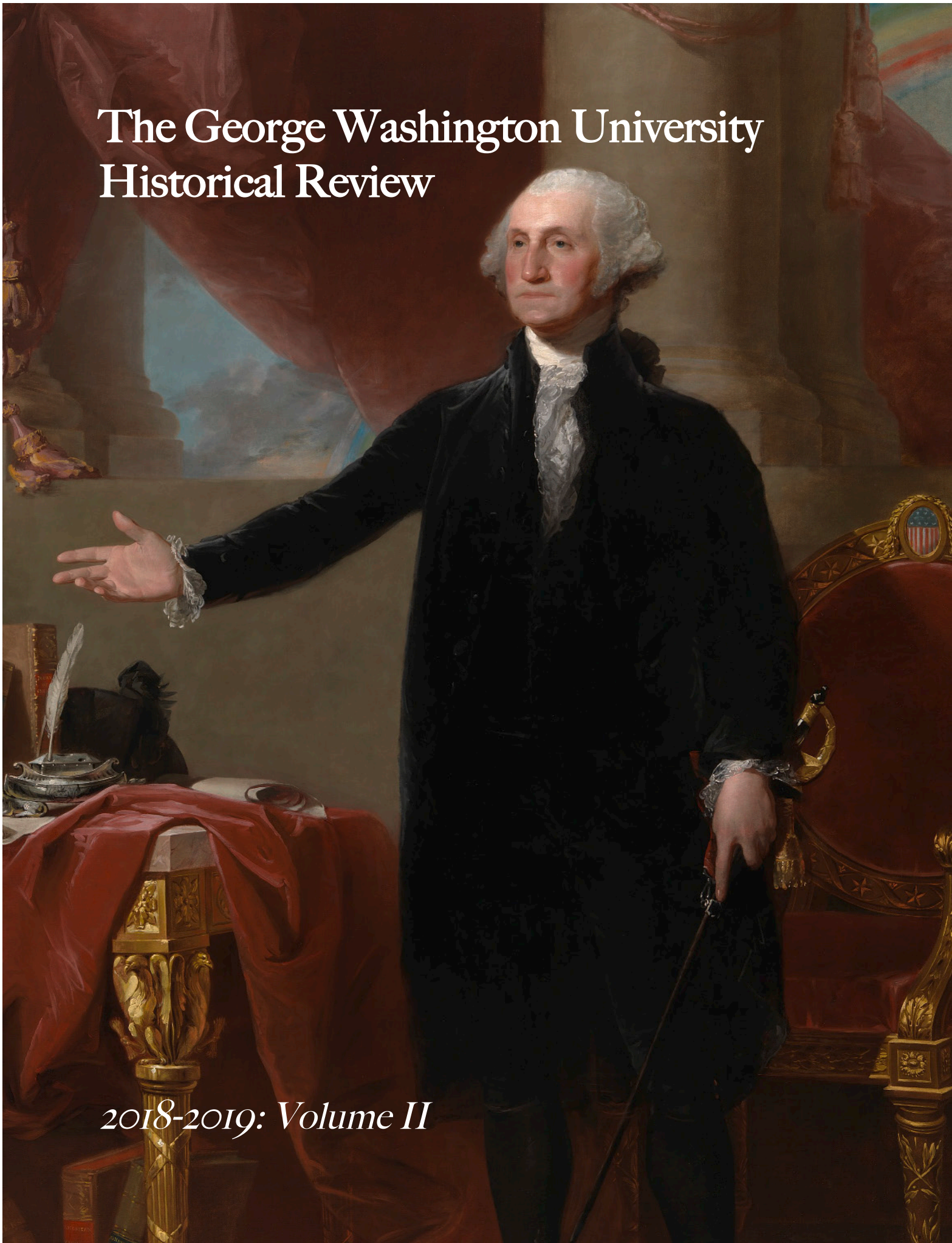


The George Washington University Historical Review

2018-2019: Volume II



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Editor's Note

Welcome to the second volume of *The George Washington University Historical Review*. After receiving a record number of submissions, our publication team has chosen to publish four thought-provoking pieces on a wide range of topics.

This issue spans two centuries of North American and European history. Covering the late eighteenth-century to the late twentieth-century, this issue examines George Washington's execution of a Federalist vision for the Supreme Court, the similarities between the Berlin Wall and the Mexican Border, the United States' imprisonment of Japanese-Americans during the Second World War, and James Birney's impact on the abolitionist movement.

To our faculty advisor, Professor Tyler Anbinder, thank you for your unwavering devotion to the journal. Without your oversight and guidance, the publication of this journal would not be possible. We would also like to thank the History Department and its professors for their time and expertise to ensure that this issue showcases exemplary undergraduate scholarship. Lastly, we commend authors Zach Sanders, Anayeli Nuñez, Amanda M. Urban, and Isaac J. Strauss, for their hard work and patience in trusting us to publish their scholarship. On behalf of all authors, editors, and advisors, we hope you enjoy our 2018-2019 edition.

Alison Beachman

Editor-in-Chief

“THE KEY-STONE OF OUR POLITICAL FABRIC”

Washington’s Judiciary and the Federalist Foundations of American Constitutional Law

By Zach Sanders

In a letter enclosed with John Jay’s commission to be appointed the first Chief Justice of the United States, Washington described the judiciary as “that department which must be considered as the Key-Stone of our political fabric.”¹ The deliberation with which Washington made his appointments to the first Supreme Court was consistent with this view. Washington took great care to emphasize “the importance of the institution and...the character and integrity of those who would serve it.”² However, as with much of the Federal Government, the foundational years of the federal judiciary constituted “an extended encounter with firstness,” and Washington had little guidance as to how he would select jurists to serve on the first iteration of the highest federal bench.³ His political beliefs undoubtedly had an influence on this process, but the question of whether or not Washington had a specific vision for the judiciary remains open, as does the question of whether his appointees successfully executed such a vision. On the surface, Washington’s writings reveal his support for a strong federal judiciary concomitant with his Federalist commitment to strong central government. Deeper analysis of contemporary

¹ “From George Washington to John Jay, 5 October 1789,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-04-02-0094>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig, Charlottesville: University Press of Virginia, 1993, pp. 137–138.]

² Maeva Marcus, “George Washington’s Appointments to the Supreme Court,” *Journal of Supreme Court History* 24, no. 3 (1999): 243–254, 245.

³ Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York: Oxford University Press, 1993), 36.

correspondence and primary sources, however, reveal that Washington strategically appointed justices to the first Supreme Court who would support his vision for an active, strong, and independent judiciary. His appointees worked to strengthen the national government, solidify the place of the United States on the world stage, affirm the independence of the judiciary, and lay the foundations for the future of American constitutional law.

An understanding of Washington's process for constructing the first federal judiciary enables us to better understand Washington's judicial vision. William Casto, an esteemed scholar on the federal court system, identifies the six criteria used by Washington to select his appointees. These criteria include support and advocacy for the Constitution, distinguished service in the American Revolution, active participation in the political life of the individual's home state or the nation, prior experience on lower tribunals, either a "favorable reputation with his fellows" or personal ties with Washington himself, and geographic diversity.⁴ Washington hewed roughly to these criteria throughout the process of making his first six appointments to the Supreme Court, despite stiff competition described by constitutional historian Maeva Marcus as mounting "well before the outlines of the federal judiciary had been made public." James Iredell, who would eventually become one of Washington's appointees, publicized his interest in a spot on the first Supreme Court, while friends of James Wilson, one of the leading jurists of the early republic, underwent an intense campaign to win the post of Chief Justice.⁵ Nonetheless, Washington was noncommittal, noting in a letter that "no one knows my ultimate determination until the moment arrives when the nomination is to be laid before the Senate...my resolution, not to create an

⁴ William R. Casto, *The Supreme Court in the Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth* (Columbia: University of South Carolina Press, 1995), 56.

⁵ Marcus, "Washington's Appointments," 245.

expectation, which thereby might embarrass my own conduct.”⁶ Ultimately, each of Washington’s six initial appointees met some or all of the above criteria: John Jay was a vocal Federalist and advocate for the ratification of the Constitution in New York; John Rutledge was a Middle Temple-trained lawyer, representative for South Carolina at the Constitutional Convention, and advocate for the Constitution’s ratification in his home state; William Cushing was the Chief Justice of the Massachusetts Supreme Judicial Court and attended the state ratifying convention; Robert Harrison was an enthusiastic patriot, aid to Washington during the war, and Chief Judge of the General Court of Maryland; James Wilson, second only to Madison in active participation at the Constitutional Convention, was a prominent legal theorist of pre-revolutionary America, signer of the Declaration of Independence, and fierce advocate of ratification in Pennsylvania; and John Blair had served in the Virginia judiciary starting in 1777 and represented Virginia at the Constitutional Convention.⁷ Washington deemed each of the aforementioned appointees to be capable of executing his judicial vision due to their shared support of the Constitution and considerable experience in administering the law. In making these first appointments, Washington took the time to consult statesmen and advisors to determine whether or not his hypothetical appointees would accept. The result of Washington’s preliminary appointments was a federal bench poised to execute his vision for a strong and independent judiciary.

Consistent with Washington’s vision of the judiciary as the “Key-Stone of our political fabric,” his appointees established the place of the Supreme Court within the Federalist framework

⁶ “From George Washington to Edmund Pendleton, 17 March 1794,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-15-02-0312>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 15, 1 January–30 April 1794, ed. Christine Sternberg Patrick. Charlottesville: University of Virginia Press, 2009, pp. 406–407.]

⁷ Marcus, “Washington’s Appointments,” 247–250.

of a strong national government.⁸ The desire to appoint individuals who would support this framework was, for Washington, a distinctive subsidiary of his requirement that potential jurists be supporters of the Constitution. Washington connected his basic philosophy of a strong national government to his judicial appointments in the following letter to John Rutledge:

Regarding the due administration of Justice as the strongest cement of good government, I have considered the first organisation [*sic*] of the judicial department as essential to the happiness of our Citizens, and to the stability of our political system. Under this impression it has been an invariable object of anxious solicitude with me to select the fittest Characters to expound the laws and dispense justice.⁹

Washington implied in his correspondence that partisan loyalty was secondary in relevance to the integrity of the system. He sought the fittest individuals for the crucial task of interpreting the laws of the new nation. Experience and ability ranked higher than anything else on his scale of criteria. As Casto notes, this set an important precedent for judicial appointments. Had Washington merely appointed Federalist politicians with little judicial experience, “the Court might have become a reliquary for political hacks, but Washington’s nominations firmly established a contrary tradition.”¹⁰ Washington made his appointments considering qualification first and partisan affiliation second, an important model that has served to strengthen the judiciary throughout American history.

Once on the Court, Washington’s appointees were quickly presented with a variety of legal questions regarding the hierarchical superiority of the Federal Government. Various cases

⁸ “Washington to Jay, 5 October 1789,” *Founders Online*.

⁹ “From George Washington to John Rutledge, 29 September 1789,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-04-02-0077>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 4, 8 September 1789-15 January 1790, ed. Dorothy Twohig, Charlottesville: University Press of Virginia, 1993, pp. 114-115.]

¹⁰ Casto, *Supreme Court in the Early Republic*, 55.

involving states as parties, for instance, cropped up as early as August of 1792, with four being filed in that term alone.¹¹ Associate Justice James Iredell—appointed when Robert Harrison could not take his seat on the Court—observed in the course of proceedings in *Oswald v. New York* that “in every Controversy therefore of a civil nature, where a State is a Party, except between a State & its Citizens, this Court hath original Jurisdiction; and in all such instances, except where the suit is between a State & Citizens of other States, or Alien, it shall also be exclusive.”¹² Justice Iredell and his colleagues did not equivocate in their views that the Supreme Court had jurisdiction to hear cases in which states participated as parties. A later case gave the Ellsworth court, still staffed with Washington appointees, an opportunity to showcase its dedication to Washington’s project of strengthening the national government. The case, *Ware v. Hylton*, was a challenge to a Virginia law that released American debtors from their pre-Revolutionary War obligations to British creditors. The United States Circuit Court for the District of Virginia found for Hylton, the British creditor.¹³ Ware, the American debtor, appealed to the Supreme Court for relief.¹⁴ The Court ruled for Hylton, noting that treaties made by the federal government superseded conflicting state laws. The Virginia law in question was found to have violated Article IV of the 1783 Treaty of Paris, which mandated that “creditors on either side shall meet with no lawful

¹¹ See *Van Stophorst v. Maryland*, 2 U.S. 401 (1791); *Oswald v. New York*, 2 U.S. 401 (1792); *Chisholm v. Georgia*, 2 U.S. 419 (1793); *Hollingsworth v. Virginia*, 3 U.S. 17 (1798); Charles Warren, “The First Decade of the Supreme Court of the United States,” *The University of Chicago Law Review* 7, no. 4 (1940): 631-54, 640.

¹² James Iredell, “Observations on State Suability,” in *Documentary History of the Supreme Court, Volume Five: Suits Against States*, Maeva Marcus, ed. (New York: Columbia University Press, 1985), 83.

¹³ The current geographical divisions of the United States Circuit Courts of Appeals did not yet exist, nor would they be established until the passage of the Evarts Act, also known as the Circuit Courts of Appeals Act, 26 Stat. 826 (1891).

¹⁴ *Ware v. Hylton*, 3 U.S. 199, 220-221 (1796).

impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.”¹⁵ The opinion of the Court was delivered by Justice Samuel Chase:

Four things are apparent on a view of this 6th article of the National Constitution. 1st. That it is retrospective, and is to be considered before the making of the treaty of 1783. 2d. That the constitution, or laws, of any of the states so far as either of them shall be found contrary to that treaty are by force of the said article, prostrated before the treaty. 3d. That consequently the treaty of 1783 has superior power to the legislature of any state, because no legislature of any state has any kind of power over the Constitution, which was its creator. 4thly. That it is the declared duty of the state judges to determine any constitution, or laws of any state, contrary to the treaty (or any other) made under the authority of the United States, null and void. National or federal judges are bound by duty and oath to the same conduct.¹⁶

Justice Chase’s decision mandates that state legislatures, and the laws enacted therein, do not have the power to contradict or counteract laws made by the federal government. This ruling was a decisive win for the power of the federal government. Taken together with Iredell’s thoughts in *Oswald*, Chase’s opinion constitutes the first area in which the early Supreme Court enshrined Washington’s vision for a strong national government. These examples prove Washington’s success in appointing justices who would uphold the first tenet of his vision for the federal judiciary. Washington’s vision would be met with similar success in other areas of the Supreme Court’s early work.

In close conjunction with the general strengthening of the national government, Washington’s appointments reveal a strong desire for the federal judiciary to take an active role in establishing the place of the United States on the world stage. The appointment of John Jay as the first Chief Justice speaks to this piece of Washington’s judicial vision. In a field of highly qualified candidates for the post of Chief Justice, Jay distinguished himself with extensive experience in

¹⁵ Definitive Treaty of Peace between the United States of America and his Britannic Majesty, G.B.-U.S., 104 U.S.T. 1783.

¹⁶ *Ware*, 3 U.S. at 237.

foreign affairs. Jay had served as minister to Spain during the Revolutionary War, helped negotiate the Treaty of Paris, and served as Secretary of Foreign Affairs under the Articles of Confederation.¹⁷ His experience with a government plagued by “inability to deal effectively with international relations and national security” shaped his belief that the United States needed a strong central government to convey strength in foreign affairs.¹⁸ While many believed James Wilson to be the strongest contender for Chief Justice, Washington ultimately chose Jay for the job in an effort to establish the Chief Justiceship as a position for advising the President on pressing questions of international law.¹⁹ Jay, for his part, embraced this role. Early in Washington’s presidency, as Washington confronted the Nootka Crisis, a dispute over land claims between the British and Spanish on Vancouver Island, he wrote to the Chief Justice as well as his cabinet.²⁰ Jay “displayed no hesitation in advising the President on the proper application of international legal principles to the diplomatic case at hand.”²¹ Jay responded to the President’s request for advice with a point-by-point breakdown of the situation and its implications for the United States, as well as how the United States should respond in accordance with contemporary principles of international law.²² However, the Court’s place in the development of early American diplomacy was not limited to extrajudicial advice, nor to just the activities of the Chief Justice. At a critical

¹⁷ Natalie Wexler, “In the Beginning: The First Three Chief Justices,” *University of Pennsylvania Law Review* 154, no. 6 (2006): 1373-419, 1382.

¹⁸ Casto, *Supreme Court in the Early Republic*, 57.

¹⁹ Wexler, “In the Beginning,” 1382-1383.

²⁰ Casto, *Supreme Court in the Early Republic*, 71.

²¹ Casto, 72.

²² “To George Washington from John Jay, 28 August 1790,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-06-02-0170>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 6, 1 July 1790–30 November 1790, ed. Mark A. Mastromarino. Charlottesville: University Press of Virginia, 1996, pp. 353–356.]

moment, the Court jumped at the opportunity to affirm the diplomatic fortitude of the new republic.

The justices made plain in the many prize cases which constituted the early Court's docket that America was a sovereign nation whose rights as such ought to be respected.²³ In one particular case, *Glass v. The Sloop Betsey*, the Jay Court "demonstrated the importance of adherence to the law of nations to the future of the United States."²⁴ The case involved the French capture of an American ship, the sloop *Betsey*, carrying Swedish cargo.²⁵ The French consulate attempted to assert its authority in determining the value of the prize, even though the ship was sent to Baltimore upon capture. At a time of tense diplomatic relations with France and escalating tensions between the two nations, the American shareholder in the ship's cargo sued for libel in the District Court of Maryland. The District Court found for the Americans, and the French captors appealed to the United States Supreme Court. The captors' argument was that the United States District Court did not have jurisdiction in the case, as French authorities were originally asked to determine the value of the prize.²⁶ The Court ruled unanimously, with Jay writing for the majority, that the District Court in fact had exclusive jurisdiction to hear admiralty cases on American soil and, further, that it was inappropriate for a French consul to assert French jurisdiction in matters of prize related to ships brought to American ports:

²³ "Prize" refers to "a vessel or cargo captured at sea or seized in port by the forces of a country at war, and therefore liable to being condemned or appropriated as enemy property." A "prize case" is a case involving the capture of prize on the high seas and the court proceeding wherein a prize court, a Federal District Court in the United States, adjudges the value of the captured prize. Brian A. Garner, "Prize," *Black's Law Dictionary*, 10th ed. (St. Paul, MN: Thomson West, 2014).

²⁴ Maeva Marcus, "The Effect (or Non-Effect) of Founders on the Supreme Court Bench," *George Washington Law Review* 80, no. 6 (2012): 1794-1812, 1800.

²⁵ The French ship, under the command of Captain Pierre Arcade Johannene, was the *Citizen Genet*. *Glass v. Sloop Betsey*, 3 U.S. 6, 7 (1794).

²⁶ *Glass*, 3 U.S. at 8.

AND the said Supreme Court being further of opinion, that no foreign power can of right institute, or erect, any court of judicature of any kind, within the jurisdiction of the United States, but such only as may be warranted by, and be in pursuance of treaties, IT IS THEREFORE DECREED AND ADJUDGED that the admiralty jurisdiction, which has been exercised in the United States by the Consuls of France, not being so warranted, is not of right.²⁷

The decision was a massive rebuke to French authority on sovereign American soil and settled a highly controversial question. It also had the effect of establishing “our powerful position as a neutral nation and a principle for the basis of action in all future years.”²⁸ While the President had previously issued the Proclamation of Neutrality, the Court—with a resounding and unanimous ruling in *Glass*—affirmed both the judiciary’s commitment to upholding the United States’ position in world affairs and its commitment to fulfilling Washington’s vision for a court active in supporting the international rule of law.

Besides merely affirming the strength of the national government, Washington’s writings allude to a specific commitment to the independence of the judiciary. Alexander Hamilton wrote in *Federalist* no. 78 that the judiciary “will always be the least dangerous” branch of government due to its inability to interfere directly in citizens’ rights.²⁹ While Hamilton was attempting to assuage fears about the potential perversions of a strong judiciary, his comments speak volumes about the skepticism of judicial power that permeated public opinion in the post-revolutionary era. Washington, however, did not share this skepticism. He said as much in his letter to the Supreme Court as the Justices prepared to depart for their first circuit:

I have always been persuaded that the stability and success of the National Government, and consequently the happiness of the People of the United States,

²⁷ *Glass*, 3 U.S. at 16.

²⁸ Warren, “The First Decade,” 648.

²⁹ Alexander Hamilton, “A view of the constitution of the judicial department in relation to the tenure of good behavior,” in *The Federalist Papers*, Lawrence Goldman, ed. (New York: Oxford University Press, 2008), 545.

would depend in a considerable degree on the Interpretation and Execution of its Laws. In my opinion, therefore, it is important that the Judiciary System should not only be independent in its operations, but as perfect as possible in its formation.³⁰

Washington very explicitly believed that the integrity of the judiciary as an independent branch of government was necessary for the success of the entire federal system. He incorporated this belief into his selection process by, for example, refusing to offer commissions unless he had some assurance that his appointees would accept the position.³¹ He took great care in ensuring the qualifications of his appointees, writing to Otho Holland Williams that “in the person of a Judge, the World will look for character and reputation founded on service and experience...in such important appointments as the Judiciary, much confidence is necessary.”³² In responding to Thomas Johnson’s letter that he was resigning his post as Associate Justice due to illness, Washington lamented that “the resignation of persons holding that high Office [of a Judge or Justice] conveys to the public mind a want of stability in that Department, where it is perhaps more essential than any other.”³³ At these and other occasions, Washington deviated from the norm of his time by asserting his belief that the judiciary should be a strong and independent branch of the federal government. His appointees enthusiastically endorsed this view.

³⁰ “From George Washington to the United States Supreme Court, 3 April 1790,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-05-02-0201>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 5, 16 January 1790–30 June 1790, ed. Dorothy Twohig, Mark A. Mastromarino, and Jack D. Warren. Charlottesville: University Press of Virginia, 1996, pp. 313–314.]

³¹ Marcus, “Washington’s Appointments,” 245.

³² “From George Washington to Otho Holland Williams, 22 November 1789,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-04-02-0223>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 4, 8 September 1789–15 January 1790, ed. Dorothy Twohig. Charlottesville: University Press of Virginia, 1993, pp. 318–319.]

³³ “From George Washington to Thomas Johnson, 1 February 1793,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-12-02-0053>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 12, 16 January 1793–31 May 1793, ed. Christine Sternberg Patrick and John C. Pinheiro. Charlottesville: University of Virginia Press, 2005, p. 80.]

On various occasions during the Supreme Court's early years, the Justices worked towards Washington's vision for an independent judiciary. In his first charge to the Grand Jury of the Circuit Court for the District of New York, Chief Justice Jay outlined his own beliefs on the subject of judicial independence:

The Constitution of the United States has accordingly instituted these three Departments, and much Pains have been taken so to form and define them, as that they may operate as Checks one on the other, and keep each within its proper Limits it being universally agreed to be of the last Importance to a free People, that they who are vested with executive legislative & judicial Powers, should rest satisfied with their respective Portions of Power, and neither encroach on the Provinces of each other, nor suffer themselves nor the others, to intermeddle with the Rights reserved by the Constitution to the People.³⁴

Jay very clearly agreed with Washington that the judiciary should be considered coequal with the other branches and acted accordingly during his time on the Court. For instance, he and his fellow justices voiced their disdain for the system of circuit riding imposed by the Judiciary Act of 1789; Justice Blair wrote to Jay that “the circuit system may not be perfectly consistent with the spirit of the Constitution.”³⁵ The system, besides requiring that the Justices spend half the year traveling the country to hear appeals in their respective circuits, also implied that a Justice might hear a case in his capacity as a Circuit Court judge and then hear the case again on appeal to the Supreme Court, a clear conflict of interest by twenty-first century standards.³⁶ The Justices drafted a joint letter to Washington even before they departed on their first circuit arguing against the practice.

³⁴ John Jay, “Charge to the Grand Jury of the Circuit Court for the District of New York, April 12, 1790,” in *Documentary History of the Supreme Court, Volume Two: The Justices on Circuit, 1790-1794*, Maeva Marcus, ed. (New York: Columbia University Press, 1985), 27 [hereinafter 2 DHSC].

³⁵ Judiciary Act of 1789, 1 Stat. 73 (1789); “John Blair to John Jay, August 5, 1790,” in Marcus, 2 DHSC, 84.

³⁶ Note, for example, Justice Kagan’s recusals from cases she worked on during her time as Solicitor General of the United States (*Jennings v. Rodriguez*, 583 U.S. ____ (2018)), Justice Gorsuch’s recusals from cases he heard on the Tenth Circuit (*Royal v. Murphy*, No. 17-1107 (2018)), and Justice Kennedy’s recusal from a fishing rights case that he heard on the Ninth Circuit in 1985 (*Washington v. United States*, 54 U.S. ____ (2018)).

They noted that they did not object to being employed in capacities other than that of Justice “provided the latter Purposes be consistent and compatible with the former.” However, they did not believe “that the Judges of the Supreme Court may also be Judges of inferior and subordinate Courts, and be at the same Time both the Controllers and the controlled [*sic*].”³⁷ They believed that Congress, by passing an act binding the Justices to this detestable practice, was jeopardizing the integrity of the Supreme Court’s work.³⁸

Another broad area where the Justices supported Washington’s vision for an independent judiciary was in the realm of extrajudicial advice. In this instance, however, the Justices set an important precedent by declining to counsel Washington in their official capacities. As with much of the early American political system, English and colonial precedents were applied to the early judiciary, including a blurred line “between judicial and nonjudicial functions...despite the new emphasis on separation of powers.”³⁹ Nevertheless, the prospect of Supreme Court Justices serving in an advisory capacity did not appeal to the American people due to its decidedly monarchical connotation. Lord Mansfield, Chief Judge of the King’s Bench in Great Britain, was known in America for his “pernicious and shadowy influence” on the Crown before and during the American Revolution.⁴⁰ Proposals for the Justices to have a formal advisory role to the President were never adopted, but the Constitution also did not contain provisions for or against any “explicit requests for advice from the Chief Justice—or from the Court as a whole, for that matter.”⁴¹ After

³⁷ Emphasis included. “Justices of the Supreme Court to George Washington, ca. September 13, 1790,” in Marcus, 2 *DHSC*, 90.

³⁸ Judiciary Act of 1789, 1 Stat. 73 (1789).

³⁹ Wexler, “In the Beginning,” 1396.

⁴⁰ Wexler, “In the Beginning,” 1399.

⁴¹ Wexler, 1399.

Washington and his cabinet failed to reach a consensus on the issue of neutrality in 1793, they wrote to the Supreme Court for the Justices' opinions on the matter.⁴² The Court declined to receive these questions, writing that "the Lines of Separation drawn by the Constitution between the three Departments of Government—their being in certain Respects checks on each other...are Considerations which afford strong arguments against the Propriety of our extrajudicially deciding the questions alluded to."⁴³ Nothing in the Constitution prevented the Court from answering Washington's questions in its official capacity, but the Justices recognized that by setting a precedent wherein federal jurists participated in executive policymaking, they treaded dangerously close to the lines that demarcated separation between the departments of the new government. As members of the founding generation, the Justices, like Washington, held powerful roles in the establishment of precedent for future government operations. This included an obligation to establish "a strong federal judiciary, one that would interpret federal law uniformly for the new nation."⁴⁴ Although this obligation led the Justices to demur on Washington's request, their commitment to creating a sound federal judiciary was not merely confined to conduct that defined the nature of the Supreme Court as an institution. The Justices worked diligently to ensure the future of the judicial branch by setting the foundations for transformative jurisprudential developments.

⁴² See "Enclosure Questions for the Supreme Court, 18 July 1793," *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-13-02-0164-0002>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 13, 1 June–31 August 1793, ed. Christine Sternberg Patrick. Charlottesville: University of Virginia Press, 2007, pp. 243–247.]

⁴³ "To George Washington from Supreme Court Justices, 8 August 1793," *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-13-02-0263>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 13, 1 June–31 August 1793, ed. Christine Sternberg Patrick. Charlottesville: University of Virginia Press, 2007, pp. 392–393.]

⁴⁴ Marcus, "Effect (Or Non-Effect)," 1812.

The final examples of the early Supreme Court laying the foundations for a distinctly Washingtonian judicial system come in early jurisprudence that presaged the formal establishment of the doctrine of judicial review. In such rulings, Washington's Supreme Court set the foundation for the future development of American constitutional law. In 1803, Chief Justice John Marshall ruled in *Marbury v. Madison* that "it is emphatically the province and duty of the judicial department to say what the law is." This historic ruling formally established the doctrine of judicial review and affirmed the power of the federal judiciary to rule on questions of constitutional law, thus giving the courts the power to strike down laws deemed to be in violation of the Constitution.⁴⁵ This was without a doubt a Federalist doctrine in line with John Marshall's political leanings; however, judicial review is wholly consistent with Washington's views on the judiciary.⁴⁶

In ways more prominent than most legal historians and constitutional law experts typically acknowledge, Washington's appointees laid the foundation for judicial review long before Marshall's ascendance to the Chief Justiceship. By the time *Marbury* came to the Supreme Court, judicial review had already existed in its basic form for at least thirteen years. Chief Justice Jay articulated the doctrine in 1790, noting in his aforementioned Grand Jury charge that "a judicial Controul [*sic*], general and final, was indispensable" in the Founders' vision for the judicial branch as framed by the Constitution.⁴⁷ Marcus notes that "federal judges exercised their power of judicial

⁴⁵ *Marbury v. Madison*, 5 U.S. 137, 177 (1803). These words are perceived as so central to the foundation of all subsequent developments in American constitutional law and the federal judiciary that they are emblazoned in gold lettering on the walls of the Supreme Court of the United States, directly behind a life-size bronze statue of John Marshall.

⁴⁶ Jean Edward Smith, *John Marshall: Definer of a Nation* (New York: H. Holt & Co., 1996), 118-120.

⁴⁷ Jay, "Charge to the Grand Jury" in Marcus, 2 *DHSC*, 27.

review with regard to both state and national legislation on a number of occasions.”⁴⁸ In such cases, the Justices set the early precedents that laid the groundwork for Marshall’s ruling. Between 1792 and 1795, the Supreme Court released opinions in three cases where judicial review was invoked in all but name. The first was in *Hayburn’s Case*. Under the Invalid Pensioner’s Act, Congress mandated that Revolutionary War pensioners could apply to the Circuit Courts for their pensions, thus assigning a duty to the judicial branch far outside the normal purview of judicial business.⁴⁹ The case was never heard because the Justices wrote to Washington and voiced their concerns over the Act:

Because, if, upon that Business, the Court had proceeded, its *Judgments*—for its *Opinions* are its *Judgments*—might, under the same Act, have been revised and controuled by the Legislature and by an Officer in the executive Department. Such revision and controul we deemed radically inconsistent with the Independence of that judicial Power, which is vested in the Courts, and consequently, with that important Principle which is so strictly observed by the Constitution of the United States.⁵⁰

Washington forwarded the Justices’ concerns to Congress, and the Act was repealed.⁵¹ While the Court did not issue a formal, precedent-setting opinion in the case, the Justices’ letter had the effect of declaring the Act unconstitutional.

Later, in a case that is widely considered to be the first “landmark” case heard by the United States Supreme Court, Jay simultaneously enhanced the Supreme Court’s power vis-à-vis the states while alluding to judicial review. *Chisholm v. Georgia* arose when an individual from South

⁴⁸ Marcus, “Effect (Or Non-Effect),” 1801.

⁴⁹ Warren, “The First Decade,” 646.

⁵⁰ “To George Washington from the United States Circuit Court Judges for Pennsylvania, 18 April 1792,” *Founders Online*, National Archives, last modified November 26, 2017, <http://founders.archives.gov/documents/Washington/05-10-02-0174>. [Original source: *The Papers of George Washington*, Presidential Series, vol. 10, *1 March 1792–15 August 1792*, ed. Robert F. Haggard and Mark A. Mastromarino. Charlottesville: University of Virginia Press, 2002, pp. 287–289.]

⁵¹ An Act to regulate the Claims to Invalid Pensions, 2 Stat. 17 (1793).

Carolina sued the state of Georgia to reclaim property lent to the state during the Revolutionary War, but Georgia failed to appear, claiming that the state had sovereign immunity under the state constitution and could not be sued by a citizen. Exercising its power under Article III, Section 2 of the Constitution, the Court asserted its jurisdiction over suits “between a State and Citizens of another State.”⁵² Jay wrote that “if there is a controversy between them, then it clearly falls not only within the spirit, but the very words of the Constitution.”⁵³ In this case, Jay struck down a state law by declaring it inconsistent with the terms of the federal Constitution, another explicit expression of judicial review.

Finally, in 1795, Justice William Patterson wrote in *Vanhorne’s Lessee v. Dorrance* that “every act of the Legislature, repugnant to the Constitution, is absolutely void.”⁵⁴ Here was the most overt expression of judicial review yet, an even more explicit invocation of the principle than Marshall would later articulate in *Marbury*. In the context of these three cases, it is clear that Marshall was not walking on untrodden ground in 1803. Like many of the Supreme Court’s landmark rulings of the twentieth and twenty-first centuries, the Court in the late eighteenth and early nineteenth centuries made its rulings progressively.⁵⁵ Marshall surely was aware of this jurisprudence—before becoming Chief Justice, he was an active member of the Supreme Court bar—and therefore felt that his ruling in *Marbury* was far less radical than modern observers believe.⁵⁶ As such, Washington’s Supreme Court had a profound effect on the foundations of

⁵² U.S. CONST., art. III, §2.

⁵³ *Chisholm v. Georgia*, 2 U.S. 419, 477 (1793).

⁵⁴ *Vanhorne’s Lessee v. Dorrance*, 2 U.S. 304, 309 (1795).

⁵⁵ Most landmark decisions of the United States Supreme Court come on the heels of a series of graduated decisions that prepare the Court to accept sometimes radical doctrines. See, for instance, *Shelley v. Kraemer*, 334 U.S. 1 (1948), *Henderson v. United States*, 339 U.S. 816 (1950), and other cases argued by Thurgood Marshall aimed at laying the foundation for the Supreme Court’s 1954 ruling in *Brown v. Board of Education*, 347 U.S. 483 (1954).

⁵⁶ Smith, *Definer of a Nation*, 157. Marshall argued the aforementioned *Ware v. Hylton*, 3 U.S. 199 (1796) among other important cases before the early Court.

American constitutional law in a substantive way. Moreover, Washington's views on judicial independence, and the legitimate power accorded to the judiciary under the Constitution, were entirely consistent with the establishment of this doctrine. In appointing the justices who laid this important foundation, Washington, intentionally or not, created a court that asserted its own authority on questions of constitutional law.

George Washington was not a lawyer. He expressed no thoughts on technical questions of law, the direction of American jurisprudence, or specific interpretations of common law. Nonetheless, his writings clearly reveal that he had specific ideas about the role of the federal judiciary within the fabric of the new republic. He believed that a strong judiciary was the "Key-Stone of our political fabric" and "essential to the happiness of our Citizens, and to the stability of our political system." By applying set criteria to all potential appointees, Washington succeeded in appointing jurists who would strengthen the national government, affirm the independence of the judiciary, and help to establish the place of the United States on the world stage. He set precedents by refusing to appoint partisans to the federal bench as well as allowing Justices to refrain from impinging upon their roles as independent arbitrators. Perhaps his most important role in the early judiciary, however, lay in his appointment of the justices who first articulated the doctrine of judicial review. Although "Father of American Constitutional Law" is nowhere to be found on the list of traditional Washingtonian monikers, judicial review is certainly considered the "Key-Stone" of American jurisprudence, as are the structural devices by which the federal judiciary conducts its operations today. Washington appointed the jurists who first enshrined these mechanisms in the annals of case law. Perhaps, then, Washington's legacy should be appended to acknowledge his

outsized role in shaping the future of the federal judiciary, just as he shaped the future of so many other American institutions.

DIVIDED POLITICS, DIVIDED CITIES

A Comparative Study of the Berlin Wall and the Mexican Border in the Twentieth Century

By Anayeli Nuñez

In December of 1963, two years after the initial construction and subsequent implementation of the Berlin Wall, negotiations between the Federal Republic of Germany and German Democratic Republic (GDR) allowed 1.2 million West Berliners to cross into East Berlin during the Christmas season.¹ It was an event that attracted international attention as the headline for the *Los Angeles Times* on December 23, 1963 read “31,000 Cross Berlin Wall in Single Day.”² The article satirically detailed the way in which West Berliners were granted access to the east for Christmas festivities when in fact the wall isolated East Berliners from the west. It illustrates how the often politically charged act of crossing boundaries, whether legally or illegally, is a common theme surrounding borders throughout the world. The Berlin Wall and the U.S. – Mexico Border, despite the geographical separation between the two, both served as a physical manifestation of two opposing political ideologies of the twentieth century: capitalism and communism. Both borders arose from a new occupation of each respective land and were later subject to reinforcement processes as new conflicts arose, thus turning the political separation into a physical separation. By focusing on the specific events that created each borderline, the

¹ "Former Border Crossing at Chausseestrasse," accessed August 24, 2018, <https://www.berlin.de/mauer/en/sites/former-checkpoints/chausseestrasse/>.

² "31,000 Cross Berlin Wall in Single Day." *Los Angeles Times* (1923-Current File), Dec 23, 1963, <http://proxygw.wrlc.org/login?url=https://search.proquest.com/docview/168456860?accountid=11243>.

reinforcement processes, the physical aspects, and the subsequent effects on the respective populations, the historical developments and the ways in which these two spaces and peoples related to one another can be observed. Despite geographical distance and cultural differences, The Berlin Wall and the U.S. – Mexico Border demonstrate how historicizing them as strictly separate or belonging to irreconcilable conflicts restricts the possibility of furthering cross-cultural connections.

OVERCOMING MISALIGNMENTS

To fully understand the degree to which the two spaces were historically alike, the inevitable discontinuities between the borders and the terminology that brings the two spaces together must be addressed and established. The first, and perhaps most noticeable discontinuity, is the level of operation. While the Berlin Wall operated at the local and municipal level, separating two halves of a city, the Mexican border operates at the international level, separating two countries. Given the dynamic of the Western Hemisphere, the Mexican border has also been said to be the divider between the core countries (The U.S. and Canada) and the periphery countries (Latin America) as described by the world-systems theory.³ To overcome this disparity, the Berlin Wall will be studied on both a local and international scale by analyzing its role as an extension of the larger west and east divide in Germany as well as the greater capitalist and communist divide

³ "Summary of Wallerstein on World System Theory," *Internet History Sourcebooks*, accessed November 18, 2017, <https://sourcebooks.fordham.edu/mod/Wallerstein.asp>; Despite the official name being the 'U.S. – Mexico border' I will refer to it as the 'Mexican border' because since its establishment, the border has acted to regulate and restrict movement from Mexico to the U.S. A similar argument could be made for the Berlin Wall restricting movement primarily from the East to the West (although regulating west to east movement as well). However, the name is not only too significant historically to alter for a study, but it more accurately describes the situation as dividing Berlin than the U.S. – Mexico border describes its respective divide.

between western and eastern Europe. The Mexican border, on the other hand, will be studied as an international border that also operates at the municipal level, as the ports of entry all exist within the sister-city context (El Paso/Ciudad Juarez, San Diego/Tijuana, and Laredo/Nuevo Laredo). The second discrepancy between the two borders is temporal misalignment. The Berlin Wall was a standing structure from August 13, 1961 until November 9, 1989.⁴ While the Berlin Wall no longer exists, the Mexican border is not only presently standing but currently in the process of undergoing yet another stage of legislative and physical reinforcement. In addition, the Berlin Wall stood for just three decades whereas conceptualizations for the Mexican border originated in the nineteenth century and continue into present day. To overcome these misalignments, both boundaries will be studied historically, referred to only in the past tense and in the context of the twentieth century.

Borders and boundary lines are a continuous theme in history. It is arguably because of this extensive presence that the terms and vocabulary surrounding the subject vary widely across disciplines. One would not refer to the Great Wall of China and the undefended border between the United States and Canada with the same terminology. Thus, it is necessary to identify the terms that will best connect these two spaces to bring about a better understanding of the contents of this study. Daphne Berdahl, a German scholar of East Germany and post-socialist Europe, approaches borders as a historical, rather than strictly political, subject. According to Berdahl, “geographical borders may be invested with cultural meanings far beyond their political intentions,” thus acting as points of dynamic interactions.⁵ Similar to this perspective on borders is

⁴ Hope M. Harrison, *Driving the Soviets up the Wall Soviet-East German Relations, 1953-1961* (Princeton: Princeton University Press, 2011), xiii.

⁵ Daphne Berdahl, *Where the World Ended: Re-Unification and Identity in the German Borderland* (Berkeley: University of California Press, 1999), 11, ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/gwu/detail.action?docID=801360>.

the definition provided by Wilson and Donnan, two scholars who stress the connection between borders and national identity. They write that borders maintain “[the] historical role as barriers to the movement of goods, ideas and people, and as markers of the extent and power of a state.”⁶ The fusion of these two ideas allows a transcultural view of borders that is key to understanding the Berlin Wall and the Mexican border. While people at both locations existed before ‘state power’ or ‘political intentions’ decided to mark a borderline, these two definitions leave plenty of room for further questions, namely ‘do the people define the border or does the border define the people?’ Additionally, the need to distinguish between the terms ‘border’ and ‘borderline’ is twofold. ‘Borderline,’ particularly when referring to the beginning stages of the two spaces, maintains fewer negative connotations than the word ‘border,’ which describes not just a physical entity but also the broader associations that accompany it. The term also offers a more neutral (although not entirely detached) middle ground for addressing the Mexican border and the Berlin Wall, as discussions surrounding the two respective spaces generally include different terminology. Once the similarities are introduced, however, the term ‘border’ will be used to refer to both spaces. The terminology used to separately study these two spaces is not powerful enough to transcend the extensive bounds of time, space, and culture. Therefore, in order to appropriately characterize both borders, this study will detail the similar processes undergone by these two vastly different spaces.

ORIGINS OF THE BORDERLINES

Both the Berlin Wall and the Mexican border arose from newly occupied land as a result of widespread warfare. It is this shared historical process that established the resulting similarities

⁶ Thomas M. Wilson and Donnan Hastings, *Border Identities: Nation and State at International Frontiers* (Cambridge: Cambridge University Press, 2009), 1.

between the two borderlines. Scholar Henry Ashby Turner articulates this phenomenon when he attributes the division of Germany after World War II, brought by the Soviet capture of Berlin in May of 1945, to the irreconcilable differences among the victors after the Third Reich and its war.⁷ Turner posits that the initial division of the country into American, British, French, and Soviet sectors resulted in the occupation of German territory, and Berlin was no exception to this sector-dividing dynamic. The Mexican border, on the other hand, spans a larger timeframe, beginning in the nineteenth century following the Mexican-American War (1846-1848). When Mexico City was captured by the Americans in September of 1847, Mexico lost all territory north of the Rio Grande River, causing the border between Mexico and the U.S. to shift. Mexicans settled along the new American territory – Texas, California, Nevada, New Mexico, Arizona, Colorado, and Utah – were suddenly American, not Mexican, citizens after 1848.⁸

Aside from warfare, the origins of the Berlin Wall and the Mexican border can be traced to specific governmental action and key negotiators. The Potsdam Conference on August 2, 1945, attended by British prime minister Clement Attlee, U.S. president Harry Truman, and Soviet state and party leader Joseph Stalin, did not create the Berlin Wall. Rather, the resulting agreement produced the circumstances that led to a series of events in the Soviet sector. These events, followed by the creation of two separate German states in 1949 as well as the

⁷ Henry Ashby Turner, *Germany from Partition to Reunification* (New Haven: Yale University Press, 1993), 8-16.

⁸ "The Treaty of Guadalupe Hidalgo," *National Archives and Records Administration (NARA)*, accessed November 1, 2017, <https://www.archives.gov/education/lessons/guadalupe-hidalgo>.

implementation of socialist policy in the GDR beginning in 1952, contributed to furthering the division of lands and ideologies.⁹

The key players in the authorization of the Berlin Wall were East Germany Socialist Unity Party of Germany (SED) leader Walter Ulbricht and Soviet leader Khrushchev.¹⁰ Their role in the Berlin Wall is revealed through a conversation from August of 1961, the same month construction on the wall commenced. The two leaders convened in Moscow to discuss the sealing of the border in Berlin and the anticipated subsequent difficulties. Although Khrushchev was a known opponent of the wall, he nevertheless found a way to justify its existence: "I have asked our ambassador to explain to you my thoughts that we should use the current tensions with the West and place an iron ring around Berlin. This will be easy to explain: we are threatened with war and we don't want spies sent into our midst."¹¹ Despite his justification for the wall, however, Khrushchev continued to find issues with the plan, among them a lack of engineering prowess, a shortage of resources, a fear of negative reactions and even retaliation, all of which he voiced to Ulbricht. Regardless, construction for the Berlin Wall began on August 13, 1961 to keep the West and West Berlin's capitalist influences from infiltrating East Berlin.

Likewise, following the Mexican-American War, the Mexican border was subject to the Treaty of Guadalupe Hidalgo. The treaty was signed on February 2, 1848 by representatives of the U.S., including General Winfield Scott representing President James K. Polk, and Santa

⁹ "Potsdam Conference (July 17-August 2, 1945)," Images - Allied Policies, 1944-1955, accessed November 10, 2017, http://germanhistorydocs.ghi-dc.org/sub_image.cfm?image_id=1008; Although Churchill attended the start of the conference, he was subsequently replaced by the successful candidate of the Labor Party, Clement R. Attlee, who thereafter represented Britain and signed the agreement.

¹⁰ Turner, *Germany from Partition*, 85.

¹¹ Nikita Sergeevich Khrushchev and Walter Ulbricht, "Notes on the Conversation of Comrade N.S. Khrushchev with Comrade W. Ulbricht on 1 August 1961," *History and Public Policy Program Digital Archive*, <http://digitalarchive.wilsoncenter.org/document/110206>.

Anna, General and President of Mexico. Like the Potsdam agreement, the treaty did not create the border, but set the conditions and redefined territorial lines along the Rio Grande. The resulting tension from the terms influenced how the two countries interacted with one another during the events of the twentieth century and sparked the adoption of multiple immigration laws, most notably the Immigration Act of 1924 (Johnson-Reed Act) and the Immigration and Nationality Act of 1965 (Hart-Celler Act). Both acts, in addition to conflicting interests in international events, created one of the world's most militarized borders.

While the construction of the Berlin Wall and the capitalist-communist divide that drove the outbreak of the Cold War are most commonly associated with Europe, the importance of this same dynamic to the development of the Mexican border should not be understated. Published in June of 1961, two months before the construction of the Berlin Wall, a U.S. newspaper printed a lengthy article entitled "Reds at the U.S. Border" that articulated American fears of communism spreading across the Mexican border: "In any case, the communist battle for Mexico – with the U.S. as its target – is moving into a new stage. The Reds intend to win. Their appetite for ripe fruit has been sharpened."¹² As evidenced by this article, the 1960s were marked by widespread fear of communism overtaking 'Americanism,' and the perception that Latin America was the "weak link" that would allow communism to spread to the West.¹³ But after the reign of dictator Porfirio Díaz, the Mexican government, specifically under Lázaro Cárdenas, not only maintained considerable

¹² "REDS AT U.S. BORDER PLOT WORLD RULE," *Nation's Business (Pre-1986)* 49, no. 6, (June 1961): 31, <http://proxygw.wrlc.org/login?url=https://search.proquest.com/docview/231734107?accountid=11243>.

¹³ Here, 'Americanism,' and more importantly the development of its construction, refers to the idea of having a set of values that collectively define what it means to be American. This of course is the subject of much debate and controversy, primarily regarding the impossibility of the objective. The initial concept of 'Americanism,' which began in the 1830s, has since then undergone various stages of development. The development seen during the 1960s represent another era of attempting to define the nation.

socialist leanings but also openly welcomed Russian Revolution exiles and other revolutionary refugees fleeing fascist Europe during the World Wars.¹⁴ The formation of both borderlines speaks volumes about the way in which borders and their ideologies are inherently detrimental. In a manner that further highlights the connections between the Mexican border and the Berlin Wall, the following step taken by each border's respective state was to reinforce the spaces or strengthen the borders.

THE REINFORCEMENT

Border reinforcement is a process that takes many forms. Most notable are the legal and physical manifestations, both of which are present in the creation of the Berlin Wall and the Mexican border. This constitutes not merely a coincidental similarity, but rather a strong parallel between the operation of the two borders. Due to both residual and new tensions, the need for reinforcement in the two spaces spawned further local and international complications.

Communications between East Germany and West Germany shed considerable light on legal procedure regarding the Berlin Wall. In December of 1962, Khrushchev wrote a letter to west German leader Konrad Adenauer justifying the Berlin Wall as a measure of defense against the West. The letter reads, "Day after day, your ministers, party functionaries, parliamentarians, and all sorts of visitors, whose numbers are legion, foment angry and dangerous agitation in West Berlin against peace and against the security of the neighboring socialist countries."¹⁵ This rivalry

¹⁴ Mónica Palma Mora, *De Tierras Extrañas: Un Estudio Sobre la Inmigración en México 1950-1990* (México, D.F.: INAH, 2006).

¹⁵ "The Soviet Government's Explanation of its Berlin Policy (December 24, 1962)," *German History in Documents and Images (GHDI)*, German Historical Institute, accessed November 19, 2017, http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=828.

between East Germany and West Germany, coupled with repeated attempts to traverse the wall, led to the use of firearms to prevent people from successfully crossing. This order, known as the “shoot to kill” order, remained in place until June of 1989 and epitomized the way in which the politburo altered the Berlin Wall.¹⁶

A similar legal process can be found in the history of the Mexican border, namely through immigration acts enacted in the region. The Immigration Act of 1924 and the Immigration and Nationality Act of 1965, both of which established quotas on immigration, drastically impacted the space by creating the concept of the illegal Mexican alien, something renowned immigration scholar Mae Ngai calls an ‘Impossible Subject.’ She emphasizes that “the immigration laws during the 1920s did not assign numerical quotas to Mexicans, but the enforcement provisions of restriction – notably visa requirements and border-control policies – profoundly affected Mexicans.”¹⁷ This type of legislation had unforeseen negative effects on border spaces, resulting in the ‘tightening’ of the Mexican border and a significant increase in border patrol.¹⁸

The two borders also maintain considerable physical similarities, specifically spatial features and armed enforcement. The Berlin Wall began as a barbed wire fence, blocking the street crossings in the city, and later gained concrete fortifications, transforming it into a more than 100-milelong wall.¹⁹ When the wall itself was not sufficient for preventing East Berliners from crossing into West Berlin, the *Stasi*, or the ‘sword and shield’ secret police force of the GDR, was tasked

¹⁶ “Order to Shoot” Berlin Wall Memorial, The Berlin Wall, updated 2018, <http://www.berliner-mauer-gedenkstaette.de/en/order-to-shoot-50.html>; Harrison, *Driving the Soviets*, 212.

¹⁷ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2014), 7.

¹⁸ “Border Patrol History,” *U.S. Customs and Border Protection*, updated May 24, 2018, <https://www.cbp.gov/border-security/along-us-borders/history>.

¹⁹ Turner, *Germany from Partition*, 88.

with guarding the border. Meanwhile, across space and time at the Mexican border, United States Border Patrol maintains significant similarities to the Stasi. Referred to as *La Migra* by Latinos, Border Patrol began guarding the 124-milelong borderland that started as a fence in 1924. Thus, the Stasi and Border Patrol both demonstrated each government's persistence in securing physical control of their respective border spaces.

The following images further depict the physical parallels between the borders.²⁰ The two photographs below, for example, highlight the stage of construction prior to the final version of each border. While the first image displays the Berlin Wall's transition from stone to concrete, the second image shows the Mexican border before the addition of the fence that would block access to the river. These two additions (the concrete and the fence) emphasize the solidification of the purported permanence of the divisions. More importantly, the images include the spaces *between* the walls: the death strip and the Rio Grande, respectively. Seemingly part of the physical structures, the spaces between the walls are as significant as the borders themselves. It is in these spaces that the action of crossing – the very thing the border is meant to prevent – occurs, and it is there that state power is asserted and reinforced to prevent undesired movement.

Photograph 1, Replacement of the Stone Wall with a Concrete Wall (July 1, 1963).



Photograph 2, The U.S. - Mexico Border pre-fence with an international bridge in the background.

²⁰ Klaus Lehnartz, "Replacement of the Stone Wall with a Concrete Wall," July 1, 1963, photograph, *German History in Documents and Images (GHDI)*, http://germanhistorydocs.ghi-dc.org/facsimile.cfm?document_id=107; "The U.S. - Mexico Border pre-fence with an international Bridge in the background," photograph, *US Citizenship and Immigration Services (USCIS) History Office*, "El Paso, Texas 1927," photograph, *CBP History Program*, October 2, 2015, <https://www.cbp.gov/about/history/cbp-history-program>; Jochen Moll, "Patrolling the Inner-German Border," 1971 photograph, *German History in Documents and Images (GHDI)*, http://germanhistorydocs.ghi-dc.org/sub_image.cfm?image_id=110.

In both Germany and Mexico, the presence of armed border enforcement developed as an additional form of fortification. Humans, rather than walls and fences, serve as a defense for the legal structures and the border, as defined by the state that imposes them. More than a form of defense for the state, however, the death strip and Stasi as well as the Rio Grande and *La Migra* each mark zones with high death tolls. A number of deaths related to crossing attempts occur on the borderlands, and *La Migra* is under orders to detain and restrain individuals by use of force. The following two images exemplify the parallels in armed enforcement at both locations. The photographs depict men in uniforms standing guard in front of facilities purposely constructed to enforce the borders.



Photograph 3, Border Patrol station in El Paso, Texas.



Photograph 4, Patrolling the Inner-German Border (1971).

The reinforcement process at both locations prompted severe changes to the physical and political landscape in the history of their respective continents, but it is these alterations that best demonstrate the similarity between the two spaces.

SYMBOLS AND IDENTITY

Political borders such as the Berlin Wall and the Mexican border exist as government top-down implemented actions that derive from the will of the state and are enforced militarily. It is

social and cultural realms, however, that best highlight the borders' importance. Borders tend to become symbols through which localities, states, and nations define themselves; they simultaneously embody territorial limits and sociocultural spaces. As Berdahl notes in *Where the World Ended*, "Boundaries – cultural, geographical, and territorial - identify people; they define who is inside and who is outside."²¹ In other words, a border creates a twofold symbol: the top-down police enforced terror that becomes synonymous with not just a violent or tragic event, but also the idea of reaching what is on the other side. The resulting border, then, becomes an idealized symbol of resistance, further incentivizing individuals to cross it.

Borders, as Berdahl, Donnan, and Wilson argue, are tied to identity due to their tendency to define who is included and who is not. Although the Berlin Wall's function was ostensibly to ward off Western influence, its true objective was to keep East Berliners from fleeing to the west. East Berliners continually sought better living conditions in the west, resulting in additional fortifications to keep them from crossing. Similarly, the situation at the Mexican border, which began with the chaos of the Mexican Revolution and was perpetuated by subsequent American imperialism in Latin America, led to abysmal conditions for many agricultural workers, causing them to flee north in search of more stable conditions and a better life. Because of the widespread need to cross among East Berliners and Mexicans alike, both sites saw instances of underground tunnels and vehicular smuggling to try and transport people to the other side. Thus, it is apparent that the social and cultural effects of the Berlin Wall and the Mexican border were and are deeply rooted in their respective populations. Peter Schneider articulated this fact when he asserted in his book, *The Wall Jumper*, that "the wall in our heads" took longer to come down than its physical

²¹ Berdahl, *Where the World Ended*, 27.

manifestation. Indeed, the process of German unification in 1990 included rebuilding a national identity.²²

CONCLUSION

The process of border reinforcement and the relationship between the U.S. and Mexico mirrors that of East and West Berlin, particularly how each boundary's initial creation and subsequent solidification proved detrimental to its respective populations. The two borders were unique and specific to their land, their people, and their era. From the governmental perspective, however, both borders were forced to address unlawful border crossings, and both found reinforcement to be the unequivocal solution. By acknowledging the similarities between the Berlin Wall and the Mexican-American border, these two spaces can not only be fused academically but generate a deeper understanding of how borders have historically developed, functioned, and cultivated widespread perceptions of those on the "other side."

²² Peter Schneider, *The Wall Jumper* (London: Penguin Books, 2005) 119.

WORLD WAR II PROPAGANDA

The Japanese-American “Internal Enemy”

By Amanda M. Urban

I. Introduction

The imprisonment of 120,000 Japanese-American citizens and residents during the Second World War is one of the most controversial stains on the fabric of American history.¹ Established following the Japanese attack on Pearl Harbor on December 7, 1941, internment camps marred the image of America’s eventual victory against the Axis powers.² No evidence demonstrated that an urgent national security threat justified this exercise of the federal government’s wartime powers as a military necessity.³ While preaching liberation, the nation perpetuated a strict racial hierarchy by casting the Japanese race as the enemy. Indeed, Allied soldiers fought and sacrificed their lives in defense of an ideal moral order, fighting under the banner of combating tyranny and oppression.⁴ Ultimately, the wartime treatment of Japanese-Americans reflects a disgraceful violation of human and civil rights, colliding with fundamental American values of fairness, equality, and innocence until proven guilty.⁵

Racial discrimination against Japanese-Americans on the home front conveniently served as a powerful tool for mobilizing the majority of the population behind the war effort. The forced removal and imprisonment of Japanese-Americans, justified by subhuman depictions of the

¹ Erica Harth, ed., *Last Witnesses: Reflections on the Wartime Internment of Japanese-Americans* (New York: Palgrave, 2001), 1-2.

² Roger Daniels, *Concentration Camps, North America: Japanese in the United States and Canada during World War II* (Malabar: Robert E. Krieger Publishing Company, 1981), 3.

³ Daniels, *Concentration Camps, North America*, 3.

⁴ John Dower, *War Without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1986), 3.

⁵ Daniels, *Concentration Camps, North America*, 3.

Japanese enemy in wartime propaganda, reinforced the widespread belief in profound racial differences between Americans and all people of Japanese ancestry. This picture of Japanese physical characteristics as defining a supposedly inferior race assisted U.S. total war mobilization, fostering a nationalist environment that influenced many Americans to support the war in Western Europe more than that in Asia and the Pacific.⁶ Following the Japanese attack on Pearl Harbor in 1941, racist wartime propaganda portrayed Japanese-Americans as internal enemies, causing the majority of the U.S. population to unify in support of a war in Europe.

II. The “Germany First” Strategy

Despite U.S. domestic pressure calling for military action in the Pacific following the Japanese attack on Pearl Harbor, American political and military considerations necessitated a strategic focus on defeating Germany before Japan. U.S. military officials understood that the nation could not wage war in the Pacific and simultaneously combat a combined German-Italian invasion of South America and the North Atlantic Ocean.⁷ Initially, the Navy backed a “Pacific-first” approach against Japan while the Army desired a unilateral defense of North America or the Western Hemisphere instead of aid to France and Britain.⁸ In his “Plan Dog” memorandum of November 1940, Chief of Naval Operations Admiral Harold R. Stark recommended a “Europe first” national security policy in alliance with Britain, aimed at defeating Germany before Japan.⁹ This strategic reassessment prompted an Atlantic, rather than Pacific, focus, serving as “perhaps

⁶ Talbot Imlat, “Total War,” *Journal of Strategic Studies* 30, no. 3 (2007): 559.

⁷ Brian Masaru Hayashi, *Democratizing the Enemy: The Japanese-American Internment* (Princeton: Princeton University Press, 2004), 79.

⁸ Mark Stoler, “George C. Marshall and the “Europe First” Strategy, 1939-1951: A Study in Diplomatic as well as Military History,” *Journal of Military History* (April 2015): 294.

⁹ Stoler, “George C. Marshall and the “Europe First” Strategy,” 295.

the most important single document in the development of World War II strategy.”¹⁰ That December, President Franklin D. Roosevelt and his military planners concluded that the European balance of power deeply impacted American security, necessitating that the Allies crush Germany quickly and decisively.¹¹ At the Arcadia Conference, from December 22, 1941 to January 14, 1942, Roosevelt and British Prime Minister Winston Churchill agreed on this “Germany first” approach, in combination with a strategic defensive against Japan in the Pacific.¹²

The “Germany first” strategy, however, clashed with American public opinion, which demanded a Pacific offensive as revenge against Japan for Pearl Harbor. Cognizant of racial attitudes on the home front, Secretary of War Henry Stimson cautioned Churchill in 1943 that the American people “really hated, if they hated anyone,” the Japanese, who “dealt them a foul blow” on December 7, 1941.¹³ He added that “only by an intellectual effort” had the American people “been convinced that Germany was their most dangerous enemy and should be disposed of before Japan.” In fact, contemporary observers unanimously agree that people in the U.S. and Britain hated the Japanese more than the Germans before and after Pearl Harbor.¹⁴ Throughout 1942, the military diverged from its strategic focus on Europe by deploying more forces against Japan than Germany.¹⁵ Roosevelt and Chief of Staff George C. Marshall reacted to the limited patience of the

¹⁰ Louis Morton, “Germany First: The Basic Concept of Allied Strategy in World War II,” in *Command Decisions*, (Washington: U.S. Government Printing Office, 1960), 35.

¹¹ Stoler, “George C. Marshall and the “Europe First” Strategy,” 295.

¹² William Hardy McNeill, *America, Britain, and Russia: Their Cooperation and Conflict 1941-1946* (Oxford: Oxford University Press, 1953), 90.

¹³ Stoler, “George C. Marshall and the “Europe First” Strategy,” 299.

¹⁴ Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* (New York: Harper & Brothers, 1948), 429–30; Stoler, “George C. Marshall and the “Europe First” Strategy,” 299; Dower, *War Without Mercy*, 8.

¹⁵ Richard M. Leighton and Robert W. Coakley, *Global Logistics and Strategy, 1940–1943*, a volume in *United States Army in World War II* (Washington: U.S. Government Printing Office, 1955), 662; Stoler, “George C. Marshall and the “Europe First” Strategy,” 299.

American people by aiming to quickly defeat Germany before domestic pressure, backed by the U.S. Navy and General Douglas MacArthur, forced U.S. strategy to align with public opinion.¹⁶

After Pearl Harbor, the forced removal and imprisonment of Japanese-Americans assisted in reducing domestic pressure for a strategic focus on Japan. Placing this racial minority group behind barbed wire conveyed a sense of American superiority over the members of an enemy race, suggesting that the nation had taken active steps to contain the Japanese threat. Dissuading the national public from rejecting the “Germany first” strategy, the internment camps enabled the government to sustain a strategic defensive against Japan.

The military and political necessity to cooperate with the Soviet Union Premier, Joseph Stalin, also led to the “Germany first” strategy. Unequipped to defeat Germany alone, the U.S. formed a coalition with the Soviet Union. Roosevelt prioritized the need to keep Stalin committed to the Allied side, never making a decision without considering its impact on him.¹⁷ In fact, Marshall asserted after the war that the “complete fusion” of the American and Soviet resources in man and material served as a “major contribution to the victory.”¹⁸ Demonstrating political and military wisdom by backing the “Germany first” strategy, Roosevelt rejected the British alternative of a slow war of attrition in the Balkans to keep Stalin in the Grand Alliance.¹⁹ Primarily because Stalin opposed the British approach, Roosevelt supported the plan to launch a cross-Channel invasion of France.²⁰ By agreeing to open a second front in the West, Roosevelt appeased Stalin’s

¹⁶ McNeil, *America, Britain, and Russia*, 299.

¹⁷ Mark A. Stoler, “The Political Wisdom of U.S. Strategy” in *Major Problems in the History of World War II*, edited by Mark A. Stoler and Melanie S. Gustafson (Boston, MA: Cengage Learning, 2003), 99.

¹⁸ “Outline of Remarks” at the University of Oxford, 22 November 1947, in *The Papers of George Catlett Marshall*, vol. 6, “The Whole World Hangs in the Balance,” January 8, 1947–September 30, 1949, ed. Larry I. Bland and Mark A. Stoler (Baltimore: Johns Hopkins University Press, 2013): 270–71.

¹⁹ Stoler, “The Political Wisdom of U.S. Strategy,” 99.

²⁰ Stoler, 99.

demand to reduce German troop concentration in the East.²¹ Stalin's willingness to provide future military support in the Pacific also crucially rested on the prerequisite that the Anglo-American troops invade northwestern France.

III. Mobilization of the Homefront

For Americans, the Japanese attack on Pearl Harbor transformed the war from a "foreign" conflict to one that left few lives unaffected. In its aftermath, paranoia served to unify the fearful majority population for a war that the nation was economically, logistically, and emotionally unprepared to fight. Initially lacking sufficient military strength, the U.S. relied on its product might, demanding immediate, urgent logistics on a massive scale.²² In his fireside chat on December 9, 1941, President Roosevelt prepared to unify the nation for mobilization, stating, "We are all in it—all the way. Every single man, woman, and child is a partner in the most tremendous undertaking of our American history."²³ The collective national identity, however, excluded Americans of Japanese ancestry. The war drastically altered the daily lives of Japanese-Americans, yet U.S. wartime policies buttressed the impenetrable social boundary that kept them socially isolated from the majority of the population.

Nevertheless, over thirty-thousand Japanese-Americans patriotically served in the U.S. armed forces.²⁴ The military considered Japanese-Americans ineligible for service until 1943, when the War Department combated manpower shortages by establishing segregated units.²⁵ Many of

²¹ Stoler, 99.

²² Greg Robinson, *A Tragedy of Democracy: Japanese Confinement in North America* (New York: Columbia University Press, 2009), 285.

²³ Maury Klein, *A Call to Arms: Mobilizing America for World War II* (New York: Bloomsbury Press, 2013), 290.

²⁴ Japanese Relocation During World War II, *National Archives*, accessed May 1, 2018, <https://www.archives.gov/education/lessons/japanese-relocation>.

²⁵ "442nd Regimental Combat Team Historical Society," accessed March 2, 2018, <http://www.the442.org>.

these individuals risked their lives in combat out of love for their country while some enlisted to prove their loyalty and honor their families. By June of 1944, military officials publicized the fact that Japanese troops crushed heavy resistance. According to Marshall, publicity offered “tremendous value, not only from the propaganda side,” but also contributed to “our handling of the American-of-Japanese-descent problem in this country, particularly on the West Coast.”²⁶ The military circulated photos of loyal Japanese-American soldiers, hoping to diminish amplified levels of racism on the home front.

After the war, Marshall applauded the “superb” service of the 442nd Regimental Combat Team and the 100th Infantry Battalion in North Africa and Europe, observing that the Japanese-American servicemen sustained “terrific casualties” and possessed “rare courage and tremendous fighting spirit.”²⁷ After replacing Milton Eisenhower as the National War Relocation Authority Director, Dillon Myer also recognized the outstanding service of Japanese-Americans:

Undoubtedly the most important factor in gaining recognition for the rights of American Japanese has been the superb fighting record of their sons, husbands, and brothers in the American Army. By their valor and devotion to duty these men have struck a permanently crippling blow at the forces of racial intolerance...The postwar period should bring a greater freedom from discrimination and a larger measure of opportunity than they have ever known before.²⁸

American soldiers of Japanese descent did not enjoy the freedoms that their Caucasian counterparts were granted. Many of these Americans, who bravely defended their country by fighting in segregated units, paid the ultimate price of freedom while their West Coast families were forced into concentration camps.

²⁶ General Marshall to General Devers, Operations Division, War Department, letter, June 28, 1944, <http://www.the442.org/battlehistory.html>.

²⁷ “442nd Regimental Combat Team Historical Society.”

²⁸ “Says Rightful Placed Assured Us Japanese,” *Granada Pioneer* 3 no. 87, August 29, 1945.

Before Pearl Harbor accelerated mobilization efforts, Roosevelt struggled to facilitate increased production in peacetime. In early 1941, he emphasized that total defense demanded more than weapons, explaining:

It means an industrial capacity stepped up to produce all the material for defense with the greatest possible speed. It means people of health and stamina, conscious of their democratic rights and responsibilities. It means an economic and social system functioning smoothly and geared to high-speed performance.²⁹

By mid-1941, General Marshall and War Department planners formulated an economic blueprint for an anticipated war, determining manpower, product, and transport needs.³⁰ Roosevelt intertwined his call for peacetime mobilization with warnings of the threat posed by Germany. He frequently suggested that Hitler would stop at nothing short of world domination. Speaking in favor of the “Germany first” strategy in May 1941, he stated, “Unless the advance of Hitlerism is checked now, the Western Hemisphere will be in range of Nazi weapons of destruction.”³¹ He also articulated that each dollar “of material that we send helps to keep dictators away from our own hemisphere, and every day that they are held off gives us time to build more guns and tanks and planes and ships.”³²

As a result of Pearl Harbor, industrial mobilization peaked in 1942, marking the largest expansion of productive facilities during the war.³³ Early that year, Roosevelt announced daunting goals for an enormous mobilization effort, including the production of 60,000 airplanes in 1942 and 125,000 more in 1943, as well as 120,000 tanks.³⁴ In fact, he recognized that the war would cost

²⁹ Klein, *A Call to Arms*, 133.

³⁰ Debi and Irwin Unger, *George Marshall: A Biography* (New York: HarperCollins Publishers, 2014), 113.

³¹ Unger, *George Marshall*, 152.

³² Unger, 152.

³³ Frank B. Schubert, “Mobilizing in World War II,” *U.S. Army Center of Military History* (1995): 17.

³⁴ Schubert, “Mobilizing in World War II,” 16.

“more money than has ever been spent by any nation at any time in the long history of the world.”³⁵ Mobilization required factories, labor, and transportation, as well as equipment, food, and housing for the soldiers, sailors and marines.³⁶ In short, it demanded the reallocation of resources for the assembly, preparation, and equipping of forces.³⁷

According to *Fortune* magazine, manpower served as the primary raw material of war and “the only resource for which no substitute can be found.”³⁸ Due to the passage of the Selective Service and Training Act in September of 1940, the Army also expanded its manpower, reaching full strength of 1.5 million people in 1941.³⁹ By the end of 1942, after Congress had amended the draft law to extend the term of service and age requirements, the Army reached a strength of 5.4 million.⁴⁰ The war, the first truly global war in history, also gave rise to new labor opportunities for some Americans and laid the path for the Civil Rights Movement. Calling upon these civilians to play a critical role in mobilization, the war effort offered African Americans, Hispanics, and women new job opportunities.⁴¹

The same year mobilization efforts spiked, in 1942, the removal of Japanese-Americans from the West Coast enhanced American morale and unified Americans on the basis of nationalism, ultimately encouraging the population to ‘hold out’ for the war against Germany. The detainment of Japanese-Americans promised a “greater relief from tension than the slow, patient

³⁵ Franklin D. Roosevelt, “On Our National Economic Policy: Radio Address of the President on the Subject of Total War and Total Effort” (speech, Washington, DC, April 28, 1942), Franklin D. Roosevelt Presidential Library and Museum, <http://www.fdrlibrary.marist.edu/042842.html>.

³⁶ Roosevelt, “On Our National Economic Policy.”

³⁷ Schubert, “Mobilizing in World War II,” 2.

³⁸ Klein, *A Call to Arms*, 332.

³⁹ Schubert, “Mobilizing in World War II,” 16.

⁴⁰ Schubert, 17.

⁴¹ Klein, *A Call to Arms*, 2.

work of military preparation for the defense and counter-attack.”⁴² Under the guise of military necessity, the imprisonment offered a temporary solution to public demands for revenge against Japan. Importantly, Assistant Secretary of War John McCloy wrote to Undersecretary of War Robert Patterson in July of 1942 that the detained Japanese-Americans “are under no suspicion for the most part and were moved largely because we felt we could not control our own white citizens in California.”⁴³

IV. Japanese-Americans: The Imagined Internal Enemy

A. Depictions of the Japanese Enemy in American Propaganda

American propaganda fed national perceptions of Japanese-Americans as the internal enemy. According to the 1940 census, 126,948 Japanese-Americans lived on the mainland, composing less than a tenth of one percent of the American population.⁴⁴ 90 percent of these individuals lived on the West Coast, including 75 percent in California.⁴⁵ Immediately following the attack on Pearl Harbor, the anti-Japanese propaganda machinery accelerated. For example, West Coast newspapers, particularly those owned by William Randolph Hearst, alleged espionage and sabotage by Japanese-Americans.⁴⁶

On December 22, 1941, *Time* magazine published “How to Tell Your Friends from the Japs,” distinguishing Chinese physical characteristics from those of the Japanese people (See Figure 1).⁴⁷ Only weeks after Pearl Harbor, this anthropologic analysis portrayed Chinese people

⁴² Eugene Rostow, *The Japanese-American Cases—A Disaster*, 54 Yale L.J. 489, 498 (1945).

⁴³ Robinson, *A Tragedy of Democracy*, 102.

⁴⁴ Maury Klein, *A Call to Arms*, 344.

⁴⁵ Klein, 344.

⁴⁶ Gary Okihiro and Julie Sly, “The Press, Japanese-Americans, and the Concentration Camps,” *Phylon* 44, no. 1 (1983): 67.

⁴⁷ “How to Tell Your Friends from the Japs,” *LIFE Magazine* 11 no. 25 (December 1941): 81.

as taller, slimmer, and less hairy, while attributing unpleasant and malicious facial expressions to the "Japs."⁴⁸ The article clearly conveyed that Japanese-Americans, in contrast to Chinese-Americans, posed a potential threat to national security.

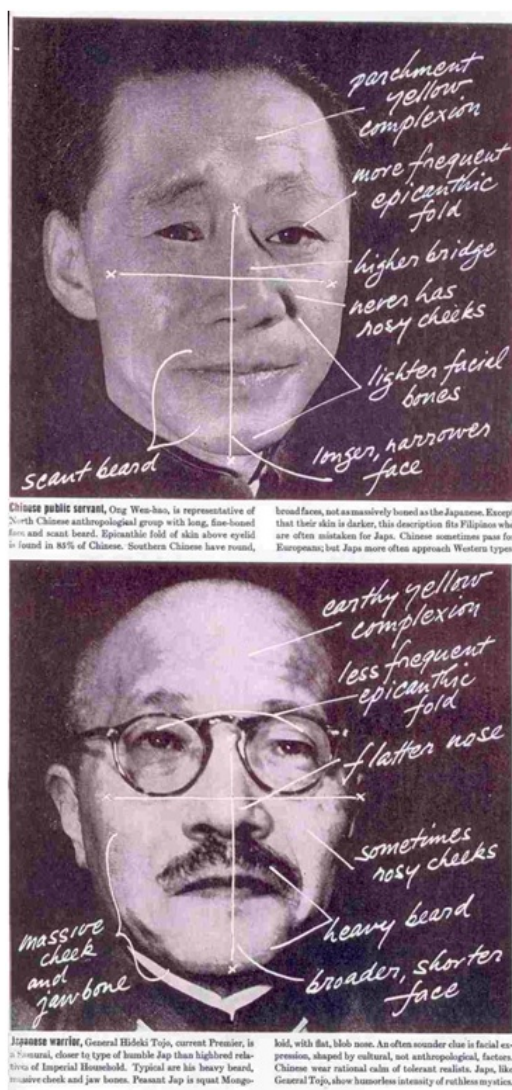


Figure 1. "How to Tell Your Friends from the Japs," *Time Magazine*, 1941.

⁴⁸ "How to Tell Your Friends from the Japs," 81.

Interestingly, large daily and small weekly editorials portrayed Japanese-Americans more favorably during the first four weeks after Pearl Harbor.⁴⁹ For example, on December 9, 1941, the *San Francisco Chronicle* criticized the FBI arrest of Japanese aliens suspected of disloyalty:

The roundup of Japanese citizens in various parts of the country . . . is not a call for volunteer spy hunters to go into action. Neither is it a reason to lift an eyebrow at a Japanese, whether American-born or not . . . There is no excuse to wound the sensibilities of any person in American by showing suspicion or prejudice. That, if anything, is a help to fifth column spirit. An American-born Nazi would like nothing better than to set the dogs of prejudice on a first-class American Japanese.⁵⁰

In early January of 1942, however, almost all papers shifted in attitude, introducing editorials in favor of mass evacuation of Japanese-Americans.⁵¹ For instance, the *Los Angeles Times* impacted the general public opinion of Japanese-Americans through propaganda in an editorial on January 23, which contended:

Many of our Japanese, whether born here or not, are fully loyal and deserve sympathy rather than suspicion. Others, in both categories, hold to a foreign allegiance and are dangerous, at least potentially.” To be sure it would sometimes stump an expert to tell which is which and mistakes, if made, should be made on the side of caution.⁵²

By the end of the month, West Coast newspaper editorials began to suspect Japanese-Americans of disloyalty and called for concentration camps.⁵³ This change in editorial opinion mirrored new developments in American public opinion.⁵⁴ The national attitude shifted from tolerance to hostility toward the Japanese minority, raising the question of whether the press reflected or created public opinion.

⁴⁹ Okihiro and Sly, “The Press, Japanese-Americans, and the Concentration Camps,” 68.

⁵⁰ Morton Grodzins, *Americans Betrayed* (Chicago: University of Chicago Press, 1949), 380.

⁵¹ Okihiro and Sly, “The Press, Japanese-Americans, and the Concentration Camps,” 69.

⁵² Okihiro and Sly, 69.

⁵³ Okihiro and Sly, 69.

⁵⁴ Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson, *Prejudice, War and the Constitution* (Berkeley: University of California Press, 1970), 75.

The media encouraged racial prejudice before and during the war, reinforcing the portrayal of the Japanese as subhuman beings.⁵⁵ Most commonly, propagandists depicted racially stereotyped caricatures of the Japanese with yellow complexions, slanted eyes, and animalistic facial features to exaggerate their Asian descent. Racial tensions also mounted as politicians publicly declared white supremacist views.⁵⁶ “I hated what I heard and read but I couldn’t help pay attention to what was printed and broadcast all over the radio,” Mary Gruenewald, a Japanese-American internee during the war, revealed. “*Is that how people see me?*” I wondered. I wished I had never been born.”⁵⁷ Gruenewald could not believe the extraordinary degree of distortion in propaganda and the press, but her immigrant parents had faced discrimination in the past and remained unsurprised.⁵⁸ “I started to drop my eyes whenever anyone approached me,” she wrote. “Never much of a talker, I spoke less in those months following Pearl Harbor.”⁵⁹ Gruenewald also recalled her response to the Japanese caricatures in the media:

I wanted to run away and hide but there was no place to go. I had a terrible feeling of guilt by association, but there was no way I could change my skin color, my eyes, my straight black hair, or my name. Shame and self-loathing framed my sense of myself. Yet, that’s the way it was—I looked like the enemy.⁶⁰

As Japanese forces captured Guam, Hong Kong, Manila, and Singapore, American wartime images, incorporating elements of fear and the barbarian motif, exacerbated existing American racial divides.

⁵⁵ Michael Sturma, “The Limits of Hate: Japanese Prisoners on US Submarines during the Second World War,” *Journal of Contemporary History* 51, no. 4 (December 2015): 739.

⁵⁶ Rostow, *The Japanese-American Cases—A Disaster*, 498.

⁵⁷ Mary Matsuda Gruenewald, *Looking Like the Enemy: My Story of Imprisonment in Japanese-American Internment Camps* (Troutdale, Oregon: New Sage Press, 2011), 9-11.

⁵⁸ Gruenewald, *Looking Like the Enemy*, 9-11.

⁵⁹ Gruenewald, 9-11.

⁶⁰ Gruenewald, 9-11.

Revealing historically common racist patterns in the West, the portrayal of the Japanese enemy as an enormous, evil gorilla frequently appeared in American wartime propaganda.⁶¹ After first encountering Africans and Native Americans in the fifteenth century, Europeans began comparing nonwhites to apes, lesser men, primitives, children, and madmen.⁶² By conceptualizing the Japanese as a subhuman, uncivilized race, images of the enemy elicited fear and anger among Americans. Consequently, propaganda served to rally both soldiers and civilians in support of the 'good' war against the evil oppressors of the world. The American propaganda's association between savagery and the Japanese antagonist reveals an extreme degree of hatred directed at an 'inferior' race. Various forms of American popular culture, including newspapers, political cartoons, films, songs, and radio broadcasts, presented the Japanese enemy as an inferior, sub-human, and barbaric race.⁶³



Figure 2. "This is the Enemy," 1942.

⁶¹ Dower, *War Without Mercy*, 184-187.

⁶² Dower, 10.

⁶³ Dower, 33.

The theme of denigrating a foe to an inferior status is evident in a poster depicting a Japanese soldier as a murderous beast, terrorizing his white female victim (See Figure 2).⁶⁴ The barbaric image suggests the “subhuman” nature of the Japanese monster, in contrast with the white woman shrieking in horror. Dark shadows stress the menacing, evil presence of the looming Japanese soldier, dehumanized to distinguish him from the civilized Caucasian race. Another propaganda poster shows an armed Japanese soldier with insect-like eyeballs, carrying away his naked female victim against a backdrop of fire and destruction (See Figure 3).⁶⁵ In addition, the poster, “Keep This Horror from Your Home,” calls upon Americans to invest 10 percent in war bonds, depicting a Japanese soldier with a knife and sharpened teeth, preparing to attack another defenseless female victim (See Figure 4).⁶⁶ These three examples of American propaganda each juxtapose the evil Japanese warrior with the helpless damsel in distress.



Figure 3. "This is the Enemy," 1942.



Figure 4. "Keep This Horror from your Home."

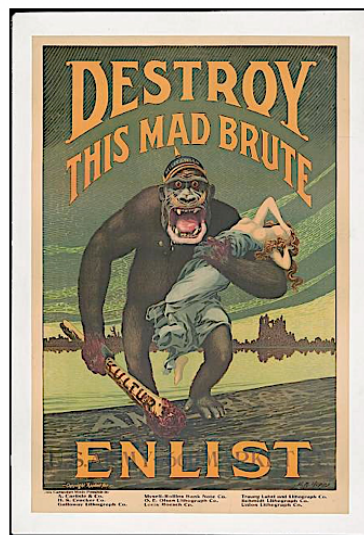


Figure 5. "Destroy This Mad Brute: Enlist," 1917.

⁶⁴ "Attack on a Caucasian Woman," accessed April 23, 2018, <http://online.sfsu.edu/jaintern/posterknife.html>.

⁶⁵ "This is the Enemy," 1942, accessed April 23, 2018, <http://online.sfsu.edu/jaintern/posterenemy.html>.

⁶⁶ "Keep This Horror from Your Home," <http://online.sfsu.edu/jaintern/posterhorror.html>.



Figure 6. "Halt the Hun!" 1918.

Likewise, warring nations in the First World War developed propaganda depicting barbarity to transform public perception of the enemy into an inferior, menacing brute. The 1917 poster, "Destroy This Mad Brute: Enlist," envisioned a German soldier as a monstrous gorilla with blood-stained hands, invading American shores (See Figure 5).⁶⁷ As he invades American shores, he clutches a bloody club and carries a victimized woman. The next year, in 1918, a propaganda poster for the Third U.S. Liberty Loan Campaign circulated the image of an American soldier

heroically halting a German infantryman from hurting a woman and her child (See Figure 6).⁶⁸ This early use of the barbarian motif in World War I propaganda reveals the ability of popular culture to utilize fear and nationalism to manipulate social understandings of the enemy.

Moreover, the German barbarian of World War I propaganda reflects an exaggerated version of historical truth regarding the barbaric nature of enemy soldiers. Beginning in August of 1914, when Germany invaded Belgium and practically conquered France, Allied propagandists personified the violated, vulnerable nations with the image of a raped woman. Representing Belgium, a frail "jeune fille [young lady]" in one example weeps on the floor of her bedroom as the German soldier leaves (See Figure 7).⁶⁹ Propagandists evoked the image of Marianne, the

⁶⁷ Harry Ryle Hopps, "Destroy this Mad Brute: Enlist," 1917, <http://www.loc.gov/pictures/resource/ds.03216/>.

⁶⁸ Henry Raleigh, "Halt the Hun!" Third U.S. Liberty Loan Campaign, poster, 1918; source: Library of Congress Prints and Photographs Division, <http://www.loc.gov/pictures/item/93515947/>.

⁶⁹ Ruth Harris, "The 'Child of the Barbarian': Rape, Race, and Nationalism in France during the First World War," *Past & Present* 141, no. 1 (November 1993): 179.

allegorical symbol of the French nation, fleeing from an armed German soldier in a wheat field (See Figure 8).⁷⁰ In another depiction of France, “La Bravoure Allemand [The Germany Bravery]” illustrates German soldiers at a bar watching a comrade threaten a terrified female civilian with his sword (See Figure 9).⁷¹ The young woman represents a feminized nation, *la France civilatrice*, fighting a good war of liberation against an armored beast.⁷² Therefore, World War I propaganda exhibited the innocent and virtuous Belgian or Frenchwoman as a violated victim of the barbaric German enemy.

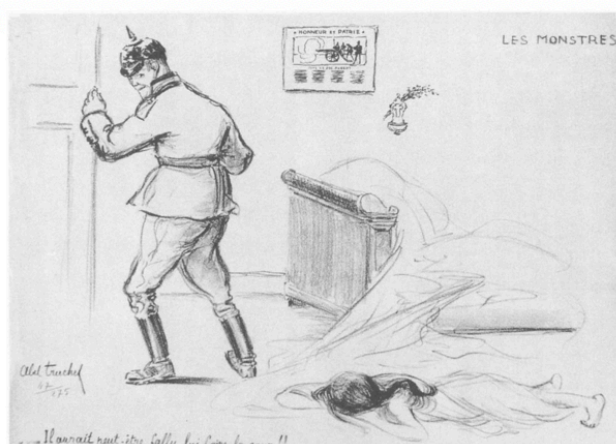


Figure 7. “He might at least have courted her . . .”



Figure 8. “Germany treacherously attacked peace-loving France in August 1914.”

American and British audiences interpreted this imagery of propagandistic claims against the Germany army of rape and murder as fabrications, concocted by Allied governments to lure powerful neutrals to their side. However, credible victim testimony confirmed that the German invaders randomly attacked women in homes or on the streets, inspiring terror in their victims. In

⁷⁰ Harris, “The “Child of the Barbarian”: Rape Race and Nationalism,” 179.

⁷¹ “La Bravoure Allemand,” E. LeDeley Paris, 1914.

⁷² Harris, “The “Child of the Barbarian”: Rape Race and Nationalism,” 180.

a moment of crisis, Allied propagandists of World War I fell into a sensational trap, relying on popular culture to inspire French national identity. Harris notes that male audiences identified with the portraits of female victimization, expressing fear of brutality at the hands of German soldiers:

Rather than directly reflecting the experience of raped women, their reactions wandered off into complicated and distressing psychological territory, which can be explored in the testimony of onlookers and soldiers, and in more sensational representations of rape and atrocity provided by newspapers, posters and pamphlets.⁷³

Therefore, the propaganda presented a strikingly gendered and emotive vision to illustrate the mortal peril facing the nation.⁷⁴

Figure 9. "La Bravoure Allemand," 1914.



Likewise, Japanese atrocities and suicidal tactics fueled the propagation of racial stereotypes in Allied propaganda.⁷⁵ By showing the barbaric Japanese enemy perpetrating rape and murder, propaganda posters used fear and racism to encourage civilians to support the war effort. As a result, the portrait of the Japanese enemy, a formidable foe who essentially demanded extermination, developed in the West.⁷⁶ The propaganda encouraged the growth of fear and racism among Caucasian Americans, unifying the nation to support a total war of destruction against the Japanese nation.

⁷³ Harris, 172-177.

⁷⁴ Harris, 179.

⁷⁵ Dower, *War Without Mercy*, 73.

⁷⁶ Dower, 9.

B. Media Coverage of the “Rape of Nanking”

Similar to the barbarian German soldier in WWI posters, Allied propaganda following Pearl Harbor applied the image of a savage monster to the Japanese enemy. Posters, newspapers, newsreels, and films aimed to capture the inherent barbarity of the Japanese enemy race. Thus, popular culture cited evidence of Japanese atrocities in China and throughout Southeast Asia, in addition to the treatment of Allied prisoners.⁷⁷ Showcasing evil acts of violence, the propaganda inspired hatred for the seemingly ruthless Japanese race.

The Rape of Nanking encompassed the six-week period that followed the Japanese Imperial Army’s capture of the Chinese Nationalist capital on December 13, 1937.⁷⁸ Ordered to kill all captives and follow a policy of looting and burning the city, 50,000 Japanese soldiers initiated a campaign of unrestrained brutality in Nanking.⁷⁹ During World War II, East Asian people understood the Nanking massacre as the dominant symbol for Japanese militarism.⁸⁰ Meanwhile, people in the West perceived the atrocities as convincing evidence of inherent Japanese brutality. Today, some scholars have even suggested that Japanese behavior in the Chinese capital of Nanking reflected “a racial supremacism as virulent in its own way as the master-race theories of the Nazis.”⁸¹

⁷⁷ Dower, 12.

⁷⁸ Pin-chia Feng, “Remembering Nanking: Historical Reconstructions and Literary Memorializations of the Nanking Massacre,” *Inter-Asia Cultural Studies* 18, no. 1 (2017): 79.

⁷⁹ Gary Evans, “The Nanking Atrocity: Still and Moving Images 1937-1944,” *Media and Communication* 1 no. 1, (2013): 53.

⁸⁰ Fei Fei Li, Robert Sabella, and David Liu, *Nanking 1937: Memory and Healing* (New York: M. E. Sharpe, Inc., 2002), xxiii.

⁸¹ Dower, *War Without Mercy*, 8.



Figure 10. "Rescue of Baby," *LOOK Magazine*, December 1937.

During the murderous rampage, Japanese soldiers killed tens of thousands of surrendered Chinese soldiers, as well as thousands of civilians, with machine guns and bayonets.⁸² The Imperial Army also raped about 20,000 Chinese women and girls, before murdering many of them.⁸³ Engaging in total warfare, Japanese troops saw no distinction between civilians and soldiers of the "inferior" Chinese race. Thus, they inflicted widespread slaughter and rape on the innocent population.⁸⁴ The constant cruelty and threat of death left civilians numb to the horror, evidenced by a witness account of Chinese men watching paralyzed as Japanese troops bayoneted people to death.⁸⁵

The Western media distinguished the war in Asia from that in Europe, portraying Japan as a "racial menace" that would perpetuate "war between Oriental ideals and Occidental."⁸⁶ Two

⁸² Evans, "The Nanking Atrocity," 53.

⁸³ Zhang Lianhong, "The Nanjing Massacre: The socio-psychological effects," *East Asia* 18, no. 3 (September 2000): 53.

⁸⁴ Lianhong, 40.

⁸⁵ Lianhong, 41.

⁸⁶ Dower, *War Without Mercy*, 8.

popular U.S. magazines, *LIFE* and *LOOK*, published images of the Nanking atrocities, targeting less educated audiences and manipulating public opinion.⁸⁷ In August of 1937, the Japanese initiated air raids on Nanking, waging a campaign of fear to eliminate civilian resistance and patriotism.⁸⁸ On December 21, 1937, *LOOK* published photos of the August 1937 bombing of Shanghai, a tragedy unrelated to the unfolding Nanking massacre.⁸⁹ The two-page feature entitled, “A Chinese Baby Survives an Air Raid,” transformed the photo of a baby, surrounded by the wreckage of a bombed Shanghai railway station, into one of the most iconic photos of the prewar period (See Figure 10). The caption accompanying the image described the scene:

[A] child and man approach to take the baby to a near-by first aid station. At the right lies the body of a 14-year-old boy, one of the 15 children found dead in the raid. In bombing Shanghai, Japan struck at China’s largest, wealthiest city. Planes also have bombed Nanking, China’s capital.

The image of the abandoned baby sparked outrage among Americans. It triggered a natural human response of revulsion that contributed to the creation of a collective memory about the brutal Japanese aggressors.⁹⁰ Influencing isolationist America, the photo publicized Japan’s senseless attacks on innocent civilians.

Meanwhile, newspapers in Nanking also reported on the killed and wounded victims of constant Japanese air raids. In October, a local newspaper observed that “the people of Nanjing [Nanking] are now used to Japanese air raids. Almost every day, when the sirens sound, they

⁸⁷ Evans, “The Nanking Atrocity,” 51.

⁸⁸ Lianhong, “The Nanjing Massacre,” 40.

⁸⁹ Evans, “The Nanking Atrocity,” 55.

⁹⁰ Evans, 55.

routinely head for the air raid shelters without any sense of fear or panic.”⁹¹ From August to November of 1937, half of the estimated pre-war population of 1 million people had fled the city.⁹²

In the U.S., media reports of the Nanking massacre drastically inflamed public opinion of the Japanese army. On January 10, 1938, *LIFE* published a graphic photo of a severed Chinese head with a cigarette in its mouth, “wedged in a barbed wire barricade outside Nanking, just before the city fell December 14.” The article described the Nanking atrocities as “possibly the worst holocaust in modern history,” stating that “the Japanese shot down everyone seen running or caught in a dark alley.” Calling attention to the brutality, *LIFE* reported that the Japanese soldier not only raped and looted, but also tied together and marched off four-hundred men to be shot.⁹³

Undoubtedly, *LIFE* published the photo of the severed Chinese head to demonstrate evidence of Japanese barbarism and racial inferiority, rather than elicit American sympathy. Revealing a double standard, the magazine did not begin printing images of dead white people until six years later. Because the severed head did not belong to a white person, *LIFE* willingly released the 1938 photo to the American public. In April of 1938, the magazine reaffirmed Western perceptions of the Japanese as an uncivilized race, now describing the Nanking massacre as “the most appalling mass atrocity since Genghis Khan,” in which Japanese troops “raped Chinese women by the thousands” and “bayoneted and burned unarmed Chinese men alive in equal numbers.” While the vibrant rhetoric called attention to the atrocious injustices by the Japanese barbarians, it failed to indicate sincere concern for the victims in Nanking.⁹⁴

⁹¹ Xu Zilingr, “Nanjingzai kongxi xia (Nanjing under the Air Raids),” *Xinbao*, October 19, 1937.

⁹² Lianhang, “The Nanjing Massacre,” 37.

⁹³ Lianhang, 37.

⁹⁴ Lianhang, 37.

Equally explicit, a November feature of *LOOK* magazine publicized graphic photos of Japanese soldiers bayoneting surrendered Chinese prisoners of war. The caption accompanying the shocking depictions emphasized the antagonistic cruelty of the Japanese soldiers:

Hands Tied, Chinese prisoners are used as live targets for bayonets of Japanese recruits. In the foreground a captive is being tormented. Another (left rear) is being stabbed to death. A third (center) has just been received the death thrust. A fourth (rear) is being driven into the pit.

Subsequently, *LOOK* also reported on the ways in which the troops brutally murdered the Japanese by setting their live bodies on fire. The article conveyed the sense that the Japanese soldiers were monsters who tormented and killed innocent civilians for amusement.⁹⁵

Western isolationism and anti-Asian racism caused Americans to initially greet the photos from Nanking with shock, despite their long-term indifference and lack of emotional investment. Unsurprisingly, the Western media generally ignored the situation in China, which had been at war with Japan since 1931, until smuggled photographic evidence of the Nanking atrocities emerged in the winter of 1938. Within a year, however, American consciousness disregarded the horrors of Nanking until Pearl Harbor in 1941, which rejuvenated the media's focus on Japanese brutality. After that infamous morning in December, American newsreels broadcasted the Japanese war crimes in Nanking on a much larger scale, reaching an audience of millions in the West.⁹⁶

C. Frank Capra's Documentary Films

Shortly after the U.S. entered the war, Marshall asked the Academy Award winner and filmmaker Frank Capra to direct propagandistic War Department films.⁹⁷ When Capra

⁹⁵ Lianhang, 57.

⁹⁶ Lianhang, 51-52.

⁹⁷ Dower, *War Without Mercy*, 15.

responded with reluctance to this request, Marshall called attention to the need to increase troop mobilization efforts, explicitly stating, “Thousands of young Americans have never had their legs shot off before. Boys are commanding ships today, who a year ago had never seen the ocean before.”⁹⁸ Ultimately, Capra agreed to direct the film series, *Why We Fight*, which conveyed the Allied common purpose of destroying evil tyranny.⁹⁹ Illuminating the “Germany first” strategic focus, the War Department primarily released propaganda about the Germans before shifting its attention to the Japanese enemy race in 1944. Capra’s wartime documentary films denigrated Japan, “The Battle of China” (1944) and *Know Your Enemy—Japan* (1945), reveal more about the Americans than the Japanese.

Aiming to cultivate hatred and overcome soldiers’ fears or reluctance to kill the enemy in combat, Capra’s *Why We Fight* series juxtaposed the Allies and their evil antagonists.¹⁰⁰ In 1944, Capra’s “The Battle of China” included footage of Japanese barbarism, such as rape, torture, and murder.¹⁰¹ Millions of recruits in basic training viewed the footage, in addition to public theater audiences.¹⁰² Viewed by about four million people before the war ended, the film not only motivated American soldiers to kill the Japanese enemy in the Pacific, but also inspired civilian mobilization in support of the war effort.¹⁰³ The film claimed that 40,000 men, women, and children were murdered in the bloody massacre, accompanied by graphic images of victims

⁹⁸ Dower, 15.

⁹⁹ Evans, “The Nanking Atrocity,” 53.

¹⁰⁰ Gerald Horne, *Race War! White Supremacy and the Japanese Attack on the British Empire* (New York: NYU Press, 2004), 138-9, 147; Sturma, “The Limits of Hate,” 739.

¹⁰¹ Evans, “The Nanking Atrocity,” 59.

¹⁰² Dower, *War Without Mercy*, 15.

¹⁰³ Dower, 17, 28.

stabbed, raped, set on fire, or nearly beheaded.¹⁰⁴ The narrator incited racial hatred by reinforcing the theme of Japanese barbarity:

. . . But those who lived might better have died, for the horror of their twisted and torn bodies was worse than death . . . This nightmare of cruelty was all the more horrible because it was deliberately planned by the Japanese high command to tear the heart out of the Chinese people once and forever . . .¹⁰⁵

Capra emphasized that Americans fought for the existence of their country, carrying the “torch of freedom” for a peaceful, democratic post-war world, void of conquest, exploitation, and economic evils.¹⁰⁶

Aiming to inspire the will to fight and achieve victory, Capra combined footage from newsreels, propaganda films, and commercial movies to “juxtapose the menacing faces and words of the enemy against the bright hope and accomplishments of the American people and their allies.” Thus, the films exhibited a sharp contrast between the radiant light of the Allies and the darkness of the enemy, reflecting Capra’s stated moto:

Let the enemy prove to our soldiers the enormity of his cause—and the justness of ours...Let our boys hear the Nazis and the Japs shout their own claims of master-race crud, and our fighting men will *know* why they are in uniform.¹⁰⁷

“The Battle for China” became “Capra’s most exaggerated portrayal of pure good versus evil.”¹⁰⁸

Describing the Shanghai bombings of 1937, the narrator highlighted the innocence of the victims by representing the “helpless civilian population” as innocent farmers, children, and the elderly.¹⁰⁹

The documentary contrasts the peaceful Chinese people, who “never waged a war of conquest in

¹⁰⁴ Evans, “The Nanking Atrocity,” 59.

¹⁰⁵ Frank Capra, “The Battle of China,” *Why We Fight*, 6, Department of Defense, 1944.

¹⁰⁶ Dower, *War Without Mercy*, 16.

¹⁰⁷ Dower, 16.

¹⁰⁸ Dower, 20-23.

¹⁰⁹ Capra, “The Battle of China.”

over 4,000 years” with the menacing “Japs,” shown as terrorists, murderers, and tyrants.¹¹⁰ In the same way American wartime propaganda depicted the Japanese as ruthless barbarians who must be stopped, Capra’s “Battle for China” suggests that the uncivilized “Japs” aimed to conquer the world. In sum, the film motivated American troops to fight the Japanese by showing that in addition to attacking Pearl Harbor, barbaric “Japs” had committed senseless atrocities in China before the war.

Although writers began drafting the initial script for *Know Your Enemy—Japan*, another film directed by Capra in June of 1942 was released on August 9, 1945—the day the Allies atomic-bombed Nagasaki. Despite this, General Douglas MacArthur ordered the withdrawal of the crude, racist film on August 28, two weeks after Japan surrendered.¹¹¹ This documentary portrayed the Japanese people without individual identities. Instead of targeting Japanese leaders, the film attacked the Japanese people as racially inferior. The film stressed themes of Japanese obedience and homogeneity, as well as their belief in divine mission.¹¹² The narrator emphasized that the unified Japanese people rallied behind the objective of world domination.¹¹³

The racial context and emotive impact of Capra’s films drastically altered public opinion of the Japanese race and revealed that visual culture could influence the thoughts of American citizens.¹¹⁴ Although photos of the Nanking massacre surfaced in 1938 editions of *LIFE* and *LOOK* magazines, the atrocities were not broadcasted on a large scale in the West until after Pearl Harbor in 1941. Capra’s wartime documentary films of Japanese soldiers committing atrocities in

¹¹⁰ Capra, “The Battle of China.”

¹¹¹ Dower, *War Without Mercy*, 18.

¹¹² Dower, 19.

¹¹³ Frank Capra, *Know Your Enemy—Japan*, Department of Defense, 1945.

¹¹⁴ Evans, “The Nanking Atrocity,” 51.

Nanking served as U.S. propaganda to reinforce anti-Japanese public opinion. Consequently, the Japanese enemy became the manifestation of evil in the eyes of American civilians.

D. Racist Political Cartoons by Dr. Seuss

Deviating from the barbarian motif, political cartoons by Theodor Geisel ["Dr. Seuss"] communicated and evoked fear and racism. Although Seuss later gained his fame for publishing *The Cat in the Hat* and *Green Eggs and Ham*, he drew remarkably racist wartime comics for the leftist magazine, *PM*, between 1941 and 1943.¹¹⁵ Only three days after Pearl Harbor, he published a cartoon that depicted a horde of "Jap" alley cats, banded together on the West Coast (See Figure 11).¹¹⁶ This piece highlighted the supposed racial inferiority of the Japanese people, indicated by their subhuman portrayal as homeless, domestic cats. Above all, the cartoon delineated the large, united mass of menacing "Japs" in the U.S., who imperiled national security.

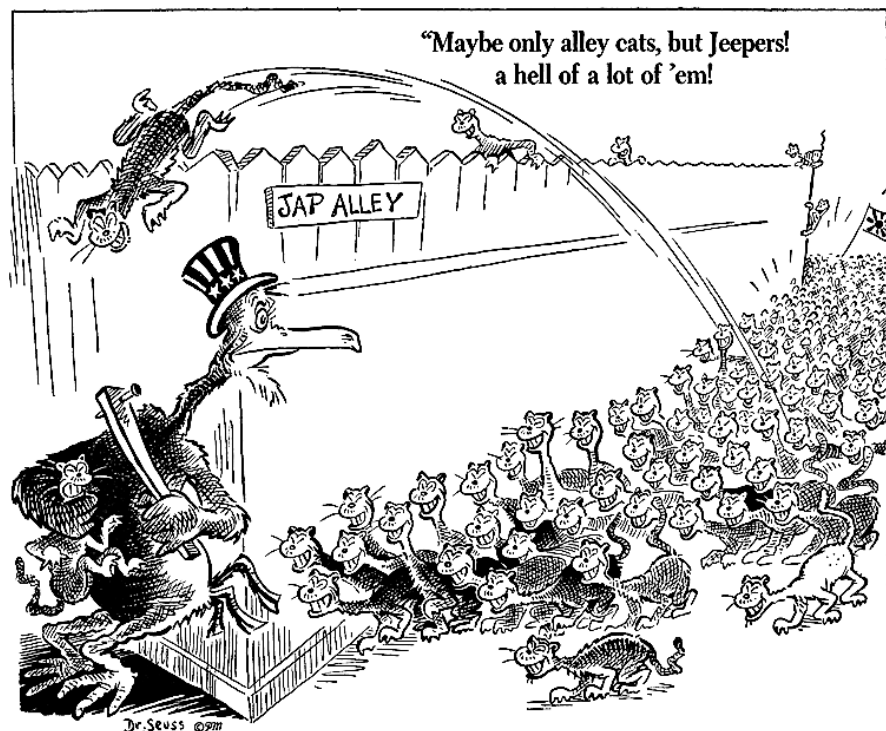


Figure 11. Theodor Seuss Geisel, "Maybe only alley cats, but Jeepers! A hell of a lot of 'em!" *PM*, December 10, 1941.

¹¹⁵ Jennie Rothenberg Gritz, "When Dr. Seuss Took On Adolf Hitler," *The Atlantic*, January 15, 2013.

¹¹⁶ Theodor Seuss Geisel, "Maybe only alley cats, but Jeepers! A hell of a lot of 'em!" *PM*, December 10, 1941.

On February 13, 1942, Seuss revisited the idea of a Japanese enemy presence on the West Coast in “Waiting for the Signal from Home” (See Figure 12).¹¹⁷ This cartoon illustrated a colossal crowd of smirking Japanese-American troublemakers across Washington, Oregon, and California, lined up to receive blocks of TNT. Seuss labeled the saboteurs as the “Honorable 5th Column,” referencing columnist Walter Lipmann’s essay, “The Fifth Column on the Coast.” Published one day earlier, Lipmann’s editorial pressed for the mass removal and relocation of Japanese-Americans:

The Pacific Coast is in imminent danger of a combined attack from within and without ... There is an assumption [in Washington] that a citizen may not be interfered with unless he has committed an overt act ... The Pacific Coast is officially a combat zone ... and nobody out to be on a battlefield who has no good reason for being there. There is plenty of room elsewhere for him to exercise his rights.¹¹⁸

Lipmann’s popular essay appealed to the American people’s wartime paranoia and racial intolerance. Indeed, Chief of Staff George Marshall read and sent it to Secretary of War Henry Stimson, who then forwarded it to Assistant Secretary of War John McCloy.¹¹⁹ Echoing Lipmann’s racist attitude, Seuss’s “Waiting for the Signal from Home” aroused considerable alarm by depicting a Japanese spy on the shoreline peering across the Pacific through a telescope. Incidentally, the cartoon served as exceptionally valuable propaganda for Dewitt, tasked with incarcerating people of Japanese descent.¹²⁰ Coincidentally, just one week after Seuss and Lipmann published their works, Roosevelt signed Executive Order 9066, thus initiating the process of Japanese-American removal to internment camps.¹²¹

¹¹⁷ Theodor Seuss Geisel, “Waiting for the Signal from Home,” *PM*, February 13, 1942.

¹¹⁸ Roger Daniels, *The Decision to Relocate the Japanese-Americans* (Philadelphia: Lippincott, 1975), 12.

¹¹⁹ Okiihiro and Sly, “The Press, Japanese-Americans, and the Concentration Camps,” 67.

¹²⁰ Richard Minear, *Dr. Seuss Goes to War* (New York: New Press, 2001), 25.

¹²¹ Minear, *Dr. Seuss*, 25.



Figure 12. Theodor Seuss Geisel, "Waiting for the Signal from Home," PM, February 13, 1942.

It remains unclear as to whether the media steered or mirrored public opinion regarding the mass removal of Japanese-Americans. Regardless, Seuss's political cartoons and Lipmann's essay encouraged the population to accept the military necessity justification for the relocation and internment programs. That month, the process of mass removal and relocation of Japanese-Americans on the West Coast extended until it reached completion at the end of October.¹²² Motivated both racism and an agenda to mobilize the national population, the American media exploited racial divides and incited fear through propaganda.

¹²² Peter Irons, *Justice at War: The Story of the Japanese-American Internment Cases* (Berkeley: University of California Press, 1983), 73.

With less emphasis on terror and barbarism, Seuss's 'amusing' wartime cartoons depicted the Japanese-American people as swarms of virtually identically, uncivilized, and animalistic pests. Interestingly enough, in response to "Waiting for a Signal from Home," *PM* received no letters to the editor in protest of the racist stereotype portrayed.¹²³ While *LIFE* magazine's "How to Tell Your Friends from the Japanese" cast the individual Japanese people as menacing and antagonistic in 1941, political cartoons by Seuss presented members of the enemy race in collective masses. By calling attention to the hidden, antagonistic nature of the underestimated, racially inferior, and subhuman Japanese caricature, Seuss created a uniquely effective form of propaganda that cultivated racial hatred. In fact, his cartoons exposed anti-Japanese sentiment that Dewitt also exhibited when he proclaimed, "A Jap is a Jap! There is no way to determine their loyalty."¹²⁴

Ironically, as the grandchild of four German immigrants, Seuss caricatured Japanese-Americans as grinning pests, stray cats, and slithering worms. He used his platform to defend the civil rights of African Americans and Jewish people, yet hypocritically demonstrated his racist view of Japanese-Americans.¹²⁵ The cartoons neither depicted the Germans as an inferior race nor portrayed Germans lined up in preparation to blow up American cities.¹²⁶ Instead, Seuss frequently attacked Hitler and Mussolini, while tending only to the collective Japanese masses and not their leaders. For instance, Hitler often appeared acting alone, without identical German clones amassed beside him like the Japanese cartoon caricatures.¹²⁷ Similar to the way in which Capra

¹²³ Minear, *Dr. Seuss*, 26.

¹²⁴ Richard Reeves, *Infamy: The Shocking Story of the Japanese-American Internment in World War II* (New York: Picador, 2016), xix.

¹²⁵ Minear, *Dr. Seuss*, 26.

¹²⁶ Amy Chyao, "In Horton Hears a Who, the Dr. Seuss You Never Knew!" *Harvard Political Review* (July 2015), <http://harvardpolitics.com/books-arts/oh-dr-seuss-didnt-know/>.

¹²⁷ Chyao, "In Horton Hears a Who."

portrayed the Japanese without individual identity in his documentaries, Seuss drew members of the enemy race with identical, stereotypical features, gathered in flocks on the West Coast. Ultimately, the dehumanized, stereotyped images of Japanese people sensitized Americans to a mindset that would permit the incarceration of citizens and aliens. Although he never publicly apologized for his racial cartoons, Seuss demonstrated his remorse throughout the pages of *Horton Hears a Who* in 1954.¹²⁸ Seuss incorporated into this whimsical children's book the lesson that "a person's a person, no matter how small," which affirmed the democratic ideals of equal rights and freedom.¹²⁹ The book called for racial tolerance and equal rights for those whose voices were not heard, suggesting that Seuss felt remorse for his racist wartime cartoons that depicted Japanese-Americans as enemies.

V. Conclusion

The propagandistic attack on Japanese-Americans, following Pearl Harbor, conveniently combated the isolationism and pacifism of the interwar years. American propaganda called for action against the Japanese enemy while simultaneously conveying that the Germans were the more sophisticated, culturally advanced, and dangerous enemy. By imprisoning a minority group that is viewed by the community as an enemy, the U.S. fostered an artificial sense of national security. Although the Japanese-Americans on the West Coast did not pose an imminent threat, the public perceived them as a racial enemy based solely on appearance. The domestic demand for an offensive in the Pacific led the U.S. government to incarcerate people who merely looked like the enemy while military forces prioritized conquering Germany. As a result, the forced relocation

¹²⁸ Theodor Seuss Geisel, *Horton Hears a Who!* (New York: Random House, 1954).

¹²⁹ Geisel, *Horton Hears*.

and imprisonment of Japanese-Americans promoted U.S. mobilization efforts by uniting the American people against an imagined enemy.

FREEDOM OF THE PRESS IN CINCINNATI

How James Birney's Abolitionist Activities Reshaped the Debate Over Slavery

By Isaac J. Strauss



Figure 1. "James G. Birney," 1844.

On January 22, 1836, at approximately 6:00 p.m., a meeting was held at a courthouse in Cincinnati, Ohio. The majority of attendees were white men from either Cincinnati or across the river in nearby Kentucky. The rough and angry crowd was mulling responses to an insurgent abolitionist newspaper called *The Philanthropist* and its defiant editor, James G. Birney (See Figure 1).¹ The meeting was led by prominent Cincinnati politicians, including Mayor Samuel W. Davies, who sat as its chair. The first speaker was Colonel Hale, leader of the local Cincinnati militia. Hale launched into a diatribe against Birney, charging him with “amalgamation, incendiarism, and treason to the Constitution of his country.”² Hale implored the crowd to ban Birney from continuing his activities in Cincinnati. The crowd responded with loud and passionate applause.³

As Hale continued to condemn Birney, the crowd evolved into an angry mob, yearning to act on its violent urges. Finally, the applause subsided, and a voice echoed through the courtroom: “Mr. President, my name is Birney. May I be heard? My personal character and my cause have been unjustly attacked. May I defend them?”⁴ The crowd erupted with anger as calls rang out to tar and feather the abolitionist. Fortunately for Birney, the Surveyor-General of the Northwest Territory, Robert Todd Lytle, interceded. “My friends,” he said, “hear before you strike. Don’t disgrace your city and our cause before the nation. I oppose abolitionism, but I honor a brave man, and Mr. Birney has tonight shown himself the bravest man I have ever seen.”⁵ For almost an hour,

¹ N. Currier, *James G. Birney*, 1844, lithograph, Library of Congress, Washington DC, <https://www.loc.gov/resource/cph.3b50549/>.

² William Birney, *James G. Birney and His Times: The Genesis of the Republican Party* (New York: Bergman, 1969), 213-217.

³ Birney, *James G. Birney and His Times*, 213-217.

⁴ Birney, 216.

⁵ Birney, 216.

Birney held the crowd's attention with an impassioned speech. One by one, Birney poignantly and eloquently addressed each grievance articulated by Hale. Regarding Hale's charge that he had committed treason, Birney retorted by absolving the Constitution of any defense of slavery. He rejected the idea that the Constitution protected the institution of slavery and argued that the document's purpose was "to secure the blessings of liberty to ourselves and our posterity."⁶ Following his speech, the crowd respectfully cleared a path for Birney's departure, and the abolitionist exited the courtroom. No violence followed the meeting.⁷

Although Birney's decision to publish an abolitionist newspaper in Southern Ohio was radical for the time, Birney is often cast in the greater scope of abolitionist history as a "reformist" abolitionist. Abolitionist historian Aileen Kraditor characterizes a reformist abolitionist as someone who believes that Northern society was fundamentally good and that abolitionism should be converted into political action to inspire social reform in the region.⁸ In contrast, more radical abolitionist leaders such as William Lloyd Garrison, David Walker, and Benjamin Lundy are often categorized as anti-institutionalist or radical abolitionists due to their demands for immediate abolitionism and their beliefs that both Northern and Southern societies were fundamentally immoral. Also referred to as "Garrisonian Abolitionists," these leaders often condemned the economic and political structures that had maintained slavery.⁹

⁶ Betty Fladeland, *James Gilliespie Birney: Slaveholder to Abolitionist* (Ithaca: Cornell University Press, 1955), 132.

⁷ Fladeland, *James Gilliespie Birney*, 132.

⁸ Aileen S. Kraditor, *Means and Ends in American Abolitionism* (Chicago: Ivan R. Dee, Inc, 1967), 8; William Lloyd Garrison, "The Great Crisis!" *The Liberator*, Dec. 29, 1862, 1-8.

⁹ Kraditor, *Means and Ends in American Abolitionism*, 1-8.

The Constitution was frequently the subject of condemnation from radical abolitionists.¹⁰ The Constitution's provisions on slavery were a controversial topic within the abolitionist movement: The general consensus amongst historians is that the Garrisonian Abolitionists believed that the Constitution ultimately did not live up to the Declaration of Independence's assertion that "all men are created equal."¹¹ Abolitionists commonly cited the "three-fifths" clause in Article 1 Section 2 of the U.S. Constitution, which states that enslaved peoples would count as three-fifths of a white person for representation purposes, as grounds for this position.¹² Due to the radical views they espoused, Garrisonian Abolitionists did not fit neatly within the country's political framework. Instead, they advocated for social reforms that were outside the confines of mainstream politics. More conservative abolitionists, on the other hand, were unwilling to make such radical criticisms: Many of their solutions were within the political and Constitutional framework insofar as they sought to end slavery through legislation and other political actions.¹³ The Constitutional anti-slavery faction held that "the founding principles of the country were anti-slavery. The Constitution gave all powers to and made it the duty of the federal government to act against slavery."¹⁴ The ideological divisions between these factions festered until the late 1840s, when they split over whether to create an abolitionist political party to compete in federal elections. Throughout early abolitionist history, however, radical abolitionists often used rhetoric that

¹⁰ Aileen S. Kraditor, *Means and Ends in American Abolitionism*, 208.

¹¹ Martin Duberman, "The Abolitionist Critique of the United States Constitution," in *The Antislavery Vanguard* (Princeton: Princeton University Press, 1965), 210; Aileen Kraditor, *Means and Ends in American Abolitionism*, 207-208; Aileen Kraditor, *Means and Ends in American Abolitionism*, 1-8.; The Declaration of Independence (US 1776).

¹² David A. J. Richards, "Abolitionist Political and Constitutional Theory and the Reconstruction Amendments," *Loyola of Los Angeles Law Review* 25, no. 4, (June 1990): 1191.

¹³ Duberman, "The Abolitionist Critique of the United States Constitution," 210; Aileen Kraditor, *Means and Ends in American Abolitionism*, 207-208.

¹⁴ Manisha Sinha, *Slave's Cause: A History of Abolitionism* (New Haven: Yale University Press, 2017), 477.

reflected philosophical compromises in order to enact progress. The initial merging of the two ideologies can be traced back to Birney's work in Cincinnati.

While historians acknowledge that the two factions of the abolitionist movement often coincided with one another, they often neglect to examine how instrumental James Birney's activities were in moving the abolitionist movement's rhetoric toward a more Constitutional stance. Several interpretations of James Birney's abolitionist activity and its place on the ideological spectrum of abolitionism placed little examination on how his actions have impacted abolitionist ideology.¹⁵ Betty Fladeland's biography of Birney covers his life and writings as an abolitionist and explores how the abolitionist community reacted to his activities but neglects to give further insight into whether Birney's abolitionist activity in Cincinnati impacted the political rhetoric and ideologies of the abolitionist movement. Because Birney's newspaper was often the target of violent threats, he consistently defended his abolitionist advocacy by asserting that his Constitutional liberties—including those guaranteed by the First Amendment—protected his actions. Birney further argued that slavery was not protected by the Constitution, a position that had rarely, if ever, been taken.¹⁶ This argument separated Birney from early abolitionists who largely relied on religious and moral grounds as the basis for their actions.¹⁷

Birney's activities in Cincinnati were pivotal in shifting the language of abolitionism from purely moral suasion to language that highlighted Constitutional and civil liberties. Birney's writings and responses to the attacks on his paper rallied the abolitionist movement to defend anti-slavery in the name of freedom of the press. Birney's actions led the abolitionist movement to craft

¹⁵ Fladeland, *James Gilliespie Birney*.

¹⁶ James Birney, "The Reign of Terror," *Philanthropist* Aug. 5th, 1836, 1.

¹⁷ Sinha, *Slave's Cause*, 229.

a platform that placed an importance on constitutional rights as a defense of anti-slavery in addition to an emphasis on moral and religious reasoning. When Birney's office was destroyed in July of 1836 by an angry mob, the abolitionist community, radical and moderate, not only stood in solidarity with Birney but heralded Birney as a defender of civil liberties.¹⁸ These reactions give further insight into the complicated overlaps that often defined the relationship between abolitionist factions. Even the most radical anti-institutionalist advocates were willing to compromise on certain stances if it meant they could achieve success in their greater quest to abolish slavery.

Exploring other notable examples of abolitionist newspapers is necessary to understand the context of Birney and *The Philanthropist*. William Lloyd Garrison, Benjamin Lundy, and Elihu Embree all started anti-slavery publications that faced considerable opposition. Advocates of slavery would often attempt to stop circulation of these newspapers through state courts. By charging abolitionists with criminal libel, local prosecutors attempted to prove that anti-slavery ideologues such as Garrison had an inherent political motive that transcended the exercise of free speech. Supporters of the slave system often accused these abolitionist editors of deliberately inciting political agitation for the sake of harming the community. When these attempts failed, pro-slavery advocates would often resort to violence, including assault or even murder of their abolitionist enemies.¹⁹ Historians have studied violent opposition to abolitionist press and have

¹⁸ American Anti-Slavery Society, Fourth Annual Report of the American Anti-Slavery Society, May 1837, 80-88); William Channing, "Letter of William E. Channing to James G. Birney," 1836, (The Cornell University Library Digital Collections), 12-26; Executive Committee, New York Anti-Slavery Society, to Executive Committee, Ohio Anti-Slavery Society, Aug. 26, 1836 in *A Collection of Valuable Documents, Being Birney's Vindication of Abolitionists-Protests of the American A.S. Society-To The People of the United States, or, To Such Americans as Value Their Rights... Outrage upon the Southern Rights* (Boston 1860).

¹⁹ Amy Reynolds, "William Lloyd Garrison, Benjamin Lundy and Criminal Libel: The Abolitionists' Plea for Press Freedom," *Communication Law and Policy* 6, no. 4 (2001): 4-6, 23; Sinha, *The Slave's Cause*, 237-238.

noted that it was often justified in a legal context. Pro-slavery communities largely believed that they had the collective right to control which ideas were shared within their jurisdiction. By branding certain abolitionist newspapers as a “public nuisance,” they could therefore claim that anti-slavery activity would disturb the peace.²⁰ Similarly, critics of Birney in Cincinnati often accused him of agitating the public.²¹ Birney’s relentless advocacy in the face of dangerous opposition influenced his evolution from a supporter of African colonization to an immediate abolitionist.

The roots of Birney’s abolitionism stem from the same religious convictions that inspired other radical abolitionists. The rise of the Second Great Awakening in the 1820s brought sweeping religious fervor across the United States. The religious revival was prominent with Presbyterian clergy including Charles Finney. After Birney converted to Presbyterianism in the early 1820s, he was deeply receptive to Finney’s theology which emphasized salvation through good works. For Birney, the implications of these religious teachings coincided with the rise in mass democracy which found its roots in Andrew Jackson’s progress to power. As a supporter of Jackson’s populist message, Birney processed these religious and political movements as a sign that he ought to apply his political values and religious beliefs to real-world advocacy.²²

In 1826, Birney allied with the American Colonization Society, a branch of the greater colonization movement which called for removing freed African-Americans from the United States and relocating them to Africa. Birney practiced law in Alabama at the time and held

²⁰ Richard B. Kielbowicz, “The Law and Mob Law in Attacks on Antislavery Newspapers, 1833-1860.” *Law and History Review* 24, no. 3 (2006): 559-600.

²¹ “A Calm Appeal From the South to the North,” *Richmond Enquirer*, quoted in the *Philanthropist*, Jan. 8, 1836.

²² Dwight Drummond, *Letters of James Gillespie Birney 1831-1857* (New York: D. Appleton-Century, 1938), vii; Fladeland, *James Gillespie Birney*, 38-39.

personal family slaves. After spending 15 years in the Deep South, Birney became troubled by the political issue of slavery but did not yet see the feasibility in freeing the slaves and attempting to integrate them into American society. He also did not yet believe in immediate emancipation, but did sympathize with the predicament of freedmen who, despite not being in bondage, faced a life of economic and social hardships. Birney wrote that he saw colonization as “a scheme of benevolence to the woe colored population, and as a germ of effort capable of expansion adequate to our largest necessities in the extermination of slavery.”²³ While Birney was considering the scope of his involvement in the colonization movement, he was introduced to Theodore Weld, a budding abolitionist from Ohio. Weld and Birney discussed the merits of abolitionism, resulting in Birney accepting a position within the American Colonization Society. In 1832, Birney became an agent for the American Colonization Society of the southwest United States.²⁴

The colonization movement was at odds with the greater abolitionist movement at the time. In his essays in the Huntsville *Democrat* written in 1833 arguing for colonization, Birney addressed abolitionist criticisms of the American Colonization Society and responded that relocation is the most feasible solution to the slavery issue.²⁵ It is evident from these essays that Birney occasionally disdained the radical rhetoric employed by abolitionists, including Garrison. This disdain is consistent with the essay’s tendency to utilize plain and detached language to defend abolitionism as opposed to the more passionate rhetoric employed by Garrison and his

²³ James G. Birney, *Letter on Colonization, Addressed to the Rev. Thornton J. Mills, Corresponding Secretary of the Kentucky Colonization Society* (New York, 1834), 4.

²⁴ Birney, *James G. Birney and His Times*, 115.

²⁵ James Birney, “Colonization of the Free Colored People No. III,” Huntsville *Democrat*, quoted in *African Repository and Colonial Journal* (Sept. 1833): 207; James Birney, “Colonization of the Free Colored People: Examination of the Objection of the Abolitionists No. VII” Huntsville *Democrat*, quoted in the *African Repository and Colonial Journal* (Jan. 1834): 342.

peers. While Birney would later support immediate abolitionism, he would rarely employ the radical rhetoric articulated by Garrison and Lundy. Birney would, instead, rely on Constitutional doctrine in defending his abolitionist leanings.

Birney eventually realized that his essays were not changing any minds in the deep South. He was disappointed by his inability to engage in an open and free discussion about the issue of slavery in the region.²⁶ He grew disillusioned with the American Colonization Society and began to see slavery as not merely a dangerous economic system that was politically toxic, but one that was inherently immoral. In his letters to Ralph Gurley in 1833, Birney asserted “I cannot, nor do I believe any honest mind, can reconcile the precept ‘love thy neighbors as thyself’ with the purchase of the body of that neighbor and consigning him and his unoffending posterity to a slavery.”²⁷ In addition, Birney expressed his belief that working to combat slavery in the South was futile, and that he had little hope colonization would find supporters in that region.²⁸ Birney knew he had to take action that would have a greater impact in order to contribute to the fight against slavery.

In May 1834, Birney declared to his colleague Gerrit Smith that he was an immediate abolitionist and resigned from the American Colonization Society.²⁹ Birney proceeded to free his personal slaves and began to explore other career opportunities in step with his interest in philanthropy. Weld encouraged Birney to either continue lecturing across the country as an agent of the Anti-Slavery Society or settle in Lexington or Cincinnati and start an anti-slavery

²⁶ Birney, *James G. Birney and His Times*, 128.

²⁷ James Birney to Ralph R. Gurley, Mar. 18, 1833, in *Letters of James G. Birney*, 60; James Birney to Ralph R. Gurley, Jan. 24, 1833, in *Letters of James G. Birney*, 53.

²⁸ James Birney to Ralph R. Gurley, Mar. 18, 1833, in *Letters of James G. Birney*, 60; James Birney to Ralph R. Gurley, Jan. 24, 1833, in *Letters of James G. Birney*, 53.

²⁹ James Birney to Gerrit Smith, Nov. 14, 1834, in *Letters of James G. Birney*, 113.

publication.³⁰ At this time, *The Liberator* had already been established in Boston and *The Genius of Universal Emancipation* was well known throughout the country, indicating great potential for publications with abolitionist leanings. In 1835, Birney declared to the Ohio Anti-Slavery Convention his intention to publish such a paper.³¹

Birney was subsequently invited to the second-anniversary meeting of the American Anti-Slavery Society—the largest abolitionist organization in the nation—founded by William Lloyd Garrison. Birney's determination to publish this paper and his subsequent speech at the association were pivotal points in his abolitionist career. In his address, Birney foreshadowed his strategy of utilizing his defense of freedom of the press to hurt the slave states' case for slavery:

But there is a stronger objection urged:- the union will be rent? What will rend it? Discussion? The freedom of the press is constitutional; and will that which is constitutional destroy the Union? Is this fair reasoning? Tho the freedom of the press is constitutional. Will it rend the Union? Never. And the same principles applies here. No constitutional proceeding can have a tendency to destroy the Union. How is it to be rent? The free states will not dissolve it. Then is it to be done by slaveholding states?...What will they gain by it?...Suppose the Union severed;...will the dissolution stop discussion? Will it destroy the free press? No; it will only change the discussion by giving it fury. It will only change the present state of things by kindling mutual rage and hatred.³²

Birney understood that he would face opposition from pro-slavery forces if he continued his advocacy. The hypocrisy inherent in violent censorship of dissenting opinions under the guise of protecting American institutions would only generate more anger toward those censoring the papers. By repeating his argument that exercising a Constitutional right would never split the Union, Birney implied that his actions were not only justified under the law but would actually benefit the nation. Whereas other abolitionists aimed their fiery, moralistic rhetoric at the

³⁰ Theodore Weld to James Birney, June 19, 1834, in *Letters of James Gillespie Birney*, 119.

³¹ Ohio Anti-Slavery Society, *Proceedings of the Ohio Anti-Slavery Convention Held at Putnam*, (Cincinnati, 1835).

³² James Birney, "Second Annual Report of the American-Anti-Slavery Society," May 12, 1835, 9.

condemnation of the American political system, Birney emphasized direct political action within the framework of the American political system with the goal of ending slavery altogether. Birney's resolution to publish a paper was adopted unanimously by the American Anti-Slavery Society, demonstrating that Birney's message had struck a chord with the abolitionist organization. After the meeting, Birney found his reputation within the abolitionist movement had grown, providing the momentum he needed to start his newspaper.³³

In October 1835, Birney settled on Cincinnati as the location of his abolitionist paper. Although Ohio was a free state, Birney was aware that the people of Cincinnati would not welcome his paper, and the process of publication would be difficult and dangerous. He privately mused, however, that "every citizen has an indisputable right to speak, write or print any subject as he thinks proper, being liable for the abuse of that liberty" and concluded that he was justified in resisting any opposition.³⁴ Unsurprisingly, it did not take long for pro-slavery forces to mobilize against Birney's actions. Not only did city officials take stances against the paper, but members of the Cincinnati press did as well. After Birney had distributed a handbill advertising his paper, Mayor Davies, and editor of the Cincinnati *Gazette*, Charles Hammond, approached Birney with a warning: if he followed through with publication, violence could ensue and there was not much they could or would do to stop it.³⁵

While not an explicit threat against Birney's abolitionist publication, Birney interpreted the message as a general threat against the abolitionist press and made the gentle assertion that he would "in no way, surrender" his rights no matter the intensity of the violent response.³⁶ Keeping

³³ Birney, *James G. Birney and His Times*, 174-177.

³⁴ James Birney to Charles Hammond, Nov. 14, 1835, in *Letters of James Gillespie Birney*, 263.

³⁵ Birney, *James G. Birney and His Times*, 181.

³⁶ James Birney to Gerrit Smith, Nov. 11, 1835, in *Letters of James G. Birney*, 257.

true to his word, the first issue of *The Philanthropist* was published on January 1, 1836. This issue contained an editorial by Birney in which he declared his mission and responded to his early critics with an earnest defense of freedom of speech. He further chastised the Constitutional hypocrisy that undergirded the pro-slavery advocates' position:

What has slavery acting through the south done for the *freedom of Speech and of the Press*...It has used the refinements of metaphysics and delusions of sophistry to explain away the obvious meaning of constitutional provisions enacted for their preservation; it has claimed for itself the peculiar favoritism of the Constitution of the United States; it has reared itself aloft on a bloody throne, demanding with lash in hand, of States sovereign as itself, that all *their rights* should bow in submission to her and "do her reverence."³⁷

Birney described the silencing of abolitionist speech as a morally bankrupt defense of slavery that distorted Constitutional values beyond recognition. He saw the pro-slavery forces as prioritizing their economic institutions over the Constitutional rights of all other Americans. This was a powerful argument for abolitionism because it framed abolitionism as a constitutional philosophy. A direct response to the pro-slavery masses who consistently framed abolitionists as hostile to American constitutional values, Birney's unique response to this argument classified slavery as an exclusive privilege that the South sought to protect by defining it as Constitutional. Not only did Birney deny this position, he classified his methods—in addition to his ideological goals—as an example of his own Constitutional virtue.

In order to understand the local and national impact of *The Philanthropist*, it is important to explore the structure of the paper itself, including the nature of its editorial tactics and the initial reactions to the publication. A self-described abolitionist newspaper, *The Philanthropist* printed columns that encapsulated both sides of the slavery debate with the goal of demonstrating the

³⁷ James Birney, "Mr. Birney's Answer," *The Philanthropist*, Jan 1, 1836.

progress that can result from productive conversations in a free press. A typical edition of *The Philanthropist* explored the current political and social debates regarding various legislation on slavery and other relevant events. Often, the paper would reprint articles from local pro-slavery newspapers, such as the Cincinnati *Whig* and the Cincinnati *Gazette*, condemning *The Philanthropist's* hostile rhetoric.³⁸ Birney also transcribed and published several speeches made by anti-abolitionist politicians such as the governors of Georgia, South Carolina, and other pro-slave politicians including John C. Calhoun, the foremost proponent of slavery and state's rights.³⁹ Birney published accounts of pro-slavery meetings and reprinted the resolutions passed at these meetings. These records and resolutions frequently condemned the abolitionist press as a danger to society.⁴⁰ The most biting critiques of abolitionism would be countered by a passionate defense of anti-slavery. By exposing the censorship tendencies of his rivals, Birney hoped to continue to expose the inherent animosity toward civil liberties that proponents of slavery harbored. As James Birney's son, William Birney, recounted, "Birney showed the spirit of slavery to be essentially and of necessity aggressive."⁴¹

Birney often wrote editorials in *The Philanthropist* urging abolitionists to take political action to attain their ideological goals. Birney understood that the abolitionist movement was primarily religious at the time but was certain that no progress would take place if the religious passion of the anti-slavery movement was not converted into real political advocacy. "It is important to determine correctly to what extent and under what aspects, abolitionism is a political question," wrote Birney, "In the main it is doubtless a purely religious scheme...for though the truths on which

³⁸ "A Free Press Our Security," *Philanthropist*, Jan. 22, 1836.

³⁹ Birney, *James G. Birney And His Times*, 231.

⁴⁰ "Alabama Watchman-Extra Public Meeting," *Philanthropist*, Jan. 1, 1836.

⁴¹ Birney, *James G. Birney And His Times*, 231.

abolitionists found their system...are essentially religious...it becomes their religious duty to resort to political action."⁴² Birney saw religious duty and political action as two sides of the same coin: to him, the protection of Constitutional and civil rights was a Christian deed.

Birney interweaved aspects of the religious and morally-based rhetoric of Garrison and Walker with the more reformist Constitutional rhetoric that he espoused. In order to practice what he preached, Birney often stressed the importance of voting in elections to challenge the "slave power" in Congress.⁴³ *The Philanthropist* would reprint federal and state legislation that expanded slavery and often urged its readers to contact their representative and voice their anti-slavery beliefs.⁴⁴ Before 1836, few abolitionists advocated strongly for political action regarding slavery. The slave power was always considered too deeply ingrained within both parties to be diminished within the confines of legislative politics.⁴⁵ Birney wanted to reframe the ideological groundwork of abolitionism so that it would fit within the political framework of the United States. As opposition to his paper grew, Birney continued to build upon his belief in the inherent compatibility of abolitionism and the Constitution.

Even though *The Philanthropist* gave a platform to those who opposed it, the common opinion of the pro-slavery forces echoed the majoritarian argument regarding community opinion on certain political issues. *The Philanthropist* regularly reprinted editorials containing biting condemnations of the abolitionist press as a whole. These editorials often accused the abolitionist

⁴² James Birney, "How Abolitionism May Be Considered A Political Question," *Philanthropist*, Dec. 30, 1836.

⁴³ James Birney, "Abolition of Slavery in the District of Columbia," *Philanthropist*, Jan. 8, 1836.

⁴⁴ Birney, "Abolition of Slavery in the District of Columbia," *Philanthropist*, Jan. 8, 1836.

⁴⁵ James Birney, "Political," *Philanthropist*, June 10, 1836.

press as being run by “dangerous fanatics” whose “system of agitation must be put down.”⁴⁶ In addition, some reprinted editorials contained threatening messages directed to Birney and his supporters. In a section of an early issue of *The Philanthropist* titled “Assaults on the Freedom of the Press and of Speech,” multiple excerpts from different pro-slavery publications were reprinted, many of which held that Cincinnati will not tolerate anti-slavery activity. The articles also contained subliminal hints at violence, namely “calling for a town meeting” and suggesting that Birney will meet severe consequences if he carries through with his publication.⁴⁷

These examples of opposition showcase the overall opinion of the community that preventing controversial political discussions from taking place took priority over defending civil liberties such as the freedom of the press. While not yet violent, the pro-slavery movement’s consistent threats of silencing certain publications because of their political beliefs shocked abolitionists as documented in their editorial responses. The abolitionist editorials would respond to these articles with rhetoric that would defend the freedom of the press and condemn the immoral position taken by the pro-slavery opposition. Even more significant, the controversy within the Cincinnati press displayed the overall division among the press itself over the freedom of speech. In fact, it was the Cincinnati *Whig* that would propose holding a meeting in late January of 1836 to discuss how to formally oppose Birney.⁴⁸

Part of Birney’s strategy to counter these opposition meetings involved rallying support from various anti-slavery organizations. When Birney received word of the pro-slavery meeting, he wrote a letter to the Rhode Island Anti-Slavery Society which was read at one of the organization’s

⁴⁶ “A Calm Appeal From the South to the North,” *Richmond Enquirer*, quoted in *Philanthropist*, Jan. 8, 1836.

⁴⁷ “Assaults on the Freedom of the Press and of Speech,” *Philanthropist*, Jan. 22, 1836, 3.

⁴⁸ Birney, *James G. Birney and His Times*, 211.

meeting. The news that Birney faced such personal danger was met with uproar amongst the Rhode Island abolitionists. The organization responded by passing a Declaration and Expose of the Society's policies. As quoted in the declaration, "Do you think that freedom of speech and of the press ought to be 'put down at the North, because its honest exercise troubles the consciences of slaveholders?...must freedom be strangled at the North for fear its contagion will affect the slaveholder of the South?"⁴⁹ This declaration provided an early example of Birney's trials, prompting many abolitionists to characterize threatening responses from the pro-slavery body as hostile to individual liberties. By portraying the political debate in Cincinnati as an ultimatum between free speech or the slaveholder's "troubled conscience," the Rhode Island abolitionists identified the dangerous implications of stifling anti-slavery speech. Birney continued to harness the pro-slavery opposition to his paper to rally the greater abolitionist movement to support his cause of a Constitutional vindication of anti-slavery activities. The continued threats against *The Philanthropist* climaxed when a meeting was held on January 22 at a local Cincinnati court house. The threat of the January meeting was quelled, however, thanks to the personal appearance by Birney himself. The boldness Birney exhibited by attending the meeting helped calm the angry mob.⁵⁰

The mob meeting also motivated Birney to write his most comprehensive defense of abolitionism in *The Philanthropist*. He published a series of articles defending his actions as Constitutional and addressed each resolution that was passed by the pro-slavery meeting in January. These essays focused on defending freedom of the press and demonstrating harmony

⁴⁹ Rhode Island Anti-Slavery Convention, *Proceedings of the Rhode-Island Anti-Slavery Convention*, Feb. 4, 1836, 57.

⁵⁰ Birney, *James G. Birney and His Times*, 213-217.

between abolitionism and the Constitution.⁵¹ Birney's exhaustive account of how anti-slavery was backed by the Constitution was one of the first attempts to argue for anti-slavery through an in-depth Constitutional framework. Rarely did Birney employ moral suasion rhetoric or religious references in these editorials. Instead, he engaged his readers in a carefully written, in-depth, and reasoned account of why abolitionism is consistent with the Constitution.

In these essays, Birney vindicated the Founding Fathers of the pro-slavery movement's charge that they intended to protect slavery when writing the Constitution. He argued that the Founders were members of early abolitionist societies, citing abolition laws passed in several states following the Constitutional Convention. Birney also cited the Founders' intentions to eventually allow the prohibition of the African slave trade as evidence that the framers intended for slavery to be gradually abolished by 1808.⁵² More specifically, he questioned the common argument that the framers intended to sanction slavery in the Constitution but refrained from explicitly doing so: "I deny that it [slavery] ever was," writes Birney, "either in the GENERAL CONGRESS which declared our independence in '76 or in that, which framed the Articles of Confederation in '76 or the Convention of '89 by which the existing constitution was made."⁵³ The redemption of the Founding Fathers as abolitionists would be a controversial stance throughout the history of abolitionism; radical abolitionists such as Garrison would hold that the Constitution was a heretical document that represented a unilateral endorsement of slavery.⁵⁴ Birney's argument in

⁵¹ James Birney, "The Cincinnati Preamble and Resolutions," *Philanthropist*, Feb. 19, 1836, 2-3.

⁵² James Birney, "The Cincinnati Preamble and Resolutions," *Philanthropist*, Feb. 19, 1836, 2-3.

⁵³ James Birney, "The Cincinnati Preamble and Resolutions," *Philanthropist*, Feb. 19, 1836, 2-3.

⁵⁴ William Lloyd Garrison, "The Great Crisis!" *The Liberator*, Dec. 29, 1832 Vol II., No. 52, 206-207; Paul Finkleman, "Garrison's Constitution: The Covenant with Death and How it was Made," *Prologue: A Quarterly Publication of the National Archives and Records Administration* 32, no. 4, (Winter 2000): 231.

these essays set a foundation for political abolitionism that would manifest itself in the formation of the Liberty Party and other political factions.

The constitutional theories in Birney's essays laid the groundwork for a more sophisticated Constitutional defense of abolitionism. The most influential work in this regard was *The Unconstitutionality of Slavery* written by Lysander Spooner in Boston. Published ten years after Birney's editorials, the book contains significant similarities to Birney's position regarding the Constitution and its framers. Like Birney, Spooner argued that there is no written proof that the Founding Fathers ever endorsed slavery and cited the Declaration of Independence, Articles of Confederation, and Convention of 1789 as notable for their lack of documented evidence on the sanctioning slavery.⁵⁵ While there is no proof that Spooner was directly influenced by Birney's editorials, it is important to note Birney published his pieces ten years prior to Spooner's book, further demonstrating that Birney's anti-slavery advocacy pioneered public discourse and served as an effective model for subsequent arguments.

Birney's editorials also addressed the First Amendment and how it justified his actions in Cincinnati. Birney specifically addressed the January meeting's resolutions holding that freedom of the press only extends to where these rights do not infringe on the rights of others. In one editorial, Birney wrote, "Abolitionists are in no such dilemma. Whilst they acknowledge the practice of the slaveholding as a permanent institution to be irreconcilable with the liberty of the press and of speech, they deny it to be a right."⁵⁶ Birney continued to argue that because slavery is not a right, it infringes on the fundamental right of freedom of speech. By defining slavery as an economic institution that conflicts with freedom of the press, Birney effectively countered the pro-

⁵⁵ Lysander Spooner, *The Unconstitutionality of Slavery*, (Boston: Bela Marsh, 1860), 55-64.

⁵⁶ James Birney, "The Cincinnati Preamble and Resolutions," *Philanthropist*, Feb. 26, 1836, 2.

slavery argument by exposing the institution of slavery as the real infringement on the rights of others. The influence of these editorials was paramount within the greater abolitionist movement. Never before had someone engaged in a legal justification of anti-slavery, and rarely had an abolitionist sought to redeem the Founding Fathers from their reputation as proponents of slavery. These articles were reprinted widely by the local and national press and served to alert other publications to the dangers faced by the abolitionist press. The editorials were praised by northern abolitionists and established Birney as a leader in the growing movement to defend anti-slavery within the confines of the Constitution and direct political action.⁵⁷

As Birney's status in the abolitionist movement grew, his publication drew increasing attention. Since the first issue was published, subscriptions to *The Philanthropist* had doubled. Birney became the subject of local and national fame for his dramatic speech given at the pro-slavery meeting in January of 1836.⁵⁸ Concurrently, several notable abolitionists praised Birney for his work and Constitutional advocacy. Judge William Jay from New York wrote a letter to Birney expressing his satisfaction with Birney's fight for a free press. Lundy wrote a letter to Birney expressing his solidarity as a fellow abolitionist editor. "Indeed, were I not, at present, otherwise particularly engaged," Lundy wrote, "I would immediately repair to Cincinnati and propose a union of efforts, in the publication of our respective periodical works."⁵⁹ Lundy's strong endorsement of *The Philanthropist* indicates a strong tendency for Garrisonian abolitionists to endorse reformist abolitionism when it resulted in significant progress.

⁵⁷ Birney, *James G. Birney and His Times*, 233.

⁵⁸ Fladeland, *James Gillespie Birney*, 134.

⁵⁹ Benjamin Lundy to James Birney, Mar. 27, 1836, in *Letters of James Gillespie Birney*, 312; William Jay to James Birney, April 27, 1836, in *Letters of James Gillespie Birney*, 317.

Statements of support such as Lundy's left Birney confident that he was close to completing his task in Cincinnati and convincing people to tolerate his political cause.⁶⁰ By July of 1836, it became obvious that he was mistaken in these assumptions. On July 30, a group of citizens assembled on Main and Seventh Streets in Cincinnati, broke into the offices of *The Philanthropist*, and destroyed the printing press. The mob then descended on Birney's home but were disappointed to find that he had left town earlier in the day after being warned of potential violence.⁶¹ Despite the mob's hopes that this would ultimately end the publication of *The Philanthropist*, Birney became even more emboldened to continue circulation.

Naturally, Birney did not hesitate to publicize the violent attack against his office. One week after the attack, *The Philanthropist* continued its circulation and saw more success than ever before.⁶² On the front page of the first edition following the attack, Birney penned an editorial blaming the pro-slavery forces for the "Reign of Terror" in Cincinnati.⁶³ In his editorial, Birney pondered the scenario of continued violence against his publication, writing that the outcome of such violence would only show those in the North that slavery can exist "only on the ruins of the press-in the darkness and silence of despotism-on the grave of their own liberties."⁶⁴ In the same issue, Birney wrote an editorial urging abolitionists to get involved in the presidential election of 1836 and to "let our votes, where we can vote at all, be given to the 'most worthy,' without regard to partisan distinction."⁶⁵ Birney cited July's mob as evidence that the Southern Slave Power felt

⁶⁰ Fladeland, *James Gillespie Birney*, 136.

⁶¹ Ohio Anti-Slavery Society, "Narrative of the Late Riotous Proceedings Against the Liberty of the Press, In Cincinnati," 1836, 39-45.

⁶² Betty Fladeland, "James G. Birney's Anti-Slavery Activities in Cincinnati," *Historical and Philosophical Society of Ohio* 9, no. 4, (1951): 264.

⁶³ James Birney, "The Reign of Terror," *Philanthropist*, Aug. 5, 1836, 1.

⁶⁴ James Birney, "The Reign of Terror," *Philanthropist*, Aug. 5, 1836, 1.

⁶⁵ James Birney, "Politics," *Philanthropist*, Aug. 5, 1836, 1

imperiled by the political threat that abolitionists posed to the mainstream party system. He encouraged his readers to combat violent censorship by electing abolitionists to Congress and forcing political parties to change their respective platforms accordingly.⁶⁶

The attack on Birney's office had a major impact on the national abolitionist movement. He received letters and resolutions of support from William E. Channing and the Executive Committee of the New York Anti-Slavery Society.⁶⁷ The New England Anti-Slavery Society, originally formed by Garrison, passed a formal resolution mentioning Birney as "one who so nobly volunteers to jeopard [*sic*] his life in the midst of dangers and persecutions."⁶⁸ More than six pages of the annual report of the American Anti-Slavery Society were dedicated to the events in Cincinnati. The report praised Birney's peaceful methods and heralded him as a defender of freedom of speech. The report also addressed the constitutional debate, stating "It is slavery, and not the Constitution, which governs the United States at the present time."⁶⁹

The language in these resolutions clearly indicates a trend in the anti-slavery movement to characterize pro-slavery forces as not only immoral, but diametrically opposed to the Constitution. The violence against Birney paved the way for the abolitionist movement to redefine itself as a movement supported by Constitutional doctrine. The support he enjoyed convinced him that his efforts were beginning to expose slavery as antithetical to the Constitution. In 1837, Birney gave a

⁶⁶ James Birney, "Politics," *Philanthropist*, Aug. 5, 1836, 1.

⁶⁷ William Channing, "Letter of William E. Channing to James G. Birney," 1836, (The Cornell University Library Digital Collections), 12-26; Executive Committee, New York Anti-Slavery Society, to Executive Committee, Ohio Anti-Slavery Society, Aug. 26, 1836 in *A Collection of Valuable Documents, Being Birney's Vindication of Abolitionists-Protests of the American A.S. Society-To The People of the United States, or, To Such Americans as Value Their Rights... Outrage upon the Southern Rights* (Boston 1860).

⁶⁸ Birney, *James G. Birney*, 231.

⁶⁹ American Anti-Slavery Society, "Fourth Annual Report of the American Anti-Slavery Society," May 1837, 80-88.

formal, report to the American Anti-Slavery Society, in person, describing the reactions to his trials:

I speak confidently, when I say there is now a large and rapidly increasing number of the most estimable, patriotic and intelligent of our countrymen who, agreeing on the evils of slavery, on the magnitude and certainty of the danger with which they threaten all that is valuable and worthy to be cherished among us—freedom of speech and of the press, the right to investigate truth, to publish its results and to act consistently with them.⁷⁰

By 1837, Birney enjoyed national renown and the *Philanthropist* was one of the leading abolitionist newspapers in the country. His success eventually brought him a job offer to act as corresponding secretary for the American Anti-Slavery Society (AASS) in New York with Gamaliel Bailey taking over as editor for *The Philanthropist*. He served on the AASS until 1840.⁷¹

When Birney took over as corresponding secretary for the AASS, the abolitionist movement was beginning to split over differences of approach.⁷² The Garrisonian faction maintained that the Constitution was a sinful document that protected slavery, believing that abolitionism should not enter politics as a political party. Birney and the conservative faction, however, continued to advocate for direct political action to solve the problem of slavery, forming the Liberty Party in 1840 with Birney as their Presidential nominee. This schism reflected a deep fissure within the abolitionist movement; however, Birney's career in Cincinnati showed that many abolitionists, both radical and conservative, were prone to endorse a more reformist form of anti-slavery if they deemed it beneficial. While severe disagreements on political action would continue to plague the movement, Birney played a pivotal role in uniting multiple factions of the abolitionist movement in their goal to expose the institution of slavery and its defenders as hostile to

⁷⁰ James Birney, "Fourth Annual Report of the American Anti-Slavery Society," May 1837, 4.

⁷¹ Fladeland, *James Gillespie Birney*, 155.

⁷² Fladeland, *James Gillespie Birney*, 155-157; Kradt, *Means and Ends in American Abolitionism*, 152-178.

Constitutional rights. Birney's efforts to expose the violence against him gave the abolitionist movement the credibility needed to begin de-legitimizing the South's argument that slavery was a Constitutional right.

Abolitionists used the violence and oppression they faced as a rallying cry behind which Americans could advance their mission of defending individual liberties. The impact of this violence was essential in convincing Northerners that abolition was not merely a radical political goal, but one fully sanctioned by the Constitution. The antagonistic response from pro-slavery forces was seen by abolitionists as disproportionate and threatening to freedom of speech. In order to promote the abolitionist cause, Birney and others were required to demonstrate how the pro-slavery movement was willing to suppress white people's civil liberties rather than simply its suppression of equal rights absent of color. The narrative put forth by conservative abolitionists convinced people of slavery's indefensibility due to its obstruction of moral and religious duty. The Northern-Southern divide on this issue resulted in the Civil War and the eventual abolition of slavery. While Birney never lived to witness this conflict, he was essential in bringing the issue of slavery to the forefront of American politics.