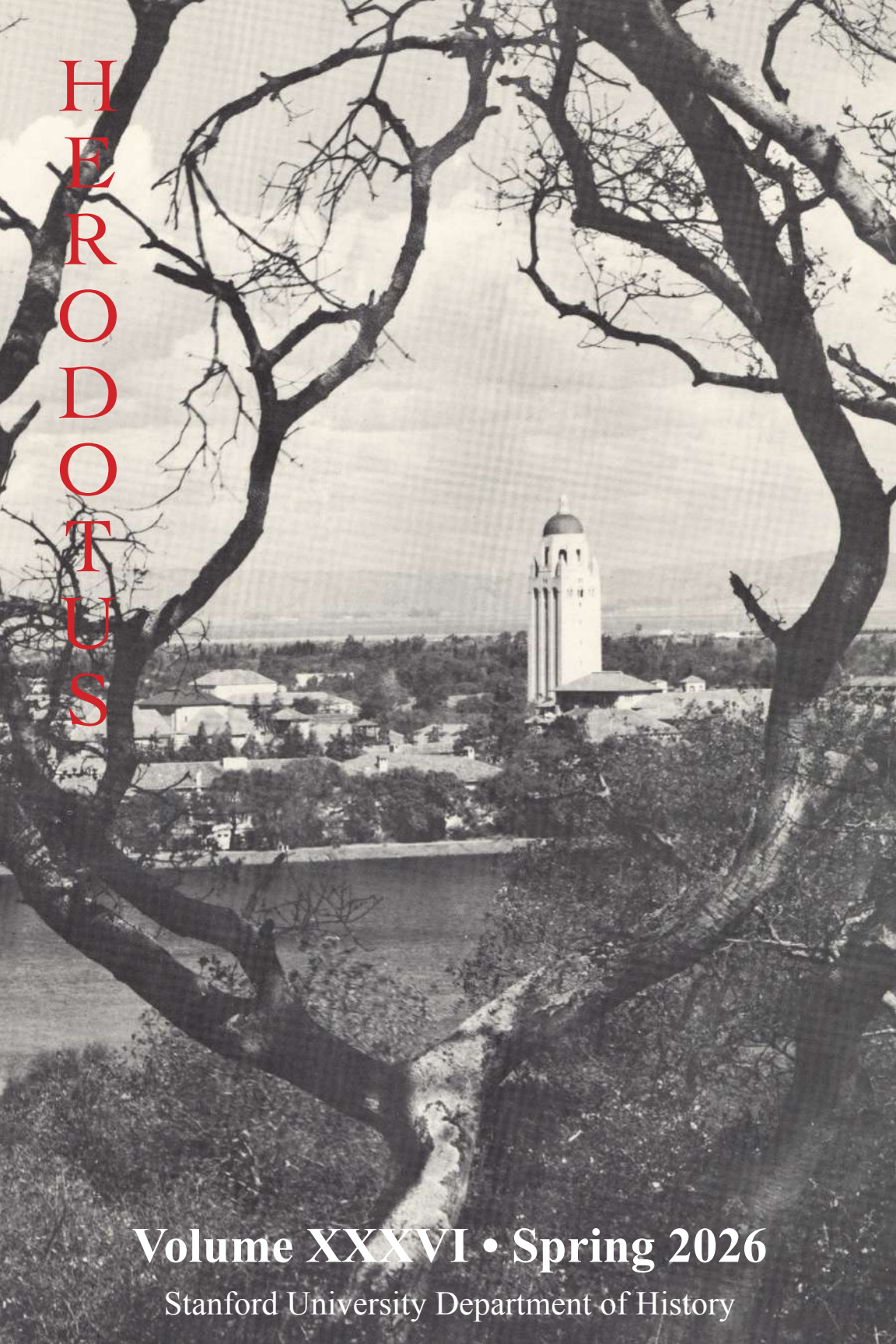
HERODOTUS



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Herodotus is a student-run publication founded in 1986 by the History Undergraduate Student Association (HUGSA) in partnership with the Stanford Department of History. It bears the name of Herodotus of Halicarnassus, the fifth century BCE historian of the Greco-Persian Wars. Herodotus wrote his *Histories* so that "human achievements may not become forgotten in time, and great and marvelous deeds . . . may not be without their glory." Likewise, this journal is dedicated to preserving and showcasing the best of Stanford's undergraduate historical work. Submissions are solicited within the university, and contributions are selected through a rigorous peer review process. *Herodotus's* volume numbering system erroneously begins in 1990 rather than 1986. We have, however, chosen to retain the existing system for the sake of continuity.

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Editor's Note

How do we remember our own history? Our namesake once said that as historians, our duty is to "report all that is said," yet we are "not obliged to believe it all alike." History is a bulwark against oversimplification, preserving and making meaning of archival noise—and interpreting the dark matter of archival silence. We construct these elements into enduring stories, or transgressive counternarratives, finding cracks in comfortable truths and details once overlooked. The resulting narratives shape how our societies view themselves. They in turn dictate how we decide values, build governments, remember tragedies, and strive to form more perfect unions.

2026 is a year ripe for historical reflection. Our Stanford community is awash in anniversaries as both the semiquincententials of the United States and San Francisco are upon us. This year, many of our authors grapple with the relationship between stories, history, and belief. They take us around the world and centuries back in time, then all the way back home to San Francisco and our own Stanford University. They challenge the ideas of both distant and familiar times, and probe how history impacts institutions that persist today. They span the histories of science, war, diplomacy, sexuality, law, politics, and the archive itself. And they continue this journal's pursuit of great depth and breadth of scholarship.

Through our efforts, we hope to showcase the dynamic study of history at Stanford.

HERODOTUS

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‘Little Hope to the Parent of a Backward Boy’: The Genetic View of Genius in Terman’s Longitudinal Study

Caspar Griffin

In early 1921, Lewis Terman, professor of educational psychology at Stanford University, began a statewide search for gifted children. Assembling a team of graduate students to pick through California’s school districts, Terman contacted administrators and superintendents, schoolteachers and principals. Above all, he wanted to hear from parents who believed their children might be something special. “Got a Child of Genius in Your Home?” advertised the *San Francisco Examiner*. “If so, Prof. Lewis Terman, authority on educational psychology at Stanford University, would like to know about it.”[1] Terman’s call for parents to write in on behalf of their genius children initially drew public skepticism. The claim that genius was not only innate and hereditary, but also detectable at a young age, was a novel assertion. Some members of the public questioned the empirical validity of Terman’s claims, while others lamented the encroachment of science into parenting. Most of all, parents were wary of the study’s implications. Before, the possibilities for a child’s development had been extensive, if not limitless. But if genius was identifiable at an early age, and development was fixed by genetic potential, what, then, could a parent do to help their child?

These mixed reactions exposed deeper tensions about the changing role of science in American life. Some historians have explored how the flawed scientific methods of psychologists like Terman changed American

1 “Got a Child of Genius in Your Home?”, The San Francisco Examiner, July 21, 1921, SC0038, Box 10, Folder 50, Lewis Madison Terman Papers, Stanford University Library Archives.

political identities at the individual and collective levels.[2] Others have traced the origins of *scientific motherhood*, the encroachment of scientific expertise on parental knowledge as the source of authority on childcare.[3] Theodore Porter offers a framework synthesizing both narratives, arguing that quantification became central to the natural sciences due to political and social pressures.[4] These studies shed light on why empirical measurement of intelligence flourished as it did, reflecting an early-twentieth century American push to objectivity and the onset of scientific methods in the home. But they do not quite explain how Terman's category—the 'child of genius'—achieved such cultural ubiquity as a new model of child development.

Ultimately, Terman's approach to studying intelligence shaped the population he claimed to merely measure. His concept of genius led parents to locate and define children of genius in their homes for the first time. In doing so, they slowly abandoned old models of childhood, premised on the possibility of adolescent development, in favor of a new one rooted in clinical assessment of predetermined future potential. Parents began to wonder whether their children were natural-born geniuses or not. Between the publication of Terman's *Measurement of Intelligence* in 1916 and his study's launch in 1921, the meanings and social implications of being a 'child genius' came to be shaped by a historically contingent interchange between scientific practice and private lives.

Lewis Terman was not the first to theorize the hereditary and fixed nature of intelligence. Nearly fifty years earlier, the British eugenicist Francis Galton had set out to show that "man's natural abilities are derived

2 John Carson, *The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750–1940* (Princeton University Press, 2018); Stephen Jay Gould, *The Mismeasure of Man (Revised and Expanded)* (W. W. Norton & Company, 2006).

3 Rima D. Apple, *Perfect Motherhood, (*United Kingdom: Rutgers University Press, 2006), https://www.google.com/books/edition/Perfect_Motherhood/73PMY8itf3cC?hl=en&gbpv=1&bsq=heri; Ann Hulbert, *Raising America: Experts, Parents, and a Century of Advice About Children* (Knopf Doubleday Publishing Group, 2011).

4 Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton University Press, 1996), https://muse.jhu.edu/pub/267/monograph/book/36191.

by inheritance."[5] Galton scoured history books and family trees, looking to find 'men of eminence' who, he hoped, would be related biologically to other distinguished figures. But, as Galton admitted, reputation was a questionable test of natural ability. "How much of a man's success is due to his opportunities?" he queried, "how much to his natural power of intellect?"[6] A subject pool of young aristocrats made discovery of any unadulterated genius difficult. Galton's methodology offered little to satisfy the empirical standards later to emerge in American psychology.

Still, Galton's distinction between innate ability and environmental influence was central to Terman's theory of genius. Galton had been among the first to contrast nature with nurture: "one produces the infant such as it actually is, including its latent faculties of growth and mind: the other affords the environment amid which the growth takes place."[7] This division had radical implications, situating the trajectory of human development firmly within the domain of measurable biological inheritance. Galton failed to prove this theory, but it deeply influenced Terman. At the outset of his longitudinal study, Terman outright embraced his connection to Galton, proclaiming that "the publication of Galton's *Hereditary Genius*, in 1869, mark[ed] the beginning of a new era."[8] Yet he was conscious of its limitations, noting how "no extensive studies of mental inheritance have been made by the use of graded objective measures, although this is the only method which can yield data of scientific validity."[9] Proof of hereditary intelligence depended on empirical insight still overlooked.

By the 1910s, developments in psychometric testing supplied this gap. In France, Alfred Binet published the Binet-Simon Test in 1905, used to assess the mental faculties of children.[10] It did not measure a unitary intelligence, and its primary function was indeed to determine pathology, not assess a population.[11] Nonetheless, it demonstrated that psychological

5 *Galton, Hereditary Genius*, 1.

6 Galton, *Hereditary Genius*, 37.

7 F. Galton, *English Men of Science: Their Nature and Nurture* (Macmillan & Company, 1874), https://books.google.com/books?id=VrG081YMOMUC., 12–13.

8 Lewis Madison Terman, *Mental and Physical Traits of a Thousand Gifted Children* (Stanford University Press, 1925), v.

9 Lewis Madison Terman, *Mental and Physical Traits*, vi.

10 Carson, *The Measure of Merit*, 144–47.

11 Alfred Binet. "New Methods for the Diagnosis of the Intellectual Level of Subnormals." *L'Année Psychologique* 12 (1905), 191.

testing could provide viable results. In America, where a clamor for statistical information swept the nation, psychologists rapidly co-opted Binet's methodology into a test for general intelligence.[12]

Terman published his own revision to the Binet-Simon Test in *The Measurement of Intelligence* in 1916.[13] Unlike Binet, Terman promoted a hierarchical view of intelligence, represented in a single number: the Intelligence Quotient (I.Q.). Across the entire population, the test categorized most individuals as approximately average intelligence, with decreasing frequency towards either extreme, making those outside the "normal" range even more conspicuous.[14] The test was empirical, designed for whole populations, and easy to administer for the purposes of Terman's study. Thus, Terman developed his missing numerical too

The I.Q. test made waves among both fellow psychologists and the public.[15] As the psychologist Henry Goddard exclaimed, "the tests do come amazingly near what we feel to be the truth in regard to the mental status of any child tested."[16] Educators and administrators embraced the test in schools. Some, like the teacher Martha Adler, compared it to their own estimations of students' abilities and determined that it formed "an excellent basis for the classification of young pupils."[17] Intelligence testing seemed to offer an efficient means of sorting children, particularly useful for the educational reformers of the Progressive era.

But the test also drew skepticism from those who questioned its scientific validity. Walter Lippmann, a prominent early critic of Terman's methodology, lucidly commented that "[the test] does not weigh or measure intelligence by any objective standard. It simply arranges a group of people in a series from best to worst by balancing their capacity to do certain arbitrarily selected puzzles."[18] Other psychologists, like William Bagley or Grace Fernald, joined Lippmann in his critique. New York Supreme Court

12 Gould, *Mismeasure of Man*, 186.

13 Carson, *Measure of Merit*, 183.

14 Carson, *Measure of Merit*, 188.

15 Carson, *Measure of Merit*, 191.

16 Henry Goddard, "Four-hundred feeble-minded children classified by the Binet method" (1910), *J Genet Psychol.* 1991 Dec:437-47, 439. DOI: 10.1080/00221325.1991.9914705.

17 Carson, *Measure of Merit*, 187.

18 Walter Lippmann, "Debunking Intelligence Experts: Walter Lippmann Speaks Out," accessed June 8, 2025, https://historymatters.gmu.edu/d/5172/.

Justice John W. Goff, ruling that Binet test results could not be admitted as evidence of mental incapacity, declared that "standardizing the mind is as futile as standardizing electricity."[19] Certainly, the I.Q. test had powerful detractors. Such voices, however, were in the minority. The public criticized Justice Goff sharply for his claim, and Terman himself compared Lippmann to Creationists and other opponents of scientific progress. As the voices of its critics were drowned, the I.Q. test became increasingly pervasive in public institutions.

At the same time, intelligence testing made its way into the private sphere, radically transforming existing ideas around parenting. As one 1938 advertisement succinctly posited, "[a]dd science to love and be a perfect mother."[20] Historian Rima D. Apple calls this "scientific motherhood … the insistence that women require expert scientific and medical advice to raise their children healthfully."[21] Met with an outpouring of pediatric expertise and practical manuals, mothers were urged to apply scientific findings to their own child-rearing. To some degree, parents embraced this development, creating a demand for more research. Parents, educators, and administrators further drove the adoption of I.Q. tests, thus science acted not in isolation but propelled by domestic needs. Theodore Porter, for example, has argued that the popularity of intelligence testing in American schools might be understood merely as a quantification of pre-existing educational methods, an "adaptation to public exposure", rather than the "achievement of a well-insulated community of researchers."[22] The contemporaneously growing public appreciation for numeric methods certainly facilitated its acceptance of testing as a diagnostic and educational tool.[23]

This framing, however, fails to recognize how intrusive and worrisome scientific methods truly were. The emergence of some objective,

19 Carson, *Measure of Merit*, 192.

20 Noomi Matthiesen and Peter and Clement Lund, "Parents as Psychological Coaches," *Ethics and Education* 19, no. 2 (April 2, 2024): 126, https://doi.org/10.1080/17449642.2024.2387519.

21 Rima D. Apple, "Constructing Mothers: Scientific Motherhood in the Nineteenth and Twentieth Centuries" | Social History of Medicine | Oxford Academic," 161, accessed May 6, 2025, https://academic.oup.com/shm/article-abstract/8/2/161/1642796?redirectedFrom=fulltext.

22 Porter, *Trust in Numbers, 210–11.*

23 Porter, *Trust in Numbers*.

external guidance for parenting created deep consternation around childrearing. "In no other country… has there been so pervasive a cultural anxiety about the rearing of children" wrote the cultural historian Max Lerner in the immediate aftermath of the *scientific motherhood* movement.[24] Terman, for his part, defended his test as a method to transcend parental bias. He noted, for example, that he often encountered the criticism that "the observant teacher or parent is able to make an offhand estimate of a child's intelligence which is accurate enough," making a diagnostic test redundant.[25] But, he argued, it was important to reduce a "grave and frequent error" made by parents and teachers alike.[26] To illustrate this point, Terman cited the example of the ten year-old "X". X's mother was "encouraged and hopeful because she sees that her boy is learning to read." Yet, "[s]he does not seem to realize that at his age he ought to be within three years of entering high school. The forty-minute test had told more about the mental ability of this boy than the intelligent mother had been able to learn in eleven years of daily and hourly observation."[27] In Terman's eyes, the test carried an objectivity impossible for a mother or teacher to maintain.

For the most part, the media celebrated the new takeover of science in parenting. Take, for example, Elsie Robinson's nationally syndicated column *Listen, World*, in which she gave advice to "Little Ellen's Mother." She regards the mother, skeptical of I.Q. testing, as archaic and bumbling: "An I.Q. test isn't as silly as you think it is, Mother… during the course of many years, educators and psychologists have determined… that a brain of a certain age should be able to work at a certain speed."[28] An article promoting Terman's search for genius, meanwhile, proclaimed that "fond fathers and mothers are not the ones to decide on their child's brain power. No, in the coldly scientific eyes of the Terman mental testers their testimony

24 Max Lerner, *America as a Civilization: Life and Thought in the United States Today: with a Postscript Chapter: The New America, 1957–1987* (Oxford & IBH Publishing Company, 1988), 562

25 Lewis Madison Terman, *The Measurement of Intelligence* (Houghton Mifflin Company, 1916), 22, http://archive.org/details/measurementofint008006mbp.

26 Terman, *Measurement of Intelligence*, 23.

27 Terman, *Measurement of Intelligence*, 117.

28 Elsie Robinson, "What's the I.Q.?" *The New York Times*, July 19, 1925, SC0038, Box 10, Folder 50, Lewis Madison Terman Papers, Stanford University Library Archives.

is not worth much."[29] Prevailing media currents thus encouraged parents to accept the scientific community's new hegemony over parenting.

Unsurprisingly, then, when Terman put out his call for children of genius, parents rushed to include their children in the study. They enthusiastically cooperated with the study, filling out extensive forms and accompanying their children to endless follow-up appointments. Terman himself was surprised at their fervor.[30] These parents deferred to a scientist's superior judgement of their own offspring, citing their biases towards their beloved children. "Of course every fond mama thinks her child comes under that head [of genius]" remarked one.[31] Said another: "[p]arents are so egotistical in family affairs; they're unreliable to pass honest judgment on their offspring."[32] Respondents represent those who actively reached out to Terman about his study, therefore were likely more sympathetic to his cause and its uses. Still, they represent a broader cultural trend towards the new science of parenthood.

Terman's study offered tangible benefits for hopeful parents. First, it suggested that "genius" could already be at home, waiting to be discovered. Parents enclosed photos of their children and detailed descriptions of their academic merits, wondering if their child might in fact be a genius. Some identified their little genius themselves, but sought external validation. "Dear Sir," began one, "I read an article asking if there was a genius in our home, yes we have a genius in our home."[33] Remarkably, this correspondence came from parents whose children were ultimately deemed *not* intelligent enough for inclusion in the study, underscoring Terman's critique of biased parents.

Beyond an external perspective on relative merit, parents perceived

29 "Got a Child of Genius in Your Home?", The San Francisco Examiner, July 21, 1921, SC0038, Box 10, Folder 50, Lewis Madison Terman Papers, Stanford University Library Archives.

30 "To the City and County Superintendents of California," December 30, 1921, SC0038, Box 10, Folder 50, Lewis Madison Terman Papers, Stanford University Library Archives.

31 *Letter to Lewis Terman*, July 24, 1921, SC0038, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

32 *Letter from Charles De Witt to Lewis Terman*, August 9, 1921, SC0038, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

33 *Letter to Lewis Terman*, July 21, 1921, SC0038, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

Terman's study as a source of guidance in navigating their children's development. This is perhaps paradoxical, given Terman's emphasis on intrinsic aptitude. Still, many requested his advice, one writing "if you could offer me any suggestions in training him it would be more than appreciated," another asking him for "any information that would assist me in helping him to start life on the right road?"[34] To these parents, Terman's scientific expertise could be a guiding light in raising their children regardless of their innate intelligence. Others believed that Terman's scientific authority could encourage their children to achieve their own potential. One parent implored Terman to "get hold of my boy, talk and draw him out on these lines you suggest in your article."[35] But Terman remained adamant: genius was the product of nature, not of environment.

Though many embraced Terman's theory, others were troubled by its fixity, preferring the previous more flexible model of childhood, which left more bandwidth for changes during development. Before Terman, Granville Stanley Hall's "genetic psychology" had been the dominant model of child-development based on the Neo-Lamarckian view of the inheritance of acquired characteristics. To Hall, "Nature" was significant, as it constituted the "substance of the developing personality."[36] But Hall also believed in "meliorism", which emphasized the prospect of improvement.[37] To Hall, development was not predetermined but likely to occur during adolescence, a time when "[p]lasticity is at its maximum... The mind at times grows in leaps and bounds."[38] Advice manuals pre-Terman embraced this message. "The boy is father to the man," suggested one. "If you have the right idea in boyhood and young manhood, you are never likely to go wrong when you become a man."[39] Hall's model of childhood recognized that nature

34 *Letter from Mrs. Henry to Lewis Terman*, July 20, 1921, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

35 *Letter from George Gratton to Lewis Terman*, July 18, 1921, SC0038, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

36 Dorothy Ross, *G. Stanley Hall: The Psychologist as Prophet* (University of Chicago Press, 1972), 312. http://archive.org/details/gstanleyhallpsyc0000ross.

37 Ross, *Psychologist as Prophet*, 332

38 Granville Stanley Hall, *Adolescence: Its Psychology and Its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion and Education* (D. Appleton, 1904), 337.

39 Isabelle Thompson Smart, *What a Father Should Tell His Son* (Funk and Wagnalls Company, 1911), 91.

informed development, but it also emphasized the malleability of a child, particularly through their adolescent years.

Terman, however, rejected this model of development. He insisted that genius children did not even work as hard at school as their less-gifted peers.[40] Intelligence could be detected early and would remain constant throughout a lifetime. Even adolescence could not make a difference. "The facts we have presented," Terman wrote, "offer little hope to the parent who would like to believe that his backward boy who is 6 or 8 years old will catch up in the supposed spurt of adolescence. Indeed, the much-talked-of adolescent spurt begins to look like a myth."[41] He attached a childcare manual to his survey on genius, advising that "[t]he parents of gifted children are indeed very fortunate, but their position is one which carries with it difficult responsibilities."[42] His fundamental advice, however, was to let children alone, warning that "prodigy-making… is at best a sorry and disappointing business, and at its worse is little less than criminal."[43] If a person's I.Q. remained constant, and, as Terman insisted, "there is nothing about an individual as important as his IQ," there was no reason for parents to attempt to intervene.[44] Terman's theory of inherent intelligence located genius and consigned the "backwards" to mediocrity, no matter how hard they, or their parents, tried.

Parents struggled with this paradox. They sought guidance from an authority figure who insisted that any guidance was futile. A Mr. Gratton, for example, told Terman that "I am so anxious for him [his son] to go on and find his place in life and fill it well."[45] Mrs. Henry, meanwhile, wrote that "I am anxious to find out what kind of work my son is best fitted

40 Manuscript I, *Miscellaneous fragments and chapters of books on study of gifted*, 1921, SC0038, Box 10, Folder 36, Lewis Madison Terman Papers, Stanford University Library Archives.

41 Lewis Madison Terman. *The Stanford Revision and Extension of the Binet-Simon Scale for Measuring Intelligence*. United States: Warwick & York, Incorporated, 1917, 60.

42 Lewis Madison Terman, *Suggestions for the Education and Training of Gifted Children ...* (Stanford University Press, 1921), 5.

43 Terman, *Suggestions,* 6.

44 Terman, *Measurement of Intelligence*, p17

45 *Letter from George Gratton to Lewis Terman*, July 18th, 1921, SC0038, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

for."[46] Both parents sought agency in a scientific model designed to deny it. They also demonstrate how from its inception, the idea of the 'child of genius' had worrisome implications for parents. For some parents, innate ability could redeem their children from difficult circumstances. But for the overwhelming majority, Terman's determinative model of development fixed their children in eternal place.

Why does it matter to conceptualize genius as a category shaped by historical contingency rather than as a natural class? One answer is to note that the creation of the 'child genius' is emblematic of how Americans have come to define and measure themselves through scientific terms. At the turn of the twentieth century, classification was at its peak. Administrators and scientists introduced new generic labels in a broad set of applications. The so-called 'child of genius' was particularly startling because it provoked widespread parental enthusiasm, demonstrating how parents and scientists negotiated authority on childcare at a time when the boundaries were yet undefined. Understanding how this category came to be delivers new insight into parenthood and psychology in Progressive America.

Further, Terman's ideas continue to resonate today, where many assume that intelligence is easily quantifiable, and that differences in this quantity justify social inequality. The idea, while a relatively recent construction, has become embedded perniciously in American consciousness, transforming social and political thought. In *I.Q. in the Meritocracy*, Richard Herrnstein wrote that "the biological stratification of society looms whether we have tests to gauge it or not," framing this as a trend towards a meritocratic America.[47] Political administrations trumpet I.Q. as a measure of worth and right to govern.[48] Schools use standardized testing to compare children across age-groups. But these ideas do not represent self-evident truths. Instead, they simply employ a reductive Galtonian distinction between nature and nurture. They assume that I.Q. adequately represents ability, an idea directly traceable to *The Measurement*

46 *Letter from Mrs. Henry to Lewis Terman*, July 20, 1921, Box 10, Folder 51, Lewis Madison Terman Papers, Stanford University Library Archives.

47 Richard J. Herrnstein, *I.Q. in the Meritocracy* (Little, Brown, 1973), 221 http://archive.org/details/iqinmeritocracy0000herr.

48 "Trump Fixates on IQ as a Measure of Self-Worth - POLITICO," accessed June 10, 2025, https://www.politico.com/story/2019/05/30/donald-trump-iq-intelligence-1347149.

of Intelligence.

Fundamentally, simplified ideas of quantifiable intelligence disregard how genius emerged as the product of the complex interplay between scientific theory and lived experience. Emphasizing these contingencies permits us to question the neutrality of scientific categories and recognize the political dynamics they are used to enforce.

An Open Secret:

Sex, Vaudeville, and Gay Prison Culture at the San Quentin Little Olympics

Anna Wang

"Welcome Olympic Club," announced the banner in proud capital letters, "20th Annual Track and Field Meet." A high stone wall loomed in the background, as far as the eye could see.[1] On September 9, 1933, the men of the Olympic Club of San Francisco stepped off the bus, adjusted their suits, and strolled through the bannered entrance. Since 1913, the Olympic Club men had sponsored and helped run this annual day of competition and festivity—named, unsurprisingly, the Little Olympics. Though all of the Olympic Club men were dedicated amateur athletes and active participants in the local sports circuits, today would be different. Today they came not to compete, but to spectate.

And what a spectacle it was. Part-field-day, part-carnival, part-theater, the Little Olympics featured athletic events, tug-of-war, pie-eating contests, and a slew of dazzling performances. An audience of 5,500 men in identical gray uniforms crowded into the yard, shouting in collective triumph or heartbreak. The hosts had been training, rehearsing, and anticipating this day for weeks—some for an entire year, since the previous Little Olympics last September. The results were so marvelous and varied that even the worldly Olympic man knew not where to look. He might cheer on the Mill team sprinting to the 100-yard finish line one moment, then laugh at a swaggering, big-shoed clown or gawk at the acrobats' delicate nine-person balancing act the next.[2] And when the vaudeville dancers stepped onto the small wooden platform erected as a stage, he would sit up straight, craning his neck to catch a glimpse of bare legs and

1 "San Quentin Carnival," *The Bulletin*, September 1933, Volume XXII, Number 2, The Bancroft Library, 6.

2 "San Quentin Carnival," 7.

slim hips—whistle when they swished their skirts, clap when they struck a pose. When the performers gathered onstage for a group photo, he might notice one of them posing in a tight two-piece costume, hands on hips, both legs entirely exposed (Fig. 1), and—simultaneously impressed, scandalized, and aroused—think to himself: the prettiest girl on stage is a man![3]

Indeed, that "prettiest girl" was a female impersonator, a man cross-dressed as a woman staging a performance of femininity for his audience's entertainment. In early twentieth-century America, female impersonation acts were exceedingly common. Female impersonators appeared everywhere from tawdry amusement districts to legitimate theaters for the popular entertainment of choice, vaudeville: a diverse hodgepodge of art forms including minstrelsy, circus, musical comedy, and the risqué offerings of burlesque.[4] By the 1930s, female impersonators in vaudeville performed a range of femininities in reaction to new cultural trends and anxieties surrounding displays of female sexuality and gender bending in American society.

That "prettiest girl" was also a male prisoner at San Quentin Prison, one of only two California state penitentiaries in 1933. The Little Olympics took place within San Quentin Prison's complex prison entertainment economy—which by the 1930s included the San Quentin Minstrel and Vaudeville Company, a baseball league, chess team, prison newspaper, and prison band, all run primarily by the inmates themselves. In its simplest interpretation, prison entertainment such as female impersonation at the Little Olympics represented a moment of healthy revelry for prisoners, a quirk of early twentieth-century Progressivism under reform-minded prison wardens in an otherwise isolated and turbulent prison setting. Inevitably, the games always came to an end: scores were tallied, prizes distributed, hands shook. As the sun began to set, the Olympic men drove out through the prison gates while San Quentin inmates feasted on a celebratory dinner of pork and pie at the prison mess hall. Tomorrow they would return to

3 This phrase is borrowed from Kathleen B. Casey, *The Prettiest Girl On Stage Is a Man: Race and Gender Benders in American Vaudeville* (University of Tennessee Press, 2015). Casey most likely took inspiration for her book title from "The Prettiest Girl on the Stage is a Man," *The Julian Eltinge Magazine,* circa 1911, 22, Townshend Walsh Collection, New York Public Library for the Performing Arts.

4 LeRoy Ashby, *With Amusement For All: A History of American Popular Culture Since 1830* (University Press of Kentucky, 2006), 119.

their old routines: laboring away at the carpenter shop or jute mill, writing for the prison newspaper, dreaming of escape, or cigarettes, or some other release from the boredom.

But prison entertainment was not only a banisher of boredom. It was also a vehicle of cultural exchange. Most historical studies of sexuality portray the prison as an ahistorical setting isolated from contemporary culture. Most historical studies of the prison overlook sexuality entirely.[5] In contrast, this cultural history of the female impersonation acts at San Quentin Prison's Little Olympics reveals how new cultural mores policing "acceptable" and "deviant" performances of gender and sexuality on and off the stage successfully permeated prison walls in early-1930s America. At the same time, an internal prison subculture of same-sex sexual relations and feminine gender performance fundamentally shaped the power inmates held in the prison hierarchy and the risks they experienced in their daily lives.

The gay sexual culture of San Quentin Prison during the 1930s existed as an open secret. This paper works to uncover that open secret. As a prison outsider, I construct a first encounter with the secret through inmate female impersonators at the Little Olympics; as a prison insider, I trace the cultural currents that produced the conditions for the *open* secret; and finally, as both prison insider and outsider, I return to the Little Olympics to demonstrate how "effeminate" prisoners used the vaudeville stage to disguise their performances of "deviant" sex appeal for personal gain—an iteration of the open secret. I argue that sexuality at San Quentin Prison was a sociocultural phenomenon, one that prisoners primarily comprehended and constructed through repeated performances of gender and social categorization. Prison sexual culture and the Little Olympics thus exposed the incoherence of biological, fixed sexual identity, an emerging idea in 1930s American popular culture—and perhaps the best-kept secret of all.

Outside Looking In: Vaudeville, Burlesque, and the Feminine Ideal

"Mr. Eltinge's costumes make the rest of the women's dresses look like a bargain sale," enthused one popular fashion columnist known

5 Historian Regina Kunzel concisely identifies these gaps in the literature. See Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (University of Chicago Press, 2008), 4–5.

by her pseudonym, "The Skirt."[6] With her keen eye, sharp tongue, and unchallenged authority on trends in women's fashion, Hattie Silverman critiqued vaudeville performances in her weekly *Variety* column "The Woman in Variety," often singling out unfashionable acts and shabby clothes for scathing rebuke.[7] "The Skirt" reserved her praise for celebrities like Julian Eltinge, a female impersonator whose powder-white, poised, and corseted "Gibson Girl" aesthetic became a model of femininity for his audience of white middle-class housewives.[8] In the early 1900s, the booming vaudeville, fashion, and beauty industries joined forces to promote dominant notions of the feminine ideal on and off the stage.

While Julian Eltinge was perfecting his performance of the refined lady to much acclaim, a raunchier version of femininity was also having its moment in the spotlight. As early as 1860, burlesque—known for the tight, scanty costumes, suggestive exhibitionism, and rebellious, "unladylike" mannerisms of its female performers—entered mainstream American entertainment.[9] By the 1920s, burlesque had flattened from a performance style with the transgressive capacity to mock fashionable dress and gender ideals to a canned selection of striptease and leg shows. In burlesque, the point of costumes was to be teasingly removed and discarded; the point of the performance was displaying the nearly naked female body. In his autobiography, the notorious burlesque businessman Mort Minsky recounted one of his shows: the mostly male audience was so close to the dancers that they "could look right up [the performers'] legs" and "smell their perfume and hear their heavy breathing. It was sensational!"[10]

Although Julian Eltinge's refined lady and burlesque's "sensational"

6 Marlis Schweitzer, *When Broadway Was the Runway: Theater, Fashion, and American Culture* (Philadelphia: University of Pennsylvania Press, 2011), 129, http://ebookcentral.proquest.com/lib/stanford-ebooks/detail.action?docID=3441920.

7 Emily Brayshaw, "Costume Behaving Badly: Poverty, Disease and Disgust in Early Twentieth-Century New York Vaudeville," *Fashion Theory* 26, no. 6 (September 19, 2022): 758, https://doi.org/10.1080/1362704X.2021.1990548.

8 Laurence Senelick, *Gender in Performance: The Presentation of Difference in the Performing Arts* (Hanover: University Press of New England, 1992), 27–28. Eltinge started his own beauty magazine and sold fans cold cream.

9 Ashby, *With Amusement For All*, 111–15.

10 Ashby, *With Amusement For All*, 200; Robert Allen, *Horrible Prettiness: Burlesque and American Culture*, Cultural Studies of the United States (Chapel Hill: University of North Carolina Press, 1991), 231–32.

seductresses seemed to represent competing femininities, they were in fact two sides of the same coin: the emerging cultural interpretation in the 1920s and 1930s of the feminine body as a sexual icon. Modesty was just the flip side of indecency, and all women were capable of both.[11] In the decades after World War I, the new American feminine ideal—represented by the flapper and bathing beauty—embodied both qualities by exuding a wholesome, youthful sexuality while baring an unprecedented amount of skin. Onstage, female impersonators like Eltinge and his more "lissome" mentee Lionel Ames followed suit, performing naturalistic, non-satirical renderings of the new feminine ideal (Figs. 2 and 3).[12] As an art form, vaudeville was a big tent containing various cultural influences, but the impulse to both reveal and conceal the body for erotic effect united the many femininities performed by female impersonators postwar.

In the spirit of a first encounter with the open secret, I adopt the perspective of a prison outsider—say, a visiting member of the Olympic Club—and his surface-level experience of the 1930 and 1933 Little Olympics to place the inmate female impersonators he observed within the context of these broader cultural trends in vaudeville and the feminine ideal. I am aided by a rich set of photographs from the archives of San Quentin Prison officials and prisoners.[13] Ranging from action shots to staged portraits, photos of female impersonators appear alongside more than 450 images of the San Quentin Prison grounds, natural surroundings,

11 Angela Latham, "Performance Rights: A Historical Performance Ethnography of Contested Displays by American Women, 1920–1930" (Order No. 9812668, University of Illinois at Urbana-Champaign, 1997), https://www.pro quest.com/dissertations-theses/performance-rights-historical-ethnography/docview/304352145/se-2, 15.

12 Andrew L. Erdman, *Beautiful: The Story of Julian Eltinge, America's Greatest Female Impersonator* (New York, NY: Oxford University Press, 2024), https://doi.org/10.1093/oso/9780197696330.001.0001, 218.

13 I reviewed photographs related to vaudeville in the following archival collections: for the early years of vaudeville at San Quentin Prison (1910s), the papers of prison warden John E. Hoyle at The Bancroft Library and a family photo album belonging to prison guard Richard Smith and prison matron Genevieve Smith at the Marin County Free Library; for the 1930 Little Olympics, the papers of prison doctor Leo Stanley at the Marin County Free Library; and for the 1933 Little Olympics, the California State Library's *Olympic Club Track & Field Meet at San Quentin Prison* collection. I also consulted the papers of high-profile San Quentin prisoner Thomas J. Mooney at Bancroft, which contain undated vaudeville photos from between 1925 and 1935. The majority of the photos referenced in this paper are available to view online; I am grateful to the Digital Transgender Archive for collecting and organizing the digitized photos for easy access.

and recreational activities. Given that capturing and captioning these photos would have required extensive access to prison space and knowledge, senior prison officials must have endorsed the documentation of San Quentin prison life, though it seems almost none of these photos were ever published. Photographs of the Little Olympics fit the style of a personal photo album: many depict prisoners standing still and posing for the camera, creating a unique opportunity to study individual performers up close. Focusing on about 70 photos of inmate female impersonators dated between 1913 and 1935, I examine the stage costumes in conjunction with the prisoners' bodies, mannerisms, and poses to interpret the femininities that prisoner-performers chose to project for the camera.

In the 1910s, when Julian Eltinge reached peak popularity, female impersonation at San Quentin Prison rarely managed the sophistication of the Gibson Girl. With few exceptions, the inmates in the San Quentin Minstrel and Vaudeville Company (hereafter SQ Company) staged female impersonation acts with dowdy attire and mannish, over-painted ladies.[14] In one black-and-white photo of a Fourth of July performance, four inmates wore conical flag-patterned hats, ill-fitting tunics with stars stamped across the chest, and semicircle lap aprons over pleated skirts. The outfits were most likely garish red, white, and blue. All four men stood either expressionless or mid-gawk, mouths slightly ajar (Fig. 4). In another performance, a female impersonator dressed as a maid bent over in the possible start of a striptease. Long skirt pulled up to mid-shin, he turned to the audience with a suggestive leer that quickly killed any possibility of seduction (Fig. 5). In both photos, the female impersonators were more stocky than slender, more awkward than elegant; none possessed the dainty features of the Gibson Girl. In fact, many of the SQ Company's female impersonation acts resembled parodies of the feminine ideal rather than true imitations.

In contrast, the performances of femininity at the 1930 and 1933 Little Olympics appeared to be acts of sincere imitation. The stage clothes had certainly improved in quality and design—flowy skirts replaced stiff pleats, while beading and sleeveless dresses also emerged (Fig. 7). Most performers wore short bob wigs or no wig at all. Some female

14 See Fig. 6. The inmate in this photo wore a high-quality dress in the Gibson Girl style—but only two such dresses appeared in SQ Company photos.

impersonators at the 1933 Little Olympics bared an astonishing amount of skin, especially the midriff, arms, and legs. Several prisoners, including a popular Black female impersonator with the moniker "Sister Kate," wore a bralette top paired with tiny shorts (Figs. 8, 9, and 10). In one photo, an impersonator in a thin turtleneck and soft knee-length pencil skirt kicked out a leg for the camera—revealing a slim, smooth thigh through the skirt's long slit (Fig. 11).

It was the feminine attitude, posing, and gestures of performing prisoners in 1930 and 1933 that transformed the show from sincere imitation to seduction. The inmates had mastered "maintain[ing] the illusion of unity between garment and body" with the apparent effortlessness of Eltinge, without the corsets and rigorous preparations.[15] Almost all the female impersonators at the Little Olympics shared a similar body type: slim, long-limbed, and limber. Almost all had delicate, fairy-like facial features. And when it came time to pose, almost all arranged their bodies obliquely in relation to the camera. Instead of facing the camera head-on, as the SQ Company's July 4th performers did, they slanted slightly away, giving their shoulders and hips a tilt (Fig. 12). They bent one knee to lift their heel off the ground, drawing attention to the sleek line of their calf (Fig. 8). Thin, coy, and often simply or scantily dressed, San Quentin female impersonators in the 1930s performed a form of femininity far removed from the Gibson Girl.

The significant shift in performance costumes and gestures at the 1930 and 1933 Little Olympics compared to SQ Company stages in the 1910s paralleled the rapid postwar revolution in the dominant feminine ideal, a change epitomized by the rise of the 1920s flapper. According to the fashion historian Anne Hollander, "The Lady had gone out; the Girl had come in."[16] Youth was a defining characteristic of the flapper, who projected a literal childlike image that Hollander calls the "child-woman."[17] Young women kept bobbed hair, slim builds, and knee- or ankle-length skirts exposing scandalous flesh-colored stockings; they scorned the corset for

15 Brayshaw, "Costume Behaving Badly," 764.

16 Anne Hollander, "Women and Fashion," in *Women, the Arts, and the 1920s in Paris and New York*, ed. Virginia Lee Lussier and Kenneth W. Wheeler (New Brunswick, N.J: Transaction Books, 1982), 110.

17 Hollander, "Women and Fashion," 114.

clothes that "stayed close to the body without fitting very tightly anywhere" and learned to slouch to convey elegance, using the "forward-thrusting hip, with hunched shoulders above."[18] In some photos from the 1933 Little Olympics, the flapper's slouch, childlike youth, and chic, leg-baring style of dress was particularly evident (Figs. 13 and 14). So too was the flapper's arm-swinging, leg-kicking style of dance—mid-performance shots captured the awkward angles of vigorous, kinetic movement (Fig. 15).

Aside from the flapper, the other major image of youthful femininity that the cross-dressing inmates of San Quentin Prison consulted and copied was the Miss America Pageant. Founded in 1921 by Atlantic City beach resorts to extend vacation season, the pageant's trademark was its bathing beauty contest, or "bathers' revue." Young amateur beauties paraded along the beach boardwalk in form-fitting one-piece swimsuits that reached only mid-thigh while a panel of judges evaluated their looks and chose a winner (Fig. 16). Quite literally, the judges of the bathing beauties selected a feminine ideal—the young and wholesome Miss America.[19] Inside San Quentin Prison, the adoption of the bathing beauty contest at the Little Olympics was speedy and enthusiastic. In 1926, an inmate proclaimed that their annual bathers' revue would "eclipse" its counterpart in Atlantic City.[20] The bathing beauty's fitted swimsuit silhouette could partially explain why several San Quentin female impersonators wore shorts and bralette tops that exposed so much skin, much more than the flapper aesthetic called for. But the costumes of Sister Kate and other prisoners were more revealing than even the most daring swimsuits of the 1930s. Understanding their origins and cultural meanings requires a return to burlesque.

Burlesque aesthetics and influences in the Little Olympics vaudeville performances emphasized an exotic femininity that served as a foil to the childlike flapper and the actual child

bathing beauty. What were the flappers and bathing beauties hiding? Burlesque answered—and left little to the imagination. One clear example of burlesque was a belly dancing female impersonator at the 1933 Little

18 Hollander, "Women and Fashion," 124, 113.

19 The first Miss America, Margaret Gorman, won the contest at age 16. See Deborah Sue Wolfe, "Beauty as a Vocation: Women and Beauty Contests in America" (Ph. D., United States -- New York, Columbia University, 1994), 67.

20 "Tarheel" Elkins, "Carolina Quibs," *The Wall City News*, November 17, 1926, Volume 1, Number 5, The Bancroft Library, 3.

Olympics, who posed barefoot with a headscarf veil and only a strapless bralette to cover the torso (Fig. 10). First introduced to American audiences at the "Streets of Cairo" and Algerian village exhibits at the Chicago World's Columbian Exposition of 1893, belly dancing (also known as the "cooch") served as a "reminder of the atavistic nature of women in a 'semi-civilized' state" and quickly became a staple of burlesque troupes across the nation.[21] Considering the belly dancer, Sister Kate doing the splits in a frilly bralette and shorts most likely did not shock any of the Olympic men watching in the audience (Fig. 9).[22] Exotic, overtly sexualized femininity was part and parcel of the burlesque tradition, and burlesque held a firm position in the vaudeville shows of the 1930 and 1933 Little Olympics.

Female impersonation acts at San Quentin Prison changed with the times. The femininities performed by prisoners in 1930 and 1933 best matched the youthful sexuality of the postwar feminine ideal, with a strong streak of exotic femininity belonging to burlesque. Although these femininities leaned toward the risqué side of vaudeville, they remained familiar to contemporary male observers; the average Olympic man would not have been surprised by the skin-baring female impersonators at the Little Olympics. Yet for all our prison outsider knew about vaudeville, there was much he did not know about the performers at San Quentin Prison and their fellow inmates in the audience. For San Quentin Prison was not a blank slate limited to receiving cultural influences from the outside world—it was also a site of cultural production, with a unique prison culture largely illegible to outsiders.

Inside Looking Out: Prison Sexual Culture in 1930s America

"CLIMB A TIER," recorded Hi Simons, former prisoner at the U.S. Disciplinary Barracks in Fort Leavenworth, Kansas, in his 1933

21 Allen, *Horrible Prettiness*, 227–28. The cooch was also widely adopted in circuses and carnivals. See Katherine Adams and Michael Keene, *Women of the American Circus, 1880–1940* (Jefferson, North Carolina: McFarland & Company, Inc., Publishers, 2012), 121.

22 Sister Kate was a Black prisoner, which no doubt affected the way Sister Kate's body was sexualized and exoticized onstage. Race and vaudeville at San Quentin Prison is beyond the scope of this project; however, it is worth noting that about an equal number of white and non-white female impersonators appeared in photos of the 1930 and 1933 Little Olympics.

publication "A Prison Dictionary (Expurgated)." "Hunt, or run down, a *boy*. [The sodomites did climb from tier to tier in the open-cell wings at night; if they attempted to walk up the stairs they might be seen by the guards.]"[23] Synonyms included "GO TO TOWN" and "RUN THE TIER." Simons defined "BOY" quite simply: "Catamite." In ancient Greece and Rome, a catamite referred to a boy or youth in a sexual relationship with an older man. In Simons' glossary of prison slang, four different words meant catamite—PUNK, BO, GAZOONEY, GONZEL—and two described prisoners who sought out catamites: WOLF, a "[b]oy-seducer," and JOCKER, "*[a] sweet daddy* [emphasis in original]."[24] Other prisoner-compiled dictionaries of prison argot published in the early 1930s similarly contained numerous terms for homosexuality.[25] As Simons noted, "A Prison Dictionary (Expurgated)" was expurgated because a complete dictionary would be "an encyclopedia of all imaginable sexual deviations," each of them "dwelt upon and yearned for by prisoners."[26] In the early twentieth century, prisoners, prison administrators, and scientists who studied prisons all agreed: within the walls of men's prisons, sex was happening everywhere, all the time.

The preponderance of coded terms in the prison vernacular for same-sex sexual practices, roles, and customs among male prisoners also pointed to the existence of an elaborate sexual culture. Prison sexual culture drew from contemporaneous gay culture outside prison walls and reacted to the early twentieth-century rise in the popular and scientific conception of sexuality as a binary of immutable, congenital sexual *identities* (heterosexuality and homosexuality) reliably identified via gender conformity and inversion. By the 1930s, gay prison sexual cultures such as that at San Quentin Prison—widely considered sexually deviant by prison officials and scientists—were in reality firmly entrenched in and illuminating of the dominant sexual culture of the Depression decade: its fears, assumptions, and fault lines.

23 Hi Simons, "A Prison Dictionary (Expurgated)," *American Speech* 8, no. 3 (1933): 25, https://doi.org/10.2307/3181754.

24 Simons, "A Prison Dictionary (Expurgated)," 24–32.

25 See Noel Ersine, *Underworld and Prison Slang* (Upland, IN: A. D. Freese & Son, 1933) and George Milburn, "Convicts' Jargon," *American Speech* 6, no. 6 (1931): 436–42, https://doi.org/10.2307/452399.

26 Simons, "A Prison Dictionary (Expurgated)," 23.

Prison sexual culture informed and recontextualized the performances of femininity by inmates at the 1930 and 1933 Little Olympics in ways that eluded the prison outsider's ignorant eye. To uncover this open secret, I turn to the positions of prison insiders. I follow prison officials as they attempted to rationalize the ubiquity of same-sex sex in prisons and the prisoners themselves as they leveraged gender performance to define their place in the prison's sexual culture and inmate hierarchy. In particular, I identify clues hinting at the open secret in an untouched archive: San Quentin Prison's inmate-run newspaper, *The Wall City News*.[27]

The 1930s saw a rise in popular interest and anxiety regarding crime and sexual deviance. The Progressive movement's concerns over public morality and social disorder, the popular romanticization of outlaws, and prison overcrowding caused by rising unemployment combined in such a way that crime, especially "sex crimes," both "troubled and titillated" the reading public.[28] During this period, two major developments in American culture changed the discourse surrounding sex in prisons: the spike in visibility of gay male subcultures in popular culture, and the emergence of a new conception of sexuality as an immutable sexual identity rather than an uneven, fluid arrangement of desires, practices, and beliefs.

Vibrant gay subcultures existed in early twentieth-century America. Historian George Chauncey's seminal work *Gay New York* (1994) maps the "immense gay world of overlapping social networks in [New York City's] streets, private apartments, bathhouses, cafeterias, and saloons" that gay men forged in the half-century before World War II.[29] During the 1930s, gay communities also blossomed in San Francisco, closer to San Quentin.[30] Public gay male culture developed its own jargon to describe sexual roles

27 Historian Ethan Blue makes three brief references to *The Wall City News* for a general overview of the Little Olympics; see Ethan Blue, *Doing Time in the Depression: Everyday Life in Texas and California Prisons* (New York University Press, 2012), https://doi.org/10.18574/nyu/9780814709405.001.0001, 169–70. As far as I can tell, no historical study has analyzed *The Wall City News* in depth.

28 Kunzel, *Criminal Intimacy*, 26. See also Estelle B. Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920–1960," *The Journal of American History* 74, no. 1 (1987): 83–106, https://doi.org/10.2307/1908506.

29 George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York: Basic Books, 1994), 2.

30 Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003), 5.

and practices. Chief among them was the archetype of the "fairy" or "pansy," a feminine gay man who took on the "passive" role during sex.[31] The "pansy craze" of the late 1920s and early 1930s, peaking in 1930–31, witnessed an explosion of flamboyantly cross-dressing actors in vaudeville, nightclubs, and Broadway theater. Many were female impersonators performing satirical pansy acts, but others were gay men stepping onstage as female impersonators, blurring the line between drag queens of the gay underworld and female impersonators of the respectable theatrical tradition.[32] By the mid-1930s, gay subcultures were increasingly visible in mass entertainment across the nation.

As gay male culture entered the public imagination, the new science of sexology attempted to explain homosexuality and heterosexuality using "scientific," biological language. Sexologists generally agreed on the existence of "true," congenital homosexuality, as opposed to situational, acquired homosexuality. According to their logic, anyone could acquire homosexual practices in an environment of sexual perversion, but only some people were true homosexuals by birth and biology. True homosexuality could always be identified by gender inversion, such as male femininity or female masculinity. In other words, non-normative gender expression always indicated sexual deviance.[33] Among gay men, the pansy's effeminacy, or male femininity, was the key indicator of sexual deviance.

Prison walls were extremely permeable to both cultural currents. Many prisoners read widely and stayed well-informed on American popular culture.[34] Moreover, most prisoners were working-class men who may have encountered working-class gay male culture before entering prison. One 1931 article in the San Quentin Prison newspaper, titled "Hollywood Hooey," demonstrated the author's clear familiarity with the pansy craze: "An old timer in Hollywood is a gent who can remember when Pansy was

31 Chauncey, *Gay New York*, 15.

32 Boyd, *Wide-Open Town*, 35–36; Chauncey, *Gay New York*, 315-316.

33 Kunzel, *Criminal Intimacy*, 59–60.

34 In the prison journal, San Quentin inmates frequently referenced articles in outside newspapers and reviewed books borrowed from the prison library. One inmate writer opined: "Oddly, prisoners are the most consistent readers of books pertaining to prisons and prison life." See "Quentiana Continued," *The Bulletin*, December 1933, Volume XXII, Number 5, The Bancroft Library, 28.

the name of a flower."[35] Prison administrators and observers relied heavily on sexology to explain the rampant "perversion" of same-sex sexual relations inside prisons. In his memoir *Men At Their Worst*, San Quentin Prison's physician Dr. Leo Stanley (who served at San Quentin from 1913 to 1951) wrote that fairies could be identified "the minute they step through the front gates" because "many have decidedly feminine characteristics." A feminine "twist to the hips" or "sly smirk" was apparently enough to "betray" their homosexuality.[36]

Yet sex in prisons also exposed the contradictions of sexology, which was at heart a justification for the social control of marginalized communities, not an actual science. In his memoir, Stanley sought to rationalize same-sex sex at San Quentin as situational homosexuality, whereby young boys were "led into" or coerced into homosexuality by manly older prisoners known as wolves. Wolves resorted to sex with boys only because they were deprived of sex with women. In this interpretation, none of the San Quentin prisoners were congenital homosexuals—not even the so-called fairies. Still, as a believer in sexology, Stanley needed an explanation for the prisoners with deviant, feminine gender expression. To compromise, Stanley claimed that only "effeminate" victims of sexual molestation would *remain* homosexual, while the "normal boy would eventually be shamed out of it by his own manliness."[37] Why did feminine boys have to be led into homosexuality if they were homosexual by birth? Why did masculine wolves practice homosexuality if their manliness should have shamed them out of it? In the prison context, the modern notion of a biological, immutable sexual identity proved incoherent. Although Stanley's logic collapses under scrutiny, it was shared by many contemporaries and prison administrators intent on stamping out the so-

35 Yoohoo Willhays, "Hollywood Hooey," *The Wall City News*, August 15, 1931, Volume 6, Number 2 edition, Box 2, Papers relating to San Quentin Prison, [ca. 1907–13], The Bancroft Library, 4.

36 Leo L. Stanley and Evelyn Wells, *Men At Their Worst* (New York, London: D. Appleton-Century Company, inc, 1940), 201.

37 Stanley and Wells, *Men At Their Worst*, 202.

called gay contagion.[38]

Responding to widespread fears about sex crimes and drawing on sexological insights, Progressive prison reformers of the 1920s and 1930s used policies intended for improving prisoners' quality of life to instead prevent sexual perversion. For example, one hallmark of Progressive-era prison reform was the Elmira model of rehabilitation, which advocated segregation between types of prisoners based on severity of crime to facilitate individualized treatment and healthier living conditions.[39] Some prisons implemented harsh measures segregating identified homosexual prisoners from the rest of the population in order to prevent situational homosexuality.[40] It appears that San Quentin Prison did not implement such a policy until the 1940s.[41] Before and during the 1930s, however, San Quentin wardens did maintain a strict segregation between women and men prisoners despite prisoner objections, most likely to prevent sex in prison.[42] Officially, sex between male prisoners was forbidden, and the official punishment ranged from solitary confinement to extension of sentences. In reality, such rules were enforced at prison officials' discretion, and many seemed uninterested in catching and punishing all rule-breakers. Same-sex sex in prison was simply too common.[43]

38 For "scientific" studies, see Joseph F. Fishman, *Sex in Prison: Revealing Sex Conditions in American Prisons* (New York: National Library Press, 1934), https://hdl.handle.net/2027/uiuc.781686?urlappend=%3Bseq=7 and Samuel Kahn, *Mentality and Homosexuality*, HeinOnline LGBTQ+ Rights (Boston: Meador Publishing Company, 1937), https://heinonline.org/HOL/P?h=hein.lgbtq/mnthmos0001&i=1.

39 Larry E. Sullivan, *The Prison Reform Movement: Forlorn Hope* (Boston: Twayne Publishers, 1990), 19–20.

40 Kunzel, *Criminal Intimacy,* 61.

41 Kunzel states the segregation policy began in 1941, while Kenneth Lamott dates it to the early 1940s. See Kunzel, *Criminal Intimacy*, 73; Kenneth Lamott, *Chronicles of San Quentin: The Biography of a Prison*, First edition, HeinOnline History of Capital Punishment (New York: David McKay Company, Inc, 1961), https://catalog.hathitrust.org/Record/001136103, 249.

42 Even the Little Olympics was not entirely free from such social control: by 1930, women prisoners were not allowed to attend the event, even though they helped make the vaudeville costumes for the female impersonators. See "Women Prisoners to Attend Field Meet," *The Wall City News*, November 8, 1926, Volume 1, Number 3, The Bancroft Library; "Sandy; Number 47474 She Has Our Numbers Now," *The Wall City News*, September 10, 1930, Volume 5, Number 5, https://sanquentinnews.wordpress.com/wp-content/uploads/2010/09/wall-city-news-1-10-1930.pdf; "'Old Faithful' Spouting Again," *The Wall City News*, August 15, 1931.

43 Kunzel, *Criminal Intimacy,* 69–70.

As reform-minded prison officials attempted to explain and eliminate the perceived contagion of homosexuality in San Quentin Prison in the 1930s, they faced a complex prison sexual economy in which the most obvious alleged sexual deviants, the prison queens, had incentives to perform femininity in order to gain power over and protection from their fellow prisoners. In the San Quentin prison economy, sex and feminine sex appeal constituted capital and covert forms of power. Prison queens could "exchange sex for favors" in a commodity exchange with other prisoners, trading sex for a carton of cigarettes or a nice silk-lined suit.[44] If they entered a longer-term relationship with a "jocker" (husband), especially a "con boss" with powerful managerial control over prisoner labor, then queens could have "a source of protection, and someone to fight on their behalf" when violence erupted inside the prison.[45] These relationships all brought dangers—rape, domestic violence, jealousy—that feminine prisoners navigated daily to stay safe and protect their position in the prison hierarchy.

Gender performance was one of the most powerful tools prison queens could use to navigate the prison hierarchy. As the sexologists argued, gender inversion indicated homosexuality; if prison queens wanted to increase their sex appeal in order to gain power, protection, or other commodities, leaning into the performance of femininity could help. According to prison observers, prison queens would rouge and powder their faces, paint their lips and eyebrows, and walk with a "mincing" step, also known as "swishing."[46] A 1934 surprise raid of the Welfare Island prison in New York City revealed "silk step-ins, nightgowns and other bits of negligee…strewn about the cells," as well as one prisoner who "clung desperately to a set of false eyelashes."[47] These inmates must have traded something valuable to obtain such precious contraband inside the prison, suggesting their performances of femininity held tremendous practical—and potentially personal—significance. In prison queens' daily lives, the spaces of the prison itself formed the stage for their performances of

44 Blue, *Doing Time in the Depression*, 125–26.

45 Blue, *Doing Time in the Depression*, 126.

46 Louis Berg, *Revelations of a Prison Doctor* (New York: Minton, Balch & Co., 1934), 137; Chauncey, *Gay New York*, 55.

47 Chauncey, *Gay New York*, 94.

femininity. San Quentin prisoner Malcolm Braly recalled the open expanse of the San Quentin Prison yard, where "the queens had been free to swish around…and carry on open love affairs" thanks to the progressive push for freedom of the yard.[48] San Quentin physician Leo Stanley worried about keeping wolves away from young boys in the "baths and lavatories," which had "no separate compartments."[49] Due to prison overcrowding, prison queens likely never lacked an audience, and so were constantly performing some degree of femininity in their everyday lives.

Depending on their attitudes toward gay sexual culture, prison insiders upheld the open secret of same-sex sex in prison to varying extents. Prison print culture exemplified these many iterations of the open secret. On one hand, prison autobiographies published detailed accounts of homosexuality and sexual deviance.[50] In his memoir, Dr. Leo Stanley discussed the "chewing-gum murder" of one San Quentin inmate by another when "he offered a younger prisoner a stick of gum." "The drama behind it could not be printed" in the newspapers, Stanley claimed, likely because journalists had no way of knowing the murder was motivated by "sex jealousy."[51] In 1933, Victor Folke Nelson—who had spent 13 years in the Massachusetts prison system—published his memoir *Prison Days and Nights*, which dedicated 30 pages to a chapter titled "Men Without Women." Nelson flew from story to story about the sexually abnormal prisoners he knew, from confused childhood friend Barton to the polygamous wolf Dreegan.[52] After the immense success of *Prison Days and Nights*, discussions of sex became "nearly obligatory" in the prison autobiographies that followed, including several by former San Quentin

48 Malcolm Braly, *False Starts: A Memoir of San Quentin and Other Prisons* (Boston: Little, Brown & Co., 1976), 159. In the 1940s, Braly also heard stories of the bygone Jocker's Ball, "when once a year the guards looked the other way and the queens sallied out in full drag to dance with their lovers to the music of the prison orchestra."

49 Stanley and Wells, *Men At Their Worst*, 201.

50 Angelo Herndon, *Let Me Live* (NY: Random House, 1937), https://catalog.hathitrust.org/Record/000340003; Goat Laven, *Rough Stuff: The Life Story of a Gangster* (London: Falcon Books, 1933); Julius A. Leibert, *Behind Bars: What a Chaplain Saw in Alcatraz, Folsom and San Quentin* (Garden City, NY: Doubleday, 1965).

51 Stanley and Wells, *Men At Their Worst*, 200.

52 Victor Folke Nelson, *Prison Days and Nights* (Boston: Little, Brown, 1933), 153–59.

prisoners.[53] These popular accounts by individuals no longer affiliated with a prison frequently framed themselves as exposés of previously hidden prison secrets. By the late 1930s, however, they became so common that the secrets they told were no longer particularly secret.

On the other hand, the topics of sexual deviance and gender transgression remained either absent or coded in prisoner-run journals and newspapers, whose contributors—current prisoners—faced higher stakes to preserve their secrecy. Since its founding in 1913, San Quentin Prison's monthly to bimonthly journal *The Bulletin* pontificated on prison education, progressive prison reform, contract labor, the value of prison newspapers, baseball, chess, and the prison band. The publication produced editorials, movie reviews, miscellaneous columns, and inmate-authored creative writing, including poetry praising their mothers for the annual Mother's Day issue in May.[54] Not once did the writers of *The Bulletin* discuss sex in the prison, or even female impersonation at the Little Olympics.[55] The other publication at San Quentin Prison was *The Wall City News*—a special inmate-run newspaper, founded in 1926, which focused solely on the Little Olympics. Published weekly for about one to two months before each annual meet as a primarily prisoner-facing publication, *The Wall City News* documented preparations, gossip, forecasts, and results with a cheeky flair missing from *The Bulletin*.[56] *The Wall City News* exhibited a penchant for irony and mischief—in its own words, "good natured raillery and friendly

53 Kunzel, *Criminal Intimacy*, 57. For an autobiography by a San Quentin Prisoner, see Braly, *False Starts*.

54 *The Bulletin*, 1916–36, The Bancroft Library, University of California, Berkeley.

55 In contrast, female impersonation *was* mentioned once in the 10 editions of *The Wall City News* available to me: "Phil says he wants all kinds of dancers except female impersonators. Nobody can get in on this part of the act. Phil wants it for himself." See "Bob Ballard Says," *The Wall City News*, August 16, 1930, Volume 5, Number 1, California State Library Government Publications Room, P875.W3, 2.

56 By the 1930s, the following language was typical of *The Bulletin's* Little Olympics coverage: "The friendly spirit which has always been manifest by [The Olympic Club] in their annual pilgrimage has done much to offset the monotony of prison existence and helped to increase the morale of competition." Monotony, indeed. See "San Quentin Carnival," *The Bulletin*, September 1933, Volume XXII, Number 2, The Bancroft Library, 6.

jest."[57] The persona of a recurring column, "Willie the Weeper," bemoaned his constant misfortune, complaining about his fellow prisoners by name while talented inmate cartoonists illustrated the pages with inside jokes and unflattering depictions of well-known prisoners.[58]

Perhaps because of its limited audience and carnivalesque subject, *The Wall City News* broached topics like non-normative gender expression and sexuality, though always using coded language with a heavy dose of irony. The August 15, 1931 edition provided a rare glimpse into the female impersonation vaudeville acts and beauty pageant staged by prisoners at the Little Olympics. On the surface, the overt sexualization of the performers and pageant contestants was clear. In "Miss San Quentin To Be Crowned at Annual Track Meet," the author admired the "lithe and languorous Latin charm" of one pageant contestant and the "fulsome, exquisitely rounded contours" of another, noting that "every eye will note the pleasing curves and ravishing charms which will be revealed."[59] The idea that spectating prisoners would be attracted to the bodies of these prison beauties was assumed—indeed, encouraged.

An outsider unfamiliar with prison life and the Little Olympics could very easily assume the inmates drooled over women. Not only did all descriptions of the pageant contestants employ language typically reserved for female bodies, but the writers of *The Wall City News* also referred to the contestants using their drag names. In "Lingerie Expert is Miss Laundry," author "Helen Maria" reported on herself in the third person, noting that Miss Laundry, "running under the nom-de-plume of HELEN," was "both adept in selection and display of lovely, frothy unmentionables of female attire."[60] But anyone familiar with the sexual culture of the prison would have immediately understood the joke: Miss Bandroom, Miss Furniture Shop, and Miss Laundry, named after the places they worked in the prison,

57 "Editorial," *The Wall City News*, November 23, 1927, Volume 2, Number 6, California State Library Government Publications Room, P875.W3, 2.

58 "Willie the Weeper," *The Wall City News*, November 17, 1926, Vol. 1, Number 5, The Bancroft Library, 3.

59 "Miss San Quentin To Be Crowned at Annual Track Meet," *The Wall City News*, August 15, 1931, Volume 6, Number 2, Box 2, Papers relating to San Quentin Prison, [ca. 1907–13], The Bancroft Library, 4.

60 Helen Maria, "Lingerie Expert Is Miss Laundry," *The Wall City News*, August 15, 1931, Volume 6, Number 2 edition, Box 2, Papers relating to San Quentin Prison, [ca. 1907–13], The Bancroft Library, 4.

were all cross-dressing men. In fact, many of them were likely men deemed sexually deviant by prison administrators—working in the laundry, an occupation understood to be "women's work," was "reserved for male homosexuals in many prisons."[61]

Most intriguing of all was the 1931 article "I-K-E Pick Ups," written by a prisoner named Walter Icardo. Icardo's opening lines read, "Has anyone noticed the expression of rapture on the 'pan' of Frederick McCarthy? Beau has taken to writing Sonnets to 'brown eyes' like pools of water, hair to compare to the dark sheen of the Raven's wing—OH, DEAR!"[62] McCarthy was a San Quentin prisoner and captain of the Mess Hall team at the 1931 Little Olympics, likely strong, athletic, and respected.[63] According to Icardo, McCarthy was a smitten "Lover"—his affections almost certainly directed at a feminine male prisoner, given that male and female prisoners remained segregated at San Quentin. Beneath Icardo's article sat a brief blurb titled "Reply To A Ribber's Writing." "O o oooh! You write?" it began. The unnamed author alleged that Icardo wrote "I-K-E Pick-Ups" to "impress his sweetie"; and that the "sweetie" in question was "a new name…in the ranks of the Literati—placed there by feminine inspiration."[64] It seems plausible that Icardo's lover was the man behind Helen Maria, whose nom-de-plume certainly fit the bill, and that the anonymous writer was none other than McCarthy, enjoying his sweet revenge.

In other words, in a public prison newspaper vetted by both the San Quentin prison warden and inmate editorial staff, two male prisoners teased each other for being smitten with their feminine male lovers. They freely used each other's real names and chose veiled, but far from indecipherable,

61 Kunzel, *Criminal Intimacy*, 62. San Quentin prisoner Malcolm Braly confirmed that the "strutting and giggling squad" were only assigned to work in the prison laundry in the 1940s. See Braly, *False Starts*, 160.

62 Walter Icardo, "I-K-E Pick Ups," *The Wall City News*, August 15, 1931, Volume 6, Number 2 edition, Box 2, Papers relating to San Quentin Prison, [ca. 1907–13], The Bancroft Library, 4.

63 "San Quentin Field Meet Cheered by Thousands of Inmates; Record Falls," San Quentin News, September 1, 2017, https://sanquentinnews.com/san-quentin-field-meet-cheered-by-thousands-of-inmates-record-falls/.

64 "Reply To A Ribber's Writing," *The Wall City News*, August 15, 1931, Volume 6, Number 2 edition, Box 2, Papers relating to San Quentin Prison, [ca. 1907–13], The Bancroft Library, 4.

language. While it was possible that the general public would not detect the article's subtext, any prison insider would immediately understand. Yet Icardo did not seem to fear any punishment from internal or external forces. This suggests that at least in the context of San Quentin Prison during the 1930s, "deviant" same-sex relationships between prisoners were so commonplace and tolerated that, in a less censored setting like *The Wall City News*, prisoners were comfortable discussing the topic openly.

The nature of the open secret makes it difficult to identify how widespread these circumstances were across other U.S. prisons in the 1930s. Sex in prison was ubiquitous, as were prison newspapers. Yet the use of coded language to discuss homosexuality, often unique to the specific prison and prisoners, means that only close reading between the lines of other prison newspapers can confirm whether similar open secrets spelled themselves out on the page. Moreover, *The Wall City News* was a unique publication by prison newspaper standards, and female impersonation acts at the Little Olympics were a unique form of prison entertainment. Both created a space for prison insiders' open secrets to become visible to the public—and to historians—in forms less carefully curated and commodified than the prison autobiography.

Return to the Little Olympics

Nine vaudeville performers posed for the camera at the 1933 Little Olympics. Five were men dressed in suits; three were female impersonators dressed in revealing burlesque fashion. The first female impersonator stood between two men doffing their hats; the second perched on someone's proffered knee; and there in the back, easy to miss, the third wrapped both arms around a smiling partner—face buried in the crook of his neck for a kiss (Fig. 17). Evidently, at the Little Olympics the open secret was almost entirely in the open. Indeed, the Little Olympics represented a rare case of hidden viewpoints going public—a space for San Quentin prison queens, well-versed in enacting the public script expected of them by prison

officials and prison outsiders, to veer slightly off-script.[65] The significance of female impersonation at the Little Olympics cannot be fully understood without considering vaudeville performance traditions in tandem with prison sexual culture and intimate relationships between male prisoners at San Quentin. From the inside looking out, we return to the Little Olympics.

Revisiting the photographs of San Quentin female impersonators at the 1930 and 1933 Little Olympics as a prison insider, I interpret the models of femininity that inmates performed in the context of the prison sexual culture and prison hierarchy. Paying special attention to the various modes of gender performance that prisoner-performers engaged in, including the different stages, audiences, and goals for each, I argue that these performances—more so than sexual acts or biological essences—constituted the primary way that "effeminate" San Quentin prisoners comprehended and constructed their own sexuality.

When the prison queen stepped onstage at the Little Olympics, he prepared two performances: the "clean" seduction of a female impersonator mimicking the feminine ideal in popular culture and the "deviant" seduction of a prison queen for whom sex appeal meant power in the prison hierarchy. When he kicked his leg through the slit of his flapper skirt (Fig. 11) or pulled his veil in a sinuous arc while gyrating his hips for the belly dance (Fig. 10), he played two games: staying within the bounds of safe, morally acceptable performance in vaudeville and displaying his body as an object of sexual attraction for his fellow inmates in the audience—ideally, attracting an inmate with power and privilege who had something valuable to exchange for a sexual favor. Performers would have been careful not to upset their audience of prison outsiders, many of whom had longstanding ties with top prison officials and helped make the Little Olympics possible. Perhaps this was why the female impersonation performances at the 1930

65 This framework and language for comprehending the oft-hidden viewpoints of subordinate sociocultural groups comes from James C. Scott's *Domination and the Arts of Resistance*. I encountered Scott's theories of resistance in the work of Angela Latham, whose dissertation brings Scott's ideas together with the performance frameworks of self-presentation vs. self-stylization in ways I could easily understand. See Angela Joy Latham, "Performance Rights: A Historical Performance Ethnography of Contested Displays by American Women, 1920–1930" (Order No. 9812668, University of Illinois at Urbana-Champaign, 1997), https://www.proquest.com/dissertations-theses/performance-rights-historical-ethnography/docview/304352145/se-2, 25.

and 1933 Little Olympics included the more risqué femininities associated with burlesque. Performers attempting to walk the line between the bathing beauty's wholesome sexuality and the fairy's sordid appeal, between the flapper's chic slouch and the homosexual's depraved lean, might relish the opportunity to shed some clothes and bare more skin in an official performance capacity, under the auspices of burlesque.

The Little Olympics thus enabled "effeminate" prisoners, under the officially acceptable disguise of vaudeville, to perform risqué femininities onstage that could serve their own agendas offstage in the prison sexual economy. These prisoner-performers cloaked—but for prison insiders, never completely obscured—the gestures and mannerisms associated with homosexuality in the prison setting beneath the costumes and traditions of female impersonation in the outside world. This was the ultimate iteration of the open secret.

Prison queens' performances of gender at the Little Olympics almost certainly produced material consequences for their everyday lives. In the complex cultural milieu of San Quentin Prison, feminine gender expression marked prison queens for a social category of both tremendous power and danger. The femininity they performed onstage would be received differently if they were in a steady relationship or if they bounced between sexual partners in exchange for material favors; selecting a burlesque act might help the latter but hinder the former. Perhaps the inmate performer made decisions by simply choosing a dress he wanted to wear, or a song he wanted to sing. But in 1930s America, even seemingly simple decisions about gender expression always had high stakes, be it inside or outside of prison walls.

No one knew the stakes of performance better than the prison queen himself. "Effeminate" prisoners were used to performing constantly: from the mess hall, the baths, and the prison yard to the laundry, the doctor's, and the pages of *The Wall City News*. Their mannerisms were observed and categorized not only by prison officials enamored with the illogic of sexology but also by wolves, jockers, and other inmates who read all about the pansy craze in the press. The prison queen no doubt internalized many of the same cultural beliefs about innate sexual identity as officials and his fellow inmates: they all reacted to and participated in San Quentin prison

sexual culture and the popular sexual culture of 1930s America. Some prison queens self-identified as fairies, or congenital homosexuals.[66] But the San Quentin prison queen—especially the female impersonator at the Little Olympics—also understood that his performances of femininity on- and offstage had the power to shape how others perceived his sexuality. Individuals like Dr. Leo Stanley might have labeled him a fairy on sight, but that label was not entirely static. Thus, prison queens likely understood their own sexuality as "both acts *and* identities, behaviors *and* beings [emphasis in original]."[67] This conception of sexuality was more accurate to prisoners' lives than the modern conception of sexual identity, which dominated American popular culture for the rest of the twentieth century.

To all of this, the prison outsider remained oblivious. For the Olympic Club man in the audience at the 1933 Little Olympics, inmate female impersonation acts appeared to be nothing more than a well-executed vaudeville show characteristic of the 1920s and 1930s. He understood the show as just that—a show. If the performed femininities were far more suggestive than anything he would have tolerated in the real women he knew, he accepted it all as performance, just as he accepted the skin-baring bathers' revue in Atlantic City or the belly dancing in burlesque venues. The stage allowed for greater moral flexibility than the ordinary world.

But ignorance was not always bliss—sometimes it was hard work. For the observant Olympic man, small details intruded on his day of festivities. Perhaps, when taking a break from the main show, he noticed a female impersonator posing groin to groin with a besuited performer, one foot between his partner's legs (Fig. 18). Perhaps he spotted someone pacing by the side of the stage, something about their gait reminding him of a flamboyant stranger from a vaudeville show in San Francisco. Troubled, the Olympic man might wander over to exchange pleasantries with the prison physician Dr. Leo Stanley, who watched with a sour expression as the female impersonators danced onstage. When the bathing parade began, he jumped at the prisoners' roar of approval for Miss Bandroom and joyous applause for Miss Furniture Shop. "HELEN!" someone might yell—and a

66 Berg, *Revelations of a Prison Doctor*, 154. Berg was shocked to meet male prisoners who "*felt like women* and were not ashamed of it! [emphasis in original]"

67 John Howard, *Men Like That: A Southern Queer History* (Chicago: University of Chicago Press, 1999), xviii.

lithe blonde beauty would look up and wave.[68]

Inevitably, the games came to an end: scores were tallied, prizes distributed, hands shook. The Olympic man was congratulating the athletes and performers on the field when the judges called him over for a photo with Sister Kate (Fig. 19). Standing this close to the inmate female impersonator, the Olympic man could see Sister Kate's bare midriff rise and fall to the rhythm of his breathing. The proximity was strangely intimate, bordering on uncomfortable, and the Olympic man stepped away as soon as the photographer snapped the photo. Sponsoring some good clean fun like the Little Olympics as a philanthropic endeavor was one thing, getting this close to a criminal dressed as a woman quite another. As he waited for his fellow Olympic Club members to walk back towards the bus, the Olympic man watched the inmate female impersonators pose and perform for the camera, giggling, strutting, slouching, leaning...

He turned away. A hazy idea had begun to form in his mind, but with a spike of anxiety the Olympic man cast it aside. There was nothing to worry about, he told himself firmly. Soon he would return to the safety of home, where his wife and daughters waited; soon the prison would recede into distant memory. *Time to go.*

Final look?

The Olympic man turned to look at the performers, one last time. To his surprise, one performer looked right back—smiling like she knew a secret.

68 Maria, "Lingerie Expert is Miss Laundry," *The Wall City News*.

Appendix

Figure 1: "Performers on Stage at 20th Annual Olympic Club Track & Field Meet at San Quentin Prison" (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/vd66vz89n.

Figures 2 and 3: Julian Eltinge in costume as a bathing beauty (left) and flapper (right). Alaina Demopoulos, "'He Was a Perfect, Beautiful Woman': The Female Impersonator Who Became a 1920s Star," *The Guardian*, June 18, 2024, https://www.theguardian.com/film/article/2024/jun/18/julien-eltinge-female-impersonator-gender-biography.

Figure 4: Four female impersonators at a San Quentin Minstrel and Vaudeville Company Fourth of July performance. “Theater/Vaudeville Album” (circa 1913), PIC Box 1, Folder 8, Photographs from John E. Hoyle’s papers relating to San Quentin Prison, The Bancroft Library.

Figure 5: Female impersonator hinting at a possible striptease. “Entertainment/ Events (Vaudeville, Sports, Band)” (circa 1913), PIC Box 1, Folder 6, Photographs from John E. Hoyle’s papers relating to San Quentin Prison, The Bancroft Library.

Figure 6: “Female Impersonator in Vaudeville Act at San Quentin State Prison, circa 1914” (circa 1914), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/05741r75d.

Figure 7: “Stage Entertainment with Four Male Dancers in Female Dress, San Quentin Little Olympics Field Meet, 1930” (1930), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/gt54kn045.

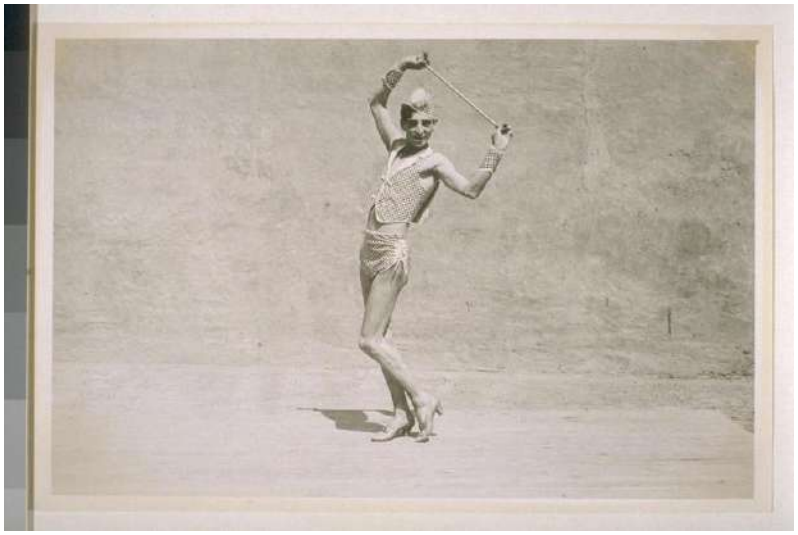

Figure 8: “At Rehearsal” (n.d.), BANC PIC 1905.11240:277--ALB, Views of San Quentin Prison and Events, ca. 1925–35, The Bancroft Library, https://oac.cdlib.org/ark:/13030/tf1p3007m2/?brand=oac4.

Figure 9: “Sister Kate Doing the Splits” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/k06987539.

Figure 10: “Unknown Dancer in San Quentin Prison, Posing” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/2227mp709.

Figure 11: “Two Unknown Female Impersonators Kicking Their Legs” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/zg64tk99d.

Figure 12: “Two Unknown Female Impersonators Hugging Each Other at San Quentin Prison” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/dr26xx37v.

Figure 13: “Clown Posing with Crossdressers” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/1v53jx001.

Figure 14: “Unknown Female Impersonator Posing at San Quentin Prison” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/sn009x805.

Figure 15: “Two African American Performers Performing in San Quentin Prison” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/5t34sj61p.

Figure 16: Rose Coyle, Miss Philadelphia in 1936 in Frank Deford, *There She Is: The Life and Times of Miss America* (Viking Press, 1971), 103.

Figure 17: "Vaudeville Acts Posing as a Group" (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/gq67jr188.

Figure 18: “Two San Quentin Prisoners Posing Together” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/g732d899x.

Figure 19 “Sister Kate Standing with Judges” (1933), Digital Transgender Archive, https://www.digitaltransgenderarchive.net/files/5q47rn737.

When Industry Regulates Itself: The Agnogenesis and Regulatory Capture of the FDA

Anand Krishnan

How many Americans today realize that 53% of the funding for the U.S. Food and Drug Administration (FDA) comes directly from the pharmaceutical companies it claims to regulate?[1] How many know that every FDA commissioner of the modern era has worked for the pharmaceutical industry after leaving their post, and many have worked there beforehand?[2] The mirage of impartiality that the FDA has constructed for itself suggests otherwise, as the regulatory body denies culpability from questions of conflict of interest. The potential stakes of these conflicts of interest, however, are painfully high; in 2024 alone, 146,766 U.S. drug-related "adverse events" resulted in patient death.[3]

This study explores a central paradox of the FDA's history. The agency has presented itself as a trustworthy entity capable of ensuring the safety of the American public, yet its fundamental structure betrays its true purpose as a mechanism for agnogenesis. I adopt Robert Proctor's definition of agnogenesis as the deliberate construction of ignorance or doubt by an entity or organization.[4] Using this framework, I trace the origins of the agency from its founding in 1906 to the present day, noting

1 Susan Thaul, "Prescription Drug User Fee Act (PDUFA): 2012 Reauthorization as PDUFA V," CRS Report R42366 (Congressional Research Service, February 22, 2013), 3.

2 Gardiner Harris, *No More Tears: The Dark Secrets of Johnson &* Johnson (Random House Publishing Group, 2025), 319.

3 U.S. Food and Drug Administration, "FDA Adverse Event Reporting System (FAERS) Public Dashboard," accessed December 4, 2025, https://www.fda.gov/drugs/fdas-adverse-event-reporting-system-faers/fda-adverse-event-reporting-system-faers-public-dashboard.

4 Robert Proctor and Londa L. Schiebinger, *Agnotology: The Making and Unmaking of Ignorance* (Stanford University Press, 2008), 8.

how rhetoric and policy created a mirage of authority that continues to surround the agency. The role of the Prescription Drug User Fee Act of 1992 earns special consideration, as it revolutionized the agency's funding structure to further legitimize conflict of interest with the pharmaceutical industry and deeply impacted regulatory activity. Finally, I explore case studies that demonstrate the adverse effects of the FDA's agnogenesis on the American public.

Founding Years of the FDA

The modern FDA was founded in 1906 with the passage of the Pure Food and Drug (Wiley) Act, which prevented the sale of "adulterated" goods, defined as "misbranded or poisonous or deleterious foods, drugs or medicines, and liquors."[5] After Upton Sinclair's 1906 novel, *The Jungle*, which detailed the horrors of the Chicago meatpacking industry, public pressure for regulatory change mounted. The act's namesake, chemist Harvey Washington Wiley, led this charge, and later served as the FDA's first commissioner. However, the judicial branch heavily restricted the FDA's authority until 1927, narrowly interpreting the definition of an altered drug and setting a high burden of proof to take potentially harmful products off shelves.[6] As a result, the relatively toothless FDA blossomed in an early form of its future mythology—the agency's establishment itself was viewed as a major milestone by muckraking journalists of the time, regardless of its inability to accomplish many of its stated goals.

In 1937, the agency faced its first major test. The Massengill company of Tennessee began manufacturing *Elixir Sulfanilamide*, a novel liquid form of sulfanilamide, an antibiotic used widely at the time to treat streptococcal infections, intended for use by children who disliked the tablet form of the drug.[7] No government regulations on the distribution

5 The original name for the FDA was the Bureau of Chemistry, within the Department of Agriculture; FDA, "The Pure Food and Drugs Act," US House of Representatives: History, Art & Archives, accessed December 4, 2025, https://history.house.gov/Historical-Highlights/1901-1950/Pure-Food-and-Drug-Act/.

6 FDA, "Part I: The 1906 Food and Drugs Act and Its Enforcement," U.S. Food and Drug Administration, accessed December 4, 2025, https://www.fda.gov/about-fda/changes-science-law-and-regulatory-authorities/part-i-1906-food-and-drugs-act-and-its-enforcement.

7 Ronald Hamowy, "Medical Disasters and the Growth of the FDA," *The Independent Institute Independent Policy Report* (February 2010), 6.

of non-narcotic drugs existed at the time, nor did the process for pre-commercialization approval exist. So, the Massengill company distributed 240 gallons of its new sulfanilamide in September 1937.[8] A month later, reports of sulfanilamide-related deaths forced the company to recall the drug when the American Medical Association, which had not received a sample before its commercialization, confirmed that the solvent in the elixir was the extremely toxic diethylene glycol, more commonly known as antifreeze. All told, elixir sulfanilamide claimed 107 lives in the span of only one month, and the Massengill company paid out the modern equivalent of $11.5 million in fines. The FDA, meanwhile, was hailed as heroic for its role in controlling the crisis and enforcing the drug's recall.[9]

The actual legal argument that the FDA used to prosecute the Massengill company, however, betrayed the early flaws in its authority. Instead of prosecuting due to the blatant toxicity of antifreeze, the FDA charged Massengill with *misbranding*; the label of "elixir" implied that the solvent in this solution was chemically classified as an alcohol, which diethylene glycol was technically not. According to the FDA itself, had "Elixir Sulfanilamide" been marketed as "Solution of Sulfanilamide," the FDA would have had no legal grounds to prosecute the Massengill company, and the drug would have doubtlessly claimed the lives of more children.[10] Then-commissioner Walter Campbell took advantage of the controversy to pressure the Roosevelt administration into enacting the 1938 Food, Drug, and Cosmetic Act, which mandated FDA pre-market approval for all drugs along with other more stringent regulations.

The loophole that allowed the FDA to prosecute Massengill's elixir sulfanilamide was but one of many lucky accidents that became public relations masterpieces for the agency. However, tellings of the sulfanilamide crisis rarely describe this loophole, instead emphasizing the FDA's heroism during the recall and the subsequent passage of the 1938 bill. This erasure is an early example of agnogenesis, and laid the foundation for the modern myth of the FDA.

8 Carol Ballentine, "Taste of Raspberries, Taste of Death: The 1937 Elixir Sulfanilamide Incident," (FDA Consumer Magazine, June 1981), 4.

9 Ballentine, "Taste of Raspberries, Taste of Death," 4.

10 Ballentine, "Taste of Raspberries, Taste of Death," 4.

Full Steam Ahead for the FDA

In the ensuing decades, a post-war technological boom spurred the growth of the pharmaceutical industry. With it came increased demand for the FDA agents to approve New Drug Applications (NDAs), which nearly doubled from 1945–47.[11] Wartime advancements in pharmacy became widely available to the public, but under the 1938 bill, the FDA had to conduct increased, if still incomplete, testing on all these products. Subsequently, the 1950s abounded with medical innovation, with advancements like the polio vaccine in 1954, the discovery of DNA's double helix in 1953, and kidney dialysis in 1950, each saving countless lives. Thus began the agency's precarious dance with the pharmaceutical industry, as it struggled to toe the line of enforcing regulations with teeth without limiting industry growth.

The regulatory power of the FDA reached its zenith in 1961, when Dr. Frances Kelsey famously denied the approval of thalidomide, a "wonder cure for insomnia" that would later cause thousands of birth defects in the children of pregnant women who had taken the drug residing in Germany, the United Kingdom, and other countries that had approved the compound for public sale.[12] The actions of Dr. Kelsey to prevent this crisis helped pass the 1962 Kefauver-Harris Amendment to the 1938 Federal Food, Drug, and Cosmetic Act, which mandated that drugs achieve substantial evidence standards of efficiency and safety in FDA applications. Her legacy has been lauded in books cataloguing her bravery in opposing the mighty Richardson-Merrell Pharmaceutical Company, and she was even awarded with the Presidential Medal of Freedom. Sixty years later, Dr. Kelsey's story is hailed as proof of the benevolent FDA in a pharmaceutical industry otherwise shrouded in scandal.

While Dr. Kelsey's actions certainly saved lives, in historical memory they grant the FDA an air of legitimacy that it has not justified in subsequent actions. Because thalidomide was approved in other parts of the

11 FDA, "NDA Approvals and Receipts since 1938," U.S. Food and Drug Administration, accessed December 4, 2025, https://www.fda.gov/about-fda/histories-fda-regulated-products/summary-nda-approvals-receipts-1938-present#Notes.

12 Karen Geraghty, "Protecting the Public: Dr. Frances Oldham Kelsey," Journal of Ethics | American Medical Association, November 2001, https://journalofethics.ama-assn.org/article/commemorative-issue-protecting-public-dr-frances-oldham-kelsey/2001-11.

world—most notably Germany and the UK—but not in the U.S., the FDA has been widely considered to hold drugs to a higher regulatory standard than the foreign agencies that allowed such a crisis to happen. Academic sources describe the thalidomide disaster as the agency's "most impactful near-miss," engendering longstanding trust in the agency without necessary evidence to back it.[13] In short, the actions of individuals like Dr. Frances Kelsey gave the FDA a plausible defense, a moral shield, against any wrong it could do, even decades later. The success stories of thalidomide and sulfanilamide, among others, laid the groundwork for a mythology of a heroic agency that held American lives in the highest regard, while still encouraging pharmaceutical innovation and treatment. Unfortunately, the FDA is no such agency.

Prescription Drug User Fee Act of 1992

In the 1980s, during the height of the AIDS crisis, FDA approval times for NDAs reached an all-time high of 29 months. Patients argued that delays were the difference between life and death, while manufacturers claimed that each month spent in review cost an average of $10 million. Regulators complained they were stretched too thin by meager funding appropriations from the Reagan and Bush administrations, leading to such inflated review periods.[14] Through the late 1980s, intense political bargaining between regulators and groups of concerned citizens debated funding for the agency. Manufacturers were initially unwilling to pay the FDA for a service that had previously been cost-free, and thus negotiated a series of concessions from regulators that drastically reshaped the FDA's operation. The resulting compromise was the 1992 passage of the *Prescription Drug User Fee Act I* (PDUFA I). At the time of its passage, PDUFA was largely understood as an administrative solution to a funding crisis rather than as a transformation of regulatory governance—a distinction that would only become visible in retrospect. While it was framed as a temporary administrative response, its repeated renewal effectively institutionalized a new

13 Stephen Phillips, "How a Courageous Physician-Scientist Saved the U.S. from a Birth-Defects Catastrophe," *UChicago Medicine*, March 10, 2020, https://www.uchicagomedicine.org/forefront/biological-sciences-articles/courageous-physician-scientist-saved-the-us-from-a-birth-defects-catastrophe.

14 Thaul, "2012 Reauthorization as PDUFA V," 2.

mode of regulatory governance. Under this new de-facto system, industry participation became structurally embedded in both the financing and operation of the FDA.

The primary goal of PDUFA I was to reshape the budget structure of the FDA. The bill provided for two classifications of fees: annual "product" fees for already-approved drugs (20% of all user fee revenue in 2025) and one-time "application" fees for NDAs (80% of all user fee revenue in 2025).[15] However, what was initially framed as a temporary funding mechanism gradually evolved into a durable fiscal reorientation. User fees across all classes constituted $3.6 billion in 2025, making up 53% of the FDA's total discretionary budget of $6.8 billion.[16] Critically, drug manufacturers negotiated a clause that mandated five-year sunset for each iteration of the PDUFA, meaning that every five years, negotiations between FDA regulators and industry representatives reignite to keep the agency afloat financially.[17]

Though attached to the agency's discretionary budget, these user fees are anything but discretionary. Compromises made for the 1992 bill guaranteed that user fees could only be used for "activities necessary for the review of human drug applications and supplements."[18] Modern studies estimate that 80% of salaries for regulators and scientists reviewing drug applications are funded directly by companies submitting these applications.[19] The bill's fourth renewal (PDUFA IV), made post-market monitoring another valid appropriation of user fee funds. Until then, for the first fifteen years of user fees, fees could only be used to accelerate approval times, and not to monitor the health and safety of American citizens using the drugs.[20] Of the $680 million expected collections in user fees in 1997, PDUFA II expropriated only $10 million for monitoring, barely 1%, of

15 U.S. Department of Health and Human Services, Food and Drug Administration, "Fiscal Year 2025 Congressional Budget Justification," (FDA, 2024), 4.

16 U.S. Department of Health and Human Services, Food and Drug Administration, Fiscal Year 2025 Congressional Budget Justification (FDA, 2024), 4.

17 Thaul, "2012 Reauthorization as PDUFA V," 1.

18 Thaul, "2012 Reauthorization as PDUFA V," 4.

19 U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Office of Science & Data Policy, "FDA User Fees: Examining Changes in Medical Product Development and Economic Benefits," Issue Brief (March 2023), 10.

20 Thaul, "2012 Reauthorization as PDUFA V," 5.

the user fee total, with the rest going directly towards review-related activities.[21] Industry advocated touting their concession to monitoring as a great sacrifice and service to regulators, yet their "concession" had virtually no effect on the issue of insufficient post-market surveillance funds.

The process of negotiating funding from pharmaceutical companies meant that the FDA was forced to make concessions in the form of decreased regulatory standards for NDAs. With each renewal of the PDUFA, industry representatives pressed for changes that reduced their development costs and evidentiary burdens. For example, PDUFA II reduced the evidentiary standards to submit an NDA from two clinical trials to one.[22] This change aligned regulatory requirements with industry development timelines and cost constraints instead of focusing on safety, compromising the authority of the FDA; a single trial instead of two is far more likely to show false positive results that could get an ineffective or unsafe drug approved while saving the drug's manufacturer millions of dollars. Similarly, PDUFA V "encouraged" the FDA to consider pathways to approval outside the traditional methods of clinical trials, such as surrogate endpoints, which use biomarkers as substitutes for patient outcomes, approximating instead of proving direct clinical benefit.[23] While providing immense benefit to drugmakers, these compromises risk life-threatening consequences for the American public.

Despite any controversy, the PDUFA achieved its initial goals of increasing approvals and decreasing review times. In the years immediately before the PDUFA's passage, the FDA approved an annual average of 23.1 drugs, which increased to 29.8 within the first three renewals of the PDUFA and reached 45.0 in 2022. Policymakers and industry advocates cited these polls as evidence of regulatory success. They also touted increased drug approvals and declining review times, which dropped from 26.6 months

21 Donald W. Light, Joel Lexchin, and Jonathan J. Darrow, "Institutional Corruption of Pharmaceuticals and the Myth of Safe and Effective Drugs," Journal of Law, Medicine & Ethics 41, no. 3 (2013): 590–600, https://doi.org/10.1111/jlme.12068, 596.

22 Aaron P. Mitchell, Niti U. Trivedi, and Peter B. Bach, "The Prescription Drug User Fee Act: Much More Than User Fees," Medical Care 60, no. 4 (February 10, 2022): 287–93, https://doi.org/10.1097/mlr.0000000000001692, 20.

23 Mitchell, Trivedi, and Bach, "The Prescription Drug User Fee Act," 290.

before 1992 to 9.9 months by 2022.[24] Yet, these metrics were in fact correlated with the relaxing regulatory standards and increasing prioritization of industry goals over safety. Though having produced an image of efficiency and improvement, the usage of these metrics must be examined under a closer lens.

The Myth of Approval Time

With each renewal of the PDUFA, the FDA is beholden to industry-generated "performance goals" in exchange for continued access to user fees. The very existence of these goals is a conflict of interest, allowing the drug industry to create the incentives by which it is regulated. Most goals come in the form of benchmarks on how long the FDA may take to evaluate an NDA, or its approval time. The FDA has historically improved when judged solely by this metric. The proposal for PDUFA V in 2012 dictated that the FDA must act on 90% of standard NDA submissions within 10 months.[25] A study from the National Bureau of Economic Research (NBER) calculated that approval times decreased approximately 42% from 1991 to 2002 immediately after the implementation of the first PDUFA, attributing approximately 60% of this decline to the bill itself.[26] Thus, NBER's report uncritically presents declining approval time as a shorthand for the success of the agency.

This perspective is intrinsically aligned with the pharmaceutical industry, not the mission of the FDA. With drug manufacturers functioning as corporations that have the ultimate incentive to deliver profit to their shareholders and increased approval times, efficiency is a central goal to the industry. The FDA has little choice in this matter—if it takes the time to review drugs with the scientific rigor that they require, it runs the risk of breaching its covenant with the industry and therefore losing access to a vital source of funding. Thus, the agency has but one choice remaining:

24 Enrique Seoane-Vazquez, Rosa Rodriguez-Monguio, and John H. Powers, "Analysis of US Food and Drug Administration New Drug and Biologic Approvals, Regulatory Pathways, and Review Times, 1980–2022," Scientific Reports 14, no. 1 (February 9, 2024), https://doi.org/10.1038/s41598-024-53554-7, 5.

25 Thaul, "2012 Reauthorization as PDUFA V," 1.

26 1. Ernst R. Berndt et al., "Assessing the Impacts of the Prescription Drug User Fee Acts (PDUFA) on the FDA Approval Process," *Forum for Health Economics & Policy* 8, no. 1 (January 1, 2005), https://doi.org/10.2202/1558-9544.1013, 23.

decrease the rigor of review to comply with the goals set by drug companies and continue receiving funding.

In 2007, Harvard's School of Public Health published a damning report on the harms of the myth of approval times, analyzing regulatory actions before, during, and after PDUFA approval deadlines.[27] Through quantitative analysis, the study found that "For standard NMEs, pre-deadline approvals are significantly more likely to experience dosage-form discontinuation (particularly for FDAMA deadlines), post-market patient population label changes (for PDUFA deadlines), post-market manufacturing revisions (for PDUFA deadlines), and Canadian and global safety-based withdrawals."[28] In plain language, the study found that drugs approved in the two months leading up to the PDUFA deadline of 10 months post-application had a statistically significant chance of being recalled. This suggests that these drugs were reviewed with less scientific rigor, a function of reaching FDA desks as a deadline approached. While the study identifies the problem with approval times, it still obscures their true risks. By using the verbiage of "recall," the study abstracts itself from the events that lead to a recall—customer adverse drug reactions—to make a drug more palatable to the public. A drug simply undergoing a recall has a far lesser implication than a drug being responsible for significant harm to patients, yet these two statements are factually equivalent.

The Harvard findings establish direct culpability for pharmaceutical firms responsible for imposing the regime of "approval time" metrics on the FDA. Further studies found that each 10-month reduction in approval times was associated with an 18.1% increase in drug-related adverse reactions, 10.9% increase in hospitalizations, and even a 7.2% increase in *deaths*.[29] While succeeding in the arbitrary barometers of innovation and efficiency, a decrease in regulatory rigor has come at the direct cost of consumer safety—American lives.

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27 D. Carpenter et al., "Deadline Effects in Regulatory Drug Review: A Methodological and Empirical Analysis" (Unpublished paper presented at the Policy Workshop on Strengthening the FDA, March 2007).

28 D. Carpenter et al., "Deadline Effects in Regulatory Drug Review," 18.

29 Donald W. Light, Joel Lexchin, and Jonathan J. Darrow, "Institutional Corruption of Pharmaceuticals and the Myth of Safe and Effective Drugs," Journal of Law, Medicine & Ethics 41, no. 3 (2013): 590–600, https://doi.org/10.1111/jlme.12068, 595.

Proponents of the PDUFA incentive structure argue it encourages innovation. This line of reasoning is twofold. First, greater funding perhaps implies greater regulatory efficiency, regardless of the money's origin. Second, faster approval times get new drugs to the American people faster, saving lives. Libertarian institutions like the Cato Institute praised the latter, claiming the bill forced the agency to promote pharmaceutical innovation.[30] However, a higher volume of approvals does not directly equate to better drugs on US shelves. A typical barometer for innovation is the classification of New Molecular Entities (NMEs), newly discovered compounds that may go on to become active ingredients in NDAs. However, a 2013 paper estimated that only 11–15.6% of NMEs achieve "meaningful therapeutic gain."[31] If nearly 90% of the approved "new" molecular entities do not translate to effective outcomes, then their increased approval does not translate directly to innovation.

Approval times and approval volume provide convenient statistics for proponents of the PDUFA, but in reality they simply construct agnogenesis. The numbers they quantify do not actually represent drug safety or efficacy, yet are willfully implied as shorthand for both. Both instead support "innovation," a convenient proxy for the goals of the pharmaceutical industry: profit.

Rhetorical Regulatory Agnogenesis

Agency rhetoric over the course of its history contributed to the FDA's benevolent myth, complicit with changes wrought by industry pressure. In its early days, the agency fought tooth-and-nail to gain regulatory power, yet the modern FDA has been coerced into ceding its autonomy and authority in exchange for funds. Still, the agency has maintained its mid-20th century reputation, aligning itself with a bygone time when it was a bulwark of consumer safety against manufacturers. It prominently displayers its heroes, including Dr. Frances Kelsey, on its website, in favor of information on its more controversial present, including

30 Michael F. Cannon, "Evaluating PDUFA: Paying for FDA Drug-Application Reviewers by Charging User Fees," Cato.org, March 7, 2025, https://www.cato.org/blog/evaluating-pdufa-paying-fda-drug-application-reviewers-charging-user-fees.

31 Light, Lexchin, and Darrow, "Institutional Corruption of Pharmaceuticals," 592.

the PDUFA.[32] Thus, the agency leans into the public perception of a strong, independent FDA through carefully constructed rhetoric on its past and present.

The term "user fees" to describe fees paid by pharmaceutical companies to the FDA is itself euphemistic. Given the agency's status as a government institution in a democratic nation focused on consumer protection, intuitively the term "users" should refer to the American populace. However, the true "users" of the FDA are in fact pharmaceutical companies, supported by the fact that they pay the misleadingly termed "user fees" and are the primary beneficiaries of the agency's loosening regulatory standards. This seemingly innocuous rhetorical strategy is but one example of the myriad ways in which the FDA has become beholden to the pharmaceutical industry at the expense of the American patient, its true user.

By becoming the primary user of the FDA, pharmaceutical companies led its regulatory capture. The PDUFA legitimized their years of lobbying for decreased regulation, radically altering the terms by which the FDA can be discussed. Such agnogenesis results in fundamental misunderstandings of how the FDA functions, which can seep its way into real policy discussion. A report by the Heritage Foundation criticized the fact that over half of the NDA applications were not approved during the first submission in 2008.[33] The report calls for deregulation, but misunderstands the mechanism of regulation itself: when NDA applications are not approved in a submission cycle, the applicants receives a Complete Response Letter (CRL) outlining the drug's specific defects. Thus, the reason for the rejection is not regulatory inefficiency—it is because the drug would be unsafe for consumption by the American people.

This form of rhetoric, and the incentive structure it obscures, is not the norm for regulatory agencies, nor is it a major political issue to the

32 FDA, "Frances Oldham Kelsey: Medical Reviewer Famous for Averting a Public Health Tragedy," U.S. Food and Drug Administration, accessed December 4, 2025, https://www.fda.gov/about-fda/fda-history-exhibits/frances-oldham-kelsey-medical-reviewer-famous-averting-public-health-tragedy.

33 Amanda Kronquist, "The Prescription Drug User Fee Act: History and Reauthorization Issues for 2012," The Heritage Foundation, December 21, 2011, https://www.heritage.org/health-care-reform/report/the-prescription-drug-user-fee-act-history-and-reauthorization-issues.

American public. While agencies like the Department of Agriculture or the Federal Communications Commission take small fees from industry, there exists no parallel to the PDUFA-mandated performance goals and regulatory changes that are present for the FDA. Yet, currently no polls exist on the American population's knowledge about PDUFA. The American population simply has fallen for the industry and FDA's scheme to obscure their collusion, and by harkening back to a bygone era of proper regulation sixty years ago, the FDA maintains its image. Meanwhile, American lives are caught in the balance.

Case Study: Johnson & Johnson Pinnacle Hip Implant

In the late 200s, thousands of Americans felt the consequences of agnogenesis firsthand after receiving a Johnson & Johnson (J&J) metal-on-metal *Pinnacle* hip implant.[34] In the case of medical devices, the FDA has its 510(k) pathway for approval. Through 501(k), manufacturers engage in a minimal approval process for products "sufficiently similar" to an already-approved product from before 1976.[35] This design prevents manufacturers from becoming mired in the same approval process for minor updates to their existing products. J&J abused the pathway to market their entirely new hip implant system, claiming it "improved" upon an earlier design from the 1960s. Gardiner Harris's investigative book *No More Tears* found that the 1960s metal-on-metal design contributed to metallosis, where friction between components of the artificial hip sent microscopic shards of metal throughout the bodies of patients. Side effects from metallosis ranged from heart attacks to blindness. The implants were promptly removed from circulation shortly after being introduced.[36]

J&J claimed its new implant was not new but an update to this existing, recalled product, granting them access to the 501(k) pathway. Notably, this occurred in 2005, shortly after the 2002 MDUFA weakened FDA regulations on medical devices. Almost immediately after release, reports flooded in of metals from the hip implant leaching into patients'

34 While a medical device instead of a drug, the regulations of pharmaceuticals are similar to those of medical devices, including as described with the PDUFA above.

35 FDA, "Premarket Notification 510(K)," U.S. Food and Drug Administration, October 1, 2023, https://www.fda.gov/medical-devices/premarket-submissions-selecting-and-preparing-correct-submission/premarket-notification-510k.

36 Harris, *No More Tears: The Dark Secrets of Johnson & Johnson*, 263.

bodies, but J&J's CEO Alex Gorsky worked with the FDA to prevent these complaints from seeing daylight. Harris details how doctors sent extensive complaints to J&J, where they were promptly buried. These complaints included that re-surgery rates were ten times higher for the new hip implant than before, and, most importantly, reports of toxic levels of heavy metal ions in the bloodstream of patients with the hip implant.[37] Fifty years later, the ions caused the same metallosis present in the 1960's implant, leaving thousands of patients needing costly, invasive surgeries or, even worse, side effects that permanently derailed their quality of life.

The most culpable actor in this tragedy was, of course, Johnson & Johnson, which lied and obfuscated evidence from regulatory bodies. However, Gorsky and the FDA remained close, as Gorsky helped renew the MDUFA in 2012 through a last-minute critical agreement between the industry and regulators. He was hailed as the agency's "savior."[38] Critically, the hip implants benefitted from being technically "FDA approved." To patients and physicians, FDA approval is a mark of trust, yet in this case it was simply a mirage.[39]

J&J ultimately paid in excess of *$6.2 billion* to patients over the course of 10,581 lawsuits related to its hazardous hip implant.[40] In the trials, plaintiffs repeatedly invoked the FDA's complicity. A notable orthopedic surgeon from California remarked, "In hindsight, the FDA let us down… we trusted the FDA like you guys trust the FDA. When the FDA says, 'Hey, this is safe,' you consider it to be safe."[41] Thus the FDA's established mythology both harmed patients and deluded physicians into a false sense of security, convincing them that the products they prescribe are safe and effective even when they were not. How can a physician or patient be blamed for trusted a government agency with regulatory authority? Yet, in this case, confidence in the FDA led to thousands of Americans harmed by a device that's danger was obfuscated from both them and their healthcare providers.

37 Harris, *No More Tears: The Dark Secrets of Johnson & Johnson*, 277.

38 Harris, *No More Tears: The Dark Secrets of Johnson & Johnson*, 258.

39 Harris, *No More Tears: The Dark Secrets of Johnson & Johnson*, 318.

40 Cassandra L. Sundbland, "DePuy Hip Replacement Lawsuits: 2025 Lawsuit Updates," Drugwatch, November 3, 2025, https://www.drugwatch.com/hip-replacement/depuy/lawsuits/.

41 Harris, *No More Tears: The Dark Secrets of Johnson & Johnson*, 320.

Conclusion

While the FDA publicly presents itself as a regulatory body protecting the American consumer, its development over the last half century reveals a more complex set of motives. In concord with the PDUFA, the agency became increasingly dependent on funding sourced from the very firms it regulates. This shift continues to hinder its stated mission of "ensuring the safety, efficacy, and security of human and veterinary drugs, biological products, and medical devices."[42] The most dangerous aspect of this transformation is its sustained efforts to preserve public confidence. The FDA maintains an air of regulatory authority and independence from external actors, built through an intentional process of agnogenesis.

The FDA's growing reliance on industry funding is not a crisis of immediate physical harm, but a historical process of corrupting public understanding. User fees under PDUFA I were initially justified to strengthening regulatory capacity. Yet, their implementation was shaped by compromises that benefitted industry actors at the expense of regulatory standards. By 2025, these user fees totaled $3.6 billion—an amount that, while substantial for the agency, represented a small fraction of total federal spending. [43] Under this regulatory capture, the FDA cannot return to its sacred mission to protect the American consumer.

42 FDA, "What We Do," U.S. Food and Drug Administration, accessed December 4, 2025, https://www.fda.gov/about-fda/what-we-do#mission.

43 U.S. Executive Office of the President, Office of Management and Budget, "Budget of the U.S. Government, Fiscal Year 2025," (Washington, DC: Government Publishing Office, 2024).

Defusing the Peaks: U.S. Embassy Fieldcraft and Nuclear De-Escalation in the 1999 Kargil Crisis

Viraj Jayam

After hours of excruciating negotiation, United States President Bill Clinton and Pakistani Prime Minister Nawaz Sharif walked out of Blair House and into the sweltering Washington heat on the afternoon of July 4, 1999. Hours later, they issued a terse, two-paragraph "Joint Statement," declaring that fighting in Kashmir was "dangerous and contains the seeds of wider conflict."[1] Behind the historic press release was ten weeks of intense high-altitude mountain warfare in Kargil, a suddenly frantic information flow through the U.S. embassies in India and Pakistan, and an anxious debate inside the White House on whether or not the world stood on the brink of nuclear war.

Since Indian independence in 1947, the Kashmir dispute has loomed over South Asian politics. At the end of the Indo-Pakistani War of 1965, the two countries formalized a ceasefire through the Simla Agreement of 1972 which established the "Line of Control" (LoC)—a physical boundary that separated Pakistani and Indian territory in Kashmir. Successive clashes after 1972 between the countries has revolved around this jagged boundary. Eight weeks before the Blair House meeting, Indian officers on patrol were moving through the Kaksar region, in Kargil, in the northern reaches of Indian-controlled Kashmir when they discovered fortified Pakistani positions around their base.[2] In response, Delhi campaigned to restore the LoC without widening the war. However, Islamabad denied their

1 The White House, "Joint Statement by President Clinton and Prime Minister Sharif of Pakistan," July 4, 1999, accessed March 24, 2026, https://clintonwhitehouse6.archives.gov/1998/12/1998-12-04-joint-statement-from-pakistan-and-the-united-states.html.

2 Sumit Ganguly, "Nuclear Stability in South Asia," International Security 33, no. 2 (2008): 45–70, https://doi.org/10.1162/isec.2008.33.2.45.

involvement and warned that they would react decisively if pushed. Two of the newest nuclear powerhouses of the world were now throwing punches while the world watched. Although LoC skirmishes were routine, Kargil was exceptional: it undercut the Lahore peace initiative of 1998 just months after it began. In this convention, Indian and Pakistani leaders Atal Bihari Vajpayee and Nawaz Sharif signed a peace agreement to "intensify their [country's] efforts to resolve all issues, including the issue of Jammu and Kashmir."[3]

Most existing literature on American involvement in the Kargil crisis has focused on decision making in Washington. The role of embassy reporting by American diplomats posted in New Delhi and Islamabad has received far less attention. Yet without work on-the-ground, Oval Office strategy would have rested on mere conjecture. The Kargil confrontation stopped short of outright war because two tiers of diplomacy reinforced each other: the roles of U.S. Ambassadors to India and Pakistan and the relationships between senior military officials in India and Pakistan. The sharp intuition of Richard Celeste, the U.S. Ambassador to India, and William Milam, the U.S. Ambassador to Pakistan, provided timely intelligence and political urgency to President Bill Clinton and the White House, who were occupied at the time alleviating tensions in the Balkans. Additionally, relationships between senior military officials, such as the discreet communication between Strobe Talbott and Indian Minister of External Affairs, Jaswant Singh and the quick thinking of U.S. diplomat Karl Inderfurth, translated that intelligence into coercive leverage. In this framework, embassies were not simply peripheral observers, but rather irreplaceable gears in the machinery of U.S. global crisis management.

Over the past twenty-five years, a growing body of scholarship on the Kargil War has amalgamated into three clusters of arguments. The first is the strategic diplomacy narrative, shaped by Bruce Riedel's insider reconstruction of Clinton's "Kargil Summit at Blair House," Strobe Talbott's White-House memoir, and Ashley Tellis's RAND monograph on U.S.-

3 Ministry of External Affairs (India), "Lahore Declaration (12 February 1999)," 1999, accessed March 24th, 2026, https://www.mea.gov.in/Portal/LegalTreatiesDoc/PA07B0425.pdf.

India realignment.[4] These authors emphasize the action inside Washington's Situation Room, quoting a handful of messages from Ambassadors Richard Celeste in New Delhi and William Milam in Islamabad. However, they treat the reporting of Ambassadors as faint background noise. The second is the military operational narrative, following leaders such as M.B. Ravidranath, Shuja Nawaz, and Shireen Mazari. Their granular maps of battalion movements and command frictions explain why Indian troops took eight weeks to restore their territory. Finally, the third body of work focuses on the deterrence-effects debate, in which political scientists Sumit Ganguly and Vipin Narang debate whether nuclear weapons in South Asia impose a ceiling on escalation, or paradoxically encourage limited probes such as Kargil.[5] These studies hinge on elite perceptions of risk, yet do not inquire into the real-time information streams that shaped those perceptions.

Taken together, the three lines of thought illuminate motives and outcomes but leave an important informational tier under-examined: the diplomatic pipeline that converted on-the-ground facts to leverage in the Oval Office. Two unresolved debates converge at this nexus. First, literature concurs that President Clinton's ultimatum to Nawaz Sharif on July 4, 1999, precipitated Pakistan's withdrawal. However, scholars still disagree on how that pressure interacted with the Indian Army's progress up the ridgeline. Was Washington merely ratifying a battlefield verdict already foregone, or did front-line intelligence give Clinton the confidence to press an otherwise reluctant prime minister? Second, scholars split on whether South Asian nuclear deterrence stabilized the crisis or emboldened Pakistan's initial action. Neither question, critical to any understanding of the flow of the crisis, can be answered without understanding the role of U.S. embassies in shaping policy and conveying opinions to Washington.

Unfortunately, almost all EXDIS and NODIS cable bodies remain

4 Bruce Riedel, "American Diplomacy and the 1999 Kargil Summit at Blair House," in Asymmetric Warfare in South Asia: The Causes and Consequences of Limited Wars, ed. P. R. Lavoy (Cambridge University Press, 2009), 175–98; Strobe Talbott, *Engaging India: Diplomacy, Democracy, and the Bomb* (Brookings Institution Press, 2004); Ashley J. Tellis, *Limited Conflicts under the Nuclear Umbrella: Indian and Pakistani Lessons from the Kargil Crisis* (RAND Corporation, 2002).

5 Sumit Ganguly and S. Paul Kapur, *India, Pakistan, and the Bomb: Debating Nuclear Stability in South Asia* (Columbia University Press, 2010); S. Paul Kapur, *Dangerous Deterrent: Nuclear Weapons Proliferation and Conflict in South Asia* (Stanford University Press, 2007).

classified. It is possible, however, to sketch their reconstruction through the open record. White House press-office drafts and INR morning summaries preserve verbatim snippets of Celeste and Milam's reporting. ADST oral histories from Karl Inderfurth, Donald Camp, and William Milam restore the texture of embassy reporting and crisis-time information management. Indian and Pakistani chronicles allow us to contextualize American sentiment with local, on-the-ground principles. Finally, cable cover sheets and distribution logs from the Clinton Presidential Library outline information routing on a common timeline.

Through these sources, a full reconstruction is possible. First, Section I sketches the post-1998 nuclear context and the slide from the Lahore thaw to the Kargil clash. Section II then tracks escalation week-by-week, matching combat turns to bursts of Delhi and Islamabad reporting. Section III dissects embassy fieldcraft—how Celeste and Milam framed messages and fed real-time intel to the White House. Section IV shows how the Talbott-Singh back-channel turned that intel into a single U.S. demand Pakistan had to heed. Section V reviews the fallout: Pakistan's pull-back, Musharraf's coup, and the template Kargil provided for the 2001–02 Twin Peaks standoff. The end result is a full timeline of the role of embassy fieldcraft in de-escalating the Kargil Crisis.

Nuclear Backdrop & Lahore-Kargil Prelude

On May 11 and 13, 1998, India detonated five nuclear devices at Pokhran, proclaiming itself a "nuclear-weapon state." Pakistan, long suspected of maintaining a recessed arsenal, responded on May 28 and 30 with six nuclear tests in the Ras Koh Hills. The tit-for-tat sequence shattered the blurred implication that had moderated Indo-Pakistani crises since the 1980s. In response, the U.S., in accordance with non-proliferation, placed mandatory economic sanctions on both capitals.[6] Nuclear deterrence forced the unresolved political impulses to alter the territorial status quo in Kashmir into a stalemate. Indian Prime Minister Atal Bihari Vajpayee framed Delhi's new viewpoint as "credible minimum deterrence," an ideology aimed at dissuading nuclear coercion and avoiding an arms

6 George Perkovich, *India's Nuclear Bomb: The Impact on Global Proliferation*, updated ed. (University of California Press, 1999), 207; Tellis, *Limited Conflicts under the Nuclear Umbrella*, 22.

race.[7] Islamabad answered with "credible deterrence at the lowest level of armaments," an ambiguous expression of their desire to keep peace with India.

Amidst this tension, the two leaders attempted a political reset. In February 1999, Vajpayee rode a bus to Lahore, where he and Prime Minister Nawaz Sharif signed the Lahore Declaration. The statement pledged to "respect the LoC in Kashmir and improve diplomacy and dialogue between the two hostile nations to reduce nuclear risk."[8] To other international leaders, this summit was evidence that nuclearization and detente could coexist. Washington's public statements shifted to deemphasize the sanction, instead captiously encouraging the bilateralism.[9] Inside Delhi and Islamabad, however, leaders were dissatisfied. India's opposition parties publicly denounced concessions on Kashmir, while Pakistan's military leadership worried that this open discussion would freeze the situation in an unfavorable equilibrium.

However, well before the declaration was signed, the Pakistani government began arrangements to undermine this effort at peace. In late autumn 1998, the Pakistani army's Northern Light Infantry began moving men across the Himalayas and into Indian-held positions around Kargil, a city in the Kashmir region. Their strategy was three-pronged; they intended to sever the Srinagar-Leh highway, internationalize the Kashmir dispute, and reignite nationalist sentiment around Kashmir. Because heavy snows kept Indian patrols off the mountaintops, the intruders established fortified rifle pits and dumps without being detected. When the snow melted around the mountain passes in early May 1999, Indian units finally discovered the intrusion first around Kaksar on May 3. They found soldiers in a 140-kilometer arc around the mountain.[10]

Out of nuclear awareness, Delhi's intelligence failure was treated with strategic caution. While Vajpayee authorized air power and artillery to restore the LoC, he imposed two unprecedented restraints. First, Indian aircrafts would not cross the LoC, and second, ground forces would confine

7 Gangly and Kapur, *India, Pakistan, and the Bomb*, 57.

8 Ministry of External Affairs (India), "Lahore Declaration," February 12, 1999.

9 Riedel, "American Diplomacy and the 1999 Kargil Summit at Blair House," 13.

10 V. P. Malik, *Kargil: From Surprise to Victory* (HarperCollins, 2006), 68.

operations to Indian-claimed territory.[11] He intended to deny Islamabad the escalation narrative that it sought, keeping international opinion on New Delhi's side. However, those restraints threatened a prolonged military operation in the thin Himalayan air, above 15,000 feet. The population at large watched each casualty report on the news with increasing frustration. These political costs threatened the newly-elected Hindu nationalist Bharatiya Janata Party (BJP) as it attempted to validate its new power.[12]

The Clinton administration, meanwhile, remained largely focused on mobilizing an international coalition against Serbia in the Kosovo War. However, American ambassadors William Milam and Richard Celeste urged the importance of Kargil, communicating two major perils to the White House.[13] First, that Pakistan's military objective was to bank on nuclear immunity to squeeze a bit more land. Second, that the Indian counteroffensive's caution was tenuous, easily erodible under various forms of domestic pressure. With these priorities in mind, how missions in the embassies in New Delhi and Islamabad gathered and relayed ground truth proved decisive in the weeks leading up to the meeting at Blair House.

Escalation in the Peaks

On May 27, 1999, Indian supersonic fighter jets moved into the Dras Valley of Kargil in the early morning to combat bunkers situated over 14,000 feet above the Srinagar-Leh highway. This was the first time since the Second Indo-Pakistani that India had used combat aircraft in Kashmir. Pakistani forces responded with missile strikes, knocking one jet from the sky and killing its pilot, Squadron Leader Ajay Ahuja.[14] The crash, replayed for hours on national television, ignited a storm in the Indian Parliament that pushed P.M. Atal Bijari Vajpayee to authorize "Operation Vijay." Operation Vijay was an aggressive operation to regain Kargil with a squadron of over 200,000 troops.[15]

11 Gangly and Kapur, *India, Pakistan, and the Bomb*, 53.
12 Talbott, *Engaging India*, 64.
13 Talbott, *Engaging India*, 158.
14 Malik, *Kargil: Surprise to Victory*, 102.
15 V. Ravindranath and Col. M. B., *Kargil War: The Turning Point* (Notion Press, 2024), 30.

Figure 1: Map of critical regions during Kargil War, 1999. Source: M. Ilyas Khan, "Kargil: The Forgotten Victims of the World's Highest War," BBC News, July 26, 2019.

The critical ground in Operation Vijay was a narrow ridge line east of Kargil. During normal winters, where temperatures plummeted to negative forty degrees Celsius, Indian troops would vacate the highest outposts. In early 1999, Pakistani Northern Light Infantry (NLI) detachment slipped through the Line of Control and established bunkers. From those positions, they could observe and dictate movement on the National Highway 1A, the only paved road linking Indian-controlled Kashmir and Ladakh. The road was strategically critical to India, as it formed its northern flank.[16] Pakistani generals initially insisted the infiltrators were Kashmiri "freedom fighters." However, intercepted radio traffic between Army Chief General Pervez Musharraf (in Beijing at the time) and his forward commanders quickly proved otherwise.[17] Indian national television prompty accepted the Indian

16 Malik, *Kargil: Surprise to Victory*, 15.

17 Milam, William B. "Oral History Interview with Ambassador William B. Milam." Interview by Charles Stuart Kennedy. January 29, 2004, Foreign Affairs Oral History Collection, Association for Diplomatic Studies and Training, Arlington, VA.

designation of the mujahideen as "intruders," and Ambassador Richard Celeste reached similar conclusions. He sided with India, saying they would have to withdraw from the Line of Control.[18] In the coming months, United States policy towards Kashmir reflected this public opinion.

Throughout early June, the Indian XIV Corps advanced up thousands of feet under machine gun fire, yielding a heavy death toll and killing national morale. On June 13, a Gurkha squad of soldiers finally broke through on Tololing, a massive ridge overlooking Highway 1A.[19] This breakthrough produced a strategic dilemma. Several Indian commanders urged P.M. Vajpayee to swing artillery north and cross the LoC, cutting Pakistani supply lines from the rear. Celeste and the Oval Office watched this situation with increasing alarm, as it seemed like India was looking to make an end run, punching through the LoC at various points that were more advantageous to them.[20] While New Delhi reluctantly kept its military within the LoC's boundaries, the pressure on Vajpayee's coalition mounted, measured in nightly casualty counts broadcasted to millions.

Across the border, Ambassador William Milam registered a similar anxiety. At Washington's request, on June 24, U.S. Central Command (CENTCO) chief General Anthony Zinni flew to Islamabad and Rawalpindi. Milam arranged meetings between Zinni, Musharraf and Sharif, in which he recounted their desire to move out of Kargil during an oral history interview:

> "Both were, by then, anxious to find a way to withdraw, but both needed political cover to do so. Both politically and militarily it was time to cut their losses. During Zinni's meeting with Musharraf, it was apparent to me that the General wanted out of Kargil."[21]

Namely, Musharraf and Sharif needed to resolve the situation with a ceasefire that saved political face. During these meetings, Zinni emphasized the meaning of withdrawal from Pakistan, stating "If you don't pull back, you're going to bring war and nuclear annihilation down on your country.

18 Bangash, Zahid, and Syed Tajammal-ul Islam. "Kashmir Mujahideen Teach India a Lesson in Mountainous Area of Kargil." *Crescent International* 28, no. 8 (June 16, 1999).

19 Malik, *Kargil: Surprise to Victory*, 102.

20 Talbott, *Engaging India*, 157.

21 Milam, "Oral History Interview," January 29, 2004.

That's going to be very bad news for everybody."[22]

By June 30, Indian artillery reopened Highway 1A. For the first time convoys moved unhindered to Leh.[23] Soon after Zinni left Islamabad, the frenzied Pakistani government convened a meeting of the Cabinet's Defense Committee. Members advocated nuclear deterrence through a withdrawal of forces. In the early hours of July 1, Sharif's representatives telephoned Milam pleading for an urgent meeting with President Bill Clinton.[24] Milam relayed the request to Assistant Secretary Rick Inderfurth, along with the information he received from the Pakistani cabinet meeting. By sunrise, Washington was prepared for a diplomatic showdown. While Islamabad scrambled and recovered, Indian para-commandos were preparing for a night climb on Tiger Hill, the last dominant peak over the valley. With Delhi's success on the ground, Sharif's desperation, and Milam's assessment that the Pakistani army was looking for an exit, Clinton saw a golden opportunity to broker a ceasefire.

Sharif arrived at Blair House on July 4, typically a president's day off. Clinton met him one-on-one, armed with talking points distilled from Celeste's "withdraw first" understanding and Milam's "face saving cover" insight. Clinton threatened to publicly denounce Pakistan and freeze an impending IMF tranche unless Sharif ordered an unconditional pullout.[25] Meanwhile, halfway across the world, Indian military squadrons began their night assault on Tiger Hill. They took the summit by dawn of July 5. While the war in the peaks was effectively over, what remained was to formalize the retreat and prevent any retaliatory Indian thrust over the LoC.

Escalation in Kargil was undeniably coupled with escalation in diplomatic channels. Each Indian victory triggered a surge of embassy reporting, while each Pakistani setback deepened Milam's warnings of political collapse. Washington's Fourt of July negotiations were only possible thanks to the understanding of the conflict built by on-the-ground diplomacy. Thus, Clinton was able to precisely control an extremely sensitive situation at Islamabad's most vulnerable period.

22 P. R. Lavoy, ed. *Asymmetric Warfare in South Asia* (Cambridge University Press, 2009), 201.

23 Ravindranath and M.B., *Kargil War: The Turning Point*, 45.

24 Milam, "Oral History Interview," January 29, 2004.

25 Riedel, "American Diplomacy and the 1999 Kargil Summit at Blair House," 13.

Embassy Fieldcraft: "Eyes and Ears" in Delhi and Islamabad

During the 1999 Kargil War, the two U.S. embassies in New Delhi and Islamabad were not simply diplomatic spectators. They were sensors, built by the sharp intuitions of Richard Celeste and William Milam that translated domestic politics into policy signals the White House could act on. At the center of both embassies were ambassadors Richard Celeste and William Milam.

Richard Celeste

Richard Celeste arrived in India in late 1997, expecting to manage a gradual warming of ties built on economic reform after the end of the Cold War. Within six months, his objectives fundamentally transformed. The Bharatiya Janata Party (BJP), a Hindu-nationalist coalition untested in security crises, came to power and detonated five nuclear devices in May 1998 in the Pokhran-II nuclear tests. Celeste recalled the "huge" transformation under BJP rule, where power "diffused from the center down to the states," and the once dominant Indian National Congress (INC) "fractured."[26] With their new platform, BJP ministers answered to a constituency that demanded more aggressive responses to Pakistan.

The domestic pressures that brought the BJP to power shaped many tactical decisions New Delhi considered after discovering the intrusions at Kargil. Celeste judged early that this government was more likely than any of its predecessors to cross the Line of Control (LoC) if heavy casualties and domestic pressure from new media sources made inaction politically fatal. His diagnosis rested on two observations. First, he noted a growing nationalist narrative in India. The BJP campaigned on restoring nationalist sentiment in India, and their refusal to sign the CTBT through the 1998 nuclear tests displayed their strong desire to prove Indian power in the world. Second, the coalition rode a razor-thin line, dependent on hard-lined allies. Smaller regional partners, like the Shiv Sena, demanded a strike across the LoC. Losing that political influence could easily topple Vajpayee's majority. As Celeste explained, "…And they [BJP] were in for

26 Celeste, Richard F. "Richard F. 'Dick' Celeste Part 4." Interview transcript. Ohio Historical Society, November 29, 2018, accessed March 26th, 2026, https://resources.ohiohistory.org/ohms/viewer.php?cachefile=OHC_Celeste_Richard_11292018.xml, 01:59:00.

a while and then they lost the vote of confidence."[27] Finally, Celeste, and, more importantly, executives in the Oval Office, recognized the growing influence of media and television in India. The death of squadron leader Ajay Ahuja on May 27 played on repeat, driving domestic pressure for retaliation.[28]

Concerned that New Delhi would cross the LoC, Celeste ensured that Indian P.M. Vajpayee understood the United States' view on the conflict. Namely, that Pakistani military were aggressors, and as long as Indian forces did not violate the LoC, the United States would "support" them. "Our position was to the Indians: don't cross the line of control," Celeste recalled, "Respect that line of control. We will support you and we will do everything we can to get the Pakistanis to withdraw."[29] Even with mounting domestic pressure, the strategic support of the United States still brought significant influence. This policy became the backbone of State Department policy and ultimately influenced President Clinton's Blair House meeting.

Celeste's daily shuttle diplomacy reinforced this message. By his own account, he was "at the foreign minister's [Jaswant Singh] office every day during that period," passing on U.S. intelligence that unmasked the Pakistani cover story and reminding Singh of American policy with respect to Kargil.[30] In parallel, Celeste helped draft the four point 'R' formula: respect the LoC, restraint, reduce violence, and reduce dialogue. This fed straight into the Talbott-Singh back channel and appeared later in Clinton's July 4 talking sheet.[31]

Through integrating hard political reality in Delhi with a disciplined public line that denied Pakistan moral reprieval, Celeste turned embassy field reporting into strategy. His insight was likely that domestic pressure, not military incapacity, was the strongest driver behind a possible Indian breakthrough at the LoC. Accordingly, Washington's first priority became to praise India's restraint at every step, even while demanding an unconditional Pakistani pull-back. Without this early understanding, the United States may have misread India.

27 Celeste, "Richard F. 'Dick' Celeste Part 4," 01:59:00.

28 Lavoy, ed., *Asymmetric Warfare in South Asia*, 184.

29 Celeste, "Richard F. 'Dick' Celeste Part 4," 02:29:00.

30 Celeste, "Richard F. 'Dick' Celeste Part 4," 02:32:00.

31 The White House, "Joint Statement by President Clinton and Prime Minister Sharif," July 4, 1999.

William Milam

William Milam landed in Islamabad in August 1998, one week after Washington's cruise missile strike on Osama Bin Laden's Afghan camp had triggered an embassy evacuation. He found, in his words, "a government that wasn't functioning very well and an economy that was going in the tank as fast as it could."[32] Within six weeks, he understood that Pakistan's civilian order was falling apart from the top. He explains, "Nawaz Sharif was working hard to turn [Pakistan] into a one-party state," while the army nursed its own conception of national interest.[33] From that diagnosis, Milam understood Kargil fundamentally differently from Washington. Milam understood that Kargil was not only an attempt to internationalize Kashmir but also was a proxy battle between Sharif and Army Chief General Pervez Musharraf for control of Pakistan's strategic future.

After several meetings with Nawaz Sharif's inner cabinet members, Milan understood and conveyed to the State Department through a cable that any presidential visit to South Asia would confront "a fundamentalist Hindu party… wreaking havoc" in Delhi and "a would-be one-party ruler in Islamabad."[34] His authentic cable "was not well received at the top levels of the Department," but it helps visualize the embassy's understanding of South Asia on-the-ground.

Once the Kargil infiltrations became public in May 1999, the divide between his view and Washington's defined Milam's reporting. As the fighting intensified, he first noted that Musharraf, through the Pakistani military, proposed the operation as a low-cost way to "bleed India":

The Pakistan military had bought wholesale into a strategy, which was bankrupt. It believed then that it could bleed India to death by getting insurgents into Kashmir and killing Indian soldiers. It did keep the Indian army tied down as somewhere between 400,000 and 500,000 Indian troops were in Kashmir. That may have been the other part of it. It may not have been the bleeding to death, as much as keeping the Indian army tied down.[35]

The ambassador's weekly "think tank" sessions, in which he convened with his CIA station chief and analysts, understood that

32 Milam, "Oral History Interview," January 29, 2004.
33 Milam, "Oral History Interview," January 29, 2004.
34 Milam, "Oral History Interview," January 29, 2004.
35 Milam, "Oral History Interview," January 29, 2004.

Pakistan's military didn't just simply undercut Lahore, but was using Kargil as a method to box Sharif in.

During Anthony Zinni's CENTCOM mission to Islamabad on June 24, 1999, evidence for Milam's view compounded. In Zinni's presence, Musharraf conceded that the troops were "in a pickle" and wanted "an honorable exit," but insisted the prime minister needed political cover.[36] Moments later, while "beating around the bush," Sharif admitted that he was prepared to pull out if he could save face. Sharif could not order withdrawal without the United States' help, and Musharraf would not support withdrawal if Sharif was seen as the one to blame.[37]

On July 1, 1999, Sharif's representatives phoned Milam asking him to arrange an immediate meeting with President Bill Clinton. A deal between Islamabad and New Delhi struck only days earlier had collapsed. Milam recounted that by late June, Pakistani diplomats had felt they had received Indian consent to a situation in which Pakistan would pull all troops out of Kargil, the Indian Army would cease fire during the withdrawal, and both sides would restart the Lahore peace process. Sharif planned on signing this understanding during a stop-over in Delhi on his way back. But while airborne, "the Indians either reneged or the misunderstanding became clear—there was no deal."[38] Landing in Islamabad to headlines of continued Indian attack, Sharif realized that he faced the dangers of both a defeat on the battlefield, but also political action by General Musharraf and his commanders. The Blair House summit began July 4 to address this crisis. In the ambassador's recount, Sharif arrived "desperate," and the joint statement between Sharif and Clinton demanded "immediate and complete withdrawal," which left the army chief "furious that he had to eat the loss."[39]

Milam's accounts before the October 1999 coup on Nawaz Sharif mapped the blame war that followed Pakistani withdrawal from Kargil. As expected, Sharif publicly faulted the army, Musharraf leaked casualty figures, and a "vicious campaign broke out in the media."[40] The embassy's

36 Milam, "Oral History Interview," January 29, 2004.

37 Milam, "Oral History Interview," January 29, 2004.

38 Milam, "Oral History Interview," January 29, 2004.

39 Milam, "Oral History Interview," January 29, 2004; The White House, "Joint Statement by President Clinton and Prime Minister Sharif," July 4, 1999.

40 Milam, "Oral History Interview," January 29, 2004.

fear of a coup initially assuaged when Sharif promoted Musharraf to Chairman of the Joint Chiefs. But when Milam went on home leave, the embassy watched the government collapse. A newspaper quoted and photographed Milam with the caption: "Ambassador discounts coup." This episode verified the common thread that was critical in his Kargil reporting: the Kargil war was inseparable from the war for political supremacy in Islamabad.

Information from both embassies often converged. While Delhi warned that Indian patience was finite, Islamabad revealed that Pakistani resolve was brittle. Put together, they created a moment in which U.S. coercive diplomacy could succeed without further escalation.

Dovetailed with embassy cables was the private dialogue between Deputy Secretary of State Strobe Talbott—Bill Clinton's Rhodes Scholar friend—and India's foreign minister Jaswant Singh. A friendship beginning in the aftermath of the 1998 Pokhran tests, their talks were intended to keep a nuclear non-proliferation agenda alive. Singh, a former cavalry officer and parliamentarian, needed to convince Washington that a new BJP-led government could be a responsible nuclear superpower. When the Kargil intrusions came to light, that personal relationship became Washington's quickest path into the Indian cabinet room. Singh's late night calls and reports describing casualty estimates were returned with Talbott's assurances that Clinton would back Delhi as long as Indian forces stayed behind the Line of Control. Equally important, the channel between the two offered political insurance. On June 28, just after Indian artillery reopened the Srinagar-Leh highway, Singh confided to Talbott that Delhi could hold its offensive "inside the ridge line" if the United States delivered Islamabad's retreat. That assurance allowed Clinton to confront Sharif four days later without worrying of Indian cross-border escalation.[41]

Aftermath and Impacts of Kargil

While Pakistan's final units vacated Kargil on July 26 1999, its political impacts remained. Within ten weeks, General Pervez Musharraf deposed Prime Minister Nawaz Sharif, citing the very debacle he may have been involved with engineering. The coup completed what the crisis had

41 Talbott, *Engaging India*, 157.

foreshadowed—authority in Islamabad now flowed almost exclusively through the army, and Washington's counter-terrorism agenda would have to run through a military ruler rather than an elected partner.[42] For New Delhi, the outcome was equally as decisive. Kargil convinced India government executives that limited Pakistani probes could be defeated without crossing the Line of Control, provided world opinion backed Delhi's restraint. That conviction strengthened the "LoC sanctity" doctrine and cleared the political path for Prime-Minister Vajpayee's understanding of stopping nuclear testing.[43]

The United States emerged from the crisis with a markedly different policy on South Asia. Clinton's five-day visit to India in March 2000, juxtaposed clearly with a four-hour stop in Islamabad, signaled a realignment that subsequent administrations deepened through civil-nuclear cooperation and defense trade. In addition, the Kargil crisis became a template. During the 2001–02 "Twin Peaks" standoff, Washington again paired embassy field reporting with shuttle diplomacy to keep Indo-Pak escalation beneath the nuclear threshold.[44] In that sense, Kargil's most important legacy is procedural. It demonstrated that ground-truth cables and leader-to-leader bargaining are not alternative instruments but complementary gears in U.S. crisis management.

Kargil was the first armed clash between the two superpowers since their stashing of nuclear warheads, yet it ended with a negotiated pullback instead of war. Reconstructing the crisis from embassy testimony and other books reveals why. Two diplomatic tiers, front line fieldcraft in Delhi and Islamabad, and the Talbott-Singh back channel, reinforced each other through the conflict. The result was a single, coherent message—"respect the LoC, withdraw first"—that both preserved India's restraint and cornered Pakistan into retreat. By distilling on-the-ground intelligence into presidential leverage, the embassies proved indispensable to U.S. crisis management. Effective coercive diplomacy began not in Oval Office assumption but in on-the-ground diplomacy.

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42 Milam, "Oral History Interview," January 29, 2004.

43 Ganguly, "Nuclear Stability in South Asia," 45–70.

44 Michael Krepon, and Patricia Nayak, *U.S Crisis Management in South Asia's Twin Peaks,* (Stimson Center, 2006).

Archiving Nanjing: American Photographs, Written Testimony, and Sino-American Relations

Tianren Li

2025 marked the 80th anniversary of China's commemoration of World War II and the Japanese invasion. Throughout the year, the People's Republic of China (PRC) held a series of public-facing initiatives to reinforce collective memory of the Second Sino-Japanese War (1937–1945). One of the most visible efforts was its summer film campaign, featuring mostly wartime films. Among them, 南京照相馆 (*Dead to Rights*), a film set during the 1937 Nanjing Massacre, became a national box office phenomenon, earning more than $400 million.[1] The film is based on a real boy described in German diplomat John Rabe's *Nanjing Diaries*, who developed photographs for a Japanese general, but secretly made duplicate copies of the images documenting mass civilian executions and preserved them until the end of the war (See Appendix 1).[2] Many of these images were later presented at postwar tribunals.

The film's popularity, and its reception by young adult viewers, reveals how the PRC cultivates a unified national memory centered on Japanese wartime atrocities. Reinforced after its release but ever present, the Nanjing Massacre remains one of the most powerful historical touchstones for building collective identity across generations.

Memory of the Nanking massacre is not, however neutral. Tellings emphasize or deemphasize certain actors. Public narratives in China and abroad typically foreground the heroism of Nazi Germans including Rabe or the British administrators of the International Safety Zone in Nanjing.

1 Jan Camenzind Broomby, "Battle for History: China's WWII Anniversary Rekindles Legacy Debate," *NPR*, September 2, 2025, https://www.npr.org/2025/09/02/nx-s1-5522234/china-80th-anniversary-wwii-battle-legacy.

2 John Rabe, *The Good Man of Nanjing: The Diary of John Rabe,* ed. Erwin Wickert, trans. John E. Woods (Alfred A. Knopf, 1998), 147.

Rabe's widely circulated diary has become one of the most influential testimonies of the massacre, and has significantly shaped global memory of foreign intervention. Yet within these narratives, the contributions of American witnesses including missionaries, doctors, and journalists receive less attention, even though they produced one of the largest and most diverse bodies of written documentation as well as the only surviving film footage of the atrocity.

Their presence and documentation during Nanjing both shaped Chinese perceptions of the war and continue to influence Sino-American relations today. John Magee's film photography, Dr. Robert Wilson's hospital correspondence, and the reporting of journalists such as Archibald Steele and Frank Durdin, whose work reached the *Chicago Daily News* and *The New York Times,* constructed critical knowledge on the massacre. These eyewitness records not only brought the Nanjing Massacre to global attention but also strengthened wartime ties between China and the United States. But while these materials continue to inform Chinese understanding of American humanitarianism, they have largely faded from American public memory.[3] This divergence complicates the wartime narratives of each nation. In China, these Americans are remembered for moral courage; in the United States, their role has been overshadowed by broader World War II history and contemporary political tensions. Yet the historical memory of American individual's humanitarian efforts in Nanjing are a powerful symbol of Sino-American cooperation in an era not past.

Background of the Nanjing Massacre and the Americans Involved

The Nanjing Massacre began almost immediately after Japanese troops entered China's capital on December 13, 1937. Over the following weeks, soldiers carried out large-scale killings, mass sexual violence, and the systematic destruction of civilian life in and around the city. What distinguished the atrocity in global perception was not only its scale but also the presence of twenty-seven Western nationals who witnessed it firsthand, including seven American and British correspondents.[4] As violence spread through the city, the only organized refuge for civilians was

3 Suping Lu, *They Were in Nanjing: The Nanjing Massacre Witnessed by American and British Nationals* (Hong Kong University Press, 2004), 5.

4 Lu, *They Were in Nanjing,* 1.

the International Safety Zone, established in November 1937 by a group of Western missionaries, professors, and businessmen who remained in Nanjing after most foreigners evacuated (Fig. 1).[5]

Name	Nationality	Affiliation / Address
John Rabe (Chairman)	German	Siemens China Co.
Lewis S. C. Smythe (Secretary)	American	University of Nanking
P. H. Munro-Faure	British	Asiatic Petroleum Co.
Rev. John Magee	American	American Church Mission
P. R. Shields	British	International Export Co.
J. M. Hansen	Danish	Texaco
G. Schultze-Pantin	German	Shinomine Trading Co.
Iver Mackay	British	Butterfield & Swire
J. V. Pickering	American	Standard Oil Co.
Eduard Sperling	German	Shanghai Insurance
Dr. M. S. Bates	American	University of Nanking
Rev. W. P. Mills	American	Presbyterian Mission
J. Lean	British	Asiatic Petroleum Co.
Dr. C. S. Trimmer	American	University of Nanking
Christian Kröger	German	Carlowitz of Nanking
George Fitch	American	YMCA

Figure 1: The List of Members of the International Committee from John Rabe's Diary.[6]

Led primarily by John Rabe of Siemens and American professor Miner Searle Bates, the Safety Zone Committee unsuccessfully negotiated with Japanese authorities to recognize the area as neutral ground and to refrain from military operations within its boundaries. Although the Japanese army refused to formally guarantee its safety, the committee nonetheless marked off a two-and-a-half-square-mile district, housed over 200,000 Chinese civilians, distributed food and medical supplies, and recorded detailed accounts of abuses occurring just outside the zone's perimeters.[7] American missionaries and doctors such as John Magee, Minnie Vautrin, and Robert Wilson assumed central responsibilities, overseeing refugee camps, treating the wounded, and documenting

5 See Appendix 2 for the full list of Foreigners who stayed or visited Nanjing from December 13th, 1937–Mid March 1938.

6 Rabe, *The Good Man of Nanjing,* 147.

7 Rabe, *The Good Man of Nanjing*, 147.

atrocities in letters, diaries, and photographs.[8] The Safety Zone became both a fragile humanitarian enclave and an inadvertent archive, sustained by the work of these foreign residents whose testimonies would later shape international understanding of the massacre.

American Activism in Fallen Nanjing

American activism in Nanjing took three major forms: visual documentation, medical testimony, and journalistic reporting. Though differing in medium, these records shared a common function. They preserved evidence, shaped international opinion, and later became archival foundations for both Chinese and global memory. They sustained the Safety Zone and now illustrate how it functioned on the ground. John Rabe's diary, which carefully recorded the daily crises inside the zone, repeatedly highlights the central role played by American missionaries and doctors. For instance, in one entry, Rabe wrote:

> "The Americans are indeed in a bad way. While I succeed in making a suitable impression by pompously pointing to my swastika armband and party badge, and at the German flags in my house, the Japanese have no regard whatsoever for the American flag."[9]

Unlike their German counterparts, Americans lacked political protection and were treated with open contempt by Japanese soldiers. Their efforts to shield Chinese civilians therefore required not only humanitarian commitment but personal risk. In fact, Americans were frequently abused when attempting to negotiate or investigate. John M. Allison, the senior American diplomat in Nanjing, for example, was struck in the face by a Japanese sentry while investigating a rape case which happened on American grounds. Widely reported in major newspapers in the United States, Britain, and China in early 1938, the "Allison Incident," together with the bombing of the USS *Panay*, became a major source of diplomatic tension between the United States and Japan, ultimately culminating in a formal Japanese apology.[10] Thus, Americans in Nanjing were not detached

8 Robert Wilson, *Documents on the Rape of Nanking,* ed. Timothy Brook (University of Michigan Press, 1999), 207–57.

9 Rabe, *The Good Man of Nanjing,* 147.

10 A US Navy River gunboat specifically constructed for duty with the Yangtze Patrol was bombed when stationed in Nanking, China.

observers; they were themselves targets of intimidation, and their resistance to Japanese abuses became intertwined with the broader narrative of atrocity and international response.

John Magee's Humanitarian Efforts and the Film that Survived

Despite the dangers they faced in Nanjing, American individuals such as John Magee, Dr. Robert Wilson from the Red Cross Association, and journalists like Archibald Steele and Frank Durdin continued to intervene on behalf of Chinese civilians with remarkable courage. John Magee appeared frequently in John Rabe's diary as a central figure in both relief and documentation efforts. Rabe recorded one such incident:

> "John Magee lays a report and a Japanese sidearm on my desk. The report described how a Japanese soldier threatened a Chinese woman with the same weapon but dropped it and ran when was surprised by three members of our committee. Smythe beams at the news, which he immediately passes on to the American embassy, since all the eyewitnesses were American. Mr. Allison from the American embassy has taken over the task of writing protests for us, which pleases us no end."[11]

As an American, Magee was forced to assume dual roles as a protector confronting armed Japanese soldiers and a witness whose testimonies fueled diplomatic protests. Yet Magee's efforts extended far beyond written incident reports. In addition to his humanitarian work, he produced one of the most significant bodies of visual evidence from the massacre, recording scenes of injury, displacement, and death on 16mm film and capturing photographs that became irrefutable documentation of Japanese atrocities (Fig. 2).[12]

11 Rabe, *The Good Man of Nanjing,* 154.

12 James Yin and Shi Young [尹集鈞 和 史永], *The Rape of Nanking: An Undeniable History in Photographs [* 南京大屠杀：历史照片中的见言 *],* (Innovative Publishing Group, 1996).

Figure 2: John Magee's Documentation of Japanese Troops Shoot-to-kill to Scare People off Commercial Streets in Order to Loot without Being Watched. In Yin and Shi, *The Rape of Nanking*, 240.

His images and film recording, smuggled out of Nanjing at great personal risk, became foundational primary sources that no government could easily deny at the Tokyo International Military Tribunal in 1948 (Fig. 3).[13]

13 Note: For the purposes of this paper, I have chosen to include only the less graphic photographs. However, John Magee's more harrowing and unfiltered images are preserved in his archival collection at Yale University.

Figure 3: John G. Magee gave his testimony to the Tokyo International Military Tribunal in 1948 showcasing his photo collection and his black and white film shot. In Yin and Shi, *The Rape of Nanking,* 272–76.

Doctor Robert Wilson's Testimony and Family Letters

Alongside Magee, and another member of the American Red Cross, Dr. Robert Wilson was the only Western surgeon who remained in Nanjing throughout the massacre (Fig. 4).

Figure 4: Members of the Nanking Red Cross Hospital Emergency Team, Front Row Center: John Magee; back row center: Dr. Robert. O. Wilson. In Yin and Shi, *The*

Rape of Nanking, 259.

Working from the University of Nanking Hospital, Wilson treated thousands of victims while meticulously recording the injuries and atrocities he witnessed. These became some of the most authoritative medical evidence of the violence in Nanjing, and were presented in the 1946 International Military Tribunal for the Far East.[14] In his written testimony he writes:

> "I am an American citizen, born in Nanking, China…on the day before the city of Nanking fell, the number of patients in the hospital had been reduced to fifty. Soon after the Japanese army entered the city on December 13, 1937, the number of civilians brought into the hospital was crowded to full capacity, and its facilitation taxed to the limit."[15]

Wilson identified himself clearly as an American born in China, deeply tied to Nanjing personally and thus particularly compelled to document what he witnessed. His testimony did not only offer clinical evidence; it carried the weight of someone watching the city he grew up in collapse under burning, bombing, and widespread sexual violence.

Beyond his verbal testimony, his diary entries and family letters also were vital for historical preservation. When his family donated his medical notes and wartime correspondence to the museum and archive associated with the Nanjing Massacre memorial hall, they gave the world far more than documents. Those letters recorded in real time the suffering that Wilson witnessed. Without these records and family letters, many of the survivors' stories and broader context of civilian trauma during the massacre would risk being lost or reduced.[16]

The Pens of Tillman Durdan and Archibald Steele

14 Memorial Hall of Victims in Nanjing Massacre by Japanese Invaders, "Chinese Doctors' Day: In Honor of the Only Surgeon in Nanjing in the Winter of 1937," 2025, Accessed April 5th, 2026, https://www.19371213.com.cn/en/information/news/201908/t20190820_2232883.html.

15 Robert O. Wilson, "Statement of Dr. Robert O. Wilson," medical testimony regarding the Nanjing Massacre, International Military Tribunal for the Far East, June 2, 1946, Nanjing University Hospital Records, David Nelson Sutton Papers Collection, https://omeka.ischool.utoronto.ca/items/show/246.

16 Wilson, *Documents on the Rape of Nanking*.

Lastly, beyond the writings and spoken testimonies of American Red Cross members, journalists took enormous risks to report the atrocity, sending their accounts to readers in the United States and Europe. *Chicago Daily News* correspondent Archibald Steele, reporting from Nanjing between December 15, 1937, and February 4, 1938, published five pieces detailing Japanese atrocities. He was the first to break the news of the massacre to the world with his article "Japanese Troops Kill Thousands." Only two days later, he followed with a more detailed story of the devastation, from machine-gun fire tearing through the streets to telephone and power lines lying in ruins.[17] If Steele was the first to report the Nanjing Massacre to the world, *New York Times* reported Tillman Durdin covered the event with more detail and in-depth analysis. His vivid descriptions of looting, burning, and the widespread assault on women stunned American and European audiences, and signaled that what they were reading was only the beginning of a much deeper horror.[18]

While American and European readers expressed their shock and horror, the English-language press within China reacted to the reports as well. After the major American newspapers published their accounts of the massacre, the *North-China Daily News* ran an editorial titled "A Great Change" on January 21, 1938. As the largest and most influential English-language newspaper in Shanghai, the *North-China Daily News* served an expatriate readership composed mostly of American, British and other Western residents, many of whom had business, diplomatic, or missionary ties in China. By publishing this editorial, the paper identified the Nanjing Massacre as a distinct and profound moral and political crisis, not just another episode of the Sino-Japanese war, to its international readership. Although it operated primarily as a commercial and expatriate-oriented paper rather than a humanitarian outlet, its decision to echo and affirm the foreign correspondents' reports helped amplify global awareness and implicitly encouraged international pressure and humanitarian concern from Western governments, churches, and relief organizations.[19]

17 Lu, *They Were in Nanjing,* 22.

18 Lu, *They Were in Nanjing*, 22; See Appendix 3 for all Major English Media Publications on the Massacre, 1937–38

19 Lu, *They Were in Nanjing, 22.*

Historical Chinese Responses and Evolving Attitudes Toward the United States

As the world increasingly heard about the Massacre, within China, civilians expressed deep gratitude for the foreigners who stayed to help, and that gratitude took every day, human forms. Refugees famously sang a piece known as the "Chorus of Nanjing Refugees" or the "Song of Horsebeans," written by American pastor J. H. McCallum to lift spirits and to recall the food and care provided by expatriate relief workers. One survivor, Jiang Wei, recalled, "Now 85 years have passed, and when we eat horsebeans, we will always remember these international friends and thank them for their dedication" (Fig. 6).[20]

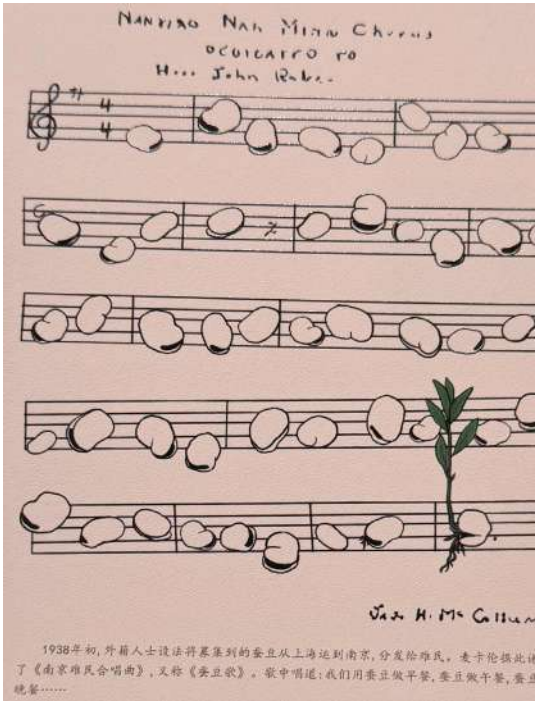


Figure 6: A postcard from the Nanjing Massacre Memorial, Nanjing, China, with the front cover showing the music sheet for "Horsebeans." Photo is author's own.

20 Jiang Wei, "When the Song of Horsebeans Plays, We Always Think of an International Friend," The Memorial Hall of Victims in Nanjing Massacre by Japanese Invaders, 2025, https://www.19371213.com.cn/sylm/enlatestnews/202204/t20220408_3338312.html.

Many American diary entries describe how Chinese civilians slipped them handwritten thank-you notes, wished them happy holidays, and tried in small ways to show their appreciation during an unimaginably dark moment. Some accounts recalled people crying and grieving when members of the International Safety Zone finally prepared to leave, as if a lifeline was being taken away.[21] The struggling wartime Chinese government failed to formally honor these Americans at the time, but ordinary people filled that silence with their own gestures of gratitude. Compared to the distrust toward foreigners that writers like Pearl Buck observed in the early 1900s, the warmth many Chinese civilians expressed toward the Americans who stayed marked a genuine shift in how people experienced the relationship between China and the United States at a human level.[22] Even though only a couple of Americans remained in Nanjing, their compassion left an imprint that survivors carried for the rest of their lives.

Contemporary Views of American Help from the Chinese Perspective

This compassion, remembered and retold by survivors, continues into the present day. Many news agencies still highlight the heroic actions of Americans during the massacre, including outlets such as *Beijing Review*, the Chinese University of Hong Kong's news archive, and *Xinhua Daily News*.[23] Today, the Nanjing Massacre Memorial Hall features a dedicated archival section honoring the American foreigners who helped protect civilians and document what happened. Visitors to Nanjing often make a point of seeing not only the main memorial site but also the statues and commemorations of the Americans whose bravery left a lasting mark on the city (Fig. 7).

21 Rabe, *The Good Man of Nanjing*.

22 Pearl Buck, "Growing Up in China," in The American Image of China, by Benson Lee Grayson (Woodrow Wilson Center Press; Stanford University Press, 1997), 151.

23 Li Qing, "The Magee Family's Documentation of Nanjing's Past and Present," *Beijing Review,* September 2025, accessed April 5th, 2026, https://www.bjreview.com/China/202509/t20250902_800413743.html.

Figure 7: Statue of Miss Minnie Vautrin Outside Nanjing Normal University. Xiao Hong Shu, "Some foreigners who will always be remembered by the Chinese people.[一些永远值得中国人铭记的外国人]" Xiaohongshu, 2025, https://www.xiaohongshu.com/explore/68847ae600000000130123a3.

In contemporary China, this memory is very much alive. On social media platforms like Xiaohong Shu, ongoing discussion threads remember the foreigners who stayed in Nanjing. In one thread urging people not to forget Minnie Vautrin, Robert Wilson, Karl Günther, and Bernhard Sindberg, a user commented, "Don't forget the American, John Magee… unfortunately he wasn't mentioned at all."[24] These comments ubiquitous. On major social media platforms such as Weibo, Xiaohong Shu, and Douban, countless threads and posts discuss similar memories and perspectives. These apps are some of the most influential social media

24 Xiao Hong Shu, "Some Foreigners Who Will Always be Remembered."

platforms in China, shaping public discourse, cultural memory, and how historical events are remembered and discussed. Their reach and impact make them powerful spaces for collective reflection and for reinforcing the significance of heroic figures from the past. The memory of individual action during Nanjing remains alive to the Chinese public today.

Alongside social media, popular media in shapes how people remember the past. The summer film campaign, which included *Dead to Rights*, mentioned at the beginning of this paper, shows that the Chinese government still sees the Nanjing Massacre as shared memory across generations. These films tell the story of real actors in real historical events. *Dead to Rights* features 15-year-old Luo Jin, a studio apprentice who secretly preserved photographs of Japanese atrocities, alongside international figures such as John Magee, Minnie Vautrin, and John Rabe (Fig. 8).

Figure 8: From *Dead to Rights*: Illustrations of Minnie Vautrin, John Rabe, and John Magee (right) alongside Real Life Historical Photos (left). Xiao Hong Shu, "True friends! The foreign friends who served as models in a Nanjing photo studio." Xiaohongshu, August 2025, https://www.xiaohongshu.com/explore/68a306ee000000001c005504.

By including heroic foreigners, both the Chinese government and public continue to, at least culturally and socially, recognize and honor those who helped relieve the suffering during the massacre. Despite tensions in US-China relations today, there remains widespread Chinese cultural media that preserves a positive view of friendly foreigners and reflects a shared respect between the two countries.

The American Perspective: Past and Present

Although it occurred an ocean away, Americans, too, remember the Nanjing Massacre. When news of the atrocity reached Americans via dispatches from foreign correspondents and missionaries, it stirred a wave of shock, moral outrage, and some segments of humanitarian response. Americans were horrified by the graphic accounts from Tillman Durdan and Archibald Steele, graphically describing the indiscriminate killing, mass rape, looting, and widespread suffering of civilians in what Americans and other Western observers recognized as mass atrocity.[25] On American soil, many Chinese Americans mobilized to raise funds, organize protests, and lobby for aid to China. Organizations like the Chinese War Relief Association (CWRA) quickly formed and raised thousands of dollars. Within a week of its founding in late 1937, San Francisco's Chinese American community alone brought in $30,000.[26] The Chinese Hand Laundry Alliance (CHLA) in New York also appealed directly to American customers, distributing leaflets in English urging them to boycott Japanese goods and donate ambulances, medical supplies, and relief funds for China.

At the government level, however, the response was more muted. Official U.S. policy remained largely one of neutrality as trade and arms restrictions constrained direct government support to China. As the war expanded, it provided some loan-based economic support and humanitarian aid, but in the immediate aftermath of Nanjing the U.S. government stopped short of strong political intervention or military support. While the

25 Beatrice Bartlett, "Lecture on the Horror and Heroism of the Nanking Massacre," *Yale News,* January 17, 1997, https://news.yale.edu/1997/01/17/nanking-massacre.

26 K. Scott Wong, "Parades, Pickets, and Protests: Before Pearl Harbor, Chinese Americans Bring the Issue of Japanese Aggression to the Nation's Consciousness," *Humanities,* July/August 2007, https://www.neh.gov/humanities/2007/julyaugust/feature/parades-pickets-and-protests.

Nanjing Massacre provoked a mixture of compassion and outrage inside the United States, but official aid remained limited until global war re-shaped American foreign policy.

In contemporary American society, the Nanjing Massacre occupies a surprisingly limited space in public memory. Unlike in China, where the massacre is commemorated as a national trauma and where the heroism of foreign missionaries, doctors, and professors who protected civilians is widely taught, the event is not a prominent part of American educational curricula or public discourse. Most Americans have little awareness not only of the massacre itself but also of the crucial role of Americans and Europeans in establishing the Nanking Safety Zone or otherwise providing humanitarian aid. Perhaps this absence was inevitable; from an American perspective, the episode was a distant foreign atrocity in which the United States acted only indirectly, while in China it has become central to national identity, wartime memory, and narratives of foreign sympathy. As a result, the humanitarian work of figures like John Magee, Robert Wilson, and others, celebrated widely in China, remain largely unfamiliar in the American collective consciousness.

Most of the American consciousness of U.S. involvement in China during the Nanjing Massacre exists primarily within academic circles rather than in public culture. Several scholarly studies exist on the topic, but their thematic focuses shape American understanding in narrow ways. Iris Chang's *The Rape of Nanking* remains one of the most influential works on Nanjing by an American writer, and while it brought enormous attention to the massacre, it centers on documenting the atrocity itself rather than exploring the broader diplomatic relevance of the foreigners who stayed in Nanjing or the implications for Sino American relations.[27] Outside of such works, the detailed records of American and European involvement—letters, diaries, film footage, and Safety Zone Committee reports—are preserved mainly in university archives.[28] These materials are largely confined to historians and researchers. As a result, even though the archival evidence of foreign aid is extensive, it has not entered mainstream

27 Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Basic Books, 1997).

28 The largest repositories of Nanjing exist at Yale, Harvard, and the University of Chicago.

American knowledge. The story of humanitarian intervention during Nanjing remains behind these walls.

Still, Nanjing is a crucial story not only in the history of atrocities but in Sino-American relations. It recalls a time of genuine friendship, cooperation, and humanitarian aid between the United States and China. The memory of American volunteers who risked their lives in Nanjing complicates the dominant narratives that reduce U.S.–China relations to geopolitical rivalry and national security concerns our world sees today. Remembering this history matters because it reveals that the relationship between the two countries once included solidarity, moral courage, and cross-cultural compassion.

Closing Remarks: Limitations of this Piece and the Future of US-China Relations

Ultimately, the history of American involvement in the Nanjing Massacre complicates the stories that both nations often tell about themselves and each other. In China, these Americans are remembered as people who acted with moral courage during a moment of extreme violence. In the United States, however, their presence in Nanjing has largely faded from view, overshadowed by the broader sweep of World War II and by the tense political climate that shapes how many Americans think about China today. Perhaps this obscurity is simply the result of temporal distance, cultural difference, and the overwhelming scale of the conflict. Yet the evidence in this paper suggests something more meaningful. Forgetting this shared history limits the ways the two countries imagine one another and narrows the possibilities for understanding the relationship in the present.

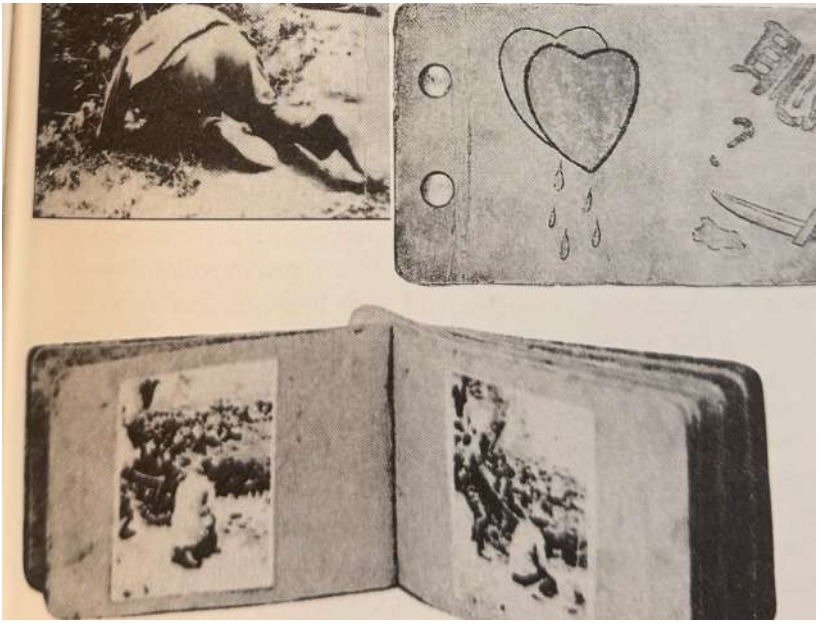
This study touches only a small portion of the foreign humanitarian presence in Nanjing, and the topic itself is far too vast to capture every individual who risked their life to protect Chinese civilians. Inevitably, many important figures remain outside the scope of this essay, including Ernest Forster, the full depth of Minnie Vautrin's diary entries, and the countless other courageous foreigners whose stories deserve far more space than can be offered here. The archival record poses its own challenges as well. For instance, the Cultural Revolution destroyed many Chinese

newspapers and publications that had once honored these volunteers, leaving gaps that make it difficult to reconstruct a complete and balanced picture of foreign involvement. However, even with these limitations, the surviving primary sources still reveal a powerful moment of transnational humanitarianism, one that continues to echo across time and reminds us of what ordinary people can choose to do in the face of extraordinary violence.

The stories here of American individuals who remained in Nanjing represent an episode where two nations saw beyond politics and self-interest and instead found possibilities for deeper social and cultural exchange. The humanitarian work of John Magee, Robert Wilson, Minnie Vautrin, and many others does not fit easily into familiar stories of rivalry or national self-interest. Their efforts reveal a moment when compassion, cross-cultural responsibility, and personal conviction mattered more than political calculation. These stories remind both countries that their relationship has included not only conflict and competition but also real cooperation and solidarity. Their importance is not only theoretical. Their individual moral choices during a crisis left lasting impressions on how two societies perceived one another long after the violence ceased.

The future of Sino-American relations is marked by uncertainty, mutual suspicion, and global instability. Yet this shared past serves as a reminder that the two societies are not bound solely by strategic calculation. They are also connected through the choices of individuals who refused to stand by in the face of suffering. If remembered honestly, these stories open a space for imagining a relationship defined not only by power but by humanity. And in an era when both nations often speak past one another, the legacy of the Americans in Nanjing stands as evidence that another kind of relationship has existed before—and might, with effort and memory, exist again.

Appendix 1: The Mention of the Luo Jin's Photo Diary of Japanese Atrocities in Rabe's Journal[1]



Photos taken from John Rabe's diary. The description reads: "This sequence of photographs records Chinese being beheaded. When the Japanese soldier took the film to be developed, a Chinese boy working in the shop secretly made copies, at the risk of his life, and glued them into a scrapbook documenting the atrocities. He decorated its cover himself and kept it hidden until the end of the war." John Rabe, *The Good Man of Nanjing: The Diary of John Rabe*, ed. Erwin Wickert, trans. John E. Woods, (Alfred A. Knopf, 1998).

Appendix 2: Western Nationals Who Stayed or Visited Nanjing, 13 December 1937—Mid March 1938 [29]

No.	Name	Nationality	Affiliation	Dates in Nanjing
1	Frank Tillman Durdin	American	The New York Times	Dec. 13–15
2	Charles Yates McDaniel	American	Associated Press	Dec. 13–16
3	Arthur von Briesen Menken	American	Paramount Newsreel	Dec. 13–15
4	Archibald Trojan Steele	American	The Chicago Daily News	Dec. 13–15
5	Leslie C. Smith	British	Reuters	Dec. 13–15
6	John Rabe	German	Siemens Company	Dec. 13–Feb. 23
7	Christian Kröger	German	Carlowitz & Company	Dec. 13–Jan. 23
8	Eduard Sperling	German	Shanghai Insurance Company	Dec. 13–
9	Auguste Zautig	German	Kiesseling & Bader Company	Dec. 13–Feb. 28
10	Richard Hempel	German	North Hotel	Dec. 13–
11	Rupert R. Hatz	Austrian	Nanjing Safety Zone	Dec. 13–Feb. 28
12	Nicolai Podshivaloff	White Russian	Sandgren's Electric Shop	Dec. 13–
13	A. Zial	White Russian	Nanjing Safety Zone	Dec. 13–
14	Miner Searle Bates	American	University of Nanjing	Dec. 13–
15	Lewis Strong Casey Smythe	American	University of Nanjing	Dec. 13–
16	Charles Henry Riggs	American	University of Nanjing	Dec. 13–
17	Robert Ory Wilson	American	University of Nanjing Hospital	Dec. 13–
18	Clifford Sharp Trimmer	American	University of Nanjing Hospital	Dec. 13–
19	Iva Hynds	American	University of Nanjing Hospital	Dec. 13–
20	Grace Bauer	American	University of Nanjing Hospital	Dec. 13–
21	Minnie Vautrin	American	Jinling College	Dec. 13–
22	George Ashmore Fitch	American	YMCA	Dec. 13–Jan. 29; Feb. 10–20
23	John Gillespie Magee	American	American Church Mission	Dec. 13–

29 Data compiled and reformatted from Suping Lu, *They Were in Nanjing*: The Nanjing Massacre Witnessed by American and British Nationals (Hong Kong University Press, 2004), 285.

24	James Henry McCallum	American	United Christian Missionary Society	Dec. 13–
25	Wilson Plumer Mills	American	Northern Presbyterian Mission	Dec. 13–
26	Hubert Lafayette Sone	American	Nanjing Theological Seminary	Dec. 13–
27	Ernest Herman Forster	American	American Church Mission	Dec. 13–
28	Bernhard Alp Sindberg	Danish	Jiangnan Cement Works	Made numerous trips since Dec. 23
29	John Moore Allison	American	American Embassy	Jan. 6–
30	James Espy	American	American Embassy	Jan. 6–
31	Archibald Alexander McFadyen, Jr.	American	American Embassy	Jan. 6–Mar. 13
32	John M. Sheehan	American	USS *Oahu*	Jan. 7; Feb. 17, 23
33	H. I. Prideaux-Brune	British	British Embassy	Jan. 9–29
34	W. A. Lovat-Fraser	British	British Embassy	Jan. 9–16
35	Georg Rosen	German	German Embassy	Jan. 9–
36	Paul Scharffenberg	German	German Embassy	Jan. 9–
37	Alfred Huerter	German	German Embassy	Jan. 9–
38	J. S. Wasler	British	British Embassy	Jan. 12–16
39	Naval Radio Operator	American	American Embassy	Jan. 19–
40	Stanley Bishoprick	American	China Export & Import Lumber Co.	Jan. 23–Feb. 6
41	E. W. Jeffery	British	British Embassy	Jan. 27–
42	Walter Henry Williams	British	British Embassy	Jan. 27–
43	Ferrolo	Italian	Italian Embassy	Jan. 29–?
44	Prinela Gozio	Italian	Italian Embassy	Jan. 29–?
45	Medical Officer	American	USS *Oahu*	Feb. 17
46	J. F. Armstrong	British	HMS *Bee*	Feb. 17
47	Hendrick Bos	Dutch	Netherlands Legation	Feb. 8–12
48	James F. Kearney	American	American Jesuit Mission	Feb. 11–13
49	French Air Attaché	French	French Embassy	Feb. 11–13
50	Richard Freeman Brady	American	University Hospital	Feb. 21–
51	George Atcheson	American	American Embassy	March 11–13

Appendix 3: Major English Media Publication on the Nanjing Massacre, December 1937—October 1938[30]

Steele, A. T. "Japanese Troops Kill Thousands." *The Chicago Daily News*, 15 December 1937, p. 1.

Steele, A. T. "War's Death Drama Pictured by Reporter." *The Chicago Daily News*, 17 December 1937, pp. 1, 3.

Menken, Arthur von Briesen. "Witness Tells Nanking Horror as Chinese Flee." *The Chicago Daily Tribune*, 17 December 1937, p. 4.

Durdin, F. Tillman. "Butchery Marked Capture of Nanking." *The New York Times*, 18 December 1937, pp. 1, 10.

McDaniel, C. Yates. "Nanking Horror Described in Diary of War Reporter." *The Chicago Daily Tribune*, 18 December 1937, p. 8.

"Terror in Nanking." *The Times* (London), 18 December 1937, p. 12.

Steele, A. T. "Tells Heroism of Yankees in Nanking." *The Chicago Daily News*, 18 December 1937, pp. 1, 3.

"Fall of Nanking Vividly Retold by Eye-witness." *The Peking Chronicle*, 19 December 1937, pp. 1, 18.

Durdin, F. Tillman. "Foreigners' Role in Nanking Praised." *The New York Times*, 19 December 1937, pp. 1, 38.

Abend, Hallett. "Terror Reigns in Nanking." *The New York Times*, 24 December 1937, p. 7.

"Nanking Horror." *The North-China Daily News* (Shanghai), 25 December 1937, p. 4.

"Rape, Looting Follow Taking of the Capital." *The North-China Daily News*, 25 December 1937, p. 5.

Durdin, F. Tillman. "Japanese Atrocities Marked Fall of Nanking After Chinese Command Fled." *The New York Times*, 9 January 1938, p. 38.

"Plundering Japanese Rob Americans: Women and Children at Nanking Killed in Cold Blood." *The Los Angeles Times*, 9 January 1938, p. 1.

"A Great Change." *The North-China Daily News*, 21 January 1938, p.

30 Compiled from Suping Lu, *They Were in Nanjing: The Nanjing Massacre Witnessed by American and British Nationals* (Hong Kong University Press, 2004), 287.

4.

"Nanking Safety Zone Still Filled with Refugees." *The North-China Daily News*, 27 January 1938, p. 5.

"Japan's Reign of Terror in China: First Authentic Description." *The Daily Telegraph and Morning Post* (London), 28 January 1938, pp. 15–16.

Steele, A. T. "Panic of Chinese in Capture of Nanking." *The Chicago Daily News*, 3 February 1938, p. 2.

Steele, A. T. "Reporter Likens Slaughter of Panicky Nanking Chinese to Jackrabbit Drive in U.S." *The Chicago Daily News*, 4 February 1938, p. 2.

"Rape of Nanking: American Eyewitness Tells of Debauchery by Invaders." *South China Morning Post* (Hong Kong), 16 March 1938, pp. 17–18.

"Nanking — What Really Happened — and the Japanese Paradise." *The China Weekly Review* (Shanghai), Supplement (19 March 1938): 10–11.

"Basket Case." *Time* (Chicago), Vol. 31 (18 April 1938): 22.

"The Sack of Nanking." *Ken* (Chicago), Vol. 1 (2 June 1938): 12–15.

Fitch, George A. "The Rape of Nanking." *This World*, Sunday Supplement to *The San Francisco Chronicle*, 11 June 1938, pp. 16–17.

"We Were in Nanking." *The Reader's Digest* (Pleasantville, NY), Vol. 33 (October 1938): 41–44.

Negotiating the Legacy of Occupation: Cultural Memory and Historical Reckoning in Postwar France

Ines Salter Martin

For decades after the end of the Second World War, France appeared to live in an uneasy silence about the realities of occupation, collaboration, and resistance.[1] Public narratives emphasized unity and heroism, often presenting the Vichy regime, the pro-Nazi collaborationist regime active after defeat in World War II, as an aberration imposed upon an unwilling nation.[2] This view presented France as primarily the victim of Nazi domination. It suggested that moral reckoning with Na zi collaboration began much later, in the 1970s and 1980s, largely through historical scholarship, war crimes trials, and political debate. This period is frequently described as the moment when memory finally "returned," awakening after years of repression.[3]

Indeed, the moment of the Vichy regime was short lived. After France's defeat in June 1940, the country was split between the occupied zone under German control and the so-called "free" zone governed from Vichy under World War I hero Marshal Philippe Pétain. Vichy was active and transformative during the war; it sought to remake the state through its "National Revolution." The regime weakened republican institutions,

1 On "silence" as a form of displacement rather than erasure, see Henry Rousso, *The Vichy Syndrome* (Harvard University Press, 1991), esp. chapters 1–3. For a broader theoretical discussion of silence and memory, see Michel-Rolph Trouillot, *Silencing the Past* (Beacon Press, 1995).

2 Henry Rousso, The Vichy Syndrome: History and Memory in France since 1944, trans. Arthur Goldhammer (Harvard University Press, 1991), 1–2; On the construction of Gaullist memory after 1944, see Sudhir Hazareesingh, *In the Shadow of the General* (Oxford University Press, 2012), chap. 3.

3 Henry Rousso, *The Vichy Syndrome: History and Memory in France since 1944*, trans. Arthur Goldhammer (Harvard University Press, 1991), 3–12; Pierre Nora, "Between Memory and History: Les Lieux de Mémoire," *Représentations 26* (Spring 1989): 7–24.

policed political enemies, and collaborated with the Nazi authorities.[4] In parallel, former Brigadier General in exile Charles de Gaulle, broadcasting from London, insisted that "Free France" represented the real continuity of the Republic. His claim ultimately foreshadowed a framework for the historical memory of collaboration. Liberation in 1944 did not resolve these competing narratives so much as compress them into a political dilemma: France needed unity, but unity was easiest to construct by treating collaboration as marginal, exceptional, or external to "France." That tension between the demand for cohesion and the reality of implication underlies the postwar decades and helps explain why the occupation could be everywhere in lived experience yet so hard to name directly in public memory.

Yet, this chronology, with its ignorance of collaboration, risks flatting the ways in which memory operates. It assumes that remembrance must be official, explicit, or institutional in order to exist at all. In doing so, it overlooks the quieter and more fragmented ways in which the experience of war continued to shape French cultural life in the decades immediately following 1945. Long before historians dismantled the myth of a nation united in resistance, and before widely-publicized trials such as that of Klaus Barbie, Maurice Papon or Paul Touvier forced public confrontation with the past, the war remained present in indirect but persistent ways.[5]

In contrast, I argue that French memory of World War II did not suddenly reemerge in the 1970s, but evolved gradually from the 1950s onward through cultural, artistic, and personal forms of expression. Rather than a period of collective amnesia, the postwar decades were marked by a displacement of memory into spaces that lay outside official political discourse. Cinema, music, and personal testimony offered alternative modes of engagement with trauma, guilt, and responsibility at a time when

4 Vichy's collaboration included anti-Jewish statutes and active participation in persecution and deportations, alongside wider political repression.

5 On the symbolic and political significance of late twentieth-century war crimes trials in France, see Richard J. Golsan, *Vichy's Afterlife: History and Counterhistory in Postwar France* (Lincoln: University of Nebraska Press, 2000), 121–165; and Henry Rousso, "Justice, Memory, and the Politics of the Past," *French Politics, Culture & Society* 18, no. 1 (2000): 19–32. Klaus Barbie, a former Gestapo official in Lyon, was tried in 1987 for crimes against humanity; Paul Touvier and Maurice Papon were later prosecuted for collaboration-related crimes.

direct confrontation with collaboration remained socially and politically fraught. These cultural forms did not merely reflect memory but actively shaped how the war could be remembered, felt, and discussed.[6] By examining a wide range of sources including Robert Paxton's historical intervention on *Vichy France*, Lucie Aubrac's memoir *Outwitting the Gestapo*, the emergence of the French New Wave in cinema, and the work of singer Barbara, this paper traces the shifting terrain of postwar memory across several decades.[7] Together, these documents reveal that memory was neither dormant nor static. Instead, it moved between unofficial and official registers, from affective and artistic expression to institutionalized historical reckoning. The transition of the 1970s and 1980s, often treated as a rupture, is better understood as a reconfiguration of memory rather than its origin.

Reframing the history of French war memory in this way complicates the notion of a clean break between silence and speech. It highlights how postwar France navigated the moral and political aftermath of occupation not through immediate confrontation but instead through a prolonged process of negotiation. This approach challenges models of postwar silence followed by rupture, emphasizing instead continuity, displacement, and changing registers of remembrance. Memory, in this sense, was not absent before it became visible, and was present in altered forms, shaped by the constraints and anxieties of a society struggling to reconcile defeat, collaboration, and resistance with a desire for national coherence.

Remembering without Reckoning: Cultural Memory after the Occupation

In the decades immediately after the war, an active, if indirect, engagement with the trauma of defeat, territorial loss, and forced labor, took shape in French society. As Henry Rousso has argued, the postwar period was characterized by a pervasive sense of mourning, shaped by

6 Rousso, *The Vichy Syndrome*, 87–110.

7 Lucie Aubrac, *Outwitting the Gestapo*, trans. Konrad Bieber (University of Nebraska Press, 1993); Paxton's archival work challenged the comforting postwar claim that Vichy had merely shielded France under constraint, arguing instead that the regime often acted with initiative in collaboration and state repression. His work helped shift Vichy from a moral exception in public narrative to a central object of historical and political scrutiny.

both emotional and physical damage inflicted during the occupation.[8] The scale of wartime suffering made total repression of memory impossible. Forced labor policies, including the compulsory labor drafts to Germany, affected over one million French citizens, producing experiences that closely resembled those of neighboring countries such as Belgium and the Netherlands. The presence of a Vichy government did not shield France from comparable levels of hardship, undermining later claims that collaboration mitigated the consequences of occupation. Yet in the 1950s, these experiences were rarely addressed through official commemoration or public debate but rather, memory circulated through affective channels, shaping cultural production and everyday discourse in ways that avoided direct challenges or political confrontation to dominant narratives of unity and resistance.[9] Cultural production is treated here not as an illustration of memory, but as one of its primary vehicles, shaping how the war could be processed in the absence of political reckoning.

French cinema of the 1950s and 1960s provides a clear example of this displacement. The emergence of the New Wave marked a stylistic and thematic break from earlier modes of filmmaking, rejecting linear narratives, heroic archetypes, and moral clarity. Directors such as Jean-Luc Godard, François Truffaut, and Alain Resnais did not set out to document the war in a conventional historical sense.[10] Rather, their films explored fragmentation, alienation, and unresolved trauma, mirroring the psychological aftermath of occupation.[11] Works such as *Hiroshima mon amour* and *Last Year at Marienbad* resisted narrative closure, forcing audiences to confront memory as unstable and incomplete.[12] In doing so,

8 Rousso, *The Vichy Syndrome*, 23–45

9 Rousso, *The Vichy Syndrome*, 54–60.

10 Many New Wave filmmakers were themselves marked by wartime childhood or adolescence; on generational experience and film form, see Antoine de Baecque, *Camera Historica* (New York: Columbia University Press, 2012).

11 On the relationship between French New Wave aesthetics and postwar trauma, see Susan Hayward, *French National Cinema*, 2nd ed. (Routledge, 2005), 210–225; and Lynn Higgins, *New Novel, New Wave, New Politics* (University of Nebraska Press, 1996), esp. chap. 3.

12 Emma Wilson, *Alain Resnais* (Manchester University Press, 2006); Kristin Ross, *Fast Cars, Clean Bodies: Decolonization and the Reordering of French Culture* (MIT Press, 1995); On *Hiroshima mon amour* as a meditation on French wartime memory rather than solely on Hiroshima, see Emma Wilson, *Memory and Survival* (Oxford: Oxford University Press, 2006).

these films implicitly challenged simplistic representations of wartime experience, although they did not directly name collaboration or culpability. Their formal experimentation reframed memory as a problem of perception and narration, rather than of objective testimony or judgment. In this sense, New Wave cinema did not so much express memory as destabilize the very conditions under which the past could be made intelligible.[13]

The New Wave's engagement with memory lay in its refusal of coherence rather than overt political critique. By destabilizing time, identity, and narrative authority, these films reflected a society grappling with the lingering presence of war while lacking a framework for public reckoning. Memory was not absent from these works. It was embedded in form rather than content, expressed through disorientation and repetition rather than historical exposition. This approach allowed filmmakers to address the war's emotional residue while remaining within the bounds of what was socially permissible in the postwar decades.

A similar dynamic is present in the music of popular singer-songwriter Barbara, whose work offered one of the earliest and most personal engagements with Jewish wartime experience in France. Barbara lived in hiding during the occupation, and thus carried the memory of persecution into her artistic life. Her songs addressed loss, fear, and forgiveness with an intimacy that contrasted sharply with the public silence surrounding Jewish suffering in the immediate postwar years. Unlike official commemorations, which largely avoided the specificity of deportation and collaboration, Barbara's music foregrounded individual experience and emotional truth.[14] In doing so, her work created a space in which Jewish wartime memory could circulate publicly without yet demanding political or juridical confrontation. This form of remembrance made trauma audible while leaving questions of responsibility unresolved, exemplifying the logic of displacement that characterized postwar memory more broadly. Barbara's significance lies not only in what she sang about but in how her work was received. Her popularity demonstrated a public

13 Kristin Ross, Fast Cars, *Clean Bodies: Decolonization and the Reordering of French Culture* (MIT Press, 1995), 20–35; More broadly see Annette Insdorf, *Indelible Shadows: Film and the Holocaust* (Cambridge University Press, 2003).

14 Barbara, *Il était un piano noir… Mémoires interrompues* (Fayard, 1998), 85–120; Susan Rubin Suleiman, "The 1.5 Generation: Thinking about Child Survivors and the Holocaust," *American Imago 59*, no. 3 (2002): 277–295.

readiness to engage with personal narratives of war, even as political discourse remained constrained.[15] Songs such as *Göttingen* articulated a vision of reconciliation that did not deny suffering but sought to transform it, and this emphasis on forgiveness reflected a broader desire to move forward without reopening unresolved questions of responsibility.[16] Memory, in this context, functioned as a means of emotional processing rather than historical adjudication.

Together, New Wave cinema and Barbara's music demonstrate that the 1950s and 1960s were not decades of forgetting, but of mediated remembrance. Cultural expression became a space where memory could be acknowledged without destabilizing national myths. These forms did not offer comprehensive accounts of collaboration or resistance, but they kept the war present in French consciousness by shaping how the past could be felt and how it could be narrated. In doing so, they laid the groundwork for later, more explicit engagements with the past. They did so not by resolving the meaning of the occupation, but by normalizing uncertainty as a condition of remembrance. Understanding these cultural forms as sites of memory challenges the idea that French war memory was dormant until the interventions of historians and courts in the 1970s.[17] What changed in that later period was not the existence of memory, but its register. The shift from cultural to institutional memory marked a transition from indirect expression to explicit confrontation and the necessary conditions for that transition were already in place, shaped by decades of artistic engagement with trauma and loss.

Authorizing Accountability: Paxton and the Politics of Vichy Memory

By the late 1960s, the forms through which French society engaged with the memory of the war began to change. The personal and indirect

15 Dominique Veillon, "Music, Memory, and Identity in Postwar France," *French Historical Studies 27*, no. 2 (2004): 345–370.

16 Barbara's song *Göttingen* (1964) is often situated within the broader context of postwar Franco-German reconciliation, particularly following the Élysée Treaty of 1963. On cultural rapprochement and memory in Franco-German relations, see Ulrich Pfeil, *Die andere deutsch-französische Beziehung: Die DDR und Frankreich 1949–1990* (Böhlau, 2004), 45–67; and Frank Stern, "Reconciliation, Memory, and Popular Culture in Postwar Europe," *German History* 18, no. 2 (2000): 205–223.

17 Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (= Stanford University Press, 2009).

expressions that had dominated the postwar decades increasingly gave way to demands for historical clarification and political accountability. This shift reflected broader political and generational transformations rather than arising spontaneously. It was driven by generational change, the decline of Gaullism, and the growing visibility of Jewish memory within public discourse.[18] Against this backdrop, American political scientist and historian Robert Paxton's intervention marked a decisive transformation in how Vichy France could be understood and remembered. His interpretation recontextualized not only systemic narratives but personal accounts of resistance.

Paxton's *Vichy France: Old Guard and New Order*, published in 1972, challenged the foundational assumptions that had structured postwar narratives of occupation.[19] For decades, the dominant interpretation portrayed Vichy as a reluctant collaborator, imposed upon France by German force, and acting, however imperfectly, as a shield against greater harm. This view carved out a moral distinction between a resistant nation and a compromised state, preserving a sense of collective innocence. Paxton dismantled this framework by demonstrating that Vichy was not merely reactive but ideologically committed to its own authoritarian project.[20] Collaboration, in his account, was not a tragic necessity but an active choice rooted in domestic political aspirations. Unlike cultural expressions of the 1950s and 1960s, which engaged the war through ambiguity and emotion, Paxton's study demanded direct confrontation with responsibility. By exposing the administrative initiative of the Vichy regime and its alignment with Nazi goals, he reframed collaboration as a French

18"Gaullism" refers to the postwar political culture associated with Charles de Gaulle that cast national legitimacy in terms of a restored Republic and a unifying narrative of resistance. In memory terms, it helped stabilize the idea that France had fundamentally resisted, while treating Vichy as an aberration rather than a regime rooted in French institutions; From the late 1960s onward, Jewish experiences of persecution and deportation became more publicly legible in France through survivor testimony, activism, and cultural and political debate. This visibility pushed discussion beyond a generalized story of national suffering toward questions of French responsibility and complicity.

19 Robert O. Paxton, *Vichy France: Old Guard and New Order*, 1940–1944 (Knopf, 1972).

20 Paxton's work initially met with resistance in France, particularly from historians invested in Gaullist narratives; see Richard J. Evans, *In Defence of History* (Granta, 1997), chap. 7.

problem rather than a German imposition. In doing so, he stripped away the moral insulation that had long protected the national narrative.

This historiographical intervention coincided with broader changes in French society. A new generation, less personally marked by the war, approached the past with fewer emotional constraints. At the same time, the political authority of Gaullism weakened, loosening the grip of a narrative that had emphasized unity and resistance as the foundations of postwar legitimacy. These shifts created space for historical inquiry that had previously been perceived as destabilizing or disloyal. Paxton's work did not initiate this transformation, but it crystallized it.

To this willing public, the impact of Vichy France extended beyond academic circles. By challenging the myth of widespread resistance, Paxton forced a reconsideration of how memory had been constructed and maintained in the decades after the war. [21] His work exposed the extent to which silence had functioned as a form of protection, allowing French society to mourn without assigning blame. In this sense, Paxton did not so much awaken memory as alter its direction, redirecting attention from suffering alone to questions of agency and complicity.[22] The reconfiguration of memory initiated by Paxton's work also reshaped the terrain on which personal narratives could be received. Earlier memoirs and testimonies had often been subsumed into a collective story of resistance, stripped of their capacity to disrupt. In contrast, the post Paxton landscape allowed for accounts that acknowledged moral ambiguity and internal conflict. Memory became increasingly fragmented, contested, and plural, reflecting the breakdown of a single, unifying narrative.

This shift was reinforced by subsequent legal and political reckonings in the late twentieth century. War crimes trials, most notably that of Klaus Barbie, brought collaboration and persecution into the public sphere with unprecedented force.[23] These trials did more than punish individual perpetrators—they legitimized a form of memory grounded in evidence, testimony, and accountability. The passage of time made such proceedings

21 Farmer, *Martyred Village*, 1–20; Richard J. Golsan, *Vichy's Afterlife: History and Counterhistory in Postwar France* (University of Nebraska Press, 2000).

22 Rousso, *The Vichy Syndrome*, 130–150; Pierre Laborie, *L'Opinion française sous Vichy* (Seuil, 1990).

23 Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (Yale University Press, 2001), 97–120.

possible, both legally and socially, which allowed for a confrontation that had long been deferred.

Seen in this light, the transition of the 1970s and 1980s represents not the birth of French war memory but its institutionalization. The cultural expressions of earlier decades had kept the war present through emotion and form. Paxton's historiography transformed that presence into a demand for explanation and judgment. Together, these phases reveal memory as a dynamic process, shaped by shifting political conditions and modes of expression rather than by a simple progression from silence to speech.

From Experience to Evidence: Testimony and the Politics of Memory

Within this transformed memory regime, personal accounts such as Lucie Aubrac's *Outwitting the Gestapo* acquired new significance.[24] Aubrac's memoir recounts her involvement in the French Resistance, including the arrest and rescue of her husband, Raymond Aubrac. On the surface, the narrative appears to align with familiar stories of courage and defiance, yet its reception and significance cannot be understood without reference to the broader evolution of memory that preceded it. Earlier decades had privileged collective narratives that emphasized unity and heroism, often marginalizing individual experience, particularly when it complicated dominant myths. By the time Aubrac published her memoir, however, the moral economy of memory had changed, with readers and institutions now prepared to engage with testimony that was personal, subjective, and emotionally charged.

What distinguished Aubrac's account was not only its content, but its form. Her narrative combined intimacy with structure, offering a coherent story that could be integrated into an emerging framework of official remembrance. Unlike the cultural expressions of the 1950s and 1960s, which relied on ambiguity and indirect engagement, Aubrac's memoir named events, actors, and choices explicitly. It did so without abandoning the emotional register that had characterized earlier forms of memory. In this way, the memoir bridged the gap between affective remembrance and institutional history. Gender also played a crucial role in shaping both the narrative and its reception. Resistance had long been portrayed as a

24 Annette Wieviorka, *The Era of the Witness*, trans. Jared Stark (Cornell University Press, 2006).

predominantly male domain, framed through images of armed struggle and political leadership. Aubrac's account challenged this paradigm by foregrounding her role as a woman, teacher, and mother who operated within and against the constraints imposed on her. Her story expanded the boundaries of what resistance could look like, emphasizing networks, improvisation, and emotional labor alongside acts of defiance.[25] In doing so, it destabilized gendered assumptions about political agency during the occupation.

The prominence of Aubrac's memoir also reflected broader shifts in French society. The rise of feminist historiography and increased attention to marginalized voices created an environment in which women's experiences could be taken seriously as historical evidence. Aubrac's testimony was thus both enabled by and contributed to this transformation; her narrative did not simply recover a forgotten past, but helped redefine the criteria by which memory was evaluated and validated. Still, Aubrac's account was not uncontroversial. *Outwitting the Gestapo* was scrutinized for factual accuracy, political affiliation, and narrative coherence. In the new memory regime, personal memory was not only confession but was expected to conform to standards of historical credibility.[26] Testimony was no longer protected by silence or reverence. It was subject to interrogation, comparison, and critique. As memory deinstitutionalized, it also changed from a site of consensus to one of contestation.[27]

In this sense, *Outwitting the Gestapo* marks the consolidation of a new phase in French war memory, one in which individual voices were integrated into a broader historical framework shaped by scholarship, trials, and public debate. The memoir did not initiate this phase, but it exemplified its possibilities. Through Aubrac's narrative, memory became a space where personal experience, gendered identity, and national history intersected openly. Taken together, the emergence of Aubrac's testimony demonstrates how French memory of World War II evolved from displacement to confrontation and finally to integration. Cultural expressions in the postwar

25 Margaret Collins Weitz, *Sisters in the Resistance* (New York: Wiley, 1995).

26 Richard J. Golsan, "The Trials of Memory," *Yale French Studies* 85 (1994): 98–114.

27 Rousso, *The Vichy Syndrome*, 240–250; Sarah Fishman, "Myth and Memory: Lucie Aubrac," *French Historical Studies 23*, no. 1 (2000): 113–140.

decades kept the past alive through indirect means. Historiographical interventions reframed that past in terms of responsibility and agency. Personal memoirs such as Aubrac's brought these developments into lived experience, allowing memory to be both intimate and public. This layered evolution challenges linear models of remembrance and underscores the importance of understanding memory as a dynamic process shaped by shifting social and political conditions.

Conclusion

The history of French memory of World War II cannot be reduced to a sudden awakening in the 1970s. Such a narrative obscures the complex ways in which remembrance persisted and evolved in the decades immediately following the war. Far from existing in a state of collective amnesia, postwar France engaged with the legacy of occupation, collaboration, and resistance through forms that reflected the political and social constraints of the changing times.

In the 1950s and 1960s, cultural expression provided a crucial space for this adaptation. Cinema and music allowed the emotional weight of the war to remain present without demanding explicit confrontation with responsibility or guilt. These forms did not resolve the contradictions of the past, but they sustained them, keeping trauma, loss, and moral uncertainty within public consciousness. By operating indirectly, cultural memory preserved the conditions necessary for later reckoning. The historiographical interventions of the 1970s transformed this landscape. Works such as Robert Paxton's study of Vichy France altered the terms under which memory could be articulated and contested. Historical scholarship reframed collaboration as a matter of agency and choice, forcing a reexamination of narratives that had long insulated the nation from moral accountability. It inherited the undercurrents of earlier cultural memory and brought them into sharp relief in explicit conversation. In the 1980s, personal testimony acquired a new authority within the evolving landscape of French war memory. Memoirs such as Lucie Aubrac's *Outwitting the Gestapo* entered a public sphere increasingly shaped by courts, historians, and archival debate, in which individual experience was no longer insulated from verification or contestation. Aubrac's account illustrated how memory could function

at once as lived experience and as historical claim, circulating within institutions that both amplified and disciplined testimony. Her prominence also reflects a broader reconfiguration of the memory field, in which women's roles in the resistance became more visible and more legible within accepted frameworks of historical representation.

Taken together, these phases reveal French war memory as a dynamic process rather than a linear progression from silence to speech. Memory moved from cultural expression to historical analysis to personal testimony, as changing political and institutional conditions reshaped what forms of remembrance could claim authority. Understanding this evolution challenges rigid periodizations and highlights the importance of examining how societies negotiate the past under changing political and social conditions. This evolution was uneven and contested, and cultural memory did not reach all segments of French society with the same intensity or immediacy.[28] By tracing these transformations, this paper argues for a more nuanced understanding of postwar remembrance in France. Memory was not absent in the decades following 1945. It was present in altered forms, shaped by constraint, creativity, and gradual confrontation. Recognizing this complexity not only reshapes our understanding of French history but also offers a broader framework for thinking about how societies remember, defer, and ultimately reckon with traumatic pasts.

28 On regional and social variation in postwar remembrance, see Sarah Farmer, *Martyred Village* (Berkeley: University of California Press, 1999).

Creating Injustice: Hugo Princz, Michael Kolanik, and the Failures of Reparations

Julia Lasiota

In 1955, West Germany denied Hugo Princz compensation despite surviving the Holocaust because he was born as an American citizen. In 1994, the United States denied Michael Kolanik Jr. a burial flag for his father because the Nazis had classified Kolanik Sr. as a Pole. Both Princz and Kolanik had survived years in the Nazi forced labor camps; both men happened to be American citizens at birth. Each man assembled extensive documentation supporting his respective claim of the crimes they suffered at the hands of the Nazis, yet neither of the men fit the jurisdictional categories established by the post-World War II reparations agreements.

Despite the decades between their legal cases, Princz's and Kolanik's roads of rejections ran parallel. Princz, born in New Jersey, lived in Czechoslovakia when the Nazis captured his family. The SS confiscated the family's American passports before deporting them to concentration camps in the occupied Poland, where most of Princz's family perished.[1] Germany's postwar compensation law deemed him ineligible because at the time of his deportation he was an American citizen rather than a permanent resident of the German territories.[2] Kolanik, born in Pittsburgh, had moved to Poland as a child. In 1939, the Nazis designated him a "stateless Pole" and forced him into labor camps. Upon returning to the United States after the war, Kolanik—was denied veteran or civilian internee status because he had been incarcerated in Nazi camps as a U.S. citizen, which was not covered

1 Hugo Princz Oral History Interview (1990), United States Holocaust Memorial Museum, RG-50.030*0061, https://collections.ushmm.org/search/catalog/irn504774.

2 Richard Bernstein, "Hugo Princz, 78, U.S. Winner of Holocaust Settlement, Dies," *New York Times*, July 31, 2001, https://www.nytimes.com/2001/07/31/nyregion/hugo-princz-78-us-winner-of-holocaust-settlement-dies.html.

by the War Claims Act of 1948.[3] Kolanik's citizenship, much like Princz's, became grounds for exclusion rather than protection under the existing war reparations frameworks. The result revealed a troubling paradox: systems designed to restore justice itself created new injustices.

Princz and Kolanik both fell through the jurisdictional cracks, each case devoid of an accessible legal recourse towards obtaining the reparations despite having proven the status of victims at the hands of the Nazis. These cases, born from World War II but unceasing until the 1990s, do not represent a historical nor legal anomaly. They reflect an inherent and continued structural flaw of the post-conflict reparations agreements. As new reparations agreements are designed looking to historical models for inspiration, understanding past failures to handle edge-cases of reparations is increasingly salient. The legal struggles of Princz and Kolanik show that, despite the justice-oriented intentions of reparations agreement, jurisdictional idiosyncrasies inherent in conflicts threaten to leave individuals out of codified legal routes. Thus arises the paradoxical injustice of justice-creating frameworks.

While the post-World War II reparations framework was designed to compensate victims of Nazi persecution, it operated through distinct national systems with varying criteria for eligibility. In the United States, Congress passed the War Claims Act of 1948, which paid prisoners of war held by either Germany or Japan at the rate of $1 to $2.50 per day of imprisonment. Civilian internees of Japan received $60 per month of internment and were also eligible for additional compensation for injury or death. The act did not, however authorize compensation for civilian internees held by Germany.[4]

West Germany established its own compensation system through the Federal Indemnification Law, which required claimants to remain German nationals or residents of Reich territory as of January 1, 1947. This requirement effectively excluded foreign nationals who had been persecuted on German-controlled territory but had no desire to remain

3 Michael Kolanik Papers, Folio Box, Folder 1, Michael's Kolanik Jr.'s Letter to People Weekly, May 21, 1995, Hoover Institution Library & Archives, Stanford University.

4 U.S. Congression Research Service, "U.S. Prisoners of War and Civilian American Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan," Report RL30606, December 17, 2002.

in postwar Germany.[5] When compensation was granted, amounts varied widely depending on the nature of the claim and the duration of suffering.

In Princz's case, West Germany based its rejection on his American citizenship at time of persecution, namely at the time of when he had to forcibly work for the German company I.G. Farben.[6] The West German framing failed to account that Czechoslovakia, where Princz legally resided, was forcibly annexed into the German territories during this time. It also overlooked how the SS had confiscated Princz's family's American documents and deported them to concentration camps rather than having them designated for an exchange in the prisoner swap with the United States.

Kolanik, for his part, faced similar exclusion from reparations when the US handled his case. Having returned to the US in 1945, Kolanik sought to be recognized as a POW but was denied the title because the Nazis had incarcerated him "as a stateless Pole," according to his *Arbeitskarte*, or labor card.[7] The U.S. government validated this Nazi designation as authoritative grounds for not recognizing the case under American jurisdiction. They concluded that because Kolanik was not held captive as an American, nothing could be done.[8] In a sense, Princz and Kolanik encountered the same problem but in polar opposite ways; Germany claimed Princz was too American, and the US treated Kolanik as too un-American. Their citizenship rendered them legally illegible to the respective legal systems where Princz and Kolanik sought reparations.

The procedural barriers of seeking war reparations only deepened the legal exclusion of Princz and Kolanik. Neither of the men had options in furthering their search for justice through appellate processes nor alternate jurisdictions. Princz's lawsuit in the U.S. courts against West Germany failed to overcome the 1976 Foreign Sovereign Immunities Act

5 Delissa A. Ridgeway, "Justice for the 'Forgotten Victims': U.S. Survivors of the Holocaust," *Journal of Law and Policy* 9, no. 3: 711-767, 769.

6 Hugo Princz Oral History Interview (1990), United States Holocaust Memorial Museum, RG-50.030*0061, https://collections.ushmm.org/search/catalog/irn504774.

7 Arbeitskarte, Michael Kolanik Papers, Folio Box, Folder 1, Folder no. or name, Hoover Institution Library & Archives, Stanford University.

8 Michael's Kolanik Jr.'s Letter to People Weekly, May 21st, 1995, Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

(FSIA), which determined that the person's injuries suffered overseas were insufficiently direct to override sovereign immunity of crimes inflicted within the German territories.[9] Decades later, Kolanik Jr.'s attempt to petition his father's case with the International Court of Justice was swiftly rejected with remarkably similar logic: "Only states may be parties in cases before the Court," the ICJ concluded.[10] At the same time, Germany asserted that the deadlines for Kolanik to seek reparations under any German-American agreements had expired.[11] Kolanik Jr. was also informed that seeking reparations under the German-Polish agreements would have also been futile: the laws required the claimant be "alive" and "in financial difficulty," thus denying Kolanik Sr. posthumous justice.[12]

Each jurisdictional avenue for Princz and Kolanik was a dead end. The illusory abundance of jurisdictions, bilateral agreements, and international courts created in fact not multiple avenues for justice but various mechanisms for refusal. Collectively, their cases reveal that the system of post-World War II reparations was ill-fitted to accommodate the victims whose circumstances crossed pre-set conditions and boundaries of the nation state.

Kolanik's case exemplified a painful trajectory; even lowering his sights from restitution to simple recognition failed to bring any semblance of justice. At the onset of the case, in 1992, following his father's death, Kolanik Jr. initially sought veteran status and burial benefits for Kolanik Sr.[13] The surviving Kolanik assembled the necessary documentation to establish that his late father had been in fact an American POW, providing Kolanik Sr.'s birth certificate, baptismal records, and the *Arbeitskarte*.

9 Ridgeway, "Justice for the 'Forgotten Victims,'" 770-71.

10 Bernard Noble letter on behalf of the ICJ to Michael Kolanik Jr., Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

11 Thomas H. Gerth's letter to Michael Kolanik Jr., January 14, 1993, Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

12 David T. Hooper letter to Michael Kolanik Jr., September 23, 1993, Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

13 Marlene Aig, "Civilian POWs Seek Recognition, Aid: History: An Estimated 5,000 Americans Survived Prison Camps in World War II," *Los Angeles Times*, January 29, 1995.

Kolanik Jr. also engaged members of the Congress in his legal struggle: Representative Nita M. Lowey advocated across multiple offices both within and out of country; representative Gene Green introduced Bill HR#4118 for American civilian internees. But as denials from different stakeholders accumulated, Kolanik Jr.'s requests became less material, eventually turning into a mere ask for recognition. By November 1994, Kolanik Jr. wrote: "While no actual benefits may be available, I merely ask for a document to properly term my late father a civilian internee."[14] Even this proved too much of an ask under the existing reparations systems, and the Veterans Affairs response cited existing laws preventing such documentation.[15] Representative Lowey noted that "as other avenues have been exhausted, Mr. Kolanik's only option is to have the President [Clinton] personally review his request."[16] The presidential appeal to Clinton sat in backlog for two years and ultimately became another denial for Kolanik to add to the dossier. This progression of reduced expectations, from reparations to recognition, revealed the ineffectiveness of an inflexible reparations system, too entrenched in standards to achieve its own goals. By the time Kolanik Jr. asked only for a piece of paper, he'd already accepted the system's verdict that his father's suffering was jurisdictionally unrecognizable, and he thus would have to be treated as an "exception." Kolanik Jr. was forced to internalize the logic of the exclusion imposed by the framework itself.

Hugo Princz's forty-year struggle for reparations followed a similar arc of legal rejections, though Princz ultimately saw a favorable outcome, unlike Kolanik. The crucial factor in achieving this success was not employed legal argumentation but rather political intervention, ironically from the very figure who had denied Kolanik the same privilege. In 1995, President Clinton personally raised the case with Chancellor Helmut Kohl. Following the conversation, Germany agreed to pay out $2.1 million

14 Michael Kolanik's Letter to Wendy R. Sherman, November 9, 1994, Michael Kolanik Papers, Folio Box, Folder 1, Folder no. or name, Hoover Institution Library & Archives, Stanford University.

15 Vincent L. Barile letter to Michael Kolanik Jr, October 18, 1994, Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

16 Nita M. Lowey letter to Marsha Scott, March 14, 1994, Michael Kolanik Papers, Folio Box, Folder 1, Hoover Institution Library & Archives, Stanford University.

divided among the twelve survivors, including Princz.[17] After four decades of meandering through the legal avenues, Princz received some settlement. Unlike Kolanik's case, which deemed him too exceptional to aid, Princz received reparations entirely because heads of state agreed to pursue his exceptional case.

Although the outcomes of Princz and Kolanik Jr.'s cases are vastly different, both men secured political advocacy from dedicated congressional representatives to navigate their fate. The difference in results raises questions of the role of personifying struggle in securing reparations. Princz could personally lobby his case across decades, whereas Kolanik Sr. had died in 1992, leaving his son to fight posthumously. Perhaps ensuring a successful outcome in such edge cases is only possible for the living victims, who can testify, generate media attention, and act as the literal face of their own suffering.

The possible asymmetries explaining the divergent outcomes between Princz and Kolanik do not end there. Princz's case was also more politically useful to the United States. His failed lawsuit created diplomatic tension with Germany, and pushing for the settlement in favor of Americans like Princz allowed Clinton to demonstrate a commitment to Holocaust remembrance without establishing legal precedent within the national legislation. It was an exceptional intervention that ultimately did not produce legislation or open the door to a slippery slope of additional reparations claims through executive order, as Kolanik's request threatened to.

After all, Kolanik's case risked resurfacing uncomfortable truths: the 1948 War Claims Act compensated Japanese-held civilians but did not compensate German-held ones, revealing the double standard within the American reparations' framework.[18] Granting even a burial flag risked acknowledging this failure. Whereas the presidential intervention on Princz's behalf positioned the United States as a "righteous" advocate pressuring Germany to confront its Nazi past, an intervention on Kolanik's behalf would require admitting American culpability in blocking access to justice.

17 Bernstein, "Hugo Princz, 78, U.S. Winner of Holocaust Settlement, Dies," *New York Times*, July 31, 2001.

18 "U.S. Prisoners of War and Civilian American Citizens Captured and Interned by Japan in World War II," U.S. Congressional Research Service, 2002.

If reparations truly do tend to respond to political calculations, not moral imperatives, Princz's certainly came as a time of heightened public interest. Indeed, Clinton's intervention came when Holocaust remembrance surged: the United States Holocaust Memorial Museum opened in 1993, and international focus on Nazi assets intensified at that time. Advocating for Princz fit this momentum. Hence, even when the reparations system worked, it only worked selectively. Princz's settlement was only possible thanks to extraordinary political pressure unrelated to the strength of the claim itself. His victory does not prove that reparations systems can accommodate edge cases, only that they can become flexible with political pressure.

The urgent question remains whether these structural flaws will persist in future reparations settlements. All conflicts produce edge cases that frameworks cannot codify *a priori*. Consider Russia's systematic issuance of passports to Ukrainian citizens in occupied Donbas since April 2019, claiming humanitarian motives to facilitate mobility for those unable to access Ukrainian documentation.[19] Should a settlement leave Russia in *de jure* control of these territories, residents holding Russian documents could face the same paradox. Will those forcibly conscripted, whose property was seized, whose children were deported, be able to claim reparations if the Russian occupation manipulated their legal status? Just as Nazis confiscated Princz's passport and Kolanik's childhood migration rendered his birth on American soil irrelevant, future victims could fall through Ukrainian-Russian jurisdictional cracks. Existing mechanisms continue to assume victims will fit neat jurisdictional categories, precisely what the cases of Princz and Kolanik disprove. The fundamental question that emerges from the cases of Princz and Kolanik in considering the future of reparations laws is simply: if reparations systems systematically exclude victims whose legal status was disrupted by the very harms for which reparations are owed, do they serve justice? Or do they perform justice while amplifying the state power?

The current system privileges collective state interests over individual harm. Each barrier—FSIA, ICJ restrictions, residency requirements—

19 Fabian Burkhardt, "Russia's 'Passportisation' of the Bonbad: The Mass Naturalisation of Ukrainians Is More Than a Foreign Policy Tool," *SWP Comment* 2020/C 41, August 3, 2020, 1, https://doi.org/10.18449/2020C41.

serves legitimate state interests. However, collectively, they make justice contingent on bureaucratic categories rather than actual suffering. As a result, frameworks designed to create justice can themselves indeed create injustice. The systems that are supposedly designed to compensate victims produce new categories of exclusion, and individuals, like Princz and Kolanik, end up legally invisible despite documented harm. The architecture of reparations frameworks post-World War II reflect the foundational emphasis in international law principles which privilege sovereignty and bilateral agreements over individual human claims. Unless reparations systems evolve to center victims rather than states, many more edge cases will continue to fight in futility. Future victims, whose exclusions are already foreseeable based on the precedents of international law, will continue prolonged legal struggles for recognition. The jurisdictional cracks that swallowed Princz and Kolanik remain open, waiting for the next generation whose suffering fails to fit the categories that the states have built—and effectively limit their own liability.

The People's Bench: Representative Juries in the Early American Republic

Eli Ward Toney

On July 11, 1789, while living in Paris as the Minister to France, Thomas Jefferson wrote a letter to Thomas Paine. Reflecting on the early days of the French Revolution, he proposed that trial by jury was "the only anchor, ever yet imagined by man, by which a government can be held to the principles of it's [sic] constitution."[1] This pillar of accountability was indispensable for representative government. Of course, Jefferson did not invent the trial by jury, nor was he the first to observe its importance. Still, he—and Americans at large—afforded the jury trial a special place in the pantheon of fundamental rights.

Indeed, over the course of their history, Americans have envisioned the jury as the bulwark of due process. Yet despite its storied past, the jury has remained controversial. Even in the Revolutionary Era, it had its doubters, and in the twentieth century it received much skepticism from legal scholars and judges.[2] But in the decades following the American Revolution, juries' role extended far beyond procedural fairness. They were not merely instruments of due process but were also active agents of popular sovereignty—imbued with the power to shape the law itself.

This evolution was not accidental. The jury trial was embedded in the centuries-old Anglo-American legal tradition, but it took on new ideological significance in the fledgling American republic. While colonists had long viewed trial by jury as a fundamental safeguard against arbitrary rule, in the wake of independence that principle transformed into something

1 "From Thomas Jefferson to Thomas Paine, 11 July 1789," Founders Online, National Archives, https://founders.archives.gov/documents/Jefferson/01-15-02-0259. [Original source: The Papers of Thomas Jefferson, vol. 15, 27 March 1789–30 November 1789, ed. Julian P. Boyd (Princeton University Press, 1958), pp. 266–270.]

2 William Guinther, *The Jury in America* (Facts on File, 1988), xiii–xv. Guinther notes that Hamilton believed juries could understand only the simplest of arguments and points. In the 20th century, Guinther observes that Chief Justice Earl Warren, among others, was long skeptical of juries' capabilities.

more expansive: an assertion that the people, rather than the government, should have the final say over law and justice.

This post-ratification transformation, where juries changed from a representative check on the judiciary to a democratic right to find and interpret law, was a radical departure. Before ratification, the jury was understood as an independent, local, representative shield against abuse by judges and prosecutors. But the post-ratification controversies of the 1790s pushed that traditional logic to new heights by treating juries as democratically grounded interpreters of law whose selection and law-finding authority could determine whether popular sovereignty would meaningfully penetrate the judicial branch. This paper begins with an explication of early Americans' thoughts about juries as a right inherited from the British. Then, it explores the dramatic focus on juries as a defensive form of popular representation in the United States and the accompanying debates. Finally, it shows the new extreme that Republicans took the logic of representative juries to in the post-ratification period.

"[T]he ancient trial by jury"[3]: The Roots of the American Jury Right

Early Americans did not invent the right to a jury trial. Rather, it was a right inherited from Britain to which Americans believed they were entitled as Englishmen and English subjects. The right to a jury trial first appeared in 1215, when the barons of England forced King Henry to issue the Magna Carta. The document declared in part that "No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in anyway destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers."[4] Thenceforth, trial by jury was the law of England and the right of free Englishmen. Still, the Magna Carta merely outlined that a jury trial was a right; it did not settle the precise limits or philosophical foundations of the right.

In the late seventeenth century, a pair of English cases clarified that

3 *Virginia Declaration of Rights*, June 12, 1776, in *The Papers of George Mason*, ed. Robert A. Rutland (University of North Carolina Press, 1970), 1:277–279.

4 *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, edited and with an Introduction by Ellis Sandoz (Liberty Fund, 2008). Appendix: Text and Translation of Magna Carta.

juries should be independent from the judiciary, an idea which Americans too imported. After King Charles II acceded to English throne in 1660, Parliament passed the Conventicle Act of 1664, prohibiting religious gatherings outside the Church of England with five or more people who were not members of the same household.[5] Though the act was aimed at Catholics, prominent London Quaker William Penn was soon prosecuted under it.[6] At his trial, the jurors split on the question of his guilt; the judge, who wished for a guilty verdict, sent them back to reconsider, threatening to withhold "meat, drink, fire, and tobacco" until they rendered the desired decision.[7] Still, the jury found Penn not guilty. As a result, the juror suspected of championing the non-guilty verdict, Edward Bushell, was imprisoned. When he filed for *habeas corpus*, the judge found in his favor, determining that jurors could not be punished for their decisions absent a showing of bad faith.[8] The decision ushered in what one historian has called the "heroic age of the English jury," which saw the jury emerge as "the principal defense of English liberties."[9] At a result, juries became more than mere fact finders. Rather, they were imbued with a law-finding power as well: juries could rule in whatever manner they wished, regardless of judges' decisions.[10] This "law-finding" power was limited, however. Its justification rested on jurors' right of conscientious acquittal; thus, early juries were not truly "finding" law—they were simply refusing to apply it. Nevertheless, their independence and its according power was a significant development of the jury role as the jury trial spread into England's colonies

5 Charles II, "An Act to Prevent and Suppresse Seditious Conventicles" (1664), in *Statutes of the Realm: Volume 5, 1625–80*, ed. John Raithby (London, 1819), 51620, British History Online, https://www.british-history.ac.uk/statutes-realm/vol5/pp516-520.

6 Guinther, *The Jury in America*, 26.

7 *The People's Antient & Just Liberties Asserted in the Trial of William Penn and William Mead* (1774 [orig. 1670]), quoted in Guinther, *The Jury in America*, 26.

8 Clay S. Conrad, *Jury Nullification: The Evolution of a Doctrine* (Carolina Academic Press, 1998), 24–28.

9 J. S. Cockburn and Thomas A. Green, *Twelve Good Men and True: The Criminal Trial Jury in England, 1200–1800* (Princeton University Press, 2014), 214.

10 See Conrad, *Jury Nullification,* 28–34.

in mainland North America.[11]

A few decades later, in the mid-1700s, the jury trial right stormed to the forefront of American political debates. By this time, trial by jury was a well-established and distinctly fundamental right under British common law, yet it was still frequently transgressed in the colonies.[12] In 1765, the debate came to a head after a set of controversial colonial policies. The highly detested Stamp Act imposed on the American colonies what was effectively a simple tax on paper. But, deeply offensively, violations could be prosecuted in Vice-Admiralty Courts, in which no jury right existed and defendants could be prosecuted anywhere in the British Empire.[13] Americans believed the law violated their fundamental rights; the Stamp Act Congress boldly declared that "trial by jury is the inherent and invaluable right of every British subject in these colonies."[14] When discussing the abominations of the Stamp Act a decade later, John Jay explicitly noted not only the tax but the transgression against the jury right. He noted specifically that the jury right demanded that verdicts be rendered

11 Guinther, *The Jury in America*, 27. William Penn established the jury trial for the colony of Pennsylvania. See also William E. Nelson, "The Lawfinding Power of Colonial American Juries," *Ohio State Law Journal* 71, no. 5 (2010), https://kb.osu.edu/handle/c9af1210-b137-57a6-b1b2-2b576b7c79b1. Nelson discusses the varying powers of juries in different regions of the American colonies, though all the colonies had jury trial rights in some form. Ironically, Nelson notes that Pennsylvania juries, descending from *Bushell's Case*, were relatively weak.

12 Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press, 2004), 10. "Much fundamental law was, in fact, derived from common law—the right to trial by jury being an obvious and outstanding example. Yet not all common law constituted fundamental law, while much of what was recognized as fundamental law was not derived from the common law." The jury trial was thus one of the most important—the most *fundamental*—of all rights recognized under the common law, many of which had not achieved this fundamental status. In this way, it was special.

13 Great Britain. The Stamp Act. New York, A. Lovell & company, 1895. Pdf. https://www.loc.gov/item/06024810/.

14 "Resolutions of the Stamp Act Congress, October 19, 1765," *The Avalon Project: Documents in Law, History, and Diplomacy*, Yale Law School, https://avalon.law.yale.edu/18th_century/resolu65.asp.

by an "honest uninfluenced jury of the vicinage."[15] Indeed, Americans placed particular emphasis on these twin pillars of the jury right—that one might be judged by (1) an impartial council of (2) his local peers. Of course, in the context of mid-eighteenth century America, it should be no surprise that Americans wanted local jurors. After all, at the time of the Stamp Act, even if someone had violated the letter of the law, it was nearly impossible to produce a conviction if a local jury thought the law was unjust.[16] And what self-respecting American colonist would think that the Stamp Act was just? For defendants, local jurors meant no guilty verdicts. By the end of the affair, the jury right had clearly cemented itself as a substantive protection against early Americans' greatest fear: "arbitrary," or at least distant, government power.[17]

Indeed, in the years directly preceding the American Revolution, the jury right was so deeply ingrained in the American psyche as a fundamental right that a republican government without became unfathomable. In a 1774 speech, John Jay claimed that the "inestimable" right "of trial by jury" was one of the "benefits secured to the subject by the English constitution" and was by nature "sacred."[18] The Declaration of Independence went so far as to charge King George III with "the establishment of an absolute Tyranny over these States" for "depriving us in many cases, of the benefits of Trial of Jury."[19] In the Virginia Declaration of Rights, George Mason wrote that "in all capital or criminal prosecutions a man has a right to trial by an impartial jury of twelve men of his vicinage," without which "no man be deprived of his liberty."[20] The right was also not limited to criminal prosecutions, for "in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other

15 "Address to the People of Great Britain, 21 October 1774," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jay/01-01-02-0071. [Original source: *The Selected Papers of John Jay*, vol. 1, *1760–1779*, ed. Elizabeth M. Nuxoll. Charlottesville: University of Virginia Press, 2010, pp. 100–107.]

16 Kramer, *The People Themselves*, 26.

17 Kramer, *The People Themselves*, 26.

18 "Address to the People of Great Britain" (1774), in *Founders Online*.

19 *Declaration of Independence*, July 4, 1776, in *America's Founding Documents*, National Archives, https://www.archives.gov/founding-docs/declaration-transcript.

20 *Virginia Declaration of Rights* in *The Papers of George Mason*.

and ought to be held sacred."[21] In the Mid-Atlantic, too, the jury right was indispensable. In his revisions on the Pennsylvania Declaration of Rights, Benjamin Franklin preserved language guaranteeing "a speedy public Trial by an impartial Jury of the Country," without which "[no] Man be justly deprived of his Liberty."[22] He also maintained the jury right in civil cases, with the Declaration guaranteeing that "in Controversies respecting Property, and in Suits between Man and Man, the Parties have a Right to Trial by Jury, which ought to be held sacred." These documents used extraordinarily similar language, reflecting a common understanding of the right. By the eve of the Constitution Convention, the jury right had become a colonial treasure.

The People's Shield: Juries, Representation, and the Defense of Liberty

Despite its storied British history and well-recognized importance, by the eve of constitutional ratification, theoretical questions about the jury right still remained. For example, what was the precise character of and justification for juries? What made juries special? Why did it matter who comprised them? The jury trial was obviously a fundamental right, but *why* was it fundamental to good government? For a late-eighteenth-century American charged with the opportunity to frame a new government, the answers to these questions were not abstract. They directly shaped the role of juries in a new constitutional order. To understand the arguments that played out, it is necessary to begin with the area of agreement: juries were representative bodies that defended the people's liberties.

To John Adams, representation was the defining feature of juries; it was why they provided a check against arbitrary violations of liberty by the government. In 1771, Adams wrote in his diary that the only thing "to distinguish the Government of Great Britain from that [of] France, or of Spain" was "the Party which the People are … to take, in the passing and

21 *Virginia Declaration of Rights* in *The Papers of George Mason*.

22 "Revisions of the Pennsylvania Declaration of Rights, [between 29 July 1776 and 15 August 1776]," Founders Online, National Archives, https://founders.archives.gov/documents/Franklin/01-22-02-0314. [Original source: The Papers of Benjamin Franklin, vol. 22, March 23, 1775, through October 27, 1776, ed. William B. Willcox (Yale University Press, 1982,) pp. 529–533.]

Execution of Laws."[23] Of course, at the time, the "Execution of Laws" included what modern-day commentators would label both the executive and judicial powers.[24] To translate Adams into twenty-first-century parlance, the fundamental liberty-preserving principle of the British Constitution was its representative character in all three branches of government—legislative, executive, and judicial. Indeed, Adams viewed the "Rights of Juries and of Elections" as twins: just "[a]s the Constitution requires … the popular Branch of the Legislature, should have an absolute Check … upon every Act of the Government, it requires that the common People should have as compleat a Controul, as decisive a Negative, in every Judgment of a Court of Judicature."[25] Juries were crucial because they brought the "Voice of the People" into the judicial process.[26] Indeed, Adams had previously made this point in 1766, when he penned a series of letters which he signed "Clarendon." In one of them, he proposed that "two branches of popular power, voting for members of the house of commons, and tryals [sic] by juries, the one in the legislative and the other in the executive part of the constitution are as essential and fundamental, to the great end of it, the preservation of the subject's liberty."[27] If representation was a coin, legislative representatives were on one face and juries on the other.

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23 John Adams, "Adams' Diary Notes on the Right of Juries: 1771. Feby. 12," in *The Adams Papers, Legal Papers of John Adams*, vol. 1, *Cases 1–30*, ed. L. Kinvin Wroth and Hiller B. Zobel (Harvard University Press, 1965), 228–30, Founders Online, National Archives, https://founders.archives.gov/documents/Adams/05-01-02-0005-0005-0004.

24 John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press, 1988), 144–48. Locke argues that "there should be a power always in being, which should see to the execution of the laws that are made, and remain in force." Before the dramatic rise of judicial review, executing the law would include the right of interpretation. Locke's distinction was indeed not between the executive and judicial powers at all, but rather between the executive and federative powers. Executive power was the right (or duty) of domestic law enforcement, while federative power was essentially the foreign affairs power.

25 "Adams' Diary Notes on the Right of Juries: 1771. Feby. 12.," reprinted in *Founders Online,* National Archives.

26 "Adams' Diary Notes on the Right of Juries: 1771. Feby. 12.," reprinted in *Founders Online,* National Archives.

27 "III. The Earl of Clarendon to William Pym, 27 January 1766," *Founders Online,* National Archives, https://founders.archives.gov/documents/Adams/06-01-02-0063-0004. [Original source: *The Adams Papers*, Papers of John Adams, vol. 1, *September 1755–October 1773*, ed. Robert J. Taylor, (Harvard University Press, 1977), 164–70.]

This conception meshed well with Americans' broader theory of representation. As historian Jack Rakove argued in *Original Meanings*, Americans relied heavily on the idea that representation demanded a mirror of the people.[28] In John Adams's 1776 *Thoughts on Government*, he noted that representation "should be in miniature an exact portrait of the people at large."[29] Similarly, during the Constitutional Convention, James Wilson argued that representation required that "[t]he Legislature ought to be the most exact transcript of the whole Society."[30] Of course, legislatures and juries are different, but Adams's contention that juries were a representative judicial body was widespread. Even Thomas Jefferson, who later became Adams's great political rival and defeated him in the Presidential Election of 1800, agreed with him on the importance of juries. Jefferson labeled them "the firmest bulwarks of English liberty."[31] Indeed, they were so firm and so crucial to the project of liberty that he wrote, "[w]ere I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislative. The execution of the laws is more important than the making them."[32] It is safe to say that early Americans believed the representative principles underlying both legislatures and juries were far more similar than modern observers might think.

In accordance with this branch of thought, Americans widely recognized juries as representative political bodies in the Constitution's ratification debates. In *Federal Farmer 2*, a pseudonymous Anti-Federalist recognized legislative representation and juries as twin rights:

The essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the

28 Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (Alfred A. Knopf, 1996), 203.

29 John Adams, *Thoughts on Government*, in *American Political Writings*, I, 403. Quoted in Rakove, *Original Meanings*, (Alfred A. Knopf, 1996), 203.

30 James Madison, *Notes of Debates in the Federal Convention of 1787*, vol. 1, edited by Max Farrand (Yale University Press, 1911), 132–33.

31 "From Thomas Jefferson to the Abbé Arnoux, 19 July 1789," Founders Online, National Archives, https://founders.archives.gov/documents/Jefferson/01-15-02-0275. [Original source: The Papers of Thomas Jefferson, vol. 15, 27 March 1789–30 November 1789, ed. Julian P. Boyd, (Princeton University Press, 1958), 282–283.]

32 "From Thomas Jefferson to the Abbé Arnoux, 19 July 1789," reprinted in *Founders Online*, National Archives.

vicinage in the administration of justice—a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled.[33] Both were necessary to good government, for both ensured that it was the people at large in control.

Of course, juries were not representative merely for representation's sake: Americans believed that representation was crucial to protect the interests of the people from despotic governments. As the Anti-Federalist Federal Farmer wrote in his 15th letter, "[t]he jury trial, especially politically considered, is by far the most important feature in the judicial department in a free country."[34] The jury was a crucial political, not solely judicial, institution. It was particularly laudable because it was "constantly and frequently drawn from the body of the people, and freemen of the country," which "secure[d] to the people at large, their just and rightful controul in the judicial department."[35] Thus, juries were a sort of check on the rest of the judiciary. With juries ever-present, judges could not commandeer the machinery of justice.

In the Federal Farmer's eyes, this protection was the primary role of the jury. "If the conduct of judges shall be severe and arbitrary, and tend to subvert the laws, and change the forms of government," he argued, "the jury may check them, by deciding against their opinions and determinations, in similar cases."[36] Juries, therefore, had the power to find law, altering the legal determinations of judges. Of equal importance, they were responsible for ensuring that judges did not pervert the will of their elected representatives or act without any accordance to the law at all. Representation thus provided the lifeblood for the real purpose of juries: to serve as a second layer of defense for liberty. Indeed, this idea fit neatly with older Whig beliefs that the purpose of representation was to provide a defensive measure for the people.[37] "This, and the democratic branch

33 "Letter II," October 9, 1787, in *Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention* (Thomas Greenleaf, 1787), 11, reprinted in Library of Congress.

34 "Letter XV," *An Additional Number of Letters from the Federal Farmer to the Republican* (Thomas Greenleaf, 1788), 137, Readex: *Early American Imprints, Series I: Evans*.

35 "Letter XV," *Letters from the Federal Farmer*, 137.

36 "Letter XV," *Letters from the Federal Farmer*, 137.

37 Larry Kramer, *The People Themselves*, 32.

in the legislature. . .are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who might otherwise infringe on them," Federal Farmer wrote.[38] Juries provided a shield against the "arbitrary and despotic" abuses that judges might otherwise foist upon the citizenry.[39] They were the last line in the multi-layered representative defense of the people's liberties.

To appreciate the unique significance of this argument, one must acknowledge the multitude of other arguments for juries. Juries might be useful because laymen are better fact finders than judges. Or, if representation was important for more than just the defensive mechanism it provided, perhaps it would be unjust to have any court proceeding of any kind without a jury. Or perhaps juries could even provide a force for the people to affirmatively *create* law, a pseudo-legislature of sorts. Yet this was not the justification that early Americans used. They believed in a specific conception of the jury as a representative bulwark against government intrusion.

Notably, the Federalists, despite their broad disagreement with Anti-Federalists, accepted this conception of juries as a popular defense against government. In *Federalist 83*, Hamilton reminded his Anti-Federalist opponents that the Constitution did not abolish the right to a jury trial; instead it guaranteed jury trials in criminal cases and merely remained silent on the jury right in civil matters. In fact, he defended the importance of juries, writing, "[t]he friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government."[40] Indeed, Anti-Federalists at the Constitutional Convention had agreed; Elbridge Gerry, one of the only delegates not to sign the Constitution, had "urged the necessity of Juries" specifically "to guard agst. corrupt Judges."[41] Juries, then, would

38 "Letter XV," *Letters from the Federal Farmer*, 137–138.

39 "Letter XV," *Letters from the Federal Farmer*, 131.

40 Alexander Hamilton, *Federalist No. 81*, in *The Federalist Papers*, ed. Clinton Rossiter (Signet Classics, 2003), 498.

41James Madison, *Notes of Debates in the Federal Convention of 1787*, vol. 2, edited by Max Farrand (Yale University Press, 1911), 587.

be the guardians of liberty and the law. In reaffirming the crucial role of the jury trial, Hamilton capitalized on this defense-oriented theory of most Americans:

> I cannot readily discern the inseparable connection between the existence of liberty, and the trial by jury in civil cases. Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings. The trial by jury in criminal cases, aided by the habeas-corpus act, seems therefore to be alone concerned in the question.[42]

Because of this distinction, Hamilton thought jury trials comparatively unimportant in civil cases, noting that "excellence of the trial by jury in civil cases appears to depend on circumstances foreign to the preservation of liberty."[43] He did not reject the jury as a defensive mechanism, but simply claimed that its bulwark was not necessary in civil cases.

Anti-Federalists, in disagreeing with Hamilton, also did not reject the theory that juries were defensive; they simply argued that civil matters required popular bulwarks too. "Brutus II," for example, noted that "[f]or the purpose of securing the property of the citizens, it is declared by all the states, 'that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.'"[44] Juries were needed to defend property. "An Old Whig II" built on this train of thought, noting that "[i]n all actions for penalties, forfeitures and public debts," the government brought "prosecutions … in the form of civil actions."[45] These actions, though civil, would "fill the public coffers and enable government to reward its minions at a cheap rate. They are a profitable kind of revenge and gratify the officers about a court."[46] Because civil actions posed just as

42 Alexander Hamilton, *Federalist No. 81*, 498.

43 Alexander Hamilton, *Federalist No. 81*, 499.

44 "Brutus, "Brutus II," November 1, 1787, in Teaching American History, Ashbrook Center at Ashland University, https://teachingamericanhistory.org/document/brutus-ii/.

45 An Old Whig, "An Old Whig III," October 27, 1787, in Teaching American History, Ashbrook Center at Ashland University, https://teachingamericanhistory.org/document/an-old-whig-iii/.

46 An Old Whig, "An Old Whig III," October 27, 1787.

great a threat of government tyranny as criminal actions, they too required representative juries.

If the petit jury was the people's shield at trial, the grand jury was their shield at accusation. Arguments supporting the grand jury were nearly identical to those for the petit jury. According to James Wilson, "the grand jury are a great channel of communication, between those who make and administer the laws, and those for whom the laws are made and administered."[47] Grand juries were especially useful for exorcising abuses of power by government officials, particularly in the executive branch, and bringing them to public attention.[48] As a body that was representative of the public, grand juries embodied the contemporaneous theory of juries as bodies whose representative nature made them particularly effective checks on the government. Because of their independence, they were able to root out corruption and provide a popular check in otherwise unrepresentative branches of government.

Thus, to all sides, juries were a form of popular defense against government. While there were disagreements about precisely which circumstances demanded a jury trial, virtually all agreed that juries were a key foundation of representative government. Only by injecting the impartial, local voice of the people into the judiciary could justice be guaranteed and the rights of the people protected. As Alexis de Tocqueville would describe the institution decades later, "the jury, such as it is understood in America, seems to me as direct and as extreme a consequence of the dogma of sovereignty of the people as universal suffrage."[49] The twins of legislative and jury representation were "two equally powerful means to make the majority rule."[50] The jury was "before all else a political institution."[51]

47 James Wilson, *Lectures on Law* (1789–1791), Part 2, Chapter VI, "The Subject Continued of Juries," in *Contextus*, https://contextus.org/James_Wilson's_Lectures_on_Law_(1789_to_1791)%2C_Part_1%2C_Chapter_I_Introductory_Lecture_Of_The_Study_Of_The_Law_In_The_United_States?lang=en.

48 Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (Yale University Press, 2008), 84–86.

49 Alexis de Tocqueville, *Democracy in America*, vol. 1, ed. Eduardo Nolla, trans. James T. Schleifer (Liberty Fund, 2010), 445.

50 Tocqueville, *Democracy in America*, vol. 1, 445.

51 Tocqueville, *Democracy in America*, vol. 1, 444.

A New Danger: Powerful Juries in the Post-Ratification Period

After the Constitution's ratification, the power of juries in the United States took on the quintessence of Revolutionary ideals, morphing into a powerful interpretive body that was as much sword as shield. To begin, the interpretive power of juries took on a pseudo-law-making role after ratification. In the Supreme Court case *Georgia v. Brailsford*, a special jury of merchants was assembled to aid in deciding the case. When giving instructions to the jury, Chief Justice John Jay reminded them of "the good old rule that on questions of fact, it is the province of the jury; on questions of law it is the province of the court to decide."[52] But, he continued, "by the same law which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy."[53] Such a statement of jury power was rare before *Brailsford*. Indeed, some modern scholars have claimed that this novel affirmation proved the power of jury nullification.[54] However, work from the last decade has indicated that, properly understood, Jay's statement was not an endorsement of either jury law-making or nullification power.[55] Rather, it was an invitation to the merchants serving on the special jury to "play a part in incorporating mercantile law into the larger body of law."[56] Certainly, juries were not permitted to make the law up wholesale. Still, incorporation is no small step. Indeed, it transcends the ratification-debate arguments about defense and transforms the jury into an affirmative law-making body, integral in establishing the principles of mercantile law in the fledgling republic. Whereas previous justifications for juries' law-finding had rested on the

52 *Georgia v. Brailsford*, 3 U.S. (3 Dall.) 4 (1794).

53 *Georgia v. Brailsford*, 3 U.S. at *4.*

54 See for example, Jon P. McClanahan, "The 'True' Right to Trial by Jury: The Founders' Formulation and Its Demise," West Virginia Law Review, 794 (2009), quoted in Lochlan F. Shelfer, "Special Juries in the Supreme Court," *Yale Law Journal* vol. 123, no. 1 (October 2013): 241, https://www.yalelawjournal.org/note/special-juries-in-the-supreme-court. McLanahan wrote that "[i]f there was any doubt about whether the jury's right to decide issues of law had survived the American Revolution, such doubt was promptly laid to rest in the 1794 case of Georgia v. Brailsford."

55 Lochlan F. Shelfer, "Special Juries in the Supreme Court," *Yale Law Journal* vol. 123, no. 1 (October 2013): 240–244, https://www.yalelawjournal.org/note/special-juries-in-the-supreme-court.

56 Lochlan, "Special Juries in the Supreme Court," 242.

right of conscientious acquittal, *Brailsford* offered jurors an opportunity to modify—rather than merely decline to execute—the law in front of them.[57] A jury empowered to alter law, even if not truly make law, was more than merely a safeguard against the government.

Juries as law-finding bodies received more support just four years later under the Sedition Act of 1798. The law, which criminalized conspiracy to undermine any act of the United States government and the publication of "false, scandalous and malicious writing or writings" about government officials, provided in Section 3 that "the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases."[58] Though the statute had no bearing on the constitutional prerogatives of juries, it is an important reflection in their popular conception: Americans widely believed that juries had the power to resolve issues of not only fact but law.[59] And, as in *Brailford*, that power rested not on the ability to decline to enforce the law, but instead on the ability to determine the meaning of the law. Thus, juries were agents of legal interpretation, not just application, according to supporters of the 1798 law.

Even the critique of Alien and Sedition Act-era juries reveals a widespread acceptance of their law-finding powers, for critics did not charge that juries lacked the power to find law, just that they were not doing so representatively. Prior, those who wished to neuter juries had argued that juries lacked a law finding power.[60] Yet that is not what anti-jury figures argued in the late 1790s. In the face of expanded law-finding claims, they instead proposed that the juries were no longer sufficiently

57 Conrad, *Jury Nullification*, 30.

58 "Alien and Sedition Acts (1798)," National Archives, https://www.archives.gov/milestone-documents/alien-and-sedition-acts.

59 Lawson Wright, "Originalism and Jury Nullification in America: A Legal Basis for the Restoration of a Lost Right," *Princeton Legal Journal* vol. 3, no. 1, Spring 2024, https://legaljournal.princeton.edu/originalism-and-jury-nullification-in-america-a-legal-basis-for-the-restoration-of-a-lost-right/.

60 Bernadette A. Meyler, "Substitute Chancellors: The Role of the Jury in the Contest between Common Law and Equity," *Cornell Law School Legal Studies Research Paper Series*, no. 06–007 (2006): 19, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1038&context=lsrp_papers.

representative.[61] In a revised petition to the Virginia House of Delegates, Jefferson, who had previously said that juries were more crucial to liberty than representative legislatures, argued that "the grand jury is a part of the Judiciary," and "for the Judiciary to interpose in the legislative department between the constituent and his representative … is to put the legislative department under the feet of the Judiciary, … to take away the substance of representation."[62] In light of the aforementioned arguments that both representation in juries and legislatures is necessary for a free state, it is clear why juries interfering with representation would be dangerous. In contrast, Jefferson's truly novel argument was reconceiving juries as a government cudgel rather than a shield. In his eyes, the true problem was that, because these jurors were picked by a federal marshal, "grand jurors are selected by officers nominated and holding their places at the will of the Executive" and "exposed to influence from the judges who are nominated immediately by the Executive."[63] Thus, they were no longer a representative check on the executive and judicial process, but a "representative" rubber stamp. Virtually all Republican leaders advanced this line of attack.[64] Critically, it completely reversed the traditional justification for juries.[65] If juries were no longer representative, they could no longer adequately defend the people's liberties. And if they were now a threat to the people's liberties, they did not fulfill their traditional role as a check on the executive and judicial powers. They were no longer a shield for republican liberty.

Still, these anti-jury arguments did not constitute a wholesale rejection of juries; rather, Republicans espoused a vision of powerful juries that took Revolutionary ideas of representation to new heights. In a Petition to the General Assembly of Virginia, Jefferson maintained in "fact & principle, that the people themselves are the safest deposit of power, &

61 Jud Campbell, "The Invention of First Amendment Federalism," 97 Texas Law Review, 517 (2019), 556, https://texaslawreview.org/wp-content/uploads/2019/02/Campbell.pdf.

62 "II. Revised Petition to the Virginia House of Delegates, [7 August–7 September 1797]," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/01-29-02-0390-0003. [Original source: *The Papers of Thomas Jefferson*, vol. 29, *1 March 1796–31 December 1797*, ed. Barbara B. Oberg. Princeton: Princeton University Press, 2002, pp. 499–504.]

63 "II. Revised Petition to the Virginia House of Delegates," *Founders Online*.

64 Campbell, "The Invention of First Amendment Federalism," 556.

65 Campbell, "The Invention of First Amendment Federalism," 556.

that none therefore should be trusted to others which they can competently exercise themselves."[66] Juries were not too representative, instead, they were not representative enough. Indeed, juries should still provide a crucial check when "bias in the permanent judge might be apprehended."[67] For the Republicans, then, the solution "the appointment of jurors by select men, chosen by the people themselves" rather than a President-appointed marshal.[68]

This idea that juries were not representative enough—that they should be more directly selected by and accountable to the people at large—fit well into Republicans' broader political project. By the close of the eighteenth century, Republicans conceived of the United States as a political system in which the final word rested with the people, and elites—including judges—must convince the people to go along with them.[69] In the context of juries, that meant jurors were independent representatives of the people who retained authority over the process, and judges would have to convince these juries of their legal interpretations. Republicans' proposal of jury selection by the people would thus take them beyond the traditional role of the jury. If chosen directly by the people and "reserving … the decision … of law," juries would be an affirmative law-finding tool. They would still be a shield against the government, but would have expanded beyond the traditional conception of judiciary-selected juries—the jury ideal had become more representative than ever before. Thus, in the aftermath of constitutional ratification and amidst the political battles of the 1790s, Republicans' idea of juries exceeded anything previously imagined. The ideal jury's law-finding and representative capacities were supercharged.

Conclusion

In the post-ratification period, American juries reached a culmination of Revolutionary ideals. Once a right of Englishmen, then

66 "Petition to the General Assembly of Virginia, [2 or 3 November 1798]," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/01-30-02-0387. [Original source: *The Papers of Thomas Jefferson*, vol. 30, *1 January 1798–31 January 1799*, ed. Barbara B. Oberg, (Princeton University Press, 2003), pp. 571–575.]

67 "Petition to the General Assembly of Virginia" in *Founders Online*.

68 "Petition to the General Assembly of Virginia" in *Founders Online*.

69 Kramer, *The People Themselves*, 113.

a right of Americans as Englishmen, the jury trial became so "sacred" and "inestimable" that republican government depended on it. After the Constitution was ratified and Americans sought to liquidate the precise workings of their new republic, Republicans leaned heavily on juries—just not the hand-selected, perfectly curated juries of the Federalists.

Juries were supposed to be representative, so Republicans wanted their appointment to come from the people. Juries were supposed to be impartial, so Republicans deplored any executive or judicial control over them. Juries were supposed to be a bulwark of liberty, so Republicans wanted to make them more accountable, so that the people could protect their own liberties. Juries were supposed to hold judges accountable, so Republicans wanted to put the law-finding power in the hands of laymen. Juries—when properly representative—were the zenith of representative government.

For all early Americans, juries were the key to representative government. Just as necessary and representative as legislatures, juries ultimately became a way to inject the legal process with a dash of popular will. They were the pinnacle of popular will, becoming not just a check on the government but a way to shape the legal system—facts, laws, verdicts, and all—for the good of the people. At the close of the Constitutional Convention, "[a] lady asked Dr. [Benjamin] Franklin, 'Well Doctor what have we got, a republic or a monarchy?' 'A republic,' replied the Doctor, 'if you can keep it.'"[70] On the backs of twelve "good men and true" did that burden fall.[71]

70 James Madison, *Notes of Debates in the Federal Convention of 1787*, vol. 3, edited by Max Farrand (Yale University Press, 1911), 85.

71 William Shakespeare, *Much Ado About Nothing*, act 3, sc. 3, line 18, in *The Complete Works of William Shakespeare*, ed. John Dover Wilson (Cambridge University Press, 1923).