the End Conscription Campaign, the Black Sash, the Institute for a Democratic Alternative for South Africa; the New Republic Party.

It was further pointed out by the opposition that the military destabilization of South Africa's neighboring states—Botswana, Lesotho, Mozambique, Angola, and Zimbabwe—as well as the occupation of South West Africa, could not be harmonized with, and was not accepted by, the Western anti-communist and anti-USSR policies of the containment of communism. The National Party government's claim about South Africa being a bastion against USSR expansionism was seen as hollow rhetoric. The quintessential values of late twentieth century Western politics were human rights, the rule of law, non-racialism, the welfare state and private enterprise. It was claimed by the liberal opposition that all these principles were disdained by the National Party government in its policies towards the non-white people of South Africa. Instead of the Total Onslaught Approach bringing security and prosperity for the people of South Africa, and stopping communism, it would rather awaken the communist revolution. In simple terms the arguments of the liberal opposition boiled down to the fact that the National Party government was calling up the Total Onslaught against itself.

The liberal opposition argued persuasively that the Total Onslaught counter strategy was not going to succeed, neither through a military solution, nor by vigorously fighting ANC and South West Africa People's Organization (SWAPO) designated as terrorists, freedom fighters, insurgents and guerrillas by the South African Government, nor by arresting thousands of people in the country in accordance with security legislation. In the view of the liberal opposition the Total Onslaught Strategy was a cynical effort of the National Party and its cohorts to maintain the power and economic prosperity exclusively for white South Africans and to hand out nothing but crumbs to the black majority in South Africa. Some of the more radical liberals even went as far as to typecast the National Party government not only as without any popular legitimacy, but also portrayed it as an illegal government. This regime had to be hounded out of office as soon as possible and be replaced by a democratic government based on one person one vote. It stands to reason that the Border War enjoyed very little support among members of the liberal opposition. The liberals in no way accepted the Total Onslaught as a war and struggle against world communism, but depicted it as an exercise prolonging the civil war in Angola and destabilizing South Africa's immediate neighbors. In addition, the Border War was experienced and criticized as being divisive for black and white South Africans. In short, the opposition argued that the Border War was very expensive and that the money could rather be used in South Africa for the upliftment and development of the non-white population.

The Intellectual Approach of the African National Congress¹⁵

The biggest, oldest and most important liberation movement in South Africa, the African National Congress (ANC), had been identified by the then National Party government as its main opponent in the Total Onslaught. In 1960 the ANC and its liberation army, *Umkhonto we Sizwe*, (Spear of the Nation in the Xhosa language, acronym MK), were banned and prohibited by the government of Prime Minister Verwoerd. In the same year the ANC decided in favor of an armed struggle. The banning forced the ANC underground. The banned ANC members built relationships with Western interest groups and states, especially in Scandinavia, the Netherlands and in the United Kingdom. It was also in alliance with the South African Communist Party and very soon the USSR (and its satellite states like the German Democratic Republic, Poland, and Bulgaria) got involved in the liberation struggle against the National Party government. The USSR and its allies supplied money, weaponry, military, and advanced training to ANC cadres.

The ANC held a national consultative conference in June 1985 in Lusaka, Zambia. The deliberations give a clear picture of the ANC's response to the Total Onslaught Strategy of the NP government. The response, known as the Lusaka manifesto, distinctly indicated that the ANC regarded itself as the true representatives of the people of South Africa, especially the black people (Africans). The goal of the armed struggle was to grab the power from the hands of what the ANC termed the colonial authority, (the National Party government under Premier Botha) and hand it to the people of South Africa. Besides, the South African people had to strengthen and transform the liberation army, *Umkhonto we Sizwe*, to make it strong enough to conquer the enemy and protect the gains of the revolution. The ANC dedicated itself to use the principles of its 1955 Freedom Charter to create a united, non-racial South Africa. The Lusaka conference decided that a people's war had to be waged against the white minority regime in Pretoria. This war had to be fought with military weapons and all kinds of popular resistance. The whole South African nation had to be involved in the war against the apartheid regime so that a National Democratic Revolution could be accomplished.

All military activities had to be aimed towards a general mobilization of the South African masses. The goal had to be a progressive weakening of the enemy, the South African government, in political, economic, social, and military areas. Furthermore, the Lusaka Conference encouraged the internal resistance structures and sympathizer organizations to get involved in international trade sanctions, school boycotts, mass action, strikes, armed uprising, and protest meetings and to make South Africa, for all practical purposes, ungovernable. ANC leader Oliver

¹⁵ This summary is based on the work of Tom Lodge, *Black Politics in South Africa since 1945* (Johannesburg: Ravan, 1987); Rodney Davenport, *South Africa: a Modern History* (Johannesburg: MacMillan, 1987); James Barber and John Barratt, *South Africa's Foreign Policy 1945-1988* (Johannesburg: Southern, 1990).

Tambo said in August 1985 that anti-government actions of the United Democratic Front, a local mass based peaceful resistance movement, had to be encouraged.¹⁶

During its armed resistance against the apartheid government, the ANC analyzed the South African problem from a Marxist-Leninist perspective. In other words, according to the ANC there was a class struggle in South Africa. This struggle was of a twofold nature. In the first place the ruling capitalist class was primarily white, but included a few black minions and fellow travelers of the apartheid regime (such as Bantu homeland leaders, the compliant mixed race, colored, and Indian political parties and leaders). The proletariat was mainly black, poor workers exploited by the rich white capitalists. White workers did not represent a proletariat, but rather a worker's aristocracy that, in terms of the theory of false consciousness, were unaware of their real class position—that they were in fact being exploited by the capitalists. Furthermore, South Africa was a colonial state of a special type, because the colonial oppressors, the whites, permanently lived in South Africa and would not leave the country after liberation. Therefore a two stage revolution was needed in South Africa. In the first place the apartheid regime had to be removed by armed force. That would mean the end of colonialism. Thereafter, the whole social, political and economic structure of the South African society had to undergo a revolutionary change in terms of a progressive political economy in which the class power of the capitalists had to be toppled and a true socialist state had to be established.¹⁷

The USSR and its allied states were not remotely experienced by the ANC as an “evil empire,” with the aim to appropriate the whole free capitalist world and rule over it. Instead it accepted the USSR as a valuable ally in overthrowing the evil power constellation of the apartheid state. Indeed, in 1979 the ANC succeeded, with the aid of the USSR and its satellite states, to have apartheid declared a crime against humanity.¹⁸ During the whole episode of the armed struggle against apartheid (1960–1990) the South African Communist Party and the ANC counted among the most loyal and uncritical allies and apologists of the USSR. The ANC leadership cadres as well as ordinary exiles made use of Marxist-Leninist political and revolutionary jargon. Therefore, in the Cold War atmosphere of the time, it was difficult for the ANC to get direct support from the conservative governments of Reagan in the United States of America, Thatcher in Britain, and Kohl in West Germany.

In this approach the Border War is part of the struggle against the white capitalist and colonial oppressors. The ANC indirectly took part in the Border War. On the

¹⁶ Tom Lodge, *Black Politics in South Africa since 1945* (Johannesburg: Ravan, 1987):301.

¹⁷ *Ibid.*, chapter 12.

¹⁸ The International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 passed by the United Nations General Assembly. This was a cynical motion. The USSR and its communist allies declared apartheid to be a crime against humanity, while the communist states themselves were guilty of gross human rights abuses.

one hand because it is military bases were established mainly in Tanzania and Angola. On the other hand the ANC's military presence had been very weakly developed in the neighboring states closer to the South African borders. To the extent in which it gained access to neighboring states like Angola, Lesotho, Botswana, and Mozambique, the actions of the SADF at the time to destabilize its closer neighbors effectively knocked out ANC bases in these states. In addition, treaties like the Nkomati Accord and the economic dependence of the neighboring states, (because of the Rand monetary area and the Southern African Customs Union) on South Africa, led to a situation in which MK seldom, if ever, got involved in direct military action against the SADF. The significance of the ANC's attitude to the Border War is illustrated by the fact that in the post-apartheid era, the approach is used again to influence and even dominate the historiography of the War. The ANC's public rhetoric on this subject, eighteen years after the political change in South Africa, is still interspersed with Marxist-Leninist jargon dating from the time of the armed struggle.¹⁹

The Military History Approach: A Sympathetic Analysis of the South African Side of the Border War

The military history approach, a sympathetic, but at times critical, analysis from the South African side of the Border War was not undertaken in terms of the moral justifiability/justification of the war. The authors analyze the Border War from a military history viewpoint including a strategic studies viewpoint, as well as from a military-logistical angle. Members of this grouping that approach the Border War as military history experts as it were, are inter alia Chester Crocker, Willem Steenkamp, Al J. Venter, Christopher Coker, De Wet Potgieter, Helmut Römer-Heitman and Mike Hough.²⁰ These analyses indicated that the South African Defense Force had proven itself to be a well prepared military force, led by professional and part-time officers, warrant officers and petty officers, and ably served by citizen force privates who exemplified virtues such as bravery, perseverance, professionalism, the ability to innovate during real military operations, the achievement to logistically handle long lines of communication between the heartland of South Africa, South West Africa and Angola. The authors pointed out the design, building and use of locally manufactured weaponry; low battle losses and low troop fatality rates: all of these are commended as indicators of a competent, professional, loyal and often heroic military corps.

Regarding the relations between the military and the civilian authorities (civil military relations), the military historians mostly judged these from a typical Western, or at least a constitutionalist approach. It was accepted (mostly quietly

¹⁹ Cf. "The Border War" in *Journal for Contemporary History*, 34 (1) 2009.

²⁰ A summary of their work can be found in Al J Venter (editor), *Challenge: Southern Africa Within the Revolutionary Context* (Johannesburg: Ashanti, 1989), especially chapters 8, 12, 15, and 16.

and even uncritically) that the apartheid civil authority was in supreme command of the Defense Force. Furthermore, it was accepted that members of the Defense Force, and especially the high command, did not act in an overtly party political (partisan) manner. In other words, they were not allowed to openly practice party politics. It was recognized that members of the Defense Force might have adhered to different party political viewpoints, but that the lawful commands of the government of the day had to be, and indeed were, obeyed. In especially the last part of the Border War this relationship became important, because at that stage many senior officers held views that were party politically closer to the opposition Conservative Party led by Andries Treurnicht than to the reformists in President Botha's National Party. Partisanship in the SADF of the time could result in a constitutional crisis. Senior Defense Force officers often maintained a standpoint that practically became a mantra: there was no military solution to the problems that had led to the Border War; the solution had to be found by the politicians.

The military actions of the South West Africa People's Organization (SWAPO), *Forças Armadas Populares de Libertação de Angola*, (FAPLA) *Frente de Libertação de Moçambique*, (FRELIMO), the GDR and Cuban defense forces are often subjected to sharp criticism by the military historians. Occasionally the Cold War context of the Border War operations was pointed out. These authors are implicitly as well as explicitly sympathetic towards the Western alliance policy of containment regarding the USSR. The military historians point out that the SADF was being politicized and was being given contradictory tasks. On the one side it was used as instrument to curtail Soviet expansionism in Southern Africa (positively judged). On the other side, they were critical of the application of the SADF in the black residential areas in South Africa to maintain law and order. They point out the negative consequences of using a well-trained defense force for internal policing purposes. These authors are therefore not insensitive to the fact that there was an internal contradiction in the policies of the South African government. The contradiction was, given the context of the international politics of the time, that it was untenable to maintain both apartheid as internal policy and an anti-communist or anti-USSR policy externally—and to expect Western support.

Though generally sympathetic towards the then SADF, the military historians at the same time are critical towards the approach sometimes displayed by the SADF high command regarding both tactics and strategy. Writers in this approach are also not blind towards the contradictions within the ANC's liberation struggle. The demands of the ANC and other liberation movements that the political rights of the non-white people of South Africa had to be restored completely and that the real leaders of South Africa had to take part in a political settlement are supported by

or at least accepted by these writers. But the authors do not uncritically accept the ANC's alliance with the USSR, the Cuban participation in the Border War and the openly communist Frelimo regime in Mozambique and the *Movimento Popular de Liberação de Angola* (MPLA) regime in Angola. In *realpolitik* terms, these authors regard the Cold War context of the Border War as more important than the apartheid context. This is the source of the sympathetic treatment of SADF operations in the Border War by the military historians.

The Critical Intellectual Analysts

Besides the sympathetic military history analysts, a whole school of critical intellectual and academic analysts wrote about the Border War. These critical analysts appraised the Border War by taking the Government's Total Onslaught Strategy apart. Examples of analysts that belong to this grouping are, in my opinion, Du Pisani, Frankel, Grundy, Hanlon, Jaster, and Seegers.²¹ They deconstruct and ironize the Total Onslaught Strategy. The analysts point out that the total onslaught strategy was derived from the work of the French strategist André Beaufrè, as well as the work of the American anti-insurgency strategist, John McCuen, but had been adapted to South African circumstances.²² According to these analysts the Total Onslaught Strategy deviated from the traditional view of civil-military relations inherited from the British model: e.g. that the SADF would not get involved in party politics. The Total Onslaught, though, is for the critical analysts an essential political act in which the SADF got totally involved. In addition the analyses of, and justifications for, the Total Onslaught, and the threats identified by this approach are condemned as crude, unsophisticated, and mythological.

In the approach of the critical analysts the SADF high command is depicted as a group of top officers that are paranoid about "communism." According to the critical analysts the SADF leadership erroneously saw the Border War as a "surrogate affair" within which Cubans and East Germans acted on behalf of SWAPO and the ANC, as well as of the other liberation movements. The critical analysts disparage and belittle the Total Onslaught terminology about a so-called communist plot, orchestrated by the USSR in collaboration with other terrorist elements from the third world in association with friendly Western states and the United Nations. The view of the SADF that the process of military insurgency of SWAPO, the ANC and other liberation movements were part of USSR efforts to eventually include South

²¹ Cf. André du Pisani, "Beyond the Barracks: Reflections of the Role of the South African Defence Force in the Region," (Johannesburg, South African Institute of International Affairs, 1988); Phillip Frankel, *Pretoria's Praetorians: Civil Military Relations in South Africa* (Cambridge: Cambridge University Press, 1984); Kenneth Grundy, "The Rise of the South African Security Establishment," *Bradlow Series Paper* no. 1, (Johannesburg: South African Institute of International Affairs, 1983); Joseph Hanlon, *Beggar Your Neighbours* (London: Catholic Institute of International Relations, 1986); Robert Jaster, *South Africa's Narrowing Security Options*, no. 159 (London: Adelphi Papers, International Institute for Strategic Studies, 1980); Annette Seegers, Review article: "The Military in South Africa: A Comparison and a Critique," *South Africa International*, 16 (4): 23-35, 1986; Annette Seegers, *The Military in the Making of Modern South Africa* (London: IB Taurus, 1996).

²² John McCuen, *The Art of Counter-Revolutionary Warfare* (London: Faber & Faber, 1966).

Africa in its sphere of influence is relatively an overreaction and a self-righteous distortion of the legitimate struggle of the liberation movements.

The critical analysts pointed out that South Africa was almost totally Afrikanerized and this, knowingly as well as subliminally, represented and advanced the interests of the ruling Afrikaner minority above the interests of the whole of South Africa.²³ According to the judgment of the critical analysts the SADF contributed to the culture of a garrison state, and of praetorianism that existed among whites, but especially among the permanent members of the SADF.²⁴ To put it bluntly, the SADF was specifically the Afrikaner people's army—the National Party in uniform. Metaphorically the SADF was an Afrikaner *Volkswaermding* (Peoples' Defense Force) but also the exclusive defense force of the white people in general. The Border War was essentially more part of the struggle for the survival of Afrikaner and white privilege, than part of a struggle together with Western allies against an onslaught by the communist USSR and its surrogate forces. Some critical intellectuals go as far as to classify the border operations of the SADF as that of a frontier army. It essentially means that the SADF border operations mostly happened in secret; that civilian access to information about the Border War was extremely limited and hampered; that the SADF consciously got involved in local politics through the hearts and minds program that had to turn the local population against SWAPO; the whole battle area was zoned as an operational area within which the SADF went about its tasks without proper civilian supervision and mostly hidden from private and civilian observation.

The analyses also focus attention, though, on the technological achievements of the SADF in collaboration with the South African private sector which had succeeded in circumnavigating the United Nations arms embargo and had built up a substantial internal arms industry. The critical analysts are also well aware of efforts by the SADF leadership to involve sympathetic black people in the arms industry and the defense force structures. Particularly, that for example, the South West Africa Territorial Forces (SWATF) generally was black and that they filled many of the senior officer posts in those forces. They find it contradictory that the SADF, who in essence supported an apartheid state, in many instances factually acted racially integrated at the border—the SWATF and *Koevoet*, a multiracial special operations South African Police battalion, are often mentioned as examples.

The final judgment of the critical analysts, though, is that in spite of the fact that the SADF ostensibly acted in a non-partisan way, their interests were so thoroughly intertwined with those of the power constellation of the white apartheid state that the SADF could hardly be judged as non-party political. In fact, these

²³ This refers to the dominant white political group in South Africa of the time, the white Afrikaans-speaking people.

²⁴ The whole political order is militarized in a garrison in order to defend the motherland against the enemy. Civilian control is greatly watered down in order to ensure survival of the state; The military establishment exercises almost total control over society with little or no civilian oversight.

analysts make a strong case that the civil-military relations in the then South Africa got so thoroughly intimate that the SADF could not be viewed as anything but an extension of the apartheid state and its National Party political leadership. However, they were aware that the top leadership of the SADF did not have a tradition or desire to get directly involved in party politics to execute a coup, for example, in a case where the South African government might become too weak or incompetent to govern by emergency measures.

Discussion

In this discussion the different approaches are treated, where possible, systematically. As far as the Total Onslaught view of the NP government and its military bureaucracy is concerned, it could never succeed to solve the essential contradiction of the maintenance of apartheid in the battle against the perceived communist onslaught. Despite the Cold War context of the situation, the international community of states through 1966-1989 was no longer willing to accept that apartheid was purely a South African internal affair. The race and color foundation of the system of apartheid was internationally so thoroughly politicized that no Western state could openly support the National Party government in the Cold War battle against the USSR and its sycophants. In addition, the view of the SADF as well as the National Party government that the USSR was orchestrating a Total Onslaught against South Africa, that it viewed South Africa as a crown piece in a game of chess for world domination and that it wanted to appropriate the country as quickly as possible, had not been built on a nuanced analysis of the USSR's foreign policies.

In the post-1975 period, when the USSR became fairly directly involved in Southern Africa and established diplomatic and trade links everywhere, they made no effort to cut off the West's access to strategic minerals. The involvement of the USSR in Southern Africa was indeed aimed at promoting its national interests in general. But to the USSR these Southern African interests were not essential in nature. If the USSR were to lose all its interests in Southern Africa, it would have constituted no greater loss than losing its interests in post-1972 Egypt. Given the USSR's interests in the international trade of the 1970s and 1980s, it is unthinkable that, if a USSR-friendly ANC were to come to power, the USSR would have refused the West access to minerals and would have blocked the Cape of Good Hope sea route. The USSR indeed regarded its diplomatic and military presence in Southern Africa as part of its greater foreign policy aim of expanding the influence of Marxism-Leninism, but managed that presence as cost-effectively as possible. The USSR, for example, gave very little economic aid to black-governed Southern African states. They did, indeed, supply arms, developed

diplomatic representation, augmented cultural relationships and so forth. But all these were relatively inexpensive diplomatic methods. With the dawn of the Gorbachov era even arms and military aid declined. That the USSR was going to force South Africa into a direct grand scale confrontation, that it was prepared to establish a puppet regime in South Africa, was post-1979, after their involvement in Afghanistan, no longer realpolitik.²⁵

The biggest anomaly of the Total Onslaught approach however was its apartheid Achilles heel. In many aspects the Total Onslaught was called up by apartheid and there was no way in which the so called Total Onslaught against South Africa could be fended off by whatever clever national security strategy. The essential stumbling block for the Total Onslaught strategy, apartheid, had to be removed to terminate the conflict in Southern Africa. That happened on 2 February 1990 when South African State President FW de Klerk released Nelson Mandela from jail, unbanned the ANC and started with a negotiated political settlement.

The second approach that of the liberal opposition, intellectually succeeded to expose the anomalies of the Total Onslaught strategy. Thinking, patriotic white South Africans considered the argumentation within this approach and could agree with some of it. However, given the armed struggle of the ANC and other liberation movements, their cozy relationships with the USSR and other communist states, and the general Cold War atmosphere of the time, the liberal opposition could not succeed to convince the white voters to accept its overall viewpoints. Not even the *verligtes* (enlightened liberals) in the National Party government could be convinced to accept these views. In addition, the Total Onslaught communication of the National Party was relatively effective, many businesses profited from the Border War, and the feeling that white civilization was under threat after the fall of the *cordon sanitaire* of the Portuguese Empire (1975) and white ruled Rhodesia (1980) contributed to a siege mentality within a majority of the white population.

Consequently the Total Onslaught campaign of the National Party government was accepted to a great extent by the white political order, until the USSR collapsed in 1990 and a settlement was reached in Namibia. Even thereafter the white electorate was more willing to accept the viewpoints of the De Klerk government than those of the liberal opposition. During the period of the Border War the white electorate was relatively conservative and decidedly anti-communist in orientation. For that reason the white electorate accepted the Total Onslaught rhetoric in all the elections held during the time of the Border War. The liberal white opposition never got more than twenty percent of the white popular vote in general elections. In addition, the Border War was also experienced by whites as a struggle in which a future ANC-led black majority government posed a real threat. In other words, the war was not only experienced in anti-communist terms, but also in racial terms.

²⁵ Cf. George R Berridge, 'The Role of the Superpowers', In *Can South Africa Survive?* Edited by John Brewer, (Johannesburg: Southern, 1989): 10-13.

Liberal criticism and the identification of anomalies simply had no party political effect because the fear of black domination was endemic in the collective memory of the overwhelming majority of whites.

The ANC's struggle orientation, or fight for liberation approach, displays a similarity with the Total Onslaught approach, namely, inherent and insurmountable contradictions. The ANC as the most important carrier and articulator of the struggle approach associated itself with the South African Communist Party and the USSR. It might have been that initially the relationship was founded on pragmatic considerations, but over time a strong ideological affinity revealed itself. The ANC's rhetoric of the just struggle made use of Marxist-Leninist jargon and propaganda and was strongly characterized by communist revolutionary rhetoric. It was inherently contradictory to make a case for the struggle for the liberation of the poor and oppressed black people of South Africa, to demand a culture of human rights and equality for all—and then to accept the USSR as a most important ally. The intimacy of the ANC-USSR alliance was such that many analysts argued that the ANC was a most uncritical ally of the USSR; that it was among the most loyal allies of the Brezhnev dictatorship.²⁶

In the same way that apartheid is the Achilles heel of the Total Onslaught Strategy, the ANC-alliance with the USSR regime is the Achilles heel of the freedom struggle approach. It is generally accepted that the USSR was a totalitarian dictatorship which trampled on the human rights of its citizens. At the time of the Border War the USSR regime were heirs to the tyranny of Stalin. Despite this, the liberation movements freely accepted and used ideological, military and financial support from this regime. Besides, the ANC never tested to the utmost the *satyagraha* strategy of Mahatma Gandhi and its former president Albert Luthuli's policy of non-violent resistance. The liberation approach could never really succeed to convince well-meaning and right-minded white South Africans of the justness of its strategy of violence and armed resistance. The problem was essentially this: an ANC-ruled communist polity in which the state finally withers away and in which a black majority rules, could not be reconciled with Western liberal and constitutional thought that would be acceptable to the white population.

The two intellectual approaches (the military historians and the critical analysts) are more difficult to classify and to judge. All things considered, it becomes clear though that the two approaches essentially had a political rather than a research agenda. The military historians were mostly sympathetic towards the SADF, its professional leadership, and impressive battle achievements in the field. In the greater context the military historians were skeptical and critical of the liberation

²⁶ Phillip Nel, *The USSR and Southern Africa: Aspects of Policy* (Stellenbosch Institute for Soviet Studies, 1987): 23.

movements' alliance with the USSR. In their analyses the USSR threat carried more weight than the apartheid yoke. The apartheid state was organized in a nominally democratic manner, in other words its white political leadership could be rejected in an election by the white voters. In comparison with the USSR, South Africa had a large degree of press freedom and a formally independent judiciary. For instance, President Botha was removed from power by an internal National Party motion of no confidence in August 1989. In addition, the apartheid National Party regime at the time, around 1985-1989, had a strong orientation towards reform and important apartheid laws were removed from the law books and citizenship for all South Africans was restored. Finally, according to the military historians, the actions of the SADF on the border created an opportunity for the politicians to bring about a political solution for the Southern African nations and for the race problem.

The critical analysts, it would appear, also had a political agenda: that the National Party regime had no legitimacy among the black majority in the country and that this government necessarily had to be terminated. They underplayed the threat from the USSR and emphasized the cruelty and oppressiveness of apartheid. In my judgment the critical analysts' special goal was to vilify the existing order in South Africa and to cast doubt on its legitimacy. It was not a "mere objective and critical analytical" exercise, but rather a case of advocacy analysis. The same criticism can be brought against the military historians: it formed part of an advocacy analysis in which the anti-communist stance of the NP-government was deemed more important than its apartheid policies.

Van Zyl Slabbert, a well-known liberal public intellectual, wrote in 1989 that the critical intellectual analyses of South Africa were marred by ideological dogmatism. Indeed, wrote Slabbert, these analysts were disposed towards ideological certainty rather than scientific objectivity, or at least rational discourse.²⁷ The critical intellectuals argued strongly that the relationship between the governing party and the top leadership of the SADF was intimate. The shared values of being white and Afrikaans, the feeling of being threatened by the West as well as the USSR, contributed to a situation where the SADF was often seen and experienced as a people's army for the Afrikaners, rather than a defense force for the whole of South Africa. The empirical outcome of the Border War, as well as the dismantling of apartheid, left considerable parts of the critical intellectual analyses undone; the structural circumstances that necessitated the end of the Namibian occupation and of apartheid were mostly accepted by the top leadership of the SADF. If South Africa really was a garrison state, the SADF, a frontier army, or praetorian defense force, the senior officers would quite likely have executed a coup d'état

²⁷ Frederik van Zyl Slabbert, *The System and the Struggle: Reform and Revolution in South Africa* (Johannesburg: Jonathan Ball, 1989), chapter 3.

and would not have adhered to the civilian and party political accords. With the political transition in 1994, the same predominantly Afrikaans speaking military high command confirmed their loyalty to the new black majority system and accepted the ANC dominated civilian high command. There was little evidence of disobedience towards the civilian authority.

One could reduce the various approaches about the Border War and the internal struggle in South Africa to two main political stances: maintenance of the white political order as it had developed since 1910 against the demands of the black liberation movements and critical analysts: scrapping of apartheid, the collapse of the white political order, and the acceptance of a black majority government. The various National Party-led governments were willing to change the nature and instruments of white domination, but were not willing to abolish them. The ANC and the other liberation movements did not want to compromise. What was needed was a two phase revolution within which white domination had to be demolished (“smashed” in Marxist jargon) and replaced by a socialist political economy. Both sides used the Cold War environment to boost their cases. The National Party government tried to argue that it was an indispensable ally in the fight against Soviet communism. The ANC and its cohorts used the USSR to advance their liberation agenda. The end of the Cold War, the deterioration and fall of the USSR and the West’s victory over communism rendered this context of the Border War redundant and the era of accommodation dawned with the De Klerk government. But then the Border War had been over.

This essay illustrates how the various approaches created a world view in which the government, the liberation movements and the intellectual analysts found space to maneuver. Even more, some of the approaches served to legitimize and justify violence, war and revolution. The application of a political-intellectual approach is therefore not merely an innocent intellectual framework for analysis; it can also justify violence and is inherently political. Intellectual approaches regarding wars therefore have to be taken seriously and be subjected to critical discourse. The same complex reality leads to different interpretations and conclusions that often cannot be united and tend to be mutually exclusive. The views were resolved by political means and not through intellectual discourse.

Comic Book Nurses: A Barometer of Mid-Twentieth Century Gender Attitudes

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Contemporary popular romance narratives are among the most significant narrative modes in advanced industrial societies. They are primary sites for the ideological construction of individuals as gendered subjects, especially female ones, in male-dominated heterosexual couples. By producing the female subject as complemented and completed by her relation to a male partner, patriarchy naturalizes sexual identity, masking the cultural construction of the feminine, thereby continually reproducing women in a subordinate position.¹

The term “patriarchy” broadly refers to an institutionalized, male-dominated social system, although the definition is far from this simple in feminist discourse, with implications being multifaceted in terms of understanding the oppression of women.² Through the twentieth century, nursing was “persistently female dominated and associated with stereotypically feminine characteristics.”³ In the history of the struggle for women’s liberation, no other identifiable image has been more consistently representative of the oppression of womanhood than that of the nurse.⁴ For the purpose of this paper, feminism is understood as being primarily concerned with deconstructing and supplanting the unequal, sex-based, societal power structure that supports patriarchal hegemony.⁵

This paper argues that, through the observation of portrayals of nurses in comic books, insight into the societal mindset contemporary with their publication is obtainable, specifically that aspect pertaining to attitudes towards women. Comic book scripts tend to place a reliance on stereotyping and the use of widely recognizable behavior patterns, giving the published material some measure of congruence with the reader’s own experiences and, therefore, components they can easily relate to. These experiences may have been direct, or indirect via other forms of entertainment or news media, but avail the reader the connection that popular media exploit in building their consumer base. Stereotypes in turn resonate with prevailing attitudinal norms, societal images of categories of people, women and nurses included, and how they are expected to behave as a group and in relation to other groups. Such images also are not static, but evolve in response to historical context, and this evolution can be seen clearly in comic book nurses from the

¹ Teresa L. Ebert, “The Romance of Patriarchy: Ideology, Subjectivity, and Postmodern Feminist Cultural Theory,” *Cultural Critique* 10 (1988): 19-97.

² Veronica Beechey, “On Patriarchy,” *Feminist Review* 3 (1979): 66-82.

³ Frances L. Hoffman, “Feminism and Nursing,” *NWSA Journal* 3, no. 1 (1991): 53-69.

⁴ Tony Delamothe, “V: Women’s Work,” *British Medical Journal (Clinical Research Edition)* 296, No. 6618 (1988): 345-347.

⁵ Pat Horn, “Where is Feminism Now?” *Agenda* 26 (1995): 71-74.

1930s through the 1970s.

Prior to World War I, although campaigning publicly for voting rights for women, nurses generally did not align themselves with radical feminists. Instead they focused on negotiating and accepting a limited professional freedom at the expense of continued subservience to the patriarchy, the latter represented by the male-dominated medical profession.⁶ This deal equates to a “patriarchal bargain” of the kind theorized by Kandiyoti.⁷ But nurses were subjugated to the extent that they were only able to practice as nurses “under the supervision of physicians,” with no “recognition that they were the professional equals . . . with rights to practice independently.”⁸

By examining depictions of nurses in comic books, this manifestation of gender-based stratification in the medical field is easily identifiable. For instance, in the 1950 romance comic book story *Forgotten Vow*, the consequences of a nurse abandoning her vow to serve the physician, and of taking treatment matters into her own hands, are pictured as severe. The nurse (woman) is cautioned not to rise above her station.⁹ Relatedly, the genuine prejudice that existed against women attempting to enter that male-dominated medical field is highlighted in Harvey Comics’ *Sweet Love #3* in a story titled “My Beloved Doctor.” The lady intern endures what would today be considered sexual harassment, as well as blatant general sexism, as the dialog on the splash page illustrates:

MALE INTERN #1. I don’t like women doctors.

MALE INTERN #2. Hmm, neither do I, but she’s cute.

Eventually the young lady aspiring to break into the medical profession capitulates to tradition by falling in love with and marrying an established physician; but we do not know whether she continued with her career afterwards.¹⁰ As an oppressed, female-gendered, low status profession, nurses received relatively low pay for their services, and thus typified working women, including home-makers, throughout patriarchal twentieth century Western society, although by the 1970s changes were apparent.¹¹ Patriarchy, viewed as a culture, seeks to maintain its status quo through pressure to conform to its norms, with sanctions for those who deviate, and the use of institutionalized devices to suppress through oppression those whose actions and beliefs might undermine the existing power structure. By repeatedly reminding women of their subordinate status and of those behaviors which they, as females, are permitted within the patriarchy, this pressure is applied by society, popular culture being one means by which such conformity is encouraged. Comic

⁶ Jo Ann Ashley, “Nurses in American History: Nursing and Early Feminism,” *The American Journal of Nursing* 75, no. 9 (1975): 1465-1467; Hoffman, “Feminism and Nursing.”

⁷ Deniz Kandiyoti, “Bargaining with Patriarchy,” *Gender and Society* 2, no. 3 (September 1988): 274-290.

⁸ Ashley, “Nursing and Early Feminism,” 1466.

⁹ Unknown writer and artist, “Forgotten Vow,” *Sweethearts* 86, Fawcett, April 1950, 1-9.

¹⁰ Lee Elias (pencil artist), “My Beloved Doctor,” *Sweet Love* 3, Harvey, Jan 1950, 1-10.

¹¹ Ashley, “Nursing and Early Feminism.”

books, and popular media in general, serve as propaganda outlets for prevailing societal norms, because they tend to communicate those attitudes that pervade the underlying matrix of social psychology.

Nurses in the Comics

World War I solidified the early image of nursing, promoted in the Florence Nightingale era, that of the “self-sacrificing angel.”¹² World War I nursing recruitment posters presented the profession as a means by which women could find an important societal role to play outside the home. The background of war added further dimensions, such as adventure and danger, and there was a powerful implication that nurses were virtuous, feminine saviors. The zenith of the self-sacrificing angel image is personified by Edith Cavell, the British nurse executed by the Germans in Belgium for aiding the escape of prisoners of war. This image was adapted for early comics by writer Ray Thompson and artist Charles Coll, in their syndicated newspaper strip, *Myra North, Special Nurse*, which ran from 1936 through 1941.¹³ Early comic books proper were compilations of such strips. *Crackajack Funnies* was one example, collecting together a variety of comic strip genres, which included *Myra North*, reprinting them on a monthly basis.

Myra North, and several comic book clones, merged espionage and military exploits with care of the infirm, the non-nursing activities predominating. Such an atypical image of a woman still, however, contained elements that returned the character ultimately to subservience to the male. Firstly, the apparent independence exhibited by the female was attained by involvement in stereotypically male activities associated with war (i.e. the woman can only achieve independence by becoming like a man). Secondly, these services were rendered to a male superior, however distant. Thirdly, if romance occurs, the independent woman succumbs to a reassertion of her femininity. Especially in *Myra North*, we observe a female character that has entered a quasi-bi-gendered territory, taking on some male attributes made expedient by the situation, and mirroring, for example, the wartime need for women to enter areas of production typically reserved for men.¹⁴

Myra North perfectly encapsulates the limited independence that nursing promised the young woman in the middle decades of the twentieth century. In the first panel from the 24 April 1936, *Myra North* newspaper strip, the narration reads, “With the donning of the Red Cross uniform, a subtle change comes over *Myra North*! She feels capable of facing life’s problems and working them out for herself!”¹⁵ A connection in the public mind between nursing and the liberated

¹² Jacqueline M. Bridges, “Literature Review on the Images of the Nurse and Nursing in the Media,” *Journal of Advanced Nursing* 15 (1990): 850-854.

¹³ Don D. Markstein, “*Myra North, Special Nurse*,” *Don Markstein’s Toonopedia*, last modified 2008, www.toonopedia.com/myranrth.htm

¹⁴ Ebert, “Romance of Patriarchy,” (see n.1).

¹⁵ Ray Thompson (writer) and James Coll (artist), “*Myra North, Special Nurse*,” *The Southeast Missourian* (Cape Girardeau, MO), April 24, 1936.

woman was still present in the early 1960s. In the 1963 comic book adventure story “Menace from the Deep,” during preparations for an expedition to locate the monster reptile Gorgo, the group leader tries to prevent a woman in the party from participating:

DR. CAREWE. No, not you, Miss Maltby! It’s too dangerous for a woman!

MISS MALTBY, *offended*. I’m not just “a woman,” Dr. Carewe! I happen to be a registered nurse and I can take care of myself as well as any man. . . and perhaps a bit better!¹⁶

The war nurse, by voluntarily placing herself on the front line, encapsulates the self-sacrificing image. But by real and fictional direct engagement in the activities of war and other dangerous situations, a persistently positive version of this image developed, that of the heroic nurse, although this image became less prominent as a representation of nurses as time passed following World War II.¹⁷

Challenging Patriarchal Norms

Adoption by women of roles traditionally reserved for men became a strategy for second wave feminists to achieve equality.¹⁸ However, feminist intellectual diversity is such that there are thinkers who entirely reject the notion that women need to emulate men or adopt male characteristics in order to achieve liberation. Instead, they assert that the woman simply needs to be herself, however she wants to be.¹⁹ In *Wonder Woman*, as originally conceived by Charles Moulton (Dr. William Moulton Marston), the heroine’s alter ego is nurse Diana Prince. Wonder Woman, an icon of independent womanhood, was the protagonist in stories that deliberately conveyed a feminist ethic. The statement “A girl who knows her own power can break ANY man-made bonds,” accompanied by Wonder Woman freeing herself from male-inflicted bondage, exemplifies the kind of feminist propaganda, extraordinary for its time, which was fairly typical of early Wonder Woman stories.²⁰ Even though one could argue that her independence was constrained by her affections for pilot Captain Steve Trevor, more so as the series moved through the 1950s, importantly, Steve loves Wonder Woman, the undisguised and superlative expression of unfettered womanhood, but is not attracted to that same woman in her role as a nurse, the woman who succeeded in becoming established in man’s world of work. Thus, Wonder Woman stories depart from patriarchal norms in that the male hero prefers the independent, natural, undomesticated

¹⁶ Joe Gill (writer) and Steve Ditko (artist), “Menace from the Deep,” *Gorgo* 16, Charlton Comics, December 1963, 18. Note that in comic book dialog, ellipses are commonly used to denote slight pauses, and do not indicate missing text in the examples used in this article.

¹⁸ Hoffman, “Feminism and Nursing,” (see n.3).

¹⁹ Cathy Kozlowski, “Feminism Should Not Have Boundaries,” *Off Our Backs* 37, no. 4 (2007): 64-67.

²⁰ Charles Moulton (writer) and Harry G. Peter (artist), “The Tigeapes of Neptunia,” *Wonder Woman* 15, DC Comics, Winter 1945, 1-36.

woman over the woman semi-liberated but made available by competing in the patriarchal work arena.

In contrast, female nurses have sometimes been masculinized in the comics, by depicting them as aggressive themselves, and defiant in the face of aggression. Examples here are the covers of Lev Gleason Publications' *Crime Does Not Pay* #132, in which a nurse pulls a gun on a gangster attempting to assassinate her patient, and the similar but much later Marvel comic *Night Nurse* #3, in which an unarmed nurse angrily challenges a gangster in another patient assassination attempt. However, in the first of these stories, the nurse's maleness-related independence is undone by suggested female gullibility. In the second, it is this same feminine gullibility, just one of the underbellies of this sometimes tough character, that precipitates the crisis, and she is rescued by the handsome male intern.²¹ The implications in both cases are that women can act like men if they want, but they will still not be as capable as men because of their feminine weaknesses. Ultimately this viewpoint underscores a societal denial of socially constructed gender difference, and harkens to a "natural order" hypothesis that consigns the female to an inferior position.

World War II and the Changing Image of Nursing

Change in the public image of nurses between the wars was in part driven by complex organizational changes within the nursing profession itself.²² World War II nursing recruitment posters convey an entirely different image of the profession from those of World War I. Promoting wartime nursing in a more glamorous light, there is the suggestion now that nursing offers a route to relationships with men, in addition to the patriotic service rendered to country in time of need. In girls' comics of the period, however, and in frequent nursing recruitment ads in romance comics through the 1960s, the nursing profession continued to be presented as noble, the means by which a young woman could contribute by helping the afflicted and serving her country, and as a career with a future. A good example is offered by the two page informational feature, *Student Nurse*, presented in Parents' Magazine Press's *Sweet Sixteen* #9. The steps undertaken by a student nurse from enrollment through graduation are outlined with a view to convincing the reader of the worth of a career in nursing, albeit one subservient to male medicine.²³

In most comics depicting nurses, however, the value of the nurse became increasingly associated with media-determined standards of appearance. The

²¹ Charles Biro (pencil artist & inker), "A Fat Tip for Murder" [cover illustration], *Crime Does Not Pay* 132, Lev Gleason, March 1954 (see <http://digitalcomicmuseum.com/index.php?dclid=15632>); Jean Thomas (writer) & Winslow Mortimer (pencil artist), "Murder Stalks Ward 8!" *Night Nurse* 3, Marvel Comics, March 1973, 1-20 (see <http://www.comics.org/issue/111442/cover/4/>).

²² Nona Y. Glazer, "'Between a Rock and a Hard Place': Women's Professional Organizations in Nursing and Class, Racial, and Ethnic Inequalities," *Gender and Society* 5, no. 3 (September 1991): 351-372.

²³ "Student Nurse," *Sweet Sixteen* 9 (Parents' Magazine, Sept 1947), 1-2 (see <http://digitalcomicmuseum.com/index.php?dclid=4974>).

deliberate juxtaposition of the desirability and corresponding undesirability of young, physically good-looking nurses on the one hand, and often older, but certainly ugly or unattractive nurses on the other, became a staple for the plots of humorous as well as romantic drama comics. Covers of Avon's *Buddies in the U.S. Army* #2, Standard Publications' *Joe Yank* #12, and Magazine Enterprises' *Dogface Dooley* #3 all promote the desirability of pretty, young nurses in uniform.²⁴ This move towards more widespread sexual objectification and commodification of the female form appears to have been a phase in a mass adjustment by the patriarchy to the outcomes of First Wave Feminism. The popularized "battle of the sexes" accentuated the extremes of gendered roles and behaviors as the norm, the voluptuous screen goddesses of the 1950s being a product of that equation. Such icons stand in stark contrast to the image of Twiggy, and the emaciated, more boyish models that seem to have driven women's fashion since the rise of Second Wave Feminism.

Nellie the Nurse and the Sexy Nurse Image

The most prominent nurse character in comics during the 1940s was *Nellie the Nurse*, written by Stan Lee of Timely/Marvel Comics. *Nellie the Nurse* was typical of the career-girl teen humor comics produced by that company during this period. Stereotypical female occupations, such as nurses, secretaries, models, movie stars – the career girls of the 1940s, although a vestige of the progress made by First Wave Feminism interestingly remained roughly the same through the 1960s and into the 1970s.²⁵ In the comics the workplace inevitably provided young women with romantic opportunities and the pursuit of relationships with the opposite sex. Thus the power that might be achieved by a working woman was subverted, by reinforcing her enslavement to her own conditioned desire for submission to the male through the heterosexual relationship approved by the prevailing patriarchy. Additionally, *Nellie the Nurse* in particular added further elements of female demotion, found across the media, that reflected, and indeed contributed to the determination of the reality for nurses, by virtue of reinforcing, exaggerating, and expanding on negative stereotypes, on the hospital floor and wherever else their work took them.

Graphically, *Nellie the Nurse* falls into the category of "good girl art." This widely used term requires precise, formal definition, but for the purposes of this paper it will be understood as a depiction of females that suggests innocent and unintended sexuality on the part of the character. Artwork in the *Nellie* series evolves from a fairly realistic style, in which the "good girl" element is achieved

²⁴ Mort Lawrence (artist), Cover, *Buddies in the U.S. Army* 2, Avon Periodicals, 1953 (see <http://digitalcomicmuseum.com/index.php?dclid=1736>); Ross Andru (pencil artist), Cover, *Joe Yank* 12, Standard Publications, Aug 1953) (see <http://digitalcomicmuseum.com/index.php?dclid=7821>); unknown artist, Cover, *Dogface Dooley* 3, Magazine Enterprises, 1952 (see <http://digitalcomicmuseum.com/index.php?dclid=14203>).

²⁵ Amy S. Wharton, "Feminism at Work," *Annals of the American Academy of Political and Social Science* 571 (September 2000): 167-182.

by, for example, the accidental raising of the edge of Nellie's dress by a gust of wind, through an increasingly cartoony appearance that features tightening of Nellie's uniform accompanied by a morphing of her physical attributes into an exaggerated hourglass figure, with very ample breasts and hips and a tiny waist. The humorous content of the comic increases as the series progresses, and jokes at the expense of Nellie's physique, particularly on the cover of the comic, become standard. Typifying this kind of good girl art, Nellie is often shown, for example, innocently taking a male patient's temperature and pulse, while the thermometer in his mouth explodes, his ability to remain oriented deserts him, and he is overcome by sexual attraction for Nellie's morphology, as on the cover of *Nellie the Nurse* 22. What we see on this cover is Nellie in an extremely tight uniform. She has very large, firm-looking breasts, a narrow waist, and curvy hips. She is holding a standing male patient's hand, touching his wrist while taking his pulse. In his mouth is a thermometer, the end of which has burst, and a rising trail of steam (?) is emitted from this broken end with the sound effect "Ssssstttt!" written in it. The man has a huge grin on his face and his tongue is fully extended in a kind of drooling position. His eyes are wide open with his eyebrows raised, and his gaze is clearly aimed at Nellie's bosom. His head is orbited by a red circle with hearts interspersed along it, indicating that he has a huge crush on Nellie. His legs and arms are in a position one would expect in someone experiencing a kind of seizure. The dialog is as follows:

NELLIE. Why, Mister O'Malley . . . you're running a fever!

O'MALLEY. **You're telling ME!**²⁶

Typically for good girl art, as in the case above, Nellie is presented as being unaware of the effect she is having on the male patient, or cannot understand why, for instance, he is chasing her. This latter gag is often accompanied by the doctor evaluating this display of male sexual arousal as indicative of the patient's recovered health. The sexual harassment that is sometimes a component of this scenario is accepted as a normal consequence. The potential independence of the working woman is thus undermined by the inference that she is facilitating her use as a sex object for men. Moreover, she is also shown as actively seeking relationships with male interns, the junior representatives of the male medical hierarchy, or succumbing to her own attraction for physically desirable or wealthy male patients, further perpetuating the patriarchal script. In these 1940s teen humor *Nellie* books we see the emergence of the "sexy nurse" image.²⁷ This image was not original to comics, being found also, for example, in the cover illustrations for detective pulp magazines of the 1930s, but comic books assisted in its refinement and distribution. This image persists to the present day, where it now predominates,

²⁶ *Nellie the Nurse* 22, Cover, Marvel Comics, January 1950 (see <http://www.comics.org/issue/202567/cover/4/>).

²⁷ Bridges, "Images of the Nurse and Nursing in the Media," (see n.12).

despite the nursing profession's moves to eradicate it from the wards by adoption of gender-neutral scrubs in place of the uniform, which increasingly became used in the media as an accessory for the sexualization of the nurse image.

A-Husband-Hunting We Will Go!

1950s and 1960s romance comics featuring nurses frequently imply that young women enter nursing at least partly for the opportunities available for husband-hunting. In one example, from the 1952 comic book story *My Heart Was in Chains*, a military nurse comments, "You never can tell, girls, aside from doing our jobs, we might even find ourselves a husband in Japan!"²⁸ Whether deliberately sought by the nurse protagonist, or merely presented as a fortunate bi-product of a girl's decision to serve as a nurse, romance and marriage appear in comics as almost inevitable benefits of nursing. Jack Kirby's 1955 cover for *Young Romance* #78 shows a military nurse kissing her patient, prepared to disregard the rules relating to male-female interactions in the armed forces.²⁹ Romance in the medical setting is presented as occurring without effort on the part of either partner, who may end up unexpectedly realizing that their affections are mutual, as in *Case #737: Betty Jones in the Carter's Case Book* feature in Charlton Comics' *Pictorial Love Stories* #22.³⁰ If comic books are accepted as a primary historical source indicative of existing gender attitudes, a very strong notion appears to have existed from the 1940s through the 1960s that "acceptable" working roles for women not only enabled the working girl to come into contact with potential mates, but also benefitted men with easier access to females and opportunities to enjoy at least subtle sense gratification by appreciating the "eye candy," if not actual tactile stimulation. This represents a shift away from the respectability of the noble, self-sacrificing image that the comic book nurse documents.

As a consequence of this kind of attitude towards nursing, a nursing career is depicted as a temporary phase inserted between the completion of formal education and the beginning of domesticity.³¹ Thus the undermining of the independence gained by a woman going out to work was complete, and this achievement of First Wave Feminism largely undone. In order to reinforce this trajectory into the home for young nurses, a subsidiary media image, "the battleaxe," served as a caution to those who might consider foregoing marriage and family and progressing in the nursing profession. This image of the older, usually ugly, unmarried, sometimes pathetic or tragic figure, is implied as the future of the nurse who thinks of breaking with societal tradition. Such a character is found in *Nellie the Nurse*, but also in

²⁸ Bill Fraccio (artist), "My Heart Was in Chains," *Romantic Hearts* 10, Story Comics, October 1952, 1-7 (see <http://digitalcomicmuseum.com/index.php?dclid=12264>).

²⁹ Jack Kirby (artist), Cover, *Young Romance* 78, Prize Comics, August-September 1955 (see <http://www.comics.org/issue/225776/cover/4/>).

³⁰ "Carter's Case Book – Case #737: Betty Jones," *Pictorial Love Stories* 22 (Charlton Comics, Oct 1949), 27-34 (see <http://digitalcomicmuseum.com/index.php?dclid=12145>).

³¹ Julia Hallam, *Nursing the Image: Media, Culture, and Professional Identity* (London: Routledge, 2000).

the romance books featuring nurses, such as the seminal “I Dared to Kiss and Tell” in St. John’s *Teen-Age Romances #2*. Matt Baker’s splendid cover for this issue depicts the “battleaxe” poised to disrupt the blossoming romance between the student nurse and the handsome young doctor.³² The “battleaxe” presence is repeatedly employed in the romance comic nurse stories to accentuate the career-love dilemma. The “battleaxe” is also often the object of derision or ridicule, again disempowering the woman in relation to the male patient or doctor. As in fiction, in reality the giving up of menial work in exchange for a service role as a housewife and mother, if attached to a wealthy husband, can be seen as freeing the woman from the burden of low paid, low status employment, and so liberating in that sense, while remaining subscribed to patriarchal oppression.³³ Factually, in the patriarchal West, men were free to enjoy love and career, whereas women had to make a choice between the two. The negativity attached to long-term career development for women—the derision, ridicule, and straightforward disapproval of a woman who chose not to marry and bear children—combines into the stigma that women faced if they wanted to focus on career. The career woman is a deviant in a patriarchy, and thus is sanctioned for failure to conform to gender norms.

Retconned WWII & Forgotten War Nurses in Comics

Comic book war nurses of the 1950s and 1960s exhibited similar characteristics to their civilian counterparts, with husband-hunting and an exit from the profession into married life and child-rearing the prognosis for most. Even if the female nurse had a higher rank, her weakness for love repositioned her into an inferior status with respect to the male object of her affections.

The origins of the doctor-nurse-male patient triad can be traced to the structure of the middle-class Victorian family. The Victorian father determines how the son should be raised, with the mother carrying out his instructions. The parallel is strongly evident.³⁴ In comic book war zones the soldier is usually substituted for the doctor in this triad. This scenario is amply illustrated by the cover of DC’s *Our Army at War #131*, in which series hero Sgt. Rock employs a bazooka to attack an oncoming Nazi tank, while a nurse, simultaneously driving, uses her own body to protect a male casualty who is strapped to a stretcher across the back of their jeep.³⁵

Just as the doctor or male patient comes to the rescue of the nurse in distress in romance comics, so does the soldier often become the savior of the nurse when circumstances overwhelm the capacity of the feminine for physical survival. The

³² Matt Baker (artist), “I Dared to Kiss and Tell,” *Teen-Age Romances 2*, St. John, April 1949, 1-9 (see <http://digitalcomicmuseum.com/index.php?dclid=17356>).

³³ Brigid Haines, “Beyond Patriarchy: Marxism, Feminism, and Elfriede Jelinek’s “Die Liebhäberinnen,”” *The Modern Language Review* 92, no. 3 (July, 1997): 643-655.

³⁴ Hallam, *Nursing the Image*, (see n.30).

³⁵ Joe Kubert (artist), Cover, *Our Army at War 131*, DC Comics, Jun 1963 (see <http://www.comics.org/issue/17706/cover/4/>).

1954 painted cover of *G. I. Joe* #32, in which the soldier carries a nurse away from a combat zone, followed by the civilians she had apparently been helping during the bombardment before she was overcome, suggests this exactly.³⁶ In *The Gunner and the Nurse* in DC's *Our Fighting Forces* #53, a nurse provides motivation for the troops simply by her female presence. After the Gunner rescues the nurse from the attack of a Japanese plane, she solidifies her encouragement for him to risk his life and fight, by holding and kissing him. In fact, throughout the story there is the suggestion that she has voluntarily made herself available to the men for the purpose of morale-boosting.³⁷

An interesting juxtaposition of brave, but still very feminine, war nurse, and rugged fighting man is seen in the relationship between Marvel's Sgt. Fury and his British love interest Lady Pamela Hawley, in the early issues of Stan Lee and Jack Kirby's *Sgt. Fury and His Howling Commandos*. In a comedic aside on page 11 of the 1964 story "At the Mercy of Baron Strucker," the Sergeant takes a break in the canteen with his lady. The narration and dialog unfolds as follows:

NARRATION. Later, we find one frantic, frustrated fighting man sharing a table with Lady Pamela Hawley, the lovely light of his life

FURY, *while eating*. Imagine Happy Sam talkin' that way to me, Pam! To me, who's always taken care of him like a brother I even once took a shave when he asked me to [slurp!].

LADY HAWLEY. Nick Fury!! Haven't I told you the proper way to sip tea?!

FURY, *holding tea cup delicately, with pinky extended*. Aw, come on, Pam! How's it look for a grown man to hold a cup like this?!

LADY HAWLEY. Adorable, Dear! Now I'm proud of you!

PASSING SOLDIER, *talking to a friend (carelessly bumping into Fury, causing him to spill tea on his face)*. Hey, Charlie! I've been lookin' all over for ya! Where's the deuce you owe me?

FURY. Watch out where ya shove that elbow, you dumb-lookin' clown!

PASSING SOLDIER, *unaware of to whom he is speaking*. Huh? Well, well! So you spilled your itty-bitty cup of tea, did ya? Don't worry, sonny, you can wipe it up with a lace doily!

FURY, *anticipating the opportunity to vent his frustration by clobbering this soldier*. Mister, you're just what the doctor ordered! I'm beginnin' to feel better already! Pam, baby, why don't you go powder your nose, or somethin'? It ain't a pleasant sight for a female to see a guy splattered all over the landscape!

³⁶ Clarence Doore (artist), Cover, *G.I. Joe* 32, Ziff-Davis, June 1954 (see <http://digitalcomicmuseum.com/index.php?dld=7658>).

³⁷ Robert Kanigher (writer), Ross Andru (pencil artist), and Mike Esposito (inker), "The Gunner and the Nurse," *Our Fighting Forces* 53, DC Comics, January-February 1950, 1-13 (see <http://www.comics.org/issue/15445/cover/4/>).

PASSING SOLDIER, *realizing his error*. Holy Hannah! It . . . It's Sergeant Fury! I – I'm sorry, Sarge! I was only kiddin', honest! I ain't lookin' to be shipped home in a box!

LADY HAWLEY. Now, Nick! Remember what I told you about losing your temper! Let me see you apologize like a gentleman!

FURY. Forgive my rash, unseemly outburst, old chap! I hope you won't consider me a couthless cad!

LADY HAWLEY, *laughing*. Oh, Nick! The word is uncouth, not couthless! But you're doing beautifully!

PASSING SOLDIER, *thinking*. "Sh – She's got him hypnotized! But I gotta scam before he wakes up!"

LADY HAWLEY. See how easy it is to behave like a gentleman? Doesn't that make you feel much better?

FURY, *back to looking 'down.'* Better than what?! Look, Doll, all this culture is upliftin' and all that, but it ain't helpin' me to settle my score with Baron Strucker! So suppose I take ya home now, 'cause I got a few things to attend to!

LADY HAWLEY. Nick! You . . . You don't intend to do anything rash, do you?

FURY. Me? Oh, perish forbid!³⁸

In analyzing this section of the story for insight into prevailing societal norms, the first thing to consider is the presence of the woman in the male domain. Wars have casualties. Care of casualties requires nurses. Nurses are (according to then-prevailing norms) female. Therefore, in time of war, it is permissible for females to be present in an otherwise male arena. Next, examination of Fury's reaction to the soldier: it is normal and acceptable for masculine men to fight, and indeed in some circumstances the male may benefit therapeutically from engaging in fighting. However, a socially acceptable, hence feminine, woman disapproves of uncontrolled displays of violence, and if an otherwise aggressive male wishes to associate with her, he will have to allow himself to be controlled in certain ways by this female, complying with her feminine sensitivities. His propensity to engage in combat must usually be deferred to a time when he is not physically with the female. This again reflects the polarized, gendered nature of accepted norms in patriarchal Western society, these being vastly different for men and women in relation to their sex. Men have activities they partake in with "the boys"-stereotypically hunting, fishing, gambling, drinking, etc. in their free time, and being employed in male gendered occupations such as soldiering, construction, and so on. Similarly, the ladies have their own set of behaviors that apply when they are together, stereotypically things associated with domesticity and child-

³⁸ Stan Lee (writer), Jack Kirby (pencil artist), and George Bell (inker), "At the Mercy of Baron Strucker," *Sgt. Fury and his Howling Commandos* 5, Marvel Comics, January 1964, 11-12.

rearing. In a patriarchy, when a heterosexual man and woman are together, some of the gendered activities are suspended. The man refrains from the more brutish (masculine) pursuits, in return for the opportunity to enjoy displays of femininity, which the woman uses to exchange some token control over the male in return for ultimate subservience to him. In the dialog between Fury and Lady Hawley, Fury eventually invokes his ultimate male superiority by making the decision that he should take Pam home, as he now needs to engage in his masculine activity of fighting, something he does not fully disclose to the woman. This (fighting) was something he was willing to forego in the potential tussle with the clumsy soldier, in order to please his girlfriend, but the masculine norm of fighting now has to be honored in the conflict with the Nazis, in his role as a soldier.³⁹

Post-War Re-Domestication, Medical Romance, and the Handmaiden Image

At the end of the 1940s romance comics emerged as a new comic book genre. Romantic fiction is well-documented as a powerful source of reinforcement of patriarchal norms within its predominantly female readership.⁴⁰ Sales of romance comics in the early 1950s competed very well with other top-selling genres.⁴¹ It is significant that this trend coincided with a conservative societal shift favoring the return of women to the home, following the end of WWII. Nurses featured prominently in romance comics from the outset, with a new media image, the “doctor’s handmaiden taking center stage.”⁴² This subservient image of the nurse became a foundational building block in the flowering of medical romantic fiction.

Medical romance comic books of the early to mid-1960s (a sub-genre of romance comics) accentuate the doctor’s handmaiden image, fully exemplified by the cover of Charlton Comics’ *Sweetheart Diary 65*, in which Nurse Cynthia Doyle lovingly pours a cup of coffee for the romantically clueless doctor.⁴³ Even in the 1950s romance tales, however, there was sometimes an undercurrent of protest, certainly discontent, as in the 1955 story *Doctor in my Heart*, in which a nurse spells out the injustice of the system in which she is forced to assume a position of inferiority, albeit in relation to her desire to capture the doctor’s heart.⁴⁴ This sub-genre is really a straightforward continuation of the appearances of nurse romance stories in the regular romance comics of the 1950s and 1960s, but the intense popularity of medical romance dramas on television and in romance novels of this period made it possible for romance comic books about nurse characters to

³⁹ Ibid. 1-23.

⁴⁰ Ebert, “Romance of Patriarchy,” (see n.1); Janice A. Radway, *Reading the Romance: Women, Patriarchy, and Popular Literature* (Chapel Hill, NC: University of North Carolina Press, 1984).

⁴¹ Michelle Nolan, *Love on the Racks: A History of American Romance Comics* (Jefferson, NC: McFarland, 2008).

⁴² Bridges, “Images of the Nurse and Nursing in the Media,” n.12.

⁴³ Charles Nicholas (pencil artist) and Vince Alascia (inker), Cover for “Cynthia Doyle, Nurse in Love,” *Sweetheart Diary 65*, Charlton Comics, August 1962 (see <http://www.comics.org/issue/113033/cover/4/>).

⁴⁴ “Doctor in My Heart,” *Cinderella Love 27*, St. John, April 1955, 1-7 (see <http://digitalcomicmuseum.com/index.php?dliid=1911>).

flourish separately. *Nurse Betsy Crane*; *Cynthia Doyle: Nurse in Love*; *Sue and Sally Smith: Flying Nurses*; *Three Nurses* (all Charlton Comics titles); *Linda Lark: Registered Nurse* (Dell); *Linda Carter: Student Nurse* (Marvel); and *Mary Robin, RN* (in DC's *Young Love*) were published in the first half of the 1960s. Alongside the subservience, however, we begin to see nurses asserting themselves and having the courage to express their knowledge and opinions openly, even challenging doctors when the interests of the patient demanded. Although usually in relation to unrequited love, there is even expression of discontent at the lowly position of the nurse relative to her actual worth. Then there is the expectation of departure from the profession as soon as marriage becomes an option. Comic book nurses of the mid-1960s were less inclined to exhibit automatic acceptance of this principle. A good example here is the story *No Tomorrow for my Heart* in the *Mary Robin, R.N.* series published by DC in their *Young Love* title. Mary struggles with the dilemma young nurses were expected to face—choosing between love and career. The cover of this issue seems to encapsulate the transition between the post-World War II re-established patriarchy and the emergence of Second Wave Feminism. In *No Tomorrow for my Heart*, Mary Robin falls for a handsome patient, and the cover depicts the point at which he is being discharged from the hospital. By this time (in the story) Mary has fallen in love with him and he has proposed, but it is revealed that Mary is experiencing inner turmoil:

MARY, *narrative*. It all seemed like a dream . . . right up to the day of Ray's discharge. As I watched him to the exit . . .

RAY. No more roaming the country for me! I can get a good sales job in town. I want to settle down, Mary. We'll be married just as soon as you resign.

MARY. R-Resign?

MARY, *narrative*. It was so unexpected . . . and yet . . . as tears filled my eyes. . . I must have known deep in my heart that I'd have to face this decision sooner or later. . .

RAY. Of course you'll give up nursing, Mary! Being my wife is a full-time job!

MARY, *thinking*. I know my darling! But . . . will I be able to . . . ?⁴⁵

In the end Mary chooses nursing over Ray, and the story reinforces the idea that the sacrifice a nurse makes who stays the course is the lost opportunity to settle down in traditional married life.

The Nurse in the Superhero Universe

Brief mention should be made of nurses in superhero comics, specifically Jane Foster, the romantic interest of Thor, alias Dr. Don Blake in *Journey into Mystery/Thor*. In the original Marvel series written by Stan Lee, and especially those issues

45 John Romita, Sr. (pencil artist), "No Tomorrow For My Heart," *Young Love* 41, DC Comics, January-February 1964, cover and 1-12 (see <http://www.comics.org/issue/18168/cover/4/>).

drawn by Jack Kirby, private practitioner Don Blake's nurse exhibits the typical romance comic nurse tendency to fall in love with her boss. She is a "doctor's handmaiden," as expected for the period, but in Thor's case she becomes a constant liability. Super-villains in the saga find that they will draw Thor's attention by kidnapping or threatening the nurse, and Jane suffers negative reactions to the trauma she is exposed to; she cannot understand why so many powerful evildoers want to harm her.⁴⁶ In Lee & Kirby's epic, Thor's love for Jane also costs him the disapproval of his father, Odin, who sanctions him for becoming involved with a mortal, by removing his godly powers. There are multiple implications here. The joy Thor experiences from indulging in romantic feelings for Jane has a heavy price—he is handicapped in his work of combatting evil, and fails to honor the manly expectations of his father. The nurse, the human woman, is his weakness, his Achilles heel. One can imply an observation on the working woman in a patriarchal society here: men enjoy women being in the workplace because of certain benefits they provide ("eye candy," opportunities for romance and sexual exploitation, service) but ultimately their inferiority (by patriarchal perceptions) can make them a nuisance, even when they remain subservient to male dominance. The woman constitutes an obstacle to goal attainment in other spheres of masculinity.

Conclusion

A pattern can be observed in depictions of nurses in comic books covering the middle five decades of the twentieth century, one that reflects actual changing attitudes in society itself. The images portrayed evidence a shift away from the respect originally applied to the volunteering of women who served in dangerous situations, assisting men in wartime. That early phase, in which the nurse was seen as a self-sacrificing angel, was associated with the gains achieved by First Wave Feminism. Nursing is portrayed throughout the period in question as the female-gendered profession that it was, with nurses in a role distinctly subordinate to male-gendered medicine. Treating nurses as representative of women generally, the implication was that women must remain within "approved" occupations, and in nursing images there was evidence of stigmatization of women who remained in the nursing profession, pursuing upward career aspirations instead of marrying, settling down, and raising children. There were strong suggestions that a young woman's career was a temporary precursor to domesticity and married life. Comic book images also suggest that patriarchal society has reacted to waves of feminism through mechanisms that tend to undermine any progress made. The noble image of the ultimate working woman of the early twentieth century gave way to the development of the sexy nurse, battleaxe, and doctor's handmaiden images, which functioned to reinforce male superiority and return the potentially liberated female

⁴⁶ Stan Lee (writer), Jack Kirby (pencil artist), and Chic Stone (inker), "Every Hand Against Him," *Journey Into Mystery* 110, Marvel Comics, November 1964, 1-21.

concept to conformity with the patriarchal status quo.⁴⁷ The re-domestication of women following World War II “promised fulfillment but produced only boredom and frustration, leading eventually to the feminist backlash which burgeoned into second wave feminism.”⁴⁸ With this emergence, by the mid-1960s, comic book nurses began to reflect contemporary women’s reevaluation of their societal roles and the questioning of male authority. The conflict between love and career experienced by the comic book nurses disappeared with the blossoming of the Women’s Movement. In nursing itself, the impact of second wave feminism began to be felt:

The early [second wave] feminist nurses . . . criticized popular images of nurses in the mass media and professional journals. They protested the sexual objectification of nurses, the association of nurses with handmaiden roles, the recruiting of nurses through promises of romances with and, ultimately, marriage to eligible physicians. Their focus in these arenas, and in others, was on the redress of imbalance; their vision, implicit if not explicit, was of a world in which men’s and women’s roles, aptitudes, attitudes, and behaviors were not linked to outmoded sex-role stereotypes and socialized sex differences.⁴⁹

⁴⁷ Bridges, “Images of the Nurse and Nursing in the Media,” (see n.12).

⁴⁸ Faust, “Feminism Then and Now,” 18 (see n.23).

⁴⁹ Hoffman, “Feminism and Nursing,” 55-56 (see n.3).

Race and Gender in Comic Books: An Analysis of Dark Horse Comics' Martha Washington Desegregation Crisis

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Significance of the Comic Book

Historically, comic books have often been dismissed as less relevant and inferior pop culture texts. However, academic scholars are now re-considering comic books and graphic novels as complex texts deserving of serious scholarly study. Even though specific research on comic book characters has begun to emerge, there still remains a need to fill the gap, which includes further examination of the black superheroine character. These complex characters and their stories offer an opportunity to move beyond the surface narrative of the comic book pages. One might say the most fascinating aspect about the comic book world is that this particular medium has a way of strategically telling a variety of narratives from a diverse group of characters. However, before discussing the actual character of the superhero it is important to discuss the comic books in which these characters play a role. Interestingly, comic books are popular texts that facilitate a reflexive discussion regarding different aspects of the culture in which we live in. Despite having a cultural significance, comic books are largely underestimated and misunderstood. Much like popular culture, comic books have fallen victim to the critics, who view these books as trivial and insignificant. Nevertheless, it is important to realize that even though they have a cultural significance, there is still a gap in the literature across academic disciplines that specifically focus on a more thorough discussion of the comic book.

The introduction of the comic book format would take place in 1933 with a typical reader age of 18-35 and made up of predominately white male consumership. According to comic book scholar Scott McCloud, comic books serve a purpose as “juxtaposed pictorial and other images in deliberate sequence intended to convey information and/or to produce an aesthetic response in the viewer.”¹ According to feminist Sherrie Innes, “comic books have been and continue to be one of the most marginalized of art forms.”² However there are some critics such as Frank McConnell who argue that within recent years much of the “best and most human fiction” in America and the world has appeared not in a “novel,” but in the form of a comic book.³

¹ Scott McCloud, *Understanding Comics: The Invisible Art* (New York: Harper Perennial, 1994).

² Sherrie A. Innes, “Tough Girls in Comic Books,” *In Tough Girls: Women, Warriors and Wonder Women in Popular Culture*, 1st ed., (Philadelphia: University of Pennsylvania Press, 1999), 138-159.

³ Frank McConnell, “Comic Relief,” *Commonweal*, February 28, 1992.

Many academic institutions across the world, such as University of Florida, University of Toronto at Mississauga, and the University of California Santa Cruz, among others have incorporated comic books (and in some places including graphic novels as well)⁴ studies within their curriculums and departments. Alongside formal academic programs and degrees, it is very common to see individual courses, workshops, and seminars dedicated to comics and graphic novels in many educational institutions.⁵ Interestingly, much of the existing criticism of comic books can be found in the newspapers. *The Guardian*, in the United Kingdom, regularly covers comic books in its Saturday Review section; and in the United States, the *New York Times* run semi-regularly reviews of comic books and graphic novels.⁶ For example, in 2002 *The Times* writer Nick Hornsby would publish a review of a number of comic books and graphic novels.

In opposition to the view of some writers, research has shown that reading comic books does not replace other kinds of reading.⁷ In general, comic book readers, read as much as the non-comic book reader.⁸ Additionally, Krashen suggests that reading comic books as well as other kinds of “light reading” may serve as an important bridge from everyday conversational language to what Cummins terms “academic language.”⁹ Many comic book texts actually contain more rare words than one might find in an ordinary conversation, as well as case histories of readers who credit comic books with providing them with the linguistic basis for reading more difficult texts.¹⁰ Overall, despite these books being viewed as less significant in comparison to the newspaper or traditional novel, comic books and graphic novels are consistently being discussed both in and outside of the classroom. To reject examining comic books is to dismiss the intricate narratives that are enclosed within these texts, as well as the controversy (e.g. the black superheroine) that exists in today’s society in which they are based upon.

Examining “The Superhero”

In addition to examining the comic book as a whole, it is important to examine the actual characters within these books, the superhero. Whenever the society is

⁴ Comic books and graphic novels are mentioned together, because in some cases they are used interchangeably and described together.

⁵ “UF | Comics Studies | Studying Comics at UF.” Department of English | The University of Florida. Last modified June 12, 2010. <http://www.english.ufl.edu/comics/study.shtml>.

⁶ Aaron Meskin, “Comics as Literature,” *British Journal of Aesthetics* 9, no. 3 (2009): 219-239.

⁷ Frederic Werham, *Seduction of the Innocent*, 1st ed. (North Fork: Amereon Limited, 1954).

⁸ Paul Witty, “Reading the Comics: A Comparative Study,” *Journal of Experimental Education* 10 (1941): 105-106; Florence Heisler, “A Comparison of Comic Book and Non-Comic Book Readers of the Elementary School,” *Journal of Educational Research* 40 (1947): 458-464; Lotte Bailyn, “Mass Media and Children: A Study of Exposure Habits and Cognitive Effects,” *Psychological Monographs* 73 (1959): 201-216; Emma H. Swain, “Using Comic Books to Teach Reading and Language Arts,” *Journal of Reading* 22 (1948): 253-258.

⁹ Stephen D. Krashen, *The Power of Reading: Insights from the Research* (Westport, Conn: Libraries Unlimited, 2004); J. Cummins, “Language, Culture and Cognition,” In *Language Development and Academic Learning* (Cleveland, United Kingdom: Multilingual Matters, 1991).

¹⁰ Donald P. Hayes and Margaret G. Ahrens, “Vocabulary Simplification for Children: A Special Case of “Motherese?”,” *Journal of Child Language* 15 (1988): 395-410. Marl Mathabane, *Kaffir Boy: The True Story of a Black Youth’s Coming of Age in Apartheid South Africa* (New York, New York: Macmillan, 1986).

under a tremendous depression and there is no chance of getting out of it, these characters (superheroes) provide an outlook of hope and strength to fight against the odds through their various stories. For young Americans, the world of comic book superheroes has been able to provide a sense of justice within popular culture.¹¹ Moreover, these fantasy characters allow their viewers and readers, for a temporary moment in time, to step away from their world of reality. Even today, the superhero remains a staple within American fiction. Oftentimes, these characters regularly attract both acclaim and controversy in the ways they influence and address the current social and political issues addressed within their storylines. In and out of popular culture, superheroes have been occasionally attacked as proponents of violent behavior and dissident political and social ideologies; on other occasions, they serve to support and idealize the dominant values of the national culture. According to Sterling North in a controversial editorial excerpt, these superheroes in comics are:

Badly drawn, badly written, and badly printed - a strain on the young eyes and young nervous systems - the effects of these pulp-paper nightmares is that of a violent stimulant. Their crude blacks and reds spoils a child's natural sense of colour; their hypodermic injection of sex and murder make the child impatient with better, though quieter, stories. Unless we want a coming generation even more ferocious than the present one, parents and teachers throughout America must band together to break the 'comic' magazine.¹²

Much like the critics of popular culture, comic books have been subjected to similar criticism despite them presenting messages of social and political significance.

The cultural phenomenon of the superhero has become a mainstay in the realm of American fantasy and mythology since the arrival of mass media and technology in the early twentieth century.¹³ As popular culture draws more attention in society, so does the idea of the superhero and what it has to offer. Martin further points out that the popularity of superheroes is increasing, so has the various media forms through which the lives and adventures of superheroes are disseminated.¹⁴ Typically, every major superhero has an origin, myth and super powers, and to varying extents within the context of Lawrence and Jewett's prototype, struggles morally, emotionally and socially in the course of doing good.¹⁵ Superheroes, for

¹¹ Scott Vollum and Cary D. Adkinson, "The Portrayal of Crime and Justice in the Comic Book Superhero Mythos," *Journal of Criminal Justice and Popular Culture* 10, no. 2 (2003): 96-108.

¹² Jamie Coville, "The Comic Book Villain, Dr. Fredric Wertham, M.D." *Seduction of the Innocent and the Attack on Comic Books*. Penn State University Press. Last modified 2004. http://www.psu.edu/dept/inart10_110/inart10/cmbk4cca.html.

¹³ John S. Lawrence and Robert Jewett, *The Myth of the American Super Hero* (Cambridge: Wm. B. Eerdmans Publishing Company, 2002).

¹⁴ Justin F. Martin, "Children's Attitudes Toward Superheroes as a Potential Indicator of Their Moral Understanding," *Journal of Moral Education* 36, no. 2 (2007): 239-250.

¹⁵ Lawrence and Jewett, *The Myth of the American Superhero*.

the most part, are considered good or bad not because of their use of violence, but with regard to the contexts and motivations that influence their actions.¹⁶

According to Chambliss and Svitavsky, “superheroes resemble their pulp forebears in having secret identities, distinctive garb, and special abilities.”¹⁷ Traditionally, superhero comics have always seemed to rely on the notion that a superman (or superwoman) exists inside every man (or woman), and while readers are well aware of this most fundamental convention, they are also aware that several new and incredibly popular comics are erasing the ordinary man (woman) underneath in favor of an even more excessively powerful and one-dimensional masculine (feminine) ideal.¹⁸ And as a result, these superheroes in popular culture have been given a makeover, but not willingly. Even more so is the challenge of how comic book and graphic novel artists and creators construct a superhero of color that fits into this ideal. “The superhero archetype is heavily steeped in affirming a division between right and wrong, thus superheroes operate within a moral framework, however, Black superheroes in American comic books and, to the lesser extent, in Hollywood films and television are cultural ciphers for accepted wisdom regarding racial justice and the shifting politics of Black racial formation in America.”¹⁹ Now the role of the superhero as it relates to Black America is more than just fighting various battles and injustices within their narrative, but also trying to fit into a traditional (i.e. “white”) superhero prototype.

Superheroes have played a significant role in “presenting idealized projections of ourselves as physically powerful, amazing and fantastic versions of ourselves; as well as serving as a roadway to escapist fantasy or funhouse mirror reflections of our desires to create bigger-than-life personas that can exert our will and power in the world.”²⁰ Overall, the superhero plays a huge role, both positively and adversely, in the formation of our thoughts, beliefs, and ideas within popular culture. As a life long fan of comic books and superheroes, I have always been eager to see what female (particularly black) character might grace the cover or be featured in the latest issues of the Marvel or DC enterprise. This is the case especially now that recently black superheroines are slowly becoming specific topics of interest and study. One black superheroine in particular who is worthy of attention is the Frank Miller and Dave Gibbons creation and Dark Horse comic character, Martha Washington.

¹⁶ Martin, “Childrens Attitudes.”

¹⁷ Julian C. Chambliss and William L. Svitavsky, “From Pulp Hero to Superhero: Culture, Race, and Identity in American Popular Culture, 1900-1940,” *Studies in American Culture* 30, no. 1 (2008): 18.

¹⁸ Ray B. Browne, “Folklore to Populore,” In *Popular Culture Studies Across The Curriculum: Essays For Educators*, (Jefferson: McFarland & Company, 2004), 24-27.

¹⁹ Adilifu Nama, “Attack of the Clones,” In *Super Black: American Pop Culture and Black Superheroes*, 1st ed. (Austin: University of Texas Press, 2011), 4.

²⁰ Adilifu Nama, “Brave Black Worlds: Black Superheroes as Science Fiction ciphers.” *African Identities* 7, no. 2 (2009): 133-144.

Who is Martha Washington?

Launched in the early 1990s and continuing periodically for more than a decade, the adventures of Martha Washington disrupt traditional notions of the female superhero. Martha Washington is a relatively recent comic book hero, an African-American woman, who makes her debut in the Dark Horse comic series *Give Me Liberty* in 1990. Visually, Washington challenges the typical comic book hero image. Martha Washington is not your classic privileged superhero—she actually humanizes the superhero experience by being a “regular”²¹ African American woman who becomes a hero. Washington’s representation strategically melds her feminism with traditionally masculine performances, thus redefining heroism or “sheroism”²² Martha Washington invites a discourse regarding issues of female empowerment, race and gender. Washington starts out as an ordinary African American woman who “fantastically”²³ becomes a resilient leader in her own community and ultimately the universe. Not only is she an empowering female action-hero, but she is also a black woman from the busy streets of Chicago who becomes the epitome of a “real life hero.”²⁴

Martha Washington as a Womanist

In addition to being a complex, relatable character there are other elements that contribute to Martha Washington being a character that challenges racial and gender norms of today’s comic book superhero. Martha Washington can be identified as a character that represents a departure from conventional representations of what it means to be a superhero.²⁵ One could say that she is a modern-day womanist in the way that she rejects the traditional white power structure and fashions her own tangible path of personal freedom. According to Alice Walker, “a womanist is committed to survival and wholeness of entire people, male and female not a separatist, except periodically, for health, traditionally a universalist, a woman interested in grown up doings, acting grown up, and being grown up.”²⁶ In opposition to feminism, according to womanist scholar Dr. Layli Phillips Mayparyan, “womanism does not emphasize or privilege gender or sexism; rather, it elevates all sites and forms of oppression, whether they are based on social-address categories like gender, race, or class, to a level of equal concern or action.”²⁷ Through each comic book issue, Martha Washington truly demonstrates

²¹ Regular as defined by the author is to be normal, ordinary, and or usual.

²² Sheroism is the feminine term for heroism, coined by the author.

²³ Based on or existing only in fantasy; unreal.

²⁴ This term refers to the character, Martha Washington, as a relatable and all around hero.

²⁵ Superhero is defined according to Peter Coogan, director of Institute for Comic Studies, as “a heroic character with selfless, pro-social mission; with superpowers—extraordinary abilities, advanced technology, or highly developed physical, mental, or mystical skills, who has a superhero identity embodied in a codename and iconic costume.”

²⁶ Alice Walker, “Womanist,” *In In Search of Our Mothers’ Gardens: Womanist Prose* (San Diego: Harcourt Brace Jovanovich, 1983), xi-xii.

²⁷ Layli Phillips, “Womanism: On Its Own,” *In The Womanist Reader*, 1st ed.. (New York: Routledge, 2006), xix-xlix.

what it means to be a womanist. Whether she is helping her friends and family survive in “The Green”²⁸ to working side-by-side with a Native American chief, to fighting foreign aliens in outer space, to even being a Black woman who leads a predominately white male military task force. Since Martha Washington comes from a broken home, she learns very quickly what it means to survive, but still manages to assist her fellow (wo)man. Essentially, she is forced to take on these “grown-up” doings and “womanish” actions. In order to endure, Washington must become a woman who grows up far before her time; however this works to her benefit as we witness her journey of growth and maturity, from birth to her final transition.

More specifically, Martha Washington becomes a PAX Peace Force military heroine who as a part of her survival takes on the job of protecting and saving the world and universe. This behavior is a precise example of the courageous and “grown-up” behavior seen in a womanist. As a womanist, she steps away from the dominant norms of white masculinity, by using her natural gifts. According to scholar Sherrie A. Inness, Washington is “one of the toughest and most realistic women to hit comic books.” African American women both young and old can use her story as an example of reaching success despite the numerous obstacles that are presented in front of them. Due to her complicated and disrupted upbringing, Washington presents a quiet-storm like strength and humility that shines through her character. Regardless of the hurdles presented in her life (ex. growing up in a single parent home, witnessing the death of her mentor, being imprisoned to a psychiatric hospital, and becoming homeless) she is able to overcome these challenges.

Martha Washington vs. Wonder Woman

It should be acknowledged that the first female to appeal to a large, predominately male comic book following, and at the same time challenge the ideas and philosophies of women superheroes was that of DC Comics Wonder Woman. Opposite to Martha Washington, Wonder Woman has the privilege of being a White woman born into royalty within the Amazon Greek gods. Whereas, Martha Washington, a Black woman who is born into Chicago poverty, must work her way through the ranks in order to be recognized and respected. In addition, Wonder Woman’s physical appearance sometimes referred to as her “hyper-feminized business suit” was usually some variation of a swimsuit, meant to look dynamic, but primarily made to look attractive for its male readers.²⁹ On the other hand, Martha Washington’s “business suit” was one in which she was able to be fully clothed in her clothes.

²⁸ A term to reference the former Chicago housing project, Cabrini Green.

²⁹ Mike Madrid, “Sirens and Suffragettes,” In *The Supergirls: Fashion, Feminism, Fantasy, and the History of Comic Book Heroines*, 2nd ed. (Minneapolis: Exterminating Angel Press, 2009), 169-170.

In further research, many media scholars have critiqued Wonder Woman as a “schizophrenic character,” one who is able to be tough and independent, but unfortunately still languishes for a man.³⁰ As media critic Susan Douglas writes, “Wonder Woman was not supposed to like or need men, but then she met one and kind of lost her resolve.”³¹ For example, in the 1970’s Wonder Woman television series, she would be more infatuated with Captain Steve Trevor, her primary love interest, so much that she appeared more interested in being his secretary than forging out on her own.³² Even though, Martha Washington too fell in love with a man this would not distract her from maintaining her leadership towards her community and the world. In comparison, while not traditionally trained in the military like Martha Washington, Wonder Woman is also highly proficient in hand-to-hand combat and in the art of strategic warfare. In contrast, Martha Washington needs no alter-ego, like her female counterpart Wonder Woman (a.k.a. Diana Prince, a government agent). Nonetheless, Wonder Woman was more of a feminist icon, whereas Martha Washington possessed the feminine qualities and personality of a womanist. Although Wonder Woman is seen as an important icon model for women due to her autonomy and independence, in relation to other female comic characters, she would still follow the traditional ideas of how a woman was to behave and look.³³ Even though both Martha Washington and Wonder Woman fought for the same mission of humanity and peace, Washington might be seen as more of a contemporary, developing, and relatable heroine/character.

Military Heroine vs. Supernatural Queen

Marvel Comics X-Men’s Storm (aka Ororo which means “beauty”) is typically the first and sometimes only character of color that is recognized in the comic book world. Not until after the African American Civil Rights Movement were there few Black female characters who were present in superhero comics. Perhaps the quintessential superheroine (arguably Black and White), Storm is one of the most frequently seen female comic/super-heroines. Storm was one of the first black comic book characters, and the first black female, to play either a major or a supporting role in the big two comic book houses, Marvel Comics and DC Comics.³⁴ The daughter of an African princess, not only does she control the natural elements, but also she rises to become a leader in the predominately white male group the X-Men. Storm and Martha Washington have this in common, along with both being African-American women, as they both excel in leadership roles within traditional white male settings. Storm, much like Martha Washington, was

³⁰ Inness.

³¹ Susan J. Douglas, *Where the Girls Are: Growing Up Female With the Mass Media*, 1st ed. (New York: Random House, 1994), 217.

³² Inness.

³³ Inness.

³⁴ Knight.

also one of the first heroines to bear a “modern nom de guerre”³⁵ that did not use “girl,” “woman,” or “lady.”³⁶ However, Storm’s soft-spoken demeanor makes her different from that of Martha Washington in that she begins her career in a more traditional female role. Washington does not have the luxury and privilege, like Storm, to have two visible parents (daughter of a Kenyan princess and American photographer) not having to wonder how she will survive to live another day.

According to Knight, Storm’s creation in particular “was during the heyday of Blaxploitation films,” in which these films featured, among others, Pam Grier, an African American actress who many have considered a pioneer within female action hero films.³⁷ Also, contrasting Martha Washington, Storm was portrayed as a tall, stately and elegant, with a mane of long white hair, angular exotic features, and blue eyes.” Despite this insatiable appearance some scholars and critics felt as though Storm’s appearance did not come off as sleazy or salacious due to her regal air of confidence and power—her allure came from her powerful persona and goddess-like quality.³⁸ In opposition of this notion was the fact that even with Storm’s regal and strength her early representations would facilitate and perpetuate various gender stereotypes about the intrinsic femininity of women until her creators began to portray her in a different light.³⁹ Ultimately, Storm’s persona would be challenged through her racial identity as a black, African woman and her social status as a mutant.⁴⁰ Martha Washington’s character would be a prime example of disrupting these gender stereotypes by setting her own rules of decorum as a woman. Albeit Storm battles with a team, Martha Washington must fight as an individual in order to survive daily life.

Female and Black Superheroes: The Good, the Bad, and the Ugly . . .

Traditionally, female superheroes within comic books and popular culture have typically been portrayed as trivial or vacillating characters. Essentially their superpowers were weaker and they had less control over them, therefore having to be dependent on the assistance of a male hero to guide them in using their abilities.⁴¹ Women were also portrayed as the girl-Friday, seductive temptress, or perhaps, the accommodating girlfriend.⁴² These stereotypical gender roles were clearly obvious: men alone are competent enough to be successful independently along with being courageous, while women were seen as subordinate figures in the background. Much of the current scholarship paints a picture that male heroes are

³⁵ Nom de guerre is defined as a fictitious name or pseudonym.

³⁶ Madrid; “emphasis added” common term used when naming female superhero comic book characters.

³⁷ Knight, 278, 282.

³⁸ Madrid, 170.

³⁹ Inness.

⁴⁰ Knight.

⁴¹ Melissa A. Sievers, “Brains, Brawn And Breasts: How Women Are Depicted in Today’s Action/Adventure Comic Books” (master’s thesis, University North Carolina at Chapel Hill, 2003), <http://www.ils.unc.edu/MSPapers/2851.pdf>.

⁴² Michael R. Lavin, “Women in Comic Books,” *Serials Review* 24, no. 2 (1998):93-99.

usually presented as being unquestionably more powerful than women. Yet they wear costumes that cover and protect most of their bodies. Women on the other hand, are written as weaker, and presumably less able to protect themselves.⁴³

Since the genre's inception, women have always played a role as superheroes in graphic novels and comic books, and simultaneously they have also been constant subjects of controversy. Within the various storylines of these popular comic books and graphic novels, the role of women have primarily been described as supporting characters with limited leadership roles. "They are almost always subordinate to their male counterparts. When in battles, they faint, overexert themselves, and worry about smudging their makeup."⁴⁴ Despite this, there have been some small improvements made in their physical appearance and character portrayal. Because of some of these superheroine characters being physically strong and capable of defeating bad guys, they send the message that women in general are neither weak nor passive. Lavin and Rimmels both agree that comics today are showing improvements by including more strong, competent, independent heroines.⁴⁵

Also, Sievers brings to our attention how "we learn from reading Superman that men are strong, brave heroes and women are emotional and need to be saved. We learn from reading Spider-Man that women can be superficial and greedy. And we learn from reading comics like Catwoman and Wonder Woman, that women look really sexy in spandex."⁴⁶ For example, in the 1910s and 1920s many of the comic book characters such as "Minerva Gump and Ma Feitelbaum" were portrayed as frumpy and domineering housewives; and others as vamps (i.e. Tillie the Toiler and Flapper Fanny).⁴⁷ Unfortunately, many of these portrayals still exist in today's female comic book characters. Madrid further points out how women take issue with the inequality in today's society that says a man can wear a sensible suit and shoes to look appropriate within the professional world, while women are expected to wear a form-fitting skirt and heels.⁴⁸

Beyond representations of female body and costume, there are many complex gender issues to be explored in superhero comics' characterizations and storylines.⁴⁹ Particularly in Inness' book, *Tough Girls in Comic Books*, she addresses different representations of these female characters and how different people might perceive them in different ways.⁵⁰ In addition, she repeatedly addresses issues of race, ethnicity, class, and sexual orientation and provides the opportunity to explore these topics due to the fact that the typical superhero in popular culture is white,

⁴³ Madrid.

⁴⁴ Sievers, 10.

⁴⁵ Lavin; B. H. Rimmels, "You've Come a Long Way Baby?" *Wizard: The Guide to Comics*, August, 1995.

⁴⁶ Sievers, 9.

⁴⁷ Inness.

⁴⁸ Madrid.

⁴⁹ Courtney L. Weida, "Wonder(ing) Women: Investigating Gender Politics and Art Education within Graphica," *Visual Culture & Gender* 6 (2011): 97-108.

⁵⁰ Inness.

male, heterosexual, and middle class which reflects a culture where these are the norms. In earlier comics, the modicum of pioneering female and minority characters appearances was unspectacular. In particular, activist and scholar Anna Saini would identify that there are three types of black comic and superheroines, “the Quiet Queen”, the “Dominant Diva”, and the “Scandalous Sojourner.”⁵¹ On several instances black female comic characters would be reduced to negative images such as hyper-sexed vixens (i.e. DC Comics “Vixen”, DC Comics “Deborah Teigel” from the series HITMAN), cold-blooded killing machines (i.e. Top Cow’s “Fox” from the series Wanted), sinister warriors (DC Comics “Fatality”), and the like.

Furthermore, Nama declares that in spite of a symbolic significance of black superheroes in American popular culture, it still remains a topic that is unexamined.⁵² In Richard Reynolds’ *Super Heroes: A Modern Mythology* although it discusses, in very little detail, black superheroes he makes it known that black superheroes have very little to offer in the way of ideological meaning.⁵³ Departing from Reynolds, Bradford W. Wright’s *Comic Book Nation: The Transformation of Youth Culture in America* offers a discussion on the importance of superhero comic books to American culture, and suitably addresses race.⁵⁴ “Popular culture does not simply reflect women’s lives; it helps to create them and so demands crucial scrutiny.”⁵⁵ Even though both Reynolds and Wright address black superheroes there is still very little discussion of the Black superheroine. As a whole, the black superheroine (specifically characters such as Martha Washington) still remains a topic that seeks further scholarly research and analysis.

Due to the overwhelming prevalence of heavily stereotyped, primarily black females, characters in comic books as a futuristic hero Martha Washington frequently functions as a leader and challenges the conventional ideas about what defines being a woman and potentially a man.⁵⁶ Martha Washington can be described as an original type of character that embodies a “reconfigured image of Black American patriotism for the twenty-first century;” unlike many of Washington’s black superheroine equals (i.e. Vixen, Photon, and the Crimson Avenger) who were based on white superhero characters.⁵⁷ Her character is also quite intriguing in that she does not exhibit “the unrealistic pumped-up pecs of Superman or Batman, nor does she possess the huge breasts of many comic book women.”⁵⁸ Martha Washington’s character presents a new image and portrayal of the Black heroine, and opens the door for more characters like her to be created.

⁵¹ Anna Saini, “Annals of The Black Superheroine,” *Bitch: Feminist Response to Pop Culture*, Winter 2009.

⁵² Nama.

⁵³ Richard Reynolds, *Super Heroes: A Modern Mythology* (Jackson: University Press of Mississippi, 1992).

⁵⁴ Bradford W. Wright, *Comic Book Nation: The Transformation of Youth Culture in America* (Baltimore: The John Hopkins University Press, 2003).

⁵⁵ Inness, 6-7.

⁵⁶ Inness.

⁵⁷ Nama.

⁵⁸ Inness, 155.

Humanize the Superhero Experience

Although comic book characters like Martha Washington are fictional and drawn primarily for entertaining purposes, their experiences become humanized and relatable to our own real life experiences. Even though she may travel to other planets during her comic book career, she is not a superhero, in the traditional sense, who has powers or is from another planet. There is nothing perfect about Washington, she has flaws, leads a normal life, she experiences problems, various challenges and heartaches just like a regular human being. When thinking about an actual person who Martha Washington could mirror, in a certain way Washington's character shares a great deal in common with former Black Panther female chair Elaine Brown. Both women come from non-affluent and inner city neighborhoods (Brown from Philadelphia, PA), and each had to face the challenges of chauvinistic attitudes, by taking on a "no-nonsense" style of leadership. Through the face of adversity, each woman makes the commitment to fight against criminal activities of their community and world. In her 1992 memoir *A Taste of Power*, Brown writes about her experience as a leader in a male-dominated organization:

A woman in the Black Power movement was considered, at best, irrelevant. A woman asserting herself was a pariah. If a black woman assumed a role of leadership, she was said to be eroding black manhood, to be hindering the progress of the black race. She was an enemy of the black people . . . I knew I had to muster something mighty to manage the Black Panther Party.⁵⁹

According to urban anthropologist Aimee Cox, "Martha Washington completely disrupts our common everyday understanding of what it is supposed to mean to be a superhero."⁶⁰ And as a comic book character, Martha Washington foreshadows this great potential by delivering this real-life image.

Martha Washington as a Black Woman and a Hero

Through each Martha Washington issue, we get a chance to share in her journey as a black woman who becomes a superhero within, in her own community, and even in the outer space realm. In the first issue, *Give Me Liberty* we are introduced to a budding comic book superhero personality that is Martha Washington. From her mother's womb on to the grimy floor of the Chicago hospital, we see an instant struggle to survive in the poverty-stricken projects of "The Green." Once she becomes of age, we see Martha Washington grow as a student with the assistance of her teacher and mentor Donald who encourages her to take the high road of being a better student and at the same time preparing her mentally and physically for life's challenges. Upon being forced out of the psychiatric institution due to

⁵⁹ Elaine Brown, *A Taste of Power: A Black Woman's Story*, 1st ed. (New York: Doubleday, 1992).

⁶⁰ Aimee Cox (Professor and Urban Anthropologist), interviewed by Jonathan Gayles, 2010, [<http://www.blacksuperherodoc.com>].

national budget cuts, Washington becomes homeless and later joins the PAX Peace Force—a reinvented U.S. Army and thus her heroic journey begins. Having to survive in a male-dominated world is no easy task, but Martha Washington manages to fight and push through it all even if it means to risk her own life. Martha Washington is your average student who manages to find any opportunity to elevate herself. In being this person she shines as this hero and ultimately becomes a leader in her community. Midway through the first issue Martha Washington comes back from PAX training and meets up with her mother, “Just don’t worry Mom—Not about me They say there’s no way I have to leave HOME not ever again.”⁶¹ Although Martha Washington may have physically left her home and neighborhood, her home and the neighborhood have never left her inner soul and spirit.

In the second issue, *Martha Washington Goes to War*, we see Martha Washington fighting for the PAX army to reunite a fractured United States. During this war effort, we encounter numerous technology failures, the disappearances of America’s brightest minds, and a general sickness plaguing the American people. In the midst of all the societal madness, Martha Washington is crippled in an attack, but is mysteriously healed when an old boyfriend brings her an “unknown technology.”⁶² Two years later, Martha Washington continues to work with the revolutionaries to create a better world. In this issue, we see Martha Washington have a breakdown moment, but manages to recover after the loss of someone that she loves dearly, her male companion Wasserstein: “Wasserstein was big and strong and really nice and he liked me a lot Last time I saw him was in the Amazon. He was shot up pretty badly. I promised I’d come back for him, and I did. That was when he said what he said . . . I love you Martha.”⁶³ There is also another scene in which Martha Washington and her unit of men go to a fast food restaurant to get something to eat: “we pay for what we eat . . . Hanson! I want mine with cheese and bacon! You got that? And fries. I want fries.”⁶⁴ Both moments can be seen as shining moments of Martha Washington becoming the leader and hero that many would come to love and respect.

The third issue, *Happy Birthday, Martha Washington*, is essentially a collection of short stories about Washington and some of the many battles she has fought. Through each story we see how Martha Washington achieves never leaving a person in need to fall behind. There is not much dialogue yet each scene shows Washington’s undying strength and compassion for those that come within her path.

⁶¹ Frank Miller (writer) and Dave Gibbons (illustrator), ‘Travel and Entertainment.’ “Give Me Liberty” #2 (1990), Dark Horse Comics.

⁶² An unidentifiable healing source.

⁶³ Frank Miller (writer) and Dave Gibbons (illustrator), ‘The Killing Fields.’ “Martha Washington Goes to War” #1 (1994), Dark Horse Comics.

⁶⁴ Frank Miller (writer) and Dave Gibbons (illustrator), ‘Harmony.’ “Martha Washington Goes to War” #2 (1994), Dark Horse Comics.

In the fourth issue, *Martha Washington Stranded in Space*, “The Big Guy” (a fellow Dark Horse comic) makes a guest appearance. During this time, Washington investigates a space anomaly, which temporarily sends her to Big Guy’s reality. In this foreign reality, Washington fights off an attack by monsters conforming to 1950s pulp science-fiction stereotypes when she discovers that this fight is purely a psychological study conducted by a world-controlling artificial intelligence. And even when Washington is stranded in space separated from her typical environment she maintains her composure and keeps her fellow soldiers composure intact as well: “the Lieutenant’s pretty shook. And if I let myself think about it, I’d be too. For all we know, were halfway across the universe and a billion years from our own time. Our one slim chance of getting home is shrinking by the minute. We could slowly suffocate, not even knowing where or when. Yeah good thing I don’t think about that. Not too much I don’t.”⁶⁵

In the fifth issue, *Martha Washington Saves the World*, we are given the opportunity to see Washington’s true natural talent and skill of hand-to-hand combat come to the forefront. From the beginning, Martha Washington takes on this confident attitude despite every obstacle that is placed in front of her: “no loser talk! We’ll get out of this! We’ll find a way! There’s always a way!”⁶⁶ With the arrival of an alien spaceship, Washington uses its superior technology to defeat the megalomaniacal artificial intelligence named “Venus.” Soon after, Washington and her fellow soldiers and friends would then leave Earth entirely, off to explore the origin of the aliens.

In the final issue, *Martha Washington Dies*, Washington is surrounded by human warriors apparently under siege from unknown foes in a warzone. And in the final pages an elderly Martha Washington gives a brief speech of inspiration before transitioning into the spirit world in the year 2095, at the age of 100 years old. As Martha Washington bows out gracefully and moves from this Earth, her close friends and comrades offer a few final words as the tears flow from their eyes: “Martha Washington has done many things in her century. She’s been many things a soldier, a warrior, an explorer of the wildest depths of the universe. A wife and mother and a leader and a teacher.”⁶⁷ In that final statement we truly see what makes her this amazing Black woman and who is also a hero.

21st Century Freedom Fighter

As a modern day freedom fighter, Martha Washington offers the suggestion to confront the question of what it takes to be a strong, tough black woman heroine

⁶⁵ Frank Miller(writer) and Dave Gibbons (illustrator), “Martha Washington Stranded in Space” #1 (November 1995), Dark Horse Comics.

⁶⁶ Frank Miller(writer) and Dave Gibbons (illustrator), ‘Comin’ In On a Wing and a Prayer.’ “Martha Washington Saves the World” #1 (1997), Dark Horse Comics.

⁶⁷ Frank Miller(writer) and Dave Gibbons (illustrator), “Martha Washington Dies” #1 (2007), Dark Horse Comics.

and to propose how social class and race are influenced by each other.⁶⁸ To some, her story is much like a satire that cuts very close to home as it can be seen through the echoes of the current politics (Reagan administration, superpower nuclear arsenals, “war on drugs,” and the Social Security dilemma) in Martha’s battles. It is important to note that “superhero comic books function as more than a roadway to escapist fantasy or funhouse mirror reflections of our desires to create bigger-than life personas that can exert our will and power in the world.”⁶⁹ In particular, Martha Washington is a military heroine who has been taught traditional (PAX Peace Force) and non-traditional (Chicago “street-like” mentality) skills to save the world. Washington’s character is able to transport her audience into a world of advanced science, UFOs, aliens, space exploration, and time travel and make it appear as though it is a normal occurrence.

Black nationalist poet and activist, Gil Scot Heron in his 1975 declaration “Ain’t no such thing as Superman” challenges black people to abandon this “far in the distance” idea of a White savior coming down to earth to save blacks from ghetto poverty and alienation.⁷⁰ And in every issue of Martha Washington’s story, she breaks away from the traditional superhero storyline. By doing so, she confronts the rules of the typical white “boy-rescues-girl” adventure story. In the end, we are left reading a “subversive narrative that suggests (black) women can be more capable of leading than men are.”⁷¹ Furthermore, this is why it is important for young African American girls and boys to be able to have their own image of someone to whom they can relate to in a manner that is uplifting and empowering. Martha Washington is a prime example of someone who came from an aggressive, poverty-stricken environment, yet manages to come out on top without having to take a violent and hypersexual route. Interestingly, this character is portrayed through the eyes of two White males, so then one might question, “what is the overall interest of the creator and artist towards the Black woman?”

Martha Washington’s Story

According to African American Studies scholar Adilifu Nama, “life imitates art especially in popular culture.” Black superheroes, like Martha Washington, are not mainstream figures but “canonical representations within the institutional history of the American superhero comic book industry.”⁷² Martha Washington is that type of hero that little black girls can relate to, because she is the average hero. No longer do they have to aspire to be someone who does not even look like them, nor does the person actually come from a place that even exists. In the words of scholar Aimee Cox, “Martha Washington does sort of celebrate this regularness

⁶⁸ Inness.

⁶⁹ Nama, 134.

⁷⁰ Nama, 134.

⁷¹ Inness, 158.

⁷² Nama, 143.

and demonstrates that being regular or being everyday, and the potential for that to be superhero-like or superheroine-like.” Ultimately, as a black comic book heroine Martha Washington represents the potential that comic books and alternative forms of media have to rethink race and gender roles, and to expand on the possible roles available to men and of course women.⁷³ Maybe in another twenty years, a character like Martha Washington will be brought to the forefront, so that we will not have to go back to the drawing board looking for that hero. Until then, she is the type of hero that I would love to take that journey with her to maybe escape my own reality here on Earth.

With the conclusion of this paper, I hope to introduce some implications concerning the politics of comic book superheroines in popular culture and how they shape cultural conceptions of race and gender. Ultimately, over eighty years after the first female appearance in a comic book, it is imperative to present more useful, grounded, and humane representations rather than racial and gendered stereotypes.⁷⁴ Few sources,⁷⁵ particularly outside the academy, have specifically addressed the black superheroine. In many regards, the literature focuses on a select group of male superheroes. And although this serves as an important source of information, it does not tackle the various questions concerning the black superheroine within popular culture. In addition, previous research on this topic has criticized black superheroines for being one-dimensional and perpetuating several stereotypes, including that of the mythical superwoman and the hyper-emotional, overly aggressive black woman.⁷⁶

Martha Washington is a character who steps away from those stereotypes, takes away the power of patriarchy, and departs from the traditional narrative of the white superhero saving the day and even more so the world. No longer must there be a heroine and or character that African Americans (particularly females) have to only imagine and fantasize about in their dreams. She is your high school math teacher, she is your mentor, she is your big sister. Martha Washington needs no alter-ego; she is simply a black woman who has a natural gift of technology and hand-to-hand combat, who happens to live in a corrupt world. Martha Washington is a twenty-first century freedom fighter created by comic book megastar Frank Miller. Cox said it best,

I think ultimately Martha Washington teaches us, I believe how to be human, and what I mean by that is how to be our best selves and how to also accept

⁷³ Inness.

⁷⁴ Fantomah not only was she the first female comic character to appear in comic books she would also be the credited as the first comic book superheroine. (<http://www.toonopedia.com/fantomah.htm>)

⁷⁵ Inness; Knight; Madrid; Ryan, Jennifer D. “Black Female Authorship and the African American Graphic Novel: Historical Responsibility in Icon: A Hero’s Welcome.” *MFS Modern Fiction Studies* 52, no. 4 (2006): 918-946; Saini.

⁷⁶ Lynne D. Johnson, “Bearing the Black Female Body as Witness in Sci-Fi | PopMatters.” PopMatters | Cultural Criticism from the World of Pop. Reviews, Essays, & Ideas in Culture, Music, Film TV, Books, Games, Comics. Last modified December 1, 2003, <http://www.popmatters.com/pm/column/johnson031218>.

the fact that we are flawed. We will always be flawed. And I think we see that beautifully depicted in Martha Washington. Ultimately Martha Washington teaches that, how we make our way through this world with what we have, always striving to acquire more and when I say more I don't mean consume more or buy more, but to acquire more wisdom, to acquire more compassion to acquire more strength and resiliency to fight these forces whatever they are... She shows us that and how to still be human, and that is not easy; it was never easy for her.⁷⁷

Even in 2012, there are few comic heroines and superheroines like Martha Washington who possess her skill and talent. Thus, she should not be overshadowed by other characters, or even worse forgotten.

⁷⁷ Cox.

From Innate to Constructed Costuming: The Rise of Costume Technology in Superhero Movies

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A superhero's costume performs several functions. The costume, as represented in film, serves primarily as a symbol—an artifact that is universally recognizable. That is, when a given superhero wears his costume, he is instantly identifiable. This primary symbolic function encompasses several related concepts. For example, the costume automatically implies a sort of status distinction: when it is worn, the individual in the costume is considered neither a human nor a god, but an individual caught somewhere in between, a super-human, occupying a special class set apart from all others. The hyphen indicates that these two identities are aspects of single self (it actually symbolizes the passage from one identity to another within this self). A superhero's costume has a performative aim, which alters and shapes the body, allowing a character to display one of his or her two identities and to hide the other. The costume also serves a protective function—as armor and as a source of superpowers. Finally, it binds the superhero's two identities; it is in the costume that the transition from a human to a superhero identity comes into being.²

It seems that the power of these brightly colored, skintight superhero costumes are always underestimated.³ Yet, it is clear that superheroes only become super after donning their costumes, as all of the aforementioned functions (superpowers, double identity, performativity, and status change) result from wearing them. This congruence of identity and attire motivates my exploration of whether the creation of the costume occurs simultaneously to the creation of the super-heroic identity. The goals of this paper are two-fold. First, to examine the representation of the superhero costume in recent cinema and, second, to explain how the costume's function as both a factor influencing a character's personality and a universally recognized symbol distinguishing the superhero from ordinary characters (or from the classic hero).

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² We can compare this kind of transition to the rites of passage among certain African peoples. For example, in the Yoruba society (mostly located in Nigeria, Benin, Ghana and Togo) masks are used during the *engungun* ceremony (celebration of the ancestors). An initiated person (often male) dons a mask to assume the identity of the ancestor represented by that mask. The mask-holder then passes from the world of the living to the world of the ancestors, just as a superhero leaves behind the human world to access the superhuman world.

³ The costume is often seen as ridiculous because it uses loud colors, it sticks to the skin, and some of its components, which may be taken to be underwear, are placed over clothes. It gives the impression that the costume is offbeat: it is too bright and too skintight.

My response to this hypothesis focuses on a corpus of films starring superheroes from Marvel and DC Comics: all three Spider-Man films by Sam Raimi;⁴ *Iron Man* and its sequel, by John Favreau,⁵ and Christopher Nolan's Batman movie.⁶ I use a hybrid methodology influenced by both cinematic case studies and the field of fashion studies, which means considering clothing as a provider of information about a character and being concerned with the social and cultural function of clothing, which plays a role in both establishing of identities and in figuring the superhero status. There are at least two distinct kinds of studies of fashion: "fashion studies" as an immaterial concept (the way fashion and/or fashions erupt and evolve, for example) and "clothing fashion studies," focusing on the material—the clothing itself. Within a culturalist perspective, whose "fashion studies" has countless branches: I draw on the specific sub-branch of clothing fashion studies, which studies both the practice and phenomena (how the outfit is constructed, worn, and what kind of discourses it produces about this character) of superhero clothing.⁷

About the Movies

Drawing on Stuart Hall's way of talking about his research,⁸ I feel it is crucial to indicate the links between the subjects I will be dealing with and my own socially situated cultural practices.

I choose to rely on superheroes movies rather than comic books because my own experience of superhero culture comes more from the audiovisual world than from comic books. For French spectators of my generation, contemporary feature films are arguably the main "superhero culture," especially the last generation of movies adapted from comic books, often preceding an interest in superhero comic books themselves.⁹ For all of the three movies I discuss in this research, France is rated third or fourth among foreign countries in worldwide box office success.¹⁰

⁴ David Koepp, *Spider-Man*, Directed by Sam Raimi (Culver City, CA: Columbia Pictures, 2002), DVD; David Koepp and James Vanderbilt, *Spider-Man 2*, Directed by Sam Raimi (Culver City, CA: Columbia Pictures, 2005), DVD; Alvin Sargent, Ivan Raimi, Sam Raimi, *Spider-Man 3*, Directed by Sam Raimi (Culver City, CA: Columbia Picture, 2007), DVD.

⁵ Arthur Marcum and others, *Iron Man*, Directed by Jon Favreau (Hollywood, CA: Paramount Picture, 2008), DVD; Justin Theroux, *Iron Man 2*, Directed by Jon Favreau (Hollywood, CA: Paramount Picture, Marvel Films, 2010), DVD.

⁶ David S. Goyer and Christopher Nolan, *Batman Begins*, Directed by Christopher Nolan (Burbank, CA: Warner Bros, 2005), DVD; Jonathan Nolan and Others, *The Dark Knight*, Directed by Christopher Nolan (Burbank, CA: Warner Bros, 2008), DVD; Christopher Nolan and Others, *The Dark Knight Rises*, Theaters. Directed by Christopher Nolan (Burbank, CA: Warner Bros, 2012), DVD.

⁷ Yuniya Kawamura, *Fashionology: An Introduction to Fashion Studies* (New York, NY: Berg, 2005), 1-4.

⁸ Notably in the article Stuart Hall, "Cultural Studies and its Theoretical Legacies," In *Cultural Studies*, ed. Lawrence Grossberg, Cary Nelson, Paula Treichler (London, UK: Routledge, 1992), 277-286.

⁹ However, French 'comics' readership must certainly not be neglected.

¹⁰ The first *Spider-Man* (with a 139 Million USD budget and released between 12 June and 17 December 2002) generated 32,938,344 USD in France, placing fourth among foreign countries, which totaled 418,002,121 USD in revenue. The USA generated 403,706,375 USD, of a total worldwide 821,606,375 USD. France is also fourth place in the *Batman Begins* foreign countries box office: released between 15 June and 02 August 2005, the 150 million USD budget movie made 10,069,984 USD in France (out of a total 167,366,241 USD for foreign countries) and the USA earned 205,343,774 USD of a total 373,710,015 USD worldwide. Finally, France was third in foreign box office earning for *Iron Man*, which was in theaters between 30 April and 20 July 2008:

France is rated in the top five foreign countries generating the most box office revenues from American superheroes films. Consequently, superhero movies can be considered to be the most important provider of a superhero culture in France, which obviously has repercussions on my own outlook on superheroes, and the attention I give to their costumes, more noticeable in movies than in comics.

Thus, feature films lies at the base of my superhero culture. Considering the huge audience for superhero movies, we can assume that a connection exists between the never ending trial-and-error process of costume creation, and the fact that the costume technology only appears in the post-2000 movies, that is, those having the widest success. Lars Svendsen in his philosophical essay *Fashion: A Philosophy*,¹¹ suggests that fashions are a paradigmatic expression of our individuality; easily adopted and frequently changed, fashion “merely becomes the expression of an abstract impersonality.”¹² In this light, a connection must exist between the costume technology of superhero movies and contemporary society, whose members try to construct their own identity through, *inter alia*, fashion and clothing.

Choosing to deal with costumes as the medium through which to engage with superheroes also corresponds to a desire to refresh or update superhero stories. Indeed, to take one superhero as an example, the origins of Spider-Man change between the comics and the movies. In the “original” story, a radioactive spider bites Peter Parker to give him his powers, and he becomes Spider-Man.¹³ In the film directed by Raimi, the spider that bites the young man is genetically modified in a laboratory to create a very resistant species of spider. Similarly, in the comic book, Tony Stark who eventually becomes Iron Man is imprisoned in Vietnam,¹⁴ not in Afghanistan as in Favreau’s film. Movies then tend to refresh the history and origins of superheroes by matching the obsessions of the twenty-first century, and the more current and specific concerns of viewers, which is why I favor these more contemporary visions in my analysis. In superhero comic books, what are called “reboots” are often enacted for mostly economic, narrative, and readership reasons. But if we follow the hypothesis that the costumes take part in the creation of a superhero, we can see the cinema as literally transforming sequential images printed on paper into twenty four images per second projected onto a screen. In the same way, cinema transforms the metamorphosis of the human into a superhero as well. The mutation from halting drawings separated by white borders to a fluid

19.197.690 USD came from France, out of 266.762.121 in total foreign earnings. The film made 318,412,101 USD domestically of the 585,174,222 USD total worldwide. Iron Man was produced on a 140 million USD budget. Source: <http://boxofficemojo.com> (last visit: 24 November 2012). All numbers are in USD, based on gross amount.

¹¹ Lars Svendsen, *Fashion: A Philosophy* (London, UK: Reaktion Books, 2006), 19-20.

¹² This statement was also studied by a lot of authors, including Georg Simmel, Thorstein Veblen or Jennifer Craik.

¹³ Stan Lee and Steve Ditko, “Spider-Man,” In *Strange Special Origins N°133bis* (Lyon, France: Lug, 1981), 11-21. *Strange* is a French magazine that re-published superhero stories between 1970 and 1998.

¹⁴ Stan Lee and Steve Ditko, “The Invincible Iron Man,” In *Strange Special Origins N°145bis* (Lyon, France: Lug, 1982), 5-21.

sequence full of moving images permits us to see what we have never really seen in comic books (even if, of course, the cinema uses other stylistic elements, such as ellipses or editing, that enacts cuts similar to comics' gutters). The cinema does what comic books technologically cannot do: make the transformation seem to be "really" happening before our eyes, thereby suggesting that there is more than meets the eye.

At the same time, the marketing plans of the countless production and distribution companies attached to each film and characters, regardless of their specific creative visions and their own internal constraints, create a similar process of evolution for each superhero's costume. For example, Sony Pictures, through the production company Columbia Sony Pictures, owns the Spider-Man character, from Marvel Comics. Batman's production rights are held by Syncopy Film (Nolan's production company) and Patalex III. Warner Bros. also produces the *Batman* Saga, while Paramount Pictures and Marvel Film produce *Iron Man*. Even if these firms seem to be competitors, they provide the same representation of costume creation and highlight superheroes bodies in the very same way. Superheroes costumes, whatever the character, the original publisher, the edition company, or distribution and production company, go through the same phases, use the same materials, and evolve in the same way. Regardless of how a given costume may evolve, and despite the high number of superhero-centered productions, this recurrent effort suggests that the costume and the way it is created has become an essential issue in most recent movies, and raises questions regarding the homogenization of costume technology in contrast to previous productions whose scenarios were less concerned with costuming. I choose three movies belonging to different companies (as well as different comic books publishers and movies directors), stressing the differences between the productions of each film to emphasize how they still narrate the characters' costume creation process in precisely the same way.

Finally, in addition to the reasons previously mentioned, the costume technology I will focus on in this paper did not appear before the 2000's superhero movies. Thus the following analysis attempts to understand the meaning of costuming in these most recent superhero movies compared to the elder generation of movies.

Costume Technology: The Creation of the Costume

Examining more recent films, it becomes evident that neither the creation of the costume nor the creation of the heroic identity occurs in a single step. That is, both the costume and the identity crystallize only after a multi-step process. For each film, I focus on three important moments that involve identity creation—or rather, the process of identity creation, to be more accurate. The three important

moments are as follows: when the character creates his costume; when he wears his costume; and when he takes off his costume.¹⁵

Since I am exploring costume creation, I concentrate on the first film in each of the sagas, the ones in which the creation of each character's costume takes place. At the beginning of all three films, the central character is dressed in clothing that represents the place he holds in society. Peter Parker, for example, is dressed as a student, wearing a colored t-shirt and blue jeans. Tony Stark appears as a businessman, wearing a suit, as does Bruce Wayne, playing the billionaire playboy roles. At this early moment in each film, we see the classic hero, situated within the hegemonic norms, still an ordinary man.

The creation of each character's costume begins with a moment of nudity. Indeed, before wearing their costumes, the characters that will later become superheroes must wear barely anything. The viewer discovers their bodies at the same time that the characters discover their powers. Peter Parker, for example, wakes up topless in his room the day after being bitten by a spider and discovers his enhanced muscles while looking into a mirror. Tony Stark, imprisoned in a cave, wakes up in bed and removes his bandages to find a battery implanted in his chest. It is this battery that is supplying his heart with energy (which will later provide him with his super powers). Bruce Wayne is also bare-chested during some of his training: when he gets his special abilities thanks to Ra's Al Ghul and when Alfred tells him later that he has to continue to behave like Bruce Wayne so as to not be accused of being Batman.

At this moment, the body serves to display the exaggerated gender of the characters. Indeed, one of the similarities among these three superheroes is excessive magnification of certain parts of their bodies. The muscular hypertrophy that each of their bodies undergoes seems to display another personality. This moment of muscular development is the one in which the double identity forms and the beginnings of the costume take place. The muscles are present on the body of the man as if to signify the passage to a super heroic fate. The second way that the gendered body manifests is in the predominance of the male superhero. There are few women superheroes whose adventures have been adapted to film, but they are treated in a similarly gendered way: the parts of their bodies that are most associated with the sex to which they belong are exaggerated. Contrary to the costumes the characters will soon wear, bodily exaggeration does not yet hide the faces, the bodies, or race of the heroes.

The first piece of clothing that each character under consideration wears is a white t-shirt. When Peter Parker makes sketches of his future costume, on the night when he uses his spider powers for the first time, he is wearing a white t-shirt.

¹⁵ We can qualify these moments as "ruptures" in the Foucauldian sense; Michel Foucault, *L'archéologie du Savoir* (Paris, France: Gallimard, 1969), 10.

When Tony Stark leaves the cave to see his jailer, he wears a light-colored t-shirt, which also hides the light on his chest. Bruce Wayne also wears a white shirt when he is not wearing Batman's costume, or the billionaire tuxedo. When the superhero discovers his powers or uses them for the first time, he wears the most universal article of clothing—which we all have in our closets—a simple white t-shirt. It is a moment in which the characters are not “completely” superheroes yet; they still have one foot in the human realm. They have the body of a superhero, and the will, but they lack one final detail: the costume—and, often, the responsibility. Their identities are only just beginning to develop: their bodies have the form of a superhero, but they do not yet seem to be one fully. However, through nudity or the blank screen of the white t-shirt, their bodies appear virginal, purged of any specificity, a surface upon which they can begin to write whatever they wish. In her essay on clothing and identities in the movies, Stella Bruzzi states that a white t-shirt at once shows a “real” body and sexualizes this body. This double aspect can apply to the body of the character that is not yet the super hero; the body concerned is that which corresponds to the character's civil identity. It would thus seem that costume creation, and what we have mentioned so far as the costume technology is linked both to the costume itself and to the civilian outfits the character wears throughout the movie. Even if the superhero is stripped of his or her symbolic costume, his or her civilian outfit says something about the character. Indeed, the aforementioned white t-shirt and nudity teaches us that this is the time when the identities begin to develop. Potentially, the body of the superhero to be makes reference to what this body will become, all the while making manifest a degree of vulnerability, bringing to the fore the grey area where the identities split.¹⁶

In these three movies, the superheroes create or wear the first version of their costumes in an idiosyncratic context. For example, Peter Parker puts on his Spider-Man costume in order to earn money in a wrestling match. Tony Stark creates his Iron Man armor to escape from the cave in which he is imprisoned, and Bruce Wayne wants to become the Batman to get revenge against those who hurt him, his parents, and Gotham.

These outfits, when worn for the first time by the superheroes, are in fact, only preliminary versions, first drafts of their future costumes. And, while these first versions are highly recognizable due to their shape, their color, or the symbol that they bear, they remain merely the idea of what the costume will become. I would call this iteration the “costume embryo.” In these movies, the embryonic versions of the costumes are the wrestling costume of Spider-Man, which is composed of a balaclava, a tracksuit and a long sleeved sweatshirt. These items obviously come from the wardrobe of the teenager. Iron Man built the first version of his armor, later called “Mark I,” in order to escape from the Ten Rings. It is barely a

¹⁶ Stella Bruzzi, *Undressing Cinema, Clothing & Identity in the Movies* (London, UK: Routledge, 1997), 80-82.

patchwork of grey pieces made of iron, which is neither practical nor aesthetic. Batman wears several layers of black clothing. He also wears a balaclava, and he is equipped with some of the weapons he borrows from Lucius Fox (responsible for the prototype section of Wayne Enterprises) and builds himself.

These embryonic costumes are most frequently constructed from recycled materials: regular clothes for Spider-Man, materials reclaimed from Stark weapons for Iron Man, and Batman's ninja training outfit (although some manufactured pieces of the costume are also present) and lost prototypes. Moreover, these costumes never last long since they are only first drafts; they are generally destroyed with use. Like a journey of initiation, the character constructs his identity personally, in response to the interactions acting upon him and his specific the context, but it is really upon his own person, his body, that the costume and the identity take shape.

As the superheroes design their costumes, the audience is allowed to watch the creative process take place. The audience can see the sketches for the Spider-Man costume, the three dimensional renderings of the Iron Man suit, and Bruce Wayne working on his bat-shuriken, giving it the shapes of his future symbol, and giving orders, gathering the pieces of the costume to be, and painting some of it black. But, at the same time, the spectator cannot assist in either the creation or the assembly of the pieces of the costume. Thus, the reworked versions of each costume are still shrouded in a certain sort of mystery.

Peter Parker takes out the sketches, makes modifications, and chooses a comfortable material from which to create a new costume for improved web slinging. Tony Stark uses the technology of Stark Enterprises to make his costume luxurious and eye-catching, using the colors gold and blood red, emulating one of the cars in his collection. And Batman uses unused prototypes for the army, which he paints black as some of the components of his costume.

After initial adventures wearing the first version of each costume, each of the superheroes creates a second one. The newer models are more technological and more aesthetically pleasing than the previous ones. They also provide better protection.

While the production process for the revised costumes is shown on film, the cinematographers also use another way of showing that a new version is being created. The entire costume is never shown; rather, the camera moves around it, focusing in on small parts of it. Without having any idea of what the costumes look like as a whole, the audience gets a vague idea of the materials being used in their creation. This is a very common cinematographic model for filming the superhero in his first appearance in the revised costume. The camera records many short close-ups that showcase the different components of the superhero's costume,

creating an abstracted image, to punctuate the transformation and to make it last.¹⁷ But this blurry image of the costume is soon replaced by a shot of the entire body of the superhero, suited up and ready for action. These scenes take place exactly in the middle of the movies. At this stage, the superhero's identity, as well as the design of his costume, starts to solidify; he faces his opponents in costume, while conducting everyday activities in regular apparel. This is often the moment at which he falls into a pattern of heroism.

Wearing – Removing the Costume

When a superhero wears or removes his costume, it is a performative act that we can consider as a rupture. That means every interaction with this artifact is a new transition in the character transformation and marks a break in the cycle of metamorphosis from human to superhero and the other way around.

Peter Parker seems to constantly wear the Spider-Man costume under his normal clothes. In one particular shot, he is seen unbuttoning his shirt to expose the spider symbol on his chest, somewhat in the same manner as Superman;¹⁸ to save people as Spider-Man, he just has to change his clothes in any dark alley. Once again, Tony Stark uses technology to his benefit. When it comes time to suit up, he stands motionless and has robotic arms place the parts of his armor onto his body. And when he is away from home, as in *Iron Man 2*, his suit assembling equipment is carried along with him in a suitcase, "Mark V," which he opens when he needs the armor to conform his body. Bruce Wayne keeps his costume hidden in an iron case or in the Batcave.

The integration of their double identities is repeated. With their costumes on, they are superheroes, and they are very different from their former selves. They have to wear their superhero costumes, in three different ways, as we have seen, in order to perform their extraordinary acts, and also to enact the transition of their identities.

When Spider-Man removes his costume, the wounds he sustained in his battle with Osborn (The Green Goblin) betray his identity. Osborn recognizes him because of the wounds. Stark dresses himself in his street clothes when he is not performing his role as Iron Man. It is in a press conference, in which he is to announce that he is not Iron Man, that he finally reveals his secret superhero identity. Bruce Wayne also has the wounds from Batman's battle on his back, except nobody sees him apart from Alfred, his secret identity is not revealed at the end.

From these examples, we can see that at the end of each movie, the identity of the superhero and his human identity are intermingled; the two identities have mixed

¹⁷ There is metamorphosis or transformation very early in cinema history, in *The Man with the Rubber Head*, 1901 by Méliès for example. The "reveal by bits and pieces" technique that we find in superhero movies undeniably calls to mind *An American Werewolf in London* (1981, John Landis), in which the transformation of the young man into a werewolf is filmed in successive close-ups.

¹⁸ Mimicking an emblematic superhero like Superman can be seen as the development of a genre of superhero.

together in a single body. It is as if the costume “dissolves” identities or obscures the border between identities: Peter Parker will no longer be Peter Parker, but will always have a little bit of Spider-Man in him. Only one of his two personalities will be evident at any given time, depending on the outfit he is wearing. The same schema is used for the other superheroes; the barrier between their two identities becomes more and more unclear as time passes. The hybrid body incarnates two identities intermixed, of which only one can show at any given time.

If we take a look at other, older, superheroes movies, like the 1977 *The Amazing Spider-Man* directed by Egbert Warnderink Swackhmer¹⁹ (which is actually the pilot of the eponymous TV show, screened between 1977 and 1979), we notice that Nicolas Hammond (aka Peter Parker) does not create his costume: rather, Spider-Man’s costume appears as if by magic. The way he gains his powers is precisely depicted, as is the way he deals with his new spider-abilities and responsibilities, but Spider-Man’s process of costume creation is totally ousted from the screenplay. After being bitten, he shows off in front of a mirror located in his bedroom dressed in his Spider-Man suit, before taking his mask off and realizing his duty. Similarly, neither the 1966’s *Batman* by Leslie H. Martinson, nor Tim Burton’s 1989 *Batman*, deal with the creation of Batman’s costume.²⁰ In the latter case, Burton only references the creation of Bruce Wayne’s secret identity creation, by opening the movie with an unknown young boy (who is not Bruce Wayne) and his two parents (who are not Bruce Wayne’s parents) being attacked by two rogues, followed by the death of the father (that Batman will eventually avenge). Here, there is no evidence of costume creation; there is no room for the costume to develop. Both Batman’s identity and costume are already created *a priori*: this does not seem to be the first time Batman has helped fellow citizens. Taking place in parallel with the Bronze Age of Comics and the Modern Age of Comics, these early films show the desire of comic book publishers to export superheroes characters—that are already well known thanks to comic books or television shows—on other media. We could argue that this is the reason why there is no costume technology in the movies of the second half of the twentieth century.

Following another of Bruzzi’s statements, I would argue that the costume not only relates to the body and the superhero’s identities, but also to the environment, the narrative, and, I would add, to fashion and to time. We are thus better equipped to understand why costumes of different movies generation are so different. Sarah Street advises us to consider fashion in films as a system: “a system of

¹⁹ Robert Janes, *The Amazing Spider-Man*, Directed by Egbert W. Swackhmer, (Hollywood, CA: Charles Fries Productions, 1977), VHS.

²⁰ Lorenzo Semple Jr, *Batman*, Directed by Leslie H. Martinson, *Batman* (Century City, CA: 20th Century Fox, 1966), DVD; Warren Skaaren and Sam Hamm, *Batman*, Directed by Tim Burton (Burbank, CA: Warner Bros., 1989), DVD.

dress characterized by an internal logic of systematic and regular changes.”²¹ In this light, the approximate relationship that exists between costume technology and fashion as a system becomes easier to understand: the costume ceases to evolve because of changes of its entire internal logic, subsuming identities, body, narration, time and fashion.

Superheroes’ costumes evolve step by step and this is used to display alternately one of their two identities. It is a cycle, going from the costume to their civil outfit, before putting on the suit to fight again. Like fashion, this cycle is always a process of change. The fact that the costume technology only appears from the 2000’s movies approximates changes in our contemporary world. Fashions regularly and systematically undergo transformation, as do continually renewed superheroes costumes. The display of the changes taking place in the outfits draws attention to a creation process situated at another level, in which, with globalization, everyone is looking to construct his or her own identity and to demonstrate his or her own individuality by a similar process of trial-and-error, experimentation and re-creation. What the costume technology and the second generation of superhero movies emphasize is the importance of issues pertaining to contemporary society, translated and also symbolized here in interactions centered around costume. The period during which the costume technology arises is also indicative of the fact that previous superhero films were meant to showcase comic books editions and to enhance comic books publications;²² unlike today, movies had less impact and were, in many ways just another promotional tool. Moreover, technological advancements (e.g. fabrics, uses of the cinematographer, stories renewal) show that the history takes place in the stories and marks these stories. If we compare new and older productions, as we did, the technological evidences from the past turn out to be better identifiable and thereby show the regular changes occurring over time.

The progression in the costumes shown in post-2000s movies is only one aspect of the technologies that highlight the main character. Apart from the way costumes are filmed (creating an expectation effect until we see the superhero fully costumed in an almost static shot), we can talk about at least three other uses of the cinema that emphasize the uniqueness of the superhero body.

Superheroes’ costumes’ fabric has also evolved with different generations of superheroes films. The costumes of Batman in the 1966 movie and of Spider-Man in the late 1970s seem offbeat now, and participate both in the “exclamatory

²¹ Sarah Street, *Costume and Cinema, Dress Codes in Popular Film* (London, UK: Wallflower Press, 2001), 2. She actually quotes the definition given by John Entwistle, *The Fashioned Body: Fashion, Dress and Modern Social Theory* (Cambridge, UK: Polity Press, 2000), 44.

²² Stan Lee himself states this kind of promotion in his “bio-autography.” Stan Lee and Georges Mair, *Excelsior! The Amazing Life of Stan Lee* (New York, NY: Fireside, 2002), 210.

effect.”²³ Indeed, that leads to a spectacular version of superhero and to lampoon the superhero image: they are skin tight, loudly colored and glossy in appearance. The three predominant fabrics used to construct superhero costumes in that era—wool, cotton, lycra, spandex, nylon and fake leather—seemed to be the most convenient materials to give the appearance of the exclamation we could find in comic books. Then, at the beginning of the 2000s, costumes materials became more rigid and started to give an impression of realism because, for the most part, they are borrowed from protective gear used in the Army, such as Kevlar and Carbone fibers, Tyvek, polyester mesh or even light iron, which are more comfortable for the actor who wears them, and allow more freedom of movement. The main difference between these two types of material used for costumes is the durability of the new ones. Fabrics used for the first film generation are not robust: the material gives the costume an ephemeral aspect (because it is thin and springy), while new materials, more solid and can be more durable. Moreover, they can endure more handlings, which effects the way of acting in a suit—in recent movies, the stunts are more spectacular than the one seen in 1970s superhero films. And in the most recent productions, several identical costumes are created for the actor to wear, depending of the kind of scene he or she has to play. For example *The Amazing Spider-man* movie stunts can be reduced to climbing a building and pirouetting in front of a green screen on which the real landscape will be inserted in post-production. Green screens are obviously still used in recent movies, but combined with special effects; the stunts in these films provide a more spectacular staging of the body, the suit, and the actor, which leads to a reinforced view of the robustness of the suit.

These more rigid materials also permit depth effects, like Batman’s curved breastplate or the screen-printed spider-web emerging out of the Spider-Man costume’s material. Whether flexible or rigid such materials stress the “fetishization” of the superhero body (making it a sexual fetish), by highlighting the emergence of super human bodily attributes. These attributes therefore seem to be fraudulent: if we look more closely at the costumes, and specifically where the muscles are, we can see shadows drawing the muscles on the surface of the fabric, an illusion emphasizing different parts of the body. In recent superhero movies, this effect emphasizes the strongman look that the superhero must fit. The costume, which covers the body, serves to exhibit the gender that is, itself, a display of big muscles. The costume exhibits the shapes of the body, and at the same time, creates these shapes graphically on the surface of the costume as

²³ The “exclamatory effect” is used by Frederic Weltzien to differentiate civil outfit (often dark) and the superhero colorful costume: when a superhero changes his or her dress from one to another, it’s a performative display of the masculinity; and it also creates a contrast (thanks notably to the color) between distinct identities. Frederic Weltzien “Masque-Unilities: Changing Dress as a Display of Masculinity in the Superhero Genre,” In *Fashion Theory*, Vol 9, no. 2 (Oxford, Berg: 2009): 235.

second skin. Traditionally gendered shapes are exacerbated on characters' bodies, pectorals are highlighted by the costume in male superheroes, while traditional feminine attributes, such as cleavage, for example, are highlighted by female superhero costumes (e.g. *Catwoman*, 2004; Storm in *X-men*, 2000).²⁴ This was not the case in older productions, where fabrics only follow the shapes of the actor's body, without adding embellishments. The strong person body emulated is also a construction of the 2000s superhero movies. Moreover, the use of the same fabrics, the same shapes, and the same kind of colors creates consistent style of costume in superhero movies. At present, we can distinguish at least two styles. The first one, characterized by the use of fabrics such as nylon, lycra, fake leather and plastic occurs in the first superhero movies and ends before 2000's *X-Men* and a second one, which appears from *X-Men* onwards, uses materials borrowed from real garments used in "professional" settings (Kevlar, polyester, iron). Contrastingly, race often remains hidden beneath the masks and the costumes that cover the body entirely. Indeed, it could be anybody under Spider-Man's or Iron Man's costume and armor, as shown in *Iron Man 2*, when Colonel James Rhodes puts on the "Mark II" prototype to stop Iron Man from destroying his Malibu Villa. While some other costumes, such as Batman's, can easily display a non-white actor, those of Spider-Man and Iron Man completely erase the notion: gender seems to prevail; gender is stressed more than race.

Another tactic used by the cinema to highlight the superhero is what can be termed the "spectacularization" (a spectacular way of staging) of the suited body. Indeed, we can find in these movies some moments of literal staging; it is not uncommon to find the superhero placed on a stage in front of a crowd. Spider-Man uses his newly acquired powers to fight another wrestler in the ring. Iron Man performed his new identity in front a group of journalists, then enters the stage of the Stark Expo (*Iron Man 2*) in front of millions spectators, accompanied by some dancers dressed like him. Bruce Wayne plays the drunken millionaire in front of Gotham's elite to avoid his guests being hurt by Ra's Al Ghul's followers at a party he is giving. Whether in their costumes or not, they are literally staging their bodies in front of a crowd as if they were performing in a spectacle. The stages upon which they are placed make them the focus of the scene, and they are positioned at the center of the gathering, all eyes on them. When they are wearing their costumes, it is in order to stage them as well; the best example might be Captain America doing his show in front of the Second World War's Italian soldiers in *Captain America: First Avenger* (2011).

The final strategy used by the cinema to distinguish superheroes from other protagonists appears when uniformed bodies surround the characters. It is very

²⁴ David Hayter and Others, *X-Men*, Directed by Bryan Singer (Century City, CA: 20th Century Fox, 2000), DVD; John Rogers and Others, *Catwoman*, Directed by Pitoff, (Burbank, CA: Warner Bros., 2004), DVD.

common to find groups of characters dressed all in the same way. This could be a reason for why there are a lot of stories involving scientists, soldiers or policemen. Professions that wear undifferentiated uniforms, as a symbol of recognition or authority are countless in superhero movies: police uniforms and laboratory coats, but also businessmen's suit, or even the crowds wearing similar casual clothing. By wearing classically known outfits that mark them as belonging to a profession, these professional groups cause the superhero to stand out from uniformity. There are different kinds of uniformed groups in these films, not always professional. In the *Spider-Man* movie, we see scientists, wrestlers and policemen, while we see businessmen, prisoners, ninjas and doctors in the Batman movies. These uniformed groups wearing all the same clothes produce several collections of characters that are internally soldered and undifferentiated: their uniformity valorizes the uniquely dressed body of the superhero, through contrasts of shapes, colors, and materials with the superhero's exceptionality. The most frequently represented groups are the Army, the police and scientists, who all wear recognizable outfits, and are accompanied by their *habitus* (weapons, vehicles or laboratories for example). In the *Iron Man* movies, this "uniformization" (standardization) is heightened when several iterations of Iron Man's armor are worn by other characters who are part of other uniformed groups, for example when "Mark II" is worn by James Rhodes and Obadiah Stein's Iron Monger, or the armored drones created by Ivan Vanko's in order to defeat Iron Man. In these precise cases, the villain is another body, besides the superhero, that stands out of uniformity, becoming the nemesis character in an opposition of the good and the evil, creating the mirror effect that we usually find in superhero movies. This means that the superhero and his nemesis resemble each other, like in a deforming mirror, or "shimmer effect"²⁵ whose frontier would be good and evil (for example, Hulk fighting the Abomination, created with the same serum but much more monstrous in Louis Leterrier's *The Incredible Hulk*,²⁶ or X-Men where mutants clash with other mutants). So now, we have at least two costumed bodies, the superhero and the super-villain, that seem to have the same extraordinary status thanks to their resemblances to each other, but that stand out from all other uniformed bodies. This exceptionality is one of the main attributes of the superhero character in movies; the interaction between the superhero and other characters participates in differentiating the superhero costume style and other characters wear thereby differentiating the superheroes themselves via clothing.

Conclusion

A superhero's creation of his or her costume requires a great deal of trial-and-error. Each step provides a specific, new vision of what the costume may become.

²⁵ Dick Tomasovic "Le masque et la menace. Constitutions et crises identitaire de la figure super héroïque contemporaine," In *Du Héros au Super Héros*, ed. Claude Forest (Paris, France: Presses Sorbonne Nouvelle, 2009), 173-184.

²⁶ Zak Penn, *The Incredible Hulk*, Directed by Louis Leterrier (Hollywood, CA: Universal Pictures, 2008), DVD.

The three steps of this process that we have seen are actually part of a perpetual quest. The costume does not cease to evolve, as the superhero must continually make changes to it.

In fact, the superhero dresses in the remnants of old costumes, which serve as templates for future costumes. The final version of the costume seen in any particular movie also tends to change yet again before a sequel is made. Hence, there is no real “final version” of a costume, because, in subsequent films, the costume reaches progressively higher levels of precision. For example, in the third movie of the Spider-Man saga, a symbiotic alien being infects the red and blue Spider-Man costume, which becomes black, visually reflecting the way in which Spider-Man personality has also been altered. In the second *Iron Man* movie, the costume is modified; the little window on Iron Man’s chest became triangular, and it seems that parts of the armor have become more meticulously detailed (it is “Mark VI”). These changes symbolize the new energy source Stark has found to provide his armor with better energy without damaging his own health. Thus, the brand new armor is more powerful than the one it replaces. In *The Avengers* movie, we see once more how Iron Man’s armor is always evolving. Now “Mark VII,” the armor, recognizes the bracelets that Tony Stark wears on his wrists, and travels to him, conforming to his body. Iron Man’s armor is the perfect example of this perpetual modification and modernization of superhero costume. Between the three movies in which Iron Man appears, we can count seven different armors worn by the superhero. Batman’s costume, even if it does not seem to change, does alter some minor details of its appearance; however, the technology inside of the costume and the gadgets that Batman uses are the site of greatest novelty in a costume that, nevertheless, becomes more and more padded and curved such that its breastplate simulates both pectorals and the wounds Batman’s body has endured. This function of the breastplate seems particularly evident in *The Dark Knight Rises*. This very precise path of costume development is reiterated in both the Marvel and the DC movies and participates equally in 1) the creation of the superhero identity, 2) showing this style of costume and costume development feeds the genre of superhero movies, 3) standing the main character out of uniformity. It is all the more noticeable since all these movies belong to different cinematic universes. Thanks to a consistent style of costume and internal references, the superhero movie genre is homogenized. I call this path of the costume, found in the second generation of superhero movies (since 2000) “the Costume Technology”²⁷

²⁷ In reference to Elfrat Tseelom, “From Fashion to Masquerade, Towards an Ungendered Paradigm”, in *Body Dressing*, ed. Joanne Entwistle and Elizabeth Wilson (New York, NY: Berg, 2001), 108; Vicki Karaminas, “Über-Men: Fashionable Heroics and Masculine Style.” In *Conference Proceedings King Power: Designing Masculinities Symposium*, ed. Juliette Pears (Melbourne, Australia: RMIT University, 2007), 4.

to give a sense of the simultaneous construction of superheroes' identities and costumes.

Peter Coogan writes that the costume is “the iconic visual element of the character that makes them visually distinct.”²⁸ It is also the blurred frontier between a given superhero's identities and the locus where the character takes shape. Costumes were inexplicably materialized in the first generation of superhero movies, and became an artifact in recent productions: an object constructed by the character. Thus, the superhero's wardrobe is one of the most predominant artifacts of the genre, one that also attempts to resolve the crisis that superheroes' identities go through.²⁹

²⁸ Peter Coogan, *Superhero: Secret Origin of a Genre* (Austin, TX: MonkeyBrain Books, 2006), 33.

²⁹ I would like to thank: The 2012 Florida Conference of Historians organizers, especially Julian Chambliss, and Sarah S. for the translation help, Jordana G. for the valuable comments, Michael H. for the final editing and my very own superhero: Kévin Q.

Beheading Saintliness: The Limited Altruism of Thomas More and Anne Boleyn

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The condition of martyrdom raises a number of questions, particularly whether it is an act of selfless suffering or an unfortunate obligation. These are both possible explanations as to why a person dedicated to a higher cause might become a martyr. Most cases of martyrdom occur within religious or political contexts, and sometimes both.¹ Religious martyrs can be ordained as saints for giving up their lives in the name of God. These men and women have often faced methods of torture designed to force them to renounce their beliefs before they were executed. In considering why someone would willingly subject themselves to this, it is necessary to question whether there could be an egotistical component to giving up one's life for a cause or purpose.

Martyrdom is often looked upon as a commitment to altruistic ideology that justifies giving up one's life for the sake of a cause. As Norman J. Brown writes, however, there may be something deeper to this selfless act, in that "altruism is an illusion, generosity sheer self-indulgence, martyrdom mere masochism or at best a desire for glory."² Individuals are generally motivated by their own desires. It is impossible to be motivated to martyrdom by another's desires, or for that matter, another's cause or wishes.³ Someone could feel very strongly about an issue, sentiment, or religious inclination, but ultimately that is founded in their own desires.

Both Thomas More and Anne Boleyn were beheaded by orders from the same king, in part for their religious beliefs, though their dogmas were in opposition to each other; both were alive and active in the court of Henry VIII and their lives intertwined with one another at some point. In the case of Sir Thomas More, author of *Utopia*, there are conflicting views of his character. Some believe he deserves the title of Saint Thomas More, while others have found his behavior reprehensible as a self-satisfying tyrant. He was an accomplished politician and lawyer of his time, earning the title of Lord Chancellor under Henry VIII of England's reign.⁴ More stood firm on upholding the doctrine of the Catholic Church, opposing the Protestant Reformation as it swept into England during the sixteenth century. On 6 July 1535, More was executed because of his refusal to recognize Henry VIII as Supreme Head of the Church of England and agree to the Act of Succession with

¹ Rona Fields, *Martyrdom: The Psychology, Theology, and Politics of Self-Sacrifice* (Connecticut: Praeger Publishers, 2005).

² Norman Brown, "Psychological Egoism Revisited," *Cambridge University Press*, 54 (1979): 249.

³ *Ibid.*

⁴ More resigned from Lord Chancellor in May 1532.

Henry's second consort, Anne Boleyn.⁵ More's refusal to acknowledge the Act of Supremacy only pushed him closer to the See of Rome and the constancy of his Catholic faith.⁶ Later, More was requested to swear to the Act of Succession only, still leaving him in ultimate reluctance to recognize Henry as Supreme Head of the Church of England.⁷

Martyristic Motivations

Spiritual confidence is a conviction shared in both Catholic and Protestant accounts of martyrdom, stemming from biblical perceptions of the identity of the true Christian; although, assessments of how suffering confirms religious identity vastly differs between Catholics such as More and Protestants such as Anne.⁸ More experienced a spiritual crisis in his early twenties during which he prayed for a defined life's purpose, a specific, comprehensive higher calling.⁹ Standing firm on a belief and giving up one's life in the name of God could have fulfilled this higher purpose. Because of his execution, More was canonized by the Catholic Church in May of 1935. Consolation for those who died as martyrs came from the belief that suffering for the truth could grant a deep "spiritual confidence," which may have supported More's desire and need for an exalted life's purpose.¹⁰ An indication of More's possible need for this was his unsuccessful attempt at priesthood, which reportedly haunted him for the rest of his life, despite his successful authorship of notable scholarly and philosophical works.¹¹

More is an interesting case; he burned and executed numerous men and women for their religious beliefs as reformers or heretics. As Jasper Ridley writes, "No one was more active in persecuting the Protestants who distributed the English Bible than Sir Thomas More."¹² In addition, Schofield writes, "More and John Stokesley, the new bishop of London, were both breathing out threatening and slaughter against Lutherans in England, and More's anti-heresy measures intensified during the second half of 1531."¹³ More continued to play the role of the naive altruist by stating that he took no pleasure in prosecuting individuals for heresy, but rather regarded the work as obligatory.¹⁴ As Ackroyd described, "His principal concern [was] to defend the Church authorities against any and every attack."¹⁵

⁵ John Foxe, *Foxe's Book of Martyrs or A History of the Lives, Sufferings or Triumphant Deaths of the Primitive Protestant Martyrs* (Public Domain Books, 2006).

⁶ John Guy, *Thomas More* (New York: Oxford University Press, 2000), 203.

⁷ Foxe, *Foxe's Book of Martyrs or A History of the Lives*.

⁸ Suzannah Monta, *Martyrdom and Literature in Early Modern England* (New York: Oxford University Press, 2005).

⁹ Richard Gilman, "St. Thomas More," *Catholic Lawyer* 44, (1955).

¹⁰ Monta, *Martyrdom and Literature in Early Modern England*.

¹¹ Guy, *Thomas More*, 22.

¹² Jasper Ridley, *Bloody Mary's Martyrs: The Story of England's Terror* (New York: Carroll & Graf Publishers, 2001), 7.

¹³ John Schofield, *The Rise and Fall of Thomas Cromwell: Henry VIII's Most Faithful Servant* (Gloucestershire: The History Press, 2008), 52.

¹⁴ Guy, *Thomas More*.

¹⁵ Peter Ackroyd, *The Life of Thomas More* (New York: Doubleday Publishers, 1998). 156.

One could become a martyr by giving up his own body, but such a person has no charity. If charity requires that we do not impose our views on other people, we must consider their consciousness and their individual wishes. Based on Ridley's account of More, he was anything but charitable.¹⁶ He condemned and executed anyone who read the Bible in English and sentenced them to a "painful death" for their beliefs. More claimed that he was "grievous" to "thieves, murderers and heretics."¹⁷ This would imply that his sentencing went beyond those who read the Bible in English. He took it upon himself to flog at least three suspected heretics and tortured with ropes individuals whose confessions he sought.¹⁸ Charity would have required More to refrain from imposing his own uncritical perception of what is good for them. His impositions led to the deaths of countless heretics. However, when it came to Henry VIII's charges of treason against More, More did not resist Henry; rather he "had not challenged the law or criticized anyone who had accepted it. He had simply kept silent."¹⁹ In this account, More does seem like he possessed charity, although his prior persecutions of heretics would contradict this claim.

Anne Boleyn has a slightly different claim to martyrdom. Although she exhibited as much egoism and sadistic behavior as More did, she did not electively die for a cause or religious conviction. As another controversial figure, Anne was second queen to Henry VIII. She was the first queen of England to be executed, having been sentenced to death on charges of treason, adultery, witchcraft, and incest, none of which were based on any factual evidence.²⁰ She was never canonized as a saint like More, but she is considered a martyred woman for her devotion to the reformed religion by many Protestant organizations. Anne's often-radical views as a defender of the Reformation and evangelicalism led to the demise of many people, including More. Additionally, her fervent and passionate views for religious tolerance and the English Reformation led to her own fall from favor and eventual execution.

Anne's life prior to her execution, like More's, was far from modest and altruistic. Her personal temperament was marked in numerous accounts by those interacting with her at court, where many thought her behavior overbearing and her language offensive.²¹ Warnicke characterized Anne as "an aggressive woman, who manipulated or bewitched Henry VIII into ending his union with Catherine of Aragon, a marriage that had endured some twenty-four years by the time it was officially dissolved."²² In the latter days of Anne's reign, she became "haughty,

¹⁶ Ridley, *Bloody Mary's Martyrs: The Story of England's Terror*.

¹⁷ Guy, *Thomas More*, 106.

¹⁸ Guy, *Thomas More*, 106.

¹⁹ *Ibid.*, 3.

²⁰ Alison Weir, *The Lady in the Tower: The Fall of Anne Boleyn* (New York: Ballantine Books, 2010).

²¹ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*.

²² Retha Warnicke, *The Rise and Fall of Anne Boleyn* (Cambridge: Cambridge University Press, 1989), xi.

shrewish, and volatile” in addition to “her strident tantrums.”²³ Although her temperament posed a grave threat to Henry, he also enjoyed her style. Denny wrote of Anne’s “habit of debating theology when she dined with the King. Her ability to discuss literature and theology on equal terms with the King was certainly one of the factors that attracted him to her in the first place. It was a meeting of the minds and intellectual equals.”²⁴ Anne’s father, Thomas Boleyn, wanted his daughters to be educated at the highest possible level available to women. He sought this opportunity by placing them at the courts of Burgundy and France, known as the birthplace of the New Learning. Anne’s experience abroad served as her catalyst for “exposure to the wider world.”²⁵

In examining another aspect of martyrdom, some religious perspectives do not value life and others do not value this life.²⁶ It could be that in a psychologically egoistic state, those who value religion over life have no problem giving up theirs for the sake of a belief or cause. Within the framework of logic, it is more logical to preserve a reputation as a martyr than it is to live life with all its strife and struggles. It is difficult to call someone altruistic or selfless if they have no value of life because there is no sacrifice in giving up something one does not value. In addition, individuals with a strong faith support their beliefs by their own behaviors.²⁷

More mentioned his compulsions of conscience yet never fully elucidated in public the specific reason his conscience demanded his self-sacrifice.²⁸ Anne did make subtle indications of her intention of martyrdom. Although Anne was less prepared for her quick downfall than More, she often professed her innocence to the charges brought up against her, shifting back and forth between composure and acceptance and passionately proclaiming her innocence. Anne said at her execution, “And if, in my life, I did ever offend the King’s Grace, surely with my death I do now atone.”²⁹ She had lost everything that mattered, “her husband, her brother, her power, her married status, her friends, her possessions, and her reputation.”³⁰ At this point, there was little left for Anne to live for, so sacrifice and satisfaction would not have applied in her case. However, as Denny writes, “her dignity impressed her jailer. She asked for the details of her brother’s death. Kingston gravely informed her of the morning’s brutal executions and she suffered greatly to hear of George’s bravery.”³¹

²³ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*, 10, 82.

²⁴ Joanna Denny, *Anne Boleyn: A New Life for England’s Tragic Queen* (New York: Da Capo Press, 2004), 99.

²⁵ *Ibid.*, 46.

²⁶ Fields, *Martyrdom: The Psychology, Theology, and Politics of Self-Sacrifice*.

²⁷ Peter Herriot, *Religious Fundamentalism: Global, Local and Personal* (New York: Taylor & Francis Routledge, 2009).

²⁸ Monta, *Martyrdom and Literature in Early Modern England*.

²⁹ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*, 281.

³⁰ *Ibid.*, 266.

³¹ Denny, *Anne Boleyn: A New Life for England’s Tragic Queen*, 310.

Martyristic Intent

If More was a psychological egoist rather than an altruistic martyr, he never gained satisfaction from sacrificing himself in order to preserve his beliefs or reputation, in part because of charity. It would have been a condition for martyrdom that More tolerated others' beliefs instead of imposing his own will and system on the reformers of England. More never viewed those he persecuted and burned as martyrs, but fully accepted his own vocation as a Catholic martyr. Unlike More, Anne understood the tide of reformation as a reform within the Catholic Church, rather than as an alternative, which would have opened such new thinking to charges of heresy. Once queen, her sweeping power through England proved to be too radical for the Catholics in her realm. It is highly unlikely that Anne received any satisfaction from her sentencing because her reputation was already tarnished after being found guilty of trumped up charges of incest, adultery, witchcraft, and treason.³² Although attempting to preserve her image and perhaps set the stage for one final performance of her tempestuous ego, once Anne reached the execution scaffold, a Portuguese witness described her as never looking so beautiful. She was determined to stress her regal rank.³³

Quinn said that the major monotheistic religions create accounts of morality according to the demands of God.³⁴ Monta states that numerous sixteenth-century Catholics believed that martyrdom could grant a special type of merit, such as cleansing the martyr from sin and allowing the martyr's soul to bypass Purgatory.³⁵ More appears to have shifted back and forth between logic and faith during his time as Lord Chancellor. Although his obligations in public life would indicate a political and legal responsibility to England, More would refer to his Catholic conscience in many circumstances leading up to his death.³⁶ He subscribed to the theological divine command theory in upholding the laws of heresy in England because God had created the laws of morality. Under this theory, More's persecution of Protestants was right and moral because God commanded it. As further evidence, Quinn writes, "one might of course understand these divine commands as merely God's endorsement of a moral code whose authority is independent of them."³⁷ More possibly experienced feelings of desire while awaiting his fate as a prisoner in the Tower of London. At the time, because More had the unconditional support of the Catholic Church, there is a chance he knowingly accepted and desired the fate of martyrdom for the cleansing of his soul. This motivated his choice to not swear to the Act of Succession, including the

³² Weir, *The Lady in the Tower: The Fall of Anne Boleyn*.

³³ *Ibid.*

³⁴ Philip Quinn, *Divine Command Theory: The Blackwell Guide to Ethical Theory* (New York: Wiley-Blackwell, 2000).

³⁵ Monta, *Martyrdom and Literature in Early Modern England*.

³⁶ Guy, *Thomas More*, 106.

³⁷ Quinn, *Divine Command Theory: The Blackwell Guide to Ethical Theory*, 53.

recognition of Henry VIII as Supreme Head of the Church of England.³⁸ More's desire for vocation confirms him as an egoist, not an altruistic martyr as tradition might regard him. As Ackroyd wrote, "Those who die for their faith are promised a martyr's crown and everlasting glory."³⁹

Anne had less of a choice in electing martyrdom for her beliefs. She is classified as a religious martyr according to Zahl because of her dedication to the English Reformation.⁴⁰ Anne wore to her execution a kirtle of red, the color of Catholic martyrdom, effectively proclaiming her innocence of the charges she was paying for with her life.⁴¹ Much is unknown about Anne's charges and why they were brought against her. Some feel it was her staunch Catholic enemies who wanted her replaced with a Catholic queen; perhaps it was a combination of a number of factors, such as character, reputation, and lack of a male heir, which many historians seem to believe.

Martyristic Meanings

The death of Anne temporarily deferred the proliferation of the reformed religion throughout England. More's and Anne's lives intertwine at numerous points; debatably, Anne had influenced More's death. Prior to his execution, More reportedly mentioned Anne to his daughter, Margaret Roper, who visited him in the Tower. He believed that Anne was the cause of his death.⁴² While factions began to grow, separating Protestants and Catholics, an alternative explanation could arise that More persecuted and burned heretics as a preemptive strike. Reformers like Anne were the antithesis to everything More stood for; if he eliminated them prior to their rise, he could save himself from a potential civil uproar against Catholics. It cannot be fully determined whether, as a rational lawyer and politician, More intentionally secured his future as a martyr, cementing his reputation throughout history, or if he simply followed his strong Catholic faith to the executioner's block. As mentioned earlier, the constable at the Tower of London, where Anne was held prisoner awaiting her execution, had said that one hour, "she [Anne] has reconciled herself to die and the next much to the contrary."⁴³ In addition, Weir wrote, "She had only her strong will and her faith to sustain her through these terrible final hours."⁴⁴ Like More, Anne held onto her faith during the hours leading up to her execution, alternating between composure, extreme piety, and terror-stricken hysteria.

³⁸ Foxe, *Foxe's Book of Martyrs or A History of the Lives*.

³⁹ Peter Ackroyd, *The Life of Thomas More* (New York: Doubleday Publishers, 1998), 372, 390.

⁴⁰ Paul Zahl, *Five Women of the English Reformation* (Michigan: Eerdmans Publishing Company, 2001).

⁴¹ James Gairdner, London, U.K., *Letters and Papers, Foreign and Domestic, Henry VIII, January – June 1536*, Institute of Historical Research, Volume 10, 1887.

⁴² Weir, *The Lady in the Tower: The Fall of Anne Boleyn*.

⁴³ Ibid.

⁴⁴ Ibid, 266.

The divine command argument has two pertinent flaws. First, one cannot use reason or logic to determine whether an action for a faith is proper. More's shift between reason and faith is demonstrated within the divine command theory because it sometimes lacks logic and is only justified by his Catholic faith. As Ackroyd pointed out, "More was engaged in a particularly difficult and subtle testing of human, as opposed to divine, law, with all the resources of his legal experience being deployed to justify his beleaguered position."⁴⁵ More proclaimed that he "died the King's good servant, but God's first," reconfirming his choice of faith over reason and his obligations to England.⁴⁶ As Lacey wrote, "the issue of suicide in the death of a martyr did not arise, for the martyr died as a witness to the truth and not by his own hand."⁴⁷ The question arises of whether or not knowingly giving up one's life for something could be considered suicide.

Anne's case differs from More's. She did not die for a cause or belief, but she was brought up on false charges in order to eliminate her rise in power and her radical reformation that was sweeping across England. Zahl wrote that Anne is considered a martyr for a number of possible other reasons, perhaps for her power as a female during her time, perhaps because "sex was her tool and also her self-inflicted prison,"⁴⁸ or maybe it was a question of her theological beliefs. Zahl also mentioned that perhaps Anne was too close to the lure of seditious teaching stemming from Martin Luther's ideologies.⁴⁹ According to Weir, Anne had sent a letter to the King, her husband, saying, "Commend me to His Majesty, and tell him that hath been ever constant in his career of advancing me. From a private gentlewoman, he made me marchioness; from a marchioness to a queen; and now he hath left no higher degree of honor, he give my innocency the crown of martyrdom as a saint in Heaven."⁵⁰ If this statement is accurate, Anne considered her role as a martyr prior to her execution.

Martyristic Morality

An additional issue with the divine command argument arises in that a theory of ethical immorality has the consequence that believers and nonbelievers use the word "wrong" with diverse meanings within ethical contexts.⁵¹ It is not thought that nonbelievers mean by "wrong" what the theory says believers mean by it. There is not a universal acceptance of wrong and right in the discourse of religion and God, leaving numerous arguments about divine command that are arbitrary or at least up for debate or interpretation. Furthermore, within these confines of theory, how can the [believer] intend or mean contrary to the will or commandments of God?

⁴⁵ Ackroyd, *The Life of Thomas More*, 400.

⁴⁶ Ackroyd, *The Life of Thomas More*, 255.

⁴⁷ Andrew Lacey, *Cult of King Charles the Martyr* (Rochester: Boydell and Brewer Ltd, 2003), 11.

⁴⁸ Zahl, *Five Women of the English Reformation*, 56.

⁴⁹ *Ibid.*

⁵⁰ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*, 276.

⁵¹ "Believers" and "nonbelievers" refers to the belief or not in God's existence.

The word “wrong,” by today’s standards, is most often used in the nontheological sense because morality is generally recognized as a social standard. Not everyone in the twenty-first century is religious, but many can still agree that certain things are immoral, such as murder, theft, and other transgressions. The concept of morality is fluid as well, and changes on a sliding scale according to the status quo. This further complicates interpretations of morally right acts on the part of the moral agent. In the case of More and sixteenth-century England, everyone believed in God, but there were different interpretations of religious dogma. For example, sixteenth-century Catholics were under the belief that only the clergy should read the Bible in Latin and deliver the word of God to their people. Reformers like Anne viewed the clergy as corrupt and thought that people should be able to read the Bible for themselves in order to gain spiritual nourishment. Reformers were just as religious and spiritual as Catholics, although they openly opposed indulgences and other doctrines of the Catholic Church and the papacy.

Fallible Agents

Again, in the case of Thomas More, martyrdom appears to possess an egoistic appeal in seeking eternal acknowledgement for selfless and sacrificial behavior. This could be for one’s reputation or in order to cleanse the soul for easy access into the next life. However, there is little resemblance between Thomas More’s life and eventual execution to that of an altruist. As Ackroyd wrote, “It is one of the most celebrated trials in English history. At first he stood before his accusers, like Jesus, but weariness and debility mastered him before the end of the proceedings.”⁵² In further defense of More, Guy wrote, “Witness him [More] generously suffering for the faith which he had defended so successfully.”⁵³ Additionally, More’s radicalism in *Utopia* made his proceedings against heresy in England unfathomable.⁵⁴ Anne, however, was a devout reformer but led an indulgent and overly ambitious life, for which she prayed for mercy in the days leading up to her execution. She also tried to ask forgiveness the night before her execution, of her stepdaughter, the Lady Mary, after cruel treatment towards her.⁵⁵

More’s persecution of English reformers left a lengthy list of martyrs, documented in Protestant John Foxe’s infamous *Book of Martyrs*, suggesting that More’s death did not fulfill the same driving ideals as his life’s actions. A few examples will support this argument. One notable incident mentioned by Ackroyd speaks of More “tying heretics to a tree in his Chelsea garden and whipping them.”⁵⁶ In addition, many men were put upon the rack and tortured until they

⁵² Ackroyd, *The Life of Thomas More*, 399.

⁵³ Guy, *Thomas More*, 64.

⁵⁴ *Ibid.*

⁵⁵ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*.

⁵⁶ Ackroyd, *The Life of Thomas More*, 298.

confessed their reformist beliefs. More was also personally responsible for burning several heretics in Smithfield.⁵⁷

These incidents resonate with distinctly non-saintly attributes. Furthermore, Guy writes, “More personally interrogated at least three of the heretics burned at the stake while he was Lord Chancellor. Two of these victims were imprisoned at his house at Chelsea so he could examine them at will, and the fourth suspect was set in the stocks which More kept at home, and forced to incriminate his associates.”⁵⁸

Numerous other incidents occurred during More’s lifetime, although he denied them forcefully.⁵⁹ Additionally, Guy recalls, More faced serious accusations as a result of his actions.⁶⁰ In the spring of 1533, close to a year after his resignation as Lord Chancellor to Henry VIII, “More dealt with every one of these accusations in his book *Apology*, which he published to defend his reputation.” At the end of his book, More summarized his position towards the reformers he persecuted, writing, “As touching heretics, I hate that vice of theirs and not their persons, and very fain would I that the one were destroyed, and the other saved.”⁶¹

His defense conveyed that he did not hate the reformers as people, but rather solely their beliefs opposing the Catholic faith. Even more disturbing is an incident recalled by Ridley where he refers to More as a “sodomasochistic pervert” who took pleasure in being flogged by his favorite daughter, Margaret Roper, with as much enjoyment as he took in flogging “heretics, beggars, and lunatics in his garden.”⁶² As previous accounts and non-saintly occurrences illustrate, More was driven primarily by personal motivation rather than divine inspiration. His canonization by the Catholic Church recognizes him as dying for his faith but ignores the personal attributes of a man whose character was often brought into question during his lifetime.

Anne’s case mirrors More’s in many ways as, for example, her behavior leading up to her execution, which was not saint-like. Her demise could be explained with a different theory about what eventually led to her debatable status of martyrdom, according to Protestant doctrines. John Foxe mentions Anne’s name three or four times in his *Book of Martyrs*, mostly referring to Anne’s part in the Reformation and once about Anne’s inappropriate and haughty reaction when she heard of the death of Henry’s first wife, Catherine.⁶³ “Upon the demise of Queen Catherine, that her successor Anne Boleyn rejoiced – a lesson this is to show how shallow is the human judgment! Since her own execution took place in the spring the following

⁵⁷ A common place for execution in London, formerly West Smith Field; presently referred to as “Smithfield.”

⁵⁸ Guy, *Thomas More*, 107.

⁵⁹ Ackroyd, *The Life of Thomas More*, 298.

⁶⁰ Guy, *Thomas More*, 106-107.

⁶¹ *Ibid.*

⁶² Ridley, *Bloody Mary’s Martyrs: The Story of England’s Terror*, 7.

⁶³ Catherine of Aragon was Henry VIII’s wife until he divorced her to marry Anne Boleyn. Although, this statement may be slightly inaccurate in that Catherine died the same year as Anne.

year.”⁶⁴ Foxe made his own judgment on Anne’s character and referenced her self-important and egoistic reaction when her predecessor died. However, Foxe was a keen supporter of Anne Boleyn and her efforts in the English Reformation.

Anne’s preoccupation with her appearance and “image” attests to her egoistic personality, which further supports her unlikely candidacy for sainthood.⁶⁵ This further supports the argument that Anne’s candidacy for martyrdom is besmirched by her own self-indulgence. Again, the characterization of an altruistic martyr is questionable in Anne’s case, as with More’s. Her excessive concern for image could have been motivation in itself. Regarding the charges brought against Anne, Ives wrote, “Enquiry reveals that the reason for the death of Anne was not sexual excess but politics.”⁶⁶ In addition, Warnicke wrote, “Commentators differed about the nature of her guilt, some offering reasons for her execution, such as her influence on foreign policy that had nothing to do with the public charges.”⁶⁷

Contemporary Perspectives

Perhaps if it were a male or a king in the sixteenth century enacting a religious revolution, things would have ended differently. Ives felt that Anne “deserves to be a feminist icon, a woman in a society which was, above all else, male-dominated.”⁶⁸ During the sixteenth century, women’s roles were limited to childbearing, even for a queen. It was very rare that a queen co-ruled with her husband.⁶⁹ As a female, Anne would never have been accepted in her time as the witty and skillful politician she proved to be. Women, especially during Anne’s lifetime, were not customarily in a position of power, a problem that sustained inequalities, even at the royal level of society.

Social struggles between men and women stem from inequalities; as Kim & McCann wrote, “The politics of masculinity cannot concern only questions of personal life and identity; it must also concern questions of social justice.”⁷⁰ It was not until the reign of Elizabeth, Anne’s daughter, that Anne was acclaimed a “champion of religious reform.”⁷¹ Her martyrdom was recognized by a number of scholars, but primarily exists in the eyes of those who believe she rose above the “handicaps” of her gender and laid the groundwork for a religious movement. Ives wrote, “Anne succeeded by exploiting the rules and conventions of politics and high society, but ‘influence’ leaves no paper trail, no evidence of passage.”⁷² As

⁶⁴ Foxe, *Foxe’s Book of Martyrs or A History of the Lives, Sufferings or Triumphant Deaths of the Primitive Protestant Martyrs*, n.p.

⁶⁵ Eric Ives, *The Life and Death of Anne Boleyn: The Most Happy* (New York: Blackwell Publishers, 2004).

⁶⁶ *Ibid.*, xv.

⁶⁷ Warnicke, *The Rise and Fall of Anne Boleyn*, 1.

⁶⁸ Ives, *The Life and Death of Anne Boleyn: The Most Happy*, xv.

⁶⁹ R.J. Knecht, *Catherine De’Medici* (New York: Longman, 1998).

⁷⁰ Carole McCann and Seung-Kyung Kim, eds., *Feminist Theory Reader: Local and Global Perspectives* (New York: Routledge, 2003), 240.

⁷¹ Weir, *The Lady in the Tower: The Fall of Anne Boleyn*, 331.

⁷² Ives, *The Life and Death of Anne Boleyn: The Most Happy*, xvi.

previously mentioned, the prevailing perspective of history on the Reformation has labeled the ill-fated queen as a martyr and a woman ahead of her time. However, Anne's actions are not fitting of those who are recognized as saints for eternity.

More, as a man, had greater ability than Anne to shape the perceptions people made about him. Being a male gave him some leverage, and having favor at court for a long period greatly enhanced his ability to frame his image and role in society. Yet his principles led him to define himself publicly through a stance that put him out of favor, then in opposition, to the king. As a published author who cultivated his reputation not only as an influential voice in matters of state but also as a philosopher and moralist, he played a mixture of public roles that could easily put him in conflict with the figure of overriding authority in difficult times. Addressing political, legal, intellectual, and moral issues left More vulnerable to attack in a time when central values were reframed to serve a new political agenda that served the king's pressing interests. More is remembered for achievements and adherence to principles, and his martyrdom is seldom questioned in light of his personal predilections that could be seen not as human fallibilities but as character failure.

Anne is a historical figure who was appreciated for her achievements and accomplishments only after death. Like More, Anne's life did not follow the ideal motives of an altruistic martyr and previous canonized saints. Although Anne's fate was ultimately determined by her husband, evidence shows she did egoistically prepare herself for an eternity of recognition as a martyred queen of England. Again, much like More, she preserved her legacy as an egoistic martyr as well as a long standing reputation as an impactful royal figure in British history.

Special Section
Selected Undergraduate Articles

The “Irrepressible Conflict” and the Political Economy of the Civil War

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The decade or so between the Mexican War and the Civil War was a transformative period in American history. From 1848 to 1860, the United States greatly increased in size and began for the first time to feel the full effects of the Industrial Revolution. The North was the more dynamic of the two regions, with a growing share of the national population and a new market economy fueled by finance and manufacturing. While the Southern states had grown every bit as quickly in the first part of the century, their population and their geographic extent—and as a consequence, their representation in the federal government—did not expand half as quickly as the North’s after the Mexican Cession. As a result of their country’s rapid expansion and modernization, Americans were forced to confront the sectional antagonisms aggravated by the South’s failure to match the North’s rate of growth. The problem was, at its core, economic. From the time it began to expand, the United States was home to two competing economic systems. Neither the market capitalism of the Northern states nor the industrial agriculture of the Southern states had reached a steady state by 1860, and each came to be promoted aggressively by a major political party. Once these sectional estrangements crystallized in the U.S. economy, they quickly became the central dispute in politics as well. Drawing on the legacy of Alexander Hamilton and his protectionist disciples in the previous century, Northern intellectuals laid out a model of economic development designed to take America headlong into the Industrial Revolution, led by a partnership between Northern capitalists and an activist federal government. While the Southern ideology was one of reaction and resistance to change, the Northern ideology that germinated after 1848 successfully brought divergent political and economic interests into a broad coalition, and it was the Northern consensus about the nation’s future that would permit mobilization for war on a national scale. Once the Civil War came, the Northern ideology that would inform the federal government’s response was already fully formed; and while the war is rightly considered the greatest convulsion in American history, it was also a long time in coming and very much in line with political developments worldwide.

The Republican Party that controlled the federal government immediately before and during the Civil War was the latest in a lineage of nationalist parties and factions of parties that had been major players in U.S. politics from the very

beginnings of the republic.¹ The Republican platform that Abraham Lincoln ran on in 1860 contained ideas inherited from the Federalist, National Republican, and Whig party agendas. Common to all of these was a bias toward strong central government; an activist role for the state in the national economy; and a liberal interpretation of the Constitution with an expansive view of federal prerogatives. In light of this nationalist and, to an extent, statist pedigree, it should come as no surprise that the Republican-controlled federal government reacted to southern secession as it did. The Republicans' historical economic agenda, inherited from John Quincy Adams and Henry Clay by way of the defunct Whig Party, is referred to as the American System by U.S. historians. Other historians with an international perspective have described the policies broadly as consisting of "neo-mercantilism."² Like the classic eighteenth century British mercantilist system which had influenced Alexander Hamilton and the Federalists, the American System emphasized a favorable balance of trade as a way of maintaining the country's status in the international arena. As in the Realist school of political science today, it was understood that power and autonomy were derived from material wealth, and that the global economy was a zero-sum affair in which one country's gains were another country's losses.³ One Whig party leader who was a contributor to the New York *Tribune* explained international commerce as a public trust in which merchants

are to some extent public agents, and hold in their hands political powers of vital importance to the nation they represent. They carry the national flag and national credentials The history of the times, as any one may see, proves that the chief motive of this movement [meaning the Revolution and the Constitution] was to have a government with ample powers to regulate foreign commerce, and establish a protective system, as well as to raise revenue.⁴

The Whigs believed that the U.S. Constitution and government had been set up to promote free trade within the United States and regulated trade without – a national sphere of commerce that anticipated the German *Zollverein* by more than half a century. Indeed, in his *National System of Political Economy*, the German economist Friedrich List cited the pre-Jacksonian United States as his most powerful influence: "The commercial and industrial history of North America is more instructive than any other from our point of view."⁵ What would become

¹ John Gerring, *Party Ideologies in America, 1828-1996* (New York: Cambridge University Press, 1998), 162, 11-12.

² *Ibid.*, 65.

³ Gerring, *Party Ideologies in America*, 65.

⁴ Calvin Colton, *The Junius Tracts* (New York: Greeley & McElrath, 1844), 34. Compare Friedrich List, *National System of Political Economy*, trans. G.A. Matille (Philadelphia: J.B. Lippincott & Co., 1856), 243: "Aided by history, we have proved that national unity is an essential condition of durable prosperity; we have shown that only where private interest has been subordinate to public interest, and where a succession of generations has pursued one object, have nations attained an harmonious development of their productive power."

⁵ List, *National System of Political Economy*, 166.

List's life's work had begun as a series of letters written to the Pennsylvania Society for the Advancement of Manufactures and Arts with the title, *Outlines for a New System of Political Economy*.⁶ A resident of Harrisburg, Pennsylvania between 1825 and 1830, List swiftly absorbed the Hamiltonian or neo-mercantilist approach to political economy that enjoyed such strong support in that state. List also inherited from the Federalists a view of economic development as primarily state-driven. Long before the German Empire was proclaimed in 1871, the German states would implement the most important prescription made by List; an expansion of the customs union or *Zollverein* which effectively gathered the German states together in an economic bubble, with free trade between themselves and high tariffs to insulate them from foreign exporters. Between 1821 and 1851, states from Prussia in the extreme northeast to Baden and Luxembourg in the southwest homogenized their customs duties and created a sphere of more or less free trade in what would later become the unified state of Germany. "It is by their Customs-Union," List insisted, "that German nations now enjoy one of the most important attributes of nationality."⁷ As it happened, the Hamiltonian ideas that List had adapted to German nationalism came full circle as the Panic of 1857 catapulted economic issues back to the forefront of U.S. politics and gave the Whig legacy of the Republican Party a shot in the arm. First published in 1841, the *National System of Political Economy* was available in English as early as 1855, when a widely-read American edition was published in Philadelphia. Economic nationalists both in the United States and in Europe reached a consensus that nations should look to their home markets first; and to that end, should invest heavily in the physical infrastructure needed to move goods between the nation's constituent parts. Hence, the plank in the 1852 Whig Party platform which called for

the power to open and repair harbors, and remove obstructions from navigable rivers, whenever such improvements are necessary for the protection and facility of commerce among the States, said improvements being, in every instance, national and general in their character.⁸

An identically worded plank in the 1856 and 1860 Republican Party platforms intoned that a transcontinental railroad "is imperatively demanded by the interests of the whole country; [and] the federal government ought to render immediate and efficient aid in its construction."⁹ The Whigs' and Republicans' liberal interpretation of the Constitution permitted the federal government a broad role in regulating and steering the national economy. Protective tariffs were a staple

6 *Ibid.*, Preface.

7 List, *National System of Political Economy*, 265.

8 "Whig Platform of 1852," in *National Party Platforms, Volume I 1840-1956*, ed. Donald Bruce Johnson (Urbana: University of Illinois Press), 20.

9 Johnson (ed.), *National Party Platforms*, 33.

of Whig party platforms and were intended to shield American infant industries from more developed foreign competitors like Great Britain. The platform of 1844 called for “a tariff for revenue to defray the necessary expenses of the government, and discriminating with special reference to the protection of domestic labor of the country.”¹⁰ The emphasis on “labor” was extremely important in Whig rhetoric and formed part of the core of the party’s philosophy, which would be passed on to the Republican Party in the 1850s. Much broader than the twentieth century concept of labor, the nineteenth century category included virtually all producers, as distinguished from traders and professionals. Tellingly, commercial enterprises like shipping, trade and international commerce were usually excluded from the Whig definition of labor; and urban port cities like New York, Philadelphia, and those in the South tended to be squarely in the Democratic Party’s corner.¹¹

The importance of “laborism” to the Whig philosophy is difficult to overstate, and the ideal of Northern labor (contrasted with stereotypes of European labor) was a major selling point for the whole Whig agenda. The specter of an international race to the bottom in labor standards led by cheap foreign labor was a powerful motivator for the party’s electorate.

Shall European capital and labor, in a field of open and free trade, be permitted to bring American capital and labor, that is, American society, down to the same level? Or shall American society, by the American government, protect American capital and labor, and maintain the position to which the cost of American freedom has elevated them?¹²

With the arrival of the so-called Third Party system in 1854, economic issues became more than ever a matter of sectional as well as partisan division. The new Republican Party applied the same social critique to the American South that the Whigs had to Europe. Southern slavery was seen as both a sign and a cause of arrested development in the region that reflected poorly on the caliber of its people. One freshman Republican congressman from New York told the South Carolina delegation that they and their constituents “cannot expect the advantages of machinery until some Yankees go down and explain the mode and manner of its use.”¹³ The stereotype of Southerners as rustic and backward was put to use making the free labor ideology a national ethos. Just as foreign labor was thought to be a danger to free labor in the United States, slave labor in the South was blamed for the relatively poor lot of southern whites. “In the slave States there is in substance no middle class,” echoed Timothy Jenkins, an upstate New York Democrat who would become a Republican a few years later. “Great wealth or hopeless poverty

¹⁰ “Whig Platform of 1844,” in Johnson (ed.), *National Party Platforms*, 9.

¹¹ Eric Foner, *Free Soil, Free Labor, Free Men: The ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1970), 14-16.

¹² Colton, *The Junius Tracts*, 46-47.

¹³ Cong. Globe, 36th Cong., 2nd Sess. 1031 (1861).

is the settled condition. The connecting link is left out. The white laborer is necessarily the companion of the slave; and the master is as far removed from the one as the other.”¹⁴ Whereas the northern working man was looked upon as a kind of micro-entrepreneur who was likely to profit from productive employment, the Southern slave and the European peasant were seen more as capital – commodified and deprived of their agency in the marketplace, as well as the fruits of their labor. “This conversion of Labor into Capital,” wrote one New York economist, “cannot fail to diminish the productiveness of that agent I think we may safely conclude that the aggregate production of wealth, under it, is less than half the amount that an equal number of freemen will produce.”¹⁵ Belief in the superiority of free labor, both as an individual lifestyle and as a nation-wide system of political economy, was the “least common denominator” of the Republicans’ political coalition, so naturally it framed many political questions. Over the protests of Southern champions in the Democratic Party, economic nationalists in the Republican Party argued that by developing the South and integrating it into the national economy at the expense of foreign exporters, living standards throughout the whole country, including the South, would improve significantly. Instead of surging into the future with the North and taking part in the United States’ dynamic market economy, however, they saw the South being left behind.

The more visionary Whig and Republican leaders saw in the American System and Hamiltonian federalism a path to national greatness; but there was no nation-wide consensus that the United States must become a modern, consolidated nation-state. For its part, the Democratic Party “steadfastly defended a preindustrial economic order, limited government, and the liberties of white people” from 1828 and even beyond the Civil War.¹⁶ Like the Republican Party twenty years later, the Democratic Party had risen from the ashes of an older political party that had failed to meet the changing needs of the electorate. What would become the Democrat coalition first formed during the twilight years of Thomas Jefferson’s Democratic-Republican Party, the only major political party between 1815 and 1824. As the party’s very inclusiveness diluted its ideology, Jeffersonian purists who called themselves “Old Republicans” sought to reform or replace the party with a more radical platform of states’ rights and limited government. Old Republicans desired a return to first principles, mainly by resisting the American System and other nationalisms that had grown up after the War of 1812. Thomas Ritchie and Martin Van Buren, two of the most important party leaders, built a “New York-Virginia axis” that promoted *laissez-faire* economics and states’ rights as the party’s core principles.¹⁷ Ideologically, “negativism” (the call for limits on government as

¹⁴ Cong. Globe, 30th Cong., 2nd Sess. 103 (1848).

¹⁵ George Opdyke, *Treatise on Political Economy* (New York: G.P. Putnam, 1851), 330-32.

¹⁶ Gerring, *Party Ideologies in America*, 162.

¹⁷ Michael F. Holt, *Political Parties and American Political Development from the Age of Jackson to the Age of Lincoln* (Baton Rouge: Louisiana State University Press, 1991), 33-38.

opposed to government action) was what held the Democratic coalition together.¹⁸ Many Southern and Western voters blamed banks and banking for the Panic of 1819; and it was the wholesale suspicion of banking as an institution and of the Bank of the United States in particular that laid the groundwork for Andrew Jackson's victory in the presidential election of 1828. The feeling of dislocation and disorientation in the western states brought on by broadening markets and the new challenges of a more integrated nation-wide commercial economy were "basic forces" behind the Democratic Party's formation in 1828 and ensured that the party would have reliable support in the South and West for as long as economic issues remained the focus of political campaigns.¹⁹

There were still sectional fissures within the Democratic coalition, however, and it was in the Southern states that resistance to the American System took its most bitter and militant form. While Northern Democrats rejected the Whig agenda in favor of pristine *laissez-faire* capitalism, the Southern faction of the party distrusted the market economy in general and held up their own agrarian society as a model of stability and class harmony. Over time, Southern Democrats developed their own coherent ideology: a rather perverse combination of the Old Republican's small-government philosophy and a reactionary aversion to the perceived dog-eat-dog excesses of Northern capital, which, even when completely divorced from the power of the federal government, was inherently exploitative of labor – whether in the persons of Northern workers or the bodies of Southern slaves.²⁰ For decades, perhaps the most vocal defender of the South and of slavery was John C. Calhoun of South Carolina, whose career is quite an illuminating example of the South's place in the American political landscape. Originally a nationalist and a war hawk who favored internal improvements and a protective tariff, Calhoun became caught up in the reactionary politics of his home state when it became clear that the new Whig Party was arrayed against the interests of Southern states, which had the most to lose if the aims of the American System were successful.²¹ The lot of the South in the Second Party System was to resist the protectionism of the Whigs as a junior partner in the Jacksonian coalition. Southerners correctly perceived that the tariff made the South both a captive market for Northern manufactures and a source of revenue to fund internal improvements. "We are the serfs of the system," declared Calhoun, "out of whose labor is raised, not only the money paid into the Treasury, but the funds out of which are drawn the rich rewards of the manufacturer and his associates in interest."²²

¹⁸ *Ibid.*, 58.

¹⁹ *Ibid.*, 33-34.

²⁰ Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Random House, 1989), 106-8.

²¹ *Ibid.*, 98.

²² John C. Calhoun, "South Carolina Exposition and Protest," in *The Statutes at Large of South Carolina*, ed. Thomas Cooper (Columbia: A.S. Johnston, 1836), 252.

While the mainstream Democrats emphasized individual rights and personal liberty in the best traditions of classical liberalism, the Southern faction of the party increasingly stressed the rights of the Southern states and the injustices of the American System. As a result, Calhoun evolved from a patriot to a militant and from a nationalist to a sectionalist, all without changing his first principles. To Calhoun, and to the Southern constituency that he represented, the prize in national politics was always self-preservation – even if the object of their alarm sometimes changed. During the War of 1812, the main antagonist of Southern self-determination was Great Britain; after 1824, the tariff; and after 1848, the inevitability of demographics and the North’s growing share of representation in Congress. Southern leaders worried that the Northeastern elite’s exploitation of the South would grow as the balance of power shifted the North’s way and left the South “a fixed and hopeless minority” with a shrinking share of the U.S. population and of states in the Union.²³ Calhoun was able to find common ground with the Jacksonians in their support for lower tariffs and their strict construction of the U.S. Constitution, which precluded, among other things, the use of federal money for internal improvements.

The territories won from Mexico turned out to be the final political battleground between Northern and Southern interests, and the struggle would culminate in the secession of the first seven states and the beginning of the American Civil War. Because westward migration was so important to the survival of free labor, Republicans promoted it vigorously. Just as closing American markets to cheap foreign goods was intended to keep wages high, it was thought that encouraging the migration of poorer Americans westward would reduce labor competition and raise the wages of workers everywhere. The concentration of the urban poor was a source of great anxiety for Republicans because it belied the general prosperity and equality of opportunity that was the main selling point of free labor. The Homestead Act, in its various incarnations between 1841 and its wartime passage in 1862, was a measure intended to ensure that free labor would endure by providing overcrowded eastern labor markets with cheap land as a kind of safety valve. As an added bonus, settling the west with free laborers and farmers would check the expansion of slavery and cultivate the growth of core Republican constituencies.²⁴ In Yankee Protestant politics, “material and moral developments were two sides of the same coin,” and Republican campaigns and editorials often communicated a gratifying sense of progress in the economic and social makeup of the North as a vindication of Republican policies.²⁵ All of the self-made men who rose from poverty to prosperity by the sweat of their brows, it was believed, owed their success to the prudent designs of their government. Unlike the urban

²³ Hofstadter, *The American Political Tradition*, 101.

²⁴ Foner, *Free Soil, Free Labor, Free Men*, 27-28.

²⁵ Foner, *Free Soil, Free Labor, Free Men*, 39.

poor and city-dwelling immigrants whom Republicans saw as a threat to the free labor agenda, Western settlers were people of means who sought to become, in a sense, landed entrepreneurs. The distinction between rural and urban labor which would define the labor movement of the early twentieth century had not yet arisen; both the western farmer and the northeastern manufacturer saw their success as a vindication of the free labor ideal.²⁶

There was, of course, very little danger that the new territories acquired in the Mexican War would become anything but free states, as they lay outside the geographical bounds of the Cotton Belt and were both too dry and too cold for plantation agriculture.²⁷ Instead, proslavery Democrats insisted that slavery remain legal as a matter of principle, drawing a hard line and demanding assurances that the rights of the slave states would be honored even if they became a permanent minority in the Union.²⁸ More than a decade before the Civil War, Southern “Fire-Eaters” were already beginning to despair of the South’s ability to press its rights in Congress without the approximate parity of free and slave states that had been maintained by constant compromise between 1820 and 1850. When Republicans in the Senate resisted the admission of Kansas as a slave state under the infamous Lecompton Constitution, John Slidell of Louisiana saw the walls closing in, and said so.

A vast majority of the people of Kansas are opposed to the existence of slavery within her limits. If, then, she be refused admission because it nominally and temporarily exists there, what may we expect when application shall be made by a State of which it will be a real and enduring institution? The scale of political preponderancy is constantly gravitating with increased rapidity in favor of the free States. If even now they are disposed to treat us with contumely and injustice, what may we expect when we shall be comparatively weak and defenseless?²⁹

Actually, Southerners defended slavery in the territories on more or less the same grounds that Northerners promoted free labor. Ownership of land and of slaves was not in fact the exclusive privilege of an entrenched aristocracy, but rather an avenue of upward mobility every bit as viable as a homestead in the outlying states of the North. In point of fact, the newer slave states were wealthier *per capita* than the Old or the free states of the Middle West thanks to the enormous European export market for cotton, which grew better in the interior slave states than on the seacoast.³⁰ If Ohio and Indiana were the Northern working man’s lands

²⁶ *Ibid.*, 14-16.

²⁷ Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (New York: W.W. Norton & Company, 1995), 198-99.

²⁸ Hofstadter, *The American Political Tradition*, 110-11.

²⁹ Cong. Globe, 35th Cong., 1st Sess. 117 (1858).

³⁰ Fogel and Engerman, *Time on the Cross*, 248.

of opportunity, Texas and Louisiana afforded even greater opportunities to aspiring planters and gentleman farmers. Two social climbers of the previous generation, John C. Calhoun and Andrew Jackson, had been able to launch their careers in the backcountry of South Carolina and Tennessee (respectively) because, in large part, of the prestige that came with owning slaves. The Southern gentry were not so exclusive an elite as Northerners supposed, if even the sons of poor Scots-Irish immigrants could buy in. Southerners from Calhoun's background saw slavery not as a mortal sin, but as a civilizing influence.³¹ In the South, white men did not exploit other white men. The political stability which the South derived from its inner tranquility "extends beyond the limits of the South," said Calhoun in the Senate.

It makes that section the balance of the system; the great conservative power, which prevents the other portions, less fortunately constituted, from rushing into conflict. In this tendency to conflict in the North between labor and capital, which is constantly on the increase, the weight of the South has and will ever be found . . . against the aggression of one or the other side, which may ever tend to disturb the equilibrium of our political system. This is our natural position, the salutary influence of which has thus far preserved, and will long continue to preserve, our free institutions, if we should be left undisturbed.³²

Ironically enough, it was the perennial drama of "agitation" on the slavery question that would finally split the Democratic Party and accelerate the onset of the American Civil War. For years, the national Democratic Party had maintained its internal cohesion by refusing to take sides on divisive issues wherever possible, including slavery. Nevertheless, Martin Van Buren's best efforts to steer the party down a middle road on sectional issues were made much more difficult by the party's Southern faction under Calhoun's leadership. While Van Buren desired a North-South axis, Calhoun worked toward Southern leadership of the party and a more aggressively pro-Southern platform, hoping to restore the equilibrium between slave and free states that he had worked for throughout his career.³³ Van Buren's Old Republicans and Calhoun's Southern Fire-Eaters eventually collided over the annexation of Texas after 1836. While Calhoun favored the immediate annexation of Texas as a slave state, Van Buren and Jackson both worried that it would put too great a strain on party unity; not to mention the Union itself.³⁴ By the election of 1844, the opposition to Van Buren over Texas was so strong that it cost him the Democratic nomination for president and James K. Polk of Tennessee was chosen instead. The annexation of Texas went ahead under the outgoing President John Tyler, who had tapped Calhoun to be Secretary of State. The shock of Van

³¹ Irving H. Bartlett, *John C. Calhoun: A Biography* (New York: W.W. Norton & Company, 1993), 218.

³² Cong. Globe, 25th Cong., 2nd Sess. 22 (1838).

³³ Holt, *Political Parties*, 46.

³⁴ Holt, *Political Parties*, 57.

Buren's defeat at the Baltimore convention (where he had been the early favorite) and the new administration's eagerness to annex Texas convinced many of Van Buren's followers that the Democratic Party had been captured by slaveholding interests in the South. As a result, Northern Democrats shifted from salutary neglect of slavery to vigorous opposition. The Wilmot Proviso, proposed by Pennsylvania Democrat David Wilmot, received all but four Northern votes from both parties, with not a single Southern vote in favor.³⁵ Increasingly dissatisfied with their small share of patronage appointments in the Pierce Administration, which they saw as an attempt by the Democratic Party to marginalize them, a growing number of Southern Fire-Eaters like James Mason of Virginia and Andrew P. Butler of South Carolina sought to re-assert Southern leadership of the party as John C. Calhoun had done. Eventually they formed into a powerful clique with great sway in the lawmaking process; and it was this clique which successfully pressured more moderate Democrats in the Senate to pass the Kansas-Nebraska Act, which essentially overturned the Missouri Compromise by permitting slavery in the Trans-Appalachian West for the first time since 1820. It was the Kansas-Nebraska Act that finally strained the Democratic coalition to the breaking point, leading an alliance of Northern Democrats and a handful of Whigs to create the anti-slavery Republican Party in 1854. The Act was a boon for the new party in the mid-term elections, who rode the wave of anti-slavery sentiment that it had inflamed and swept the Democrats out of the North. By the end, the Kansas-Nebraska Act, directly or indirectly, had cost the Democratic Party sixty-six seats in Congress. The disaster was repeated in 1856, when disaffected Northern Democrats again voted for Republicans. Erstwhile Democrats like David Wilmot, Gideon Welles, Hannibal Hamlin, John C. Frémont and Salmon P. Chase all left the party in 1854 or 1856 to run as Republicans.³⁶

With the defection of so many Northern Democrats to the Republican Party, Southern leadership in the party was finally assured and the Third Party System had arrived. The Democratic platform of 1856 declared that the party "will faithfully abide by and uphold, the principles laid down in the Kentucky and Virginia resolutions of 1798."³⁷ The Virginia and Kentucky Resolutions, in which Thomas Jefferson and James Madison had affirmed the states' right to nullify an unconstitutional federal law based on the reserved powers clause of the Tenth Amendment, were revived by Southern constitutional scholars to help combat the American System. Taken to the extreme, the compact theory of constitutional origins which Calhoun and others had popularized also meant that a state could lawfully secede from the union by unilaterally un-ratifying the Constitution and revoking its compact with the other states – provided its reasons

³⁵ *Ibid.*, 65.

³⁶ Holt, *Political Parties*, 75.

³⁷ "Democratic Platform of 1856," in Johnson (ed.), *National Party Platforms*, 25.

were constitutionally sound. Nearly two decades after the Nullification Crisis, the militant Southern ideology crafted in opposition to the Republicans was at last the controlling force behind the Democratic Party. The South's terrible weapon of last resort, the threat of secession, was finally put to use after the next election, the only remaining means of resistance to a federal government now under the control of the "absolute and irresponsible majority" that Calhoun and his followers had feared for decades.³⁸ The outcome of the Civil War meant that even that final measure failed to stop a complete takeover of the United States by the nationalist movement.

While some Democrats tried to the very end to mend their broken party, Republicans like Senator William Seward of New York, a leader in the party throughout the Civil War and Reconstruction period, would do what their predecessors the Whigs had never dared – write the South off entirely as "enemy territory" and campaign only for Northern and Western votes, swelled by the large number of defections by Northern Democrats in the 1850s. The normalization of free labor as a modern, progressive, and desirable economic model by Republicans meant that the sectional antagonisms that Whigs had long tried to smooth over became a permanent fixture of Republican politics.³⁹ Seward said in as many words that the sectional estrangement between slave states and free states was "an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will, sooner or later, become either entirely a slaveholding nation, or entirely a free-labor nation."⁴⁰ Before the United States could become a great nation, sectional antagonisms would have to be diminished so that the states could work together for a singular purpose, like the departments or provinces of a nation-state. The chosen instrument for this nation-building project was a strong central government, the creation of which was a mission much older than the Republican Party. In 1832, as the National Republican Party prepared to send Henry Clay up against the incumbent President Jackson, the party convention had expressed the need for national unity with their usual appeals to history and tradition.

The great improvement made by the adoption of the present constitution in the political system of the old confederation, was the extension of the power of the union over the persons of the individual citizens. . . . The adoption of this single salutary provision raised us from the situation of a cluster of poor, imbecile, and, for all substantial purposes, mutually dependent states, oppressed with debts, disturbed by insurrections, and on the verge of absolute anarchy, into our subsequent condition of one great, powerful, prosperous, glorious, free

³⁸ Hofstadter, *The American Political Tradition*, 101.

³⁹ Foner, *Free Soil, Free Labor, Free Men*, 9-10.

⁴⁰ William H. Seward, "The Irrepressible Conflict," in *Recent Speeches and Writings of William H. Seward, 1854-1861*, ed. George E. Baker (New York: Redfield, 1861), 292.

and independent federal republic. The rejection of this wholesome principle would bring us back again to the same situation in which we stood before.⁴¹

By embracing the federal government's power to encourage the growth of a "free labor" system in the United States, the early Republicans adopted a process described by the political scientist Richard Bense. Bense has argued that conventional nation-states form and "modernize" in three distinct stages: First, the total rationalization of central authority by breaking down or co-opting decentralized institutions; second, the development of specialized institutions to perform a new and expansive set of political functions; and third, the broadening of political participation into some form of mass politics. Bense further argues that the United States followed this path to political modernization, but in exactly the opposite order.⁴² The Democratic and Whig parties were fully formed as nationwide coalitions by the year 1836, and the process of creating a mass electorate with universal suffrage was complete by the end of Andrew Jackson's presidency. Step two of the modernization process was completed during the Civil War itself, when the Republican-controlled legislature made the American System the law of the land. Appropriations were made for a transcontinental railroad, the Homestead Act was passed, and the Morrill Tariff, the highest in the country's history, protected American manufacturers from foreign competition. Finally, the federal government broke down obstacles to central authority by prosecuting a successful war of reunification against a Southern separatist movement whose purpose was resistance to the American system and the nationalist project on which the Republican Party was founded.

The closing words of President Lincoln's first inaugural address may hold the key to why the "Irrepressible Conflict" died so hard. As the United States' chief magistrate, Lincoln claimed not only the authority but the *duty* to

hold, occupy, and possess the property and places belonging to the government, and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere.⁴³

The ambiguity of this passage seems almost too strong to be accidental. To a unionist, it sounds like a promise not to initiate hostilities against the South unless the South interferes in "necessary" operations of the federal government. To a secessionist, however, it sounds like a threat to invade the South if it resists the continued presence of federal troops and tax collectors. Barely a month before the

⁴¹ "Address of the National Republican Convention, 1832," in *History of American Presidential Elections, Volume I 1789-1844*, ed. Arthur M. Schlesinger, Jr. (New York: McGraw Hill, 1971), 553-66.

⁴² Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990), 2-3.

⁴³ Abraham Lincoln, "First Inaugural Address, March 4, 1861," in *Abraham Lincoln: Speeches and Writings, 1859-1865*, ed. Don E. Fehrenbacher (New York: Literary Classics of the United States, 1989), 218.

war broke out in Charleston Harbor, it was the South's continuing participation in the American System that was the main sticking point for Lincoln and the federal government.

When seeking an international context for the American Civil War, it is helpful to think of the contest as a war of national unification, in which the central government of a republic was "captured" by a single coherent ideology. As in German or Italian unification, that ideology took generations to form fully; but once it had behind it the full force of a modern state, implementing it took only a short time. The secession crisis of 1860 was not just another crisis of law and order; it was an existential threat to the entire Whig-Republican agenda: to construct in the United States the machinery of a modern nation-state capable of bringing the whole country into the industrial age. The Civil War warrants study not only as a sea change in America's political culture, but as part of a global trend in the evolution of statecraft and ideas of nationhood.

My Fair Malady: Understanding the Diagnosis of Female Hysteria in the Victorian Era

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“Oh, I have nervous exhaustion,” began most hysterical patients, according to a passage in the third chapter of *Fat and Blood*, a treatise written by physician S. Weir Mitchell.¹ Mitchell was later criticized in the popular late nineteenth century novella, *The Yellow Wallpaper*, written by Charlotte Perkins Gillman, one of his famous patients. Commonly, the hysteric found herself physically weak as a result of trying nerves, leading late Victorian doctors to presume that the malady was attached to women’s neurological system or the reproductive system. *The Yellow Wallpaper* allowed Victorian society to see the detriment hysterical diagnoses and treatments caused Victorian ladies. Biologically inferior to men by birth, Victorian society denied women entry into the public sphere.

In 1899, Charlotte Gillman invited Victorian society into the chaotic world of the hysteric with her semi-biographical novella *The Yellow Wallpaper*. Many physicians protested the novella’s publication on the grounds that it would induce madness because of the content.² Prior to Gillman’s pioneering novella, physicians, who were overwhelmingly male, discussed hysteria in a medical setting. Seldom were hysterics allowed to wander in society without medical policing for long periods of time. The woman branded “hysterical” found herself confined within the private sphere of the home or in the constructed world of mental intuitions, where physicians constantly observed and scrutinized her. However, Gilman’s description of her bout with what we would now call post-partum depression shifted the perspective from physicians to that of a housewife, and the setting from the medical sector to a country house. *The Yellow Wallpaper* offered a rare look from a feminine perspective inside a woman’s descent into madness as the result of seclusion, a treatment used for hysteria. Before prescribing the rest cure for Gillman’s hysteria, Mitchell proposed that Gilman (in her words) “live a domestic life as far as possible,” “to have but two hours’ intellectual life a day,” and “never touch pen, brush or pencil again as long as I lived.” The prescription Gillman described amounted to behaving in a more “womanly” way—if she simply upheld the Victorian ideal of the “angel of the hearth,” she would be cured of hysteria. Charlotte Gillman complied with the Mitchell’s cure: “I went home and obeyed those directions for some three month, and came so near to the borderline of utter mental ruin that I could see over it.”³

¹ Weir Mitchell, *Fat and Blood: An Essay on the Treatment of Certain Forms of Neurasthenia and Hysteria* (Philadelphia: J. B. Lippincott Company, 189), 37.

² Charlotte P. Gilman, “Why I Wrote the Yellow Wallpaper” in Golden, *The Captive Imagination* (New York: The Feminist Press, 1992), 52.

³ Gilman, 52.

These medical orders led to the young writer creating the yellowed world of feminine madness, to show American society that Mitchell's regimen caused her insanity rather than reversing her melancholy feelings of depression.⁴ The female protagonist simply referred to in the first person is married to a physician named John who doubts the validity of her illness. When discussing his wife's condition with family, he referred to the protagonist as being "temporary nervous depression . . . and having a slight hysterical condition."⁵ Yet the protagonist resented the medical observations made by her husband and brother, asserting that their negativity and disbelief hindered her healing process.⁶ Nineteenth-century physicians David Hart and Alexander Barbour made the opposite argument from Gilman's. They argued that the defective moral education and a hysterical mother hindered the healing process of the hysteric.⁷ The female protagonist worsened as the story reached its conclusion; by the end it was the rest cure itself that led her into madness.⁸

Hysteria had a profound effect on the histories of women and mental health in the Western world. Although hysteria contributed to the disabling of women's bodies, other maladies also negatively affected the feminine body. The multiple diagnoses of hysteria influenced the mental health movement that emerged from the Victorian era. The discourse surrounding hysteria centered almost exclusively on male opinions. Hysterical diagnoses waned in the twentieth century and the disease seemed to disappear from the medical repertoire entirely, leaving historians baffled. Historians questioned what constituted hysteria and where the malady had originated. They discovered that hysteria's origins lay in the ancient civilizations of Greece and Rome. Greek and Roman physicians and philosophers Hippocrates and Galen described hysteria as a suffocating womb that wandered within the feminine body, the same definition later echoed by early Victorians. Ancient physicians believed the wandering womb made the female form inferior to the male form. From this ancient theory flourished the ideas that hysteria belonged to the feminine body and that women were naturally flawed. Victorian physicians used the ancient theory of the fundamentally inferior feminine form to continually give medical credence to opposition to women's entry into the public sphere.

Since antiquity, the feminine body found itself under constant medical surveillance to explain the biological differences that existed between women and men. Hippocrates, the founding father of hysteria, wrote in one of his medical

⁴ Ibid. Gilman's work is semi-autobiographical--she admitted that she embellished the hallucinations or objections to the décor of her home for literary affect because she never suffered from hallucinations.

⁵ Charlotte Perkins Gilman, *The Yellow Wallpaper* (Boston: Small, Maynard & Co., 1899), 2.

⁶ Ibid.

⁷ David Berry Hart and Alexander Hugh Freeland Barbour, *Manual Of Gynaecology* vol. 2 (New York: William Wood & Company, 1883), 699.

⁸ Gilman, 12. The female protagonist believes that she sees a menacing female figure within yellow wallpaper who means to harm her. These beliefs drove the protagonist to not eat or sleep as she stares obsessively at the wall paper. The madness peaked when the protagonist imagined she was in fact the creeping woman in the wall paper and only now is she free on her insanity.

texts that the “womb is the origin of all diseases.”⁹ He found the female physique to be fundamentally inferior to the male because it tended to be moister, looser textured, and softer with spongier flesh. He theorized that mentally, women were more deranged than men because of puberty, pregnancy, menopause, or suppressed menstruation. Suppressed menstruation caused excess fluid to build which eventually needed to be drained from the body, or it would cause the womb to wander. The result would be the contraction of feminine illnesses like hysteria, which mercilessly plagued women.¹⁰ Plato, like Hippocrates, believed the womb wandered. However, Plato viewed the womb as a wild animal. Galen on the other hand, viewed the womb not as a wanderer but rather as the central location where hysterical symptoms were derived. He theorized that hysteria was manifested in many forms such as in extreme emotionality, dizziness, respiratory distress, and paralyses. Galen, like his medical predecessor Hippocrates, believed hysteria was a woman’s disease. Unlike Hippocrates, Galen linked sexual depravation to hysteria, believing that marital intercourse cured the female form of the malady.¹¹

Since antiquity, medical authorities classified the feminine form as frigid and sexless. In the Victorian era conflicting views of feminine sexuality emerged. Some scholars argued the feminine form was capable of sexuality and others said that it was incapable of sexuality.¹² These notions influenced the medical treatment women received. The heart of the hysterical discourse was the uterus, which Hippocrates said was the center of the disease’s power. Apparently, financial status affected the feminine body’s susceptibility of the malady, too. Upper-class women were the primary patients diagnosed with the illness. Most Victorian doctors viewed all women as potential hysterics, but they believe women in the upper-classes were more susceptible because upper-class women tended to be leisurely. Leisure time afforded upper-class women access to partial education, romance novels, tea, alcohol, masturbation, corsets, and sexual thoughts, all activities that excited the female form and left women vulnerable to hysteria.¹³

Fascinated by the female anatomy particularly the uterus, the physicians readily diagnosed female patients with hysteria in an attempt to explain the anatomical differences between men and women. Nineteenth century physicians retained the same theory perpetuated by their ancient predecessors which was that hysteria was a woman’s disease. Physicians reasoned that romantic love, suppressed menstruation, irritated nervous systems, and ovulation made the feminine form more susceptible to hysteria. In his treatise, *The C. Hamlin Study of Medicine*, the English medical writer John Mason Good wrote that hysteria often resulted

⁹ Andrew Skull, *Hysteria: The Disturbing History* (New York: Oxford University Press, 2009), 13.

¹⁰ Ibid.

¹¹ Ibid.

¹² Rachel P. Maines, *The Technology of Orgasm: Hysteria, The Vibrator, And Women’s Sexual Satisfaction* (Baltimore: The John’s Hopkins’s University Press, 1991), 59.

¹³ Maines, 57.

from romantic love, suppressed menstruation, and nerves because the events often induced overexcitement and passion within the feminine form. Irritated nervous systems resulted in the contraction of female hysteria.¹⁴ The critical discovery of female ovulation in the 1840s solidified the biological theory of inferiority. After the discovery of ovulation, physicians suspected it might also contribute to contracting the disease, too.¹⁵

Dr. Fredrick Skye adopted the irritated nervous system theory, which he believed explained hysteria. In the treatise *Hysteria: Remote Causes of Diseases In General Treatment of Disease By Tonic*, Skye proposed that hysteria was a nervous condition that resulted from the irritation or disorder of the nervous system.¹⁶ Disagreeing with other medical authorities, British physicians David Berry Hart and Alexander Hugh F. Barbour argued in their treatise that irritated or sensitive joints induced hysteria within the feminine body. The pair believed that if hysteria went untreated, the patient would become paralyzed.¹⁷ British psychiatrist Henry Maudsley also suspected ovulation of being the direct link to developing hysteria. He insisted that hysteria was tied to the reproductive organs, particularly the ovaries because their monthly activity had a considerable effect on the female anatomy and mentality.¹⁸

Henry Maudsley wrote that while ovulation influenced the contraction of hysteria, it was not the only contributing factor that led to the disease. He argued that most women during their menses were “irritable and susceptible” to hysteria. Maudsley believed that the sudden suppression of the menses incited insanity or hysteria within the feminine form.¹⁹ He wrote that he often observed increases in insanity during the menstrual period for female patients.²⁰ Maudsley described hysteria as an attack of “acute maniacal excitement,” suggesting that the attack caused the patient to grow restless and speak rapidly to the point of incoherency.²¹ He argued that the hysteric’s conversations tended to become erotic and perverse which incited uncontrollable laughter, singing, and rhyming in the hysterical patient.²²

By the 1890s, explanations for hysteria had shifted from the feminine reproductive system to the psyche. The theory of a sensitive psyche replaced the physical symptoms of ovulation, menstruation, sensitive joints, and nervous systems to mental illnesses. The developing theory created a bridge between the

¹⁴ John Mason Good, *The C. Hamlin Study of Medicine* (Boston: Wells and Lilly Court Street, 1823), 90.

¹⁵ Mark S. Micale, *Approaching Hysteria: Disease and its Interpretations* (Princeton: Princeton University Press, 1995), 23.

¹⁶ Frederick Skye, *Hysteria: Remote Causes of Diseases in General Treatment of Disease By Tonic* (New York: A. Simpson & Company, 1867), 40-41.

¹⁷ Hart and Barbour, 618.

¹⁸ Henry Maudsley, *Body and Mind* (New York: D. Appleton And Company, 1870), 78.

¹⁹ *Ibid.*, 87.

²⁰ *Ibid.*, 79.

²¹ *Ibid.*, 78.

²² Maudsley, 78.

mind and body, of the hysterical woman. Despite this discovery and the medical expansion, the malady remained incurable and attached to the feminine body. Some leading physicians of the era like James Corning, Jules Falret, and Sigmund Freud believed that the feminine psyche represented the center of the malady's strength. New explanations for the disease circulated throughout the medical sector. Many physicians, including the men already honorably mentioned, agreed that the feminine form was vulnerable to the illness, when they left the protective walls of the private sphere to engage in physical labor, maternal genetics, and education. These were only some of the new hypotheses made by the physicians.²³

Some medical authorities believed that maternal genetics and maternal mortality explained the feminine body's ability to contract the illness. To avoid being susceptible to the disease, young women needed sane and moral mothers. In their treatise Dr. Hart and Dr. Barbour wrote that hysteria resulted from heredity and defective moral education taught by a hysterical mother.²⁴ On the other hand, physicians like James Corning inferred that hysteria was imagined and the hysteric was a hypochondriac and grandiose being in want of attention. In his 1888 book, *A Treatise on Hysteria and Epilepsy*, the American neurologist described the hysteric as dangerous, egotistical, and desperate for attention and sympathies.²⁵ He believed that hysteria made the feminine form and mentality extremely fanciful. Corning emphasized the erratic natures of hysterics with an account describing the strange behavior of a young woman suffering from hysterical tendencies. One evening in December of 1876, an eighteen year old girl was found dressed in wet, muddy clothing, outside of a Manchester restaurant, "in an apparent stupefied condition."²⁶ The girl was taken home where she was put bed and a doctor was called. The girl appeared to lose consciousness often uttering "some disjointed and incoherent complaints of having been drugged and threatened."²⁷ However, the physician ignored the young woman's babbling. He contributed the girl's senseless chatter to her recovery. The next day the girl appeared to worsen and the doctor believed she was dying. Two detectives and the magistrate were called where the girl told the sad tale of her apparent attack the evening before:

On the previous evening a solicitor, at whose office she had called on business, told her that she must go into a convent, and gave her some sort of dark, sweet drink, which rendered her senseless. On going down the stairs from the office, she met a Jesuit Father, whom she had met once before. This gentleman pulled her along the street to a little house in a court, where there was an upper room with a bed in it, and a cross on the wall. Having got her into this room, he said

²³ Corning, 5-7

²⁴ Hart and Barbour, 699.

²⁵ Corning, 5-7.

²⁶ Ibid. The phrases in quotations are direct quotes taken from a larger quote. However, to conserve space and maintain the fluidity of the article the quote was condensed.

²⁷ Corning, 5-7.

improper things to her, and gave her a little cake, which affected her directly. The woman of the house came into the room and found her on the floor, after which she somehow got outside; the priest following her, again dragging her along in the dirt to the street corner, when he ran away.²⁸

In fact, none of this story of abduction and mistreatment was true. James Corning distrusted the hysteric because they succumbed to fanciful thought, often resulting in imaginary events. However, to the hysteric their imagined events seem real. The young woman discussed in Corning's treatise, believed that she was actually dying, and that the alleged attack she described to the magistrate really occurred. Corning, however, saw it as evidence of women's weakness and their hypochondria. The popularized idea that hysteria was an imagined disease was hardly unique to Corning, but shared by many of his fellow physicians.

Hysteria possessed the ability to mimic serious diseases. Physicians were baffled by this ability and found diagnosing patients difficult and they feared public perception of their ability as medical authorities. In an attempt to explain the disease and its strange ability to mimic other diseases, Frederick Skye proposed that the disease was either imagined or a supernatural force.²⁹ Dr. Skye admitted in his treatise that physicians were continuously deceived by hysteria which in turn made him question his ability to properly diagnosis the curious malady.³⁰ Physicians depended too readily on the disease to explain natural inferiority and the physical ailments associated with the woman's body.

Historian Rachel Maines described the physical symptoms of hysteria as anxiety, sleeplessness, irritability, nervousness, and erotic fantasy, sensations of heaviness in the abdomen, lower pelvic edema, and vaginal lubrication.³¹ The negative characterizations hysteria underwent included eccentricity, impulsiveness, emotionality, coquettishness, deceitfulness, and hypersexuality.³² As the lines between physical symptoms and negative characterizations of hysteria blurred, Victorian physicians were baffled by the behavior of the illness. This incident produced tensions within the medical sector regarding cures and medical creditability. In an attempt to explain the disease and its strange ability to mimic other diseases, Frederick Skye proposed that the disease was either imagined or a supernatural force.³³ Dr. Skye admitted in his 1867 treatise that physicians were continuously deceived by hysteria which in turn made him question his ability to

²⁸ *Ibid.*

²⁹ Skye, 42. Historian Rachel Maines described the physical symptoms of hysteria as anxiety, sleeplessness, irritability, nervousness, and erotic fantasy, sensations of heaviness in the abdomen, lower pelvic edema, and vaginal lubrication. The negative characterizations hysteria underwent included eccentricity, impulsiveness, emotionality, coquettishness, deceitfulness, and hypersexuality. As the lines between physical symptoms and negative characterizations of hysteria blurred, Victorian physicians were baffled by the behavior of the illness. This incident produced tensions within the medical sector regarding cures and medical creditability.

³⁰ Skye, 40-45.

³¹ Maines, 8.

³² *Ibid.*

³³ Skye, 42.

properly diagnosis the curious malady.³⁴ Physicians depended too readily on the disease to explain natural inferiority and the physical ailments associated with the woman's body.

Although rare, physicians like Jules Falret and Robert Carter viewed the hysteric woman and the nymphomaniac through the lens of sexual wantonness. Hysterical convulsions often resembled the titillation exhibited by nymphomaniacs but they were hardly the same disorder. Many physicians held resentment for the hysteric because of the sexual connotations associated with the disease. They viewed hysterical patients with disdain because of the perceived deceitful behavior of hysteria. Hysteria mimicked blindness, deafness, skin anesthesia, paralysis, and spasms.³⁵ Dr. Jules Falret, an affiliate of the Salpêtrière Hôpital in Paris, harshly critiqued women suffering from hysteria. Falret believed female patients performed the role of the hysteric to manipulate and deceive their physicians. Much of Falret's criticism mirrored the assertions made by Dr. Corning in his treatise. He described the patients' perceived sexual perversion:

These patients are veritable actresses. They do not know of a greater pleasure than to deceive In one word, the life of the hysteric is nothing but one perpetual falsehood; they affect the airs of piety and devotion and let themselves be taken for saints while at the same time secretly abandoning themselves to the most shameful actions.³⁶

Falret accused hysterical women of imagining the ailments affecting their bodies. His criticisms implied that hysteria was a mental illness attached to womanhood. Misogynistic in opinion and treatment, Falret viewed the public display of hysterical sexuality as immoral because it lacked the protective walls of the private sphere and the control of the andocentric paradigm. Robert Carter shared his counterpart's misogynistic opinion of the female hysteric. Carter perceived hysteria as excessive feminine sexuality, which he found deplorable. Dr. Carter argued that the speculum induced wickedness within the girls, during gynecological exams. He stated that female hysterics used gynecological exams to achieve sexual fulfillment. Carter expanded his argument by accusing hysterics of possessing similar behaviors and virtues to prostitutes:

No one who has realized the amount of moral evil wrought in girls . . . whose prurient desires have been increased by Indian hemp[marijuana] and partially gratified by medical manipulations, can deny that remedy is worse than the disease [hysteria]. I have . . . seen young unmarried women, of the middle-class of society, reduced by the constant use of the speculum to the mental and moral condition of prostitutes; seeking to give themselves the same indulges

³⁴ Ibid. 40-45.

³⁵ Neil Micklem, *The Nature of Hysteria* (London: Rutledge, 1996), 4.

³⁶ Ibid., 24.

by the practice of solitary vice; and asking every medical practitioner . . . to institute an examination of sexual organs.³⁷

Gynecologist Baker Brown shared the frustrations of Falret and Carter. He alleged that patients “with hysterical and other nervous affection” foiled his ability to properly treat them.³⁸ Brown asserted that female masturbation aggravated the nervous system which resulted in hysteria.³⁹ Victorian society abhorred masturbation and particularly female masturbation. In order to stop the female masturbation and solve the center of female hysteria, Brown suggested genital mutilation.⁴⁰

After analyzing the disease, many physicians concluded that hysteria was both incurable and a chronic illness.⁴¹ However, they disagreed on treatment methods. To avoid contracting the disease, physicians encouraged strategies that managed sexuality under male authority marriage, sex, and physician-performed manual massages—as well as traveling, special diets, and hydrotherapy.⁴² Another popular treatment prescribed in the nineteenth century was the rest cure or medical seclusion of the patients from their normal activities. As we saw earlier, the feminist Charlotte Gilman complained that the rest cure, prescribed by Dr. Weir Mitchell, threatened her sanity, rather than helping her. One of the most controversial treatments prescribed to treat the disease was the invention of the vibrator. The vibrator was created to assist physicians with manual massages but also to prevent women from masturbation, masculine control over women’s sexuality to endure.⁴³ The genital mutilation described by Dr. Brown to treat hysteria and stop female masturbation was perhaps the most controversial treatment recommended by a Victorian physician.⁴⁴

While ancient and Victorian physicians encouraged married women to have intercourse and encouraged single women to marry, Barbour and Hart encouraged the milk diet to treat hysteria.⁴⁵ In *The Manual Of Gynecology* written and published in 1883 by British physicians Hart and Barbour prescribed special diets, faradic electricity, seclusion, and cold baths to soothe irritated nerves that caused hysteria.

³⁷ Maines, 58. Dr. Carter judged the hysteric’s behavior as insatiable sexuality. Victorian society viewed the feminine body as frigid and incapable of being sexual unless engaged in marital coitus. Sexual awareness within women poised a threat to the patriarchal framework of the era.

³⁸ Skull, 77.

³⁹ Ibid.

⁴⁰ Ibid., 78. Brown believed that the removal of the clitoris would cure female hysteria and masturbation.

⁴¹ Alison Twells, *British Women’s History: A Documentary History From The Enlightenment To World War I* (New York: I. B. Tauris & Co. LTD, 2007), 15.

⁴² Edward John Tilt, *A Handbook of Uterine Therapeutics and Diseases of Women* (New York: D. Appleton and Company, 1869), 60-61.

⁴³ Maines, 11. The vibrator was invented in the 1880s by a British physician. He hoped would be a solution for the linear lists of problems regarding hysteria and the feminine form. The process of manual massaging was time consuming. The invention of the vibrator reduced the time it took physicians to help their patients find relief.

⁴⁴ Skull, 78.

⁴⁵ Maines, 2.

The physicians believed the application of faradic electricity supplemented manual massaging of the uterus to treat hysteria.⁴⁶

Dr. Mitchell, the former physician of Charlotte Perkins Gilman, created the milk diet to fatten the patient.⁴⁷ The diet was recommended by Hart and Barbour, as a potential treatment for hysteria. The diet monitored the eating and resting habits of the female hysteric. In their treatise, Barbour and Hart stated that to properly cure hysteria, physicians should apply Dr. Mitchell's regimen, which included (1) seclusion of the patient, and absolute exclusion of all but the medical attendant and nurse, (2) absolute rest in bed, (3) a systematic extra feeding of the patient, and (4) use of massage and electricity. When a patient was placed in seclusion they were removed from their overbearing families who often excited them more, therefore hindering the patient's progression and placed under the care of a capable nurse. However, when a patient was required to have absolute rest, she was expected to nap two hours a day, exert herself as little as possible, as well as rest mentally and muscularly.⁴⁸

The diet designed by Dr. Mitchell began with milk, about three ounces every two hours, until two quarts were given during the day. At the end of the first week raw beef soup was given, and gradually the diet was increased. Patients were encouraged to have Coffee at seven; at eight, iron and malt. The patient's breakfast, included a chop, bread, and butter. Later a tumbler of milk and a half; at eleven, soup; at two, iron and malt were allotted to the patient. Dinner, was closed with milk, one or two tumblers full. The dinner consisted of anything she liked, and with it she took about six ounces of Burgundy or Dry Champagne. At four the patient was given soup and at seven, malt, iron, bread and butter, and usually some fruit, and commonly two glasses of milk. Around nine the patient was again given soup; and at ten, her aloe pills. At noon, massage occupied an hour. At 4.30 PM., electricity was used for an hour.⁴⁹

The emergence of Freudian thought and psychoanalysis assuaged the fears and concerns physicians confronted in regards to hysteria. The idea that the feminine form was demonically affected was abandoned in favor of the belief that hysterics suffered from a disturbed psyche. Once a physical ailment, hysteria was converted into a mental malady. Freud theorized that the key to understanding the naturally inferior female form resided solely in the feminine psyche. According to sociologist Andrew Skull, Freud believed the roots of hysteria stemmed not from sexuality, as medical authorities first suggested, but instead was a result of childhood experiences. Freud argued that the psyche was deeply affected by childhood traumas. Freud's new view of hysteria altered the way society saw the

⁴⁶ Hart and Barbour, 617.

⁴⁷ *Ibid.*, 313.

⁴⁸ *Ibid.*

⁴⁹ Hart and Barbour, 698.

hysteria.⁵⁰ The psychoanalyst discarded former techniques or cures used to treat hysteria and instead encouraged his patients to talk in order to relieve themselves of hysteria. Freud's "talking out" cure was reminiscent of the Christian practice of confession. Freud assured a young female patient that she could be cured of hysteria if she told him the truth.⁵¹

Freud's colleague Josef Breuer also employed the "talking cure" with his patients as a method of treatment. Breuer's most famous patient was Anna O., a pseudonym for Bertha Pappenhiem who suffered from hysteria.⁵² Pappenhiem exhibited hysterical symptoms after the death of her father, for whom she was the primary caregiver.⁵³ Prior to her father's death, Anna O. was a healthy viable young woman but upon his death she became hysteric. The young woman's hysterical symptoms included headaches, disturbed speech, and muscular contractions. The muscular contractions hindered the young woman's ability to swallow liquids, leaving her to satisfy her thirst by eating fruit.⁵⁴ Throughout the psychoanalysis process, Pappenhiem appeared to improve with each session which seemed to suggest that the talking cure actually worked, but the triumph was short-lived. Several weeks later, Bertha Pappenhiem suffered a relapse and on 12 July 1882 and was committed by Breuer and her family to the Bellevue Santorum where she was confined until the fall of 1883.⁵⁵

The glory days of hysteria sustained the ancient theory that women's bodies were biologically inferior to men's. The disease perpetuated one of the many images associated with women in the Victorian era, the invalid. Medical authorities viewed women's bodies as weak, flawed, susceptible to upset, and emotional.

With the close of the nineteenth century cases greatly declined. The eruption of the Great War changed the conditions in which Victorian women lived. In the twentieth century, women from the upper and middle classes abandoned their homes in favor of nursing and volunteer and paid work in the name of nationalism, thus rewriting the definitions of their bodies as capable and sound. With the twentieth century and its emphasis on mass warfare and armies of millions, women and their bodies once again found themselves in the public foreground, but this time for different reasons. With the need for more and stronger armies, women's bodies became sources for potential soldiers and national strength rather than evidence of feminine weakness.

⁵⁰ Skull, 10.

⁵¹ H. Addinton Bruce, "Sigmund Freud and the Conquest of Hysteria" in *Metropolitan Magazine* 36 (1912), 35. Freud encouraged the patient to speak the truth and describe their negative experience as a means for treatment.

⁵² Mikkel Borch-Jacobsen, *Remembering Anna O.: A Century of Mystification* (New York: Routledge, 1996), 22.

⁵³ *Ibid.*

⁵⁴ Borch-Jacobsen, 22.

⁵⁵ *Ibid.*

On the Nietzschean Mechanics of Myth-Making

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The nineteenth century was a momentous one for the varied states of what is now Germany. The Napoleonic invasion of Germany formally put an end to the ancient Holy Roman Empire. The Napoleonic occupation of Germany, however, had much more indelible effects. During the time and in the aftermath of the French occupation of German lands, German-speaking intellectuals began to take up the question of German identity with renewed vigor. It is important to point out that unlike the unification of Italy, the unification of Germany lacked popular participation and was to a great degree a problem for the intelligentsia.¹ The Germanies brandished a lively community of prestigious universities. Throughout this intellectual landscape, letters were constantly exchanged between thinkers both within and outside their respective disciplines.

Questions concerning the essence of the German identity or the future of the German people loomed increasingly large in the minds of artists, university professors, and other professionals as Napoleonic France became bellicose. Many of these intellectuals appealed to the rising disciplines of anthropology and archeology, in addition to the well-established philological tradition to invigorate and legitimate the search for a distinctive German essence. One thread, which is common to various such efforts, is the invocation of national myths as a source of unifying power for nations. And while the relationship between the cultural myth-making project and that of creating a German national project is a complex one, it can be said that nationalism played a rather small role in unification and was instead more a result of the political process rather than a cause of it.² This paper examines the approach to the social role of myth of two more famous German intellectuals: Johann Gottlieb Fichte and Friedrich Nietzsche. Through the analysis of the differences of both thinkers' form and content, this paper brings attention to Nietzsche's work on myth and its role in history.

The Paradox of Fichte

Within philosophy, Johann Gottlieb Fichte is known for his astounding account of human consciousness. Within history, however, Fichte is known for his stark ethnocentric nationalism. This nationalism and its anti-Semitism in particular permeate his *Addresses to the German Nation*.

For those wishing to understand Fichte's peculiar brand of nationalism, there are two crucial starting points. The first is Fichte's chance encounter with Kantian philosophy. The second is Fichte's own commitment to being a man of action

¹ Michael Hughes, *Nationalism and Society* (London: Edward Arnold, 1989), 101.

² Ibid.

rather than a man of mere speculation, as a partial effect of the French Revolution.

In his writings on the French Revolution, published in 1793, one finds Fichte's appreciation for freedom and social reform strengthened even at a time when many other German intellectuals were turning away from the Revolution after an initial fascination. For the son of humble peasants, and a questioner of the "so-called high classes," the principles of the French Revolution were exactly correct. Even unto this point, one sees Fichte holding on to the writings of Rousseau and championing the idea of a social contract as the basis for philosophical discussion of the events of the day.

The time in which Fichte wrote his *Addresses* may be noted by the abundance of interest in philology. The first decades of the nineteenth century saw a considerable increase in German interest in linguistics.³ It is important to understand this to fully appreciate Fichte's move toward German nationalism.

As has been stated before, Fichte found within the work of the German Idealists the highest rendition of the human condition, this partiality, not surprisingly, was especially true of his own work. This was significant because for Fichte the relative merits of nations could be measured in accordance to the level of their culture (*Kultur*). Here, *Kultur* is used to designate not the state of the arts and scholarship of a region in general. Instead, Fichte's *Kultur* made specific reference to a nation's degree of affinity with Idealist, or more precisely Fichtean, philosophy. And, relying upon the ontological notion also found in the work of Herder and others that the language in which ideas were communicated could improve or impair one's ability to truly understand the ideas being communicated based on one's familiarity with that language, Fichte concluded that the German people were the most apt to access the truth of the Idealist systems of thought.

For Fichte, there is a direct connection between the language one speaks and the thoughts one is able to form. From such a perspective, language is the tool which allows subjects to sculpt objects in their surrounding environment. Based on the manner in which objects are structured, a culture (in the general sense) will develop around such objects. But if one's language is not native to the place where one lives, there will be a corresponding disconnect between the environment by which one is surrounded and the language one is forced to employ to render it.

Such an advantage was possessed by the Greeks, whose language was rooted in the lands in which it was used, and thus led its speakers to great achievement. This is true to some extent of the Romans, but with their grand expansionist campaigns, their language became increasingly out of touch with the populations which used it and the locales in which it was used.

This linguistic disjointedness is to blame, at least in part, for the decadence of the Romance nations. These nations adopted languages borrowed from, and

³ Suzanne Marchand, *Down From Olympus* (Princeton: Princeton University Press, 1996), 29.

centralized gubernatorial structures in emulation of, their Roman forefathers. In other words, these languages and states suffered from an irreducible disconnect with the spaces in which they were implemented.

Thus, the superiority of the German nation was derived from the superiority of the German language itself. The German language was superior to those languages descended from the Latin tongue of the Roman conquerors because, much like Greek, it was ancient and preceded Roman colonialism. Ironically, Fichte used Tacitus as one of his sources when discussing the purity and strength of the unconquered pagan tribes of the Germanic north. Following from the superiority of the German language, Fichte elevated the status of German literature and general culture over that of all of her neighbors.

By 1808, the time of Fichte's delivery of his *Addresses to the German Nation* in an occupied Berlin, the reality of the French Revolution had turned sour as autocracy and privilege reentered the public stage, most prominently in the figure of Napoleon. This latest work, therefore, exhibits a new perspective. In a fascinating routine of philosophical gymnastics, Fichte manages to preserve his passion for transcendental human freedom while at the same time exalting the history and distinctiveness of the German folk. German idealism was the seat of humanity's new freedom, and it was through the German language's special "ontological primacy" (its relation to its primordial homeland) that this fact about the world could first be logically articulated and then publicly enunciated. For if German Idealism, from Kant on downwards, held the truth which offered scholars the tools to change the direction of human development, it was because there was some special feature of the German language and its surrounding culture which made it capable of realizing this truth.

What we see in the *Addresses*, then, is an interesting mix of cosmopolitanism, intellectual activism, and a primitive philosophy of language. It is in the mixing of these diverse currents of thought that the ingredients of Fichte's peculiar brand of German nationalism may be first located. In these lectures, Fichte lays out his plan for a new system of education that will correct the negative aspects of the traditional educational system.

This means that in order to produce upright moral citizens, a new educational system must be adopted that will address these fundamental weaknesses of the old educational system. It is important to keep in mind that public education had first been introduced by Prussia in the eighteenth century, so Fichte's writings were published in a formative stage of the German educational system. Fichte's prescriptions were made with the intention of orienting the Prussian state in the direction of a superior moral direction. And this is why Fichte's lectures on education are well worth exploring for the historian interested in the formation of a German national identity. For while Fichte does not treat with national mythologies, his treatment of education can be read as closely analogous to other

thinker's treatment of the development of a national mythology. Fichte's response to the need for a way to solidify (perhaps even define) the German national character was to develop an educational system which would be compulsory yet adopt innovative pedagogical techniques in order to raise Kantian citizens. Again, it is important to recall that Kantian philosophy represents in Fichte's eyes the epitome of everything "German."

That new educational system would inculcate pupils with the idea that the individual is nothing without the collective. In a time of great national crisis for the Germanies as the Napoleonic forces occupied most of German-speaking central Europe, Fichte's educational system would teach youth to learn no longer for rewards, but for its own sake. And where the pupil excelled, he should not "expect any reward . . . not even praise, because the prevailing mentality in the community is that each is only doing his share; that instead he merely takes pleasure in his activities and work on behalf of the whole, and in being successful in them, should he meet with success."⁴

Fichte's initial philosophical writings were of a strong cosmopolitan character. Being a meticulous reader of Kant and his fellow Idealists, Fichte saw in this school of philosophy the most tantalizing (and truthful) account of the human condition. During the time of Napoleon's rise to power and expansion across the European continent, a time in which many German thinkers became increasingly nationalistic, Fichte remained markedly indifferent to the fate of the German people.⁵ Fichte even expressed support for the French excursion into German lands. Indeed, the behavior of young Fichte does not arouse any suspicion of ethnocentrism, nationalism, or anything of the sort. The nationalist turn in Fichte's work came not as recognition of the superior racial attributes of the German people, but out of an unshakable devotion to the work of the German Idealists.

Conveniently for the German speaking peoples, Idealist philosophy was written, and more importantly taught, in German. And since German Idealism presented the greatest account of the world, especially through its reliance on *a priori* principles of historical and rational necessity, the German speaking populations had privileged access to the greatest universal truths.⁶

Never straying far from cosmopolitanism, Fichte emphasized that the loyalty of any educated European should reside with the nation assuming cultural leadership. Seeing as the Germans were poised to assume such leadership due to their familiarity with the medium of the highest ideas of the age, Fichte's cosmopolitanism paradoxically stressed not only the superiority of the German language and culture, but also the fact that any educated Christian European

⁴ Fichte, *Addresses to the German Nation*, 33.

⁵ Hans Kohn, "The Paradox of Fichte's Nationalism," *Journal of the History of Ideas* 10, no. 3 (1949): 322.

⁶ David James, "Fichte on the Vocation of the Scholar and the (Mis)use of History," *The Review of Metaphysics* 63 (2010): 545.

should also be loyal to the German nation as the staging area for the “realization of the cosmopolitan idea.”⁷

Thus, Fichte founded his account of the German identity and its superiority in the determinate composition of its unique, organic language and its superior philosophy.

The Philology of Monuments

The period of time between Fichte’s death and the publishing of Nietzsche’s first work is important for three main reasons: firstly, because there was a significant shift in the methods used to approach questions of culture; secondly, because of the spread of philhellenism; and thirdly, because the question of German identity became increasingly important.

The rising social science of anthropology, and especially archeology, provided for this demand. Numerous German expeditions set off to rescue and bring back ancient Greek ruins. Codification of anthropological methods was further affected by these expeditions and the pressures on existing institutions to create and fund organisms to undertake further research, publishing and exhibits in their field.

But although the social sciences affected a new regime of more properly scientific reasoning, they ultimately served to reinforce the fundamental notion of culture as an outgrowth of essential historical, geographic and structural conditions.

But before the next move towards a new German mythology can be laid out, it is necessary to discuss the contextual discourse concerning something called the *Vorzeit*. In German, *Vorzeit* is nothing more than the “before-time.” This referred to a time before the present (time that came before), not a space existing outside of time itself (as in, time before time itself). In short, German nationalists of the late eighteenth century became obsessed with re-capturing fragments of ancient and medieval German history and poetry, to put it to the service of their own nationalism.

This point is best made by historian Patrick Geary in his recent book *The Myth of Nations*. In this book, Geary argues that the contemporary nation state is a testament to a few prominent European intellectuals writing in the eighteenth and nineteenth centuries.⁸ And upon further inquiry, it becomes apparent that these extremely influential intellectuals, like Herder, constantly drew upon a vast wealth of previous thought stretching back to the ancient Greeks. It is revealed, for instance, that when it came time to theorize a “Germanic” identity, the laudatory writings of the Roman Tacitus became a prized resource to Enlightenment and Romantic intellectuals alike. In conjunction with learned or scholarly intellectuals, politicians recognized the potential of nationalist theories to mobilize identities for political purposes. The most prominent of these politicians in Germany was

⁷ Kohn, 325.

⁸ Patrick Geary, *The Myth of Nations* (Princeton: Princeton University Press, 2002), 19.

Freiherr vom Stein of Prussia. This mobilization of identities could not have been successfully carried out without the support and legitimation of legions of social scientists, from anthropologists and historians to philologists, who helped shape and re-shape ethno-linguistic categories and thereby creating national myths which lent credibility to the nationalist movements of nineteenth century Europe. One philologist, who developed an especially original theory of how myth serves to cement national identity, was Friedrich Nietzsche.

The Mechanics of Myth-Making

Friedrich Nietzsche was first named professor of classics in Basel at the age of twenty-four. This early appointment is a testament to the sharpness of Nietzsche's intellect and the great confidence his superiors had in the quality of his scholarship. Throughout his oeuvre, Nietzsche proved to be a refined observer with his fingers on the pulse of the world around him. Seeing the decadence of his times and driven forth by the philosophical questioning of values, Nietzsche's work constitutes a harrowing critique of the entrenched institutions and unquestioned ideas which held sway in his day.

Unfortunately for his superiors at Basel, Nietzsche's first book was a shockingly unorthodox take on the Greek tragedy. In a book which is so rich partly due to the scope of its ambition and the viciousness of its antagonisms, Nietzsche unfolds a systematic re-interpretation of the Greek tragedy. It is in *The Birth of Tragedy* that Nietzsche teases out the Apollonian and Dionysian impulses present in the Greek tragedy. This new interpretation of the merits of Greek tragedy before Euripides and Socrates brought on a slew of criticism on *The Birth of Tragedy*.⁹ But while Nietzsche's reading of the classics is itself an interesting subject, it is not the focus of this discussion. What is more important for the German historian is what Nietzsche learned from his readings, specifically, what Nietzsche learned about the nature of myth.

In common parlance, myth is a synonym for falsity. But for Nietzsche, myth was an affirmation of the crucial process of self-creation. Nietzsche's work on myth in *The Birth of Tragedy* represents a radical break from the notion of culture as always-already determined. For Nietzsche, myth was the key component in the culture of a nation. Myth achieves this in two main ways: firstly, it delivers the nation from its contingent historical situation; secondly, it defines the horizon of the very space in which, and content with which, a national identity is to be crafted.

"The greedy Will," Nietzsche writes, "always finds some way of detaining its creatures in life and force them to carry on living." The "Will" does this by means of elaborate "delusions," one of which is the "Socratic pleasure of understanding." Nietzsche enumerates three styles of distortion by which the human Will seeks to

⁹ Marchand, *Down From Olympus* (Princeton: Princeton University Press, 1996), 129.

suture the “eternal wound of existence.” *Socratic, artistic, and tragic*.¹⁰ What we refer to as culture is, in the end, nothing more than a mix of these different styles of distortion which function as something like coping mechanisms for individuals whose sensitive natures makes the burden of existence especially daunting. Accordingly, cultures can be understood to be *Alexandrian, Hellenic, or Buddhist*. One must immediately recognize that these definitions did not describe cultures as absolutely homogenous, since they contain within them strands that “[have] to fight [their] way up alongside it, as something permitted but not intended.”¹¹ But Nietzsche utilizes these three categories to construct his theory of myth.

The modern world, of which Western Europe is an integral part, is animated by an Alexandrian culture. Alexandrian cultures, allegedly named after the birthplace of the philological profession, were fueled by the human “lust” for knowledge.¹² Enlisting mankind’s powers in the service of science, these societies had Socrates as their “archetype and progenitor.”¹³ This society holds as its ideal the man of learning, prizing theoretical aptitude and accumulated knowledge. There is an innate optimism at work within these societies, a deeply-held attitude that man can unlock the mysteries of existence through his capacity to understand phenomena. This neatly translated into a privileged status for the activities of the mind, evoking the principles of individuation and theoretical constructs. It is no mystery that Nietzsche’s diagnosis included the concern that the Apollonian impulse had lost its primordial balance and had come to dominate, and perhaps vanish, the Dionysiac impulses from modern societies. Illustrative of this cultural paradigm was the myth which presided over modern man: the myth of the fall. As a point of clarification, Nietzsche demonstrates a habit of referring to the myth of the fall as the “Augustinian,” or alternatively, “Semitic” myth.¹⁴ The myth of the fall is none other than the popular biblical story of first man’s expulsion from the Garden of Eden. This myth conflated sin and sexuality, identifying humanity’s earthly existence as a problem that needed to be either overcome (as an optimist) or merely lamented (as a pessimist).¹⁵ It is curious that the story of the fall held such a strong association with the impulses of the body, since the prize that tempted Eve was the fruit of the forbidden “Tree of Knowledge.” The fact that the sin was committed originally by a woman, however, serves to indicate that the true culprit behind mankind’s shameful betrayal was the wild, uncontrollable urges of man’s

¹⁰ Friedrich Nietzsche, *The Birth of Tragedy* (New York, Cambridge University Press, 2010), 85.

¹¹ *Ibid.*, 86.

¹² George Williamson, *Longing for Myth in Germany* (London, University of Chicago Press, 2004), 244.

¹³ Nietzsche, *The Birth of Tragedy*, 86.

¹⁴ George Williamson, *Longing for Myth in Germany* (London, University of Chicago Press, 2004), 241. These labels make reference to St. Augustine, early Christian thinker and the Semitic ethnic designation, which was applied to the populations native to the Middle East. While it is evident that this deploys popular contemporary ethnic delineations between Aryan and Semitic peoples, it is important to note that one should make an effort to approach these labels with as little possible recent historical connotations as is possible.

¹⁵ Williamson, 241.

physical composition.¹⁶ What this myth transmitted, both in its Augustinian and its Semitic variations, was that the human condition was something that needed to be overcome. The realm of the physical was full of pain, temptation and suffering. Salvation was to be attained by escaping the physical realm either through direct physiological death or through a taming of the animalistic drives populating the body.

The result of the flight towards control and the mind resulted in the embracing of the Socratic ideal, animated by the Augustinian-Semitic myth of the Fall. Just as Adam remained hungry even after he had given names to all of the beasts, modern man remained hungry even after having procured the fruits of science and sterile scholarship. The modern Alexandrian man who was the product of the Socratic culture remains “eternally hungry, a critic without desire or energy . . . who is basically a librarian and proof-reader, sacrificing his sight miserably to book-dust and errors.”¹⁷ The aim of the Socratic constitution was clear: to destroy the world of myths and replace them with skeletal scientific facts. “Now,” pronounced Nietzsche, “mythless man stands there, surrounded by every past there has ever been, eternally hungry, scraping and digging in a search for roots, even if he has to dig for them in the most distant antiquities.”¹⁸ By the time of Nietzsche’s composition of *The Birth of Tragedy*, the Alexandrian culture had taken root in Germany but had failed to sprout any means of salvation for the “eternal wound of existence.” Not only was it the aim of the Socratic man to dismantle the myths of old which helped give meaning to the struggles of everyday life and define cultural collectives, but the facts which were produced by Socratic man to supplant the myths of old were a woefully inadequate substitute. Thus, the modern scientist was forced to turn to the cultural artifacts of the ancients with a hungry avarice, seeking to satisfy their neglected need for meaning with the myths of the ancients. Modern man wondered rootless in search for a sustainable foundation.

The crucial insight of Nietzsche is that the hidden reasons for the decadence of his own day were to be found in his contemporaries’ embrace of the Socratic ideal, which had left them so “rootless” and “eternally hungry.” Nietzsche’s insight was that the ancient myth and its Socratic ideal that had been appropriated by modern man in the aftermath of a resurgence in the Renaissance was paradoxically an ideal whose imperative command was the demolition of myth. In other words, the myth of modern man was the myth of mythlessness.

Up and against the Semitic myth of the Fall, Nietzsche lays out the narrative of the Aryan myth of Prometheus. This myth narrates the way that Prometheus, a Titan who was the champion of mankind before the Gods, first sculpted mankind

¹⁶ One could continue to push this association by arguing that man’s brute physical drives appear to only become problematic once the betrayal and expulsion has already taken place and not before. But to belabor this specific issue is beside the crucial point at stake and would serve as an unredeemable distraction.

¹⁷ Nietzsche, *The Birth of Tragedy*, 88.

¹⁸ *Ibid.*, 108.

out of clay and successively stole the element of fire from the Gods to deliver it along with the gifts of civilization upon his mortal subordinates. This was taken as an affront by the god Jupiter. As a punishment for his stunt, Prometheus was secured to a boulder which he could not but struggle on. While immobilized on the rock, Prometheus was forced to endure the process of a vulture flying in, perching upon his abdomen, and devouring his liver. Only to make matters much worse, the liver would grow in overnight so that the punishment was exacted daily for all eternity.¹⁹

At first glance, the two myths appear to share similar plots. Both discuss an act of betrayal that enrages the divine and results in a fall from grace. And while one may get the impression that Nietzsche is ready to launch into a sterile philological dissection of the Prometheus myth, the reality is actually quite fresh. The myth of Prometheus is not yet another incarnation of the story of the Fall, but actually its opposite. The story of Prometheus is not a narrative of a hero's fall from grace, but of his rise to greatness through enduring insufferable punishment.

The story of the Fall, says Nietzsche, is one of lamentation. The story of Prometheus, on the other hand, is one of resilience in the face of eternal suffering. The former carries the lesson that existence in the worldly sphere is to be lamented and overcome, while the latter carries the lesson that the pains of existence must be endured and even embraced. It is appropriate to point out how seeds of many of the themes of the more mature Nietzsche, such as yea-saying and the Will to Power can already be observed in this early work of the philosopher's. The fact that the protagonist of the Greek myth was a lone male avoided any connection between his acts and sexuality, since it was committed in isolation of any source of sexual attraction, and thus Prometheus' act of self-definition avoided any moralizing prescriptions on sexuality.²⁰ Prometheus' act was a pure, authentic act of self-creation.²¹

Nietzsche's categorization as one myth as "Aryan" and the other as "Semitic" points to his familiarity with the scholarly literature on comparative myth at the time of *The Birth of Tragedy's* authoring. This philological sub-discipline traced differing mythological systems back to their historical and social origins, as a tool by which to study those ancient societies. Nietzsche was aware of the most recent developments in that sub-field, and yet characterized the overall trajectory of that line of research as "somewhat boring."²² The point, argued Nietzsche, was not to learn about the physical trivialities of the myth origins, such as the natural phenomena they were constructed to explain or the linguistic or material nature of the myths themselves. Rather, the point was to understand their full ethical and

¹⁹ Thomas Bullfinch, *Bullfinch's Mythology* (New York: Barnes & Noble Books, 2006), 26.

²⁰ It is interesting that there exists an association between female agency and sexuality which appears to be absent when male agency is discussed.

²¹ Williamson, *Longing for Myth in Germany*, 242.

²² *Ibid.*

aesthetic meaning.²³ In a certain sense, the study of myth should be used to learn about the values of the societies which constructed and lived through those myths, not to study the myths themselves. Herein one locates the motivation behind Nietzsche's controversial re-interpretation of significant aspects of ancient Greek culture: the extraction of timeless conceptual aesthetic and ethical values.

As George S. Williamson discussed in his writings on the subject, the myth of Prometheus was tied into humanity's respect and reverence for fire combined with the difficulty with which fire is created, resulted in a certain degree of guilt as to the ease with which humans possessed and used it. In Nietzsche's reading, this presented the ancient Greeks, as well as humans generally, with a moral dilemma. This dilemma was the following: how is one to deal with the guilt which results in the application of such a useful tool, an application which in the face of fire's power appears almost as profane? At this point Nietzsche drew inspiration from his greatest philosophical influence, Arthur Schopenhauer. The Greeks, surmised Nietzsche, resolved the dilemma by adopting a "pessimistic worldview." At first sight, it appears as contradictory to refer to the positive attitude of the Greeks as pessimistic while accusing the Judeo-Christian myth of leading to an unbalance or a denial of life. This may sound like an odd label to apply to the exuberant Greeks, but what Nietzsche meant was that for the Greeks, self-definition and individuation inevitably led to suffering. This Greek insight was similar to the Nietzschean discussion of the "eternal wound of existence."

When the Greeks thought back to the myth of Prometheus, they did not see the Titan's torments as a punishment to be endured and escaped, but instead as a "source of dignity."²⁴ It was understood that suffering would result from self-creation, or as Nietzsche understood it, simply from living in the world as such. But what the myth of Prometheus taught, in conjunction with Greek pessimism, was that the suffering corollary to existence was certainly worth it. In Prometheus' defiance in the face of eternal suffering, his subsequent punishment was "justified."²⁵ From this pessimistic perspective, the suffering resulted not from some Original Sin, but from the rather ordinary task of self-definition.

Friedrich Nietzsche's contribution to the German national movement was one that emerged from his radical insights into what made the Greek's culture so venerable. What those who believed in a German national project needed to do, Nietzsche argued, was to rid German culture of foreign myths, and adopt myths which were more likely to lead to stronger, healthier individuals and thereby result in a stronger culture. Without a strong common culture, any German state apparatus was doomed to failure.

²³ Ibid.

²⁴ Williamson, 242.

²⁵ Ibid.

To recall the sentiments expressed above, the myths which would lead to a healthier national constitution are those myths that encourage a balanced view of life by embracing a balance between the two fundamental human drives. Just as the myth of Prometheus transmitted an interestingly pessimistic attitude which encouraged individuals to live life fully in spite of its many sacrifices, the ultimate foundation of a new German state would have to be a new set of myths, proper to the German nation, which would encourage such a balanced world view and produce healthy and creative individuals.

It is important to point out that the balance achieved between the Apollonian and the Dionysiac is an interesting one. For the balance between these two aspects of human nature was not struck through checks and balances. We are not to understand that the Dionysiac somehow constrains the Apollonian or vice versa. Rather, the two drives bring out the best in one another. In other words, Nietzsche's critical insight in regards to Ancient Greek tragedy was that its early glory expressed such a balance between the Apollonian dialogue and the Dionysiac music and chorus. Without the Dionysiac aspect of things, the Apollonian drive becomes negative and in the end leads to endless rumination and self-undoing. And yet the same could be said of the Dionysiac. Without the structure provided by the Apollonian, a culture which embraces de-individuation singularly would end in orgiastic self-dismemberment.

A simple return to the myths of the Greeks would prove to be both inauthentic and pragmatically impossible, so a new beginning was required. What was needed was a "rebirth of myth." For the Nietzsche of *The Birth of Tragedy*, this rebirth of German myth existed in the works of Richard Wagner. For the later Nietzsche, that would no longer be the case. But one cannot afford to miss the important insight that is found in Nietzsche's early reverence for the works of Wagner. What Nietzsche detected in Wagner was a deep respect for myths, contained within a dramatic style across a wide range of works. Thus, in Wagner one could find the heir to "new German music."

This connection between a national myth and music can be understood in the context of Nietzsche's religious context. Written in the midst of the *Kulturkampf*, *The Birth of Tragedy* reflected a certain ambivalence towards the role of Protestantism within the German cultural space.²⁶ As George S. Williamson aptly points out, Nietzsche's Romantic-like composure in regards to the connection between myth and culture was at least in part derived from a long history of German Catholicism. Nietzsche himself found the comparison most appropriate when one observed the connection between the Catholic liturgy and the Greek chorus during their respective symbolic ceremonies. The joint singing of the Catholic liturgies of the Middle Ages would send congregants convulsing and singing in a way which was

²⁶ Williamson, *Longing for Myth in Germany*, 248.

particularly reminiscent of the Dionysiac spirit. In this sense, Nietzsche diagnosed within the ceremonies of the Middle Age Catholics elements of Ancient tragedies.²⁷

At the same time, Nietzsche harbors a potent dislike for the Catholic tradition, locating within it traces of the decadent “Roman” hunger for knowledge and facts. Additionally, Nietzsche found an undeniable association between Catholic tradition and French culture, which displayed the greatest signs of unencumbered Apollonian tyranny. And while the decadent French-Romance culture had been dealt an important blow during the Franco-Prussian War, the internal battle for the authentic myths of Germany was still being waged. Any traces of insipid Roman cultural elements needed to be uncovered and thereafter extirpated. What was required was a cultural struggle, that could not be won “without [the German] household gods, without [the German] mythical homeland, without a ‘restoration’ of all things German!”²⁸

German music, which was born out of German Protestantism, would be the basis of the new German mythology through its recapturing of the Dionysian tonal symbolism that had once been found in Greek tragedy. Of course, Nietzsche was certainly not the first German thinker to characterize German music as particularly “Protestant;” this had been a prevalent motif in the writings of many great German writers.²⁹ But what Nietzsche did pioneer was the connection between the German Protestant cultural tradition and ancient Greek “Dionysianism.” The German Protestant musical tradition had revived this ancient spirit and stood ready to “overturn” the “optimistic foundations” of Roman-Apollonian culture.³⁰ Borrowing from his master Schopenhauer, Nietzsche thought music to be the “immediate language of the will,” and that by sublimating itself into the realm of the image, music could veritably “give birth to myth.”³¹

Nietzsche then revealed an interesting interpretation. Science had followed a similar historical trajectory as music had, and had successfully (though presumably opposite) founded a tradition of “Socratic-Alexandrian” myth deconstruction. And although this tradition had yielded much in the way of innovation and facts, it had with Kant’s antinomies finally reached the outer reaches of its purview. These limits were characterized as “boundary points” at which “logic coils up . . . and finally bites itself in the tail.”³² It was at this stage that the Alexandrian or Faustian men of facts were faced with the reality of the failure of their optimistic starting assumption. In due course, thought Nietzsche, the value of the tragic insight

²⁷ *Ibid.*, 242.

²⁸ Williamson, 242.

²⁹ *Ibid.*, 249. In particular, figures like Goethe and Schiller were celebrated not only for their literary genius, but also for having grown up in Protestant households. In the musical realm, even Catholics like Mozart and Beethoven were understood to have convictions and spirits that were distinctly Protestant despite having had Catholic upbringings.

³⁰ Williamson, 249.

³¹ *Ibid.*

³² *Ibid.*

would become evident and a pessimistic worldview would be adopted wherein the failure of the Apollonian-fueled Socratic tradition could only be survived with the assistance of “art as a protection and remedy.”³³ The conclusion found here being that though the marriage of Protestant Dionysiac music and German Idealist philosophy, modern man would reverse the stages of Greek culture and (led by Germany) would “regress” from the Socratic-Roman culture back to a tragic Hellenic one.

Perhaps the most potent aspect of myth is that it delivers us from our contingent historical situation. Myth is, in an important sense, a powerful negating force. The ability to create myths which sustain collective and individual identities is a prominent element in Nietzsche’s work, although he doesn’t always use the term “myth.” Instead, Nietzsche speaks of giving “style” to one’s character as the high achievement of the creative and self-creative individual. The individual becomes both the artist and the work of art. What this sort of style achieves is a breaking of the chain of historical causality and the liberation of the individual subject, or perhaps nation, from determinism and pessimism through the embracing of the power of the will to project and re-shape one’s very conditions of existence.

Framed in this way, the elaboration of a national myth contains a radical emancipatory potential. This is insofar as myths would allow a nation to highlight certain elements of its heritage while eradicating others. Through this process of casting one’s concrete historical situation into doubt and affirming the positive agency of the nation, myth moves history.

Myth also shapes the horizons within which the task of creating and enlivening identity would take place. Nietzsche writes: “Only a horizon ringed about with myths can unify a culture.”³⁴ But what is it about the composition of a nation’s culture that necessitates such delineation?

As Nietzsche makes clear time and again: for a culture to grow strong it must lay strong roots. That is to say, healthy and confident citizens require a strong legacy on which to feed, a grand example to aspire to. Without such roots it proves foolish to hope for generations of healthy, creative spirits. Without such roots man is condemned to dig frantically for other, stronger, roots to appropriate. In this sense a mythical, historical womb nourishes the minds and spirits of individuals. Thus, strong identities necessitate a strong anchor.

That anchor is provided by the space opened up by myths. This is the place where theorization on the identity of a people may take place. Myths do this by creating a common horizon of understanding from which members of the collective may draw upon. A common horizon of understanding, whether implicit or explicit, itself

³³ Ibid. In particular, figures like Goethe and Schiller were celebrated not only for their literary genius, but also for having grown up in Protestant households. In the musical realm, even Catholics like Mozart and Beethoven were understood to have convictions and spirits that were distinctly Protestant despite having had Catholic upbringings.

³⁴ Nietzsche, *The Birth of Tragedy*, 136.

provides the baseline on which additional cultural structures may rest. In a certain Kantian sense, the horizon of understanding or even possibility is the foundation for a sound system of disciplines (*wissenschaften*) such as history, statecraft and even perhaps natural science. And what better way to formulate identity than the set of historical, economic, cultural, and other information one draws upon? This is how myth delineates the space in which nationhood may be staged. But in order to grasp the crucial point of Nietzsche's explication of myth one must delve deeper still.

For myth is not merely the force which demarcates the space in which identities may be etched. Even more radically still, Nietzsche affirms that myth structures our very reality.³⁵ Speaking here as perhaps history's first structuralist, Nietzsche implies that social reality is necessarily structured by historical fiction. He writes: "Nor does the commonwealth know any more potent unwritten law than that mythic foundation."³⁶

Nietzsche saw the defeat of the French in 1871 as the opportunity for the German assumption of leadership on the continent. As has been discussed, the formulation of a new German national mythology would lend precious support to any German national project. Before institutions and laws could affirm a new German role, a new foundational mythology was needed to re-invigorate the German culture.

Such a connection between law and mythic foundation rests on the assumption that law can be distilled into two categories. These are written law and unwritten law. The former enumerates explicit laws as written down in the basic law and statutes that are derived from or added to it. The latter consists of the underlying "unwritten" laws which sustain their explicit relatives. Any coherent body of explicit law rests firmly upon a foundation of unspoken laws. These unspoken laws are constituted of myths, base assumptions and similar kernels of collective experience (the *Nation, God, History*).

Explicit, codified laws structure a society. Yet unwritten law not only provides the foundation for codified law, but also prescribes the times at which subjects are permitted or even solicited to break explicit law. (Deserted red light at four a.m., civil disobedience) Additionally, the values which sustain these and other social systems are also sustained and permeated by ideological assumptions which may be equated to Nietzsche's myth.

What Nietzsche is in many ways up to in *The Birth of Tragedy* is the solicitation of a new German national mythology. This mythology would be created by a twofold effort. On one hand, non-German elements of culture, with particular reference to France, would be extirpated. On the other hand, native German folklore and tradition, especially in its ancient pre-Roman and medieval varieties

³⁵ Marchand, 127.

³⁶ Nietzsche, 137.

would be romanticized.³⁷ A special place is reserved for Nietzsche's great idol at the time, the composer Richard Wagner.

Here we find the hidden cause of his enemies' ire in Nietzsche's positing of an anti-essentialist humanist project.³⁸ Against Fichte and the social sciences, Nietzsche's theorization of myth discloses a new project, one radically different from the essentialism of his predecessors. It is clear that language and ruins are not positively excluded from a Nietzschean mythical project. But as has been demonstrated, these essentialist elements do not occupy any sort of special position within the project as they did for Fichte and those scholars that succeeded him. And it is in this fundamental de-centering of what had, up to that time, been privileged elements of a German national-mythical discourse that the combative thrust of Nietzsche's *The Birth of Tragedy* is found.

Although crucial to our understanding of the German nationalist project of the nineteenth century, it is hardly limited to that time and space. Analogous discussions can be found almost anytime and anywhere. Just under a century and a half later, similar questions of national identity, myth (or ideology, if actualized), and the opposition of historical determinism and genuine self-creation haunt us still.

³⁸ Geary, 23.

³⁹ Williamson, 245.

**2012 FLORIDA CONFERENCE OF
HISTORIANS
52nd ANNUAL MEETING
February 24-25, 2012
LAKE CITY, FLORIDA
HOSTED BY FLORIDA GATEWAY COLLEGE**

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Hello and welcome to Lake City for the 52nd Annual Florida Conference of Historians. As the “Gateway to Florida,” Lake City is situated at the crossroads of commerce and it has been in this position for many years. I hope you will take some time to explore our historic downtown, or the many recreational opportunities in our area.

I am proud that Florida Gateway College is the host institution for this year’s conference. We are now a four-year school and we are proud of our reputation as one of the most engaged, and veteran-friendly, colleges in the nation. We strive to provide superior, affordable education for our five county district in North Central Florida and to our students throughout the country and around the world!

The Division of Liberal Arts and Sciences successfully prepares students for university transfer in a variety of majors ... and our students who go on to major in History at Florida universities earn GPA’s above native University students. I know you will be rewarded with this opportunity to hear about the latest trends in historical research and pedagogy.

Enjoy the conference, and again FGC and Lake City welcome you to our area.

Sincerely,

Brian G. Dopson, Ed.D.
Dean
Division of Liberal Arts and Sciences

**2012 MEETING
FLORIDA CONFERENCE OF HISTORIANAS**

Thursday, February 23rd

Early Registration 6-9 p.m. Hotel Lobby

The “Santa Fe” Room and the patio behind it, is open for our use during this time. Refreshments on your own.

Friday, February 24th

7:30 a.m. Ongoing Registration Hotel Lobby

Complimentary Continental Breakfast in the Hotel Lounge

8:00 a.m. Session 1

Session 1a. Santa Fe Room.

The Law and Slavery in the Antebellum South

“The Life of Joshua G. Clarke, Mississippi’s First Chancellor”

J. Calvitt Clarke, Jacksonville University

“Judging Against the Grain? Reading Mississippi Supreme Court Justice Joshua G. Clarke’s Views on Slavery Law in Context”

Andrew Fede, Independent Scholar

“‘Offenses Committed by Slaves Should be Speedily Punished’: The Campaign for Summary Courts for Slaves in Florida, 1822-1864”

Craig Buettinger, Jacksonville University

Chair / Discussant: Mike Denham, Florida Southern College

9:30 a.m. Session 2

Session 2a. Santa Fe Room.

The Civil War

“The Rights, Causes, and Necessity: The Contextualization of Slavery and the Middle Florida Plantation Frontier Within the Secession Crisis”

Lauren Thompson, Florida State University

“The ‘Irreconcilable Conflict’ and the Political Economy of the Civil War”

Wesley Decker, New College of Florida

Chair/Discussant: Seth Weitz, Dalton State College

Session 2b. Suwannee Room South.

Ancient and Modern Women’s History

“Portraying the Female in Late Antiquity: Women and the Feminine in the Poetry of Prudentius”

Lydia Epple, Florida Gulf Coast University

“The Role and Contribution of Women in the Canal Zone”
Ginger Kalinsky, Florida Gulf Coast University

Chair/Discussant: Patricia Farless, University of Central Florida

11:00 a.m. Session 3

Session 3a. Santa Fe Room. Modern Florida Environmental History

“Voices from the Stream: An Oral History of Working-Class Environmentalism on the St Johns River, 1960-2000”

Charles E. Closman, University of North Florida

“Sunbelt Environmentalism: Post-World War 2 Environmentalism in Everglades National Park”

Chris Wilhelm, Tallahassee Community College / Florida State University

Chair/Discussant: Jesse Hingson, Jacksonville University

Session 3b. Suwannee Room South. Developments in the Cold War World

“The Cold War and American Religion: How Dr. Billy Graham and Bishop Fulton Sheen Responded to the Early Cold War”

Michael Epple, Florida Gulf Coast University

“Reflecting on Contending Interpretations of the South African Border War, 1966-1989”

Albert J. Venter, University of Johannesburg

“Beautiful Game, Ugly Conversations: The Cultural Politics of Soccer in the U.S.”

Andrew Kotick, New College of Florida

Chair/Discussant: Heather Parker, St Leos University

12:30 – 2:00 Lunch on your own

FCH officers will meet in the Olustee Room for the annual business meeting.

2:00 p.m. Session 4

Session 4a. Santa Fe Room. Trends in Postwar Florida

“If You Are Hungry, Why Hold Out for a Steak? Reapportionment and the New Florida Constitution of 1968”

Seth Weitz, Dalton State College

“Sell Everything, Come Quickly to Florida, the Land of Milk and Honey: Jewish Motivations to Settle in South Florida, Post-WW2 to the Present”

David Trevino, Donna Klein Jewish Academy / Barry University

“Pioneering Journalist Beverley Morales: Redefining Womens Page Content in 1960s Florida”

Kimberly Wilmot Voss, University of Central Florida

Chair/Discussant: Michael Epple, Florida Gulf Coast University

**Session 4b. Suwannee Room South.
Power and Society**

“The Society Position of Native Americans, Slaves, and Women in French Illinois”

Amy Drewel, Florida State University

“‘Factory Work is no More Difficult Than Housework’: United States Government and Magazine Propaganda During World War II”

Kelley Duda, Florida State University

“Political Pan-Africanism: The Impact of Global Factors”

Rebecca Shriver, Florida State University

Chair/Discussant: Richard Soash, Florida State University

3:30 p.m. Session 5

**Session 5a. Santa Fe Room.
19th Century US Social History**

“‘For the Use and Benefit of the People’: The Intersection of Indian Lands, Conservation, and Federal Policy”

Richard Soash, Florida State University

“Property Rights and Suffrage for Women: An Inextricable Campaign Against the ‘Anti-Republican’ Doctrines of Marital Unity and Virtual Representation, 1840s-1870s”

Patricia Farless, University of Central Florida

Chair/Discussant: Kim Voss, University of Central Florida

**Session 5b. Suwannee Room South.
Perspectives on the History of India**

“Questioning the British Raj: Determining Administrative Efficiency Through an Agricultural Lens”

Lydia Dumais, New College of Florida

“Hunting and British Hunters in Colonial India, 1900-1947: New Technology, Humanitarian Hunters, and Growing Conservationist Awareness”

Fiona Mani, West Virginia University

Chair/Discussant: Blaine Browne, Broward College

5:30 p.m.

Cocktails and light refreshments in the Suwannee Room South.

6:30 – 8:30 p.m. Banquet in the Suwannee Room South

Welcoming Remarks: Dr. Blaine Browne, Broward College
President, Florida Conference of Historians 2011-2012

FCH Journal Remarks:
Dr. Michael Epple, Florida Gulf Coast University

Introduction of Keynote Speaker:
Dr. Sean McMahon, Florida Gateway College

Keynote Speaker: Dr. Paul Ortiz, Director of the Samuel Proctor Oral History Program and Professor of History, University of Florida. A veteran of the United States Army, Dr. Ortiz earned his Ph.D. in History from Duke University in 2000. He previously taught at Duke and at the University of California-Santa Cruz. His book *Emancipation Betrayed: The Hidden History of Black Organizing and White Violence in Florida from Reconstruction to the Bloody Election of 1920* was published by the University of California Press. He has won awards from the Southern Regional Council and from the Florida Historical Society. Dr. Ortiz's lecture is "What's Wrong With Florida?"

Saturday, February 25, 2012

7:30 a.m. Complimentary Continental Breakfast, Hotel Lobby
Conference Registration Continues in the Lobby

8:30 a.m. Session 6

Session 6a. Santa Fe Room.

"A Fight For What's Right" Gender, Power, and Identity in Superhero Comics

"Comic Book Nurses: A Barometer of Mid-Twentieth Century Gender Attitudes"

Christopher J. Hayton, Florida State University

"'Martha Washington': A Round the Way Hero"

Grace Gipson, Georgia State University

Chair/Discussant: Julian Chambliss, Rollins College

Session 6b. Suwannee Room South.

A Celebration of Young Scholars: Emerging Scholarship on the Nineteenth and Twentieth Century

"Selling Florida: The Movement Toward Collective Marketing of Florida Citrus, 1890-1950"

Holly Bennett, Florida Southern College

"Samuel Adams and the Boston Beer Company: A Story of American Innovation"

Shawn Marler, Florida Southern College

"My Fair Malady: Female Hysteria and Medical Practice in the Nineteenth Century"

Amy Jackson, Wesleyan College

Chair: Frank Hodges, Florida Southern College

Discussant: Karen E. Huber, Wesleyan College

10:00 a.m. Session 7

Session 7a. Santa Fe Room.

More than Meets the Eye: Exploring Exploring Identities in Comic Media

"Where is the Black Panther From? Wakanda and the Question of Post-Colonialism in Marvel Comics"

Julian Chambliss, Rollins College

“Costume Technology Representation of Superheroes’ Costume in Cinematic Cases”
Rimbault Sylvain, CRICC (Paris)

Chair/Discussant: David Proctor, Tallahassee Community College

**Session 7b. Suwannee Room South.
European Intellectual History**

“Beheading Saintliness: The Limited Altruism of Thomas More and Anne Boleyn”

Niki Incorvia, Nova Southeastern University

“On the Neitzschean Mechanics of Mythmaking”

Lucas Ballestin, New College of Florida

“Slavery and Progress: The Colonial Enlightenment of Pierre-Victor Malouet”

David Harvey, New College of Florida

Chair/Discussant: Marco Rimanelli, St Leos University

11:30 a.m. Session 8

**Session 8a. Santa Fe Room.
If Ye Be Worthy: Culture, Race, and Identity in Superhero Comic Media**

“‘Maybe the Costume is in Bad Taste’: Race and Masculinity in Ultimate Spider-Man”

Wylie Lenz and Rachel Riley, University of Florida

“Nothing Goldar Can Stay: The Rise and Fall of a Manga Superhero in America”

Kimiko Akita, University of Central Florida

Richard Kenney, Florida Gulf Coast University

Chair/Discussant: Julian Chambliss, Rollins College

**Session 8b. Suwannee Room South.
Military History**

“Jacksonville and Camp Blanding, 1939 – 1945”

Anthony Atwood, Florida International University

“The Embedded Press Revolution: Cooperation, Comaraderie, and the New Military-Press Relationship”

Andrew J. McLaughlin, University of Waterloo

“Napoleonic Strategy and Cavalry Warfare Under Murat”

Marco Rimanelli, St Leos University

Chair/Discussant: Jack McTague, St Leos University

1:00 p.m. Conclusion of Conference Activities

See you next year in Sarasota for the 53rd Annual Florida Conference of Historians – hosted by Dr. David Harvey and the New College of Florida.