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The Twilight of the Gods: the Norwegian Stave Church as a Representation of the Pagan End of the World

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ABSTRACT:

This paper explores the influence of Norse pagan mythology on the design and construction of stave churches, the earliest medieval Christian structures in Norway. Unique to any other Christian church design in Europe, stave churches, which began in the 11th century, were developed as physical representations Ragnarok, of the end of the Norse pagan world. By examining Ragnarok, an event in the Norse mythos that resulted in the death of one world and its subsequent rebirth, one can see the pagan borrowing in the physical design and decoration of these churches, and their interior fusion with Christian motifs and designs.

BIOGRAPHY:

Ryan Stone a graduating senior with a double major in Classical Studies and Art History, and a minor in Medieval and Renaissance Studies. As of this fall, she will begin my Viking Studies Master's program at the University of Edinburgh, a yearlong program that will hopefully culminate in an extension of this paper as my dissertation. Though a classicist and art historian at CNU, Viking culture has long been a fascination of Stone's and this paper developed from Dr. Erhardt's support. Difficult to study from CNU, research of the stave churches primarily derives from religious correlations Stone has made with the development of the stave church architecture, an otherwise scarcely explored field. This paper was recently presented at the Art History Senior Seminar at Paideia, and was the recipient of their second place award.

*“Brothers shall fight | and fell each other,
And sisters' sons | shall kinship stain;
Hard is it on earth, | with mighty whoredom;
Axe-time, sword-time, | shields are sundered,
Wind-time, wolf-time, | ere the world falls;
Nor ever shall men | each other spare.”¹*

The gods are mortal. From the very beginning, pagan Scandinavia held the belief that at a certain point the world would end, the Aesir would destroy themselves, and a new world would be born from the ruins of Midgard.² When Christianity arrived at Scandinavia in the middle of the Viking Age (793-1066), the pagans did not entirely reject it, recognizing in it that Ragnarok—the twilight of the gods—was on the horizon.³ Ragnarok served as the justification for the acceptance of the new faith, and was infused into the design and function of their new places of worship. These stave churches thus became physical representations and of the end of the pagan world and the creation of the new Christian one.

What is Ragnarok?

The story of Ragnarok is as follows, summarized from the Scandinavian text *The Poetic Edda*, written by Snorri Sturluson in the 13th century.⁴ As stated, the gods were aware that their world and reign would eventually end. All gods in the Scandinavian mythos were mortal and capable of dying. According to a seer, a woman known only as the *volva*, the chain of events that would set Ragnarok into motion would begin following the death of the god of light, Baldr.⁵ There would be three consecutive winters, called Fimbulvetr,

¹ Snorri Sturluson, *The Poetic Edda*, trans. Lee M. Hollander (University of Texas Press: Austin, 2011), 9. An excerpt from *The Poetic Edda*, this verse describes the end of the gods—how each will fight one another and few will survive. This is an interesting statement because of the importance of kinship in the Viking culture.

² Aesir is the name of the dominant sect of pagan gods; Midgard is the Norse term for the "middle-earth," the world of humans.

³ Colleen Batey, Helen Clarke, R.I. Page, and Neil Price. *Cultural Atlas of the Viking World* (Oxford Limited: Oxford, 1994); 2, 26, 30; J.M. Clements. *Lost Worlds: Vikings* (Metro Books: New York, 2012), 3-5; John Haywood. *The Encyclopedia of the Vikings* (Thames & Hudson: London, 2000) 7, 10, 13; Neil Price. *The Viking World* (Routledge: London, 2008), 5, 164, 194; Peter Sawyer. *The Oxford Illustrated history of the Vikings* (Oxford University Press: Oxford, 1997), 2, 20-1, 48-9; Angus A. Somerville and R. Andrew McDonald. *The Viking Age: a reader* (University of Toronto Press: Toronto, 2010), 397. The official date that begins the Viking Age is often attributed to the Vikings' siege on Lindisfarne, a monastery off the coast of Ireland. This is the first recorded siege.

⁴ Batey, *Cultural Atlas*, 169, 187; Haywood, *Encyclopedia*, 179; Robert Kellog, *The Sagas of Icelanders* (Penguin Classics Deluxe: US, 2001), 561, 684; Sturluson, *Poetic Edda*, x, xi.

⁵ Helene A. Guerber and Kristen Wolf. *Myths of the Norsemen* (Barnes and Nobles Library of Essential Reading: US, 2007) 360. Son of Odin and Frigg, Baldr was the god of light.

putting an end to life on earth; the sun will be consumed by the wolf Fenrir;⁶ and all the evils of the world would be released from their prisons: Loki, the trickster god who caused Baldr's death, will be the leader against the Aesir at the battlefield Vígríðr.⁷

Once the evils are free, the gods would go to battle and those who fought would kill each other: Odin was meant to battle Fenrir and die, then his son Vidarr would take his place and both destroy and be destroyed by the wolf; Thor was intended to battle the Midgard Serpent, Jormungdr,⁸ who he had long searched for, and slay it, even as the serpent fatally wounded him. Following these and many other battles, the sky would turn black and the earth would be consumed by the sea. When the new world arose from the destruction, only a few of the Aesir were left: Baldr and Vidarr were resurrected, Vali (one of Odin's other sons) would arise, and Mogi and Magni—sons of Thor— would return. Together, these gods were said to make their new home in Gimle, a hall of gold, and the world would be restored with new life.⁹

Christianizing Pagan Norway

Writing in two centuries after the Christianization of Scandinavia, it is evident that Snorri's text is intended to show draw a correlation between Ragnarok and the rise of Christianity.¹⁰ The Christianization of Scandinavia was a very long, painful process and Norway saw the most conflict between the years 950-1000 CE.¹¹ King Hakon, the ruler at the time, was one of the pioneers of the Christian faith and his method was quite

⁶ Clements, *Lost Worlds*, 108-9; Guerber, *Myths of the Norsemen*, 360; Sturluson, *Poetic Edda*, 9. Sometimes, other wolves are cited.

⁷ Christopher Abram. *Myths of the Pagan North: The Gods of the Norsemen* (Hambledon Continuum: US, 2011), 162-9; H.R. Ellis Davidson, *The road to Hel; a study of the conception of the dead in Old Norse literature* (Greenwood Press: New York, 1968), 51-3; Guerber, *Myths of the Norsemen*, 358-366; Haywood, *Encyclopedia*, 153; Sturluson, *Poetic Edda*, 8. For the reader's reference, Baldr was inadvertently killed by Loki. Baldr was the favorite of his mother Frigg, and she made every person and plant vow never to harm him. All but mistletoe agreed. Loki, disliking the god, tricked his blind brother into throwing a spear of mistletoe at him, resulting in the death of the god.

⁸ The Midgard Serpent is also referred to in text as the World Serpent.

⁹ Abram, *Myths of the Pagan North*, 162-9, 212; Clements, *Lost Worlds*, 110-3; Davidson, *The road to Hel*, 51-3; Guerber, *Myths of the Norsemen*, 358-366; Haywood, *Encyclopedia*, 153; Sturluson, *Poetic Edda*, 8.

¹⁰ Price, *The Viking World*, 233, 311.

¹¹ Batey, *Cultural Atlas*, 35, 71, 189; Clements, *Lost Worlds*, 107, 133; Haywood, *Encyclopedia*, 140-1; Kellog, *Sagas of the Icelanders*, 346-8; Price, *The Viking World*, 159, 162, 623-4; Sawyer, *Illustrated History*, 74, 78, 129-30; Somerville, *The Viking Age: a reader*, 400-9.

like Constantine's in the Byzantine east.¹² Rather than destroying temples to build churches, or persecuting pagans, Hakon chose the midway approach: he left temples to the pagans, but built churches alongside them; he personally refused to sacrifice to the old gods, but did not punish those who continued the practice. Hakon aided the spread of Christianity by showing kindness to the established religion while also enforcing the new one where he could.¹³

This peace was short-lived following his death, however, as is often the case. His successor Jarl (Earl) Hakon was a wholly pagan man. Jarl Hakon destroyed the progress King Hakon made, and continued to sacrifice to the gods. A legend circulated that during a year of a terrible harvest, Jarl Hakon sacrificed to the gods of the Norse pantheon. The result—attributed to these sacrifices—was the subsequent revitalization of the crops, reaffirming the jarl's own pagan faith and restoring it in recent converts. Following this incident, an even stricter reign against Christianity began.¹⁴

It was not until the end of the 10th century when Christianity finally took root in Norway. King Olaf Tryggvason¹⁵ only ruled for five years (995-1000) but he made them count. Olaf travelled all over the country to enforce Christianity, but his approach was much more unyielding, as he resorted to torture and punishment to those who refused his religion. His successors—Sweyn Forkbeard immediately and then Olaf II (Saint Olaf) later—continued Olaf I's Christianization process until it was fully successful in the 12th century.¹⁶

¹² Thomas Mathews. *The Clash of Gods: A Reinterpretation of Early Christian Art* (Princeton University Press, New Jersey, 1995), 3, 13, 14, 23.

¹³ Abram, *Myths of the Pagan North*, 99-106, 111, 120-1, 123-5; Batey, *Cultural Altas*, 170; Clements, *Lost Worlds*, 133-4; Haywood, *Encyclopedia*, 89; Price, *The Viking World*, 212, 215, 621-5; Sawyer, *Illustrated History*, 166, 219-20, 257; Somerville, *The Viking Age: a reader*, 400-4. It is generally agreed upon that King Hakon's reasons for Christianization were selfish. Hakon was in the midst of a war with other powerful jarls (earls) and needed allies. Christianization was a method of unifying various tribes.

¹⁴ Abram, *Myths of the Pagan North*, 127-9; Batey, *Cultural Altas*, 188; Clements, *Lost Worlds*, 133-9; Haywood, *Encyclopedia*, 88-9; Kellog, *Sagas of the Icelanders*, 165-6, 182, 322-3, 371; Price, *The Viking World*, 224-5; Sawyer, *Illustrated History*, 169, 170-1, 228-9; Somerville, *The Viking Age: a reader*, 397.

¹⁵ Batey, *Cultural Altas*, 35, 71, 189; J.M. Clements, *Lost Worlds*, 133-9; Haywood, *Encyclopedia*, 140-1; Kellog, *Sagas of the Icelanders*, 346-8; Price, *The Viking World*, 159, 162, 623-4; Sawyer, *Illustrated History*, 74, 78, 129-30; Somerville, *The Viking Age: a reader*, 400-11. Harald Gormsson, king of Denmark, was one of the first Christian rulers—as Denmark was the first Christianized Scandinavian country—and sent word to Norway that everyone should be Christianized. Olaf Tryggvason lived in the region of Norway first baptized and when he became king, continued Harald's mission. It is also important to note, however, that while Olaf Tryggvason made important headway in Christianizing Norway, the process was not fully complete until the reigns of Harald Fairhair, Sweyn Forkbeard, and St. Olaf.

¹⁶ Batey, *Cultural Altas*, 189, 193; Haywood, *Encyclopedia*, 139-40; Price, *The Viking World*, 621-5; Somerville, *The Viking Age: a reader*, 409, 434.

The Beginning of Scandinavian Churches

During the early years of Christianity, particularly the 11th century, there was a dramatic rise in church building due to the newly Christian leaders.¹⁷ But despite the new religion, the architects of the churches clung to the familiar: heathen hofs (Figure 1), the initial locations of pagan practice, were looked to for structure and design. Though there is no definitive evidence for pagan places of worship, these hofs were banqueting halls of the rulers in which religious worship commonly took place before or following meals.¹⁸ Their attention to verticality and emphasized dragon heads were directly borrowed by the architects of the new churches, which themselves were directly borrowed from the construction of the Viking ships: a familiar and undoubtedly comforting sight to the Scandinavians.¹⁹



Figure 1. Two reconstructions of the heathen hof at Uppåkra, Sweden.

¹⁷ Batey, *Cultural Atlas*, 189, 193; Haywood, *Encyclopedia*, 139-40; Price, *The Viking World*, 320, 334-5, 621-25-5; Somerville, *The Viking Age: a reader*, 409, 434.

¹⁸ Graham-Campbell, *Viking Art*, 184.

¹⁹ Graham-Campbell, *Viking Art*, 178-9; 183-4; Kirsten Wolf, *Viking Age: Everyday Life During the Extraordinary Era of the Norsemen* (Sterling Publishing: New York, 2004), 109, 112-4.

The stave churches are constructed using a post and lintel form of architecture; *stav* is the Norwegian word for "post."²⁰ As seen in figures 2 and 3, Borgund and Hopperstad stave churches respectively, they borrow the two basic hof structural components: verticality and dragon heads. As with the majority of Scandinavian architecture, the churches are made of timber, a readily accessible material in the area, though not necessarily conducive for longevity.²¹ It more than likely did not occur to the northern architects to search for other material; not only was wood cheap because of its abundance, but they were also incredibly well-skilled in the material due to their strong hip-building capabilities.²²



Figure 2. Borgund Stave Church, Borgund, Norway, 12th c. CE.

²⁰ Graham-Campbell, *Viking Art*, 184.

²¹ Graham-Campbell, *Viking Art*, 184.

²² Clements, *Lost Worlds*, 36; Wolf, *Viking Age*, 109, 112-4.



Figure 3. Hopperstad Stave Church, Hopperstad, Norway, 1130 CE.

The architects' skills in shipbuilding thus led, as previously mentioned, to a direct influence on the churches from the Viking warships, a practical choice for a sea-faring culture.²³ The interior roofs are essentially inverted ships (figure 4), while on the exterior, carved dragon heads growl down from ridge crests. These heads are intended to recall to the viewer's mind the warships that once terrorized the coastlines of new lands before making landfall and laying siege. According to scholar Olaf Olsen, there is no other source for the style of the stave churches except indigenous Norway itself, which lends credibility to their choice to incorporate ship designs.²⁴ Though the warships would have been frightening to the foreign lands the Vikings attacked, such as Lindisfarne in Ireland or the Orkney Islands of Scotland, the appearance would have been natural and probably welcoming to the Norwegian viewers.²⁵ They would have recognized the heritage in this warlike structure, and would undoubtedly have drawn a correlation between the harbinger of the new religion and the harbinger of Ragnarok: the ship of dead warriors, Naglfar.

²³ Batey, *Cultural Atlas*, 38-43; Bjerknes, *Borgund stavkirke*, 1-5; Clements, *Lost Worlds*, 36-45; Sawyer, *Illustrated History*, 113, 193, 195, 248-9; Somerville, *The Viking Age: a reader*, 194-5; Wolf, *Viking Age*, 109-116.

²⁴ Clements, *Lost Worlds*, 36-45.

²⁵ Campbell-Graham, *Viking Art*, 23, 199; Wolf, *Viking Age*, 164-7.



Figure 4. Borgund Stave Church roof interior, Borgund, Norway, 12th c. CE.

Naglfar: The Ship of the Dead

Referring again to Sturluson's *Poetic Edda*, at the onset of Ragnarok, Loki will arrive at the battlefield by way of Naglfar, a ship made entirely of the untrimmed nails of the dead.²⁶ This corpse ship was built over the entire history of the world by giants, the enemies of the Aesir, the leading gods of the Norse pantheon. It was loosed from its bonds by Jormundgr, his thrashing under the sea creating ferocious waves that breaks its chains.²⁷ Aboard the ship are Loki and his daughter Hel, ruler of the underworld, her dead army, and the same giants that built the ship. Naglfar's sole purpose is to bring the Aesir's enemies to the final battleground, thereby bringing an end to the Norse pantheon and the pagan world.²⁸

As the stave churches were built at the end of a period of religious instability, it is not unrealistic to draw correlations between their design and that of Naglfar. While the interior of the churches are *definitively* made with Viking warships in mind, their exteriors resemble the description of Naglfar almost perfectly. The shingled roofs are reminiscent of the human fingernails used for the building of Naglfar, the pointed tips overlapping one another to create a durable exterior, protecting the interior worshippers against rain and snow.

²⁶ Abram, *Myths of the Pagan North*, 162-9; Clements, *Lost Worlds*, 110-2; Guerber, *Myths of the Norsemen*, 362-3; Haywood, *Encyclopedia*, 132; Bruce Lincoln, "Treatment of Hair and Fingernails among the Indo-Europeans," *History of Religions*, 16.4 (1977), 351—362; Sturluson, *Poetic Edda*, 8-12.

²⁷ Abram, *Myths of the Pagan North*, 162-9; Clements, *Lost Worlds*, 110-2; Guerber, *Myths of the Norsemen*, 360-2; Haywood, *Encyclopedia*, 130; Sturluson, *Poetic Edda*, 10-1.

²⁸ Clements, *Lost Worlds*, 110-2; Wolf, *Viking Age*, 201-5.

Similarly, the human nails of Naglfar were intended to protect against the thrashing seas of Jormundgr, providing protection literally by the hands of the occupants on board, for the occupants on board.²⁹

Thus, with Naglfar in mind, the exterior of the stave churches can suddenly become viewed in a pagan light—which the first Christianized Norwegians would have also taken into account. The churches loom overhead like the ship of the dead coming ashore to announce the end of days, the structure itself announcing Ragnarok's success through its mere construction. The church would not have been constructed if the Norse pantheon did not end, which is further cemented by these already established Christian buildings. And with the eyes of the dragons gazing down, the newly Christianized worshippers have little choice but to accept their new religion.

The Pagan World Devoured

Now that the physical construction of the church has been correlated to Naglfar, it is important to understand how the remaining facets of the churches relate to Ragnarok as well. Even for the Norwegians to believe that these churches were symbols of the end of one faith and beginning of another, they would have needed more than just a Naglfar-like structure to understand the importance of these new religious havens. To accomplish this, the architects drew from another part of the myth of Ragnarok—the most important piece of the world's end: the rebirth.

In Sturluson's *Poetic Eddia*, the World Tree played one of the most important roles in the tale. Called Yggdrasil for its relationship to Odin,³⁰ the World Tree spans the entirety of the universe: its leaves reach to the very heights of heaven and its roots touch the bowels of hell. Because of its interconnectedness, it is the only thing to survive Ragnarok, and the shelter under which the only two humans survive. Lif and Lifsandir are the Adam and Eve of Norse mythology; from them, the human race will be reborn.³¹ Yggdrasil's protection

²⁹ Abram, *Myths of the Pagan North*, 162-9; Clements, *Lost Worlds*, 110-2; Guerber, *Myths of the Norsemen*, 362-3; Haywood, *Encyclopedia*, 132; Lincoln, "Treatment of Hair and Fingernails," 351—362. According to Lincoln, it was actually tradition in the Viking religion to trim the nails of the dead very short; in doing so, it would take the evils of the world that much longer to create a ship totally out of nails, thus extending the life of the world. Sturluson, *Poetic Edda*, 8-12.

³⁰ Bob Curran. *Lost Lands, Forgotten Realms* (New Pages Books: New Jersey, 2006), 51-4.

³¹ Abram, *Myths of the Pagan North*, 162-9; Clements, *Lost Worlds*, 110-2; Guerber, *Myths of the Norsemen*, 362-3

allowed them that chance. Thus, it was necessary to depict this tree on the doors of the stave churches because the churches now are the protectors of this new religion.

Looking first at the north portal of Urnes Staves Church (figure 5), the intertwining, interwoven vines and leaves are intended to be representative of Yggdrasil.³² The branches are entangled in what appears to be disarray across the portal, however this was a standard aspect of Viking and early medieval art, more apparent as Yggdrasil by the creature in the lower left corner.³³



Figure 5. Urnes Stave Church north portal, Urnes, Norway, c. 1132 CE.

Believed by many scholars to be the serpent Nidhoggr, the symbolism of a serpent gnawing on the World Tree would have spoken volumes to both remaining pagans and Christians alike.³⁴ Nidhoggr was a creature that lived in Hel and gnawed forever on one of the roots of the Yggdrasil.³⁵ When he finally made his way to the surface it was an indication that the final battle between the gods and giants was beginning.³⁶ By

³² Allan, *The Vikings: Life, Myth, and Art*, 38, 113; Haywood, *Encyclopedia*, 212; Price, *The Viking World*, 320, 334-5. The style of the portal is the Urnes style, which developed around 1050 CE—possibly in Sweden—but takes its name from this particular church. However, the Urnes type is the last of the Scandinavian animal motif styles that stretch all the way back to the early Viking era in the late 8th century. The Urnes technique is categorized by stylized animals, slimly interwoven into patterns. Animals have almond shaped eyes with their heads shown in profile, and tend to be curving in an upward fashion. These techniques are evidently seen on the Urnes portal as Nidhoggr is shown with the aforementioned almond eyes tightly twisting upward.

³³ Campbell-Graham, *Viking Art*, 150-7.

³⁴ There are varying beliefs about the type of animal this creature is. While it appears to have four legs, depictions of Nidhoggr in medieval Icelandic texts tend to depict the serpent with fore and hind legs, like a combination of a deer and a snake. Some scholars believe this creature is, thus, one of the four deers, however, due to the location of the creature and that there is only one, I believe this is meant to be indicative of Nidhoggr.

³⁵ Abram, *Myths of the Pagan North*, 162-9; Guerber, *Myths of the Norsemen*, 14, 168, 196, 360; Haywood, *Encyclopedia*, 212; Sturluson, *Poetic Edda*, 7-8. His particular root was placed over Niflheimr, the realm of ice.

³⁶ Abram, *Myths of the Pagan North*, 162-9; Guerber, *Myths of the Norsemen*, 14, 168, 196, 360; Haywood, *Encyclopedia*, 212; Sturluson, *Poetic Edda*, 7-8.

depicting Nidhoggr steadily making his way through the root, the steady conquest of Christianity over paganism is evident. Nidhoggr is the serpent from the Garden of Eden; he is the temptation for the apple; the constant reminder that Christianity—and Christ's sacrifice—is a necessary part of northern life now. That the World Tree survives his endeavors, through the end of time and into the new world, would have been a powerful message about faith. Depicting such an image right at the moment worshippers were about to enter the church would have created a moment of contemplation, and then appreciation for the new religion.

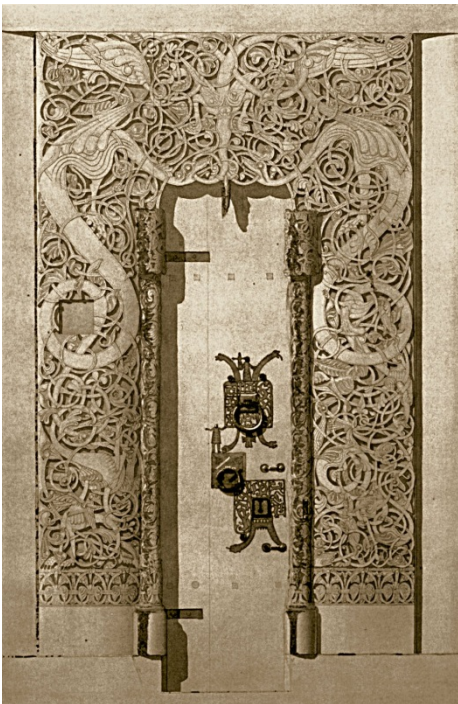


Figure 6. Heddal Stave Church portal, Telemark, Norway, 13th CE.

Now consider: doorways such as the Urnes portal or a similar one at Heddal Stave Church (figure 6) are physical barriers between two different locations—the interior and exterior worlds. It has already been established that the exterior of the stave churches were meant to recall the end of paganism; the inside, then—as the keeper of the new faith—recalls the second coming of life. Just as Nidhoggr begins the end of the pantheon by gnawing through the World Tree, the physical act of the worshipper crossing the threshold, past this depiction, is the completion of Ragnarok and a successful new beginning. Ragnarok is now a personal choice for the viewer.

Other, similar representations can be seen on the line drawing from Heddal Stave Church (figure 5), a portal which no longer exists, and the previously seen Borgund Stave Church (figure 6). As seen at both

Heddal and Borgund, there are similar motifs like those on Urnes—intertwining figures and tightly woven forms.³⁷ These churches also focus on the end of the world but utilize different themes than what was seen at Urnes. The destruction of the World Tree is replaced with serpent imagery, signifying the Midgard Serpent's destruction of the seas and subsequent drowning of the world.³⁸ While different scenes from Ragnarok are portrayed on the various stave churches, they all share the common theme: the end of their world is the beginning of the Christian one.

Though Christianity's hold on Scandinavia was strong following the reign of Olaf I and his successors, it was not possible for it to completely erase the old values and beliefs of the northern world.³⁹ By creating churches and images that spoke of the twilight of the gods, the pagan apocalypse, Scandinavia—and Norway in particular⁴⁰—was able to make peace with the new faith in such a way that did not rob them of their old traditions. The stave churches are the best example of the way in which Christianity and paganism were able to co-exist, and the best visual example of how the two faiths were combined so the new faith could be understood. Ragnarok allowed the pagans a justification for their acceptance of the Christian god, a celestial end of the world rather than a literal one, their celestial world ends and is reborn, and the structure of the churches is intended to act as a physical representation of it.

³⁷ Bjerknes, *Borgund stavkirke*, 2-5; Haywood, *Encyclopedia*, 212; Price, *The Viking World*, 320, 334-5

³⁸ Abram, *Myths of the Pagan North*, 162-9, 212; Davidson, *The road to Hel*, 51-3; Guerber, *Myths of the Norsemen*, 358-366; Haywood, *Encyclopedia*, 153; Sturluson, *Poetic Edda*, 8.

³⁹ Abram, *Myths of the Pagan North*, 99-106, 111, 120-1, 123-5; Batey, *Cultural Atlas*, 170; Clements, *Lost Worlds*, 133-9; Haywood, *Encyclopedia*, 89; Price, *The Viking World*, 212, 215, 621-5; Sawyer, *Illustrated History*, 166, 219-20, 257; Somerville, *The Viking Age: a reader*, 400-4, 409, 434.

⁴⁰ This paper predominately discusses Norway, the purpose of this caveat.

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LBJ's "Whiz Kids": The Failure of Hyper-logical Warfare in Vietnam

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Oliver Thomas is currently working on two majors in History and American studies while also seeking to complete three majors in Leadership, U.S. National Security Studies and East Asian Studies. His main areas of research and study revolve around political philosophy, international relations, diplomacy, weapons non-proliferation, Sino-U.S. relations, and societal and environmental sustainability. He is the president of the Alexander Hamilton Society Chapter at Christopher Newport University which is ranked amongst the top five chapters in the country. The society is committed to hosting constructive debates on various foreign policy issues. In turn, on the meta scale, the society hopes to combat intellectual and civic apathy on CNU's campus. He is also a member of Alpha Chi, Phi Alpha Theta, Center for American Studies Ambassadors and the Green Team. Thomas currently works as a Junior Fellow for the Center for American Studies at CNU where he conducts research, aids professors in their publications, and facilitates symposiums. Having just completed his junior year, he plans to apply for a Fulbright Scholarship Grant to teach English in Taiwan. He also has plans to attend a graduate program in either History or International Relations in the future. Most of all, he enjoys interacting and holding discussions with citizens of foreign countries. This love of discourse, travel, and shared perspective was sparked by Professor Nathan Harter's private study group. He has ventured to many nations abroad such as Denmark, Germany, Poland, China, Canada, and England. Thomas spent time last summer teaching Chinese students English and has since become very close with many of them. Besides his studies here at CNU, he is very passionate and interested in drumming, Chinese language, baseball, sustainable farming/composting, and climbing.

Since the Enlightenment, the human mind has undergone a perpetual transformation toward rational thought. With technological breakthroughs, new methods of calculation and industrial mass production, the twentieth century epitomized a reliance upon numbers. Indeed, there exists a natural instinct in modern man to trust in quantitative analysis and equations searching for truth. However, in some cases, over dependency upon this system of thinking ironically leads to adverse effects. The ancient Greek philosopher Plato had it right when he asserted that, “a good decision is based on knowledge and not numbers.”⁴¹ One such example of over-rationality can be found in the tumultuous times of the Vietnam War Era in America.

President John F. Kennedy, a graduate of Harvard College, sought the best and the brightest to advise him on foreign policy. As a part of his dream team of “Whiz Kids,” Kennedy believed that calculations and reports were essential to debunk the issues posed in South Vietnam. From the upper echelon of Ford Motor Company came a number crunching monster. His name was Robert S. McNamara. As a professor at Harvard University Business School during the Second World War, McNamara developed statistical techniques of systems analysis for the War Department.⁴² McNamara’s reputation preceded him when he assumed the position of Secretary of Defense under President Kennedy. Unbeknownst to American executive officials under the Kennedy and Johnson administrations, a reliance upon statistics and technology would, in part, cost them the war in Vietnam. The question as to why America lost the war in Vietnam finds etiology in the choices made by U.S. officials and the influence they had on the president.

The conduct of the Vietnam War can be historically debated through conflicts amongst the American political and military bureaucracies. Under the Kennedy administration from 1961 to 1963, the United States harbored a group of advisers known for their academic zeal and obsession with overly logical risk analysis through numerical computation. These advisers were dubbed the “Harvards” or the “Whiz Kids” in honor of their intellectual capacity. As historian Mark A. Lawrence states, these “men believed that they could use

⁴¹ Plato, *Laches* (Project Gutenberg, 2013), <http://www.gutenberg.org/files/1584/1584-h/1584-h.htm>.

⁴² James William Gibson, *The Perfect War: Technowar in Vietnam*. (Boston: The Atlantic Monthly Press, 1986), 14.

America's vast material power to guide the development of Third World countries."⁴³ They asserted this policy in South Vietnam with the hope of deterring the threat of communist influence from China and North Vietnam.

The American objective to deter the spread Communism sparked numerous historical debates over the manner by which America projected power in Vietnam. In correlation to the spread of Communism throughout East Asia, advisers such as Secretary of Defense Robert McNamara, National Security Adviser McGeorge Bundy, and Secretary of State Dean Rusk employed a "hyper-logical" method by which they believed they could correctly assess the outcome of an engagement in Vietnam. JFK's stellar advisers adhered to a genealogy that found its roots in the "Wise Men" who were also considered the best advisers of their time during and after World War Two. Their names were William Harriman, Robert Lovett, Dean Acheson, John McCloy Jr., George Kennan, and Charles Bohlen. Having found themselves in high ranking positions as lawyers, diplomats, and bankers after graduating from Ivy League institutions such as Yale and Harvard, they held an infallible air about them that made them extremely trustworthy. As advisers, they shaped America's superpower mindset and manifested faith in American capability to project influence abroad.

Put simply, these officials were "the original brightest and best, men whose outsized personalities and forceful actions brought order to the postwar chaos and left a legacy that dominates American policy to this day."⁴⁴ These six advisers under the Truman administration set a standard of knowledge that future presidents relied upon when consulting their executive staff. In fact, Secretary of Defense McNamara was specifically chosen by Lovett during JFK's presidency. McNamara initially had no experience in foreign policy and relied heavily upon Dean Acheson's advice during Vietnam. McNamara recalled "looking to him as a God." He further stated that Acheson "was the wisest foreign policy advisor I worked with during seven years in government."⁴⁵ President Johnson himself depended heavily on the "Wise Men" as well as the "Whiz Kids" during the conflict in Vietnam because he was more focused on creating the "Great Society" at home. The genius advisers applied pressure to Johnson's psychological need assert his manhood and superiority, as

⁴³ Mark A. Lawrence, *The Vietnam War*, (Oxford: Oxford University Press, 2008), 69.

⁴⁴ Walter Isaacson & Evan Thomas, *The Wise Men: Six Friends and the World They Made*, (New York: Simon and Schuster, 1986), 19.

⁴⁵ Quoted in Isaacson & Thomas, *The Wise Men*, 654.

historian Robert Dean shows in his book *Imperial Brotherhood*. He argues that “U.S. hegemony over the ‘free world’ required the cultivation of imperial masculinity.”⁴⁶ It can be interpreted that Johnson’s advisers engaged him in a vicious cycle of political and rational credibility which exacerbated his need to assert his manhood and legacy. Graduating from a small state school in Texas, Johnson felt undermined by his advisers who tested his authority. A question that historians further debate is the extent to which Johnson chose the war.

Historian Fredrik Logevall maintains that President Johnson “chose” going to war in Vietnam. Johnson’s “egomania” and desire to perpetuate his credibility may also be attributable to the over-rational mindset of the advisers to the Kennedy and Johnson administrations. Logevall argues that LBJ and his advisors were aware of many opportunities to withdraw from the war in Vietnam, but these were not explored.⁴⁷ The Whiz Kids and military officials believed that their manpower, logic, and strategy could quickly eliminate the threat imposed by communists in Vietnam. However, other historians such as George Kahin regard the president as resistant to the idea of escalation and capitulated to the overpowering “logic” of his advisers.⁴⁸ One prominent historian who examined the question of responsibility for the war in Vietnam is H.R. McMaster. In *Derelection of Duty* he asserts that Johnson, the Whiz Kids, and the Joint Chiefs of Staff were engaging in self-deception when thinking they could win in Vietnam.⁴⁹ Moreover, executive officials did not care to formulate a strategy that could have been applicable to the combatants and manner of warfare in Vietnam. The decision to wage war in Vietnam ultimately affected the strategies created by American officials.

In closer relation to the historiographical question, historians David Halberstam and Frances Fitzgerald boldly assert that “American arrogance about its own ability and ignorance of the revolutionary appeal of the Vietnamese communists had produced an avoidable war.”⁵⁰ These arguments elaborate upon conceptions of

⁴⁶ Robert D. Dean, *Imperial Brotherhood: Gender and the Making of Cold War Foreign Policy*, (Amherst: University of Massachusetts Press, 2001), 12.

⁴⁷ Fredrik Logevall, *Choosing War: The Lost Chance for Peace and the Escalation of War in Vietnam*, (Berkeley: University of California Press, 1999), xxiii.

⁴⁸ David Hunt, “Washington Quagmire: US Presidents and the Vietnam Wars - A Pattern of Intervention,” in *A Companion to Post-1945 America*, ed. Jean-Christophe Agnew and Roy Rosenzweig, (Malden: Blackwell Publishing Ltd., 2006), 470.

⁴⁹ H.R. McMaster, *Derelection of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam*, (New York: Harper Collins Publishers: 1997), 332.

⁵⁰ David L. Anderson, “The Vietnam War,” in *A Companion to Foreign Relations*, ed. Robert D. Schulzinger (Malden: Blackwell Publishing Ltd., 2006), 313.

honor, justice and logical retaliation to ensure the longevity of the administration's legacy. In relation to the conduct of the war, logic ironically became the Johnson administration's worst enemy because the strategies implemented in Vietnam were fallible in the face of such an elusive enemy in addition to an unsupportive indigenous personnel. After analyzing whether or not the Johnson administration was "trapped" or "chose" to escalate in Vietnam, historical debates point to different perspectives by which America conducted the war.

The Perfect War by James William Gibson elaborates upon the argument that the Harvards, McNamara in particular, loved mass production and number crunching as a means to calculate victory. For Gibson, American officials such as McNamara sought to implement a scientific method or mathematical equation to create a valid "managerial technowar" against insurgency in Vietnam.⁵¹ After the Second World War, advances in technology and production provided logical structures for efficiency and accuracy. McNamara utilized IBM computer technology and quantitative analysis to predict outcomes of engagement in Vietnam. In turn, McNamara became LBJ's verification system. Yet, the question remains, and what this paper hopes to answer is, how valid was this strategy?

The faith in technological superiority over Vietnamese insurgent groups also yields important questions about how the morale of U.S. infantry was affected. Historian Max Boot argues that the conventional conduct of World War II did not prepare American infantry or bureaucracy for the conflict in Vietnam. In reference to General William Westmoreland, Boot states that "he was well schooled in conventional operations, but nothing in his background or education prepared him to face an enemy that did not stand and fight in the open like the Wehrmacht or the Korean People's Army."⁵² Background and "superior" fighting power in this case may have not been enough to suppress the threat in Vietnam. Were executive strategies and infantry training cognizant of the ambiguities of guerrilla warfare, and to what extent were overconfidence, machismo, and credibility factors in diluting the notion of an easy victory? Most of these questions pertain to the escalation and conduct of the war which began during the Kennedy administration.

⁵¹ James William Gibson, *The Perfect War: Technowar in Vietnam*, (Boston: The Atlantic Monthly Press, 1986), 79.

⁵² Max Boot, *Invisible Armies: An Epic History of Guerrilla Warfare from Ancient Times to the Present* (New York: Liveright Publishing Corporation, 2013), 418.

The escalation of American advisors in Vietnam was mainly the result of a fear of a communist victory in East-Asia. Eisenhower's "Domino Theory" instilled a mindset that left the American executive weary of allowing U.S. prestige to crumble under communist spread. At his inaugural address in 1961, Kennedy promised "that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to assure the survival and success of liberty."⁵³ Unfortunately, the Vietnamese, who had been ravaged by outside imperialist nations such as China and France, did not view the U.S. as liberators. To them, America was but another hegemonic power that sought to suppress their independence. Indeed, North Vietnamese leader Ho Chi Minh stated that "his people are prepared for a long struggle of ten or twenty years, and are willing to fight for the freedom, not of their own, but of future generations."⁵⁴ From the outset of the war, ambiguous notions of American presence in Vietnam perpetuated a misunderstanding of the enemy, their motives, and their combat tactics. Advisors such as McNamara used what prior knowledge they had in an attempt to make sense of the conflict. As David Halberstam points out, McNamara "knew nothing about Asia, about poverty, about people, but he knew a great deal about production technology and about exercising bureaucratic power."⁵⁵ Furthermore, American officials had no way to win over the hearts and minds of the indigenous populous. For fear of falling into the tragedy of "another Korea," a limited war of attrition and statistical analysis were America's tactics in Vietnam.

By 1962 and 1963, Kennedy's Whiz Kids' primary desire was to ease tension in Saigon under Ngo Dinh Diem's regime. Dissonance under his rule such as the persecution and killing of Buddhist protestors, verified that Diem was a tyrannical ruler and a misrepresentation of American democratic virtue abroad. In turn, the Kennedy administration initiated a cover-up coup to overthrow Diem and his brother Ngo Dinh Nhu. The Army of the Republic of Vietnam (ARVN) took part in an overnight attack on the Gia Long Palace in Saigon. A telegram from Saigon verified the success of the coup declaring both brothers dead: "President Diem, and his

⁵³ Kennedy Inaugural Address, *Public Papers of the Presidents of the United States: John F. Kennedy, 1961* (Washington D.C.: U.S. Government Printing Office, 1962), 1.

⁵⁴ Quoted in Noam Chomsky, "An Act of Imperialism," in *Light at the End of the Tunnel: A Vietnam War Anthology*, ed. Andrew J. Rotter (Lanham: Rowman & Littlefield Publishers, Inc., 2010), 347.

⁵⁵ David Halberstam, *The Best and the Brightest* (New York: Random House, 1969), 214.

brother and one presidential orderly were caught and killed by personnel under direction of Gen Mai Huu Xuan at church in Cho Quan, Cholon.”⁵⁶

At this point, America was under the spotlight of the international community. Optimism garnered from the coup fizzled out as the North Vietnamese National Liberation Front Army (NLF) took advantage of the disunion in the South. In reality, European countries such as France, West Germany, and Great Britain were more concerned with the battle against communism in Berlin. America, on the other hand, believed that Vietnam served as a primary proving ground to show the might of democracy and capitalism over communism. New York Times writer, Homer Bigart clarified American commitment to the cause.

“The United States seems inextricably committed to a long inconclusive war. The Communists can prolong it for years. Even without a large-scale intervention from the North, which would lead to ‘another Korea,’ what may be achieved at best is only restoration of a tolerable security similar to that achieved in Malaya after years of fighting. But it is too late disengage; our prestige had been committed. Washington says we will stay until the finish.”⁵⁷

To the Whiz Kids, these geopolitical issues could be resolved through managerial statistics, budgeting, and applied pressure. The issue of disproportionate faith in rational thought carried into the Johnson administration.

After Kennedy’s assassination on November 22, 1963, Johnson inherited the conflict in Vietnam as well as Kennedy’s advisors. Robert McNamara became an infallible source to Johnson. The Secretary of Defense was often referred to as a “data dictator,” but “he had an extraordinary capacity for learning the facts and summoning them in any situation.”⁵⁸ McNamara’s reputable background made it appear as though his equations and rationality could be applied to any situation. His undergraduate career at UC Berkeley installed logical and mathematical reasoning which took him to Harvard Business School. He described his education as “a

⁵⁶ Henry Cabot Lodge from the Embassy in Vietnam to the Department of State, telegram, November 2, 1963, 8 p.m., United States Department of State, *Foreign Relations of the United States*. 1961-1963 Volume IV, Vietnam, August-December 1963, Document 273.

⁵⁷ Homer Bigart, “Increasing American Involvement: February 1962, A ‘Very Real War’ in Vietnam-and the Deep U.S. Commitment,” in *Reporting Vietnam: Part One* (New York: The Library of America, 1998), 32.

⁵⁸ Special to the New York Times, “Pursuer of the Facts: Robert Strange McNamara,” *The New York Times*, March 9, 1964.

revelation,” and “to this day, I see quantification as a language to add precision to reasoning about the world.”⁵⁹ After graduating in 1939, McNamara taught accounting at Harvard soon after. With the Japanese attack on Pearl Harbor in 1941, McNamara was asked to aid the U.S. Army Air Corps in statistical analysis of B-29 bombing operations against Japan. McNamara’s background prepared him to maximize the efficiency of these bombing runs.

He and General Curtis LeMay focused solely on maintaining a productive ratio of targets hit vs. loss of crew per unit. All of a sudden, with improved technological and statistical capabilities, waging war became a quantifiable act. McNamara was part of a mechanism that sought to weaken an adversary through numerically driven attacks.⁶⁰ He further implemented statistical equations as the president of Ford Motor Company after the war. As stated in a New York Times article, McNamara “made it his business at Ford to help insure maximum productivity.”⁶¹ Mass production, data gathering and efficiency became reoccurring tropes in McNamara’s agenda to solve problems. Here, at Ford Motor Company, McNamara was dubbed a Whiz Kid. McNamara clarifies in his memoir that “because of our cerebral approach to making decisions and our youth, we became known as the Whiz Kids.”⁶² His reevaluations and changes to car prototypes made Ford more profitable. Seven weeks after becoming the president of Ford, McNamara got a phone call from John F. Kennedy, and McNamara was tapped to become the Secretary of Defense.

Knowing McNamara’s trajectory into the White House, it makes clear sense that he would believe that numbers, industrial output, managerial analysis, and logical thinking could win the war in Vietnam. America simply out produced the Axis powers during the Second World War and were able win. Indeed, McNamara’s strengths were more applicable to an enemy that fought in the open, yet this was not the type of war Vietnam was. Further escalation of advisors and bombing campaigns in Vietnam occurred after the Gulf of Tonkin incident on August 2nd and 4th of 1964. The American destroyer USS *Maddox* retaliated to attacks from North Vietnamese torpedo boats. The House and Senate passed the Gulf of Tonkin Resolution on August 7, 1964

⁵⁹ Robert S. McNamara, *In Retrospect: The Tragedy and Lessons of Vietnam* (New York: Times Books, 1995), 6

⁶⁰ Robert S. McNamara, *The Fog of War*, film, directed by Errol Morris (2003, Sony Pictures Classics).

⁶¹ Henry Brandon, “Robert McNamara’s New Sense of Mission,” *The New York Times*, November 9, 1969.

⁶² McNamara, *In Retrospect*, 12.

allowing the president to take any action necessary to deter North Vietnamese threats to American personnel. McNamara, Bundy, Rusk, and Generals Maxwell Taylor and William Westmoreland pushed Johnson to utilize tactical bombing campaigns. McNamara coined the operations as “graduated” and “sustained” bombing campaigns on specific targets to ensure the deterioration of communist forces in Vietnam. The bombing campaign became known as Operation Rolling Thunder and lasted from March 1965 to November of 1968.

For the Whiz Kids, numbers pointed to an ensured American victory by weakening Hanoi’s will to continue on with the war. Westmoreland and McNamara in particular employed “body counts” to verify the level of success of American campaigns. It was their objective to “introduce and accelerate the acceptance of cost-benefit analysis, systems analysis and the application of modern methods of business administration to the problems of defense.”⁶³ As seen in the recently declassified Pentagon Papers, McNamara created graphs to depict a “statistical survey of the war.”⁶⁴ Ratios of soldiers killed in action from both sides and a quantified analysis of the build up of forces in Vietnam point to McNamara’s obsession with equations and logic to interpret conflict. However, these numbers were highly malleable and often “baked” to serve as reassurance of American productivity. The United States Military Assistance Command displayed numbers to the public that were incorrect. Since data was usually gathered from the sky, officers were often unsure of the exact casualties rendered. A particular case can be seen in an excerpt from this 1964 New York Times article.

“The Army’s briefing officer was asked if the Vietcong casualty figure included those incurred in an engagement on March 3 between the Vietnamese airborne battalion and a Vietcong battalion near the Cambodian border. He said that the figure of 130 Vietcong dead for that battle had been incorporated. He was then asked if he was familiar with an eyewitness report that no bodies of guerillas had been found on the battlefield. He replied that the casualties had been reported by the Ministry of Defense and accepted by the United States Advisers.”⁶⁵

⁶³ Ibid.

⁶⁴ Commissioned by Robert S. McNamara, *Pentagon Papers: Evolution of the War. Statistical Survey of the War, North and South: 1965-1967* (College Park: National Archives, 2011)

⁶⁵ Peter Grose, “Battle Statistics Queried in Saigon: Vietcong Toll is Disputed-Setback Seen for Khanh,” *The New York Times*, March 7, 1964.

Westmoreland's "number game" during the years leading up to the Tet Offensive misrepresented American progress. Intelligence gathering systems such as MACV J-2 attempted to garner reliable data after insufficient help from the South Vietnamese.⁶⁶ In truth, it was not a matter of lacking intelligence, rather the enemy was non-distinguishable. Historian James Kitfield elaborates on how the Army viewed the bureaucratic system: "Some of the American troops felt body counts came uncomfortably close to turning them into bounty hunters." Furthermore, "once punched into computers and displayed on bar graphs and briefing charts, indices such as body counts could be construed as showing marked progress in a war where none really existed."⁶⁷ Westmoreland and McNamara's body count system yielded ineffectual because every Vietnamese dead was seen as VC, therefore miscalculations were bound to occur. McNamara's empirical system was both quantitatively and qualitatively unsound.

This was the case for a few reasons. For one, VC guerrillas and irregular combatants fought in the shadows and were usually not seen. Veteran Philip Caputo puts it frankly: "Phantoms, I thought, we're fighting phantoms."⁶⁸ The brushfire war between the Americans and guerrillas could not be won by brute force and numbers alone. Nor could orthodox ground tactics utilized in past conflicts be productively applied to this new kind of war. Reporter Bernard B. Fall points out that "it is one of the paradoxes of the Vietnamese war that the huge American military commitment to South Vietnam is not well suited for waging a guerrilla war."⁶⁹ In fact, guerrillas were aware of U.S. ground forces long before they came into their midst because of the loud disturbances they made. The VC could easily melt into the landscape or civilian population for cover after firing upon unsuspecting Americans and ARVN. Moreover, the guerrillas wore no standard issue uniform that delineated them as a distinct enemy. Dwight Eisenhower correctly stated that "here is a war that is the most

⁶⁶ Lt. Gen. Phillip B. Davidson, *Secrets of the Vietnam War* (Novato: Presidio Press, 1990), 32.

⁶⁷ James Kitfield, *Prodigal Soldiers: How the Generation of Officers Born of Vietnam Revolutionized the American Style of War* (New York: Simon & Schuster, 1995), 73.

⁶⁸ Philip Caputo, *A Rumor of War* (New York: Henry Holt & Company, 1977), 58.

⁶⁹ Bernard B. Fall, "Interview with Ho Chi Mihn: July 1962- Master of the Red Jab," in *Reporting Vietnam: Part One* (New York: The Library of America, 1998), 46.

nasty and unpredictable thing we've ever been in.”⁷⁰ Another reporter reiterated that “the battle that is being fought is complex--in the nature of the fighting, in the political background and in its international implications.”⁷¹ The allocation of infantry forces and numerical verification systems in Vietnam reflected the arrogance of American superpower mindset. Ambivalence and aggravation settled in once the Services recognized that superior technology and data analysis were not changing the tides of war in their favor. Kitfield sums up the crux of the issue by stating that after the Second World War, “the Army’s attitude was cocky and can-do, and that was both its greatest strength and a potentially fatal weakness, for it masked a certain blindness.”⁷²

American attempts at counterinsurgency operations were also futile because of an instilled rational and honorable mindset. Search and destroy missions were the primary means of flushing out VC and NLF forces on the ground, but often times were pointless. Sentry dogs used to sniff out guerrilla forces did not help the cause either because of their inability to adapt to the environment. In many cases, the dogs became ill and died. American counterinsurgency groups waged what was referred to as the “Other War,” deeming it less important. Cadres such as the Combined Action Program, Civilian Irregular Defense Group, and the Phoenix Program were highly effective against guerrilla fighters. These groups featured coordinated covert infiltration between American and ARVN forces into VC units to garner intel, tactical strategy, and enemy movement. Historian Max Boot maintains that “these programs produced more enemy kills and fewer casualties among American forces and Vietnamese civilians than more-conventional operations.”⁷³ Once again the lack of adaptive measures hindered American ability to understand and counteract the nature of VC irregular, asymmetrical warfare.

⁷⁰ Conversation between Lyndon B. Johnson and Dwight D. Eisenhower, October 3, 1966. LBJ Library; Miller Center. exhibit, *An Exceptional Alliance: Johnson, Eisenhower, and the Vietnam War*, Citation #PNO 2, Envelope #2, Belt #5, Tapes SO.01. Accessed <http://millercenter.org/presidentialclassroom/exhibits/exceptional-alliance>

⁷¹ Homer Bigart, “A ‘Very Real War’ in Vietnam,” in *Reporting Vietnam: Part One* (New York: The Library of America, 1998), 27.

⁷² James Kitfield, *Prodigal Soldiers: How the Generation of Officers Born of Vietnam Revolutionized the American Style of War* (New York: Simon & Schuster, 1995), 34.

⁷³ Boot, *Invisible Armies*, 419.

Military and executive bureaucracies only searched for a magical formula to win the war in Vietnam; One that McNamara seemed to offer. Troops looked upon this wartime strategy as impersonal and demeaning. In 1964, a pilot recalled McNamara visiting his company: “McNamara was here, spent his usual line, and has gone back home to run the war with his screwed-up bunch of people. We call them ‘McNamara’s Band.’ I hope and pray that somehow this man does something right pretty soon.”⁷⁴ Formulas and intelligence gathering were not enough to lift American troops’ moral as the war escalated in Vietnam. Making matters worse, soldiers could not even depend on their weaponry, dropping morale further. Such is the case of the evolution of the M16 assault rifle during the Vietnam War.

Eugene Stoner, an employee of Armalite modified his lightweight AR-15 prototype creating the new M16 rifle. Of course, McNamara and Generals LeMay and Westmoreland were attracted to the revolutionary technology and vied for the weapon to be produced and utilized at Air Force bases. McNamara’s decisions pertaining to the rifle speaks to his irrelevant attempts to apply past successes of logic and knowledge. Historian Edward Ezell rightfully poses the question: “What did the McNamara cost-effectiveness whiz-kids really know about rifles?”⁷⁵ McNamara supposed that by mass producing the weapon, ground troops would have a better chance at winning “meeting engagements.” Since the M16 was light and had a high rate of fire, U.S. ground forces would, in theory, overpower the enemy force regardless of their element of surprise. Ratios and number charts powered McNamara’s speculative theories about the implementation of the rifle. The Whiz Kids made all the final decisions in regards to modifying the M16 which ended up yielding problems for soldiers in the field. For the whiz kids, Vietnam served as a “testing ground” for the weapon.

By 1966, the rifle was issued in full production for military use in Vietnam. From the outset, soldiers reported malfunctions which, in some cases, led to death. For one, a misconception existed that the rifle was “self cleaning.” Soldiers were not issued cleaning kits. Another problem arose from a failure to chrome-plate the chamber of the rifle. McNamara, in truth had no knowledge of rifle mechanisms and pushed the prototype

⁷⁴ Capt. Jerry Shank, “A Pilot’s Letters Home: November 1963-March 1964: ‘We Are Losing, Morale is Bad . . . If They’d Give Us Good Planes . . .’” in *Reporting Vietnam: Part One* (New York: The Library of America, 1998), 133.

⁷⁵ Edward C. Ezell, *The Great Rifle Controversy: Search for the Ultimate Infantry Weapon from World War II Though Vietnam and Beyond* (Harrisburg: Stackpole Books, 1984), xiii.

through anyway. Many instances of the rifle jamming in combat from not being cleaned or faults in the mechanisms led to deterioration of morale in an environment where soldiers were already lost in their surroundings. Sgt. Maj. Kenneth Stumpf disdainfully remembers that “the M16 sucked. Mine jammed four times under fire. I used to think, how can we be so far ahead of every other nation in the world and they can’t give us a rifle that would shoot a fucking bullet?” He wondered “how many soldiers died ‘testing’ the weapon in Vietnam.”⁷⁶ Historian James Gibson reiterates in his book that, ground level, search and destroy missions were regarded as mechanisms of an assembly line rather than adaptive strategy against an elusive enemy.⁷⁷ Later modifications to the M-16 rifle made it one of the best assault rifles in the world, but the Whiz Kids’ arrogance and moral detachment from experiences of ground troops made “testing” the weapon a nightmare. Indeed, military ground personnel began to distrust the bureaucratic politicians and their theoretical frameworks of warfare.

The failures of body count statistics, lacking counter-insurgency operations, and the testing of the M16 rifle allude to the central problem of the Whiz Kids’ conceptualization of the war in Vietnam. Key players such as McNamara, Bundy, Westmoreland, and even Johnson could not understand the conflict in Vietnam kinetically nor politically. Thus, they used what methods they could in order to conceptualize the war. In reality, numbers showed that a chance for victory in Vietnam would be slim. By 1965 and 1966, it was estimated that one million troops would be needed to detain the communist threat in Vietnam. Moreover, it would take twelve billion dollars to fund the operations, and an ensured victory would only be attainable through complete annihilation of the population because there were not fronts or delegated adversaries.⁷⁸ Groupthink amongst the Whiz Kids also stifled any form of dissent which is clear in the case of Under Secretary of State George Ball and advisor Clark Clifford. Ball pointed out in regard to McNamara:

“Though he tried at the outset in 1961 to be realistic about the inherent difficulty of the struggle and the risks of its enlargement, he could not help thinking that because the resources commanded by the United States were greater than those of North Vietnam by a factor of X, we could inevitably prevail if we only applied those

⁷⁶ Sgt. Maj. Kenneth Stumpf, *Red Thunder, Tropic Lighting: The World of a Combat Division in Vietnam* ed. Eric M. Bergerud (Boulder: Westview Press, 1993), 50-51.

⁷⁷ Gibson, *The Perfect War*, 93.

⁷⁸ *Path to War*, directed by John Frankenheimer (2002; USA: Avenue Pictures Productions, 2002), DVD

resources effectively--which is what our government frantically sought to do for the next ten years. The quintessential advantage of the North Vietnamese and Viet Cong could not, however, be expressed in numbers or percentages.”⁷⁹

The power of groupthink in a time of such assurance was not easily corroded. Dissenters such as Ball were, in fact, correct in their assessment of the futility of America’s escalation of the war. McNamara only became aware of this years after America was entrenched in the conflict. In his memoir he admits to many of his faults in vouching for escalation in Vietnam. Deriving eleven distinct lessons from the conflict, McNamara attempts to reconcile the missteps America made during the war. His fifth lesson seems to be most applicable to the historiographical inquiry of this paper: “We failed then--as we have since--to recognize the limitations of modern, high-technology military equipment, forces, and doctrine in confronting unconventional, highly motivated people’s movements.”⁸⁰ American discourse with warfare has indeed forced a clearer understanding of unorthodox tactics and multi-domain attacks.

Today, the American military has learned from many of its mistakes in Vietnam. New battle concepts such as AirSea Battle utilize integrated, adaptive measures to project power across multiple domains. Although U.S. ground forces are still adapting to irregular and asymmetrical systems of combat, intelligence and innovative measures are being taken to fight in such conflicts. If any good can be derived from McNamara’s hyper-logical assessment of the Vietnam War it is that American power projection capabilities are no longer contingent upon speculative number crunching and irrelevant knowledge. In truth, the conflict in Vietnam was a liminal crisis for America as a superpower. America was forced to adapt to a new kind of war that was not fought by their orthodox standards. Ironically, McNamara later stated in 1968 that “man is the only creative animal on earth, though paradoxically his resistance to change sometimes can be heroically obstinate.”⁸¹ This problem he speaks of reflects his own deficiencies during the Vietnam War. The Whiz Kids’ failure to

⁷⁹ George W. Ball, *The Past Has Another Pattern: Memoirs* (New York: W.W. & Norton Company, 1982), 369.

⁸⁰ McNamara, *In Retrospect*, 322.

⁸¹ Robert S. McNamara, *The Essence of Security: Reflections in Office* (New York: Harper & Row, 1968), 107.

coordinate and adapt to asymmetrical warfare in Vietnam taught a bloody lesson that America won't soon forget.

Properly Justifying Originalism

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ABSTRACT:

In this argument, I seek to support a particular justification of originalism against other justifications. I argue that originalism is best justified by an appeal to two key principles of constitutional democracy: democratic authorization and the separation of powers. It is of the utmost importance to preserve the legitimacy of the law by adhering to the understanding of the Constitution's original authorizers – the people, construed broadly. It is equally important to preserve the stability of the law by adhering to the separation of powers and not stripping away power from the people or from other branches by abusing the freedom of the judiciary. Originalist interpretation accomplishes both of these goals by determining the original public meaning of the Constitution and then applying that meaning. Originalism, in short, is justified by the importance of the above two principles and by its ability to sustain these two principles. Sustaining these two principles, and thus preserving the authority of the law itself, is so important that even the perpetuation of some bad laws is an acceptable side effect, because good law cannot exist at all without an authoritative legal system. Further, alternative justifications, namely appeals to rights and appeals to consequences, both fail to properly justify originalism because they prioritize rights or consequences over the system established by the authority of the people. By setting inappropriate priorities, these justifications actually encourage exceptions to originalism in pursuit of these alternate priorities.

BIOGRAPHY:

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In *the Tempting of America*, Robert Bork laments that judges have ceased to decide solely legal issues, and have moved on to deciding moral and political issues. He tells how, “twice a year,” he “watched massive marches come down” Constitution Avenue, walking from the White House to the Supreme Court, and passing right by the Houses of Congress “with hardly a glance.”⁸² The reason for these two annual marches was the Supreme Court’s decision in *Roe v. Wade*. One march was conducted by proponents of the pro-life position, the other by proponents of the pro-choice position, both seeking to influence further government action on the matter of abortion. It is not the marches in and of themselves that Bork finds disturbing. Rather, it is the fact that the protestors see no need to make their position known to Congress, to their representatives, who are directly responsible for making laws that benefit the people. The protestors instead seek out the Supreme Court. They seek out nine men and women, believing that the very best way to alter American law is to convince a simple majority of this group, just five men and women, that their position is correct, so that these men and women can independently and pseudo-permanently change the face of American law. What is more disturbing even than the fact that this perception exists among the American people is that this perception is very likely accurate.

Bork moves on from his lament to argue for an originalist interpretation of the Constitution, a method of interpretation that encourages judges to limit themselves to deciding solely matters of the law. Such an interpretive method would, conceivably, prevent judges from being agents of activist social change. The people would no longer march upon the Supreme Court to solve a moral problem like abortion; they would flock to their legislators to demand that a law be passed. The people would no longer see the Court as an effective method of activist social change, because the Court would make itself an ineffective method of activist social change. The Court would diminish, by its own method of interpretation, the inappropriate dominance of nine men and women over the course of American law. The people would rely on elected representatives, not unelected judges, to make law. But, despite Bork’s hope for originalism, is such a result the consequence of simply any form of originalist interpretation? Or must originalist interpretation be backed by appropriate goals and justifications in order for the judiciary to be properly limited? I argue that, in order to serve as a valid and

⁸² Robert Bork, *The Tempting of America* (New York: Touchstone, 1990), 3.

valuable method of interpretation, originalism must be properly justified. The appropriate way to justify originalist interpretation is by an appeal to the principles of constitutional democracy.⁸³ While there are certainly a number of principles that might be given the moniker “of constitutional democracy,” there are two that, in the realm of constitutional interpretation, stand above all others: democratic authorization and separation of powers. With these two principles, originalist interpretation can be appropriately and effectively justified.

Originalism

Before moving on to a discussion of why originalist interpretation should be justified on the basis of principles of constitutional democracy, it will be beneficial to explore what originalism is. At its most basic, originalism is the name of a strategy that judges use to interpret the Constitution. The Constitution is complex enough, old enough, and produced by enough differing opinions that there are few quick answers to what a particular clause or passage in the Constitution means. To avoid arbitrarily interpreting the Constitution on the basis of personal preferences, judges attempt to create uniform methodologies for interpretation that can be applied to the Constitution as a whole.

Originalism is one such methodology. At the core of originalism lies the belief that the Constitution must be interpreted on the basis of its meaning at the time the Constitution was ratified. It should not be interpreted on the basis of what the Constitution’s words mean to us today. But, while most originalists have the same basic goal, originalism is not without its controversies. Whittington identifies the key agreed-upon components of modern originalism. He notes that the most basic point of agreement among originalists is “that the public meaning of the Constitution at the time of its initial adoption should be regarded as authoritative for purposes of later Constitutional interpretation.”⁸⁴ There are two key ideas underlying this claim: that “the meaning of the text is historically fixed,” and that this fixed historical meaning “constrains legal meaning.”⁸⁵

⁸³ A constitutional democracy, for the purposes of this paper, is a government that is based upon the authority of the people, but utilizes republicanism (representation) and federalism (multiple sovereigns) to slow down the law-making and policy-making processes in order to temper both the people and the government.

⁸⁴ Keith E. Whittington, “Originalism: A Critical Introduction,” *Fordham Law Review* 82, no. 2 (2013): 377.

⁸⁵ *Id.* at 378; Lawrence B. Solum, “District of Columbia v. Heller and Originalism,” *Northwestern University Law Review* 103 (2009): 944, 954.

Together, these ideas mean that originalists think that interpreters of the Constitution should look at what the text meant when it was ratified and that interpreters should consider this meaning to be legally binding.

Once this basic level of agreement is established, originalists must determine how exactly to discover what the Constitution meant when it was ratified. Modern originalists are in widespread agreement that, in order to discover what the Constitution meant when it was ratified, judges must identify “the meaning of the rule or principle that those who were authorized to create the Constitution meant to communicate.”⁸⁶ This means that judges must seek to understand what the people⁸⁷ thought the Constitution meant when they ratified it, and then apply that understanding. Using this “public understanding” of the Constitution as the core of originalist interpretation is most commonly referred to as “original meaning” originalism⁸⁸. Originalist scholars and judges used to seek out the original intent of the lawmakers, but the intent focused version of originalism is fraught with problems. These problems include, but are by no means limited to, the inability to know someone’s intent without them explicitly expressing it,⁸⁹ and the inability to know whether all lawmakers intended the same thing.⁹⁰ Modern scholars and judges have recognized the limitations of original intent, and have as a group moved to supporting original meaning.⁹¹ Modern day originalism, then, holds that judges should ascertain the original public meaning of the Constitution and then faithfully apply the original public meaning.⁹²

Constitutional Principle Originalism

To merit the use of originalism as an interpretive strategy, originalism must be appropriately justified.

While the basic concept of modern originalism is widely agreed upon, the appropriate justification is not.⁹³

⁸⁶ Keith E. Whittington, “Originalism: A Critical Introduction,” *Fordham Law Review* 82, no. 2 (2013): 389.

⁸⁷ In the broadest sense of the term “people,” referring to the general American populace alive at ratification.

⁸⁸ Public understanding: From Henry Paul Monaghan, “Stare Decisis and Constitutional Adjudication,” *Columbia Law Review* 88 (1988): 725; Original meaning: From Antonin Scalia, *A Matter of Interpretation* (Princeton: Princeton University Press, 1997), 38. I quote Scalia because even he, despite having his own terminology for his theory of interpretation (reasonable textualism), recognizes that the term “original meaning” describes the core of modern originalist interpretation.

⁸⁹ Charles Fried, “Sonnet LXV and the ‘Black Ink’ of the Framers’s Intention,” *Harvard Law Review* 100 (1987): 759.

⁹⁰ Keith E. Whittington, “Originalism: A Critical Introduction,” *Fordham Law Review* 82, no. 2 (2013): 382.

⁹¹ *Id.* at 379.

⁹² The precise means by which to discover the original public meaning of the Constitution is an important and current debate. However, the specifics of this debate are beyond the scope of this paper, as this paper is primarily concerned with the ‘why’ (instead of the ‘how’) of originalism.

⁹³ *Id.* at 394.

There are three chief methods of justifying originalism in today's scholarship: an appeal to rights, an appeal to consequences, and an appeal to processes.⁹⁴ I take a process-driven approach, and argue that originalism should be justified by an appeal to principles of constitutional democracy.

To appeal to principles of constitutional democracy is to argue that there are certain key components (processes) of our political system that justify and even necessitate an originalist interpretation of the Constitution. The two principles that are key to our political system and justify originalist interpretation are democratic authorization and the separation of powers. These two principles both espouse processes that are essential to the stability and legitimacy of the law, and these processes must be, and can only be, preserved by constitutional principle originalism.⁹⁵

Democratic Authorization

Democratic authorization can be summed up rather simply. In short, it is the people, and the people alone, who authorize the law. The people have “the right to make constitutions,”⁹⁶ and on the basis of this popular sovereignty they approve the fundamental and non-fundamental law.

There are two types of law, fundamental and non-fundamental. In the American political system, the Constitution is fundamental law, and any legislation made under the rules of the Constitution is non-fundamental law. Non-fundamental law is legitimate when it is made under the processes authorized by the fundamental law, and when it does not conflict with the fundamental law. Non-fundamental law serves to provide a way for the people's representatives to make laws that address concerns not covered by fundamental law.⁹⁷

Fundamental law serves as the backbone of the government that the people authorize. In the American political system, fundamental law is of the utmost importance because in order to authorize the government, the

⁹⁴ Id. at 394-400. Appeals to rights and consequences will be explained in a later section of the paper addressing counterarguments.

⁹⁵ As opposed to alternative justifications. The goal of this paper is not to argue for originalism itself, but to argue for a particular justification of originalism.

⁹⁶ Keith E. Whittington, *Constitutional Interpretation* (Lawrence, KS: University of Kansas Press, 1999), 154.

⁹⁷ It is important to note that the people authorize these representatives by electing them under the conditions set forth by the fundamental law.

people authorized the fundamental law itself. Authorization of the Constitution is the *means* by which the people consented to the American government. Because the people consented to the Constitution itself⁹⁸ and not to the government directly, it is the Constitution that truly rules supreme. The government exists merely as an agent of the Constitution, and, by extension, as an agent of the people.⁹⁹

Upon ratification, the Constitution was rendered authorized by the people, and became fundamental law. The government possessed the authority to do that which the people authorized in the Constitution, and to do *only* that which the people authorized in the Constitution. The people, as sovereign, give power to the government, and decide what power the government possesses, not vice versa. Originalist interpretation is justified and necessitated, then, by this flow of power from the people to the government. Because the people¹⁰⁰ who ratified the Constitution gave the Constitution its power,¹⁰¹ it is appropriate and necessary to look to the original public meaning of the Constitution, at the time of its ratification, to determine what the Constitution means, and by extension to determine what power was given to the government.

A slight problem arises from the fact that, while the Constitution was authorized originally by the people, who ratified it, it has not been explicitly authorized by continuing generations. The easy way around this issue is to hold that the people have tacitly consented, and assume that because they continue to live and vote in a nation they submit to its government. But this argument makes the grand and potentially improper assumption that the people made a “conscious choice”¹⁰² to consent. Whittington offers a better option, noting that future generations consent by conscious necessity, recognizing that their generation and future generations “can only expect their own constitutional will to be effectuated if they are willing to give effect to prior such

⁹⁸ The people consented to the Constitution (as opposed to the government) by ratifying the Constitution. The people did not ratify any particular government or administration, they ratified the Constitution. It is the Constitution that establishes the government, not vice versa.

⁹⁹ The people ratified that Constitution to carry out their purposes. The Constitution authorizes a particular form of government to serve the people. Thus, the government is an agent of the people.

¹⁰⁰ ‘People’ refers to the American people in each ratifying state. The ratification of the Constitution was conducted by state convention, and was subject to significant debate, both within and outside the state conventions. The final act of ratification was carried out by the state representatives appointed to the conventions, who were authorized by the people (through elections under the authority of state constitutions). While the people did not ratify the Constitution in a direct democratic process, their authority still underlies and provides for ratification because it is the people who authorized their representatives to ratify.

¹⁰¹ As opposed to the government, or political or moral philosophies, or future generations.

¹⁰² Id. at 129. A conscious choice was originally required for ratification.

expressions.”¹⁰³ By “accepting the authority of the Constitution,” the people of any individual generation “accept [their] own authority to remake it.”¹⁰⁴ As a result, following generations have the ability to remake both the law and the Constitution by altering non-fundamental law, altering fundamental law through amendment, or, of course, going the Jeffersonian route, altering the Constitution radically on a frequent basis either by convention or revolt. Following generations alter the law within the context of the Constitution, as it stands at any point, having the authority of fundamental law.¹⁰⁵ The authority of the Constitution, as the expression of the will of the people, is thus maintained through this conscious necessary consent. As a result, the original *and* continuing democratic authorization of the Constitution justifies originalist interpretation of that same Constitution.

Separation of Powers

Democratic authorization serves to establish the people as the source of power. Separation of powers, on the other hand, serves to ensure that the government established by the people is properly limited, so that the government can effectively serve the people. There are three types of separation of powers: branch vs. branch, state vs. national, and people vs. government. Together, these separations serve to limit the powers of government and prevent abuses against citizens.

Separation of powers between branches is the most commonly known form of separation. Inter-branch separation most often takes the form of power being separated between the executive, legislative, and judicial branches. The executive has the power to execute the law, the legislature has the power to make the law, and the judiciary has the power to both decide how to apply a law and decide whether or not a law oversteps the power granted to the government. By separating these powers, no branch can overstep the bounds of its power without stepping on the toes of the other branches and invoking their ire. To enhance separation of powers, checks and balances are added by slightly mixing these powers to make sure that the branches have substantive means by which to punish the other branches. This system then relies on the natural inclination of man to “resist

¹⁰³ Id. at 156.

¹⁰⁴ Id. at 133.

¹⁰⁵ This of course would change in the event of revolution (but not in the event of a constitutional convention). The past constitution would lose the authorization of the people and the new one would gain the authorization of the people.

encroachments” and defend personal power.¹⁰⁶ When one branch oversteps its bounds, the other branches utilize the checks at their disposal to defend their own power and put the errant branch back in its place. This system prevents any one branch from becoming so powerful that it can dominate the entirety of government.

The separation of powers between the state and the national governments adds an additional safeguard. The national government, though purposefully divided, can still on occasion muster enough solidarity to wield oppressive power. To prevent this, the national government is limited solely to its enumerated powers. All other powers are granted to the states, which are also subject to a separation of powers among branches. Thus, “a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”¹⁰⁷ The national and state governments are both subject to the limitations of separation of powers among branches, but must also be wary of each other. When a state oversteps, the national government, and other states, may offer opposition, and when the national government oversteps, the states may collectively offer opposition.

Branch vs. branch and state vs. national separation of powers both protect the rights of the people by limiting the government’s ability to step outside the bounds of the power specifically granted to it by the people. But there is still a danger that both the national and state governments might collectively agree to overstep their granted powers, or that a lack of ambition might render separation of powers useless¹⁰⁸. Further, there is a danger that the people might abuse one another through the government. Publius notes that it “is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part.”¹⁰⁹ One final separation is added, then, between the people and the government. The government is made dependent on the people by means of regular elections. If the governors begin to overstep their powers, the people can react by refusing to re-elect them.

On the other hand, the people are dependent on the government. They rely on the skill of the governors to accomplish things that they want *and* things that are good for them. Representatives generally make better

¹⁰⁶ Federalist 51, 319.

¹⁰⁷ Id. at 320.

¹⁰⁸ Id. at 319. When only one branch is ambitious, and the others are not, the one branch can easily overpower the others.

¹⁰⁹ Id. at 320.

laws than the people because they are “more knowledgeable and experienced than their constituents,” and they “operate in an environment that fosters collective reasoning about common concerns.”¹¹⁰ Because of their greater skill and more deliberative environment, these legislators sometimes know that the people’s immediate desires are in fact bad for the people, or for a particular group of people. They may also recognize the long-term benefits of making a law that the people do not like. In these instances the legislature can act contrary to the immediate desires of the people, and because between two and six years distance elections, the people have time to cool their passions and experience the benefits of a decision that they initially opposed. In short, legislators can do what the people would have wanted if they had possessed all of the same information available to the legislators. The legislature thus accomplishes not the will of the tyrannical majority, but the will of the “deliberative majority.”¹¹¹ In this way, the government is able to use its power to check the people *for* the benefit of the people.

The separation of powers is an essential component of constitutional democracy, limiting the excesses of the state and national governments, and even the excesses of the people. If the separation of powers is undermined, the danger of an oppressive government or an oppressive majority substantially increases. Unfortunately, the separation of powers and the system of checks and balances is weakest in regard to the judiciary. There are numerous checks upon the legislature. Not only is the legislature split into two, but the executive has a veto power, and the judiciary can declare a law unconstitutional. There are also numerous checks upon the executive. The legislature can override any veto, possesses control of the purse, and makes the non-fundamental law that governs the executive, while the judiciary can again declare executive actions unconstitutional. Both the legislature and the executive are also subject to terms and elections.

The judiciary, on the other hand, is limited only by the political capital it possesses.¹¹² The judiciary is freed from the political pressures that the other branches are subject to by the fact that its members sit for a life term, and by the fact that the only legal checks upon it are the extremely difficult amendment process and often futile

¹¹⁰ Joseph M. Bessette, “Deliberative Democracy: The Majority Principle in Republican Government,” in *How Democratic is the Constitution?*, eds. Robert A. Goldwin and William A. Schambra (Washington: American Enterprise Institute, 1980), 105.

¹¹¹ Id.

¹¹² Because of the people’s desire to use the court for social activism, the court often possesses a substantial amount of political capital.

attempts to act outside the jurisdiction of the Court. The only way that the other branches can in practice check the judiciary is by illegally ignoring the decisions of the judiciary and hoping that the people do not throw them out of office at the next election. Whether the judiciary wins this battle is simply a matter of political capital. It must be sure to not make decisions so outrageous that the other branches deem defying the judiciary worth risking the wrath of the people, and it must be sure to not make decisions that are so abnormal that it loses the trust of the people, but otherwise the judiciary is free to pass down its judgment on all non-fundamental law.¹¹³

This great freedom makes the judiciary extremely dangerous to both democratic authorization and the separation of powers. It may interpret the law in any way it desires. As a result it may choose to adhere to the authority of the people, or it may choose to adhere to the authority of whatever political or moral philosophy it wishes and impose this philosophy on the people against their very authority. Just nine men and women have the potential to pseudo-permanently¹¹⁴ alter the very meaning of the Constitution over the wishes of the millions on the basis of their personal ideological goals. Where the legislature's and executive's decisions can be molded and reacted to by the people through the election process, the judiciary's decisions are final until it decides otherwise. Because the judiciary is not structurally bound to the separation of powers pressures of both the government and the people, the judiciary must place these pressures upon *itself*. To avoid undermining both democratic authorization and the separation of powers, it is imperative that the judiciary hold *itself* to the Constitution. In order to hold itself to the Constitution, which is authorized by the people, the judiciary must uphold the authority of the people. To uphold the authority of the people, it must determine the original public meaning of the Constitution and then apply that meaning.¹¹⁵ Thus, to preserve democratic authorization and the separation of powers, the judiciary must utilize original meaning originalism. The use of originalism, then, is justified by the distinct importance of preserving the constitutional principles of democratic authorization and the separation of powers.

¹¹³ The interpretive methods judges subscribe to are well known, and if a judge begins to blatantly violate the methods he or she publicly subscribes to the people can lose trust in that judge and in the court the judge sits on.

¹¹⁴ Until the next court.

¹¹⁵ As a reminder, the original public meaning of the Constitution is what the people believed the Constitution meant when they ratified it.

Objections

Unsurprisingly, appealing to principles of constitutional democracy is not the only way to justify originalism. There are three primary ways to justify originalism: an appeal to principles of constitutional democracy, for which I have just argued, an appeal to rights, and an appeal to consequences. The two alternate methods of justifying originalism serve as objections to the method I propose simply because they hold that there is a superior method by which to justify originalism.

Justifying Originalism by an Appeal to Rights

Appeals to rights have an interesting relationship with originalism because they are so rarely associated with originalism. Perhaps the most prominent proponent of rights-based justifications is Ronald Dworkin.¹¹⁶ Dworkin argues that the “Constitution, and particularly the Bill of Rights, is designed to protect individual citizens and groups against certain decisions that a majority of citizens might want to make, even when that majority acts in what it takes to be the general or common interest.” He goes even further by arguing that “an individual is entitled to protection against the majority even at the *cost* of the general interest...[and] that men have moral rights *against* the state.”¹¹⁷ Dworkin has two primary reasons for making these claims. First, he believes that because the Bill of Rights makes a number of broad rights claims, “the difficult clauses of the Bill of Rights, like the due process and equal protection clauses, must be understood as appealing to moral concepts rather than laying down particular conceptions.”¹¹⁸ Just like a father may tell a child to treat others fairly and not be required to have identified or even have thought of every single instance in which fairness might be applied, so too the ratifiers of the Constitution may leave future generations with principles while not having thought of every way those principles might be applied.¹¹⁹

¹¹⁶ It is important to note that Dworkin is a living constitutionalist. He has such a prominent influence over rights-based justifications however that his ideas must be discussed even in the context of originalist justifications.

¹¹⁷ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), 146, 147. (Emphasis added.)

¹¹⁸ *Id.* at 147.

¹¹⁹ *Id.* at 134.

Second, Dworkin argues that men factually do possess inherent and fundamental moral rights, and that these rights are not limited to legal rights.¹²⁰ For example, “a black child has a moral right to an equal education...if it is wrong for the state not to provide that education.”¹²¹ Period. As such, these rights must be upheld, even against the state or the general interest. While Dworkin does not advocate that judges enforce rights that have no conceivable relationship to the Constitution, even if they are true moral rights, he does argue that the “court that undertakes the burden of applying [the difficult clauses] fully as law must be an activist court.”¹²² For Dworkin, the judiciary has the unique opportunity to advance moral rights where the legislature or executive fails to do so. Judges, then, must make up their own minds about what a principle in the Constitution means according to moral philosophy, rather than relying on a particular conception.

Dworkin’s argument is powerful because he recognizes the importance of upholding rights and very reasonably argues that the ratifiers cannot be expected to have thought of every instance in which a principle might be applied. But Dworkin’s argument is fatally flawed in its tendency to limit the judiciary’s fidelity to the Constitution, and thus its fidelity to the authority of the people. If we expand on the example of the father exhorting his children to fairness, we see that the father’s exhortation does not mean that the children should apply fairness however they deem fit. For example, the children might decide that it is fairer to distribute their father’s belongings amongst the poor than for their father to retain his belongings. While they certainly apply the principle given by the father, they do not apply it in a way the father would approve. The children exceed what the father meant the principle to mean, and thus are not faithful to the father’s original meaning. They exceed the authority bestowed by the father’s exhortation to fairness. In the same way, judges exceed the authority bestowed by the ratification of the Constitution, and are unfaithful to the Constitution and to the people, when they apply a principle beyond what can be ascertained to be the original meaning of the principle.

We might also imagine a situation in which the father exhorts the children to fairness, and then also sends them to beat a confession out of a man who had wronged the father. In such a situation, the children

¹²⁰ See *Id.* at 184-205 for Dworkin’s defense of the possession of moral rights.

¹²¹ *Id.* at 139.

¹²² *Id.* at 147.

would be unfaithful to the father's original meaning if, after the father died, they argued on the basis of the father's exhortation to fairness that it is unfair to beat a confession out of someone. They would be ignoring the father's original meaning and exceeding the authority granted by his exhortation. In the same way, a judiciary that applies a constitutional principle against concurrent actions of the ratifiers ignores what the ratifiers originally meant and thus exceeds what the ratifiers authorized.¹²³

To avoid reiterating the conclusion of the separation of powers section, it is enough to note that it is imperative that the judiciary make the choice to remain faithful to the Constitution, in order to uphold the authority of the people. When the judiciary exceeds the original meaning of the Constitution in order to uphold moral rights, as Dworkin would advocate, it fails to be faithful to the Constitution and exceeds the authority of the people.

The reason that rights-based justifications are so rarely associated with originalism, unsurprisingly, is that they often eschew the original meaning of the text in favor of rights. As Whittington notes, and Dworkin's argument demonstrates, in rights-based theories "the constitutional text is taken as a mere indication of a larger moral universe standing behind it that judges should access directly to enforce fundamental values against the state."¹²⁴ But despite the difficulty of justifying originalism through an appeal to rights, there are still several originalist scholars, Jack Balkin and Randy Barnett in particular, who have been influenced by Dworkinian theories.

Balkin argues for his own rather unique form of originalism, which he calls "living originalism."¹²⁵ This form of originalism might best be categorized as a very loose originalism. Balkin emphasizes the fact that the Constitution purposefully contains a combination of "rules, standards, and principles"¹²⁶ and discourages the treatment of standards and principles as rules. In fact, he accuses judges and scholars who apply standards and principles as rules of attempting to "blame the imposition of [their] values on the founders."¹²⁷ Instead of attempting to apply original meaning strictly, then, Balkin argues that we should apply the original meaning of

¹²³ For example, by overturning the death penalty on the basis of the cruel and unusual punishment clause.

¹²⁴ Keith E. Whittington, *Constitutional Interpretation* (Lawrence, KS: University of Kansas Press, 1999), 28.

¹²⁵ Jack M. Balkin, *Living Originalism* (Cambridge: Harvard University Press, 2011).

¹²⁶ *Id.* at 43.

¹²⁷ *Id.*

standards and principles loosely, adopting them to modern day. For example, he holds that if “the original meaning of the text requires ‘equal protection’ of the laws,” then we enforce that guarantee,” but “how we apply the principles of equal protection may well be different from what people expected in 1868.”¹²⁸ Balkin recognizes that our “contemporary understandings” of rights change, and argues that these rights should be upheld when the Constitution espouses a principle and not a rule. He technically holds to the Constitutional principle, but it is the contemporary understanding of rights that justifies how the principle is applied.

Barnett makes an argument that also incorporates Dworkinian ideas. He holds that “for a constitution [or interpretation] to be legitimate on the basis of hypothetical consent, it must be shown that such a constitution [or interpretation] is *consistent* with whatever may be the rights of the individual.”¹²⁹ Barnett opposes theories that rely upon tacit (implicit) consent or upon tacit consent’s more sophisticated cousin, hypothetical consent. The gist of tacit consent is that a government can reasonably assume everyone remaining in the land they govern to have consented to the government.¹³⁰ The gist of hypothetical consent is that a government can reasonably assume everyone remaining in the land they govern to have consented to “that to which a rational person would consent.”¹³¹ In response to these theories, Barnett argues that such presumptions are just that, presumptuous, and that, as Lysander Spooner noted, “Justice is evidently the only principle that *everybody* can be presumed to agree to, in the formation of a government.”¹³² That is, everyone can only be presumed to have agreed to have the government protect their rights, and thus the government (including the judiciary) must place the rights of the people above any notion of non-explicit consent. Thus, barring explicit consent, originalism is justified only by the importance of protecting the rights of the people.

Balkin and Barnett both make arguments that, while certainly appealing due to their promotion of basic rights, offer improper justifications for originalism. It is possible to attack rights-based theories individually, but when addressing justifications for originalism, this is unnecessary. Rather, there is a single flaw that renders all justifications of originalism by an appeal to rights highly ineffective. To justify originalism on the basis of

¹²⁸ Id. at 44.

¹²⁹ Randy E. Barnett, *Restoring the Lost Constitution* (Princeton: Princeton University Press, 2004), 30.

¹³⁰ Tacit consent theories avoid accusations of rule by force by pointing to some prior generations explicit consent.

¹³¹ Id. at 29.

¹³² Id.

rights is to place rights above originalism, and hold that originalism is the best interpretive theory *because* it is the best way to protect rights. But what about situations in which originalism is clearly not the best way to protect rights? For example, if *Brown v. Board* had been decided on the basis of Frankfurter's distinctly originalist legal (not political) view, segregation would have been upheld. Frankfurter's clerk Alexander Bickel spent an entire summer conclusively demonstrating that there was neither original intent nor any semblance of original meaning indicating that the equal protection clause opposed segregation in schools, and Frankfurter concluded that there was no constitutional basis on which to overturn segregation.¹³³ If rights are paramount, then, originalism must be abandoned in favor of the protection of rights. Whittington phrases this concern nicely, arguing that "a single-minded focus on enhancing rights might conflict with, rather than realize, the features and commitments of the original meaning of the Constitution."¹³⁴ Not only do rights-based justifications fail to truly justify originalism, they may end up serving as a means by which to undermine originalism.

Justifying Originalism by an Appeal to Consequences

Another potential way to justify originalism is an appeal to consequences. At their most basic, such appeals hold that "originalism provides positively attractive substantive policy outcomes."¹³⁵ In other words, originalism results in good law. Such an approach, however, is overly optimistic – something pointed out by Cass Sunstein's reference to such a reality as a fantastical "Scalia-land."¹³⁶ A more realistic appeal to consequences has been proposed by John McGinnis and Michael Rappaport.

McGinnis and Rappaport still argue that "originalism advances the welfare of the present-day citizens of the United States because it promotes constitutional interpretations that are likely to have better consequences

¹³³ Michael Klarman, lecture at Harvard Law School, March 10, 2014. Frankfurter later conceded to vote against segregation in order to preserve the unity of the Court when Chief Justice Vinson's death resulted in the Court's opinion changing from 5-4 in favor of segregation to 5-4 against segregation. He was also personally opposed to segregation.

¹³⁴ Keith E. Whittington, "Originalism: A Critical Introduction," *Fordham Law Review* 82, no. 2 (2013): 399.

¹³⁵ Keith E. Whittington, "Originalism: A Critical Introduction," *Fordham Law Review* 82, no. 2 (2013): 397.

¹³⁶ Cass R. Sunstein, *A Constitution of Many Minds* (Princeton: Princeton University Press, 2009), 21.

today than those of non-originalist theories.”¹³⁷ But instead of arguing that originalism itself results in good law (like in Scalialand), they argue that originalism is the best way to support supermajoritarian¹³⁸ processes and preserve the laws that result from supermajoritarian processes. McGinnis’s and Rappaport’s chief goal in promoting supermajoritarian processes is to create a good constitution,¹³⁹ a constitution that produces “maximum net benefits for the nation.”¹⁴⁰ They support originalism, then, because the “beneficence of that supermajoritarian constitution thereby requires using the original interpretive methods of the enactors.”¹⁴¹ Originalism is justified, and indeed necessitated, by the fact that it supports a supermajoritarian constitution, which in the eyes of McGinnis and Rappaport is a constitution that produces positive consequences by creating good law. Originalism is justified, at the simplest level, by the fact that it promotes good consequences.

This justificatory method is flawed for largely the same reason that rights-based justifications are flawed.¹⁴² Justifications that ultimately refer back to the consequence of good law – however that may be defined¹⁴³ – place the consequence over the interpretive method. As a result, if another interpretive method is shown to produce better consequences (or simply to better protect good law), originalism is no longer justified. At minimum, justifications on the basis of consequences warrant exceptions to the interpretive method when consequences so demand, and as a result serve to undermine rather than to effectively justify originalism.¹⁴⁴

Does Constitutional Principle Originalism Do More Harm than Good?

Justification of originalism by an appeal to principles of constitutional democracy can be attacked, as has just been explored, simply by proposing a different justification. It can also be attacked on the basis of its

¹³⁷ John O. McGinnis and Michael B. Rappaport, “Originalism and the Good Constitution,” *Georgetown Law Journal* 98 (2009-2010): 1695.

¹³⁸ *Id.* at 1697. Supermajoritarian processes require that a supermajority (a higher proportion than a simple majority) pass laws and ratify Constitutions. McGinnis and Rappaport believe that the American Constitution’s own ratification is an example of a supermajoritarian process.

¹³⁹ *Id.* at 1701.

¹⁴⁰ *Id.* at 1699.

¹⁴¹ *Id.* at 1734. It is important to note here that McGinnis and Rappaport have a somewhat different conception of originalism, one that actually pays some attention to intent (to the enactors), though this is softened by the supermajoritarian context. What type of originalism the authors prefer, however, is not relevant to the critique of their justification.

¹⁴² Keith E. Whittington, “Originalism: A Critical Introduction,” *Fordham Law Review* 82, no. 2 (2013): 399.

¹⁴³ *Id.* at 1699. McGinnis and Rappaport, as mentioned above, define good law as law that produces “maximum net benefits for the nation.”

¹⁴⁴ Keith E. Whittington, “Originalism: A Critical Introduction,” *Fordham Law Review* 82, no. 2 (2013): 398.

own flaws. One significant problem facing an appeal to principles of constitutional democracy is the fact that such a justification does not offer significant positive protections against negative policy outcomes, or, in other words, against bad laws.

It seems very reasonable to argue that the purpose of government is to benefit the people, whether that purpose is manifested in the protection of rights or the creation of good law generally. Thus it seems that an interpretive method or justification for that method that fails to protect against bad law or consistently protect rights is highly undesirable. If constitutional principle originalism maligns rights or produces bad law as a result of its strict adherence to original meaning, then it seems best to throw the justification and the interpretive method out the window. Further, if there are no legitimate methods to justify originalism left, then originalism itself should be discarded.

While such an approach seems to make sense at first glance, it ignores the overwhelming importance of the processes of constitutional democracy. Constitutional democracy and all that it encompasses: things such as democratic authorization, separation of powers, and federalism, form a set of processes and frameworks that provide a place for the law, good or bad, to exist in the first place. Alternate justifications and alternate interpretive methods serve to undermine these processes, or at the very least fail to protect them, by allowing judges great freedom to manipulate and establish law.¹⁴⁵ Judges who fail to adhere to the principles of constitutional democracy – to the constitutional will of the people – take the act of congressional deliberation upon themselves, independent single persons largely free from political influence. When judges take this deliberation upon themselves, they strip the power from the people, who are the underlying authority for law. In doing so, judges pull authority itself out from underneath the law.

Interpretive theories that fail to protect the processes of law by focusing on the results of law inadvertently undermine law itself in the long run. It is essential that the processes be preserved in preference to the quality of the laws themselves, in order that the laws, whatever their quality, actually have authority. A lack

¹⁴⁵ Judges no doubt do so with good intentions, for example the protection of rights or the preservation of immediately positive consequences, but they nonetheless are manipulating and inappropriately establishing the law.

of authority turns any law that is good in theory into a law that is bad in practice.¹⁴⁶ As such, unless constitutional processes are protected, no good law can truly exist. Constitutional principle originalism is justified, then, by the relevant processes it upholds, not by the merit of the laws or rights that it produces or protects. On occasion, this does serve to protect bad law for longer than other interpretive justifications or methods would permit, in the interests of preserving constitutional processes. The temporary protection of bad law is merely an unfortunate but acceptable side effect of protecting the constitutional processes. Bad law must be changed through legitimate processes, not through activism on the part of a judge, to preserve the authority of the law itself.

Is Originalism Based on Broken Processes?

The other significant problem facing attempts to justify originalism by an appeal to principles of constitutional democracy stems from the above claim that bad law must be changed through legitimate processes. This is all well and good, but what if bad law cannot actually be changed? In the constitutional context, this is a very real issue, as it is effectively impossible to pass amendments in the modern political world. Scott, talking about the high numerical bars set for the passage of an amendment, says:

And $\frac{3}{4}$? Well, do the math: 50 divided by 4 is 12.5. 50 minus 12.5 is 37.5. (Does anyone know if we round up or down in these cases?) Even if we round down, meaning that 37 states would be sufficient, all it would take is fourteen states to kill any proposed amendment. So let's see: NY, RI, MA, DE, CT, VT, MD, WA, OR, IL, WI, CA, HI, and NJ would do the trick.¹⁴⁷

Scott shows that just 14 (Democratic, in this case) states could demolish any amendment they wished to oppose. Given the highly partisan nature of today's politics, it is no wonder that amendments are difficult to pass.

¹⁴⁶ A lack of authority makes a law bad in practice first because the law itself loses authority, and second because the legal system that underlies the law loses authority. The law and the legal system lose the backing of the people.

¹⁴⁷ Carl Scott, "Mark Levin, Meet Herbert Croly," *FIRST THINGS*, August 2013, <http://www.firstthings.com/blogs/firstthoughts/2013/08/mark-levin-meet-herbert-croly/>.

Various numerical changes have been suggested to improve the amendment process,¹⁴⁸ but the key to a critique of constitutional principle originalism is the plain and simple fact that amendments can hardly be passed.

Because it is so difficult to pass amendments, critics of constitutional principle originalism question whether or not constitutional processes are actually upheld. Constitutional principle originalism calls for judges to refrain from ideologically driven¹⁴⁹ changes to the law on the grounds that the people should be the ones to change the law (through their representatives). But if the people cannot actually change the law, then how can proponents of constitutional principle democracy use broken processes as the justification for their interpretive theory?

They can do so because, while the processes may be flawed, they must still be preserved. To simply throw off constitutional processes is to throw off the authority of the law, no matter how difficult it is for the people to utilize that authority. It is important that the will of the people be reasonably connected to the law in order for the law to maintain legitimacy, and as a result it is important to acknowledge that the amendment processes need to be adjusted.¹⁵⁰ But again, this must only occur through the proper processes.¹⁵¹ If judges attempt to update the Constitution themselves, they actually undermine the amendment process even more severely than its current limitations hinder it by removing both the need for and the resolve of the people to change the Constitution.¹⁵² The problem, then, does not lie with constitutional principle originalism, but with the amendment process itself. It is paramount that constitutional processes be maintained so that a revamped

¹⁴⁸ Scott suggests 55% and 66%, and Croly suggests a flat 50% all around. Carl Scott, "Mark Levin, Meet Herbert Croly," *FIRST THINGS*, August 2013, <http://www.firstthings.com/blogs/firstthoughts/2013/08/mark-levin-meet-herbert-croly/>; Herbert Croly, *Progressive Democracy* (New York: Macmillan, 1914), 230-233.

¹⁴⁹ Specifically, to refrain from changing the law on the basis of personal beliefs about things like rights or good law. It is acceptable for judges to change or overturn non-fundamental law on original meaning constitutional grounds, because in doing so they are adhering to the authority of the people.

¹⁵⁰ While it might be said that the will of the people is still connected to fundamental law through judges, who are in very practical terms still political actors, such a connection cannot be described as a reasonable connection. Not only are judges doubly removed from the people (indirect election of the president followed by the appointment of judges), they are not subject to any form of electoral process, and thus are at most blatantly disconnected from the people, and at minimum not reasonably connected. When judges are the only way for the people to alter the fundamental law the people are not reasonably connected to the law.

¹⁵¹ This, admittedly, does seem a somewhat circular problem. The process is flawed, and yet we can only use the process to fix the process. Nonetheless, to eschew the process in order to fix it serves only to further undermine the process. Some sort of last hurrah on the part of the people may be required to pull the amendment process out of its downward spiral. The activist involvement of judges is not a viable solution, as it will only worsen this downward spiral.

¹⁵² John O. McGinnis and Michael B. Rappaport, "Originalism and the Good Constitution," *Georgetown Law Journal* 98 (2009-2010): 1741.

amendment process can still be a part of a legitimate and authoritative government. Fixing the amendment process is pointless if the legitimacy of the government is destroyed in the process.

Conclusion

For originalism to diminish the Court's inappropriate establishment and manipulation of the law, as Bork hopes, it must be properly justified. Indeed, for originalism to be valid at all, it must be properly justified. Appeals to rights and appeals to consequences both fail to properly justify originalism because they prioritize rights or consequences over the system established by the authority of the people. By setting inappropriate priorities, these justifications actually encourage exceptions to originalism in pursuit of these alternate priorities. Originalism is properly justified by an appeal to the two key principles of constitutional democracy: democratic authorization and the separation of powers. It is of the utmost importance to preserve the legitimacy of the law by adhering to the Constitution's original meaning.¹⁵³ It is equally important to preserve the stability of the law by adhering to the separation of powers and not stripping away power from the people or from other branches by abusing the freedom of the judiciary. Accomplishing these goals and thus preserving the authority of the law itself is so important that even the perpetuation of some bad laws is an acceptable side effect, because good law cannot exist at all without an authoritative legal system. Original meaning interpretation accomplishes both of these goals by determining the original public meaning of the Constitution – being faithful to the ratifiers – and then applying that meaning. Originalism is justified by the importance of these goals and its ability to accomplish these goals.

¹⁵³ As it is understood by the people, construed broadly, who ratified the Constitution.

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AMERICAN SEXUAL IDEOLOGIES IN THE POST-WAR ERA: A CLOSER LOOK AT THE KINSEY REPORTS

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ABSTRACT:

The goal of this paper is to examine how the research of Indiana University (IU) sexologist, Alfred C. Kinsey, as best expressed in the now famous reports bearing his name, affected American society in the 1940s and 1950s. While many historians have acknowledged how the Kinsey Reports contributed to a more comprehensive understanding of the American sexual experience by detailing the sexual behavior of men and women, very few have delved deeper into the broader anxieties that it produced in the country more generally. Rather than cite Kinsey solely as a leader in the field of sexology, I have chosen to examine his work more closely within this historical context, and especially the years surrounding the publication of the first report, *Sexual Behavior in the Human Male* (1948) and the second report, *Sexual Behavior in the Human Female* (1953). One of my key findings is that much of the outrage surrounding Kinsey's research surfaced even before the reports were published. A common theme, expressed by numerous people was concern that Kinsey's research would negatively influence the reputation of Indiana University. What this suggests is that much of the public concern was derived not from Kinsey's actual findings but rather from fears of its potential impact. Therefore, I posit that the topic of Kinsey's research and the possible negative ramifications elicited more anxiety from Americans than the actual data he uncovered.

BIOGRAPHY:

Lacey M. Guest is a member of the class of 2014 at Christopher Newport University where she majored in History with minors in Communication Studies and Women's and Gender Studies. She is a member of the history honors society, Phi Alpha Theta and served as the president of CNU's Feminist Alliance. Additionally she worked for the Department of History for three years as a student assistant. Primarily focusing on 20th century American gender history, she aspires to continue her education in history at the graduate level. This research project was made possible by the generous monetary support of the Undergraduate and Graduate Research Committee and the Honors Program as well as the intellectual support and encouragement of her mentor, Dr. Laura M. Puaca. She extends her gratitude to everyone who offered advice, assistance, and opinions throughout the research and writing process.

Introduction

Anticipating the release of Dr. Alfred C. Kinsey's second report in 1953, Indiana resident, Olga Navta wrote that she was sure that "Abraham Lincoln never muddled his mind with such things as sex."¹⁵⁴ Her assertion that to think of sex was to muddle the mind demonstrated the popular view of sex in the post-war period; exemplary Americans did not discuss their participation in such things, nor did they lend their time to thinking about the subject. However, not only did Kinsey think and talk about sex, but his research suggested that everyone else did too. By delving into the sex lives of Americans, Kinsey threatened the sexual mores and stereotypes upon which the sexual status quo was delicately balanced. The avenue of research that Kinsey had chosen to pursue caused much anxiety amongst American readers, however, the specific information he uncovered regarding human sexual behavior was not the only concern. Many American readers also worried about the effects of Kinsey's choice of research would have on Indiana University. While various communities across the country expressed a wide variety of opinions, the possibility of damaging Indiana University's reputation as an academic institution emerged as a recurring concern. Thus, the subject of Kinsey's research and its anticipated effects caused more anxiety amongst Americans than the actual contents of the Kinsey reports.

Kinsey's academic career did not begin with his notorious sex research. He began teaching at IU in 1920 as a professor of zoology. Due to his involvement in the University's marriage course beginning in 1938, Kinsey developed a preoccupation with his students' limited knowledge of sex. He began collecting individual sexual histories and in 1940, when the administration asked him to choose between that line of research and his teaching position, Kinsey chose to pursue the sex research full time. In order to develop the project further, Kinsey incorporated the Institute for Sex Research in 1947, through which all funding would be funneled. In 1948, he released his first volume, *Sexual Behavior in the Human Male* which quickly made the bestseller list,

¹⁵⁴ Olga Navta to Herman B. Wells, August 26, 1953, Letter, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Indiana University Office of University Archives and Records Management, Bloomington, Indiana. (Hereafter referred to as Indiana University Archives).

much to the surprise of Kinsey and his professional colleagues. A flurry of media attention ensued. American readers' reaction to the report made Kinsey a household name, successfully making sex a topic of national conversation.¹⁵⁵

August 20, 1953 found Americans rushing to the newsstands for information regarding Kinsey's new report, *Sexual Behavior in the Human Female*. This was "K-day" and it represented the first day Americans could procure information about the second report. Newspapers across the country published information that had been fact checked by Kinsey himself. This advanced publicity was the cause of many problems. K-day was seen by many as a publicity stunt, an effort to promote sales through exploitation of the news industry's penchant for sensationalism. This detracted from its perceived legitimacy and offered a forum for national conversation. American readers no longer had to glean an understanding of female sexuality from the data compiled and analyzed within the report itself; they could simply pull the highlights from the newspapers. While this did not seem to affect sales, it did affect the number of Americans who actually read the information that Kinsey and his team had laboriously collected and interpreted, making many initial responses to the research both ignorant and preemptive. In fact, the publication of the second report did not occur until September 14, 1953, approximately three weeks after K-day. For those three weeks, Americans wrote letters to newspaper editors, Kinsey, and the administration of Indiana University despite the fact that none of them had actually read *Sexual Behavior in the Human Female*.

Both the male and the female reports provided previously unknown information on American sexual behavior. Kinsey based his findings on a meticulous interview process that measured sexual experiences and success through the achievement of orgasm. It was in *Sexual Behavior in the Human Male* that Kinsey introduced his sexuality scale in an effort to account for the fluidity of sexuality and explain that instances of sexual experience were not definitively indicative of sexual identity. The first report was made infamous by suggesting that homosexual experience was far more ubiquitous than was previously thought. Kinsey's data surmised that thirty seven percent of males reported experiencing "instances of at least one same-sex experience

¹⁵⁵ Miriam Reumann, *American Sexual Character: Sex, Gender, and National Identity in the Kinsey Reports* (Berkeley: University of California Press, 2005), 55.

to orgasm.”¹⁵⁶ Other key findings of the male report included premarital and extramarital sex statistics including data regarding percentages of men who had engaged in intercourse with a prostitute. Kinsey’s data indicated that sixty-eight percent of men had premarital intercourse by the age of eighteen and that approximately fifty percent of married men participated in extramarital sex.¹⁵⁷ These were the statistics that caused controversy and concern amongst American readers. However, less controversial data introduced by the report was offered and accepted as well. The first report also discussed the instances and statistics surrounding men’s sexual experiences with masturbation, oral sex, sex dreams, foreplay, and coital positions.¹⁵⁸

While several of these topics were not incredibly controversial within the confines of the male report, many were explosive components of *Sexual Behavior in the Human Female*. Kinsey’s suggestion that approximately fifty percent of women had engaged in premarital sex was a shock to a society valuing female virginity and sexual purity.¹⁵⁹ Kinsey’s data also asserted that twenty-six percent of women engaged in extramarital sex by the time they were in their forties.¹⁶⁰ Homosexual experience was discussed and analyzed in the female volume as well, however, it was not received with as much dismay and anxiety. Only about thirteen percent of females reported having a homosexual experience to climax.¹⁶¹ The female report also discussed oral sex, sex dreams, foreplay, and coital positions, which often coincided closely with the male statistics. Several obvious discrepancies occurred between the male and female reports such as masturbation, age at first intercourse, and sex with prostitutes. Significantly more men reported masturbating and having an earlier first intercourse experience, while the second report completely omitted any reference to female sexual

¹⁵⁶ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Male*, 650.

¹⁵⁷ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Male*, 549-552, 585-587.

¹⁵⁸ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Male*.

¹⁵⁹ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Female*, 286.

¹⁶⁰ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Female*, 416.

¹⁶¹ Kinsey Institute, “Data From Alfred Kinsey’s Studies,” <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from *Sexual Behavior in the Human Female*, 475.

contact with prostitutes.¹⁶² Within the pages of the first report, these statistics may have been shocking, however, as the statistics appeared in the female volume, they acted as a direct and overt challenge to the sexual status quo in America.

These early interpretations of Kinsey reflected what many primary sources also conveyed. Kinsey's avenue of research and subsequent reports cast him as a moral degenerate in the collective American mind. Many people from various community groups in the United States were concerned that Kinsey's research interests demonstrated a dubious personal morality. Many suggested that the morality of the men and women who agreed to be interviewed was questionable and that the data Kinsey collected, if accurate, was seen as indicative of America's moral decline. However, after the publication of the second report, Kinsey shifted focus toward something of a social-legal movement. He firmly believed that generally accepted practices shift over time and the law needed to reflect popular ideologies and sexual practices. It was here that historians began to reclaim Kinsey's morality and cast it in a new light: the role of a social-moral reformer. Toward the end of his life, historians surmised, Kinsey began to view his research as a reform effort. He wrote his reports and other publications with an agenda, a goal to alter the dominant discourses about sex and sexuality.

Historiography

Over the years, Kinsey's research was treated in a variety of ways by historians and other scholars. In the decades following the release of the Kinsey reports, the information was cited in numerous academic disciplines as the premier study on human sexuality. The 1940s and 1950s saw a host of publications about the Kinsey reports that aimed to either interpret them in a constructive manner or dismantle completely the information that Kinsey had compiled. Authors wrote through the lenses of morality, religiosity, or sensationalism and did little to surround Kinsey's research with legitimacy. However, by the 1960s and 1970s, Kinsey's research gained credibility with the rise of a new era. The sexual revolution invoked a renewed interest in human sexuality in academia. Leaning on the limited prior scholarship in the field of sexology,

¹⁶² Kinsey Institute, "Data From Alfred Kinsey's Studies," <http://www.kinseyinstitute.org/research/ak-data.html#Findings>, quoted from Sexual Behavior in the Human Female.

academics stumbled across the Kinsey reports. As some of the only extensive research on the subject, Kinsey was heralded as the primary source on sexuality in America. Despite the decline in new scholarship on the topic in the 1980s, the 1990s fostered another resurgence of interest in sex and sexuality. Kinsey's research, however, had become of lesser interest than the man himself. Historians began to postulate about Kinsey's personality, emotions, and morals as they delved further into the contradictions that were thought to be exemplified by him just as they were manifested within his work.

This trend of fascination with Kinsey's personal life continued in the early years after the turn of the 21st century. While still enthralled with Kinsey as a person, his research began to gain more attention and the Kinsey reports began to take precedent. More historians recognized that by examining the reports within their historical social context, a more comprehensive understanding of their impact was achievable. More recently, Kinsey's work has been acknowledged as an important component of postwar American society. Rather than cameo appearances in sociology or biology textbooks, Kinsey's work has begun to have a history of its own. While this increase in scholarship has proved beneficial to understanding Kinsey's influence, there is still a general lack of literature on the subject. American society was altered immeasurably by the advent of sex research and this contributed to the palpable changes felt by Americans in the postwar era. Various groups of people were influenced by Kinsey's research in different ways and these specific portions of the national conversation that occurred have been insufficiently explored by historians to date. In an effort to further explore the effects of Kinsey's research, this article examines three communities and their participation in this national dialogue.

The Indiana University Community is confronted with Sexuality

The Indiana University community responded to Kinsey's research in a wide variety of ways, including letters, telegrams, articles, and editorials. Comprised of anyone affiliated with the university in any official capacity, this community was far reaching. Students, parents of students, alumni, faculty, staff, and the administrators all participated in the national conversation surrounding Kinsey's research, the Institute, and the

reports. Many did so in an anticipatory manner; the dates and contents of their letters suggesting an ignorance of what data the second report contained. The concerns demonstrated by the IU community were as diverse and expansive as the members of the community. Yet, regardless of whether they personally condoned or condemned Kinsey's research, many expressed similar concerns that his work would be detrimental to the school's reputation. The IU administration's public stance differed from the response of the general IU community by virtue of its solidarity; the administration was consistent in its staunch support of Kinsey.

An early instance of an IU community member experiencing the repercussions of Kinsey's research was Claude E. Hadden, an alumnus and medical doctor in Indianapolis, Indiana. On May 12, 1949 Hadden wrote to IU President, Herman B. Wells describing his humiliation when patients saw the IU diploma hanging in his office and commented on his alma mater's damaged reputation.¹⁶³ Hadden made it very clear that his anxiety stemmed from the possibility that IU would suffer a damaged reputation because of Kinsey's research and his affiliation with the university. His suggestion was to "remove the degrading influence of incest snoopery from our campus."¹⁶⁴

In response to Kinsey's research concerning female sexuality, Dean of Women, Kate Hevner Mueller began to see an influx of communications as early as 1944. Not only were the authors of these letters concerned about their daughters' exposure to Kinsey, they also articulated their concern for IU's reputation. On November 10, 1944, Mueller wrote a letter to Dean of Faculties, Herman T. Briscoe detailing a request that Kinsey's assistant had made in regard to interviewing the female students living in the dormitories.¹⁶⁵ Mueller listed several reasons for why she had rejected this request, one among them being that "Dr. Schuman, Dr. Rice, and Dr. Boyd have serious objections to Mr. Kinsey's theories and methods."¹⁶⁶ These were three of the professors of various disciplines with whom Kinsey collaborated throughout his association with the marriage course. By

¹⁶³ Claude E. Hadden to Herman B. Wells, May 12, 1949, Indiana University President's Office Records, 1937-1962, Box 336, Folder 3, Indiana University Archives, Bloomington, Indiana.

¹⁶⁴ Claude E. Hadden to Herman B. Wells, May 12, 1949, Indiana University President's Office Records, 1937-1962, Box 336, Folder 3, Indiana University Archives, Bloomington, Indiana.

¹⁶⁵ Kate Hevner Mueller to H. T. Briscoe, November 10, 1944, Dean of Women's Office records, 1876-1951, bulk 1917-1945, Indiana University Archives, Bloomington, Indiana.

¹⁶⁶ Kate Hevner Mueller to H. T. Briscoe, November 10, 1944, Dean of Women's Office records, 1876-1951, bulk 1917-1945, Indiana University Archives, Bloomington, Indiana.

citing several instances of faculty members withholding support, Mueller demonstrated the burgeoning anxieties within the IU community without expressing her personal stance regarding Kinsey's research. As a member of the administration, Mueller remained publicly impartial on the subject throughout the duration of her appointment as Dean of Women.

If the first report ignited the anxieties of the IU community, the second report fanned the flame of worry into an inferno. Immediately following the famed K-day of August 20, 1953, readers associated with IU flooded the postal service with mail addressed to both Wells and Kinsey. The office of the President received a letter just three days after K-day on August 23, 1953 expressing condolences for "poor Indiana and her State University."¹⁶⁷ The letter, signed "an Ashamed Hoosier," indicated that the author very closely identified themselves with the university.¹⁶⁸ Another anonymous letter, signed only "a Brother Sigma Nu" was received by Wells just three days later and articulated a similar sentiment by asking Wells if he would "permit Mr. Kinsey to continue to be associated with the University after the disgrace he has brought to good old Hoosierdom."¹⁶⁹ Both letters came to Wells just days after K-day and conveyed a similar angst regarding the reputation of the university.

It was common to express concern about IU's reputation while simultaneously insulting Kinsey and his work by comparing it to obscene literature. The very same "Ashamed Hoosier" expressed disappointment that their beloved university had become "the pioneer of smut and indecency in the United States."¹⁷⁰ A parent of an IU student, Harold E. Napier wrote to Wells on August 31, 1953 to demonstrate that he "resent[ed] the association of Mr. Kinsey's so called report with the University."¹⁷¹ He also viewed Kinsey's research as lacking legitimacy and asserted that Kinsey was "in the business of peddling lewd and obscene literature" and

¹⁶⁷ An Ashamed Hoosier to Herman B. Wells, August 23, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Anonymous Comments, Indiana University Archives, Bloomington, Indiana.

¹⁶⁸ An Ashamed Hoosier to Herman B. Wells, August 23, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Anonymous Comments, Indiana University Archives, Bloomington, Indiana.

¹⁶⁹ A Brother Sigma Nu to Wells, August 26, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Anonymous Comments, Indiana University Archives, Bloomington, Indiana.

¹⁷⁰ An Ashamed Hoosier to Herman B. Wells, August 23, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Anonymous Comments, Indiana University Archives, Bloomington, Indiana.

¹⁷¹ Harold E. Napier to Wells, August 31, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

should consider limiting “his distribution to the customary alley channels that are the accepted sources for such smut, rather than hide behind the good name of IU.”¹⁷²

Constantly in a state of defense, the IU administration addressed the concern with its reputation numerous times through its unflagging support of Kinsey and his work. In anticipation of the innumerable communications K-day was likely to elicit, Wells issued an official press release the very next day on August 21, 1953 expressing the university’s stance on the situation. Appearing in newspapers across the country, the IU administration’s official public stance regarding Kinsey’s research and the Institute as they related to the university only served to exacerbate the community’s anxiety about Kinsey’s affiliation with their beloved university. Wells’ assurance that “Indiana University stands today, as it has for fifteen years, firmly in support of the scientific research project that has been undertaken and is being carried on by one of its eminent biological scientists, Dr. Alfred C. Kinsey” was either ignored or served to further provoke opponents or concerned IU affiliates.¹⁷³

One month later, after the official publication of the second report, Wells released another public statement addressing this same concern. Since K-day the anxiety surrounding IU’s continued affiliation and sponsorship of Kinsey only intensified. In response to these pervasive fears, Wells highlighted that “Dr. Kinsey’s research project is entirely divorced from the university’s teaching function. He and his colleagues are assigned full time to research duties.”¹⁷⁴ He emphasized that rather than contribute to the decline of IU’s status as a prestigious university, having faculty members devoted fully to research ensured that IU remained competitive in academia. “The search for truth,” he argued “is one function of all universities. Another function is teaching.”¹⁷⁵

¹⁷² Harold E. Napier to Wells, August 31, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

¹⁷³ “Dr. Wells Endorses Kinsey’s Research,” *Bloomington, Indiana Herald-Telephone*, August 21, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, A; Binder 21, Pg. 102, Kinsey Institute, Bloomington, Indiana.

¹⁷⁴ “First Emphasis Upon Teaching,” *Decatur, Illinois Herald*, September 21, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, D; Binder 24, p. 47, Kinsey Institute, Bloomington, Indiana.

¹⁷⁵ “First Emphasis Upon Teaching,” *Decatur, Illinois Herald*, September 21, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, D; Binder 24, p. 47, Kinsey Institute, Bloomington, Indiana.

In order to continue demonstrating its support for Kinsey, the administration consistently referred to the standards of academic freedom to substantiate their defenses. In 1940, the American Association of University Professors (AAUP) had written the *1940 Statement of Principles on Academic Freedom and Tenure* in an effort to establish the definition of academic freedom in an official capacity. The IU administration relied upon this national standard of collegiate academic freedom in its defense of Kinsey's research. The first tenant established that "teachers are entitled to full freedom in research and in the publication of the results," and directly applied to the problems IU faced regarding the publication of the Kinsey reports.¹⁷⁶ In an interview with an *Indiana Daily Student* reporter in 1977, Wells argued that it was the "business of the university to protect the freedom of the scholar" despite any sort of public controversy or opposition.¹⁷⁷ Even "if his research proves temporarily to be disastrous so far as the public relations of the University are concerned" he concluded, "so be it."¹⁷⁸ Wells fully acknowledged the anxieties of IU affiliates and understood that Kinsey's reports were often acrimoniously received. However, he did not think this would reflect poorly on the university permanently.

Despite this overwhelming concern that Kinsey's research was inimical to IU's public image and reputation, Kinsey's IU affiliated supporter network extended further than the IU administration. The day after K-day, on August 21, 1953 IU alumnus, Maurice Judd wrote to Wells offering his "sincere congratulations" for the University's "unqualified support of Dr. Kinsey."¹⁷⁹ He further asserted that with the help of the University, Dr. Kinsey had successfully done "more to lift the University of Indiana from the doldrums than anything I can well remember."¹⁸⁰ Two months later an IU parent, Mrs. Odie Streets also wrote to Wells to express her approval of Kinsey's research as well as his affiliation with IU. "I have two sons attending Indiana University,"

¹⁷⁶ American Association of University Professors website, "Reports and Publications," <http://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>, (accessed April 2, 2014).

¹⁷⁷ Herman B. Wells, October 22, 1977, "Being Lucky: Chapter XII – Dictations on Academic Freedom," interview by Richard Wayne Greeson, Herman B. Wells Papers, 1819-2001, Box 43, 2, Indiana University Archives, Bloomington, Indiana.

¹⁷⁸ Herman B. Wells, October 22, 1977, "Being Lucky: Chapter XII – Dictations on Academic Freedom," interview by Richard Wayne Greeson, Herman B. Wells Papers, 1819-2001, Box 43, 2, Indiana University Archives, Bloomington, Indiana.

¹⁷⁹ Maurice Judd to Herman B. Wells, August 21, 1953, Correspondence Collection, Folder 9, Kinsey Institute, Bloomington, Indiana.

¹⁸⁰ Maurice Judd to Herman B. Wells, August 21, 1953, Correspondence Collection, Folder 9, Kinsey Institute, Bloomington, Indiana.

she told Wells, “and I want them to investigate all truths, including truths found in the Kinsey reports.”¹⁸¹

These members of the IU community expressed opinions that differed immensely from the preponderance of concerns about Kinsey’s impact on the university’s reputation. These proponents of Kinsey’s research expressed a faith in the pursuit of truth rather than the pursuit of public acceptance.

In 1954 the Indiana chapter of the AAUP released a public resolution regarding Kinsey’s work. Kinsey’s network of state-wide colleagues asserted that “the pursuit of truth includes neither moral nor political issues. A scholar has an obligation to report his methods, findings and conclusions, and a student has the right to hear unpopular as well as popular theories.”¹⁸² In a further display of public support that year, Kinsey was “honored by award of the title ‘Hoosier of the Year’” at the Sons of Indiana meeting in New York City.¹⁸³ These public statements from Indiana organizations served to legitimize the statements that Wells and the IU administration had made for years defending academic freedom and Kinsey’s right to pursue his chosen field of research.

The vast majority of community members that voiced their concerns did so in the three weeks between K-day and the official publication of the second report. While there were instances of concern expressed long before and after the release of the reports, most people who wrote to the IU administration did so in a preemptive manner. The authors of communications dated prior to September 14, 1953 based their opinions and concerns not on the data uncovered in Kinsey’s report on women, but rather to the existence of such research more generally.

The Professional Community extends Congratulations and Criticisms

Kinsey found viable critics and proponents of his research in the professional community. This highly educated, elite group of individuals comprised of medical doctors, university professors, and Ph. D.s

¹⁸¹ Mrs. Odie Streets to Herman B. Wells, October 25, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Favorable Comments, Indiana University Archives, Bloomington, Indiana.

¹⁸² “Kinsey Given ‘Vote of Confidence,’” *Bloomington, Indiana Herald-Telephone*, April 23, 1954, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, A; Binder 21, p. 114, Kinsey Institute, Bloomington, Indiana.

¹⁸³ Minutes of the Board of Trustees of Indiana University, April 29, 1954 - May 01, 1954, <http://webapp1.dlib.indiana.edu>.

demonstrated an intellectual interest in Kinsey's research and provided him with valuable feedback. Unlike many other communities, the professional community displayed an interest in Kinsey's research prior to K-day. The attention his research received from professionals across the nation both preceded and succeeded the publication of either report providing strong evidence that it was not the information found in the publications that elicited their approval or criticism. For the professional community, Kinsey's research methods and objective interpretation of the facts were top priority. The reports he published were only of concern to his colleagues due to their availability to the public and their potential for social upheaval. The relationship between the professional community of Kinsey's contemporaries and the research offered a nuanced perspective that allowed for complexity of opinion. Often, even his professional support network offered critiques of Kinsey's objectivity or advice on how his study could have been executed more effectively.

Before the publication of either volume of the Kinsey reports, the professional community expressed interest in his research. Dr. Walter C. Alvarez of the Mayo Clinic wrote to Wells on August 31, 1946 to convey his approval of Kinsey's research. After spending a day with Kinsey and examining his research methods closely, Alvarez's prognosis was that he believed "Dr. Kinsey was studying his problems in an excellent and most scientific and thorough way."¹⁸⁴ While scientific objectivity was a crucial element of this research, Kinsey also received criticism for failing to account for various other aspects of the human experience with regard to sex. An article written by Dr. Ashley Montagu, professor of anthropology at Rutgers University appeared in *McCall's Magazine* in the December 1953 edition titled, "Where Kinsey Went Wrong." Montagu argued that although Kinsey's research was legitimate, his analysis failed to account for human emotion, love, and motherhood.¹⁸⁵ Referencing Kinsey's training and experience as a zoologist specializing in the Gall fly, Montagu argued that "sexual activity may be nothing more than 'biological performance' in insects; in human beings it is a social, psychological and often spiritual performance as well."¹⁸⁶ This was a common sentiment

¹⁸⁴ Walter C. Alvarez to Herman B. Wells, August 31, 1946, Indiana University President's Office records, 1937-1962, Box 336, Folder 1, Indiana University Archives, Bloomington, Indiana.

¹⁸⁵ Ashley Montagu, "Where Kinsey Went Wrong" *McCall's Magazine*, December 1, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Magazines, M-N, Kinsey Institute, Bloomington, Indiana.

¹⁸⁶ Ashley Montagu, "Where Kinsey Went Wrong" *McCall's Magazine*, December 1, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Magazines, M-N, Kinsey Institute, Bloomington, Indiana.

amongst many of Kinsey's professional colleagues; they expressed concern regarding the social implications of the data rather than being upset by the existence of such research as members of other communities often were.

Emily H. Mudd, professor of psychiatry at the University of Pennsylvania acted as a consulting editor for Kinsey's second report and expressed similar critiques in her article, "Implications of the Kinsey Report on Women for Marriage and Sexual Adjustment." While she referred to Kinsey's work as a "tremendous and excellent contribution," she also highlighted that both reports "add little to our knowledge of 'this thing called love' – the feelings, motivations, values, ideals and goals which are involved in loving or in being loved, and their relation to orgasmic capacity and other aspects of sexual activity."¹⁸⁷ Mudd's other comments and criticisms reflected her thoughts on the effect of the "unprecedented publicity and the unrestricted sale of these reports" on the general population. It became especially clear in her article entitled "How Dr. Kinsey's Report on Women may help your Marriage" that she valued the contribution Kinsey had made to this field of study. She and coauthor, Bill Davidson expressed the usefulness of Kinsey's findings to "professionals in the field of human emotions – whether marriage counselors, clergy, psychologists, or psychiatrists."¹⁸⁸ Mudd offered both criticism and approval of Kinsey's research and publications, as many other professionals did. She demonstrated in her articles that the information he uncovered was incredibly useful, but still left room for improvement. Rather than question the data, she suggested means for improvement regarding its collection methods and other variables for which Kinsey should have accounted.

However, just a month before the release of the first report in January 1948, one of Kinsey's colleagues in the marriage course at Indiana University, Dr. Thurmon Rice wrote to Kinsey expressing his concern with Kinsey's methods. Having read the newspaper reports and editorials about the contents of Kinsey's forthcoming report on male sexuality, Rice was "extremely apprehensive."¹⁸⁹ Of particular concern to him was the statistic that allegedly approximated that fifty percent of men in the United States were unfaithful. "We are

¹⁸⁷ Emily H. Mudd, "Implications of the Kinsey Report on Women for Marriage and Sexual Adjustment" November 13, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Magazines, Kinsey Institute, Bloomington, Indiana.

¹⁸⁸ Emily H. Mudd and Bill Davidson, "How Dr. Kinsey's Report on Women may help your Marriage," September 18, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Magazines, Kinsey Institute, Bloomington, Indiana.

¹⁸⁹ Thurmon Rice to Alfred C. Kinsey, December 3, 1947, Indiana University President's Office records, 1937-1962, Box 336, Folder 2, Indiana University Archives, Bloomington, Indiana.

being told that your work is purely objective,” Rice stated, “but I will leave the matter to any impartial person as to whether or not the term ‘unfaithful’ is an objective scientific term, free of all social and moral connotations.”¹⁹⁰

Although he was merely raising a legitimate question about the way in which Kinsey was portraying the information to the public, Rice’s points were not well received. Sparking a month long conversation preceding the publication of the first report, the two professors were eventually intercepted by the IU administration. Rice’s final letter in the extensive correspondence represented the end of the ongoing conversation. Addressing his comment to Dean Briscoe and chairman of the Zoology Department, Fernandus Payne, Rice stated that “this is the first time so far as I recall that any scientific work done by any of my colleagues has required such protection as is being given to this work of Dr. Kinsey.”¹⁹¹ Rice’s criticism was some of the first that Kinsey had faced from within his own university community and professional community. Rather than disputing the facts that Kinsey had conveyed in his research, Rice criticized Kinsey’s methods and called into question Kinsey’s objectivity. Kinsey took this very personally his reaction served to ignite further tensions within the IU community.

Following this intense month long conversation between Rice and Kinsey in 1947, a colleague of Rice, Dr. Clifford R. Adams, a professor of psychology of Pennsylvania State College wrote to Kinsey as well. Adams opened the letter stating that Rice had come to speak at Pennsylvania State College and had eviscerated Kinsey’s research. He quoted some of what Rice had said and summarized other points. While Kinsey’s research was probably of interest to a professor of psychology, Adams objectively recused himself of any personal involvement with the situation stating at the end of his letter that he had reiterated Rice’s “comments, to you in the hope that they may be of some interest.”¹⁹² Later on in his career, Adams proved a proponent of Kinsey’s work. He authored a column in *Ladies’ Home Journal* called “Making Marriage Work” that

¹⁹⁰ Thurmon Rice to Alfred C. Kinsey, December 3, 1947, Indiana University President's Office records, 1937-1962, Box 336, Folder 2, Indiana University Archives, Bloomington, Indiana.

¹⁹¹ Thurmon Rice to H. T. Briscoe and Fernandus Payne, December 29, 1947, Indiana University President's Office records, 1937-1962, Box 336, Folder 2, Indiana University Archives, Bloomington, Indiana.

¹⁹² Clifford R. Adams to Alfred C. Kinsey, February 20, 1948, Indiana University President's Office records, 1937-1962, Box 336, Folder 2, Indiana University Archives, Bloomington, Indiana.

frequently cited information and quoted statistics from Kinsey's research efforts as fact. In the late 1950s he made references to newer studies which corroborated many of Kinsey's findings and lent his support indirectly by ensuring that the Kinsey reports held some credence within the academic community.

The professional community's interest in Kinsey's research and reports spanned a much broader time frame than the initial reaction of the public. It was the research and his method of collection that held their attention, not the scandal surrounding the publications of the reports. Many members of the professional community expressed both approval of his contributions to sex research and criticism of his methods. They even mentioned and questioned his data, something that other communities rarely did, the latter usually preferring to express outrage at his gall in conducting such research. The professional community bypassed such displays and immediately questioned how certain aspects of the data Kinsey had collected would affect society. This communal reaction was perhaps the most unified response from any one community, despite its complexity.

The Religious Community Expresses Concern and Camaraderie

The Kinsey Reports evoked an array of reactions from the religious community. Regardless of official affiliation, American readers wrote to Kinsey, Wells, and IU expressing both delight and disdain regarding Kinsey's research. Religious organizations, churches, reverends and pastors, clergy, seminary professors, and religious individuals all took it upon themselves to express their opinions in the name of god. This community was united by Christianity more generally as there does not appear to be any decisive denominational division. The publication of the reports, rather than the actual data found in the reports acted as a catalyst for the expression of religious opinion and the responses reflected how Kinsey's reports were received through the lens of religion. Many of the responses employed religious rhetoric to justify their interests and concerns with Kinsey's research or the Institute's affiliation with IU.

The press paid particular attention to the reactions of the religious community regarding the release of the second Kinsey Report. A preemptive survey done by the *Akron, Ohio Beacon Journal* in February 1953

reported that “the Clergymen weren’t much concerned by publication of the Kinsey reports on American men and women.”¹⁹³ Following K-day, however, the Church had only slightly more to say regarding the Kinsey reports. Apparently on the Sunday immediately following August 20, 1953, only one pastor in all of Atlanta, Georgia “condemned Dr. Kinsey’s report.”¹⁹⁴ The rest, the article in the *Atlanta, Georgia Journal* suggested were simply “holding their fire.”¹⁹⁵

While the religious community leaders often chose to refrain from judgment, some expressed their admiration and concern before the publication of the second report. These self-identified Christians often wrote their letters of gratitude or congratulations in reference to Kinsey as an individual. His reports in these instances had merely won him credibility or a place in the public discourse. It was his speeches, talks, and warm communications with Church leaders that won him favor amongst the minority of people who wrote to him in the name of religion. Kinsey’s network of contacts within the religious community extended across the country. On February 9, 1954 the Institute’s secretary, Eleanor L. Roehr wrote a letter to Wells listing five religious groups with which Kinsey and the Institute had continuous contact. This contact was not merely letters; Roehr indicated below the names of several of these religious groups that Kinsey was to deliver a talk or a clergyman was to deliver a sermon on behalf of Kinsey. This letter is demonstrative of the fact that not all of Kinsey’s interactions with the religious community were negatively charged.

In early April 1952, Kinsey visited the Diocese of California to deliver a talk regarding his research in sex. A few days after his apparently successful speech, Reverend Karl M. Block wrote a letter to Kinsey thanking him for the information and claiming that “every priest and pastor will have a far more useful ministry if he obtains scientific knowledge of the sex life from one so unusually gifted and highly qualified.”¹⁹⁶ While

¹⁹³ Lloyd Stoyer, “World not too Bad, Most Pastors Agree” *Akron, Ohio Beacon Journal*, February 12, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, A; Binder 20, pg. 23, Kinsey Institute, Bloomington, Indiana.

¹⁹⁴ “Kinsey’s Book Fails to Draw Pulpit Fire,” *Atlanta, Georgia Journal*, August 24, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, A; Binder 20, pg. 93, Kinsey Institute, Bloomington, Indiana.

¹⁹⁵ “Kinsey’s Book Fails to Draw Pulpit Fire,” *Atlanta, Georgia Journal*, August 24, 1953, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, A; Binder 20, pg. 93, Kinsey Institute, Bloomington, Indiana.

¹⁹⁶ Karl M. Block to Alfred C. Kinsey, April 10, 1952, Indiana University President's Office records, 1937-1962, Box 336, Folder 6, Indiana University Archives, Bloomington, Indiana.

Block was expressing an opinion of Kinsey and his research more generally rather than the publication of either report, his definitively positive tone cast him as a minority in the religious community.

Block may have been the minority, but he was certainly not alone. By 1954, Kinsey had shifted his concern away from publicity concerns regarding his infamous reports and toward the noble goal of sex law reform. Just as with his previous endeavors, Kinsey was met with both resistance and encouragement. He found an unlikely ally in the National Council of the Churches of Christ. In February 1954 the executive director of the council, Reverend Otis R. Rice, wrote to Kinsey discussing two projects the council was undertaking. Both coincided well with Kinsey's advocacy for legal reform. The first was an effort to address the "variety of implications of sex law in this country."¹⁹⁷ Kinsey had been exploring this phenomenon for years and as a result had begun to advocate that the law reflect the behavior of its constituents. For this Kinsey was accused of departing from strict science and using his knowledge to establish a crusade to reform the socio-legal sexual mores. Kinsey expressed sentiments that countered the generally accepted sexual morality at the time. His campaign to change American sexual character was not one of morality restoration, but rather one of morality alteration. He suggested a modification in American sexual mores and slowly a swell of support began to agree. The council also aimed to establish an understanding of "the facts of sexual behavior in relation to moral theology and pastoral practices."¹⁹⁸ Another member of the council, Dr. Edward J. Humphreys wrote a letter to Kinsey as well, expressing concerns that aligned well with Kinsey's own. Humphreys discussed a sense of camaraderie in their shared goal to reform "the archaic sex law situation."¹⁹⁹ These concerns articulated by the National Council of the Churches of Christ demonstrate that many of the reactions were not specifically aimed at the Kinsey reports themselves, but rather at the general effect Kinsey's research had on society.

¹⁹⁷ Reverend Otis R. Rice to Alfred C. Kinsey, February 5, 1954, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Favorable Comments, Indiana University Archives, Bloomington, Indiana.

¹⁹⁸ Reverend Otis R. Rice to Alfred C. Kinsey, February 5, 1954, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Favorable Comments, Indiana University Archives, Bloomington, Indiana.

¹⁹⁹ Dr. Edward J. Humphreys to Alfred C. Kinsey, February 9, 1954, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Favorable Comments, Indiana University Archives, Bloomington, Indiana.

Prior to Kinsey's open examination of sex laws, American readers asserted that his research was not conveyed in an objective manner. Early reactions from both supporters and critics in the Christian community voiced this realization and drew attention to Kinsey's crusade to do more than provide America with information about sexual behavior. Supporter Arthur Swift of Union Theological Seminary wrote that while he believed in Kinsey's "integrity and commitment to scientific standards," he had never "read a social study which was free of personal bias."²⁰⁰ A mere three days after the release of the second report, A. Ray Grummon, Methodist pastor and opponent of Kinsey's research expressed his opinion that the report "was no mere fact finding study. It is an argument, slanted against the Christian standards of sex."²⁰¹ No member of the religious community examined the reports without their own biases as they were informed by Christianity and its standards of sex, however, they were not alone in their assertions that Kinsey's research was done with a crusading agenda.

Like every demographic of people, the religious community did not communicate identical reactions to the Kinsey reports, the Institute, or Kinsey's research more generally. In fact many of the written communications received by IU that held a negative connotation expressed concern over the university's affiliation with the Institute and what effect this would have on the sexual mores of its student body. One protestant minister, S. A. Macklin wrote a letter to Wells on September 9, 1953 expressing this very concern, amongst others. While this letter was written prior to the publication of the second report, it was clearly the impending release that encouraged him to voice his opinion. Macklin quoted scripture heavily in his quest to demonstrate his concern that IU's support for Kinsey would have a negative effect on the student's sexual morality.²⁰² This concern was also voiced by the Holy Name Society of St. Patrick's Church in their letter to Indiana governor, George C. Craig on October 15, 1953. While they expressed general distaste for Kinsey's

²⁰⁰ Arthur Swift to Alfred C. Kinsey, June 10, 1955, Indiana University President's Office records, 1937-1962, Box 336, Folder 9, Indiana University Archives, Bloomington, Indiana.

²⁰¹ A. Ray Grummon to Herman B. Wells, September 17, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

²⁰² S. A. Macklin to Herman B. Wells, September 9, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

research, their primary issue was the possibility of the “teaching of his false science and alleged facts on this subject in our universities.”²⁰³

Perhaps one of the most famous and publicized Christian debates over Kinsey’s research was the grievances that the National Council of Catholic women listed in specific regard to the release of the second report on women. On August 24, 1953, two leading council members, Mrs. Harold D. Brady and Mrs. Alfred C. Brown wrote to President Wells purporting to speak on behalf of 150,000 Catholic women. Their purpose, like many people writing to Wells and Kinsey, was to “seek some reassurance [sic] that Indiana University is still a place fit for the educating of the youth of our state.”²⁰⁴ With this demand, they claimed legitimacy and demonstrated concern for the University and all Indiana youth. The letter was written four days after K-day, but over two weeks before the second Report was even published. They admitted to not having read the report, but were instead basing their concern off of “the sensational reports on it in magazines and newspapers.”²⁰⁵ This means that the women of the Council were not responding to the Report knowing firsthand the information it contained. Rather, their anxiety stemmed largely from the knowledge that Kinsey was conducting research and planning to publish a volume about female sexuality.

Two days after the letter was written, an article entitled “Wells’ Stand on Kinsey is Attacked, Catholic Women Ask Clarification” appeared in the *Bloomington, Indiana Herald-Telephone*. This article discussed a letter written by Mrs. Harold D. Brady and Mrs. Alfred C. Brown on behalf of the National Council of Catholic Women to Wells on August 24, 1953. While the article was published only two days after the letter was written, Wells’ office failed to answer publicly until September 2, 1953. Rather than wait for his reply, the fact that the paper published the article effectively illustrates the anxiety surrounding the Kinsey Reports within the religious community. The opening line of the article stated that the Council “today asked President Herman B.

²⁰³ Holy Name Society of St. Patrick’s Church to Governor George C. Craig, October 15, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

²⁰⁴ Catholic Women to Wells, August 24, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

²⁰⁵ Catholic Women to Wells, August 24, 1953, Indiana University Vice President and Dean of the Faculties records, 1940-1959, Sexual Behavior in the Human Female, Unfavorable Comments, Indiana University Archives, Bloomington, Indiana.

Wells of Indiana University to clarify his stand on Dr. Alfred Kinsey's sex research."²⁰⁶ This indicates that the article was in fact written on the day that the women wrote to Wells, not the day it was published. By this logic, the women's letter was, in fact an open one; they must have presented the letter in some public fashion in order to ensure the papers would pick it up.

Wells' response was also made public and specifically addressed these women's concerns. Wells quoted his own press release in order to give the women an opportunity to read Indiana University's official public stance on Kinsey and his research. It is clear that Wells understood the magnitude of this open correspondence; it was not merely a conversation between him and Mrs. Brady or Mrs. Brown, but rather a conversation between Indiana University and the entire religious community of the United States. With this in mind Wells attempted to ameliorate any hostility or animosity by stating that the university wants to see that its students "have the continuing benefit of the spiritual guidance of their respective churches" as this contributes "to the proud record of the University."²⁰⁷

The lack of consensus was illustrative of the anxieties surrounding this development in the postwar period. Many of these groups, individuals, and religious leaders expressed their concerns with Christian language and scripture. However, an underlying concern expressed numerous times was the effect Kinsey's research would have on the reputation of Indiana University with the continuation of Wells' support thereof. In that same trend was the fear that Kinsey's information would be detrimental to the morality of the students. Whether they opposed or encouraged Kinsey's work, the opinions of Christian readers across the country were informed by and expressed in religious rhetoric.

Conclusion

Each of these three communities represented a significant portion of the American population. Reactions to the reports differed immensely nationwide as well as within each of these constituencies.

²⁰⁶ "Wells' Stand on Kinsey is Attacked, Catholic Women ask for Clarification," Bloomington, Indiana Herald-Telephone, Print Media Response Collection, Sexual Behavior in the Human Female Newspapers, Female Newspapers, B; Binder 21, pg. 107.

²⁰⁷ Herman B. Wells to Mrs. Harold D. Brady, September 2, 1953, Correspondence Collection, 1939-1959, Kinsey Institute, Bloomington, Indiana.

However, Americans affiliated with IU, highly educated professionals, and religious devotees all expressed similar concerns about the public perception of IU due to its ongoing affiliation with Kinsey and the Institute. It was not solely the reports themselves that caused distress amongst the members of these communities, rather the fear that the reputation of IU might suffer a detrimental blow if the university continued to support Kinsey's research interests. IU affiliates expressed the gamut of responses, while the IU administration remained unwavering in its unconditional support. The professional community simultaneously lauded Kinsey's efforts and critiqued his methods. The religious community justified its indignation with Christian rhetoric. They often condemned Kinsey's morality for conducting such a project and the nation's morality for giving him the information. The reception of the reports was riddled with paradoxes. However, a constant trend was the general lack of consensus regarding opinions on Kinsey's research.

The Kinsey reports had a dramatic effect on American society in the postwar era. While both reports elicited responses from the general public, the second report's advanced publicity and anticipation fostered a more intense and preemptive reaction. The three weeks between K-day and the actual publication day of *Sexual Behavior in the Human Female* instigated intense anxiety on a national scale. The timing of these reactions indicated many of the people writing letters, telegrams, articles, and editorials that had not yet read the second report were expressing their opinions and concerns in reaction to Kinsey's research more generally. That he was studying female sexuality and reporting it to a nation entrenched in a conspiracy of silence presented itself as a direct threat to the sexual status quo. A research project that delved into the sex lives of American shattered the tradition of silence and challenged popular tropes about women, sex, and sexuality.

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