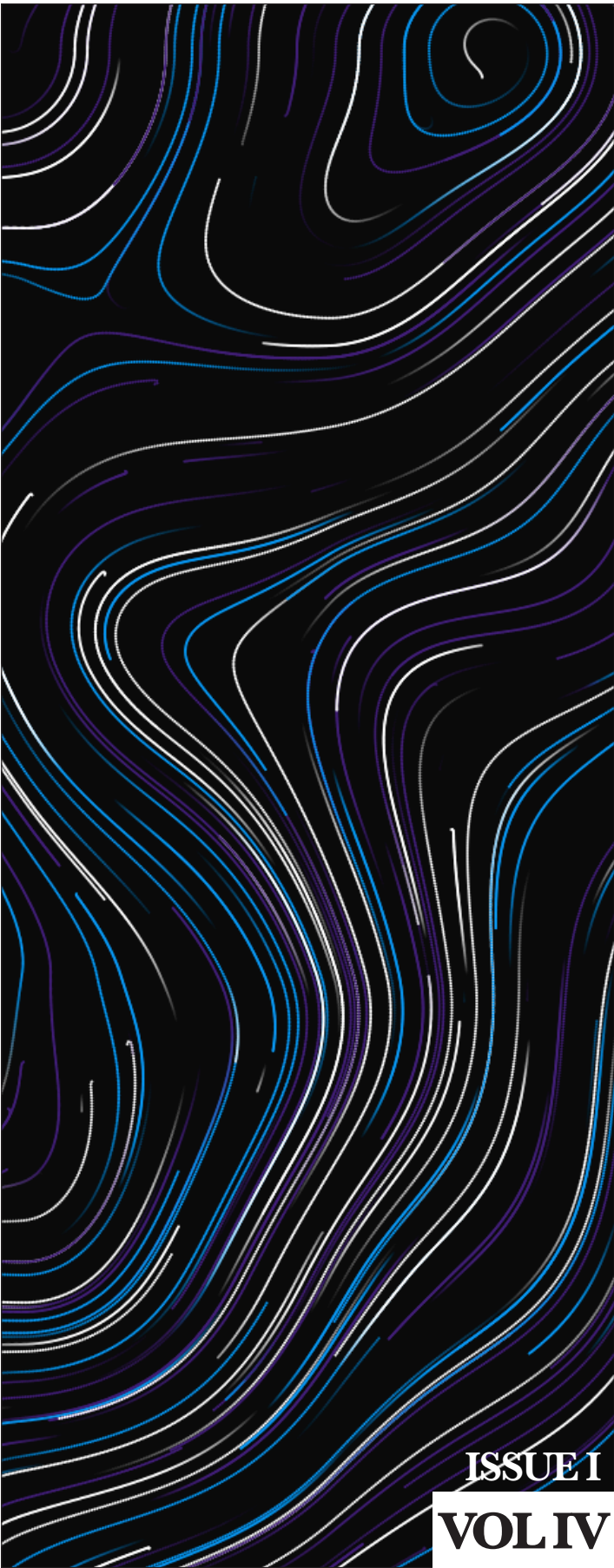


THE BROWN UNIVERSITY  
**JOURNAL OF  
PHILOSOPHY,  
POLITICS &  
ECONOMICS**

Special Feature:  
**PERFORMANCE**

*with a contribution from Danielle  
Bainbridge*

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## FOUNDING STATEMENT

The Brown University Journal of Philosophy, Politics, and Economics (JPPE) is a peer reviewed academic journal for undergraduate and graduate students that is sponsored by the Political Theory Project and the Philosophy, Politics, and Economics Society Program at Brown University. The JPPE aims to promote intellectual rigor, free thinking, original scholarship, interdisciplinary understanding, and global leadership. By publishing student works of philosophy, politics, and economics, the JPPE attempts to unite academic fields that are too often partitioned into a single academic discourse. In doing so, the JPPE aims to produce a scholarly product greater than the sum of any of its individual parts. By adopting this model, the JPPE attempts to provide new answers to today's most pressing questions.



# MASTHEAD

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## FOREWORD

As we continue to move through the new social regulations and adjustments of this historical moment, the behavior and authenticity of performance come to the fore. Public health parameters shape our ability to interact with others, translating our performative conventions into a new virtual and distanced dimension. With ongoing discussion and legislation around critical race theory and LGBTQ+ sexual education, the impact and intersection of positionality remain ever-present in this context, affecting how one takes up physical and intellectual space. While we continue to investigate the different ways people engage with their environment, we have yet to explicate all facets of interpersonal and conscious performance. Only through a holistic, interdisciplinary approach can we do such critical and timely work.

## Special Feature

### Interview with Danielle Bainbridge

Danielle Bainbridge is a professor of theater, African American Studies, and Performance Studies at Northwestern University. Her background is in theater, English, African American Studies, and American Studies. She completed her undergraduate degree at the University of Pennsylvania in 2012 in English and Theatre Arts and completed her PhD in African American Studies and American Studies—cultural history—in 2018 from Yale.

Interview has been edited for clarity.

**JPPE:** *I'll start by asking you to introduce yourself, your background, and your research, as well as the questions you find most interesting or important to explore at the moment.*

**Bainbridge:** Right now, my most important questions or areas of inquiry are thinking about the intersections of race, disability, gender, sexuality—like, how do we perform difference on stage? As well as thinking about the important role that performance and theatre and art have played in the establishment of new nations or nationalism.

To that end, I'm working on two projects. The first one is called *Refinements of Cruelty*, and I'm collaborating with NYU press at the moment hopefully to place the book there. The book is about 19<sup>th</sup> and early 20<sup>th</sup> century sideshow and freak show performers who were born with physical disabilities and also born into slavery, and the process through which they were doubly subjected to systems of oppression, both as disabled people and also as enslaved Black people. So that book is my primary project.

My secondary project is a general history book that's called *How to Make a New Nation*. It's about the performances of nationalism in early postcolonial nation-states.

## Special Feature

So I'm curious about how things like the professionalization of the Olympics, early TV politics, radio broadcasts, who gets put on the money, and the building of monuments. How these performative objects were used to establish the idea of nation and to recognize nation on an international scale. So those are the kind of questions that I'm thinking about right now.

**JPPE:** *Our journal is focused on interdisciplinary scholarship, and I know that what you do is very interdisciplinary as well. I'm curious how your work has benefited from interdisciplinary practices.*

**Bainbridge:** My background in every phase of my academic career has been very interdisciplinary. As a double major in college, I was always thinking of the intersections of history, literary analysis, theatrical history, theatrical performance studies, and performance practice. That was where I started to ask these questions and when I was introduced to scholars who were also thinking through that critical lens. And then when I went to graduate school, I was in an interdisciplinary PhD program because African American Studies is a field that encompasses lots of other disciplines. So you think through political science, anthropology, sociology, and history, and you're thinking about all of these questions at the same time. And American Studies was similarly oriented, even though it was a degree that really focused on cultural history. So, I think that interdisciplinary work became really interesting to me at an early phase of my career. When I was an undergrad, I didn't think of it as a career, I just thought of it as college. But by the time I started thinking about wanting to be a professor and wanting to teach at the undergraduate and graduate level, I was really curious about how I can bring different kinds of media and different kinds of inquiry in different fields together.

Some of that was also influenced by the fact that I'm a practitioner—I'm an artist. I do creative scholarship, digital media work, and digital storytelling like my PBS series *Origin of Everything*. I have also done some docuseries work with Youtubers and PBS. And I'm currently working on a couple different shows, like some of the *Crash Course* series through Complexly, which is a company that focuses on making educational media for young people. Right now, I'm really invested in how scholarship can be brought to larger audiences outside of the academy through digital media in a democratic way, where it's not necessarily about how much you can afford but more about your natural curiosity and desire to learn.

I am also a writer. I write for theater, and I'm working on my first documentary that just got funded. I'm always trying to look for new ways to interpret information and translate it for different audiences.



It's appealing to me to think about interdisciplinary work as something that combines disparate fields. I think that sometimes, when we say interdisciplinary, we mean fields that are adjacent to each other, that are touching. But for me, combining theater, digital media, performance, documentary, and mashing these things together makes me excited because it stretches me as a scholar to think about the ways that I could actually benefit people and the way that my work travels through the world. Sometimes when you think in strict disciplinary lines, your work has a narrower reach. And I'm really interested in how I can reach people. I really want them to learn and be excited about the things I present, so I'm always looking for interdisciplinary ways to bring stuff to new audiences.

**JPPE:** *What's the relationship between the scholar and the artist, and what's the importance of that relationship?*

**Bainbridge:** It wasn't always the smoothest transition. When you enter a Ph.D. program, you're really there to commit to doing book-length and article-length research. That's the discipline; that's what's expected of you. And I think it's really important stuff, I mean, I wouldn't be able to do any of the public-facing work I do if folks weren't writing books and articles about it because I'm not an expert in everything that I make videos about. And I think that at the heart of our fields, book projects and articles are really the foundation. But I think because I had a background in theater and then went to grad school for more cultural history and African American Studies, it became important to me to continue to express myself.

I always say that the difference for me between being an artist and a scholar is that I try to let every project express itself as what it wants to be. If I have an idea for something and I think, "This would be a really fun script," or, "This really wants to be an essay," or "This really needs to be in my book," I try to make those decisions very consciously, about what's the best way for this information to be shared with a larger audience and what does this piece of information demand of me as a maker, as a creator. There are plenty of things that I think, "Oh, this would make a great 12-minute online video, really punchy, good graphics, and people will be into the question," and that's a good primer for folks who are thinking about gender, race, sexuality, ethnicity, international politics, or whatever. Sometimes I have ideas like that, and then sometimes I have ideas like my documentary that I think, "Oh, this really demands a longer look and a more intense focus." So it all depends on what the archive and that object I'm studying or the subject I'm studying demands, and how best to translate that for people to learn from it.

**JPPE:** *What is the subject of your documentary?*

**Bainbridge:** I am working on a documentary right now called *Curio*. In 2018, I was Artist in Residence and also a facilitator and writer of a piece called *Curio: A Cabinet of Curiosity*, which was based on the research for my book *Refinements of Cruelty*. It is focusing specifically on the lives of Millie and Christine McKoy who were two conjoined twins born in 1851 in North Carolina, who were touring the world and became international celebrities as freak show performers. So, they would sing and dance and there was also a heavy amount of exploitation and medicalization in their archive. The McKoy twins were who I started researching in grad school when I decided to work on freakshows and the intersections of slavery and disability. So, I am really intimately acquainted with their archive, and I made this performance piece out of it that a group of undergraduate students at the University of Pennsylvania staged. I loved working with those students, I think that they were really game to do a lot of weird stuff with me. I had them learning the handbell, I had them singing songs from the 19th century, they were tied together in a conjoined dress, and they were doing all sorts of really weird and experimental stuff with me. I learned a lot from that process, and I always wanted to rewrite and then restage it.

So, in my early days at Northwestern—I came here in fall of 2018 as a postdoc right after the play had opened—I did spend some time with the piece thinking about revamping it. And then, you know, the world turning upside down the next academic year because it was 2019-2020 and COVID happened and all theaters went dark, and there was no opportunity to rethink the work, except in my own head. So I started thinking, wouldn't it be great if I can make a documentary, because it combined my interest in digital media and my experience making these explainer videos and docuseries. It would be great to do a documentary that combines some of the creative elements of music from the play with traditional documentary storytelling. So, I started working on that idea and thinking it'd be great to do it, especially because it was funny that I started to see this explosion of digital theater overnight since there weren't any opportunities to perform except on Zoom or through recorded stuff. And I just wanted an opportunity to combine my areas of interest under this same topic, so I pitched it to Northwestern for a research grant and I got some funding. And now I'm going to be working on that for the next year and a half or so, making maybe a 20- to 30-minute documentary that combined some of the elements from the stage production that I thought were really successful along with traditional documentary storytelling, like interviewing the McKoy descendents, looking at archival footage, and you know, figuring out

ways to bring that story to life and to a larger audience.

**JPPE:** *Theater and performativity is in a rudimentary sense acted and therefore fictitious, but in recent years I think we've had a wider awareness that it isn't that simple. So, how does the theory that you study translate into real world politics, representation, and change? And can you speak about this in relation to your Refinements of Cruelty?*

**Bainbridge:** It's interesting because I've always been interested in the work of people like Moisés Kaufman, Anna Deavere Smith—people who do documentary theatre, just because it offers something really insightful and interesting, especially Anna Deavere Smith, I'm a big admirer of her work. So I think, when I write and when I create stuff, I do know where the line between reality and fiction is, I think that's the first step, but I am also really interested in ways that theater could impact and bring about empathetic and lasting political and social change. I do think that the pieces that we make and things we put into the world have an impact on the way we view representation, on the way we view politics, on the way we view people from groups that aren't our own. And so, when I'm teaching my students, it's not just that I want them to be good storytellers, or good creators of fiction. I also want them to be good people, good global citizens, good people who think about the world in really critical and crucial ways.

And I think there's so much to be said for performance in general. Not only the creation of it, but the consumption of it is this huge engine for empathy and huge engine for understanding. So, when I'm making work or when I'm thinking about theater or writing criticism, I'm thinking about it in those ways—specifically about how we can create lasting and sustained social and political change through the creation of art.

And I don't think every piece is for every person. But I do think that there's a lot that can be done. And a lot of artists are thinking really critically, especially as we're starting to see new generations of artists making work that's really critically looking at race and gender, not that these things are new, but that they're really important questions that are being brought up. I do think there is a history of work making new social movements or new social possibilities for people.

**JPPE:** *What is the most impactful example of art that has created or propelled lasting change or social movements?*

**Bainbridge:** One of the things I teach is a course on African American theater history that starts in the 19<sup>th</sup> century and ends with *A Raisin in the Sun*. And I think

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most of my students who are young, Gen Z, savvy, politically active folks think of *Raisin in the Sun* as that old-fashioned play from the 50s that they had to read in high school or early college. And the thing for me about why I staged the class this way that ends with *Raisin* is that we have all of this activity of Black theatrical innovation and genius that comes before it. We have plays from Black artists in the 19<sup>th</sup> century, we studied things like slave narratives, we study Frederick Douglass's oratory, we look at W.E.B. DuBois's theories of artist propaganda, we look at some of the darker aspects of the representation of Black people like blackface minstrelsy, Vaudeville—you know, performance of minstrelsy as well as early instances of Black people performing in blackface. So we also see some of that as well in this time period.

But what I want to chart for my students is the slow progress that we start to see in Black representation from the mid-19<sup>th</sup> century to the mid-20<sup>th</sup> century. We start to see improvements in realism, improvements in domestic drama, and then we have this revolutionary moment with *A Raisin in the Sun*, where it's this big critical success, but it's also one of the first plays that we see by a queer, radical Black woman that represents Black people as people and fully human. And so by the time my students arrive at *A Raisin in the Sun*, you can see that they're excited, that they say, "Oh my god, finally something that looks like real people, fully fleshed out people."

And I think oftentimes, Hansberry's work gets read as conservative because it comes from a particular historical moment, but actually, it was this radical revelation in the representation of Blackness on popular stages. And it represents early emerging Pan-African identities through the character of Beneatha, it talks about the role of gender through characters like Ruth and Mama Younger and Walter. We see early integration politics that represent Black desire as not a desire for integration because they want to be in proximity to whiteness or close to whiteness, but because they want greater opportunity for themselves and their children.

That subtlety and that keen hand that Hansberry has was so revelatory, and I really like having it at the end of the quarter so that students can finally put it in its context and say, "Oh, this really was a lot different than what came before it. This really is espousing something radical and fresh when you think about what came before it." So that's one of my favorite examples, and then I also teach the second half of that course, which is *A Raisin in the Sun* to contemporary theater.

**JPPE:** *What has been your research methodology on the Refinement of Cruelty project, and what has surprised you or not surprised you the most about the process?*

**Bainbridge:** As a writer, I write a lot of creative nonfiction, as well. And I was really surprised by what the archive demanded of me in terms of ethics. I'm looking at this archive of people who were exploited, essentially, in multiple ways. And I'm trying to make sense of this story while I'm also having complicated and complex feelings as a Black woman, as someone who has experienced the trials and tribulations of the American healthcare system, and medicalization and fetish, and all of these other things. And so, you know, when I first started the project, it was 2012. So it's been, like 10 years. So that's overwhelming. But I think when I first started the project, I was just surprised by how hard it was for me to look at the material, because I primarily before then had been studying feminist theatre from Jamaica in the 1980s. So it was more celebratory and more self-fashioning, because these women were creating their own stories and writing their own work, deciding what went into the archive.

Things about the performers I study largely when they're either against their will or without their consent, at the very least. And so methodologically, I started thinking through two primary questions. The first was, what does it mean to enter something into the archive? What does it mean, to put something on the official record? And the second question was, what are the ethics or responsibility that I have as a Black queer woman telling this story? What do I need to do to make this feel okay?

The first question I kind of answered with what I'm theorizing is the future perfect tense of historical recording. The future perfect is a tense that you see in romance languages, like Latin and Spanish, which is the past tense of the future. So it's, "it will have been." I started to fool around with that idea because I thought, when you are entering something into the record as a historical actor, as someone who is concerned with history—so say, I have things that I think are historically significant, I entered into an archive—I'm concerned with how history is going to be told 10 years from now, and 15 years from now and 100 years from now, that's why I put it in the archive. I wanted to trace sort of what those impulses were, and why people began to think through those terms. And I thought the archive that I was engaging in, especially because a lot of it is ephemera, and sort of freak show stuff, and things that people think of as lowbrow culture, I was thinking, why would someone enter this in an archive? What's the impetus? And why are they thinking that historians 100 years from now should be able to view this? They put this in a protected place for a reason.

And then the second question methodologically, I'm answering was what I'm call-

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ing an ethnography of the archive. So it's a lot of auto-ethnographic writing that I do about archival ethics, essentially. And I put that in the project itself and fold it into it itself because I think one of the things that felt unsatisfying to me was speaking in the sort of disembodied historian's third-person voice. I wanted it to feel as if I was considering the questions of what the archive is demanding of me and my own subject position as a descendant of slaves. And I started doing that writing mostly in grad school to satisfy myself. It wasn't something that I thought would really end up in the project. And then when I saw that people were responsive to it, and that the questions being asked by this ethnography of the archive were leading me somewhere methodologically, I started writing more and more and more and more. So I think you really have to consider what the archive demands of you before you start working. Because if I was working on another archive, or a completely different subject, I don't think I would have the same questions.

**JPPE:** *Right, so really considering positionality.*

**Bainbridge:** Yes.

**JPPE:** *What are the cultural and economic legacies of the freakshow and performance archive that you've found?*

**Bainbridge:** There are some interesting economic quirks of these archives. In one chapter of my manuscript, I call it the "Alternative Ledgers of Enslaved Labor." That's where the economic angle of this archive really becomes most evident. The chapter itself focuses on this really long ledger kept by Chang and Eng Bunker, who are two other subjects in my study. Chang and Eng were conjoined twins, just like the McKoys. They spent most of their life in North Carolina, just like the McKoys, but they were actually born in Thailand, or then known as Siam. They are the twins around which the phrase "Siamese twins" was established, so they are the original so-called "Siamese twins."

This ledger is interesting to me particularly because they are included in my study not because they were enslaved, but actually because they were racialized, BIPOC people who were slave owners. When they retired from the freakshow stage, they invested their money in buying two adjacent plantations, they married two white sisters—each married to one sister—and they divided their time between these two plantations, they owned a few dozen slaves, and they invested all their money in Confederate currency. So ultimately, we all know the historical outcome of this, that Confederate current went defunct. It became valueless after the war ended, and they were forced to re-enter the freakshow stage as performers, essentially to

support their family and to support themselves.

I'm interested in this ledger, particularly because it's so detailed and so nitty gritty, but it doesn't recount any of the expenses of all of the enslaved souls that lived on these plantations. So it doesn't have a lot of information about the women and men that they enslaved, but it has things like, "gave daughter five cents to repair her gloves," "25 cents in postage for publicity, five flyers," I'm sifting through this ledger primarily to think about ways that performance labor is recorded, but slave labor is erased. And I'm also curious about how we think about performance labor through these enslaved performers. So folks, not like the Bunkers, but more like the McKoys and Blond Tom Wiggins and Joice Heth, who are other people who are in my study.

I'm interested in how we could reconfigure this as not just performance practices, but thinking about labor because at its heart, slavery is a labor system. It is an economic system—to live in a slave society is an economic system. So I'm thinking through scholars like historian Stephanie Smallwood's *Saltwater Slavery*, I'm thinking through things like Jennifer Morgan's *Laboring Women*, where they think really intimately about the connection between finance and enslavement and what it means, particularly for Black women. I'm curious about how all these things could be read through performance, where we're not necessarily seeing these performers do things like pick cotton, or perform housework, or take care of children because they were presumed to be valueless, essentially, because of their physical disability. But many of them ended up becoming the prize of their master's plantation because their performance labor actually netted more money than they could do any of those domestic tasks or fieldwork. So I'm curious about that relationship and how it can be explicated.

**JPPE:** *Switching over to your project on nation and how the nation is imagined and born, what is the relation between literature and performance and the idea of nationhood? How do postcolonialism and Black Feminist Theory interact with, shape, or reflect these ideas and forces?*

**Bainbridge:** I first became interested in this topic because I was teaching a class which used to be called State-Funded Theater of the Americas and now is called State-Funded Theater of the US and Caribbean, which looks at state-funded theater from the 20<sup>th</sup> century after postcolonial movements have started to emerge in the 1930s until about the 1970s. It is concerned with why and how so many states, these newly formed independent nations, as they were entering the postcolonial period, why they were funding theater. That was my initial question that started



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the idea for the book. What is it about theater or these plays—you know, they're funding plays by Derek Walcott about the Haitian Revolution, they're funding plays by Sylvia Winter, they're funding plays by lesser-known playwrights and we're seeing this explosion of work from really important folks who would later become important poets, playwrights, postcolonial theorists, and they're essentially being put to work by these states making theater?

And then at the same time, in the US during the Great Depression, we start to see things like the Works Progress Administration and the Federal Theater Project, which are funding what they're calling "Negro Units," in the parlance of the day, of all-Black theater companies that are doing this really interesting work. I was introduced to a book by a scholar named Stephanie Batiste, who wrote a book called *Darkening Mirrors*. The book is about how these Negro Units of the Federal Theater Project were also thinking about US imperialism and internationalism in their performances because they often staged things like a production of *Macbeth* that's set in Haiti or a version of *The Mikado* that's set in the Pacific. And they're doing these really interesting internationalist works, and I was also really taken in by a book called *Satchmo Blows up the World* which thinks about how Black jazz artists were sent around the world during the Cold War essentially as ambassadors of American identity.

I became interested in all of these questions around the same time, which is: why is it important to use art to express national identity or a nationalist identity? I really started thinking about how these works could be connected, and I started to find other examples of how these places, these newly formed nations were thinking about their own national identities.

Then the second thing I became really interested in was the professionalization of the Olympics, which sounds completely disparate and sounds like it has nothing to do with it, but basically I wanted to know how the Olympics went from being what was considered an amateur event—so, one of the requirements of the Olympics prior to, I want to say the 1970s or earlier, was that folks had to be amateur athletes, so they couldn't be making money, either from sponsorship or they couldn't be involved in professional leagues. And this was supposed to be a leveling of the playing field, but also was a big hallmark of the Olympic Games. As that transitioned to becoming this multibillion-dollar industry with TV ads and Coca-Cola sponsorships and all this other stuff, we start to see some of these newly independent nations start to get this greater recognition beyond the scope of their political impact. So we start to see places like my family's home country of Jamaica become really famous for track and field, even though on the international politics



scale, they weren't considered a necessarily huge player by other nations because of global anti-Blackness and general disregard for Caribbean politics. So, we see smaller nations get this chance to now be considered competitors of larger nations.

Those are the two archives that I started digging around in that made me want to ask these questions, and as I got more and more into thinking about these things, I just started pulling that thread and saying, "What are other instances of ways that nations perform their own identity?" I started thinking about monuments because we were in this endless news cycle of Confederate monuments being torn down and colonial monuments being torn down around the world. And then I started thinking, "Well, what's another performance that's supposed to signify something?" And I started looking into the performance and writing of national anthems, who gets put on money, who becomes a national hero, who's considered an emblem of the nation?

And I think all of these questions come because I am a scholar who's deeply invested in Black Feminist Theory. They come from a Black Feminist perspective because I'm not just concerned with how we perform masculine leadership in new nations. I'm concerned with how all of these disparate things come together, but I'm also curious about the performance of nationalism or the performance of the nation-state particularly because I just haven't had as many satisfying answers. I have a rule, basically: if I'm in a meeting and I have an idea, I have to be willing to do the thing that I'm suggesting, or else I don't suggest it, because I hate being that person who says, "It'd be great if *someone*...would do this." I have a similar thing with my scholarship, which is: if I have a question and it needs answering, I should probably write it down and write the answer because I can't wait on someone else to do the project or do the thing.

The question of nationhood became really interesting to me, not because I'm so much invested in the idea of the nation-state, but because these early independent countries as they're starting to formulate their own idea of themselves, are turning to things like parades, and festivals, and literature, and theater, and are funding it at an incredibly high rate in comparison to what we see today. I mean, now it's hard to get money out of a government to do anything artistic because other things are considered more practical. But it's curious to me that so many nations are experiencing that same impulse at the same time—they're saying "Oh, it's important for us to have anthem, it's important for us to have a national team at the Olympics, it's important for us to put on plays and give people a sense of cultural heritage and pride." It just seemed like too many coincidences not to be something, and that's really where the idea came from.

**JPPE:** *How has the relationship between nationhood and culture and performance in literature or literary methods shifted over time and geography? How have different power systems influenced this?*

**Bainbridge:** From what I've done in terms of preliminary research and writing the proposal, in the early days of these postcolonial movements, there was a lot of effort made to put a good face on independence. There was a sense of celebration, liberation, where we start to see things like emerging Pan-Africanism, Black Nationalism, a sort of international perspective that's thinking of people of color and oppressed people as in league with each other, as having shared destinies. And I think that's really, really fascinating.

I also think that as time goes on, and we start to see some of the hangover of postcolonial excitement, we start to see less and less of these performances, at least in my early stages of research for this second project. While there's this big boom at the beginning of, "we need to have plays and pageantry and all this stuff to celebrate postcolonial identity," it starts to slowly wane, not necessarily because I think the interest in promoting cultural identity goes away, but because other emerging issues of forming an independent nation come to the fore, things like being recognized internationally, economic downturn, the strength of the dollar—these become more prevalent at the front. As many nations became sort of undermined by the international community, we just see less and less of it. That's the trajectory that I'm tracing now. Why is there this period of just explosion of creativity? And then the creativity doesn't go away, the creation doesn't go away, but some of the funding goes away, and when people are less inclined to put money behind something, it becomes less visible. And now, my work as a historian is to trace what became less visible.

**JPPE:** *Did the burst of creativity also come during independence movements?*

**Bainbridge:** Yeah, so we start to see them in the line with a lot of independence movements. I start the book with Aimé Césaire's and others' formulation of Négritude in the 1930s, which is interesting because Césaire himself is a politician, poet, theorist, global citizen—you know, he's doing all this stuff. So I start with that, and then I think as time goes on—like anything, creativity is a plant, it needs water to grow, it needs funding to grow, it needs support to grow—we start to see people investing, especially because a lot of these early politicians had a sense of culture and literature that was more acute. They're reading Marx, they're reading cultural theory, they're exchanging ideas, they're organizing festivals and things

together. There's a lot of shared destiny in their thinking. But I think, because the idea of nation-state often gets framed, especially from a Western perspective, as individualistic—there's the idea that you have to support and protect the boundaries and borders and we hear that rhetoric all the time here in the US—we start to see that it doesn't disappear, people are still engaging and writing and making the stuff, but we just see a shift in focus, and I think that's really where art reaches its limit a little bit.

**JPPE:** *How can theory and literature help us understand modern imperialism and the continuing legacies of past imperialism?*

**Bainbridge:** That's really a great question. I'll reference again Stephanie Batiste's book because I think she does an excellent and really articulate job of discussing the connection between imperialism and performance. I do think that the work we make in any given historical moment is informed by what's happening around us. Even if you set a sci-fi thriller in the year 3500, it's informed by the moment you write it in. We know that implicitly as people who study literature and study performance, but I think it's also curious as we start to see work now take up that charge but in a commercial sense. The work that I study was primarily funded by governments, and I'm interested in that aspect of things, but I was teaching the *Swing Mikado* (or the all-Black cast of the *Mikado*) to my students a couple weeks ago, and one of them brought up—so I can't take credit for this—they brought up that it's really interesting to see that this moment is so concerned with US militarism and involvement around the world, and we're coming off the wake of World War I, launching right into World War II, and then the Korean War and Vietnam, and we're seeing all these things. And they made an analogy between the *Swing Mikado* or the all-Black cast of the *Mikado* and *Hamilton*, and how those two things speak to each other. They were saying that if the question of the moment when *Swing Mikado* came out in the 1930s was emerging US military involvement and imperialism, then the question of *Hamilton* is the hangover and wake of multiculturalism and what moment we're in now as a society.

And there's lots to be said about *Hamilton*, I don't know if I necessarily need to go down that rabbit-hole, but one thing that I find fascinating about it—and I didn't see a live production, I saw the Disney Plus recording of the stage version—is that I think the music is actually quite good but I think that what it's doing in terms of cross-racial casting is actually really confusing and not necessarily as successful as people think. So, I'm curious about that connection because, if the question of that moment was emerging imperialism, the question of this moment is now entrenched imperialism coupled with the hangover of 90s and early 2000s multi-

## Special Feature

culturalism, and the promise of that moment. When I was a kid in the 90s, multiculturalism was everywhere. There was this idea that if we just put people forward enough, if we just represent people enough, if we just have enough TV shows with diverse casts, that will solve the problem of race or solve the problem of classism or xenophobia. And now, many years later, we see the failings of that. But I think the hopefulness of something like *Hamilton* is directly linked to that movement and that moment.

# **Authenticating Authenticity: Authenticity as Commitment, Temporally Extended Agency, and Practical Identity**

**Kimberly Ramos**

The everyday concept of authenticity presupposes the existence of an underlying, unchanging self to which to be authentic. However, with the rise of bundle theories in philosophy of mind and neuroscience, it is unlikely that we have an essence of self to which to be authentic. In this case, should we abandon the concept of authenticity entirely or formulate a new account of it? I argue that authenticity is still important to one's everyday life, particularly when making difficult decisions about one's identity in terms of morals, goals, and values. Rather than being true to an objective essence of self, I argue that we can be true to the self as a construct (a self-concept). We create this self-concept with consistency and steadfastness in our commitments, as well as our ability to be an agent that fulfills those commitments. Thus, authenticity and selfhood are more about undertaking important projects and a creative process of becoming rather than unearthing and expressing an essence of self.

Just be yourself. Embrace your most authentic life. Or, if you like, "To thine own self be true." We often encounter such pithy aphorisms. Some of us might find such advice to be helpful because it pushes us to pursue a career or life path that brings out the best version of ourselves. On the other hand, such advice could also induce anger because of its irrationality and emptiness. The self, as others of us might point out, is just a construct, so what is there to be "true" to? Or perhaps the whole concept of authenticity is simply confusing. We might agree that it is good to

be authentic to one's self but find it confusing as to what sort of identity this means for our own lives. We might, like philosopher Elisabeth Camp, pose this question: "What is my true self, such that I should pursue and cultivate it?"

The everyday, common view of authenticity assumes that (1) we possess a "true" self, and (2) we ought to embrace this "true" self. But as more is learned about the mind and brain, it seems increasingly unlikely that a true, underlying self exists. Dr. Christian Jarrett, a writer for the British Psychological Society, mentions a study conducted by Strohminger et al. Strohminger and her colleagues observed that belief in an underlying "true" self is common across cultures, and inherent in this belief is the concept of authenticity. However, they are skeptical that this true self actually exists because such a self would be "radically subjective."<sup>1</sup> We see this sort of radical subjectivity in a study conducted by Quoidbach et al. The study found that people tend to underestimate the amount of change they will undergo in the future. They believe that their personality, core values, and preferences will be preserved over time, even though these attributes have already changed from the past to the present.<sup>2</sup> The belief in the consistency of the self and its preferences is radically subjective in that it is based on feeling alone—it is not based on objective fact or essence. If at least some personality traits and values can and do change over the course of one's life, then the common view of authenticity does not seem plausible. There is no true and essential self to which to be authentic because the self is not immune to change. An action which is authentic to me today might not be authentic to me in ten years. If this is the case, then how am I to decide what is most authentic: my past values, my current values, or my future values?

In rejecting true and essential self, philosophers of mind, psychologists, and neuroscientists including Douglas Hoftstadter, Thomas Metzinger, and Daniel Dennett have turned to bundle theories. David Hume, one of the first bundle theorists, expresses the general sentiment of bundle theories in viewing the self as a series of "bundled" perceptions that change from moment to moment.<sup>3</sup> As such, bundle theorists declare there is no rational reason to believe in an enduring self over time. Under their view, a new self exists each moment. If no enduring and underlying self exists, then pursuing the everyday view of authenticity seems somewhat futile. Authenticity would only be possible to a given self at the singular moment it exists, which does not seem satisfying given that, from a practical standpoint, we view the self as a consistent entity, at least on a day-to-day basis. This paper is dedicated to redefining the way we commonly think about authenticity and the self. Is there

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<sup>1</sup> Christian Jarrett, "There Is No Such Thing as the True Self, but It's Still a Useful Psychological Concept," 2017. <https://digest.bps.org.uk/2017/08/22/there-is-no-such-thing-as-the-true-self-but-its-still-a-useful-psychological-concept/>

<sup>2</sup> Jordi Quoidbach, et al., "The End of History Illusion," *Science*, vol. 339, (2013), 98.

<sup>3</sup> David Hume, *A Treatise of Human Nature*, (Oxford: 1896), 134).

even a “true” self to be authentic to? And why should we desire authenticity at all?

### ***Three Cases: Authenticity as a Common Concern***

Before discussing more of the practical reasons for desiring authenticity at length, I will begin with a few “real world” examples to illustrate authenticity as a common concern within one’s daily life.

(a) *Neryssa and Her Corporate Job*: Neryssa dislikes her current job as a human resources manager at a large corporation that manufactures soda. Though she enjoys working with people, the corporation’s product and mission don’t align with her personal values. She desires a job that feels more representative of the person she takes herself to be, but she isn’t sure if her job should even matter in terms of her sense of identity and values.

(b) *Rowan and Their College Major*: Rowan needs to decide between a major in English or in History. On the one hand, they love literary analysis, especially as it applies to the fantasy genre. On the other hand, they also enjoy detangling and reconstructing historical narratives. When they think about the job prospects of each, they find each option to be about equal. Rowan wants to pick the major that “fits” them best, but at this juncture, both choices seem equally well-fitting. Which should they choose?

(c) *Julia and Her State Senate Campaign*: Julia is running for election to the state senate. Her platform emphasizes environmental consciousness, especially in contrast with her opposition, who takes donations from large corporations that contribute to the climate crisis. Julia’s team suggests that she run a slander ad that, while not conveying outright lies, strongly insinuates that the opposition is cheating on his partner. While the ad would help Julia win the election and implement environmentally sustainable legislature, Julia isn’t sure that she can condone the ad. She takes herself to be someone who “plays by the rules” and holds herself to high moral standards. What should she do?

In each of these three examples, authenticity plays a role in the decision making process of the individual involved.<sup>4</sup> In (a), Neryssa desires a job that feels more authentic to her person. A job which represents her values is important to Neryssa, and thus, authenticity is relevant to her creating a life she enjoys. In (b), Rowan wants to know which of two options is more authentic of them to choose. Like Neryssa, they want to make a choice that will lead to a fulfilled and enjoyable life.

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<sup>4</sup> There are other considerations at play in each scenario. For instance, in (c), there are also considerations of ethics. In (a) and (b), there are considerations of practicality and utility in regards to selecting a job and a college major. Still, authenticity plays a role in what the agent chooses and how they decide to value considerations of ethics, practicality, and utility, so each scenario will involve authenticity in some way, although authenticity might not be the only deciding factor.

In (c), Julia must choose between becoming a state senator and her morals. An understanding of authenticity might help her decide between these two options. I would wager that we, like Neryssa, Rowan, and Julia, have come up against similarly difficult decisions that challenge who we take ourselves to be and leave us wondering what decision is most authentic. I would also wager that the simple advice “Just be yourself!” would not help much in the situations described above. The purpose of this paper, then, is to provide a novel account of authenticity that (1) takes into account the lack of an underlying “true” self in light of bundle theories, and (2) helps us confront difficult decisions in which one’s identity is in question. Ultimately, I will propose a commitment-based account of authenticity, in which the personated, socially-constructed self and the commitments it makes are the basis for determining authentic action.

### ***A “True” Self? A Foray Into Bundle Theories and a Postmodern Account of Authenticity***

Discussions about the self often turn to psychology and the brain. Following John Locke and his discussion of substance in *An Essay Concerning Human Understanding*, the view of the self shifted from one of body or spirit to one of psychological substance, particularly consciousness.<sup>5</sup> But, as philosopher David Hume later pointed out, the brain and its associated consciousness do not have a substance of self. In more modern terminology, this means that there is no lobe or neural center that constitutes an essence of self, which is an inherent entity upon which one’s identity is founded. Rather, the self is the “bundle” of thoughts and impressions present at any moment.<sup>6</sup> These bundles pass away and give rise to new thoughts and impressions. Thus an entirely new self arises that bears no necessary or logical connection to the previous self. To support his argument, Hume asks us to turn inwards and observe the contents of consciousness:

For my part, when I enter most intimately into what I call myself, I always stumble on some particular perception or other, of heat or cold, light or shade, love or hatred, pain or pleasure. I never can catch myself at any time without a perception, and never can observe any thing but the perception. When my perceptions are remov’d for any time, as by sound sleep; so long am I insensible of myself, and may truly be said not to exist.<sup>7</sup>

If we look inwards, we can find only perception. We can also find memories, but

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<sup>5</sup> John Locke, *An Essay Concerning Human Understanding Book II: Ideas*, 118.

<sup>6</sup> Hume, *A Treatise of Human Nature*, 134.

<sup>7</sup> Ibid.



these are the revival of past perceptions.<sup>8</sup> We do not find any singular thing that we could call an essence of self. Hume does not completely negate the existence of the self. There is certainly something that perceives. But, Hume argues that given the evidence, we cannot extrapolate beyond this fairly minimal conception of the self—what Elisabeth Camp more recently calls a “bare skeletal ego.” Again, the self just *is* perception. Science writer and neuroscientist David Eagleman offers an updated view of how bundle theories apply to the biology of the brain and thus supports bundle theories originating from Hume:

So who you are at any given moment depends on the detailed rhythms of your neuronal firing. During the day, the conscious you emerges from that integrated neural complexity. At night, when the interaction of your neurons changes just a bit, you disappear...the meaning of something to you is all about your webs of associations, based on the whole history of your life experiences.<sup>9</sup>

Like Locke, Eagleman locates the self in consciousness, which he describes as “detailed rhythms of neuronal firing.” And when this neuronal firing shuts down perception during sleep you “disappear,” reflecting Hume’s claim that when we are “insensible” of perceptions we do not really exist.<sup>10</sup> The self is perception and neuronal firing, and this neuronal firing impacts the way we experience and interpret the world.

Hume’s description of the self is the foundation for most modern bundle theories. Thomas Metzinger, a German philosopher, similarly undermines belief in an essence or substance of self: “There is no such thing as a substantial self (as a distinct ontological entity, which could in principle exist by itself), but only a dynamic, ongoing *process* creating very specific representational and functional properties.”<sup>11</sup> Like Hume, modern bundle theorists doubt an underlying self that exists over time and endows one with a sense of “I,” which is closely tied to one’s perceived personal identity and autonomy. While bundle theorists claim we do not have any rational reason to believe in a sense of “I,” they do admit its practical necessity, as well as the human inability to abandon it. Douglas Hofstadter expresses the utility of the sense of “I” in *I Am a Strange Loop*: “Ceasing to believe altogether in the ‘I’ is in fact impossible, because it is indispensable for survival. Like it or not, we humans are stuck for good with this myth” (294). It is natural and practical for an individual to construct a sense of “I” to navigate the world, make future plans,

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<sup>8</sup> Ibid, 11.

<sup>9</sup> David Eagleman, *The Brain: The Story of You*, (New York: Vintage Books, 2015), 34-35.

<sup>10</sup> Hume, *A Treatise of Human Nature*, 134.

<sup>11</sup> Thomas Metzinger, “Self Models,” *Scholarpedia*, 2007.

and distinguish herself from others. As Hofstadter states, a sense of “I” is thus necessary to survive in and engage with the world.

If there is an objectively existing self, it is momentary and fleeting. And, in being solely composed of processes and perceptions, it is not an entity we can be perfectly authentic to over time. Nor is there an essence of self that we can stake personal identity upon. Instead, our sense of “I” comes from the temporally and subjectively existing selves we construct as useful “myths.”<sup>12</sup> Let us call this subjectively existing entity the “self-concept” for the sake of clarity. The common view of authenticity, however, assumes that there is “true” underlying self to which to be authentic to. Under this view, authenticity is the expression of one’s “real” self. But, as bundle theorists have stated, there is not an underlying, temporally-extended self to embrace! How can we be authentic to something that isn’t objectively real, if at all? Beyond proclaiming that personal identity is a construct, bundle theorists do not offer us any answers about authenticity. Still, I think bundle theorists would likely embrace what Varga and Guignon call a “postmodern” view of authenticity. This account of authenticity abandons an essential self and embraces a more minimal construction of self and authenticity:

Postmodern thought raises questions about the existence of an underlying subject with essential properties accessible through introspection. The whole idea of the authentic as that which is “original”, “essential”, “proper”, and so forth now seems doubtful. If we are self-constituting beings who make ourselves up from one moment to the next, it appears that the term “authenticity” can refer only to whatever feels right at some particular moment.<sup>13</sup>

The bundle theorist, in viewing the objectively existing self as a continual and ever-changing process, would endorse the idea of a “self-constituting being” that makes itself up from “one moment to the next.”<sup>14</sup> Thus postmodern authenticity is merely whatever feels right at some particular moment. And if we reject an essential, underlying self—which, given the psychological evidence from Strohminger, Quoidbach, and bundle theorists, I think we should—it seems we are left to embrace the postmodern account of authenticity.

However, I do not find the postmodern conception of authenticity satisfying because we do not view ourselves as beings that make themselves up from one moment to the next. Rather, we wake up each day believing that we are more or

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<sup>12</sup> Douglas Hofstadter, *I Am a Strange Loop*, (Basic Books: 2007), 294.

<sup>13</sup> Somogy Varga and Charles Guignon, “Authenticity,” *Stanford Encyclopedia of Philosophy*, 2020.

<sup>14</sup> Ibid.

less the same person we were the day before, with the same projects and goals, social relationships, and values. In our three “real world” examples, the postmodern view of authenticity gives Neryssa, Rowan, and Julia no direction as to what sorts of values or projects they ought to pursue to feel personally fulfilled. It may be true that they are just bare Humean selves from a purely objective standpoint, but they don’t view themselves as such. Consider if, in virtue of the postmodern account of authenticity, we were to tell them, “Well, just do what feels right in the moment.” They would probably respond along the lines of, “The problem is I don’t know what feels right in the moment, and the choice I make will impact my future. I don’t want to make the wrong choice!” They view themselves as people who are concerned about their futures, their well-being, and their personal projects. Neryssa, Rowan, and Julia all regard themselves as selves that exist over time with relatively consistent attributes. I think it is likely that most humans view themselves as selves that exist throughout time with somewhat consistent attributes, too. For instance, if I go to sleep liking the song “Piano Man” by Billy Joel and having a desire to learn the song on the guitar, I expect to wake up the next morning with the same sort of preferences and goals. And in taking myself to be a person with specific aspirations, I necessarily find myself interested in my future and what it holds for me. On the pain of speaking for a reader, I find it probable that they conceive of themselves in this manner, too.

Elisabeth Camp offers further practical reasons for embracing a sense of “I” concerned with authenticity beyond the bare Humean ego. She argues that the sense of “I” allows an individual to make sense of and evaluate her life given her values and goals, to select relevant characteristics of selfhood and thus form a meaningful identity through which to understand herself, and to create and carry out future plans based on the self-concept she wants to create or maintain.<sup>15</sup> Camp’s three listed benefits of a sense of “I” point to authenticity: we want to know who we are, if we have lived up to what we want to be, and how to best preserve a sense of self. In the service of self-understanding and pursuing a fulfilling life, we ought to care about a sense of “I” along with authenticity and its application to our lives.

For an account of authenticity to be useful, then, it should take into consideration our perceived existence as temporally-existing selves with an eye to the future and the values and projects we hope to fulfill. In other words, a more satisfying and practical account of authenticity should work alongside our intuition of having a “true self,” even if the true self turns out to be more of a construct than an objectively existing entity. This new account of authenticity seems to be related to

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<sup>15</sup> E Camp, “Wordsworth’s Prelude, Poetic Autobiography, and Narrative Constructions of the Self,” Retrieved 2021, from <https://nonsite.org/wordsworths-prelude-poetic-autobiography-and-narrative-constructions-of-the-self/>.

being loyal to a constructed self-concept. To restate, this account should (1) take into account the lack of an underlying “true” self in light of bundle theories, and (2) provide us with some direction in confronting difficult decisions in which one’s identity is in question or at stake.

### ***The Self-Concept and Concerns of Self-Deception***

In this section, I will define the self-concept and discuss some difficulties self-deception poses to the self-concept, though ultimately I think we can table such difficulties. Before we address the wider question of how one might be authentic to the somewhat subjective self-concept, we need to first define the self-concept. Here I will draw from Elisabeth Camp’s character model of self. This model describes the objective self as possessing “a distinctive way in which a particular ‘I’ inhabits, interprets, and engages with the world—a particular nexus of dispositions, memories, interests, and commitments.”<sup>16</sup> These dispositions, memories, and interests, fit in with our earlier discussion of a psychological, Humean ego if we view them at a singular point in time. The self, as Camp defines it, is not so much a unified identity that endows one with a sense of “I.” Rather, it is a particular way of experiencing and interpreting the world. Here, it is worthwhile to note that these interests and dispositions constitute a “something” that makes up the bare, Humean ego. I do not wish to misrepresent Hume or bundle theorists in saying that there is no self whatsoever. Instead, we should recognize that the bare Humean ego is an existing self, an underlying “something” that makes up an individual. The problem regarding authenticity we find with the Humean ego is its impermanence and lack of a unified, temporally existing identity. The underlying Humean ego is not an essence or substance of self that can endow us with a sense of “I” and a lasting identity. The bare Humean ego allows us to say “I exist,” or “Something that is me is here having experiences,” or perhaps even, “At this current moment, I would like to have a glass of lemonade,” but it would not allow us to say anything about the kind of person we are, especially if the statement has to do with a characteristic or commitment that is meant to describe us over time—perhaps something to the effect of, “I am the type of person to pursue graduate study.” So the Humean ego endows one with momentary consciousness but not a sense of self or identity.

Camp believes that an individual comes to an understanding of herself when she posits a “self-interpretation,” and thus forms the meaningful identity the bare Humean ego lacks. Camp compares a self-interpretation to a theory, as both create a coherent pattern or explanation “by electing and structuring a coherent unity out of [a] teeming multiplicity [of evidence].” Camp remarks that we can evaluate the effectiveness of a self-interpretation in the same way we would

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<sup>16</sup> Ibid.

evaluate a theory. The more disparate elements it unites, the stronger the theory and related self-interpretation. Just as many theories can be equally probable or valid, so too can multiple self-interpretations. Likewise, when interpreting a body of data, there are clearly some interpretations that are better than others. While many interpretations may be on a par in strength, we can still distinguish between “bad” theories, which are not much grounded in the evidence nor realistic, and “good” theories, which take into account the available body of evidence for realistic interpretations. Let us say that the self-concept is the self-interpretation an individual embraces as the “best” explanatory theory for themselves given the current evidence. The self-concept is one’s understanding of their experience of the world. It is also the constructed identity that unifies one’s dispositions, memories, and interests. Thus, it is the self-concept that endows one with a sense of self and identity.

I want to emphasize that even though one’s self-concept is subjective, there are limitations to its construction. The self-concept relies on objective evidence: the particular dispositions, interests, and memories held by an individual. This evidence is publicly accessible, too. Irish philosopher Philip Pettit remarks that an individual is a “figure in the public world, characterized by public properties.”<sup>17</sup> The dispositions and interests held by an individual influence her behavior, actions, and statements. As such, the evidence becomes accessible to the public and available for use in forming a self-interpretation. Though the interpretation itself is subjective in how one decides to connect evidence and organize it into a meaningful pattern, an individual’s dispositions and interests remain objective because they exist without any given meaning. For example, say that Cassandra has an interest in almost every genre of music: country, hip hop, indie, classical—she likes it all. Before interpretation, this is simply an objective fact. Cassandra’s friend, Russel, believes that Cassandra likes many different genres of music because she is an open-minded person. Cassandra, on the other hand, believes that she likes so many genres because she had friends with varied music tastes growing up. Cassandra and Russel take an objective fact and then attribute meaning to it through interpretation. I would compare this sort of interpretation to the construction of historical narratives. Historians share the same set of facts about a historical event, but how they choose to connect them and endow them with meaning will vary.

Given the objective nature of these public properties, we can blame an individual for a particularly self-deluding interpretation. For instance, a man who believes he is Napoleon might point to some evidence as reasons for him forming such a self-concept—perhaps he has a talent for tactical strategy and horseback riding—while ignoring glaringly contradictory evidence such as the fact that he is not French and he was not born in 1769. But this is a quite obvious case of self-delusion.

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17 Philip Pettit, “My Three Selves,” *Philosophy*, vol. 95, no. 3, 2020, 6.

sion. What about more ambiguous, “real life” cases?

I do not want to venture too far into this topic, but I would like to put forth a general means of avoiding, or at least living, with self-delusion. Firstly, we ought to approach self-concepts with the understanding that we are constructing theories, and like theories, self-interpretations are provisional. They can and should be replaced when new evidence comes to light, and if we are individuals that are dedicated to self-understanding and epistemic respectability, we ought to undergo regular introspection to uncover new evidence or re-contextualize old evidence. I think it is likely that we do so already. As fairly self-centered creatures, we like to talk about our lives with our acquaintances. Much of the time, this naturally incorporates interpretation of the self. Perhaps you spend some time talking with a friend over lunch about why you like horror movies. That evening, you discuss with your partner why they feel unfulfilled by their current job. Before bed, you silently think about whether you are the sort of person who would be happy adopting a child.

With our recognition of self-concepts as provisional comes a sense of what Laurie Paul calls “epistemic humility.” We can be wrong about the sort of person we think we are, and so we must approach the self-concept knowing that we will likely get quite a few things wrong. Perhaps you thought you were the sort of person who values their career over family, but once you were faced with the actual choice to stay home and raise children or accept a promotion, you found that your priorities lay with family. What is most authentic for us to do is not always represented by the current self-concept, and this only comes to light when we encounter a choice that tests our self-concept. These choices are an integral part of self-discovery. Once again invoking epistemic humility, it seems that we are never fully done defining the self-concept. There will always be additional evidence generated or uncovered through events that test or reveal one’s character. Thus, we should accept that the self-concept is a provisional entity which we must continually discover and refine.

### ***Authenticity as Commitment, Temporally Extended Agency, and Practical Identity***

#### *An Existing Definition of Authenticity*

Charles and Guignon pose this question in their entry on authenticity in the Stanford Encyclopedia of Philosophy: “What is it to be oneself, at one with oneself, or truly representing one’s self?” They contrast this more complicated view of authenticity of self with the authenticity of objects, in which the latter is defined as the state of being “faithful to an original” or a “reliable, accurate representation.”<sup>18</sup> While I agree that the authenticity of a self is more complicated than that

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<sup>18</sup> Varga and Guignon, “Authenticity.”

of objects, I see no need to generate an alternative definition of authenticity if we can produce a “standard” to which an individual might be faithful. The existing thing being judged for authenticity in terms of faithfulness to an original or reliability in representation is a particular self-concept. Our account of authenticity will need to explain how we can temporally extend the self-concept and thus create a standard to be faithful to over time.

The next natural question has to do with what it means to say that a person is a “reliable, accurate representation” of themselves.<sup>19</sup> To form a “reliable, accurate, representation” of oneself, there are two primary “keys”: commitment and temporally-extended agency, both of which I will discuss in the remainder of this section.

### *The Personated Self, Commitment, and Agency*

The first key to a new account of authenticity lies in commitment. Here I will make use of Philip Pettit’s discussion of commitment and selfhood. Though Pettit primarily focuses on selfhood and identity in his article “My Three Selves,” I believe we can extend his conclusions to our current discussion of authenticity. According to Pettit, a person is defined as an “agent with the capacity to personate,” where personation is the act of presenting a persona and “inviting[ing] others to adopt [this] picture of who you are.”<sup>20</sup> For instance, say that my friend asks me to keep a promise and I agree to do so. In doing so, I am making a claim about myself and a *commitment* to that claim: I will keep my friend’s promise. If I want my personated self to be relied upon, I ought to do as I said I would and keep the promise. If I do not, my earlier claim is compromised in its assertion as the truth. An individual must “live up to their words in practice: they act as the attitudes communicated would warrant.”<sup>21</sup> In effect, the individual treats their personated self as real and, in living up to their personated self, invites others to do the same. In doing as I said I would, I fulfill the persona I set forth, thus endowing it with a sense of provisional reality.

Here we come up against an objection. In making commitments or endorsing a particular self-interpretation, it would seem that an agent must be almost narcissistically focused on the creation of the self-concept at any given moment. Pettit’s own view is in tension with this sort of narcissism: “To return to a point made earlier, however, this self is not a construct that I intend to create as such...That claim ties personhood, implausibly, to a highly intellectualized form of reflection and a pattern of self-scripting that sounds downright narcissistic, as critics have suggest-

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<sup>19</sup> Ibid.

<sup>20</sup> Philip Pettit, “Philip Pettit: My Three Selves. Royal Institute of Philosophy Annual Lecture 2019,” *YouTube*, uploaded by RoyIntPhilosophy, 2019, [www.youtube.com/watch?v=DUzuNVuEIYA](https://www.youtube.com/watch?v=DUzuNVuEIYA).

<sup>21</sup> Pettit, “My Three Selves,” 7-8.



ed.”<sup>22</sup> Relying on a “highly intellectualized form of reflection” poses a problem because it would require us to undergo a good deal of reflective agony about the person we take ourselves to be every time we make a commitment. Furthermore, it is entirely possible for an individual to possess a rich identity without undertaking highly intellectualized reflection. I think that we can still be quite conscious and aware of the commitments we endorse without being overly focused, or even highly aware of, the personated self we are creating in most cases.

The following example will help us overcome this objection. Say that you ask me to drive you to the mechanic to pick up your car. I will likely say yes barring a major inconvenience. When I agree to drive you to the mechanic, I do not fully conceptualize the person that I believe myself to be. Rather, I feel as a matter of good will that I should help you out. If you were to ask me why I drove you, I could come up with the answer upon momentary reflection: I agreed because I take myself to be the sort of person to help out a friend in a bind. But I don’t take the commitment itself to be constitutive of my self-concept unless prompted by some outside inquiry or internal reflection. Furthermore, in such moments of self-reflection I do not focus on a singular commitment but a larger collection of commitments that I attempt to arrange into a meaningful pattern, thus forming a self-concept. Pettit echoes this sort of intermittent reflection, writing, “...it is important that it may take effort to achieve a full knowledge of who and how in this sense I am... Thus, it may take time and trouble for me to develop such a sense of where I am committed.”<sup>23</sup> In other words, the personated self is something we make somewhat unconsciously through conscious commitments, and it is only later, through adequate reflection, that we develop a “sense of where we are committed,” and thus a self-concept to which to be faithful to.<sup>24</sup>

Now we can return to the initial example of my promissory commitment to my friend. In keeping my promise to my friend, I find that I have been *faithful* to my

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<sup>22</sup> Ibid, 18.

<sup>23</sup> Ibid, 19.

<sup>24</sup> Three more brief notes. (1) It is possible that the first time I make a commitment to be a certain sort of person that the commitment does require substantive reflection and narcissistic intellectualization. But hereafter, the fulfilling of the commitment is somewhat automatic as a matter of policy. If I find no difficulties in fulfilling my commitment (say, a competing commitment), it should be easy for me to do so with little reflection. (2) Some decisions concerning commitments *do* require substantive reflection and narcissistic intellectualization, along with an awareness of both. However, these sorts of commitments are likely “tests of character” or life-changing decisions, so they warrant such agonizing and reflection. I have in mind the decision to marry someone, to have a child, to go to war, to change careers, etc. (3) Here we can easily see how “taking stock” of one’s life might prompt a series of new commitments and the abandonment of old ones. We look back on the commitments we have made and decide, through the gradual making and fulfilling of new commitments, to form a new self-concept. In instances of conscious change, we would be aware of the new commitments we make—we would be more “mindful” of the personated self being created than we naturally find ourselves to be.



commitment in this particular instance. If I expand this promissory commitment to be constitutive of my self-concept and thus the sort of person that I take myself to be, I will as a matter of principle continue to fulfill my promises. If I successfully keep such commitments, my actions, behaviors, and claims will *accurately and reliably represent* my self-concept. My friend will accept that I am the sort of person to keep a promise, given that I continue to keep promises when called upon to do so. So authenticity relies on the fulfillment of the commitments one sets forth as constituting their self-concept (or at least, a sincere attempt to fulfill such commitments).

With commitment comes the second key: temporally extended agency. As Pettit suggests in his definition of a person, persons are a particular sort of agent—an individual or entity that undertakes or performs an action.<sup>25</sup> When we make commitments, we become agents concerned with values, goals, and policies that are enacted over time. American philosopher Michael Bratman uses the goal of writing a paper as an example of temporally extended agency:

I see my activity of, say, writing a paper, as something I do over an extended period of time. I see myself as beginning the project, developing it over time, and (finally!) completing it. I see the agent of these various activities as one and the same agent—namely, me. In the middle of the project I see myself as the agent who began the project and (I hope) the agent who will complete it. Upon completion I take pride in the fact that I began, worked on, and completed this essay. Of course, there is a sense in which when I act at a particular time; but in acting I do not see myself, the agent of the act, as simply a time-slice agent. I see my action at that time as the action of the same agent as he who has acted in the past and (it is to be hoped) will act in the future.<sup>26</sup>

Similarly, an individual can make a commitment to be a particular sort of person that acts in a particular sort of way, and then carry this commitment over time. The individual does not view their self-concept and associated commitments as a “time-slice agent,” even if the Humean self changes from moment to moment.<sup>27</sup> Rather, commitments connect both the personated self and the self-concept through time. Harry Frankfurt, another American philosopher, similarly argues that the individual makes plans and acts in virtue of the commitments

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<sup>25</sup> Pettit, “My Three Selves,” 7.

<sup>26</sup> Michael Bratman, “Reflection, Planning, and Temporally Extended Agency,” *The Philosophical Review*, vol. 109, no. 1, 2000, 43.

<sup>27</sup> Ibid.

which she cares about, and thus becomes “inherently prospective; that is, [she] necessarily considers [herself] as having a future.”<sup>28</sup> So too do such plans entail a “notion of guidance” along with a “certain *consistency* or *steadfastness* of behavior; and this presupposes some degree of persistence.”<sup>29</sup> To re-emphasize my point, though we may objectively be bare Humean selves, on the basis of forming commitments and endorsing them over time, we create a provisional sort of self that is temporally extended in terms of agency and identity. Even if the objective self shifts from moment to moment, the commitments we endorse remain somewhat consistent and thus so does the self-concept. Furthermore, for our self-constituting commitments to have a real impact on who we take ourselves to be and how other people perceive us, they must be somewhat consistent. Like a theory, a self-concept should accurately “predict” future behavior and actions—if a self-concept were not consistent, it would not have much credibility or trustworthiness for those around us. Nor would it be a source of guidance and meaning for the individual.

To sum, a personated self arises out of one’s commitments (and more generally, one’s intent to act/actions). A personated self is temporally extended into a more unified identity when one is faithful to their commitments, though a reflective understanding of this identity is not yet present. To construct the self-concept and achieve a level of self-understanding, the collection of commitments are arranged into a meaningful pattern as if to say, “I am this sort of person because I have made several commitments of this kind in the past, and I would like to continue doing so.” The self-concept, though subjective, gives us a standard to which to be authentic and guides our future actions in the service of preserving authenticity. We decide who we are and who we want to be, and then we do our best to fulfill the self-concept we conceive. At the core of authenticity, we find a steadfastness and consistency towards one’s commitments.

I also believe that the required degree of faithfulness to a commitment is normative. I cannot give a full account here, but if we accept Quoidbach’s conclusion that core values, personality traits, and preferences change over time, then we should also allow commitments and authenticity to shift over time. An individual should be required to uphold her commitments for as long as they accurately represent the person she takes herself to be at present. In this manner, our novel account of authenticity occupies a median position between that of bundle theorists and a true and essential self. The self-concept is stable from moment to moment unlike the self put forth by bundle theories. However, the self-concept is revised as one undergoes self-discovery and changes as a person, so it does not rely on

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<sup>28</sup> Harry Frankfurt, “The Importance of What We Care About,” *Synthese*, vol. 53, no. 2, (1982), 260.

<sup>29</sup> *Ibid*, 161.

consistent and core personality traits like the essential self. What is authentic to me today might not be authentic to me in ten years, though our account of authenticity allows for gradual changes over the course of one's life. We are held to our commitments, but only to a point. Authenticity is, then, a moving target.

### *How Commitments Originate*

Commitments and the behaviors and actions they endorse may seem arbitrarily chosen, especially if one does not have a given reason to endorse a particular self-concept over others. Here I will discuss how commitments originate and what reasons they are based on.

First, I wish to introduce the concepts of fixed traits and free traits. According to personality psychologist Brian Little, a fixed trait is an inborn or "culturally endowed" personality trait such as introversion or conscientiousness.<sup>30</sup> A fixed trait is "fixed" in virtue of its givenness. I cannot wake up and decide, as a matter of will, to no longer be an introvert. Free traits, on the other hand, are "tendencies expressed by individual choice," such as cultivating an interest in soccer.<sup>31</sup> However, Little also believes that fixed traits and free traits can coexist, particularly in how an individual chooses to modify fixed traits to fulfill a goal. In the spirit of our earlier discussion of temporally extended agency, Little states that we must "extend personality *temporally*," because over time, particular personality traits are emphasized or downplayed based on one's core projects.<sup>32</sup> A core project is defined as "meaningful goals, both small and large, that can range from 'put out the cat, quickly,' to 'transform Western thought, slowly.'"<sup>33</sup> Importantly, a longstanding core project related to one's life work and identity resembles Pettit's definition of commitments. Little uses himself as an example: as an introvert, he dislikes public speaking. However, he also values being a professor and sharing knowledge, and thus pushes himself out of his comfort zone during lectures and speeches.<sup>34</sup> His commitment to teaching and imparting knowledge allows him to take a fixed trait and disposition, introversion, and treat it as a free trait for a limited amount of time to work towards his core project. Though it may not be authentic of Little to become a professional public speaker, it is still authentic of him to undergo public speaking engagements due to his commitments. Little's self-concept might be the following: "I take myself to be an introvert, but if I have a cause I really care about, I'm willing to talk in front of a crowd and thus act as if I were an extrovert." Little's

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<sup>30</sup> Susan Cain, *Quiet*, (New York: Crown Publishers, 2012), 209.

<sup>31</sup> Craig Lambert, "Introversion Unbound," *Harvard Magazine*, July 2003, [www.harvardmagazine.com/2003/07/introversion-unbound.html](http://www.harvardmagazine.com/2003/07/introversion-unbound.html).

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Cain, *Quiet*, 209-210.

acting like an extrovert does not make him one, but rather invites others to view him as someone who can successfully engage a crowd with a speech regardless of introversion or extroversion.

Therefore, commitments are based upon inborn and culturally endowed behavior, dispositions, and interests, although we might have some control over if and how we enact such traits. In his paper “The Importance of What We Care About,” Harry Frankfurt offers support for the necessity of given traits. He writes, “While what is antecedently important to the person may be alterable, it must not be subject to his own immediate voluntary control. If it is to provide him with a genuine basis for evaluations of importance, the fact that he cares about it cannot be dependent simply upon his own decision or choice.”<sup>35</sup> We must start with some given and objective behaviors, dispositions, and interests, lest our entire constitution be entirely arbitrary. Though we cannot choose our given traits, I believe we still have a degree of freedom in which traits cultivate and express. We can, as Millgram argues, “take an interest in something, in the hope of finding it interesting” because we are curious and will ourselves to look into a new interest.<sup>36</sup> The same sort of curiosity and flexibility applies to behaviors and dispositions. We cannot fundamentally change these characteristics, but perhaps we can be curious enough to see how flexible they are in our expression of them. Like Little, we can undertake a project that pushes us outside of our comfort zone. This allows us to observe how freely we can manipulate a fixed trait.

There is a balance between commitments we undertake knowing that we will have to alter fixed traits and commitments which we accept because we acknowledge we have particular fixed traits. Thus, another consideration of authenticity is understanding how far and for how long we can push ourselves past fixed traits until we experience what Little calls “burnout.”<sup>37</sup> We might also find that there are behaviors and interests that we simply cannot enact or adopt, try as we might. A few years ago, I tried to cultivate an interest in ornithology. Though I was curious, I could not adopt or sustain the interest, and eventually abandoned my attempts at doing so because it did not bring me any pleasure and I had no other strong reasons to keep trying. On the other hand, there are behaviors and interests that we simply cannot abandon or downplay. While I cannot bring myself to be interested in ornithology, I find it difficult to remain uninterested in *The Bachelor* when it airs. Perhaps my lack of interest in ornithology and my inability to abandon interest in *The Bachelor* are the result of my not trying hard enough. To this sort of objection,

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35 Frankfurt, “Freedom of the Will and the Concept of a Person,” *Journal of Philosophy, Inc.*, vol. 68, no. 1, (1971), 18.

36 Elijah Millgram, “On Being Bored Out of Your Mind,” *Proceedings of the Aristotelian Society*, vol. 104, (2004), 179.

37 Lambert, “Introversion Unbound.”

I reply that I have no reason to try harder, nor a further interest in doing so. I might try harder to develop an interest in ornithology if I had a commitment or core project that related to it, such as spending more time with a friend who likes bird watching. I might also try harder to abandon my interest in *The Bachelor* if I read a scientific article about the detriment of reality TV to the human brain, which would be in tension with my greater commitment to intellectual health. As it stands, I don't have any further interest or relevant commitments that would have me try harder to mold these traits. Thus, part of living authentically might be realizing which of our traits are involuntary and which of our traits are voluntary—in other words, which traits are decidedly fixed and which traits are somewhat mutable. Living authentically is a balance of acceptance and choice in terms of forming and fulfilling commitments, as well as discovering what commitments we can and cannot enact.

Our account of authenticity has arguably come to resemble Harry Frankfurt's account of freedom of will. Frankfurt argues that freedom of will relies on the hierarchical ordering and endorsement of desires and volitions.<sup>38</sup> Likewise, I believe authenticity relates to ordering one's commitments by their strength, especially when we are faced with two competing commitments. Authenticity comes from the commitments we endorse, and one commitment, such as the inborn tendency to be introverted, can be overridden by a stronger commitment and accompanying desire such as the commitment to be a professor that engages in public speaking with the desire of imparting knowledge. Therefore, another aspect of authenticity is reflecting upon what one cares about, and then determining, either by an act of will or an acceptance of one's nature, which of these values "overrides" the others.

Our new account of authenticity also bears relation to Christine's Korsgaard's description of practical identity. In deciding which commitments to make, we create policies or "laws" which dictate future actions: "When you deliberate, it is as if there were something over and above all of your desires, something that is you, and that chooses which desire to act on. This means that the principle or law by which you determine your actions is one that you regard as being expressive of yourself."<sup>39</sup> Korsgaard further supports my assertion that commitments are expressions of the self-concept. Making commitments builds what Korsgaard calls one's "practical identity," which is "a description under which you find your life to be worth living and your actions to be worth undertaking."<sup>40</sup> Where the personated self focuses on the making of commitments to present a self to others, the practical identity emphasizes making commitments to define and justify the actions of a self. Indeed,

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<sup>38</sup> Frankfurt, "Freedom of the Will and the Concept of a Person," 15.

<sup>39</sup> Christine Korsgaard, *The Sources of Normativity*, (Cambridge: Cambridge University Press, 1996), 83.

<sup>40</sup> Ibid.

Korsgaard's description of integrity might as well be discussing authenticity:

Etymologically, integrity is oneness, integration is what makes something one. To be a thing, one thing, a unity, an entity; to be anything at all: in the metaphysical sense, that is what it means to have integrity. But we use the term for someone who lives up to his own standards. And that is because we think that living up to them is what makes him one, and so what makes him a person at all.<sup>41</sup>

Along with authenticity and practical identity comes a sense of “integration” or “oneness” of self. The commitments, values, interests, and actions of an individual come together under the self-concept to form a rational pattern. Korsgaard additionally indicates another consideration in our search for authenticity: we should attempt to form commitments that exist in harmony with each other rather than in tension. In doing so, we form a self-concept better equipped for consistency and steadfastness.

### *Practical and Existential Reasons for Committing*

Once you have made a commitment, why should you keep it? Let's return to our earlier example: I tell my friend that I'm the sort of person to keep a promise, and he asks me to promise that I will attend his jazz concert tomorrow evening. What are the consequences of my failure to show up and fulfill my promise? Pettit offers three excuses that I might use in such a situation, which we will apply to our discussion of authenticity.

The first is an excuse of circumstance.<sup>42</sup> Say that I call my friend after the concert and profusely apologize for missing the event. However, I have a relevant excuse for the context. At the last minute, a family member of mine was admitted to the hospital and my presence was needed. With this excuse (as long as it is true), my friend excuses me from living up to my earlier promissory commitment. In fact, I could use an excuse of circumstance as many times as necessary, though it is unlikely that I would be able to genuinely use such excuses unless I were an incredibly unlucky person. We can regard ourselves as acting authentically in this situation because, although we had two competing commitments, we fulfilled the commitment we felt was stronger. If my friend understands my self-concept and rationally approaches the situation, he will likely understand why I valued my commitment to aiding my family in an emergency over attending his jazz concert. In this context I suffer little to no consequences for failing to uphold my promissory

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<sup>41</sup> Ibid, 84.

<sup>42</sup> Pettit, “My Three Selves,” 17.

commitment.

The other two excuses are less so the product of uncontrollable circumstances but of mental states or events. They result in interpersonal consequences. The first is an appeal to being misled by one's mind. Say that I tell my friend that I truly thought I could make a promise to go to his concert, but when the occasion arose, I found that I simply could not keep it. Perhaps I remembered that I don't like crowds, and therefore could not attend the concert. My initial willingness was an instance of self-delusion, or at the very least, a lack of self-knowledge.<sup>43</sup> If I use this excuse, my friend would begin to see me as easily misled and too quick to form self-judgments. What kind of person, he might ask, forgets that they dislike crowds? Certainly not a person who is properly introspective. My friend would regard me as untrustworthy when it comes to my statements about commitments, and thus would disbelieve elements of my self-concept. If my self-concept does not match up with my personated self and its actions, then I have failed to act authentically. I will suggest that authenticity is an attractive quality in a friend and necessary for a steady relationship. If I continue to be inauthentic, then I might destroy our relationship.

The second excuse is a matter of changing one's mind.<sup>44</sup> Say that I was not misled when I made the prior commitment, but I decide I no longer want to keep my promise. Besides being outrightly rude in changing my mind about this commitment, I also appear "wishy-washy," or indecisive, to my friend. I make commitments without thinking about what they entail. My friend would regard me as unreliable and "flaky." I would fail to be faithful to my commitments, and it might cost me my reputation. My friend would be less likely to rely on me and to let me rely on him in return.<sup>45</sup> Again, authenticity is necessary for maintaining stable interpersonal relationships.<sup>46</sup>

Beyond potentially losing a meaningful interpersonal relationship, breaking commitments bears pressing existential implications. Varga and Guigon, in quoting Sartre, express a worry about the "cost" of breaking self-constituting commitments: If an agent acts against her commitments, she risks the "radical transformation of her being-in-the-world." If I say that I am the type of person to keep a promise and then fail to do so, I will have to take this new behavioral evidence into

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<sup>43</sup> Ibid, 9.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid, 19-20.

<sup>46</sup> By authenticity in relationships, I do not mean "showing your true self." Many of our relationships might only exist *because* we present ourselves in a curated fashion. So authenticity in relationships might simply be keeping one's commitments. However, as in our discussion of free trait theory, there is a limit to which we can keep up an image that is in tension with our given traits. Authenticity in a relationship is, once again, a balance between the person we are for others (free or mutable traits) and the person we cannot help but be (fixed traits).



account. If I fail to keep a promise multiple times, then my action is not simply out of character—it *is* my character. If I avoid deceiving myself, I will have to admit that I am not the type of person to keep a promise, and thus must change my self-concept. My personated self, the outward persona which I present to others through my attitudes and actions, would come apart from my practical identity and self-concept. I would lose who I take myself to be.

Korsgaard adds to this worry: “Consider the astonishing but familiar ‘I couldn’t live with myself if I did that.’ Clearly there are two selves here, me and the one I must live with and so must not fail.”<sup>47</sup> Here, she elaborates upon the discomfort of losing who one takes themselves to be. As we have previously seen in the case of the personated self vs the self-concept, there is a tension between who we take ourselves to be and who we really are by virtue of our behavior and actions. I would have to live with the knowledge that I want to be someone who keeps their promises, but, based on my actions, I can no longer claim this commitment as part of my self-concept. Again, if I do not delude myself, I have to recognize that I am not a reliable person nor a good friend when it comes to promises. As Korsgaard points out, I would have trouble “living” with myself; my self-esteem would suffer. Indeed, this sort of asymmetry in my personated self versus my self-concept has some serious consequences if I let it infect too much of my being:

It is the conceptions of ourselves that are most important to us that give rise to unconditional obligations. For to violate them is to lose your integrity and so your identity, and no longer to be who you are. That is, it is no longer to be able to think of yourself under the description under which you value yourself and find your life worth living and your actions worth undertaking. That is to be for all practical purposes dead or worse than dead.<sup>48</sup>

This is quite the cost. If I value being the sort of person who keeps their promises, then I would find it difficult to exist with the knowledge that I am someone who does not do so. While I think Korsgaard’s statement here is overly dire in terms of breaking only a few loose commitments, she illustrates the real and pressing threat that losing one’s authenticity poses. If I fail to live up to several of my commitments, especially those which I designate as highly integral to my self-concept, I risk creating a life in which I find no value, meaning, or self-esteem. My personated self would be so far removed from my desired self-concept that I would feel

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<sup>47</sup> Korsgaard, *The Sources of Normativity*, 84.

<sup>48</sup> Ibid.



the disconnect Korsgaard mentions between “me and the one I must live with.”<sup>49</sup> Such an existential state is likely the source of statements such as, “I am a stranger to myself,” and “I do not recognize myself any longer.”

Finally, having long-term commitments is part of an enjoyable life and the avoidance of boredom. Little and Frankfurt concur on this end. Little is quoted as saying, “Human flourishing is achieved through the sustainable pursuit of one’s core projects,” which can be reframed as lasting commitments to one’s goals.<sup>50</sup> Frankfurt, too, identifies final ends as the driving purpose of one’s life: “If we had no final ends, it is more than desire that would be empty and vain. It is life itself. For living without goals or purposes is living with nothing to do.”<sup>51</sup> We need commitments as final ends in order to build fulfilling and interesting lives. Furthermore, commitments stave off the encroachment of boredom. Boredom, Frankfurt claims, threatens one’s “psychic survival.”<sup>52</sup> Besides losing a sense of personhood, a lack of commitments and the development of boredom would endanger one’s mental existence and inner life. We can see, from discussing the existential implications of breaking commitments, even more reasons to pursue authenticity.

### ***Applying Our New Account of Authenticity***

Now that we have a new account of authenticity, let’s return to the three cases we posed earlier. How does our new account of authenticity offer guidance to Neryssa, Rowan, and Julia?

For (a), we would first ask Neryssa how much her job contributes to her sense of identity, and thus, her self-concept. If she does not stake much of her identity upon her job, then for the sake of authenticity, she does not need to search for a new job. If she does take her work to be a large part of her identity, then she will need to search for a new job because the current job is in tension with her self-concept and the person she takes herself to be. We would also ask Neryssa how much the company’s product and mission misalign with her personal values. If she works for a corporation that espouses anti-LGBTQ+ rhetoric while simultaneously taking herself to be someone who supports LGBTQ+ rights, she might, as Korsgaard warns, find it difficult to “live with herself.” Let’s say that Neryssa does stake a fair amount of her identity on her job. In addition, let’s say that the company’s values are greatly misaligned with Neryssa’s values. We would say that it is more authentic of Neryssa to leave her current job and search for a job that is representative of

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49 Ibid.

50 Lambert, “Introversion Unbound.”

51 Harry Frankfurt, “On the Usefulness of Final Ends.” *Iyyun: The Jerusalem Philosophical Quarterly*, vol.

41, (1992), 6-7.

52 Ibid, 12.

her values and the person she takes herself to be. We might even counsel her and suggest that, in staying in a job that is in tension with her self-concept, she risks burnout, the loss of her sense of identity, and general dissatisfaction. Furthermore, she might find it difficult to even commit to a job that she cannot fully endorse. In terms of authenticity alone, we would say that it is best for Neryssa to search for a new job.

In (b), it would be helpful if we suggest that Rowan reframe the question. Instead of worrying about which major is the most authentic choice, we would remind Rowan that authenticity is not an expression of an essence of self. Rather, authenticity is a commitment to the self-concept, or, the self they take themselves to be. Therefore, they should ask themselves which major they would find themselves most capable of *committing* to. Can they envision a long-term commitment to either history or literature? In reframing the question in this way, we take away the agony related to the question, “What kind of person am I?” and turn our attention to a new question: “What kind of person would I *like* to be?” This question is prospective and forward-looking, and it emphasizes that there is no truly “right” choice (although some choices might be more “right” than others). We make a choice “right” by committing to it, given that we have the capability and interest necessary to commit to it in the first place.

In Rowan’s case, they have the added benefit of being able to change their major. Say that Rowan declares an English major, but after a semester of classes, realizes that they would much prefer life as a history major. They can now change their commitment and self-concept. Thus, Rowan’s case endows us with a bit of advice for ourselves. When we can, we might try out a choice or experience before making a commitment to it and staking our identity upon it. For example, say that you are interested in becoming a parent. Before committing to parenthood (which, unlike a college major decision, cannot be reversed once chosen), you might spend some time taking care of young children and talking to their parents about the pros and cons of raising a child. While spending time with young children and talking to parents cannot fully replicate the actual experience of becoming a parent, you would at least have a clearer idea of what parenthood entails.

In (c), we would remind Julia that her decision for or against the attack ad will become evidence that constitutes her self-concept. This is because decisions of this nature are “expressive of yourself” (Korsgaard 83). She needs to evaluate which she values more: the ultimate goal of her campaign, which is to promote environmentally sustainable legislature; or her personal morals and commitment to “playing by the rules.” If she runs the attack ad, she commits to being the sort of person who values the greater cause over her personal morals. If she decides against the attack ad, she commits to being the sort of person who values her personal morals over the greater cause, even if the greater cause is quite worthy. What we are ask-

ing of Julia is similar to what we asked of Rowan: “What sort of person would you like to be?” As we did with Neryssa, we would tell Julia to make the commitment that results in a self-concept she can “live with.” Though running the attack ad might help Julia win the election, the victory will mean little if she has sacrificed the self-concept that she wants to embody. Or perhaps Julia determines that she values the ultimate goal of her campaign more than her personal morals. In doing so, she commits to a new self-concept, one that values the greater good over her personal qualms. What matters in Julia’s case is that she decides in relation to a self-concept she can endorse and commit to, and thus continue past the decision with minimal tension between the person she takes herself to be and the person she acts as. Her self-concept, whatever it ends up being, will also influence how she reacts to and values future decisions, so it is imperative that she be able to commit to this new self-concept over time.

I hope these three examples properly illustrate how one would use this new account of authenticity in real-world situations. I believe authenticity is of greatest importance when we are faced with difficult, self-constituting decisions. On a day-to-day basis, we might find it unnecessary to ask whether an egg salad sandwich or a hamburger is a more authentic lunch choice. However, it is necessary to spend time reflecting upon the self-concept and authenticity when the choice we face has clearly life-altering consequences or stands to change the way that we conceive of ourselves. And though authenticity may be an important factor in how one makes decisions and conceives of themselves, it is not necessary that authenticity and steadfast commitments constitute a morally admirable or respectable life. A person could commit to being flaky, to being a nuisance to their friends, or to being a criminal mastermind all while still being authentic.

On a final note, it may seem as if one cannot help but be authentic if, at the end of day, authenticity amounts to a sincere commitment to one’s self-constituting choices. It seems like Neryssa could just as easily authentically embrace the practicality of keeping her current job as she could embrace the authenticity of seeking more fulfilling work, as long as she fully commits to her choice. However, I do not think this new account of authenticity is too weak regarding the tension between the personated self and the self-concept. Again, I will use the quote from Korsgaard: “Consider the astonishing but familiar ‘I couldn’t live with myself if I did that.’ Clearly there are two selves here, me and the one I must live with and so must not fail.”<sup>53</sup> Sometimes the person we take ourselves to be is markedly different from the behavior we exhibit and values we espouse. In these situations, we have two options. One option is to accept a new self-concept in light of new behavioral evidence. Alternatively, we can change ourselves or our lives, thus pursuing greater

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53 Korsgaard, *The Sources of Normativity*, 84.

harmony between the person we act as and the person we take ourselves to be. The discomfort of not being able to live with oneself is what holds us to a stricter attribution of authenticity.

### ***Conclusion***

From the initial doubt that bundle theories cast upon the necessity and nature of authenticity, we find ourselves with a novel account of authenticity centered upon steadfastness to the commitments which we take as integral to our self-concept. It is this self-concept that endows us with a sense of “I” and identity. When the actions and behavior of the personated self successfully act as a “reliable, accurate representation” of the person we take ourselves to be, we are authentic to that sense of identity. When faced with difficult decisions which have the potential to shape who we take ourselves to be, it may help to ask ourselves not what is most authentic of some underlying essence of self, but what we would find most natural to commit to. With this sort of direction, we will hopefully continue to construct self-concepts which we can “live with” and bring fulfillment and satisfaction to our lives.

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# Can Pascal Convert the Libertine?

## An Analysis of the Evaluative Commitment Entailed by Pascal's Wager

Neti Linzer

*While Pascal's wager is commonly approached as a stand-alone decision theoretic problem, there is also a crucial evaluative component to his argument that adds oft-overlooked complexities. Though we can formulate a response to these challenges by drawing on other sections of the *Pensées*, an examination of an argument from Walter Kaufmann highlights enduring difficulties with this response, leading to the conclusion that Pascal lacks the resources to convincingly appeal to the libertine's self-interest.*

### I. Introduction

Pascal's wager, an argument due to the 17th-century mathematician and philosopher, Blaise Pascal, is generally analyzed as a self-contained, formalizable problem, embodying one of the first applications of decision theory.<sup>1</sup> In short, it calculates the expected utility of believing in God against that of not believing, and concludes that, inasmuch as rationality entails maximizing expected utility, i.e. making the decision that will most likely lead to the most preferable outcome, it is rational for us to believe in God.<sup>2</sup> This is a "wager" insofar as we cannot know with certainty that God exists, and the most we can do is gamble on the fact that

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<sup>1</sup> This insight is due to Ian Hacking, quoted in: Hájek, Alan. "Pascal's Wager." *Stanford Encyclopedia of Philosophy*, Stanford University, 1 Sept. 2017, [plato.stanford.edu/entries/pascal-wager/](https://plato.stanford.edu/entries/pascal-wager/).

<sup>2</sup> While, as Hájek notes in her article, Pascal actually presents three different wager arguments, for the purposes of this paper, I will not discuss the correct interpretation/presentation of the wager. This is because my paper is not so much about the mechanics of the wager, but about the wager as a general strategy to inspire pragmatic commitment to God.



he does.

But what I will argue is that the wager argument presupposes a certain evaluative commitment, which Pascal's targeted audience, the 'libertine,' notably lacks.<sup>3</sup> The libertine is someone who does not believe in God, and whose value system is instead oriented towards earthly, bodily, happiness. I claim that for someone thus constituted, Pascal's wager fails to be convincing. The wager, however, is only one part of Pascal's never-finished apologetic project, the preliminary notes of which are organized in the *Pensées*, meaning 'Thoughts.' I will show that if we examine some of the other arguments Pascal makes throughout the *Pensées*, then we can formulate a response to this objection on Pascal's behalf.

As Pascal describes her, the libertine is deeply unhappy when she thinks about the contingencies of the human condition, and she therefore values activities which entertain her and divert her from these disturbing thoughts. In his description of the libertine's condition, Pascal performs something of a Nietzschean style 'revaluation' of this approach to life: it includes a *destructive* phase—in which Pascal argues that the libertine's values are based on false presuppositions—followed by a *constructive* phase—in which Pascal presents the libertine with a more attractive evaluative framework. Once she is in this new cognitive space, the libertine is prepared to be persuaded by the wager.

I argue, however, that inasmuch as there are alternative ways for the libertine to revalue her mortality, Pascal fails to make an argument that will necessarily appeal to her self-interest. Drawing on the work of the 20th-century philosopher Walter Kaufmann, I argue that the libertine can instead revalue her mortality by embracing it, by recognizing the way in which the fact of her death is precisely what makes her life worthwhile. And while Kaufman's approach certainly might also fail to be convincing it at least offers a viable alternative, and has two advantages over Pascal's: (i) it draws on known facts (our mortality) rather than theoretical possibilities (an immortal soul), and it does not require any kind of wager. The upshot is that, while the destructive phase of Pascal's 'revaluation' may have been successful, the success of the constructive phase is dubious. As an appeal to the libertine's self-interest, the wager falls short.

The first section of this paper presents the objection to Pascal's argument, the second section develops a response on Pascal's behalf, and the final section pres-

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3 For the purposes of this paper, I adopt Pascal's use of the term "libertine" to refer to his intended audience. This is partially for convenience, and partially meant to underscore that Pascal's argument is addressed to a specific target audience and is not necessarily applicable to anyone who does not believe in God. As we will see throughout this paper, Pascal's libertine has a very specific set of values and concern, which at times may even seem unrealistic. Inasmuch as Pascal sees himself as addressing this sort of person, however, this paper will assume that his observations are accurate, and analyze whether Pascal's argument is successful on Pascal's *own terms*.

ents enduring difficulties with Pascal's argument by introducing Kaufmann's alternative approach.

## II. The Libertine's Objection to Pascal's Wager

Crucially, Pascal's wager is written in a language that the libertine will understand—the language of self-interest. We can summarize Pascal's argument by saying that the libertine's current lifestyle can, at most, offer her finite happiness: “what you are staking is finite.” If she gambles on belief in God, however, then the libertine opens herself up to the possibility of gaining infinite reward, and, as Pascal puts it, “all bets are off wherever there is an infinity.” As long as there are not infinitely greater chances that God doesn't exist, than that God does exist, then, Pascal urges the libertine that, “there is no time to hesitate, you must give everything.” Pascal thereby appeals to the libertine's instrumental rationality by identifying what it is that the libertine intrinsically desires—namely, her own “beatitude”<sup>4</sup>—and then by arguing that in order to truly satisfy this desire, the libertine must wager on belief in God.<sup>5</sup>

But there is a catch: the infinite happiness guaranteed by God is incomparable to any form of finite happiness that the libertine now enjoys. This is certainly true *after* the libertine accepts the wager, since belief in God demands that the libertine radically transform her lifestyle, substituting the dictates of her own will for the dictates of God's. But I will argue that choosing to accept the wager requires the libertine to undergo what is arguably an even more dramatic transformation: she must transform her value system. This is because the wager does not just promise the libertine *more* happiness, but rather, it promises her *qualitatively different* happiness. And the wager only works if the libertine values *this* sort of happiness. It is true that Pascal never specifies what he means by “an infinite life of infinite happiness,” but inasmuch as he believes that it is the result of a life of faith, we can assume that he is referring to a traditional Catholic conception of heaven.

Consider, then, the following reply in the mouth of Pascal's libertine: *an infinite life with God sounds absolutely miserable! First of all, inasmuch as my happiness is derived, at least in part, from the enjoyment of bodily pleasures, I cannot imagine being happy without my body. Happiness means hunting expeditions, games of cards, lavish feasts, and good company—where can I find those in heaven? Moreover, God promises to unite with believers in heaven. But why should I want to unite with God? You are offering me something that*

<sup>4</sup> All quotations in this paragraph come from: Pascal, Blaise, and Roger Ariew. *Pensées*. Indianapolis, IN: Hackett Pub. Co., 2005 pg. 212-13 (S680/L418).

<sup>5</sup> Pascal actually argues that there are two things that the libertine desires: the true and the good. However, Pascal argues that we cannot know whether God exists, and therefore “your reason is no more offended by choosing one rather than the other.” Since the libertine only stands to gain in the realm of happiness, and not in the realm of truth (or at least not yet), I focus, for brevity, only on this claim.

*satisfies absolutely none of my desires. My life would not be better if God existed, even, (and this is crucial), if God rewarded me as a believer!*

Pascal's wager works by presenting the libertine with a gamble: if God exists, there will be infinite happiness for those who believe and infinite misery for those who do not. This is because God promises to reward believers by uniting with them in heaven, and punishing non-believers by burning, or otherwise punishing them, in hell. But from the libertine's perspective, there *is* no gamble: the prospects of heaven and hell are both unattractive, and since we are dealing with infinite amounts of time, they are both infinitely distressing prospects. There is therefore nothing worth gambling on.

We might try to assure the libertine that *once* she is a believer, she *will* desire eternal life in heaven. We often persuade people to do something by promising that they might enjoy it, even if right now they cannot understand why. To take a mundane example, you might happily follow the recommendation of a friend to try a new food, even if you cannot imagine what it would be like to eat it. True, the stakes of this decision are qualitatively lower, but the same epistemic uncertainty seems to be at play: you cannot know whether you appreciate this food until you taste it, and you also cannot know whether you value a relationship with God until you attempt to build one. Inasmuch as wagering on the food does not involve any sort of evaluative transformation on your part, wagering on God might be the same way.

But, there is a disanalogy between the two cases. Pascal is presenting the libertine with a certain decision matrix in which Pascal assigns an infinitely positive value to heaven and an infinitely negative value to hell.<sup>6</sup> In order for the libertine to assign the same values to the given outcomes in the matrix, she must transform her evaluative framework, so that this-worldly happiness is no longer her highest value. The case of the new food, however, does not require a transformation of this sort. You know that you will either like or dislike the food, and you know that you value eating food that you like and disvalue eating foods that you do not like. Of course, there is still a gamble involved in trying the food since it is impossible to know *how* you will feel about its taste.<sup>7</sup> But crucially, this puts you in a position

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6 This is a simplification. Pascal does not mention exactly how we ought to quantify the harm that will come to a non-believer if God exists. It is certainly possible that the harm will be infinite. And since this is the strongest way to formulate Pascal's wager, I choose to present it this way.

7 The case of trying a new food is interesting in its own right. While it is beyond the scope of this paper to analyze this case, it is worth noting that it is unclear *how* one might weigh the value of trying a food and disliking it against the value of trying a food and liking it, since there are also different degrees of liking and disliking a food. But I think it is fair to assume that, having had the experience of eating foods that you've liked and disliked, you can have a rough sense of the maximum and minimum amount of pleasure that can be derived from eating a food. I would venture to say that trying a food that you love more

that is analogous to the libertine considering Pascal's wager *only provided that she has already made the necessary evaluative transformation*. It does not put you into the position of a standard libertine, who values her current happiness above all else, and therefore does not see anything to gamble for.

Let's describe a case that would be more analogous to the wager. Henrietta is a principled ascetic, meaning that she values abstention from earthly pleasures to whatever extent possible. As such, she adheres to a strict diet of only bread and water. She has sworn off earthly pleasures and adheres to a strict diet of bread and water. Suppose that her cousin, Henry, a food connoisseur, wants to convince her to try some caviar. He knows that he has never tasted caviar before, but he argues that, given her expected utility calculations, those who eat caviar enjoy it so much that he stands to gain more than lose from trying the caviar. But of course, even if Henrietta thought that Henry's calculations were correct, they would be meaningless to her. As a matter of principle, she does not value the sensual pleasure provided by eating delicious food. Therefore, the experience of enjoying the food might be even more negative for Henrietta than the experience of disliking it, inasmuch as she has moral disdain for sensual pleasure. Henry's calculations will only be persuasive if Henrietta abandons her current ascetic values and adopts a more hedonistic lifestyle. This is similar to the situation that the libertine finds herself in when presented with Pascal's wager. Just as it would be meaningless to convince Henrietta to eat caviar by convincing her to abandon her ascetic lifestyle, to suggest that the libertine will desire heaven *if she* is a believing Christian is to reformulate the challenge rather than to address it.

By formulating the libertine's challenge this way, we realize just what Pascal's wager requires: before the libertine can decide to wager on God's existence, she must first revolutionize her evaluative framework, performing what the philosopher Friedrich Nietzsche would refer to as a "revaluation of values," i.e. a complete reversal of her normative commitments. At present, a religious lifestyle is not in the libertine's self-interest; the libertine's conception of happiness is tethered to her physical existence in this world, and therefore she will not be moved by promises of her soul being rewarded in another world. Now that we have established that the libertine must be induced to reassess her values before she can be persuaded to wager on God's existence we must ask: does Pascal present the libertine with such an argument?

### III. Pascal's Revaluation

There is an inherent challenge in trying to influence someone to "revalue their

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than any food you have ever eaten, is still not a *qualitatively* different type of pleasure than eating a food that you really love.

values”: namely, identifying which values one can appeal to in formulating the argument. Generally, pragmatic arguments like Pascal’s wager take the agent’s values as a starting point, and then proceed to demonstrate that a certain action will do a better job at furthering the agent’s values. But if we use values as a starting point, how can we cogently provide someone with practical reasons to adopt a wholly new evaluative framework, without invoking the very values that they do not yet possess?

To see how we might formulate a “revaluation” without recourse to other values, we can draw inspiration from Friedrich Nietzsche, whose philosophical undertaking was just that: a revaluation of all values. In his work, *Nietzsche’s Revaluation of Values: A Study in Strategies*, contemporary Nietzsche scholar, E.E. Sleinis, analyzes the various strategies that Nietzsche uses to achieve his evaluative revolution. One strategy that he discusses, “destruction from within,” undermines a certain value by revealing that it is internally inconsistent.<sup>8</sup> This undermines the value *on its own terms*. There are a few different permutations of this strategy. One, which Sleinis refers to as “false presuppositions,” aims to show that “the value requires a fact to obtain that, as it turns out, fails to obtain.” In attacking the factual, rather than the evaluative component of the value system, Nietzsche is able to undermine it from within, without recourse to other values. For example, Nietzsche devalues “disinterested contemplation as the ideal of aesthetic contemplation” by arguing that humans are simply incapable of disinterested contemplation. We cannot disengage from our passions, emotions, and other interests when we contemplate works of art. “We can put this point in more graphic terms,” explains Sleinis, by arguing that “the pure aesthetic contemplator is a fiction.”<sup>9</sup> In what follows, I will demonstrate how Pascal launches a similar attack on the libertine’s value system by arguing, in a parallel manner, that the happy libertine is a fiction.

As mentioned, the wager is merely a *part* of Pascal’s broader apologetic project, and it is within this broader project that Pascal employs this Nietzschean revaluation strategy. There are many notes in the *Pensées* devoted to bemoaning the wretchedness of the libertine’s condition, and arguing that man simply cannot be happy without God. And while we do not know where Pascal would have placed these ideas (if at all) in his final work, we can still argue that, Pascal’s intentions aside, they do an excellent job preparing the libertine to be receptive to the wager. Once Pascal convinces the libertine that her approach to life was premised on a false presupposition, he is able to urge her to gamble on a new one.

Pascal undermines the libertine’s approach to life—happiness derived from en-

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<sup>8</sup> Sleinis, E. E. *Nietzsche’s Revaluation of Values: A Study in Strategies*. Urbana: University of Illinois Press, 1994, pg. 168.

<sup>9</sup> Ibid.

tainment or diversions as the ideal of happiness—in the same way that Nietzsche undermines disinterested contemplation as the ideal of aesthetic contemplation: he shows that humans are incapable of achieving happiness through their diversions.<sup>10</sup> While traces of this argument are evident throughout the *Pensées*, Pascal's most sustained argument for it appears in his section "Diversions." After examining this argument, we will turn to the possibility of an alternative response on behalf of the libertine in the spirit of philosopher Walter Kaufmann.

Pascal presents us with an imagined dialogue, presumably between a believer and a libertine, in which the libertine explains her approach to life: "is not happiness the ability to be amused by diversion?"<sup>11</sup> For the libertine, to be happy is to be entertained. We can understand some of the more perplexing behaviors of people if we realize that their underlying motivation is to divert and entertain themselves: "those who philosophize about it, and who think people are quite unreasonable to spend a whole day chasing a hare they would not have bought, scarcely know our nature." People do not hunt because they want the kill, but rather, because hunting provides them with entertainment. Pascal argues that all men, even kings who are in "the finest position of the world," are miserable, "if they are without what is called diversion."<sup>12</sup>

The reason that we value diversion, explains Pascal, is because it allows us to avoid confronting all of the unpleasant features of our condition. We do not seek "easy and peaceful lives," because those would force us to think about "our unhappy condition."<sup>13</sup> The "unhappy" quality of our condition is delineated in the believer's reply to the libertine; the libertine asks whether happiness is not the ability to be amused by diversions, to which the believer replies, "No, because that comes from elsewhere and from outside, and thus it is dependent, and subject to be disturbed by a thousand accidents which cause inevitable distress."<sup>14</sup> All of the activities with which the libertine happily amuses herself are all highly contingent, and are made easily inaccessible by any number of factors that are necessarily out of the libertine's control.

Moreover, all of the libertine's amusements are necessarily ephemeral, so that even if they are miraculously undisturbed by illness or accident, they will inevitably be disturbed by death. *This* is the primary source of the libertine's inconsolable misery in Pascal's conception—no matter how much happiness she derives from her activities in this world, her impending death constantly threatens to rob her

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10 As Ariew notes in his translation, "the word 'diversion' suggests entertainment, but to divert literally means: 'to turn away' or to mislead." By using this word, Pascal makes his critique implicit from the beginning.

11 Pascal, S165/L132.

12 Quotations in this paragraph come from Pascal, S168/L136.

13 Ibid.

14 Pascal, S165/L132.

of everything. As Pascal puts it, man “wants to be happy, wants only to be happy, and cannot want not to be so. But how will he go about it? The best way would be to render herself immortal, but since he cannot do this, he has decided to prevent himself from thinking about it.”<sup>15</sup> Thoughts of mortality thwart the libertine’s ability to enjoy the world around, and so the libertine blocks out these thoughts with diversions. In Pascal’s example, the libertine hunts vigorously for a hare that he would never buy, because while “the hare does not save us from the sight of death...the hunt does.”<sup>16</sup>

All of this explains how Pascal can argue, in the spirit of Nietzsche, that valuing the happiness derived from diversions as the ideal of happiness falsely assumes that humans can find happiness in diversions. Pascal demonstrates that they cannot. Our diversions are inevitably “subjected to be disturbed by a thousand accidents, and this causes inevitable distress.”<sup>17</sup> Crucially, the distress is *inevitable*; even if we spend most of our time completely amused by diversions, the fact that our source of happiness is external and contingent puts us in a constant state of instability. We are rendered eternally dependent on factors beyond our control and are therefore powerless to console ourselves in the face of adversity unless the universe conspires to offer us diversion.

We might wonder if Pascal’s case is overstated. Couldn’t the libertine seek happiness through something more substantial than a mere “diversion,” like, for example, self-fulfillment? I think that for Pascal the answer is no. This is because death robs any pursuit—even the pursuit of self-fulfillment—of enduring meaning. As Pascal puts it: “the final act is bloody, however fine the rest of the play. In the end, they throw some earth over our head, and that is it forever.”<sup>18</sup> The libertine can only be satisfied if she does not think about the “final act” that will undermine “the rest of the play,” and because of this, all of her pursuits, even those that appear most meaningful, are really attempts to distract herself from this sobering fact. Pascal suggests that if the libertine actually confronted the truth of her condition, she would desist from all of her pursuits—even her desire for self-fulfillment—because they would no longer mean anything.

That the libertine seeks to distract herself from the contingency of her condition with something that is itself contingent, is, I think, sufficient to undermine the libertine’s approach to life. But Pascal goes even deeper in exposing the problems with the libertine’s approach. He writes that, “The only thing that consoles us for our miseries is diversion, and yet this is the greatest of our miseries. For it is mainly what prevents us from thinking about ourselves, leading us imperceptibly to our

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<sup>15</sup> Pascal, S166/L134.

<sup>16</sup> Pascal, S168/L136.

<sup>17</sup> Pascal, S165/L132.

<sup>18</sup> Pascal S197/L165.



ruin.”<sup>19</sup> The libertine’s pursuit of diversions makes genuine self-knowledge impossible—if she is always distracting herself, she will never take the time to understand herself and her condition, and search for a more reliable and stable form of happiness. How can we say that someone is happier the more diverted they are, if someone who is diverted is also wholly alienated from herself?<sup>20</sup> It is this consideration that motivates Pascal’s famous observation that, “man’s unhappiness arises from one thing alone: that he cannot remain quietly in his room.”<sup>21</sup> As Pascal sees it, diversion as source of true happiness—much like Nietzsche’s detached contemplation—is, indeed, a fiction.

Pascal has induced a value crisis in the libertine by rendering what she previously valued—the amusements of earthly life—fundamentally meaningless. So what now? Left to live without diversion, Pascal explains, “we would be bored, and this boredom would lead us to seek a more solid means of escape.”<sup>22</sup>

I will argue that Pascal asking the seeking libertine to consider the possibility of an immortal soul is, in a certain sense, similar, to Nietzsche’s imagined demon presenting the possibility of eternal recurrence—i.e the doctrine that our lives will be repeated infinitely many times into the future. Nietzsche presents this as a mere *possibility*, the consideration of which is nonetheless capable of inspiring an evaluative transformation in his readers.<sup>23</sup> Entertaining the possibility of eternal recurrence hopefully inspires us to seek meaning in the lives that we are living on earth, rather than placing all of our hopes on a life after death. Analogously, before the wager, Pascal does not expect the libertine to believe in the immortal soul as a *metaphysical fact*, but he nonetheless presents it to her as an attractive *possibility*, powerful enough to reorient her life. If the possibility of an immortal soul isn’t even on her radar, then the wager argument cannot even get off the ground. But Pascal believes that considering this possibility will induce the libertine to seek God, the wager will then point out that doing so maximizes her expected utility, and eventually she will be certain of God’s existence.<sup>24</sup>

What makes the libertine’s condition so unhappy are all of the external threats that face her at every moment, the most debilitating of which is her own death.<sup>25</sup>

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19 Pascal, S33/L414.

20 The libertine says something in this spirit in Pascal, S165/L132.

21 Pascal S168/L136.

22 Pascal, S33/L414.

23 In some interpretations of Nietzsche, the eternal recurrence is actually presented as a metaphysical truth that we must believe in. Inasmuch as I am looking for an example that will parallel Pascal, however, I have chosen to discuss the interpretation that sees it as a pure possibility.

24 Evidence that Pascal believes those who are inspired by the possibility of an immortal soul and genuinely seek God as a result will come to have sure knowledge of her existence can be found in S681/L427.

25 This is not intended to summarize Pascal’s nuanced account of why we are wretched, but rather to encapsulate what it is that the libertine recognizes as “unhappy” about her



The libertine's old approach was to avoid confronting this reality. As Pascal puts it, "as men are not able to fight against death...they have it into their heads, in order to be happy, not to think of them at all." What Pascal offers the libertine is a solution that is truly sustainable: instead of valuing *distractions* from our mortality, we can value that which *denies it altogether*. We can reject that part of us that gets piled with dirt, since it can only make us unhappy, and instead we can embrace our immortal soul.<sup>26</sup> Pascal presents this as a dazzling, metamorphic possibility, writing that "the immortality of the soul is something so important to us, something that touches us so profoundly, that we must have lost all feeling to be indifferent to knowing the facts of the matter."<sup>27</sup> Inspired by the possibility of an immortal soul, we are primed to be receptive to the wager, which tells us that if we want to maximize the expected outcome for our soul, we must gamble on God's existence.<sup>28</sup> If we now believe that it is through taking care of our immortal soul that we can transcend the misery of our bodily condition, the wager will indeed have a powerful pull on us.

Inasmuch as the libertine's challenge is escaping the misery of her contingent condition, Pascal presents the possibility of the immortal soul as a powerful alternative to the use of amusements and diversions. But is this alternative persuasive? The weakness in Pascal's argument is noted by Sleinis in his analysis of Nietzsche's parallel argument: "pure possibilities may have some capacity to exert pressure on our choices, but this capacity can in no way be equal to that of known actualities."<sup>29</sup> There is, however, a limit to how influential a mere possibility can be. If you know that a certain consideration that is motivating you to act, is only *possibly* true, then you won't feel like you have a decisive reason to act. Pascal is confident that if we take the possibility of an immortal soul seriously, then we will eventually be led to believe it as an actuality. The problem, however, is whether we can take it seriously enough for this epistemic transformation to occur. This doesn't mean that Pascal's argument *cannot* work at all, it just means that its practical success will likely be limited to libertines with certain psychological constitutions (i.e. it will be more persuasive to someone with a credulous disposition than to someone

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condition: that is, all of the external factors that threaten her ability to enjoy diversions, the most intractable of which is death.

26 This might seem almost like a pre-wager-wager: wager on belief in an immortal soul, since it provides the potential for immortality rather than on the belief in a mortal soul, since this will lead to a life of misery.

27 Pascal S681/L427.

28 Of course, it is possible that there are other belief systems which include the notion of an immortal soul in an equally attractive way. This is similar to the well-known "many Gods objection" to Pascal's wager, and while addressing it is not the subject of this paper, it is worth noting its presence. When I argue later on that the argument can work, I mean that, leaving other considerations such as this objection aside, it can work.

29 Sleinis, pg. 173.

with a skeptical disposition).

#### IV. Walter Kaufmann on Our Misery

So far, we have seen that Pascal's wager requires a certain evaluative shift on the part of the libertine, and that certain sections of the *Pensées* can be read as making an argument for that shift. But there is a weakness to part of this argument, namely, the plausibility that a mere possibility can inspire a dramatic revaluation. What I would like to consider, therefore, is an alternative response to the libertine's crisis of value that would allow her to retain her current theoretical framework, but nonetheless allow her to transcend the apparent miseries of the human condition.

We can read Kaufmann as addressing the libertine at the same stage that Pascal is—once she has accepted the futility of her diversions but does not know how else to cope with her unhappy condition—and arguing that the libertine can *embrace* her mortality rather than try to *escape* from it. Examining Kaufmann's argument helps us to appreciate the way in which Pascal's wager falls short as a straightforward appeal to the libertine's self-interest. At most, the wager offers the libertine one way to escape her misery, but the libertine may find Kaufmann's ideas more persuasive.

While for Pascal, the libertine is unhappy if she is left to ponder her mortal condition, Kaufmann argues that this is not so; in fact, it is our *mortality* that renders our lives here worthwhile. The libertine considers herself miserable because she will not live in this world forever, but Kaufmann urges her to consider how miserable she would be if she *did*. It's true that death is frightening for those who "fritter their lives away," but "if one lives intensely, the time comes when sleep seems bliss."<sup>30</sup> Meaning, that if the libertine embraces all that this-life throws at him, then she will welcome death as a much-needed rest. One cannot live intensely forever.

This argument might seem a bit problematic. After all, it is not clear why a simple good night's sleep (or two) would not suffice for the one who lives intensely—why should she crave *eternal* sleep? The answer to this lies in the second argument that Kaufmann makes, namely, that without an eternal deadline we would not be able to live our lives as meaningfully. Our impending death offers a perspective that would otherwise be impossible.

Kaufmann describes the way in which the threat of death motivates us to live vigorously: "the life I want is a life I could not endure in eternity. It is a life of love and intensity, suffering and creation, that makes life worthwhile and death welcome." Death "makes life worthwhile" because it encourages us to carve out lives that are indeed worthwhile. For example, "love can be deepened and made

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<sup>30</sup> Kaufmann, Walter, and Immanuel Velikovsky. *The Faith of a Heretic*. [1st ed.] Garden City, N.Y: Doubleday, 1961, pg. 386.

more intense and impassioned by the expectation of impending death,” meaning that our desire to be with someone we love is made all the more acute by our knowledge that we cannot be with them forever. When the libertine worries about the fact that she may one day lose her beloved, she need not retreat from these thoughts—either by seeking diversion or by entertaining the possibility of an immortal soul—but rather, as Kaufmann advises, she should embrace them. The fact that she may never see her beloved again is all the more reason for the libertine to express her love more eloquently and fervently than she ever would have if she was not worried about losing her beloved. It is not just that such intensity and passion would be impossible to sustain in an infinite life, but rather that in an infinite life we could never achieve it in the first place. Death offers a perspective on life that, contrary to what Pascal argues, makes our lives in this world vibrant and precious.

Pascal writes that, “As men have not been able to cure death, wretchedness, ignorance, they have decided, in order to be happy, not to think about those things.”<sup>31</sup> But Kaufmann argues that it is precisely *by* thinking about her own death that the libertine can be inspired to live in a way that makes her happy. Perhaps this is why Ecclesiastes muses that “it is better to go to the house of mourning than to the house of feasting”—proximity to death provides the living with an invaluable lesson to truly “take to heart.”<sup>32</sup> The libertine desperately avoids confronting her mortality, when in fact, thinking about death makes her life better right now: “one lives better” says Kaufmann, “when one expects to die,” and takes advantage of the time she has.<sup>33</sup> This is not to deny the tragic reality that death often visits too early, but rather, to suggest that inasmuch as this is not always the case, we are, as philosopher Bernard Williams puts it, “lucky in having the chance to die.”<sup>34</sup>

Pascal might still counter that even if contemplating our death imbues our lives with urgency and significance, belief in the Christian afterlife *also* accomplishes this inasmuch as our conduct in this life determines how we fare in the next. But this argument will have no sway over the libertine at the stage of the argument at which we are now encountering him—when she does not yet believe in God. And what Kaufmann’s argument has demonstrated is that the libertine does not need to wager on God’s existence in order to live life meaningfully and passionately. While the Wager asked the libertine to revalue her values—which, as we have seen, is a non-trivial requirement—Kaufmann speaks directly to the evaluative commitments that the libertine already has. In a way, Kaufmann uses *mortality* in the same

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<sup>31</sup> Pascal S168.

<sup>32</sup> Ecclesiastes 7:2.

<sup>33</sup> Quotations in this paragraph come from Kaufmann, pg. 386.

<sup>34</sup> Williams, Bernard. “The Makropulos Case: Reflections on the Tedium of Immortality.” Chapter. In *Problems of the Self: Philosophical Papers 1956–1972*, 82–100. Cambridge: Cambridge University Press, 1973.

way that Pascal uses *immortality*: to redeem us from our misery by impressing upon us the urgency and significance of our lives. It's true that Kaufmann and Williams don't consider the possibility of an afterlife that is equally as exciting—if not more exciting—than earthly existence. There is, after all, no reason to assume that when we die we lose our ability to exercise agency. But the point is simply that they offer a way of seeing life on earth as meaningful *regardless* of what comes afterward. This is in sharp contrast with Pascal's picture in which life on earth is miserable unless it is redeemed by belief in the afterlife.

This is not to say that Pascal is wrong *per sé*; it is possible that Kaufmann would have lived a better life had he sought God and embraced religion. It is possible that he is currently burning in the depths of hell, wishing his philosophical reasoning had taken a different turn. But this is of no consequence. What I am arguing is that Pascal is wrong to assume that the libertine's mortality leaves her irredeemably miserable; Kaufmann offers an alternative perspective, whereby the libertine's mortality is precisely what redeems her life and makes it worthwhile. Crucially, Kaufmann's argument does not ask the libertine to entertain any theoretical possibilities like Pascal's does, and it never requires that she make a wager of any sort. The libertine *might* still prefer Pascal's argument, and therefore choose to see "the final act" as "bloody." But as we have seen, she might choose to welcome death as a "blissful sleep." And if Pascal cannot convince the libertine that mortal life is miserable, then he cannot get her into the evaluative mindset to be receptive to the wager.

## V. Conclusion

The success of Pascal's wager as an appeal to the libertine's self-interest depends on his ability to convince the libertine to change her evaluative framework. At least at the outset, the possibility of an infinite life with God in heaven will repel rather than attract the libertine, giving her no reason to "wager all she has."<sup>35</sup> If we study the wager against the backdrop of Pascal's broader apologetic project, however, we find the resources to persuade the libertine to "revalue her values."

This argument takes place in two stages. First, Pascal shows the libertine that the premium she places on amusements and entertainment falsely presupposes that they can truly make her happy. Pascal argues that they fail to do so, both because they are external—and therefore "subject to a thousand accidents"—and because they alienate the libertine from herself, making it impossible for her to discover what might truly make her happy. With the libertine's evaluative framework thus dismantled, the inherent unhappiness of her condition becomes even more acute. Without diversions, she must confront the miserable fact of her mortality head-on.

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<sup>35</sup> Pascal, S680/L418.

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It is in this evaluative vacuum that Pascal offers her a new value that can save her from the misery of mortality: the immortal soul. At this stage of the argument, the libertine will not believe in the immortality of her soul as a metaphysical fact, but in considering this marvelous possibility, she will be encouraged to investigate it. And when Pascal tells her that her soul will fare best if she gambles on God's existence, she will eagerly oblige.

But this need not be the only way to save the libertine from the misery of mortality: Kaufmann suggests that the libertine should embrace and cherish her mortality because it is through the prism of her own death that her life becomes urgent and precious. This approach does not require an epistemic leap of faith like Pascal's did; it simply requires the libertine to look at the fact of her life in a new light. The upshot is that for those who find themselves moved by Pascal's polemic against diversions, but unmoved by her appeal to dubious metaphysical facts, there might be a more attractive solution.

After he presents the libertine with her wager, Pascal urges that "there is no time to hesitate!" From what we have seen, however, there might be far too much of it.

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# The Growing Incoherence of Our Higher Values

Aash Mukerji

Nihilism is perhaps the most commonly misunderstood notion in Friedrich Nietzsche's writings. Not only do many wrongly believe Nietzsche to advocate for nihilistic behavior, but many also see nihilism as the loss of all value and synonymous with the belief that everything is meaningless and valueless. In reality, Nietzsche defines severe nihilism as "the conviction of the absolute untenability of existence when it comes to the highest values that are acknowledged."<sup>1</sup> For Nietzsche, nihilism thus does not necessarily reduce the individual to a living lump of ennui. Rather than lacking all value judgements, Nietzsche portrays nihilism as a condition characterized by the absence of justifiable higher values. This supposed depletion in justification comes from Nietzsche's infamous assertion of the death of God; Nietzsche held that modern science has made "belief in the Christian God unbelievable."<sup>2</sup> Nietzsche believed that without divine reasons to cherish our higher values, we would ultimately lose them entirely. Moreover, Nietzsche characterizes nihilism primarily as a cultural phenomenon—the societal loss of higher values precedes and causes the affective individual symptoms of nihilism.

Nietzsche sees this cultural wave of nihilism as a looming threat; he predicts that humanity is on the brink of succumbing, to becoming nothing more than a group of "last men" Last men are characterized by the aforementioned deficiency in higher values, effectively rendering them incapable of justifying any goals that do

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<sup>1</sup> Friedrich Nietzsche, et al., *Writings from the Late Notebooks*, (Cambridge University Press, 2016), 205.

<sup>2</sup> Friedrich Nietzsche and Walter Kaufmann, *The Gay Science: With a Prelude in Rhymes and an Appendix of Songs: Translated, with Commentary by Walter Kaufmann*, (Random: 1974), 343.

not immediately benefit them.<sup>3</sup> Nietzsche makes the impending nature of nihilism clear in *Zarathustra*, where the titular character is confronted by a chorus of individuals who actually wish to become last men.<sup>4</sup>

Nietzsche's assertion of the imminence of nihilism was something of great interest to me as it seems that, even in the last two hundred odd years, our higher values have not been lost entirely. Nonetheless, I was not ready to entirely discount Nietzsche's worries concerning our higher values, and this paper discusses a different manner in which our relationship with them may be deteriorating. In the wake of the death of God, what we are losing may not be our higher values themselves, but instead the unifying principles that require consistency and soundness among them. I will argue that we are progressing towards a world where our higher values are maintained but do not necessitate coherence in order to inform and justify our actions. Indeed, some incoherent higher values evidently already enjoy primacy over other kinds of values. I will attempt to demonstrate this by showing that, though contemporary society has preserved various higher values, individuals and communities frequently act in ways that conflict with those values without recognizing any logical inconsistency. This implies that what is missing from our higher values is the necessity for harmony with our actions and the other values we hold. In this paper, I will discuss some ideologies maintained today that seem to fit the characterization of higher values but conflict with our day-to-day activities and other values. I will attempt to supply some explanation for what causes this incoherence both through a Nietzschean lens and through the analysis of media culture within the framework of Jean Baudrillard. I believe both perspectives provide valuable insight into the mechanics of what is going on. Throughout this paper, I essentially seek to prove that we have retained our higher values but are losing their coherence and structure.

First and foremost, we must establish some higher values that have been preserved. In my view, the most prevalent ones seem to be the political and social ideologies we subscribe to individually and culturally. For this paper, I will primarily consider liberalism and conservatism in America as typical instances of these types of values. To distinguish higher values from other more standard values, I will make use of the criteria detailed by Katsafanas in his paper, "Fugitive Pleasure and the Meaningful Life: Nietzsche on Nihilism and Higher Values." These criteria include demandingness, tendency to generate tragic conflicts, regular induction of strong emotions, professedly great import, exclusion of other values, and propensity for creating communities.<sup>5</sup> As far as I can tell, political ideologies seem to

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<sup>3</sup> Friedrich Nietzsche, et al, *Nietzsche: Thus Spoke Zarathustra*, (Cambridge University Press, 2006), 129.

<sup>4</sup> Ibid, 130.

<sup>5</sup> Paul Katsafanas, "Fugitive Pleasure and the Meaningful Life: Nietzsche on Nihilism



instantiate all of these criteria.

They are certainly demanding; liberals and conservatives both generally see their chosen credo as the “correct” way to live and believe that it is immune to any sort of compromise. For either group, their ideology does not (in theory) allow them to be frivolous with their moral and political choices or to deviate from the prescribed guidelines is often perceived as a violation of some sort of ethical code.

When conflict between our political ideologies and other higher values is acknowledged, such discord is often seen as tragic. For instance, nearly everyone has heard of individuals that have experienced, or have themselves experienced, intense strife with family members due to political disagreements. Family, as a general construct, is widely treated as a higher value. Familial bonds are demanding insofar as compromising them is seen as betrayal of the highest degree, they induce powerful emotions, acting for the sake of one’s family is seen as sufficient to explain most actions, family is often presented as taking priority over all other pursuits in life (to the point of being exclusionary), and family, of course, instantiates strong communities. So, when we experience conflicts between our political ideology and our family, such conflicts are nothing short of agonizing. Is it morally permissible to cut off one’s family members because they are conservative or liberal or libertarian? Is the gap in ideology something so forceful that it ought to trump deep familial bonds? Such questions are not easy to answer (for most) and the dilemma one finds oneself in when faced with them is most definitely viewed as a tragic one. Even if one is not sold on the status of family as a higher value, there are numerous others that can be substituted to illustrate my point. Here I will include a brief clarification that will prove important further on in this paper: The conflict between higher values must be acknowledged. My characterization of political ideology as a higher value relies partially on the notion that if one identifies a conflict between one’s political ideology and another higher value, then such conflict will be viewed as tragic. However, should one have an unrecognized logical conflict between one’s ideology and another higher value for whatever reason (for instance due to growing incoherence in our higher values), then this trait does not go unfulfilled merely because such a conflict goes unnoticed.

Elicitation of strong emotions when it comes to political ideology needs no lengthy justification. One merely needs to survey the landscape of almost any social media platform to witness the masses loving, hating, condemning, and worshipping political figures.

Likewise, it seems obvious that we believe political ideology is more important than the vast majority of things in our lives. At their core, ideologies such as liber-

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and Higher Values: Journal of the American Philosophical Association,” *Cambridge Core*, (Cambridge University Press, 2015), 9-11.

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alism and conservatism exist to function as banners of the things we value most in life. For the strong liberal or strong conservative, the very essence of what it means to live a good life is often synonymous with their dogma.

Lastly, it is needless to say that political ideology has become exclusionary in nature and is prone to instantiate powerful communities. This phenomenon is represented best by the American political system where, by being part of one community, you are by default excluded (and often even looked down upon) by rivaling groups. As people increasingly and overwhelmingly define themselves and others based on their choices in politics, one's ideology is commonly seen as central to one's character. The intense political polarization that has resulted from this is testament to just how exclusionary political ideology has become and how robust the coalitions formed based on such ideology can truly be.

Thus far, I have endeavored to establish political ideologies as common examples of higher values that are still held by people today. From here, I aim to show that such higher values are not being lost, but rather becoming increasingly incoherent. To this end, I would invite my reader to consider how party politics works in America. Generally speaking, the Democratic Party is meant to model liberalism and represent liberal people, and, conversely, the Republican Party is supposed to model conservatism in action. But can we confidently say that those values are the basis upon which each party unerringly acts? I have instead found their condition to be best described by the ideas of Baudrillard, whose framework I will use to illustrate what is going on. Of contemporary society, Baudrillard says:

“Abstraction is no longer that of the map, the double, the mirror, or the concept. Simulation is no longer that of a territory, a referential being, or a substance. It is the generation by models of a real without origin or reality: a hyperreal. The territory no longer precedes the map, nor does it survive it. It is nevertheless the map that precedes the territory - precession of simulacra.”<sup>6</sup>

In short, rather than our values and ideals informing the models we use to structure society, the models have begun to determine our values. In this case, instead of political parties typifying our liberal or conservative ideals, it seems increasingly true that the parties are influencing and warping our values. If we accept this Baudrillardian understanding, it seems evident that what retains vital importance in modern society is not our higher values themselves but the models that now precede them.

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<sup>6</sup> Jean Baudrillard and Sheila Faria Glaser, *Simulacra and Simulation*, (University of Michigan Press, 2019), 2.

This account also explains why incoherence of higher values seems to be on the rise; we still perceive our higher values to be what drives our society forward, even though this is not the case, which causes a disconnect between the individual and the weight of their own values. In addition, because our models have started to inform our values, we are no longer able to distinguish which actions we take on behalf of a higher value and which we take on behalf of a mere imitation of one. Even worse, the solution is no longer as simple as critically analyzing our values in order to discriminate between which ones are legitimate and which ones are mere simulacra; our genuine higher values have started to emulate the misshapen versions of them embodied by our models.

The Baudrillardian fall from grace notably has two distinct steps: First, the models of our values (in this case our political parties) seem to operate completely independently from, and often in contradiction with, our actual values. Second, in a more sinister fashion, our values themselves are altered in a manner that breeds incoherence and an inability to grasp the inconsistencies in our beliefs. This transmutation occurs, on Baudrillard's account, through media culture.<sup>7</sup> This fits nicely with my argument, as it seems overwhelmingly obvious that the media is now inextricably entwined with politics, meaning our political ideology is especially susceptible to modification by mass media. For those readers who are skeptical about the weight Baudrillard and I are assigning to media culture, I will justify this further on in this paper. For now, however, I will provide some evidence that the process I have just described is in fact reflective of our society.

First, consider America's involvement in the ongoing conflict between Israel and Palestine. For the fiscal year 2021, the Trump Administration sought \$3.8 billion to support Israel's military spending.<sup>8</sup> Theoretically, this should be a big concern for Republicans. Since the reduction of taxes and minimization of governmental scope are undoubtedly two of the main goals of conservatism, and purportedly the Republican Party, it seems as though the Party ought to support decreasing tax-funded aid to Israel. And yet, studies show that the vast majority of Republicans believe that Trump has "struck the right balance" in dealing with the Israeli-Palestinian conflict.<sup>9</sup> As we can see, even if reducing our financial assistance to Israel is in the best interests of conservatism, self-identified conservatives consistently act contrary to this because that is what their party leaders convey to them.

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7 Glenn Yeffeth, *Taking the Red Pill: Science, Philosophy, and Religion in the Matrix*, (Benbella Books, 2003), 74.

8 *U.S. Foreign Aid to Israel*, Congressional Research Service, 2020, [fas.org/sgp/crs/mideast/RL33222.pdf](https://fas.org/sgp/crs/mideast/RL33222.pdf).

9 "U.S. Public Has Favorable View of Israel's People, but Is Less Positive Toward Its Government," *Pew Research Center - U.S. Politics & Policy*, 2020, [www.pewresearch.org/politics/2019/04/24/u-s-public-has-favorable-view-of-israels-people-but-is-less-positive-toward-its-government/](https://www.pewresearch.org/politics/2019/04/24/u-s-public-has-favorable-view-of-israels-people-but-is-less-positive-toward-its-government/).

A Republican might object to this characterization, on the grounds that America has a responsibility to intervene in areas where it has deemed human rights violations are occurring. But if that is the case, then how can the Republican simultaneously support the construction of a border wall designed to prevent persecuted Latin Americans from fleeing for their lives?<sup>10</sup> The significance of all this is that the status of our higher values, in relation to their models, becomes dubious. This issue seems to mimic the first step quite clearly in our Baudrillardian process. The U.S. support of Israel is but one example of this phenomenon wherein actions resulting from our models are completely separate from the actions that would normally be dictated by our higher values.

Next, let's discuss an example of the second step of the Baudrillardian framework. Firearm legislation is another controversial issue in America at the moment, with various groups holding drastically different positions on whether one has the right to bear arms. Through this issue, I hope to demonstrate the ways in which the incoherence of higher values can lead to illogical stances on both ends of the political spectrum. When it comes to gun control, conservatives are generally in favor of fewer restrictions. This is largely consistent with core conservative beliefs, such as minimizing government input on private lives and preserving the liberties provided by the second Amendment. As a matter of fact, widespread gun ownership is not only morally permissible but even *necessary*, many conservatives say, in case the state ever decides to infringe on the rights of its citizens or coerce them without due cause. For the conservative, guns are thus a mode through which the individual can retain power over the state. So far, nothing seems wrong. But issues arise when other beliefs, supposedly in line with the same brand of conservatism, are added to the mix. While retaining this belief in the need, and indeed the moral right, to protect oneself from an unjust state *as one sees fit*, conservatives in America today are also associated with the position that it is unpatriotic and morally reprehensible to kneel during the anthem or otherwise protest the brutality and violence that occurs through the arm of the state, i.e., the police. It seems to me that simultaneously holding these two beliefs is something that is very difficult, if not impossible, to maintain. And yet, these are often considered standard conservative and Republican positions in our society.

Contemporary liberals do not fare much better when their higher values are analyzed in this context. For the liberal, government institutions in America have a long history of systemic racism and oppression of minorities and lower classes. Such institutions thus ought to be overhauled or rectified, the logic goes, in order

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<sup>10</sup> Suzanne Gamboa, et al., "Why Are so Many Migrants Crossing the U.S. Border? It Often Starts with an Escape from Violence in Central America," *NBCNews.com*, 2018, [www.nbcnews.com/storyline/immigration-border-crisis/central-america-s-violence-turmoil-keeps-driving-families-u-s-n884956](http://www.nbcnews.com/storyline/immigration-border-crisis/central-america-s-violence-turmoil-keeps-driving-families-u-s-n884956).

to form a society that reflects more liberal values. Yet at the same time, there is a common liberal view that guns are instruments of death and should be withheld from all except government employees who require them for their job, such as police officers and military personnel. But this view seems to remove an opportunity for the individuals oppressed by the state to gain power, and instead places that power squarely in the hands of the oppressors. The liberal cannot have their cake and eat it too; to believe that the police should be defunded because of their routine violence against the people they ought to be protecting, and simultaneously believe that the state should have full authority and exclusive control over all firearms, seems problematic at best. Even if the liberal attempts to avert this problem by going even further and asserting that *nobody* should own a gun, then a similar problem arises. It is still the same oppressive and racist state that takes guns away from people. It is still the same state that ultimately retains the power in this scenario.

These are just some ways in which our higher values have begun to show signs of incoherence. Unlike our first step, this second step is no longer just a matter of us acting in line with our models while wrongly believing that they are reflections of what we ultimately value. If we could stop after the first step, there would still be a dim hope of redemption. If one can be shown the inconsistencies between their values and the actions of their party, it seems as though they can revise their mode of life. But the incoherence of the second step is far more deadly. Our higher values themselves are being changed; they are becoming muddled and losing intelligibility rapidly. Recommitting oneself to one's values when faced with inconsistency is already exceptionally difficult but refashioning one's values when faced with complete incoherence is even more demanding. Gun control is just one example of this, but these types of discussions all beg the same question: Are conservatives and liberals determining what their party stands for, or is it their parties that are deciding what the ideology stands for? It may be, in the words of Baudrillard, "no longer a question of imitation, nor duplication, nor even parody. It is a question of substituting the signs of the real for the real."<sup>11</sup>

This Baudrillardian diagnosis of society is explained by many factors, but primary among them is the rise of media culture. Overwhelmingly, the types of media we consume has come to define what it means to be social in our culture. The interactions we have with friends, family members, significant others, strangers, all are determined by the media we absorb. Take romantic encounters, for instance. The ways in which we decide how we ought to act towards our partners, what sort of romantic gestures are considered socially acceptable, what kind of boundaries we set, are all largely, if not entirely, defined by what we have seen in social media,

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11 Baudrillard and Glaser, *Simulacra and Simulation*, 2.

films, television, advertisements, and so on. One need look no further, Baudrillard says, than to observe that, “whoever is underexposed to the media is desocialized or virtually asocial.”<sup>12</sup> Such a state of affairs would be fine, of course, if most forms of media faithfully represented and depicted our higher values, but the opposite seems to be the case.

Consider the social phenomena commonly referred to as “virtue signaling” or “performative activism.” In particular, let us contemplate the cases in which one virtue signals without actually doing much to pursue that virtue. In cases like these, many remain unaware of their hypocrisy and nonetheless believe that they act virtuously when, in fact, they are merely presenting the facade of virtue. The mere posting of a black square on one’s Instagram account without any further action to support African American communities comes to mind as a relevant example of this. One might say that all individuals who engage in such signaling do so consciously—they are aware that they are “faking it” in order to achieve popularity, acceptance into a social group, or something of this nature. But this seems like an overly pessimistic claim, and I would characterize the phenomenology of such individuals differently. I would argue that most people that act in these ways genuinely believe that they are pursuing their ideal of a virtuous life. They do not recognize that their virtues (which are closely related to, if not synonymous with, their higher values) are not informing their actions. Rather, they are acting according to the media-warped model of what it means to instantiate that virtue.

To make this more concrete, take the notion of equality to be a higher value or virtue that one strives towards. If equality was truly what was informing the behavior of the virtue signaling person, then such a person would seemingly recognize that their actions are not satisfying that higher value. Thus, it seems much more likely that what the virtue signaler is motivated by is not the pure higher value of equality, but rather an incoherent version of it altered by media culture. The people who post black squares on their Instagram and then go about their daily life feeling excellent about their stand against police brutality and institutionalized racism certainly feel as if they have higher values (e.g., equality, liberalism), but such values have been rendered incoherent. The proof of this incoherence is of course that their higher values are (even partially) satisfied by trivial actions that provide no substantive change in one’s way of life or the world. In addition, as referenced earlier, such people do not experience the tragic feelings that are meant to accompany conflict between higher values because they do not recognize that such conflict exists in the first place. We can perhaps judge from the outside that there seems to be an objective disconnect between these people’s purported higher values and their actions, but the growing incoherence of their values prevents the

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<sup>12</sup> Ibid, 55.

perpetrators themselves from coming to the same conclusion.

At this juncture, one might object that if our higher values have become so vacuous that they can be fulfilled by such superficial action, then it is likely that they are not higher values at all anymore. In this regard, it would seem that we have ultimately returned to Nietzsche's hypothesis and lost our higher values entirely. To this I would reply that these incoherent higher values may very well be vacuous, but they retain their status, nonetheless. Political ideology, for instance, still instantiates all the higher value criteria, as I have discussed. What this shows is that our immediate societal condition is distinct from that of the last man. We still have the capacity to cherish things in all the right ways and set goals for ourselves beyond immediate gratification, it is just that the things we cherish and the goals we set may be severely distorted.

Now that we have touched on how our current situation is different from the last man, a question naturally arises: What would Nietzsche say about the state of our political ideology? When it comes to politics, Nietzsche is remarkably silent. Try as one might, it is rare to find Nietzsche discussing political ideology at great length. Though he is often found criticizing democracy as a "conspiracy of the whole herd against [its] shepherd," this does not amount to much in the form of a distinct political structure.<sup>13</sup> We also get some cryptic allusions to the merits of a natural order-based caste system in *The Antichrist*, but this discussion seems less about the desirability of the castes and more about how even this sort of ideology is preferable to the life-negating belief system that characterizes Christianity.<sup>14</sup> Rather than focusing on political structures in service of the many, it seems like Nietzsche was more interested in particular individuals that could serve as paragons of vice or virtue. Napoleon is an oft-cited example of someone Nietzsche admired very much, going so far as to name him one of the "profound and largeminded men of [the] century."<sup>15</sup> But Nietzsche's view of Napoleon as a higher man could justify an entire paper by itself, and such analysis is not particularly relevant to our discussion of higher values. Rather than present Nietzsche's (scarce) ideas on political ideology, it seems more fruitful to examine how concepts like the death of God might have led to our current predicament.

Nietzsche, of course, saw the loss of higher values as a direct result of the absence of a divine entity able to furnish our choices and goals with meaning. But what may be more potent than the loss of objective meaning is the loss of the structure installed by that divinity. Organized religion generally aims to provide a clear system concerning the fulfillment of our higher values. It lays out, for instance,

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<sup>13</sup> Friedrich Nietzsche, *The Antichrist*, (Auckland, NZ: Floating Press, 2010), 67.

<sup>14</sup> Ibid, 57.

<sup>15</sup> Friedrich Nietzsche, *Beyond Good and Evil*, (New York, NY: Dover Publications, 1998), 256.



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what constitutes a sin, how to worship properly, and so on. Ergo, religion serves to enforce a uniformity between our actions and our values. It is fundamentally designed not to allow individuals to both violate their own higher values and escape with a morally sound conscience. But without religion, this necessity for consistency between our higher values and our behavior is damaged. There is no eternal damnation, no divine punishment, no karmic justice to threaten us to maintain such cohesion, and so we lose it.

What all of these topics have in common, from virtue signaling to contradictory stances on gun control, is the apparent inconsistency in the higher values that allow such behaviors to take place. Ultimately, I would suggest that the path the individual in contemporary American society has taken is distinct from the condition of the last man that Nietzsche fears. Higher values persist, as I have endeavored to show, but the logical consistency required to fulfill them properly seems to be rapidly deteriorating. Nevertheless, if one wishes to remain compatible with Nietzsche's theory, then we could perhaps frame the current state of society as merely one of the final steps on our inevitable trajectory to becoming last men. After all, it does seem plausible that the degeneration of the coherence of our highest values will eventually lead to the loss of them entirely. Such an understanding does raise some concerns, however, as discarding our higher values ("believing in their untenability" as Nietzsche puts it) seems to require one to be aware of their unintelligibility. Insofar as we have reached a state where our higher values no longer even need to be consistent in order for us to act on them, one can wonder whether we will ever collectively reach a position where we realize the inconsistencies exist so deeply in our higher values that they must be abandoned altogether. Still, there is certainly a Nietzschean argument to be made that there must be a limit to how incoherent our higher values can get before we rid ourselves of them in disgust. As it stands now, even though our higher values have garnered significant incoherence, they can still be said to represent us faithfully for the most part. For example, though issues like gun control demonstrate some glaring problems that require rectifying, I would argue American liberals and conservatives still tend to largely act on the values at the core of their ideology. Single-payer healthcare is a good instance of this: Liberals largely support it on the basis of their beliefs about equality and human rights, while conservatives largely do not because it would result in less individual freedom and greater taxes.<sup>16</sup> Thus, though I have spent the majority of this paper painting quite a dismal picture, our higher values do not seem close to collapsing entirely. We may not have to resign ourselves to the fate of

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<sup>16</sup> Bradley Jones, "Increasing Share of Americans Favor a Single Government Program to Provide Health Care Coverage," *Pew Research Center*, 2020, [www.pewresearch.org/fact-tank/2020/09/29/increasing-share-of-americans-favor-a-single-government-program-to-provide-health-care-coverage/](http://www.pewresearch.org/fact-tank/2020/09/29/increasing-share-of-americans-favor-a-single-government-program-to-provide-health-care-coverage/).



the fabled boiling frog, insofar as the coherence of our higher values continually gets worse without us noticing. One could certainly make a compelling case that when the incoherence gets to a stage where it overwhelms the proper functioning of our higher values, we will desert them. At such a juncture, it appears we would have no choice but to become last men. At any rate, if one is really committed to the Nietzschean hypothesis, one could call the state we are currently inhabiting that of the “penultimate man” (or better yet penultimate person, for the sake of inclusivity and alliteration).

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# The Necessity of Perspective: A Nietzschean Critique of Historical Materialism and Political Meta-Narratives

Oliver Hicks

*Karl Marx and Friedrich Nietzsche both contributed immensely to 19<sup>th</sup> century political philosophy and laid the foundation for countless revisions, interpretations, and new theories throughout the 20<sup>th</sup> and 21<sup>st</sup> centuries. While they share a common goal of exposing hidden, socially constructed restraints in order to liberate the individual, they differ sharply on both the nature of those societal restraints and what liberation actually looks like. I present these thinkers as foils: Marx guided by a normative approach that sees liberation as an inevitable conclusion of current social conditions, and Nietzsche describing liberation as necessary but ultimately ambiguous. Ultimately, I assert that this ambiguity is a necessary acceptance of true liberation that ought to humble any assertion of truth, morality, or rationality.*

## I. Introduction

But everything is fair  
It's a paradox we call reality  
So keepin' it real will make you  
A casualty of abnormal normality  
Talib Kweli, *Respiration*<sup>1</sup>

The above remarks are from a verse of the 2002 duet album *Mos Def and Talib*

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<sup>1</sup> Black Star. "Respiration (feat. Common)." Track 11 on *Mos Def and Talib Kweli Are Black Star*. Rawkus Records, 1998, CD.

*Kweli Are Black Star*, in which artist Talib Kweli describes his inner-city New York landscape. The broader context of the song speaks to the harsh and often hopeless reality of a low-income Black experience. It begins with a dialogue from the seminal hip hop documentary *Style Wars*, in which a New York graffiti artist describes a recent work titled “Crime in the City.” The work implicitly asks the audience whether “crime” is all his city has to offer or if it is simply what one chooses to see when examining the New York streets. Kweli contributes his own perspective in the aforementioned line, in which he calls his reality a “paradox” where everything in this world is fair. Thus, nothing can be unfair with the proper perspective, lending itself to the paradox of never being able to pin down what is truly right or wrong. Kweli speaks of inter-gang violence, where young Black men are pitted against each other for the scarce resources present in their desolate environment. Yes, success is good, but at what cost to the broader struggle of their community? The second part of his stanza questions the efforts of anyone in this world to be truly “real,” as Kweli plays with a definition that is so integral to one’s identity in the hip hop community. Hip hop and rap are built around delivering viscerally authentic, or “real,” stories, usually about struggle, persecution, and ultimately perseverance against an adverse world. Thus, “keeping it real” becomes the idealized form of living as opposed to whitewashed versions of struggle or falsified stories for commercial success. But what does “realness” actually entail, and is it captured by this idealization? Kweli would answer that it is less objective than it might seem. Any attempt at authenticity is undermined by another perspective, and thus the vanity that accompanies an allegedly “real” individual instead makes them a casualty: they are not truly real, authentic, nor honest versions of themselves, but rather they are only “real” by an externally defined perspective, one that society wants for them. Kweli is inverting a pillar of rap culture by arguing that what is deemed true “realness” by people in the city is actually defined by the same subjective standards used to define its opposite. Put simply, the inner-city stories to which Kweli is referring are authentic as defined by what is expected of the storytellers: to be hard, cold-blooded, and insensitive to the harsh world around them. But does this produce genuine versions of who these individuals *could* be given different circumstances? Or are they simply buying into the “abnormal normality,” one defined by social constructs that is ultimately abnormal to whatever their “real” selves might be?

The question of authenticity amidst veiling social norms is one discussed by a variety of modern political theorists, all seeking to understand who we are in order to understand who we ought to be—and how we ought to be governed. From descriptions of a primordial state of nature proposed by early contract theorists to Karl Marx’s world-encompassing system of historical materialism, these modern thinkers attempt to sketch out the natural, psychological, and social undercurrents

of our behavior. Though Marx was the first to usher in a hermeneutics of suspicion by critiquing existing philosophical norms in search of hidden truths, he did so with the intent of outlining his own normative conception of humanity's goal (or his own end point on the linear timeline that is progress): communism. Decades later, Friedrich Nietzsche claimed "we are unknown to ourselves, we men of knowledge" in his preface to *On the Genealogy of Morals*. He proposed a philosophy that sought to interrogate reigning value systems that presented themselves as natural or self-evident without replacing them with his own explicit normative solution.<sup>2</sup> Nietzsche recognized the limitations of philosophical inquiry while operating within the system he was critiquing. Humans lack a basic sense of what is good as enshrined in the concept of natural law or historical materialism because our entire system of moral values is a product of changing power dynamics. More importantly, we cannot see any semblance of truth unless we shed these artificial moral constructs. The relativity inherent in our ability to make judgements of ourselves and fellow citizens ultimately moves the goalposts of political theory itself: we are no longer moving toward that ideal form with which Plato was so obsessed because we cannot accurately define it. There are no political meta-narratives, no slate of criteria with which we can accurately and objectively identify our deepest human nature—to do so would be to dismiss far too many factors and make far too many assumptions. Rather, we must instead work to interrogate our unwavering beliefs in perceived truths or ideal forms in order to understand how we might escape them as they arise.

As shown by Talib Kweli in his aforementioned lyrics, the inability to shed the social, moral, and ethical constructs that surround a particular Black experience raises questions regarding the obscuration of truth and the need for a variety of perspectives. Using Nietzsche's skepticism of philosophy and morality as a foil for Marx's historical materialism, I will draw on a number of their works to discuss the validity of any proposed political meta-narrative. First, I will present a brief model for viewing history as forward-facing in the pursuit of a realized ideal form, courtesy of Marx. Then, I will use Nietzsche to reject the notion of an ideal form and instead emphasize the need for perspective to understand any type of truth, political or otherwise, in order to escape the social constructs that mystify this truth and enslave us to normative ideals.

## II. Historical Progress as Forward-Facing: Marx's Determinism

Marx famously remarked at the beginning of *The Communist Manifesto* that "the

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<sup>2</sup> Nietzsche, Friedrich. "On the Genealogy of Morals." Essay. In *Basic Writings of Nietzsche*, translated by Walter Arnold Kaufmann, 451. New York, New York: Modern Library, 1967.

history of all hitherto existing society is the history of class struggles.”<sup>3</sup> More importantly, however, was the history that Marx was proposing henceforth. Communism was not just a prescription for the ills of capitalism, but a prediction of the inevitable collapse of the market economy itself: the contradictions intrinsic to capitalist function would ultimately lead to its own demise. Communism would simply be the final and best option for a post-revolutionary society. In this way, Marx lays a deterministic view of human progress. If humanity keeps moving forward as is, we will reach an inflection point; if we actively work to deconstruct the status quo, we will reach that same inflection point sooner. Though bleak, this notion of progress posits its own normative assumption that society is moving *forward*: ideology has simply masked antagonistic class divides while capitalism exploits them, but we will inevitably overcome this stain on history to usher in a new and better world.

This deterministic presentation of history, or historical materialism, is one of Marx’s greatest contributions to political philosophy. Using this dialectical approach, Marx identified two main forces that drive historical change: the division of classes and the division of labor. The evolution of class systems is best articulated in the first section of the *Manifesto*, where Marx focuses primarily on Europe’s transition from feudal to modern societies, namely bourgeois societies. Feudal societies were composed of complex hierarchies: feudal lords, vassals, guild-masters, journeymen, apprentices, serfs, and more. Among these classes existed a constant dynamic of oppression, wherein higher classes dominated subordinate ones as defined by the material conditions of each.<sup>4</sup> Centuries of global exploration, however, produced ever-expanding markets and ever-increasing demand that revolutionized the modes of production and condensed class antagonisms into Marx’s binary: the bourgeoisie and the proletariat. This defined the “Modern Industry” that Marx witnessed in the 19th century, wherein “the modern bourgeoisie is itself a product of a long course of development, of a series of revolutions in the modes of production and of exchange.”<sup>5</sup>

Underlying this series of class revolutions are developments in the division of labor: first in tribal communities, then ancient communes, feudal states, commercial states, and finally the capitalist state of the bourgeoisie. The division of labor reflects both the growth of the productive capacities of these communities as well as the growth of divided interests among individuals. For example, Marx argues that the division of labor within a nation first leads to the “separation of industrial and commercial from agricultural labor, hence to the separation of town and

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3 Marx, Karl and Friedrich Engels. “The Communist Manifesto.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 473. New York, New York: Norton, 1978.

4 Ibid, 474.

5 Ibid, 475.

country... [then] to the separation of commercial from industrial labor” and so on.<sup>6</sup> Occurring simultaneously are infinitesimal divisions within these branches “among the individuals cooperating in definite kinds of labor.”<sup>7</sup> Ultimately, Marx places the modern industrial state, with all of its complex and specialized divisions, on an historical timeline that inevitably moves toward the maximization of its productive capacities since it is constantly in competition with similarly structured nations. This maximization, however, along with its own internal contradictions, begets its own destruction. The consolidation of “scattered private property” into the consolidation of “capitalistic private property” in the hands of an increasingly smaller elite becomes too heavy to support itself, and the fetters that confine the socialization of labor for exploitation ironically lead to the organization of a massive, oppressed class that revolts against their slave-wage masters.<sup>8</sup> This revolution, Marx argues, is a smoother transition than the original consolidation of private property via the socialization of labor, since the latter is the “expropriation of the mass of the people by a few usurpers,” but the former is the “expropriation of a few usurpers by the mass of the people.”<sup>9</sup>

However, the light at the end of this tunnel that is capitalism and the driving force behind this expropriation of the few by the many is Marx’s concept of “species-being.” As human beings, Marx considers our most basic and fundamental essence to be our drive to engage in productive activity; it is our “working-up of the objective world,” in which “[man] duplicates himself not only, as in consciousness, intellectually, but also actively, in reality, and therefore he contemplates himself in a world that he has created.”<sup>10</sup> This creative process, when done freely, consciously, and socially, is what separates us from animals and satisfies our life purpose: we *choose* what to make and when to make it in order to survive. Capitalism disrupts this process by commodifying labor and subsequently alienating the laborer first from their product, second from their process, third from themselves, and finally from each other.<sup>11</sup> As a result, the worker becomes antagonistic to the entire system of private property: they are resentful of the bourgeois capitalist, suspicious of their fellow worker, and disillusioned with themselves, all because of alienation from their species-being. The rediscovery of our species-being is the natural epilogue to the implosion of capitalism.

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6 Marx, Karl, and Friedrich Engels. “The German Ideology.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 150. New York: Norton, 1978.

7 Ibid, 150.

8 Marx, Karl, and Friedrich Engels. “Capital, Volume One.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 437. New York, New York: Norton, 1978.

9 Ibid, 438.

10 Marx, Karl, and Friedrich Engels. “Economic and Philosophic Manuscripts of 1844.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 76. New York, New York: Norton, 1978.

11 Ibid, 72-77; Marx describes species-being at length throughout the Manuscripts.



And yet, this conclusion relies on Marx's own crypto-normativity. Like the early contract theorists who came far before him, Marx is simply making his own normative assumption regarding human nature: we live to create the world around us, and are only satisfied by seeing ourselves in that world. One could argue that the exploitation of this process is a violation of a Marxist natural law, and that a communist revolution is a means of retributive justice. As noble as it may be to argue that communism is the inevitable end point of a history structured by material conditions, Marx's theory is limited by its own dogmatic assumptions. However, he was not alone in proposing human history as a deterministic teleology. Marx built his theory off the critique of Hegel, who argued a similar conception of history driven by conflicts in ideas rather than material conditions. Adam Smith falls into this same category, emphasizing the ability to improve society through the accelerating efficiency of mutually beneficial economic transactions and production (he even titled his magnum opus *The Wealth of Nations*—"Nations" being plural to suggest collective benefit in pursuing capitalistic ends). Immanuel Kant believed in the ability of individual societies to develop the faculties of humankind over time, leading again to the upward trajectory of progress and the inevitable achievement of our full potential. However, each of these thinkers suffer from the same flaw: they boldly claim to know the end stage of humanity and the final form to which political philosophy strives while being limited by their own historical context and intellectual horizons.

### III. Rejection of the Pure Form: Nietzsche's Response

Though his work is filled with a multitude of social and moral critiques, Nietzsche claimed that "the worst, most durable, and most dangerous of all errors so far was... Plato's invention of the pure spirit and good as such."<sup>12</sup> Consistent with Nietzsche's long-standing critique of religion was his belief that Christianity had become "Platonism for 'the people'" by providing an ideal form to which, by restricting one's indulgences and taking leaps of faith, one could strive and achieve a good moral life. To Nietzsche, however, faith extends far beyond theology: it applies to every corner of philosophy and knowledge. Philosophers' pursuits of knowledge are done in vain, since each proposes an alleged "cold, pure, divinely unconcerned dialectic" that is, in reality, simply "an assumption, a hunch, indeed a kind of 'inspiration'... that they defend with reasons they have sought after the fact."<sup>13</sup> A particularly heinous example of this prejudice is Kant's "discovery" of a new human faculty, one that allowed him to argue man's capacity to make syn-

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<sup>12</sup> Nietzsche, Friedrich. "Beyond Good and Evil." Essay. In *Basic Writings of Nietzsche*, translated by Walter Arnold Kaufmann, 193. New York, New York: Modern Library, 1967.

<sup>13</sup> Ibid, 202.

thetic judgements *a priori*. Nietzsche argues this discovery was in fact not a discovery at all, but a lazy leap of faith that compelled him to answer his own questions “by virtue of a faculty” and essentially invent his own *causa sui*.<sup>14</sup> Consequently, Nietzsche argues that we ought to approach knowledge with suspicion. By questioning the value of truth and certainty in the face of their opposites, Nietzsche rejects the idea of proposing a fully contained and explanatory system for any type of knowledge, since “in the philosopher... there is nothing whatever that is impersonal; and above all, his morality bears decided and decisive witness to *who he is*.”<sup>15</sup> Dogmatic philosophy and its ideal forms, therefore, are less interesting to Nietzsche than the necessity of our belief in them. Rather than ask what our beliefs say, a better question to pose is what these beliefs say *about us*.

By accusing all philosophy of being dogmatic, Nietzsche is drawing attention to the philosophical limitations of any single individual. As such, a new generation of philosophers ought to embrace “the dangerous ‘maybe’ in every sense,” instead putting their faith in possibilities rather than certainties.<sup>16</sup> To recognize one’s own inability to offer an all-encompassing system for the world is to endorse the necessity of perspective, the variety of which is the only way to understand the true nature of anything. To deny this necessity, which Nietzsche calls “the basic condition of all life,” is to instead continue the pursuit of that Platonic good spirit or ideal form.<sup>17</sup> Rather than working to defend knowledge as we come to understand it, philosophers should be constantly interrogating knowledge in an attempt to free themselves from their own prejudices. In doing so, one rejects the idea of truth as purely objective and “knows how to employ a variety of perspectives and affective interpretations in the service of knowledge.”<sup>18</sup> Nietzsche draws attention to the fact that there is no view from nowhere: “there is *only* a perspective seeing, only a perspective ‘knowing’; and the *more* affects we allow to speak about one thing, the *more* eyes, different eyes, we can use to observe one thing, the more complete will our ‘concept’ of this thing, our ‘objectivity,’ be.”<sup>19</sup> Put differently, one can liken Nietzsche’s concept of truth to a statue: any singular view of the statue only provides a singular picture of it. The view from the front of the statue will give a completely different image than that from the back, assuming we could even agree upon which is front and back in the first place. A plethora of angles upon which to view the statue, therefore, is necessary to truly understand it since any individual view is inherently limited by their position relative to the object. “Free spirits,”

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<sup>14</sup> Ibid, 207-208.

<sup>15</sup> Ibid, 204.

<sup>16</sup> Ibid, 201.

<sup>17</sup> Ibid, 193.

<sup>18</sup> Ibid., 555.

<sup>19</sup> Ibid, 555.

then, unlike those who throughout history have proposed their singular view of the statue as correct, are that new generation of individuals who constantly question their own prejudices and adopt new angles.<sup>20</sup> In this way, one could argue that Nietzsche rejects the concept of Truth altogether, and perspectivism becomes a practical tool for understanding the world around us as we develop our own concepts of knowledge. At the very least, Nietzsche seems to suggest that regardless of the existence of any Truth, we cannot even begin to understand Truth unless we prioritize an ensemble of perspectives over any individual one. In doing so, we can use the former to prevent us from being limited by the latter.

Once again, Nietzsche's perspectivism has less to do with its relationship to truth (capital-T or otherwise) and more to do with its relationship to the individual and their inherently limited perspective. This concept of agency and power in the face of social restraints is consistent throughout Nietzsche's works, and one of the most obvious ties is in his critique of Christianity. Nietzsche makes explicit his disdain for the church in *The Genealogy of Morals* by arguing that the church itself pioneered a type of slave morality that inherently limits the capability of man by suppressing his instincts. Throughout history, however, this morality was used strategically by the weak (namely priests) to seize some semblance of power from the nobility, whose morality is entirely self-affirming, contemptible towards things outside itself, and emphasizes power over restraint.<sup>21</sup> Not unlike Talib Kweli's description of his catch-22 lifestyle as a gangster in inner-city New York, Nietzsche asks us to consider a bird of prey and a lamb: "there is nothing strange about the fact that lambs bear a grudge towards large birds of prey—but that is no reason to blame the large birds of prey for carrying off the little lambs."<sup>22</sup> In fact, he continues, the lambs would be perfectly well off to regard anything like a bird of prey as evil, since it is the source of violence against them; the bird of prey, however, might view this "somewhat derisively, and will perhaps say: 'we don't bear any grudge at all towards these good lambs, in fact we love them, nothing is tastier than a tender lamb.'"<sup>23</sup> The perspective that is intrinsic to these qualitative judgements of good and evil both undermines their objectivity and highlights a cornerstone of Nietzsche's philosophy: will-to-power. With regard to Marx, Nietzsche dismisses one of his most basic assumptions using this concept of the will-to-power:

... life itself is essentially appropriation, injury, conquest of the strange and

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<sup>20</sup> Ibid, 242-243.

<sup>21</sup> Nietzsche, Friedrich. "On the Genealogy of Morals." Essay. In *Basic Writings of Nietzsche*, translated by Walter Arnold Kaufmann, 472–479. New York, New York: Modern Library, 1967.; Nietzsche describes his master-slave dichotomy of morality throughout the first essay of his *Genealogy*, though particularly in sections 10, 11, 12, and 13.

<sup>22</sup> Ibid, 480.

<sup>23</sup> Ibid, 481.

weak, suppression, severity, obtrusion of peculiar forms, incorporation, and at the least, putting it mildest, exploitation; —but why should one for ever use precisely these words on which for ages a disparaging purpose has been stamped? Even the organization within which, as was previously supposed, the individuals treat each other as equal—it takes place in every healthy aristocracy—must itself, if it be a living and not a dying organization, do all that towards other bodies, which the individuals within it refrain from doing to each other: it will have to be the incarnated Will to Power, it will endeavor to grow, to gain ground, attract to itself and acquire ascendancy—not owing to any morality or immorality, but because it lives, and because life is precisely Will to Power... “Exploitation” does not belong to a depraved, or imperfect and primitive society: it belongs to the nature of the living being as a primary organic function; it is a consequence of the intrinsic Will to Power, which is precisely the Will to Life.<sup>24</sup>

By arguing that exploitation is not inherently evil, it is easy to dismiss Nietzsche as equally normative with different assumptions. The difference, however, is that Nietzsche’s critique does not lead him to propose a political solution or theorize a political meta-narrative meant to end suffering as he sees it, for that would be replacing one restraining superstructure with another. Will-to-power, according to Nietzsche, is not a facet of human nature that must be complemented by politics nor economics: the will-to-power is a means to finding that solution. It is the unaffected and unfettered ability of truly “free spirits” to escape the confines of “good” and “evil” themselves. As discussed above, no philosopher is truly impartial nor void of their own prejudices, and political meta-narratives such as Marx’s unwavering rejection of exploitation cannot exist to serve their purpose without accepting some degree of dogmatic assumptions. Nietzsche himself is no exception, which is why he hypothesizes these free spirits rather than identifying with them. But continuing to engage in philosophy, particularly political philosophy, without interrogating these assumptions and prejudices is distracting; we cannot begin to construct new worlds until we have deconstructed old ones.

Earlier in Nietzsche’s career, we see a similar critique of Christian morals in a different context. In *On the Advantages and Disadvantages of History for Life*, Nietzsche argues that Christianity seeks to define an end point for humanity by predicting “an end to life on earth... and [condemning] the living to live in the fifth act of the tragedy.”<sup>25</sup> By limiting the scope and potential of humanity, Christianity restrains

<sup>24</sup> Nietzsche, Friedrich. “Beyond Good and Evil.” Essay. In *Basic Writings of Nietzsche*, translated by Walter Arnold Kaufmann, 393. New York, New York: Modern Library, 1967.

<sup>25</sup> Nietzsche, Friedrich. *On the Advantages and Disadvantages of History for Life*. Translated

the true potential of the strong and capable, or those who might have the potential to transcend the social or moral limitations they have inherited. Moreover, Nietzsche argues that “Christianity would like to [destroy] every culture which incites to striving further and takes for its motto *memento vivere*... [it] rejects with a shrug of the shoulders everything in the process of becoming, and spreads over it the feeling of being very late arrivals and epigoni.”<sup>26</sup> Though Marx’s calls to action for the proletarian revolution seem counterintuitive to a feeling of being “late arrivals” or “epigoni,” Nietzsche’s critique holds true with regard to Marxism’s crypto-normative, deterministic approach to social organization. Marx provides an all-encompassing system that is meant to both explain and predict the movement of human progress, which owes itself entirely to factors and conditions that are beyond the individual. In a way, this parallels Nietzsche’s diagnosis that we are products of our society to a degree much higher than we realize. The difference, however, lies in their prognosis.

Marx believed that the course of these societal effects, namely material conditions, would inevitably lead to the implosion of the status quo that, if properly prepared for, could usher in his optimal form of social organization. Individuals, therefore, might not be “late arrivals” nor “epigoni,” though Marx certainly seems to think that these individuals are entirely at the behest of their own material conditions. The asymmetrical influence that these material conditions have on us—the proletariat being exploited by these material conditions and the bourgeoisie benefitting from them—leads Marx to draw moral conclusions: exploitation is *bad* and satisfaction of species-being is *good*. What Marx fails to do is recognize that he is a product of his own material conditions, and so are his theory and determinations of “good” and “bad.” The quasi-utopian society that is only permitted by the revolution is itself borrowing descriptions from the idealized lifestyles of the bourgeoisie. In *The German Ideology*, Marx suggests that man in a capitalist society is “a hunter, a fisherman, a shepherd, or a critical critic, and must remain so if he does not want to lose his livelihood,” which is true for most working-class individuals. He then adds that in a communist society that same man may “hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as [he has] a mind, without ever becoming hunter, fisherman, shepherd or critic.”<sup>27</sup> The ability to actively satisfy one’s species-being, or to do as one pleases without the alienating incentives required by capitalism, is simply the universalization of bourgeois life—it’s not hard to imagine that these hypothesized jacks-of-

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by Peter Preuss. Indianapolis, Indiana: Hackett Publishing Co., 1980. 44

<sup>26</sup> Ibid, 45.

<sup>27</sup> Marx, Karl, and Friedrich Engels. “The German Ideology.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 160. New York: Norton, 1978.

all-trades did exist in 19th century Europe, they just happened to be the elite. He who can labor (or engage in any productive activity) without being defined by that labor is a privilege of the ruling class—and one that Marx identifies as good and therefore preferable. In other words, a communist society destroys class conflicts by creating the conditions of one class for all classes. This is not to say that Marx is proposing an egalitarian utopia as his positive project, since he does believe in a relatively heterogeneous society living by the mantra “From each according to his ability, to each according to his needs.”<sup>28</sup> Moreover, the concept of class itself is theorized to dissolve post-revolution, but this does not mean that Marx’s ideal *conditions* for all human beings aren’t plagiarizing the conditions of a single class as observed pre-revolution. When workers own the means of production rather than capitalists, they will have the resources, leisure time, and material conditions to produce in accordance with their species-being and satisfy Marx’s normatively defined purpose (or achieve his own concept of “good”). Like Kant, Marx is creating his own *causa sui*. A Nietzschean contribution to Marxism might argue, then, that capitalism must be deconstructed in the same way that we might deconstruct Christian morality: not with the intent of replacing these superstructures with our own normative solution, but by interrogating them to essentially see where it takes us. Again, the elusive free spirit is not an indirect, self-congratulatory description of the value of Nietzsche’s own theories, nor is it a pessimistic and nihilistic acceptance that nothing truly matters. Rather, it is a new theory in itself—one that considers the possibilities of a new generation of entirely self-affirming thinkers stripped of their prejudices and social restraints.

#### IV. Conclusion

Marx’s ultimate conclusion is that a history of society determined by material conditions leaves us no choice but to reject our current modes of production in favor of a society that complements the satisfaction of our species-being. If we don’t, then capitalism will destroy itself anyway. Marx certainly presents himself as a revolutionary determined to unite the working men of all countries toward a common purpose, but it’s difficult to reconcile this call for individual agency toward a collective purpose with the material conditions that seem to govern us regardless of that agency. Marx’s own logic is, again, itself determined by the superstructures he seeks to identify; he is no more or less a product of them than any of the characters in his theory. The vain assertion of a universal truth that is species-being simply uses his own normative definition of what is good by borrowing language from those who have already determined what is good: the bourgeoisie. Conse-

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<sup>28</sup> Marx, Karl, and Friedrich Engels. “Critique of the Gotha Program.” Essay. In *The Marx-Engels Reader*, edited by Robert C. Tucker, 531. New York: Norton, 1978.

## Philosophy

quently, we see his proposed political meta-narrative, that contradictory principles of capitalism inevitably lead to the realization of human emancipation, is at best incomplete and at worst deeply flawed.

In the case of the former, we can at least use Marx's critique of capital to understand how material conditions have shaped our world views: they can determine incentives, exploit workers based on factors beyond their immediate control, or assign value to both people and commodities. These are invaluable critiques that have wide-ranging implications, but they are nowhere near close enough to providing an all-encompassing system of human behavior.

In the case of the latter, however, we are met with the dangerous hubris of which Nietzsche is so suspicious. The true nature of anything can only be understood by simultaneously interrogating our prejudices and assumptions while recognizing the need for multiple perspectives. Truth ought to be sought after, but it is extremely elusive and mystified by social constructs, whether they be political, material, moral, sexual, racial, or otherwise. From a postmodernist perspective, Nietzsche was perhaps prodigal. Today, we live in a pluralist world that is constantly challenging the normative assumptions that structure so much of our interconnected lives. Critical race theory has interrogated the fundamental principles of our facially neutral laws; emerging disciplines of queer and feminist studies have reshaped the way we understand and perform our gender and sexuality; successive generations of increasingly agnostic individuals have undermined religiously-grounded social norms to further liberate the arts and create a vibrant pop culture. Social media alone has become one of the greatest conduits for self-expression and has created channels of communication that the world has never before seen. Everything from college campuses to corporate boardrooms have acknowledged the importance of representation and diversity in order to create more inclusive communities. The 21<sup>st</sup> century is an era of interrogation that requires one to accept a multiplicity of perspectives. Ultimately, it could be said that we are unified by a common obligation to better understand each other.

In a way, Marx becomes the casualty to which Talib Kweli is referring in his verse. The idealization of a satisfied species-being is arguably a normality defined by what is expected of human beings in a capitalistic world: to enjoy their work. It is not difficult to imagine that this is actually abnormal, and the entire concept of labor as we understand it could transform or even wither away in the epochs to come due to technology, climate change, or some other unforeseen development. Nietzsche therefore becomes a critical theorist superseding even Marx, for he seeks to critique not just one superstructure but all the superstructures that limit our ability to define for ourselves what is good, bad, evil, true, rational, or authentic. Political philosophy ought to continue elevating the voices that provide these pointed critiques and encourage generations of free spirits as they come. As Kweli

might argue, to truly engage in philosophy is to suspect any normality as actually abnormal, and not suffer as a casualty of its misleading assumptions. Rather, we ought to use these suspicions in the service of life and work towards the most ideal form of social organization we can find while recognizing that there is always work to be done.



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# **The Unchurching of Black Lives Matter: The Evolving Role of Faith in The Fight for Racial Justice**

**Anna Savo-Matthews**

*The Black church was at the center of the Civil Rights Movement in the 1950s and 1960s. In the early 1990s, American society began a trend in secularization, whereby many Americans began to identify less with religious institutions. This societal shift, coupled with the rise of social media, has had a marked impact on racial justice movements. To illustrate how secularization has affected protest, this work compares the Civil Rights Movement with Black Lives Matter and specifically examines the decline of the Black church's organizational capacity in Jacksonville, Florida.*

Faith has long been closely intertwined with racial justice movements. Scholars of Black liberation theology believe that Jesus is the God of the oppressed, someone who stands with those struggling for freedom. This religious movement was born from civil-rights activism of the 1960s, and it continues to inspire activists to this day.<sup>1</sup> Furthermore, the Civil Rights Movement's close relationship with the Black church has been well documented, as the church provided organizational support that was crucial for the movement's success.<sup>2</sup> When comparing the Civil Rights Movement to more recent racial justice movements, more specifically the Black Lives Matter protests during the summer of 2020, the Black church has had a less prominent role in organizing and mobilizing protestors. However, spirituality still had a great influence over the content of the protests, as protesters often draw from a greater plurality of religious inspiration than the Civil Rights Move-

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<sup>1</sup> "Black Liberation Theology, in its Founder's Words," *NPR*, 2008.

<sup>2</sup> Morris, Aldon D, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change*, (The Free Press, 1986).

ment did.<sup>3</sup> In line with findings on a national scale, local reporting has found that spiritual rituals were incorporated into the Black Lives Matter protests in Jacksonville. Prayer, vigils, and altars were incorporated into the protests, and the rhetoric used by many organizers and protestors reflected common religious tropes.

### **The Civil Rights Movement and the Black Church**

The impact of religion on the Civil Rights Movement has been well documented. Both in terms of organization and content of protests, the Black church had an enormous effect on the Civil Rights Movement. The Black church was an autonomous sphere, owned and controlled by Black people, within a larger societal context where Black people were excluded economically, socially, and politically. As a result, in terms of structure, the Black church was the primary organizational center for the Civil Rights Movement.<sup>4</sup> The church provided a network of charismatic clergymen who were “economically independent of the larger white society,” a regular meeting place free from surveillance, and a membership that was united by a rich culture and similar political aims.<sup>5</sup> As a result, the Black church gave the Civil Rights Movement many resources crucial for a successful social movement.

Additionally, the content of the protests themselves were often based on religious teachings from the Black church; one would have to look no further than Martin Luther King Jr.’s speeches to see its influence. In one of his most famous speeches, “Eulogy for Martyred Children,” King draws upon Christian notions of martyrdom and applies these sentiments to the fight for racial equality. Older martyrdom accounts—like those of Perpetua and Felicity, or animal sacrifices found in Leviticus—speak of suffering and death transformationally powerful, sometimes for entire communities. King employs a similar theme in his speech, claiming that the children who lost their lives “died nobly,” and that “the innocent blood of these little girls may well serve as a redemptive force that will bring new light to this dark city.”<sup>6</sup> Furthermore, King’s speeches often explicitly draw connections between his faith and the modern-day fight for racial justice, saying “They did not die in vain. God still has a way of wringing good out of evil. History has proven over and over again that unmerited suffering is redemptive.”<sup>7</sup> When an innocent life is lost due to senseless violence, it can be a rational response to try to make sense of the tragedy. In this way, martyrdom accounts serve an important social function, allowing communities to grapple with tragedy in a meaningful way. Furthermore,

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3 Gleig, Ann and Farrag, Hebah, “Far from Being anti-religious, faith and spirituality run deep in Black Lives Matter,” *The Conversation*.

4 Morris, Aldon D, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change*, 4.

5 Ibid.

6 King, Martin Luther, “Eulogy for the Martyred Children,” Carnegie Mellon University.

7 Ibid, 221.

these tragedies can be leveraged politically. Many sociologists consider martyrs to be “tangible cultural resources” that can be used to motivate social and political movements. The violence inflicted on a martyr can “galvanize a course of action” and rally a community around their cause.<sup>8</sup>

### **Black Lives Matter and Secularization**

Originally founded in 2013 following the acquittal of George Zimmerman, the Black Lives Matter movement began to build a more prominent national profile in the wake of the deaths of Michael Brown and Eric Garner, who were both killed by police in the summer of 2014.<sup>9</sup> The Black Lives Matter movement reached a new level of public support following the murder of George Floyd, and it is estimated that tens of millions of people participated in protests across the country in 2020.<sup>10</sup> As a result of its large and diverse membership, the movement is very decentralized; however, the general aims of the movement include police reform and reallocating police department funds to invest in Black communities directly.

In contrast to the powerful, direct influence the Black church had on the Civil Rights Movement, Black Lives Matter’s religious influences are far less straightforward, and this is especially apparent in the movement’s organization. Sociologists and political scientists have contended that the Civil Rights Movement and Black Lives Matter movement have markedly different structures. Professor of political science Dewey Clayton has noted that the leadership structure of the two organizations are “vastly different,” describing Black Lives Matter’s structure as “highly decentralized and unstructured.”<sup>11</sup> He suggests that, rather than the Black church, social media is the new movement center for Black Lives Matter, contributing to its decentralized nature. Other scholars and researchers have confirmed that social media has played a “core role” in the proliferation of the movement, as platforms like Twitter and Instagram allow for the “documentation of cases of police violence” against both “individual African Americans” and “BLM protests,” which can draw emotional responses from casual users of social media.<sup>12</sup> Because of its heavy use of social media, Black Lives Matter “does not want one leader,”

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<sup>8</sup> DeSoucey et al, “Memory and Sacrifice: An Embodied Theory of Martyrdom,” (*Cultural Sociology*, 2008), 114.

<sup>9</sup> Luibrand, Shannon, “How a death in Ferguson sparked a movement in America,” 2015.

<sup>10</sup> Buchanan, Quoc Trung, and Patel, “Black Lives Matter May Be the Largest Movement in U.S. History,” 2020.

<sup>11</sup> Clayton, Dewey M, “Black Lives Matter and the Civil Rights Movement: A Comparative Analysis of Two Social Movements in the United States,” *Journal of Black Studies*, Vol. 49 no. 5, 2018.

<sup>12</sup> Bolsover, Gillian, “Black Lives Matter discourse on US social media during COVID: polarised positions enacted in a new event,” *The University of Leeds, Centre for Democratic Engagement*, 2020.

but rather encourages leaders from all over the country to “engage in grassroots organizing in their local communities.”<sup>13</sup> Jamal Bryant, a clergyman who spoke at Freddie Gray’s funeral, acknowledged this shift in leadership and noted that his role in Black Lives Matter is more limited, saying, “The difference between the Black Lives Matter movement and the civil-rights movement is that the civil-rights movement, by and large, was first out of the church. The Black Lives Matter movement, largely speaking, is not.”<sup>14</sup>

However, despite the Black church’s receding role in the organization of the movement, the influence of religion and spirituality on the Black Lives Matter movement is still apparent on a national scale. Founders of the movement, like Patrisse Cullors for example, practice Ifà, a religious tradition from Nigeria. She describes her spirituality as having a huge influence on her protests, saying that, “seeking spirituality had a lot to do with trying to seek understanding about [her] conditions... and how [she understands] them as part of a larger fight, a fight for [her] life.” In Black Lives Matter more broadly, researchers have found that protests often incorporate a wide variety of religious rituals, from invoking “the names of abolitionist ancestors” to “the creation of sacred sites and alters at locations of mourning” to “purification, protection, and healing practices” like burning sage.<sup>15</sup>

Overall, Black Lives Matter has incorporated rich religious pluralism into the national movement, as it draws inspiration from Native American, Buddhist, and African religious traditions, in addition to Black Protestant traditions.<sup>16</sup> Scholars have found that Black Lives Matter draws from a broader source matter than the Civil Rights Movement did, and others argue that “the Black church is not the only religious well from which Black movements have historically drawn,” and Black Lives Matter is no different.<sup>17</sup> Given the broad variety of faiths that Black Lives Matter draws inspiration from, Erika Gault argues that “we are actually seeing more religion, not less.”<sup>18</sup> Younger activists from Baltimore described their own beliefs similarly; they did not necessarily have a diminished sense of spirituality, but they felt a need to express their religious beliefs outside of formal institutions. Brion Gill, a 25-year-old organizer, recounted that many of her friends within Black Lives Matter identify as “spiritual but not religious” and claim that they want “a relationship with the Creator” but don’t wish to manifest that “with-

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13 Clayton, Dewey M, “Black Lives Matter and the Civil Rights Movement: A Comparative Analysis of Two Social Movements in the United States.”

14 Green, Emma, “Black Activism, Unchurched,” *The Atlantic*, 2016.

15 Gleig, Ann and Farrag, Hebah, “Far from Being anti-religious, faith and spirituality run deep in Black Lives Matter,” *The Conversation*.

16 Ibid.

17 Ibid.

18 Ibid.

in the church space.”<sup>19</sup>

BLM’s move away from formal religious organizations fits within social trends more broadly. Around the turn of the century, sociologists began to describe a new theory of secularization, which emphasized that faith is still a “powerful force at the individual level” despite a decline in religious institutional authority.<sup>20</sup> Theorists from this newer perspective, sometimes called neosecularization theorists, emphasize that religion is not necessarily “declining... They believe that it is changing.”<sup>21</sup> These findings are similar to those articulated in a major study by Hout and Fischer, who found that the number of Americans who identified themselves as having no religious preference increased significantly in the late nineties. From the early ‘90s to the early 2000’s, the number of adults who reported having no religious preference doubled, from roughly 7 percent, to 14 percent.<sup>22</sup> However, despite this increase, a significant portion of the population still retains spiritual beliefs: “Over two-thirds (68 percent) of adults with no religious preference expressed some belief in God or a higher power in 1998 or 2000; one-fourth said they do not doubt that God really exists.”<sup>23</sup> Thus, the decrease in identification with formal institutions is not driven largely by a decrease in religious sentiment, but rather a stronger desire to disassociate from organized religion. This urge to express religious beliefs often originates from a desire to distance oneself from the conservative political views often associated with religious institutions.<sup>24</sup> The sudden decline in religious identifications correlated with the rise of the Religious Right, as “religious conservatives definitely received more attention in the press in the 1990s than during earlier years.”<sup>25</sup> Therefore, the authors argue that the rise of the Religious Right initiated dissociation with religious institutions among left-leaning individuals.

Hout and Fisher stress that a decline in religious identification is most attributable to a dislike of the Religious Right, and not a result of a decline in religious sentiment or ideas: “The key fact, in sum, about people who express no religious preference is that most are believers of some sort, and many are quite conventional.”<sup>26</sup> One of the most commonly used metrics to gauge the religiosity of an individual is the frequency with which they pray. This metric was cited by the authors of this study, and they noted that of the respondents who claimed no religious

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19 Green, Emma, “Black Activism, Unchurched.”

20 Yamane, David and Roberts, Keith A, “Secularization: Religion in Decline or Transformation?” *Religion in Sociological Perspective*, (SAGE Publications, 2015), 25.

21 Ibid.

22 Hout, Michael and Fischer, Claude, “Why More Americans Have No Religious Preference: Politics and Generations,” *American Sociological Review*, vol. 67, no. 2, pp. 165-190, (April 2002), 166.

23 Ibid, 173.

24 Ibid, 168.

25 Ibid, 179.

26 Ibid, 175.

preference, “Relatively few are secular, agnostic, or atheist; most actually pray. Their most distinguishing feature is their avoidance of churches.”<sup>27</sup> Therefore, we may expect contemporary activists to still express religious beliefs and participate in religious rituals in protest, even though they may not be guided by any specific institution. The authors of this article actually raise concerns regarding the future of religious institutions and their connections to social and political movements, asking the question of how the “spiritual but not religious” trend will affect new social movements.<sup>28</sup>

Overall, secularization in the Black Lives Matter movement seems to be widely consistent with a general nationwide trend towards secularization. While formal religious institutions have less power in influencing behavior and social movements, religious beliefs are still held by a majority of those who participate in the BLM movement. This seems to be the general consensus among scholars who have studied the movement; that, while the movement is no longer organized through the church, spirituality still has a great influence on the movement, and at times, protest can even be a spiritual act. To examine these claims, I will take a closer look at one specific city. To get a sense of how the shift from ‘churched’ social movements to a decentralized movement plays out in a specific city, I will compare Jacksonville’s Civil Rights Movement to its Black Lives Matter movement.

### **Jacksonville and Racial Justice**

Jacksonville has an extensive history with the Civil Rights Movement. For a considerable portion of time, the primary method of challenging segregation in Jacksonville was through litigation. The City Council segregated numerous public services: streetcars, saloons, theaters. There were long, drawn-out attempts to overturn these and other segregation policies like unequal pay, and an “all-white Democratic primary.”<sup>29</sup> However, the courts ruled against African American attorneys seeking to challenge segregationist policies. As a result, civil rights activists turned to civil disobedience.

One of the most well-known events in the history of civil rights activism in Jacksonville occurred on August 27, 1960, when a group of African American men staged a sit-in to protest segregation in local businesses and lunch counters.<sup>30</sup> The group of protestors were attacked by a group of over 200 Ku Klux Klan members, armed with baseball bats and axe handles. The lunch counters were desegregated in the months following this protest. Although African American communities in

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<sup>27</sup> Ibid, 175.

<sup>28</sup> Ibid, 178.

<sup>29</sup> Crooks, James B, “The history of Jacksonville race relations. Part 2: Struggling for equality,” *The Florida Times-Union*, 2021.

<sup>30</sup> Ibid.



Jacksonville had pushed for desegregation in the past, many locals see Axe Handle Saturday as the true start of the Civil Rights Movement in Jacksonville. A first-hand account from protestor Rodney Hurst details the planning that went into this protest. His account demonstrates the importance of the Black church. In Hurst's view, the Black church was a lifeline for the Civil Rights Movement: "the civil rights movement in Jacksonville would not have survived without the support of Black pastors and their churches."<sup>31</sup> Along with providing a support network for protestors, Black churches were the meeting place for the NAACP meetings during the fifties and sixties, providing resources for a legal organization responsible for many local civil rights victories.<sup>32</sup> The NAACP's efforts were crucial in desegregating businesses and public services in Jacksonville. In the months following Axe Handle Saturday, the NAACP Youth Council continued a boycott of downtown merchants, and in the following year the NAACP and business leaders reached an agreement to desegregate the lunch counters.<sup>33</sup>

Turning to the Black Lives Matter protests that took place decades after the Civil Rights Movement, it is apparent that Jacksonville mirrors national religious trends. While Jacksonville's Civil Rights Movement used the Black church as its main movement center, taking advantage of its resources and member base, the Black Lives Matter protests were organized in a more decentralized manner, often relying on social media to spread awareness of police violence and information about upcoming events and protests.

Over the course of the summer of 2020, several waves of protests were held in Jacksonville; from May 30th to June 8th, the city saw thousands of protestors participate in marches in the downtown area.<sup>34</sup> Smaller marches occurred sporadically throughout the greater Jacksonville area in the subsequent weeks. A smaller march took place near Atlantic and Neptune Beach on June 28th. An inter-faith group held a Juneteenth celebration live stream discussing racial injustice on June 19th, and a group of Black ministers hosted a press conference in front of the Duval County Courthouse on June 8th.<sup>35</sup> Another wave of protests occurred on July 10th, as protestors blocked off portions of highways around the downtown area.<sup>36</sup>

Consistent with findings on a national scale, the Jacksonville protests were largely organized through social media; websites like Twitter and Instagram played

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<sup>31</sup> Hurst, Rodney L, "It was never about a hotdog and a Coke," *Wingspan Press*, 2008.

<sup>32</sup> Ibid.

<sup>33</sup> Woods, Mark and Soergel, Matt, "Ax Handle Saturday: The segregated lunch counters are gone, but the 'Jacksonville Story' continues," 2020.

<sup>34</sup> Avancier, Erik, "Thousands march through San Marco during peaceful demonstration," 2020.

<sup>35</sup> "The Spirit of Juneteenth," *YouTube*, Uploaded by Interfaith Center of Northeast Florida, 2020. [https://www.youtube.com/watch?v=fIDBJx\\_HWhM&feature=youtu.be](https://www.youtube.com/watch?v=fIDBJx_HWhM&feature=youtu.be)

<sup>36</sup> Cravey, Beth R. and Patterson, Steve, "Black Lives Matter protesters march through downtown Jacksonville; 3 arrested," *The Florida Times-Union*, 2016.



a crucial role in spreading information throughout the Jacksonville community. Social media accounts were started at several Duval county high schools to document instances of racial profiling; the accounts generally followed a similar format: “they’re titled “Black At [the respective school]” and allow students, parents, and faculty to submit posts where they document racist experiences they’ve had at their respective high school, which are shared publicly on the Instagram account.<sup>37</sup> Kiara Alexis, a young community organizer born and raised in West Jacksonville, described the crucial role Twitter played in diffusing information throughout her community, saying “Twitter has become this hub... the news won’t tell you what’s going on, but people on Twitter, they’re gonna come up there and they’re gonna give it to you.”<sup>38</sup>

### **Diversity in Spirituality**

Again, in line with findings on a national scale, although the church was not the main avenue through which protests were organized, religion and spirituality still had a notable impact on the content of the protests. Moments of prayer were incorporated into many of the protests that took place in Jacksonville. One notable example took place on June 3, outside of the Jacksonville Sheriff’s Office, where faith leaders led a prayer before a press conference on police accountability.<sup>39</sup> Rituals and prayers were not only seen in smaller protests: one of the largest rallies that took place in Jacksonville was the “Reflective Walk” for Floyd in which over 1,000 participants prayed before marching throughout Jacksonville’s San Marco business district and residential areas.<sup>40</sup> Even protests that were planned by secular organizations, like The Women’s March Jacksonville Chapter, involved spiritual ceremonies. The Women’s March held a two-hour long remembrance ritual on June 4, where “candles were lit in memory of those who died by police or racial brutality, plants watered on a table as each was remembered.” Participants at this protest were encouraged to express their “sorrow and disgust over the racial division in this country.”<sup>41</sup>

Jacksonville’s protests often seem to embody what sociologist Emile Durkheim would identify as “collective effervescence,” referring to the emotional effect experienced by individuals when they collectively perform religious rituals; when people come together and perform the same action together, they may feel ‘outside

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<sup>37</sup> Bloch, Emily, “Students at Jacksonville’s elite schools discuss racism — often anonymously,” *The Florida Times-Union*, 2020.

<sup>38</sup> “The Spirit of Juneteenth,” *YouTube*, 50:13.

<sup>39</sup> “Photos: Jacksonville Black Lives Matter protests in the wake of George Floyd’s death,” *The Florida Times-Union*, 2020.

<sup>40</sup> Ibid.

<sup>41</sup> Scanlan, Dan, “Jacksonville Residents continue protests in support of black lives,” *The Florida Times-Union*. 2020.

of themselves.’ Durkheim describes this process in *Elementary Forms of Religious Life*, saying that “When collective life reaches a certain degree of intensity it awakens religious thought... vital energies become overstimulated, sensations stronger; there are even some that are produced only at this moment.”<sup>42</sup> In this moment, collective effervescence then strengthens group identity. The common usage of prayer in protest likely serves a similar function; overall, rituals like group prayer serve an important, unifying force during protests, allowing the protester to step outside of themselves and feel a greater sense of unity with those they are protesting with. Aspects of the Jacksonville protests encourage such an experience. For example, Chapter President Bonnie Hendrix was reported as saying “I felt it was time for black people to have the podium to raise their voice, to be heard, to let the pain and anguish of years of oppression, out,” acknowledging the heightened emotional experience that was produced by the remembrance ritual.<sup>43</sup>

Even disregarding the use of rituals like prayer and reflection, protests exhibited religious characteristics in other ways. When activists described their motivations for protesting, they often directly or indirectly referenced their religious beliefs, often echoing sentiments in speeches from the Civil Rights Movement. On June 8th, several dozen ministers from local Black churches read a letter addressed to Jacksonville mayor Lenny Curry, Sheriff Mike Williams, and various other city and state officials. The letter called for a variety of reforms that asked for increased transparency and communication between police and community members. Some of the demands included roundtable discussions with black officers, increased sensitivity training, and increased diversity in leadership.<sup>44</sup> Martyrdom narratives were incorporated into the minister’s press conference as well, as one minister was quoted as saying “It was as a result of George Floyd that all of a sudden a choir began. A choir of people from all across this nation have come together to lend their voices together in harmony for the express purpose of making sure that people can be treated fair.” In a similar manner to how martyrdom narratives were used during the Civil Rights Movement, the pain and suffering inflicted upon George Floyd can be the impetus for social change. In the quote from Rev. Williams, there are themes of unity and healing, demonstrating similar themes to those used by Martin Luther King Jr in his “Eulogy for Martyred Children” as well as older martyrdom accounts, like those in Leviticus, where the loss of innocent life has the power to transform an entire community.

In honor of Juneteenth, a holiday commemorating the end of slavery, the Inter-

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<sup>42</sup> Durkheim, Emile, “The Elementary Forms of Religious Life,” (*Oxford University Press*: 2001), 317.

<sup>43</sup> Scanlan, Dan, “Jacksonville Residents continue protests in support of black lives.”

<sup>44</sup> Savo-Matthews, Anna, “Black ministers call for Jacksonville reforms amid unrest,” *The Florida Times-Union*, 2020.

faith Center of Northeast Florida held a livestream, connecting the protests that took place this summer to the fight for equality during the Civil War. Religion again played a large role in the motivations for those participating in the conversation. In describing her motivations for fighting for justice, Rev. Juana Jordan referenced Matthew 10 as an inspiration for resilience in her activism, saying “[Jesus] says people are gonna harass you, and he talks a lot about... using your voice. If you are a part of the family, if you are gonna do what I’m doing, people are gonna come against you. But there’s some responsibilities that you have.”<sup>45</sup> In a later comment, Rev. Juana again connected the notion of equal rights to Scripture, saying “I believe in communion, there is more than enough at the table. When Jesus laid out the table, he stretched the table to make sure everybody could come around.”<sup>46</sup> This livestream reiterated a common theme from Hurst’s personal account, where faith gives activists resilience in their work.

### Conclusion

In conclusion, faith still plays a prominent role in Black civil rights movements, but its role has been complicated due to recent trends in secularization and the rise of social media. Although social media has replaced the Black church as the organizational center of the movement, spirituality has proved itself to be indispensable to the movement due to its ability to unify protesters through rituals. Finally, spiritual beliefs also seem to be a powerful source of motivation for those who participate in protest, providing inspiration to continue persevering when met with opposition. With this sudden shift towards a more decentralized movement center, it will be interesting to see if Black Lives Matter will be able to achieve the same legislative successes as the Civil Rights Movement.

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<sup>45</sup> “The Spirit of Juneteenth,” *YouTube*, 61:28.

<sup>46</sup> *Ibid*, 66:54.

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# **From *Bowers* to *Obergefell*: The US Supreme Court's Erratic, Yet Correct, Jurisprudence on Gay Rights**

**Sydney White**

The gay rights movement has seen consistent support from the US Supreme Court over the last 25 years since the ruling in *Romer v. Evans* (1996). Culminating in recent years with the *Obergefell v. Hodges* (2015) ruling, which legalized same-sex marriage nationwide, the Court's jurisprudence has been an odd combination of internally consistent and erratic. How have the justices reasoned through this shift in their court opinions? How has the Court's level of scrutiny for discrimination on the basis of sexuality heightened while the level of scrutiny for discrimination on the basis of gender or race has simultaneously lowered? Furthermore, what might this mean for future court battles related to civil rights?

In the last 35 years, there has been a rapid shift in laws concerning same-sex conduct and same-sex marriage in the United States. At the time of the 1986 *Bowers v. Hardwick* decision, 24 states and the District of Columbia outlawed sodomy.<sup>1</sup> Although these laws purported to ban sodomy for all couples regardless of their sexual orientation, anti-sodomy statutes were primarily a means of curtailing the sexual activity of gay men.<sup>2</sup> Today, by contrast, gay and lesbian couples are allowed to marry throughout the US. This paper explicates this major shift in the Supreme Court's jurisprudence, particularly through an examination of the interplay between the due process and equal protection claims made by plaintiffs,

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<sup>1</sup> *Bowers v. Hardwick*, 478 U.S. 186. (U.S. Supreme Court 1986). See Justice White's majority opinion.

<sup>2</sup> *Ibid.* See Justice Stevens' dissent.

as well as through an analysis of American federalism and the conflict between state and federal laws. I argue that such a shift is a normative good, as the right to marry guaranteed in *Obergefell v. Hodges* (2015) grants gay couples greater hospital visitation privileges, marital status for tax purposes (such as inheritances), and access to numerous other privileges originally only allowed to heterosexual couples.<sup>3</sup> Nonetheless, the Court's jurisprudence over this time raises numerous questions. To what extent did the Court shift its level of scrutiny over the course of 35 years—from *Bowers* to *Obergefell*—without explicitly saying so? Is the Court's use of the Equal Protection Clause and the Due Process Clause in *Obergefell* contrived? In my view, the Court's decision in *Obergefell* should not have been seen as a surprise; indeed, it was a natural extension of the Court's jurisprudence on gay rights since *Romer v. Evans* (1996). Nonetheless, the Court's equal protection and due process jurisprudence is riddled with inconsistencies on these issues, and Justices Scalia, Thomas, and Roberts were right to point out the Court's erratic invocation of different levels of scrutiny.

### **Background and History: From *Bowers* to *Lawrence***

Although overruled by *Lawrence v. Texas* (2003), Justice White's and Justice Powell's reasoning in *Bowers v. Hardwick* (1986) relies heavily on historical and precedential claims regarding the Due Process Clause. In 1982, a police officer entered the home of Michael Hardwick and found him having sex with another man. Hardwick's conduct was illegal under a Georgia law prohibiting sodomy, which was defined as "any sexual act involving the sex organs of one person and the mouth or anus of another."<sup>4</sup> Although the district attorney decided not to prosecute, Hardwick filed a suit against Georgia's attorney general, Michael Bowers, arguing that the anti-sodomy law was unconstitutional under the Due Process Clause of the Fourteenth Amendment. In a 5–4 decision, the Supreme Court rejected Hardwick's claim. In the majority opinion, Justice White argued that no precedent had announced a right resembling that of the "claimed constitutional right of homosexuals to engage in acts of sodomy." He, along with Justice Burger in a concurring opinion, indicated that proscriptions against sodomy have ancient roots in Judeo-Christian moral and ethical standards. In a more explicitly legal argument, they also suggested that anti-sodomy statutes were inherited from En-

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3 *Obergefell v. Hodges*, 576 U.S. 644 (U.S. Supreme Court 2015). See Justice Kennedy's opinion, in which he lists the aspects of life in which rights are conferred on married couples: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decision-making authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support, and visitation rules.

4 *Bowers v. Hardwick*, 478 U.S. 186. (U.S. Supreme Court 1986).



glish common law and were thus enacted in colonial America. Their conception of fundamental rights is oddly similar to that discussed in later case *Washington v. Glucksberg* (1997), as it sought to consider any substantive due process claims by utilizing the framework of tradition and history as the precedent.<sup>5</sup>

In his dissent, Justice Stevens put forth a principle that would render itself crucial to future gay rights cases, arguing that “a policy of selective application must be supported by a neutral and legitimate interest—something more substantial than a habitual dislike for, or ignorance about, the disfavored group.”<sup>6</sup> In the case of *Bowers*, for example, Justice Sandra Day O’Connor inquired whether there was a legitimate state interest in curtailing homosexual conduct as a means to reduce the spread of HIV/AIDS among gay men. In response, Harvard University Law Professor Laurence Tribe, on behalf of Hardwick, indicated that this was not Georgia’s stated interest. Furthermore, various amici curiae briefs submitted in the case argued instead that anti-sodomy statutes would be counterproductive in mitigating the spread of HIV/AIDS.<sup>7</sup> With this in mind, it is clear that Justices Powell and Burger were correct: Georgia’s actual interest was seemingly the prevention of immoral conduct, and nothing more. As such, the Court has had to grapple with the question of whether a morality-based interest is sufficient to justify discrimination on the basis of sexual orientation.

Although the Georgia sodomy statute was upheld in *Bowers*, the later *Romer v. Evans* (1996) case proved to be more of a success for gay rights advocates, as Justice Kennedy did not consider the morality interest to be sufficient to justify a statute against sodomy. This case arose as the state of Colorado passed a series of local ordinances that sought to ban discrimination in many sectors, including housing, employment, education, public accommodations, and health and welfare services.<sup>8</sup> Notably, it contained a ban on discrimination on the basis of sexual orientation. This ban prompted Colorado voters to pass “Amendment 2,” which precluded future action designed to protect persons from discrimination based on their sexual orientation. In this case, the Court considered whether the state of Colorado provided a sufficient rational basis for singling out gays, lesbians, and bisexuals, which the state justified on the basis of respecting citizens’ freedom of association and, in particular, the liberty of landlords or employers who had per-

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5 *Washington v. Glucksberg*, 521 U.S. 702. (U.S. Supreme Court 1997).

6 *Bowers v. Hardwick*, 478 U.S. 186. (U.S. Supreme Court 1986). See Justice Stevens’ dissent.

7 *Ibid.* See oral argument. This line of questioning starts at 51:50. O’Connor states “Perhaps the state [of Georgia] can say its desire to deter the spread of a communicable disease or something of that sort,” to which Mr. Tribe replies.

8 *Romer v. Evans*, 517 U.S. 620. (U.S. Supreme Court 1996). See Justice Kennedy’s opinion.

sonal or religious objections to homosexuality.<sup>9</sup> Nonetheless, in his majority opinion, Justice Anthony Kennedy argued that such a rationale was too broad to allow for deference to the state, as it had no legitimate purpose or discrete objective.<sup>10</sup>

In contrast to Justice Kennedy, Justice Antonin Scalia argued that the morality rationale was sufficient and that the Court was undermining the majority will of Americans.<sup>11</sup> Scalia contended that Kennedy's notion of animus—or decision-making motivated solely by dislike for a particular group—is allowed in various arenas of life. He noted: “But I had thought that one could consider certain conduct reprehensible—murder, for example, or polygamy, or cruelty to animals—and could exhibit even ‘animus’ toward such conduct.”<sup>12</sup> Scalia's equivalation of murder and cruelty to animals to homosexuality was likely reprehensible then, as it is now. However, it also points to a crucial misconception in this case: that landlords or other groups of people may be discriminating against queer people on the basis of their *conduct*. In the Court's hearing of *Romer*, Scalia argued that if one criminalizes homosexual conduct [*Bowers*], then it follows that one can discriminate against homosexuals as well.<sup>13</sup> What Scalia failed to understand, however, and what lead counsel and future Colorado Supreme Court Justice Jean Dubofsky pointed out on behalf of respondents, is that *Romer* was about both conduct and sexual orientation. A person may be perceived as gay (when they are not) by a landlord, for example, and then discriminated against. In this regard, Scalia's analogy does not hold, as murder, polygamy, and cruelty to animals are all forms of conduct, while homophobia can be directed at people regardless of whether or not they actually engage in homosexual conduct. In this regard, Scalia's conflation of conduct and sexual orientation renders his analogy regarding the possibility for morality-based animus less persuasive.

Scalia's second argument was that the Court is an insulated institution of justices that have graduated from elite law schools, and so it had no business pushing its morality onto the good people of Colorado in *Romer*.<sup>14</sup> While Scalia's notion may have been theoretically viable, he failed to consider how his conception operates in a greater historical context. For example, as Laurence Tribe, counsel to Michael

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> In *Romer*, Scalia argued that a ‘politically-powerful minority’ is acting against the majority will of Colorado: “the majority of citizens [is attempting] to preserve its view of sexual morality state wide against the efforts of a geographically concentrated and politically powerful minority to undermine it.”

<sup>12</sup> *Romer v. Evans*, 517 U.S. 620. (U.S. Supreme Court 1996). Opinion Announcement - May 20, 1996.

<sup>13</sup> Ibid. See oral argument: 52:57-53:36. Scalia asks: “It seems to me the legitimacy of the one follows from the legitimacy of the other. If you can criminalize it, surely you can take that latter step, can't you?... Doesn't... if the one is constitutional, must not the other one be?”

<sup>14</sup> Ibid.

Hardwick, argued in the *Bowers* hearing, the majority of people in Virginia did not think that interracial liaisons were moral at the time of *Loving v. Virginia* (1967).<sup>15</sup> If the Court had relied on Scalia's majoritarian claim regarding gay rights, volmany generally agreed upon cases, such as *Loving*, would have been decided differently.

Following *Romer*, the Court made several decisions in favor of the gay community, such as in *Lawrence v. Texas* (2003). *Lawrence* mirrored the *Bowers* case in many regards, as it involved a police intrusion into the home of two men, John Lawrence Jr. and Tyron Garner, who were purportedly having sex.<sup>16</sup> It differed in two crucial dimensions. For one, the Texas statute in question was specifically directed at prohibiting homosexual sodomy, while the Georgia law in *Bowers* targeted sodomy in general. The second difference was that Lawrence's counsel, Paul Smith, argued that the Texas statute violated both the Equal Protection and Due Process Clauses of the Constitution, not just the Due Process Clause.<sup>17</sup> Justice Kennedy argued in the majority opinion of the Court that the Texas statute was a violation of substantive due process, and Justice Sandra Day O'Connor claimed that it also violated the Equal Protection Clause so its potential violation of the Due Process Clause need not be decided.<sup>18</sup>

Kennedy relied on two precedents in his jurisprudence in *Lawrence*: *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) for substantive due process and *Romer v. Evans* (1996) for equal protection.<sup>19</sup> In *Casey*, the Court introduced a new substantive due process claim: dignity and respect for autonomy.<sup>20</sup> As mentioned in regard to *Romer*, the Court started to level up its scrutiny for discrimination on the basis of sexual orientation; Colorado gave a rationale regarding freedom of association, but the majority found that this was not a sufficient basis for Amendment 2. In *Lawrence*, Kennedy quotes Justice Stevens's dissent in *Bowers*, in which he claimed that "individual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried

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15 *Bowers v. Hardwick*, 478 U.S. 186. (U.S. Supreme Court 1986). See oral argument: 35:41. Tribe states: "But, as this Court recognized in *Loving* against Virginia, where also a majority of the people of Virginia believed that interracial liaisons were inherently immoral and where for a long time a lot of people had believed that, this Court did not think that the Constitution's mission was to freeze that historical vision into place."

16 Dahlia Lithwick, "Extreme Makeover: The Story behind the Story of *Lawrence v. Texas*," *The New Yorker*, Mar. 4, 2012, <https://www.newyorker.com/magazine/2012/03/12/extreme-makeover-dahlia-lithwick>.

17 *Lawrence v. Texas*, 539 U.S. 558 (U.S. Supreme Court 2003). See oral argument: 1:48-2:10.

18 *Ibid.* See Justice O'Connor concurrence.

19 *Ibid.* See Kennedy opinion.

20 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (U.S. Supreme Court 1992).

as well as married persons.”<sup>21</sup> Following this logic, Kennedy disagreed with the *Bowers* decision, and it was overruled by *Lawrence*.

Analysis of Justice O’Connor’s concurrence in *Lawrence* indicates the potential legal consequences that could have arisen if Justice Kennedy had not drawn on precedents from both *Casey* and *Romer*. O’Connor argued that the fact that the Texas statute was only aimed at same-sex sodomy resulted in a violation of the Equal Protection Clause. Unlike Kennedy, O’Connor did not rely on *Casey* but rather the liberal precedent of *Romer*.<sup>22</sup> In her rational basis analysis, she asserted that “moral disapproval of [homosexuals], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause.”<sup>23</sup> O’Connor’s decision in *Lawrence* was therefore much narrower and more minimalist than Kennedy’s, as she implied that a sodomy statute would still be constitutional while a same-sex sodomy statute would not. If O’Connor’s minimalist stance had been adopted by the rest of the Court, however, it seems that very little change would have occurred. In *The Most Activist Court in Supreme Court History*, Thomas M. Kerk notes that O’Connor’s reasoning would have only rendered four states’ same-sex anti-sodomy statutes unconstitutional.<sup>24</sup> States would have still been able to adopt anti-sodomy statutes in general, and in practice, these statutes would likely only have been applied in same-sex cases. Consequently, Kennedy’s use of legal reasoning from both *Casey* (substantive due process) and *Romer* (equal protection) was imperative to establishing a precedent in *Lawrence* that resulted in legitimate change for the privacy and dignity of same-sex couples.<sup>25</sup>

### **The Shift After *Lawrence*: The Legal Fight for Same-Sex Marriage**

Following *Lawrence*, change was certainly on the horizon for same-sex couples in the US, particularly with regard to marriage. Evan Gerstmann, Professor of Political Science at Loyola Marymount University, argues in *Same-Sex Marriage and the Constitution* that *Lawrence* paved the way for lower courts to overturn bans on same-sex marriage.<sup>26</sup> In November 2003, the Supreme Judicial Court of Massachusetts ruled in *Goodridge v. Department of Public Health* that the state’s ban on same-sex marriage lacked a rational basis. The state had provided justifications for the ban,

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<sup>21</sup> *Lawrence v. Texas*, 539 U.S. 558 (U.S. Supreme Court 2003). See Kennedy opinion.

<sup>22</sup> Thomas M. Kerk, *The Most Activist Court in Supreme Court History: The Road to Modern Judicial Conservatism* (Chicago: The University of Chicago Press, 2004), 219.

<sup>23</sup> *Lawrence v. Texas*, 539 U.S. 558 (U.S. Supreme Court 2003). See Justice O’Connor concurrence.

<sup>24</sup> Kerk, *The Most Activist Court in Supreme Court History*, 219.

<sup>25</sup> Kenji Yoshino, “A New Birth of Freedom?: *Obergefell v. Hodges*,” *Harvard Law Review* 129, no. 147 (2015): 173.

<sup>26</sup> Evan Gerstmann, *Same-Sex Marriage and the Constitution: We All Deserve The Freedom To Marry* (Cambridge: Cambridge University Press, 2004), xii.

including “providing a ‘favorable setting for procreation,’” ensuring an optimal setting for child-rearing, and preserving state resources. Still, the Court rejected all three claims, stating that “...the [Massachusetts same-sex] marriage ban does not meet the rational basis test for either due process or equal protection.” As a result, Massachusetts became the first state to legalize same-sex marriage.<sup>27</sup>

As more states began to allow same-sex marriage and the topic penetrated the national conversation, federal challenges concerning the definition of marriage reached the Supreme Court, such as in the 2013 case of *United States v. Windsor*. This case challenged the legality of the Defense of Marriage Act (DOMA), which Congress had enacted in 1996.<sup>28</sup> In *Windsor*, Thea Spyer and Edith Windsor had been in a committed relationship since 1963. In the 2000s, they were living in New York, which recognized same-sex marriage ordained elsewhere but would not legalize same-sex marriage itself for a few more years.<sup>29</sup> As Spyer’s health deteriorated, the couple married in Ontario, Canada and then returned to New York. Upon her death, Spyer left Windsor all that she had. Although the couple had been married, Windsor was unable to claim a marital estate tax exemption due to Section 3 of the Defense of Marriage Act, which defined marriage as the “legal union between one man and one woman.”<sup>30</sup> As a result, Windsor was required to pay \$363,053 in estate taxes. For a heterosexual, federally sanctioned marriage, the entire estate tax would have been waived. When Windsor sought a refund, the Internal Revenue Service refused and claimed that Windsor was not a surviving spouse.<sup>31</sup> Although Windsor had to first prove she had standing in the case,<sup>32</sup> the central question in *Windsor* was whether or not the Defense of Marriage Act violated her right to equal protection under the Fifth Amendment.

Indeed, the Court found that the federal government failed to provide a sufficient rationale for DOMA, but did not explicitly point to the level of scrutiny that it used to come to this conclusion. During the hearing of *Windsor*, Paul D. Clement, who represented the House of Representatives, implored the justices to adhere to the rational basis test. He also provided the apparent justification of the federal government for the act: uniformity of the definition of marriage across states. DOMA had been passed in 1996, just as same-sex marriage was

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<sup>27</sup> Ibid, xiii.

<sup>28</sup> *United States v. Windsor*, 570 U.S. 744 (U.S. Supreme Court 2013). See Justice Kennedy’s majority opinion.

<sup>29</sup> N. S. Siegel, “Federalism as a Way Station: Windsor as Exemplar of Doctrine in Motion,” *Journal of Legal Analysis* 6, no. 1 (2014): 89, <https://doi.org/10.1093/jla/lau002>.

<sup>30</sup> *United States v. Windsor*, 570 U.S. 744 (U.S. Supreme Court 2013). See Justice Kennedy’s majority opinion.

<sup>31</sup> Ibid.

<sup>32</sup> In *Hollingsworth v. Perry*, 570 U.S. 693 (U.S. Supreme Court 2013), the petitioners were denied standing. This was certainly a concern for *Windsor*; Roberts’ opinion indicated that he would have denied standing here as well.

starting to be considered at the state level. In Clement’s view, Congress at the time became concerned that same-sex couples would travel to other states to be legally wed and then return to a state in which their marriage was not valid and insist that it remained so.<sup>33</sup> Nonetheless, reading from a 1996 House Report, Justice Kagan pointed out another potential legislative rationale for DOMA, which was that “Congress decided to reflect an honor of collective moral judgment and to express moral disapproval of homosexuality.”<sup>34</sup> Clement then argued that the report’s revelation of the intentions of some legislators did not necessarily lead to a failure of the rational basis test<sup>35</sup> Moreover, in his dissent in *Windsor*, Justice Scalia emphasized the rationale of uniformity, as well as his decades-old notion (dating back to *Romer*) that the Constitution does not forbid the government to enforce traditional moral and sexual norms.<sup>36</sup>

Traditionally, sexual orientation has been relegated to the sphere of rational basis tests—immediate scrutiny often includes sex or gender and heightened scrutiny is often in regard to race.<sup>37</sup> The level of scrutiny utilized is crucial to the level of protection given to a select class. The rational basis test, or rational review, is generally used in cases where no fundamental rights are at stake. In *Windsor*, Scalia also slighted Kennedy and the rest of those in the majority for their unwillingness to announce that they were using anything more than a rational basis test in their conclusion—a critical shift in the jurisprudence of gay rights cases. Scalia berated the majority members for their leveling up of protection for sexual orientation, writing that: “The opinion does not resolve and indeed does not even mention what had been the central question in this litigation: whether, under the Equal Protection Clause, laws restricting marriage to a man and a woman are reviewed for more than mere rationality.”<sup>38</sup> While the justices in the majority did not indicate that they were utilizing heightened scrutiny, it is notable that Justice Breyer pointed out in the *Windsor* hearing that for “rational basis-plus,” the rationale of uniformity might not be sufficient.<sup>39</sup> Although flippant, this points to the possibility

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<sup>33</sup> United States v. Windsor, 570 U.S. 744 (U.S. Supreme Court 2013). Oral argument: 1:06:05. Clement gives the example of Hawaii here, which had considered legalizing same-sex marriage around the time that DOMA was enacted.

<sup>34</sup> Ibid. Oral argument: 1:14:16.

<sup>35</sup> Ibid. Oral argument: 1:14:40. Clement’s rebuttal was that the improper motive of a few legislators does not mean that DOMA would necessarily fail the rational-basis test: “This Court, even when it’s to find more heightened scrutiny, the O’Brien case we cite, it suggests, Look, we are not going to strike down a statute just because a couple of legislators may have had an improper motive.”

<sup>36</sup> United States v. Windsor, 570 U.S. 744 (U.S. Supreme Court 2013). See Justice Scalia’s dissent.

<sup>37</sup> Legal Information Institute at Cornell Law. “Strict Scrutiny. [https://www.law.cornell.edu/wex/strict\\_scrutiny](https://www.law.cornell.edu/wex/strict_scrutiny).

<sup>38</sup> Ibid. See Scalia’s dissent.

<sup>39</sup> United States v. Windsor, 570 U.S. 744 (U.S. Supreme Court 2013). See oral



that the liberal justices were consciously raising the level of scrutiny for discrimination on the basis of sexual orientation.

Scalia's critique also points to a more serious concern for proponents of civil rights: erratic levels of scrutiny are not only the case for discrimination on the basis of sexual orientation, but now also for discrimination on the basis of race. Berkeley Law Professor Russell Robinson argued that the Court has decidedly levelled up some types of scrutiny, particularly for discrimination on the basis of sexual orientation, while it has lowered it for issues of race.<sup>40</sup> Arkansas Law Professor Susannah Pollvogt took this a step further, arguing that Kennedy's analysis regarding the discrimination ordinance in *Romer* (1996) is incompatible with his analysis in *Schuette v. Coalition to Defend Affirmative Action* (2014). In *Schuette*, Michigan voters had enacted a similar ordinance to that discussed in *Romer* which precluded future protections based on race, and Kennedy found that such an ordinance was constitutional.<sup>41</sup> In this regard, it does seem that Scalia was correct: the justices that supported gay rights issues over the last 25 years had seemingly changed their level of scrutiny without announcing it. Although this may seem like a win to gay rights advocates, unconscious or unannounced changes regarding the Court's level of scrutiny can have profound effects, particularly as the Court levels down its protections for race and gender.

### ***Windsor and Obergefell: A Resolution...***

Beyond the rational basis test, the Court was concerned about whether DOMA intruded on the principle of federalism and if the federal government could impose one uniform idea of marriage on the states.<sup>42</sup> Justice Kennedy's opinion in *Windsor* suggests that the decision in *Obergefell v. Hodges* may not resolve the concern with federalism. He indicates that in *Windsor*, federalism was of grave concern to the majority and that a future case that would establish same-sex marriage at a federal level could meet serious challenges from the Court. He wrote that state governments are delegated authority on the matter of marriage and divorce, quoting *Haddock v. Haddock* (1906).<sup>43</sup> In this regard, he asserted that "DOMA, because of its reach and extent, departs from this history and tradition of reliance on state

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argument: 1:17:41.

<sup>40</sup> Russell K. Robinson, "Unequal Protection," *Stanford Law Review* 68, no. 1 (2016): 151.

<sup>41</sup> Susannah William Pollvogt, "Thought Experiment: What If Justice Kennedy Had Approached *Romer v. Evans* the Way He Approached *Schuette v. BAMN?*," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2436616>.

<sup>42</sup> *United States v. Windsor*, 570 U.S. 744 (U.S. Supreme Court 2013). See oral argument: 1:16:09. Kennedy stated: "The question is whether or not the Federal government, under our federalism scheme, has the authority to regulate marriage."

<sup>43</sup> *United States v. Windsor*, 570 U.S. 744 (U.S. Supreme Court 2013). See Justice Kennedy's majority opinion.

law to define marriage.”<sup>44</sup> In a 2014 article entitled “Federalism as a Way Station, *Windsor* as Exemplar of Doctrine in Motion,” Duke University Law Professor Neil S. Siegel acknowledged that the Court concocted their decision in *Windsor* to a certain degree.<sup>45</sup> It is clear that imbued in the majority opinion was concern for federalism, equal protection, and substantive due process, but it is not as easy to discern where each concern lies or originates. In particular, Siegel noted the difference between Scalia and Roberts’ dissents. Roberts, for example, read the majority opinion as being concerned with federalism, although he himself thought that *Windsor* lacked standing.<sup>46</sup> Scalia, by contrast, thought that the majority was more concerned with the malice directed at same-sex couples by the federal government, and, consequently, its intention to impose inequalities and restrictions on same-sex couples.<sup>47</sup> Siegel argues that the Court resisted making a definitive judgment on either side and instead used the concept of federalism to push the country towards marriage equality. Thus, the rhetoric of federalism employed by Kennedy in the majority opinion, as well as the majority’s choice not to announce the level of scrutiny applied, may be used by the Court as a way station to a future resolution. Popularized by constitutional law scholar Alexander Bickel, this approach would seek to invite, as opposed to resolve, national conversation.<sup>48</sup> Siegel’s interpretation may suggest that federalism was less of a concern to Kennedy and rather a means of rhetoric to push the Court in one direction.

*Obergefell v. Hodges* itself also provides clearer guidance as to why the federalism notion in *Windsor* can be disregarded. In *Obergefell*, Justice Kennedy rooted his decision in the ever-changing due process jurisprudence, citing marriage as a fundamental right laid out in *Griswold v. Connecticut* (1965) and *Loving v. Virginia* (1967).<sup>49</sup> Nonetheless, the Court hesitated to enforce a federal definition of marriage onto the states. At the onset of the hearing, Justice Ruth Bader Ginsburg asked Mary Bonauto, counsel for *Obergefell*, how to square the *Windsor* case with *Obergefell*, a case in which “the Court stressed the government’s historic deference to the States when it comes to matters of domestic relations.”<sup>50</sup> Although Bonauto agreed with Justice Ginsburg’s characterization of *Windsor*, she suggested that *Obergefell* differed in an important way: the Court’s failure to affirm the right to same-sex

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<sup>44</sup> Ibid.

<sup>45</sup> Siegel, “Federalism as a Way Station,” 87.

<sup>46</sup> *United States v. Windsor*, 570 U.S. 744 (U.S. Supreme Court 2013). See Roberts’ dissent.

<sup>47</sup> Siegel, “Federalism as a Way Station,” 90.

<sup>48</sup> Ibid, 87.

<sup>49</sup> *Obergefell v. Hodges*, 576 U.S. 644 (U.S. Supreme Court 2015). See Justice Kennedy’s majority opinion.

<sup>50</sup> Ibid. See oral argument. Within seconds (0:52), Justice Ginsburg asked this question: “What do you do with the *Windsor* case where the court stressed the Federal government’s historic deference to States when it comes to matters of domestic relations?”



marriage would result in a violation of the Fourteenth Amendment. Conversely, in *Windsor*, the Court struck down a definition of marriage for the states because it prevented equal protection. The two cases are thus an inversion of one another in this regard, allowing *Obergefell* to overcome the federalism concern of *Windsor*.

On a constitutional level, however, *Obergefell* intertwined the notions of the Equal Protection and Due Process Clauses in a manner akin to that of *Lawrence*. Indeed, *Obergefell* relied heavily on precedents from *Lawrence*, *Romer*, and *Casey* which were imperative for differentiating Justice Kennedy's majority opinion from Justice O'Connor's concurrence in *Lawrence*. A similar process seemingly occurred with *Obergefell*. NYU Law Professor of Law Kenji Yoshino argues that while the Court relied on both the Equal Protection and Due Process Clauses of the Fourteenth Amendment, it put greater faith in fundamental rights claims.<sup>51</sup> In *Loving*, the equality and liberty claims were made in parallel to one another.<sup>52</sup> In *Obergefell*, Justice Kennedy described them as interrelated and unable to be captured fully without one another. But just as O'Connor's equal protection concurrence in *Lawrence* would have only resulted in the striking down of same-sex sodomy statutes, the enforcement of *Obergefell* may have been weaker had Kennedy not invoked the substantive due process claim in his decision.

Theoretically, the Court's use of both clauses should have prompted states to level up their protection for same-sex couples, as opposed to exiting the marriage licensing business altogether. As Yoshino notes, this was a concern in South Africa's 2005 decision to legalize same-sex marriage, in which the Constitutional Court of South Africa warned against their "levelling down" of marriage licensing in the wake of the decision.<sup>53</sup> Nonetheless, although the US Supreme Court attempted to use both the Equal Protection and Due Process Clauses in *Obergefell* to mitigate such practices, the enforcement of *Obergefell* was not necessarily easy. One prominent example concerned Kim Davis, a county clerk in Kentucky, who refused to grant a marriage certificate to a same-sex couple on the grounds of freedom of religion.<sup>54</sup> Yoshino asserts that actors such as Kim Davis "violate a due process ruling in a way that would not violate an equal protection ruling."<sup>55</sup> Such a

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<sup>51</sup> Yoshino, "A New Birth of Freedom?: *Obergefell v. Hodges*," 148.

<sup>52</sup> Ibid, 172.

<sup>53</sup> Minister of Home Affairs v. Fourie, No. ZACC 19 (Constitutional Court of South Africa 2006). The Honorable Justice Albie Sachs of the Constitutional Court of South Africa: "Levelling down so as to deny access to civil marriage to all would not promote the achievement of the enjoyment of equality. Such parity of exclusion rather than of inclusion would distribute resentment evenly, instead of dissipating it equally for all. The law concerned with family formation and marriage requires equal celebration, not equal marginalisation; it calls for equality of the vineyard and not equality of the graveyard."

<sup>54</sup> Alan Blinder and Tamar Lewin, "Clerk in Kentucky Chooses Jail Over Deal on Same-Sex Marriage," *New York Times*, Sept. 3, 2015, <https://www.nytimes.com/2015/09/04/us/kim-davis-same-sex-marriage.html>.

<sup>55</sup> Yoshino, "A New Birth of Freedom?: *Obergefell v. Hodges*," 173.

sentiment mirrors the potential outcome of O'Connor's opinion in *Lawrence*—had her opinion been carried out, the decision would have been toothless. Indeed, the entire jurisprudence of the Court in the area of gay rights seems to have some sort of internal consistency. This raises the question: following *Romer* and *Lawrence*, was *Obergefell* predictable?

Ron Kahn, James Monroe Professor of Politics and Law at Oberlin College, argues that *Obergefell* could have been predicted by commentators that recognized the Court's combination of formalist and realist conceptions of gay rights.<sup>56</sup> At first glance, the Rehnquist Court and Roberts Court jurisprudence on issues of sexual orientation is a bit surprising, as Kahn remarks: "... the Supreme Court has reaffirmed and expanded implied fundamental rights and equal protection under the law for gay men and lesbians during a period of political dominance by social conservatives, evangelical Christians, and other groups who view the protection of their definition of family values as a central mission of government."<sup>57</sup> Integral to Kahn's conception of the Supreme Court over these decades is whether or not justices understand the bidirectionality between legal principles (a more formalistic conception) and the "lived lives of individuals" (a more realistic conception).<sup>58</sup> In *Windsor*, for example, Kahn asserts that Justice Kennedy engaged in a realist form of decision-making as he discussed the burdens that DOMA placed on same-sex couples with regard to their married and family lives.<sup>59</sup> Kahn traces this bidirectionality from *Lawrence* to *Obergefell*, arguing that he was able to anticipate *Obergefell* insofar as the case was internally consistent with its precedents, and it relied on the bidirectionality of realism and formalism.<sup>60</sup>

### Final Remarks

It seems less likely that Kahn could have anticipated the later developments of the Court's jurisprudence on gay rights issues, particularly with the case of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights* (2018). In this case, Jack Philips, a Colorado baker and owner of Masterpiece Cakeshop, refused to create a wedding cake for a gay couple.<sup>61</sup> Notably, this interaction occurred in 2012 before the *Obergefell* decision. Relying on the Free Exercise and Free Speech Clauses, the Court ruled

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56 Ronald Kahn, "The Right to Same-Sex Marriage: Formalism, Realism, and Social Change in *Lawrence* (2003), *Windsor* (2013), & *Obergefell* (2015)," *Maryland Law Review* 75, no. 1 (2015): 271–311.

57 Ibid, 272.

58 Ibid, 275.

59 Ibid, 292.

60 Ibid, 302. "...specifically, *Obergefell* cannot be explained only on the basis of either formalist or realist elements."

61 Noah Feldman and Kathleen M. Sullivan, *Constitutional Law*, Twentieth edition, University Casebook Series (St. Paul: Foundation Press, 2019). *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. \_\_\_, 138 (2018)

in a 7–2 decision that the Colorado Civil Rights Commission’s decision in favor of the gay couple violated the First Amendment. Kahn’s framework does not seem to suit this case; indeed, if the Court had an understanding of the lived lives of gay people, and the discrimination that they face, it may have provided greater weight to the commission. Instead, the Court found that the Commission had “clear and impermissible hostility” toward Philips.<sup>62</sup> In his majority opinion, Chief Justice Roberts asserted that the commission’s hostility revealed that Philips was not afforded the neutrality mandated by the Free Exercise Clause.

Cases such as *Masterpiece Cakeshop* certainly cast doubt on the progress of gay rights advocacy. Regardless, gay rights advocates have achieved a series of victories over the last 35 years, from *Romer* in regard to discrimination ordinances, to *Lawrence* in regard to anti-sodomy statutes, to *Windsor* and *Obergefell* as the Court redefined marriage to include same-sex couples. Backlash, however, is still probable. Indeed, the Massachusetts Supreme Court’s decision in *Goodrich* in November of 2003 was likened to “an early Christmas gift to Republicans” prior to Massachusetts Senator John Kerry’s bid for the presidency in 2004.<sup>63</sup> Although *Obergefell* should have been anticipated, it certainly highlights the Court’s continued inability to state its level of scrutiny in regard to discrimination on the basis of sexual orientation, which lends itself to conservative critiques. Many commentators have also found it problematic that the Court has leveled up its protection for sexual orientation while it has simultaneously leveled it down for race. Nonetheless, it is promising that the Court has provided greater civil rights for the gay community. The Court’s internal consistency should be kept in mind for proponents of gay equality—even if its jurisprudence has been correct. The future of civil rights litigation hinges on it.

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<sup>62</sup> *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. \_\_\_\_ (U.S. Supreme Court 2018).

<sup>63</sup> Michael J. Klarman, *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage* (New York: Oxford University Press, Incorporated, 2012), 183. <https://ebookcentral.proquest.com/lib/swarthmore/detail.action?pq-origsite=primo&docID=5746877#>.

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# Predictive Algorithms in the Criminal Justice System: Evaluating the Racial Bias Objection

Rebecca Berman

Increasingly, many courtrooms around the U.S. are utilizing predictive algorithms (PAs). PAs are an AI that assigns risk [of future offending] scores to defendants based upon various data about the defendant, not including race, to inform bail, sentencing, and parole decisions with the goals of increasing public safety, increasing fairness, and reducing mass incarceration. Although these PAs are intended to introduce greater objectivity to the courtroom by more accurately and fairly predicting who is most likely to commit future crimes, many worry about the racial inequities that these algorithms may perpetuate. Here, I scrutinize and subsequently support the claim that PAs can operate in racially biased ways, providing a strong ethical objection against their use. Then, I raise and consider the rejoinder that we should still utilize PAs because they are morally preferable to the alternative: leaving judges to their own devices. I conclude that the rejoinder adequately, but not conclusively, succeeds in rebutting the objection. Unfair racial bias in PAs is not sufficient grounds to outright *reject* their use, for we must evaluate the potential racial inequities perpetuated by utilizing these algorithms relative to the potentially greater racial inequities perpetuated without their use.

## The Racial Bias Objection to Predictive Risk Assessment

ProPublica conducted research to support concerns that COMPAS (a leading predictive algorithm used in many courtrooms) is unfairly racially biased. Its research on risk scores for defendants in Florida showed:

- a. 44.9% of black defendants who do not end up recidivating are mislabeled as “high risk” (defined as a score of 5 or above), while only 23.5% of white defendants who do not end up recidivating are mislabeled as “high risk.”
- b. 47.7% of white defendants who end up recidivating are mislabeled as “low

risk,” while only 28% of black defendants who end up recidivating are mislabeled as “low risk.”<sup>1</sup>

Intuitively, these findings strike us as an unfair racial disparity. COMPAS’s errors operate in different directions for white and black defendants: disproportionately overestimating the risk of black defendants while disproportionately underestimating the risk of white defendants. In “Measuring Algorithmic Fairness,” Deborah Hellman further unpacks the unfairness of this kind of racialized error rate disparity:

First, different directions of error carry different costs. In the criminal justice system, we generally view false positives, which punishes an innocent person or over-punishes someone who deserves less punishment, as more costly and morally troublesome than false negatives, which fails to punish or under-punishes someone who is guilty. The policies and practices we have constructed in the U.S. system reflect this view. Defendants are innocent until proven guilty, and there is a high burden of proof for conviction. Because of this, the judicial system airs on the side of producing more false negatives than false positives. Given the widely accepted view that false positives (punishing an innocent person or over-punishing someone) carry a greater moral cost than false negatives (failing to punish or under-punishing a guilty individual) in the criminal justice system, we should be especially troubled by black defendants disproportionately receiving errors in the false positive direction.<sup>2</sup> A black defendant mislabeled as “high risk” may very well lead judges to impose a much longer sentence or post higher bail than fair or necessary, a cost that black defendants would be shouldering disproportionately (in comparison to white defendants) given the error rate disparity produced by COMPAS.

Second, COMPAS’s lack of error rate parity is particularly problematic due to its links to structural biases in data used by PAs. Mathematically, a calibrated algorithm will yield more false positives in the group with a higher base rate of the outcome being predicted. PAs act upon data that suggest a much higher base rate of black offending than white offending, and this base rate discrepancy can reflect structural injustices:

I. *Measurement Error*: Black communities are over-policed, so a crime committed by a black person is much more likely to lead to an arrest than a crime committed by a white person. Therefore, the *measured* difference of offending between black and white offenders is much greater than the *real* (statistically unknowable) difference in offending between black and white offenders, and PAs unavoidably utilize

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<sup>1</sup> ProPublica, “Machine Bias.”

<sup>2</sup> Hellman, “Measuring Algorithmic Fairness,” 832-836.

this racially biased arrest data.<sup>3</sup>

II. *Compounding Injustice*: Due to historical and ongoing systemic racism, black Americans are more likely to live in conditions, such as poverty, certain neighborhoods, and low educational attainment, that correlate with higher predicted criminal behavior. Therefore, if and when PAs utilize criminogenic conditions as data points, relatively more black offenders will score “high risk” as a reflection of past injustices.<sup>4</sup>

To summarize, data reflecting unfair racial disparities are necessarily incorporated into COMPAS’s calculations, so unfair racial disparities will come out of COMPAS predictions.

For all of these reasons—the high cost of false positives, measurement error, and compounding injustice—lack of error rate parity is a morally relevant attack on the fairness of COMPAS. By being twice as likely to label black defendants that do not end up re-offending as “high risk” than white defendants, COMPAS operates in an unfairly racially biased way. Consequently, we should not use PAs like COMPAS in the criminal justice system.

### **Rejoinder to the Racial Bias Objection to Predictive Risk Assessment**

The argument, however, is not that simple. An important rejoinder is based on the very reason why we find such tools appealing in the first place: humans are imperfect, biased decision-makers. We must consider the alternative to using risk tools in criminal justice settings: sole reliance on a human decision-maker, one that may be just as susceptible, if not more, to racial bias. Due to historical and continuing forces in the U.S. creating an association between dark skin and criminality and the fact that judges are disproportionately white, judges are unavoidably ingrained with implicit or even explicit bias that leads them to perceive black defendants as more dangerous than their white counterparts. This bias inevitably seeps into judges’ highly subjective decisions. Many studies of judicial decision-making show racially disparate outcomes in bail, sentencing, and other key criminal justice decisions.<sup>5</sup> For example:

a. Arnold, Dobbie, and Yang (2018) find, “black defendants are 3.6 percentage points more likely to be assigned monetary bail than white defendants and, conditional on being assigned monetary bail, receive bail amounts that are \$9,923 greater.”<sup>6</sup>

<sup>3</sup> Ibid, 840-841.

<sup>4</sup> Ibid, 840-841.

<sup>5</sup> National Institute of Justice, “Relationship between Race, Ethnicity, and Sentencing Outcomes: A Meta-Analysis of Sentencing Research.”

<sup>6</sup> Arnold, Dobbie, and Yang, “Racial Bias in Bail Decisions,” 1886.



b. According to the Bureau of Justice Statistics, “between 2005 and 2012, black men received roughly 5% to 10% longer prison sentences than white men for similar crimes, after accounting for the facts surrounding the case.”<sup>7</sup>

Consequently, the critical and challenging question is not whether or not PAs are tainted by racial biases, but rather becomes: which is the “lesser of two evils” in terms of racial justice: utilizing PAs or leaving judges to their own devices? I will argue the former, especially if we consider the long-term potential for improving our predictive decision-making through PAs.

First, although empirical data on this precise matter is limited, we have reason to believe that utilizing well-constructed PAs can reduce racial inequities in the criminal justice system. Kleinberg et al. (2017) modeled New York City pre-trial hearings and found that “a properly built algorithm can reduce crime and jail populations while simultaneously reducing racial disparities.”<sup>8</sup> Even though the ProPublica analysis highlighted disconcerting racial data, it did not compare decision-making using COMPAS to decisions made by judges without such a tool.

Second, evidence-based algorithms present more readily available means for improvement than the subjective assessments of judges. Scholars and journalists can critically examine the metrics and their relative weights used by algorithms and work to eliminate or reduce the weight of metrics that are found to be especially potent in producing racially skewed and inaccurate predictions. Also, as Hellman suggests, race can be soundly incorporated into PAs to increase their overall accuracy because certain metrics can be distinctly predictive of recidivism in white versus black offenders. For example, “housing stability” might be more predictive of recidivism in white offenders than black offenders.<sup>9</sup> If an algorithm’s assessment of this metric were to occur in conjunction with information on race, its overall predictions would improve, reducing the level of unfair error rate disparity.<sup>10</sup> Furthermore, PAs’ level of bias is consistent and uniform, while the biases of judges are highly variable and hard to predict or assess. Uniform bias is easier to ameliorate than variable, individual bias, for only one agent of bias has to be tackled rather than an abundance of agents of bias. All in all, there appear to be promising ways to reduce the unfairness of PAs—particularly if we construct these tools with a concern for systemic biases—while there currently does not appear to be ready means to better ensure a judiciary full of systematically less biased judges.

The question here is not “which is more biased: PAs or judges?” but rather “which produces more racially inequitable outcomes: judges *utilizing* PAs or judg-

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7 Bureau of Justice Statistics, “Federal Sentencing Disparity: 2005-2012,” 1.

8 Kleinberg et al., “Human Decisions and Machine Predictions,” 241.

9 Corbett-Davies et al., “Algorithmic Decision Making and the Cost of Fairness,” 9.

10 Hellman, “Measuring Algorithmic Fairness,” 865.

es alone?” Even if improved algorithms’ judgments are less biased than those of judges, we must consider how the human judge, who is still the final arbiter of decisions, interacts with the tool. Is a “high risk” score more salient to a judge when given to a black defendant, perhaps leading to continued or even heightened punitive treatment being disproportionately shown towards black offenders? Simultaneously, is a “low risk” score only salient to judges when given to a white defendant, or can it help a judge overcome implicit biases to also show more leniency towards a “low risk” black offender? In other words, does utilizing this tool serve to exacerbate, confirm, or ameliorate the perpetuation of racial inequity in judges’ decisions? Much more empirical data is required to explore these questions and come to more definitive conclusions. However, this uncertainty is no reason to completely abandon PAs at this stage, for PAs hold great promise for net gains in racial equity because we can and should keep working to overcome their structural flaws.

In conclusion, while COMPAS in its current form operates in a racially biased way, this factor alone is not enough to forgo the use of PAs in the criminal justice system: we must consider the extent of unfair racial disparities perpetuated by tools like COMPAS relative to the extent of unfair racial disparities perpetuated when judges make decisions without the help of a tool like COMPAS. Despite PAs’ flaws, we must not instinctively fall back on the alternative of leaving judges to their own devices, where human cognitive biases reign unchecked. We must embrace the possibility that we can improve human decision-making by using ever-improving tools like properly crafted risk assessment instruments.

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# **Breaking Big Ag: Examining the Non-Consolidation of China's Farms**

**Noah Cohen**

**Abstract:** Over the past two decades, China's policymakers have implemented numerous reforms intended to promote the emergence of scale farming enterprises. Nonetheless, contrary to demographic predictions, China's farm economy remains dominated by smallholders and virtually untouched by "big ag," as evidenced by a mean farm size of 0.6-0.7 hectares. This paper seeks to explain why China has not significantly transitioned to scale farming despite market liberalization. Using empirical evidence derived from data on land rental markets before and after the implementation of the 2011 Land Certificate Program, I find that land tenure insecurity has not been solely responsible for limiting scale farming. Rather, China's farm sizes have likely been constrained partly by unique policy conditions that lead to smallholders renting out their land to other smallholders, who subsequently do not further scale up due to other distortions that disincentivize mechanization, including labor surplus and plot fragmentation. These findings may have wide-ranging implications for the future efficacy of China's efforts to optimize its rural land policy strategy.

## **Introduction**

Over recent decades, the issue of farm size has loomed large for the world's policymakers and the environmental movement alike. To many economists, large-scale farming is an emblem of market efficiency, enabling millions of rural workers to move out of agriculture into higher-growth sectors. For others, enormous mech-

anized farms are emblematic of the unstoppable encroachment of “big ag” on the farm economy; they connote lost rural jobs, decimated communities, monocultural commodity dependence, and ecological ruin. (1)

In countries like China, where land tenure systems are being continuously invented and reinvented ad hoc to support economic and social objectives, the clash between these two conflicting narratives of scale farming is more than just an ideological battle between family farmers and big business. Rather, it is a surrogate of a broader set of political questions about social optimality that have come into particularly stark relief for China as globalization has forced the nation to strike a balance between economic competitiveness and self-sufficiency. The stakes are nothing less than how daily life is lived for hundreds of millions of people. (2)

Partly as a result of both centuries of traditional labor-intensive land-use practices and decades of land policy designed to build a self-sufficient food system, China’s farms are today among the world’s smallest, at an average of roughly 0.6 hectares.<sup>1</sup> As of 2010, 70 percent of China’s farmland was occupied by “small-holder farms” (<2 ha),<sup>2</sup> compared to 30 percent for East Asia and below 5 percent for upper-middle-income countries globally.<sup>3</sup> These average farm sizes continually decreased until at least 2007.<sup>4</sup> They have since stabilized and begun to slightly increase, but to this day there are no indications of “a systemic shift toward large-scale farming for the typical farming household.”<sup>5</sup> (3)

While decreasing farm size is unusual for middle-income developing countries, it is especially extraordinary for countries with China’s demographics. Countries typically begin to rapidly adopt scale farming once they reach the “turning point” where the agricultural labor force begins to decrease due to the increasing availability of off-farm jobs.<sup>6</sup> With rapid urbanization and a low total fertility rate,<sup>7</sup> China has long since reached this “turning point”: its rural population has decreased by roughly 36 percent since 1992,<sup>8</sup> while its number of “rural employed persons” has been decreasing since 1997.<sup>9</sup> Meanwhile, census data<sup>10</sup> shows cultivated land decreased only 0.2 percent over five years, debunking the popular narrative that

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1 Lowder, Scoet, and Singh, “What Do We Really Know about the Number and Distribution of Farms and Family Farms Worldwide?,” 11.

2 Wu et al., “Policy Distortions, Farm Size, and the Overuse of Agricultural Chemicals in China,” 7012.

3 Lowder, Scoet, and Raney, “The Number, Size, and Distribution of Farms, Smallholder Farms, and Family Farms Worldwide.”

4 Huang and Ding, “Institutional Innovation and Policy Support to Facilitate Small-Scale Farming Transformation in China,” 228.

5 Ji et al., “Are China’s Farms Growing?,” 48.

6 Masters et al., “Urbanization and Farm Size in Asia and Africa.”

7 Cai and Lu, “Take-off, Persistence and Sustainability,” 215.

8 “Rural Population - China | Data.” World Bank.

9 “China Statistical Yearbook 2016,” section 4.2.

10 Ibid, section 8.23.

farm sizes have contracted due to farmland being lost to urban development projects.<sup>11</sup> This appears, at first glance, to be a contradiction. If the same amount of land is being cultivated, but the number of farmers is decreasing, how can this not ipso facto imply farm consolidation? (4)

Perhaps the most striking thing about China's farm size trends is that they have persisted through several rounds of rural land tenure reforms that eliminated nearly all direct policy barriers to land transactions and consolidation. A robust debate continues among scholars about the ideal scale of farms in a Chinese topographic and economic context, with many arguing that land rights provide critical social insurance to rural residents and that traditional "dual-intensive" smallholder farming practices are well-suited to modern China's need for both land-efficient farming and crop diversification.<sup>12</sup> Nonetheless, China's top policymakers appear to see farm non-consolidation as a major labor efficiency issue that threatens to inhibit economic growth.<sup>13</sup> To attempt to solve this issue, the government has implemented a series of reforms, including the 2011 Land Certificate Program, to make it easier to transfer land rights. While past studies have indicated that these reforms have increased household-level land renting, it remains unclear whether these increases have translated into any large-scale land consolidation.<sup>14</sup> (5)

Globally, land economists have noted the potential impact of several factors on farm sizes, with significant literature dedicated to the relationships between land documentation,<sup>15</sup> mechanization,<sup>16</sup> and off-farm employment.<sup>17</sup> For China specifically, few studies have investigated the causes of farmland non-consolidation beyond the household responsibility system (HRS). The HRS is a policy instrument that equitably distributes land to every rural household, and, until recently, allowed for the periodic "redistribution" of land to preserve this equity; as such, many have assumed it sufficiently explains land remaining unconsolidated.<sup>18</sup> While the HRS helps explain why Chinese farms have generally tended to be small, it cannot explain why farms have barely even begun to scale up several decades into land tenure liberalization. Indeed, the HRS makes China an ideal case study for how rural land markets develop when starting from a condition of de facto complete land equality. (6)

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11 Landesa, "Summary of 2011 17-Province China Survey's Findings."

12 Huang, "China's New-Age Small Farms and Their Vertical Integration."

13 Cook, "Surplus Labour and Productivity in Chinese Agriculture."

14 Zhang, Cao, and Bai, "The Impact of Land Certificated Program on the Farmland Rental Market in Rural China."

15 Deininger, *Impacts Of Land Certification On Tenure Security, Investment, And Land Markets*.

16 Wang et al., "Wage Growth, Landholding, and Mechanization in Chinese Agriculture."

17 Huang, Liangliang, and Rozelle, "The Effect of Off-Farm Employment on the Decisions of Households to Rent out and Rent in Cultivated Land in China."

18 Wu et al., "Policy Distortions, Farm Size, and the Overuse of Agricultural Chemicals in China," 7012.

## *Structure*

This paper proposes one model to explain how China's farmland remains unusually unconsolidated despite land market liberalization. Specifically, I theorize the HRS as a policy instrument that enforced an *initial* market condition of there being no scale farms. I then propose that given that initial condition, existing models of scale farming development can be deconstructed into two functions: (1) whether people enter the land rental market and (2) the land rental behavior (e.g. total quantity of land rented) of those who *do* enter the land rental market. Based on this model, I find that while policies that improved land tenure security led to more people entering the land rental market, there is no evidence that they caused those who rented land to rent *more* land. This finding suggests that tenure insecurity has not been solely responsible for non-consolidation. Rather, although the number of land transactions is increasing, most land continues to be transferred locally from smallholder to smallholder rather than to outside large companies, due to irregular market forces caused by China's unique land policies. Further, most farms remain non-mechanized, likely due to both farm labor surpluses and plot fragmentation. This non-mechanization disincentivizes smallholder renters from scaling their operations up into scale farms, which constrains consolidation.

(7)

To examine both the context and global relevance of China's experience with land markets, I begin with a historical land policy overview. Then, I examine several hypotheses for China's land non-consolidation, which I organize into three broad categories: (1) barriers to land rental market participation, (2) relative incentives to smallholder-to-smallholder transfers (or disincentives to smallholder-to-company transfers), and (3) disincentives to smallholder land renters scaling up. I then test how variation of each factor correlates with land rental behavior, using data on households from villages that either had completed or had not yet started, implementing the 2011 Land Certificate Program (LCP) as of 2015.<sup>19</sup> Finally, I discuss the possible implications of my findings for China's land policy strategy.

(8)

## **Institutional background**

### *Land tenure in China: a historical overview*

China has a unique and complex history of land tenure that often goes unappreciated by Western observers. This history has been shaped by two defining characteristics of modern China: a rapidly growing population and a sharply limited amount of arable land. These characteristics necessitated an agricultural strategy

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<sup>19</sup> Zhang, Cao, and Bai, "The Impact of the Land Certificated Program on the Farmland Rental Market in Rural China."

that prioritized ‘land efficiency’ (maximizing output per land) over ‘labor efficiency’ (maximizing output per labor). Indeed, as the population began to grow faster than urbanization could keep up, labor-intensive agriculture emerged as a useful way to “absorb” surplus labor.<sup>20</sup> As agricultural technology improved, Chinese farmers began to adopt a “dual-intensive” farming strategy: technology was used not to reduce labor, but to increase output per land.<sup>21</sup> This strategy has been credited with facilitating China’s world-class agricultural yields, which remain among the world’s highest by output per acre of arable land.<sup>22</sup> Under agricultural collectivization during the Mao era, dual-intensive agriculture largely continued despite the removal of boundaries between plots, surprising economists who had expected economies of scale to emerge.<sup>23</sup> (9)

China’s rural reforms in 1978 revolutionized the land tenure paradigm, but preserved incentives for dual-intensive farming. The right to work (collectively owned) land became the right to operate land. Crucially, however, the village committee remained the legal proprietor of all the land, and households’ right to retain it was conditional on meeting agricultural production quotas. Under this “household responsibility system” (HRS), the village contracts several non-contiguous parcels of land out to each of its households, equitably distributed by household population, for a given renewable term, currently 30 years.<sup>24,25</sup> When the term expires, the village can “redistribute” the land to correct for changing household sizes over the contract term, and, until recently, could take land away from a household that was leaving it idle.<sup>26</sup> Households retain their own agricultural income, except for taxes paid back to the collective. This system ensures that all of China’s limited farmland continues to be used efficiently, and that land distribution remains equitable, with all households having the right to retain any land they can use for farming. (10)

While the HRS provides an invaluable social safety net for a rapidly growing population and facilitates the maximization of domestic agricultural output, it poses significant obstacles to China’s new goal of maximizing national labor productivity.<sup>27</sup> On the most basic level, limitations on land rights impose obvious limitations on land transfers, making it difficult for farmers who could make more

20 刘江, “近5年农民工收入年均增8.8% 累计培训农民工超1亿人次。”

21 Huang, “China’s New-Age Small Farms and Their Vertical Integration.”

22 Ibid.

23 Special thanks to Professor Louis Putterman for this insight.

24 Zhang, Cao, and Bai, “The Impact of the Land Certificated Program.”

25 “Notice of the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on Further Stabilizing and Improving Rural Land Contracting Relations.”

26 United States Congressional-Executive Commission on China, “Ownership with Chinese Characteristics.”

27 Zhan, *The Land Question in China*.



money off-farm to leave agriculture.<sup>28</sup> Given that villagers cannot fully own their land, they cannot sell their land; they can only rent it out or subcontract it for the remainder of their lease term.<sup>29</sup> Village government proprietorship of land has given rise to further frictions. Until recently, village governments had to sign off on transfers,<sup>30</sup> giving village leaders significant power over what kinds of transfers could occur and to whom. Many villages regularly violated the prescribed contract terms by conducting “reallocations” of villagers’ land even within the contract period.<sup>31</sup> These reallocations made farmers hesitant to rent out their land, the fear being that doing so would signal the land was no longer needed.<sup>32</sup> Finally, until 2011, most land contracts were not formally certificated; the resulting limited land tenure security discouraged renting out to strangers, with whom no informal social contracts existed to motivate contract compliance. (11)<sup>33</sup>

To resolve such problems, the central government has introduced several reforms to improve tenure security and liberalize the land market. Two especially noteworthy programs stand out. The first, the 2002 Rural Land Contracting Law, clarified that villagers had the right to transfer their contract land either by renting out or by “subcontracting” the remainder of their contract term, while explicitly banning most reallocations.<sup>34</sup> Subsequently, the 2011 Land Certificate Program (LCP) reasserted commitment to the 2002 regulations while introducing formal land documentation for every rural household. Some contended that large-scale land consolidation was only a matter of time as a result of these reforms.<sup>35</sup> However, the fact that farms have not meaningfully consolidated decades later suggests otherwise. (12)

## Potential constraints on consolidation: Several hypotheses

### 1. Structural barriers to entering the land rental market

#### 1.1 Land tenure insecurity

Perhaps the most common explanation of China’s farmland’s non-consolidation is that persistent land tenure insecurity continues to discourage land transfers.<sup>36</sup>

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<sup>28</sup> Cook, “Surplus Labour and Productivity in Chinese Agriculture.”

<sup>29</sup> “Decree of the President of the People’s Republic of China (No. 73) Law of the People’s Republic of China on Rural Land Contracting.”

<sup>30</sup> United States Congressional-Executive Commission on China, “Ownership with Chinese Characteristics.”

<sup>31</sup> Brandt, Rozelle, and Turner, “Local Government Behavior and Property Right Formation in Rural China,” 629.

<sup>32</sup> United States Congressional-Executive Commission on China, “Ownership with Chinese Characteristics.”

<sup>33</sup> Ma et al., “Tenure Security, Social Relations and Contract Choice.”

<sup>34</sup> “Decree of the President of the PRC (No. 73) Law of the PRC on Rural Land Contracting.”

<sup>35</sup> Ji et al., “Are China’s Farms Growing?”

<sup>36</sup> Zhang, Cao, and Bai, “The Impact of the Land Certificated Program.”

This explanation would suggest that, while recent reforms have improved the conditions for consolidation, rental markets remain constrained largely because the new policies have not yet been universally implemented or enforced. Despite the central government's obsessive efforts to recalibrate land policy, this explanation is plausible, as village governments' compliance with national land laws vary.<sup>37</sup> This pervasive noncompliance is evidenced by the significant number of reallocations that have continued to occur well into the 2010s despite reallocations having been essentially outlawed by the 2002 Rural Land Contracting Law.<sup>38</sup> (13)

Despite these implementation lags, each round of reform has demonstrably had some impact. When the pilot of the LCP had extended to roughly half of China, farmers from villages where the LCP had been decreed were more likely to rent land.<sup>39</sup> However, it remains unclear whether reforms' impact has been to increase scale renting or just to spur lots of non-scale renting. If tenure insecurity were solely responsible for non-consolidation, we would expect the local implementation of reforms to positively correlate not only with rental participation but also with rental scale. Thus, a more granular assessment of how land reform implementation has affected rental market dynamics may elucidate the extent to which tenure insecurity has constrained scale farming. (14)

### *1.2 Hukou system: Emigration without land renunciation*

The Hukou System, which splits the Chinese population into "urban" and "rural" residents, is another widely theorized source of non-consolidation. Over recent years, an unprecedented number of rural Chinese residents have migrated to the cities.<sup>40</sup> Yet many of these migrant workers cannot get their rural *hukou* registrations changed to receive social benefits from their new municipalities, nor do employers typically offer them basic social protections.<sup>41</sup> Only 22 percent of migrant workers have "basic pension insurance," while just 17 percent have unemployment insurance.<sup>42</sup> Thus, most migrants choose to keep their land rights as a fallback.<sup>43</sup> To some theorists, this trend is the end of the mystery of China's farm sizes: these retained landholdings simply remain idle, perhaps being casually tended by an aging family member.<sup>44</sup> Thus, it is possible that while the rural population is decreasing, the number of rural landholders is not, precluding consolidation.

<sup>37</sup> Teets and Hurst, *Local Governance Innovation in China*, 21.

<sup>38</sup> Zhang, Cao, and Bai, "The Impact of the Land Certificated Program."

<sup>39</sup> Ibid.

<sup>40</sup> "China Statistical Yearbook-2016," section 4.2.

<sup>41</sup> Wu et al., "Policy Distortions, Farm Size, and the Overuse of Agricultural Chemicals in China."

<sup>42</sup> 刘江, "近5年农民工收入年均增8.8% 累计培训农民工超1亿人次."

<sup>43</sup> Wu et al., "Policy Distortions, Farm Size, and the Overuse of Agricultural Chemicals in China."

<sup>44</sup> Ibid.

Indeed, this seems to be the popular conception both outside and within China.<sup>45</sup> (15)

However, evidence suggests this is unlikely to be happening en masse. For instance, China's land is remarkably productive given how much of it is barely arable. The country's average cereal yields per hectare regularly rank among the top-few G20 countries—including those with far more prime farmland—and far exceeds most of its regional peers.<sup>46</sup> If most of the thirty percent of China's farmland contracted to migrant households were near-idle, the remaining farmland would be by far the most productive land on the planet, which is implausible.<sup>47</sup> Moreover, output has not decreased with the emergence of migration since the 1990s; rather, it has increased comparably to or more rapidly than that of peer countries, again making it improbable that idle land is massively increasing.<sup>48</sup> Finally, the persistence of reallocations, which Krusekopf<sup>49</sup> finds most often occur where village demographics have recently changed, indicates that migrants typically cannot leave land idle without it being redistributed. Thus, it is incredibly unlikely that land abandonment alone can account for farm non-consolidation. Yet the question remains: what, then, happens to migrant households' land when they leave the village but do not renounce their land? (16)

## *2. Relative disincentives to land rentals to outside scale farming companies*

### *2.1 Cheap rent prices reduce barriers for local renters*

The data suggest that for most of China's migrant households, renting their land out is the solution of choice. For migrant families to fully allocate their labor capital off-farm while keeping their land rights for social insurance, they must somehow keep their land under cultivation to meet HRS quotas, lest they risk the village government reallocating their land.<sup>50</sup> This need can essentially only be fulfilled by renting; thus, it is unsurprising that households with more migrant workers tend to rent out greater proportions of their land.<sup>51</sup> Given China's remarkable recent rates of rural emigration and non-agricultural job growth, the expected result of this dynamic is an extremely high supply of land for rent, likely leading to unusually low land rental prices. Wang's<sup>52</sup> data confirms this conjecture: 62 percent of land "rentals," including 53% of those to non-relatives, were rent-free. While rent-

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<sup>45</sup> Zhang, Cao, and Bai, "The Impact of the Land Certificated Program," 3.

<sup>46</sup> World Bank, "Cereal Yield (Kg per Hectare) - selected countries | Data."

<sup>47</sup> Ibid.; author's calculation.

<sup>48</sup> World Bank, "Crop Production Index (2004-2006 = 100) - Selected Countries."

<sup>49</sup> Krusekopf, "Diversity in Land-Tenure Arrangements under the Household Responsibility System in China."

<sup>50</sup> Ibid.

<sup>51</sup> Zhang, Cao, and Bai, "The Impact of the Land Certificated Program."

<sup>52</sup> Wang, Riedinger, and Jin, "Land Documents," 223.

charged rather than rent-free transactions slightly increased from 2000 to 2008, the mean yearly rent charged when rent *was* charged decreased over the same period, from 272 to 222 yuan/mu.<sup>53</sup> Even with these low prices, supply of land for rent continued to outstrip demand. While 25 percent of households expressed “willingness to rent out” land for a below-market 200 yuan/mu, a dramatically lower proportion of households actually found takers.<sup>54</sup> The result of this “buyer’s market” is that Chinese smallholders, unlike most of the world’s smallholders, can afford to rent—which many do. (17)

Due to still-inconsistent land tenure security, Chinese farmers typically prefer to rent to their neighbors, with whom informal social relations may provide recourse if land disputes occur, rather than to companies or to strangers from outside the village.<sup>55,56</sup> Thus, the feasibility of local smallholder-to-smallholder renting leads to such transactions dominating the rental market: as of 2008, 85 percent of rented out land was rented to farmers within the contract holder’s own village.<sup>57</sup> (18)

This tendency toward local renting has persisted even with rental market expansion and reform. From 2000 to 2008, a period over which renting participation nearly doubled, the percentage of rental contracts that were informal rather than written decreased from 96 percent to 89 percent.<sup>58</sup> However, over the same period, the proportion of rentals to “non-kin” rather than “kin” did not change.<sup>59</sup> Given that it is unlikely that many people would choose to rent their land out to outside companies with no formal contract, this likely indicates that it was not rentals to outside companies, but formal rentals to close social relations, that increased most substantially with the recent expansion of land rental markets. (19)

## *2.2 Disincentives for scale farming companies to rent or subcontract land*

Even when farmers transfer their land rights for the remainder of their lease term, they most often transfer to other nearby farmers. As of 2013, 58 percent of full-lease-term transferred farmland by area—and the overwhelming majority of such transfers by count—was transferred to other farmers rather than to companies, cooperatives, or others.<sup>60</sup> Only 9.6 percent of transferred farmland was transferred to companies.<sup>61</sup> Because farmers who transfer their land rights permanently presumably do not care what happens to their land once they sell it, the predominance of smallholder-to-smallholder transactions indicates the presence

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53 Ibid.

54 Ibid., 226.

55 Ma et al., “Tenure Security, Social Relations and Contract Choice.”

56 Macours, “Insecurity of Property Rights and Social Matching in the Tenancy Market,” 898.

57 Wang, Riedinger, and Jin, “Land Documents,” 223.

58 Ibid.

59 Ibid.

60 Huang, Guan, and Jin, “Scale Farming Operations in China,” 196.

61 Ibid.

of not just supply-side, but demand-side barriers to scale transfers. Smallholder farmers entering the transfer market cannot singlehandedly explain why farmers who permanently transfer their land do not choose to transfer it to scale farming companies (which could presumably pay more than smallholders), given that, for such transfers, trusting the recipient is no longer a factor. This implies that scale farming companies must be choosing not to rent land, or, equivalently, that China's land economy precludes many scale farming companies from penetrating the Chinese market. (20)

One likely demand-side contributor to the dearth of outside-scale renters is that it is simply not worthwhile for companies to rent or subcontract land given China's policy conditions. Given that land is merely leased rather than owned, the long-term returns for non-residents to establish scale farming operations may not be worth the considerable fixed costs. Moreover, renting 0.1 hectares of detached land may be gainful for smallholder renters, but is unlikely to be very useful to most scale farming companies. Due to the non-contiguous plot distribution under the HRS, one cannot rent corporate-scale stretches of contiguous land without contracting with dozens, or even hundreds, of farmers who hold conjoining plots. It is thus unsurprising that, according to Huang,<sup>62</sup> most scale transfers to companies involve village governments organizing the transfer of the entire village's land at once. However, this is only possible when none of the village's households still rely on agricultural employment—or when those who do can be convinced to become wage laborers on the land they own—which is rare.<sup>63</sup> Thus, companies can rarely obtain enough contiguous land to warrant the nontrivial fixed costs of scale farming enterprises. (21)

Whether scale farming is constrained more by the opportunity for local farmers to rent land or by disincentives to outside companies taking on land is difficult to precisely determine, though examining the impact of village per capita incomes on rental markets will help elucidate the impact of cheap rent prices. Regardless of the reason, it is evident that the vast majority of rental transactions occur locally and between smallholder farmers. (22)

### *3. Disincentives for local land renters to scale up: Non-mechanization*

Even if China's land rental market is constrained to local smallholder-to-smallholder transfers, it is not obvious that this should prevent farms from consolidating. The U.S. farm economy is a prime example: even though mean farm sizes have ballooned to hundreds of times those of China, 96 percent of US farms re-

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

main “family farms” rather than corporate entities.<sup>64</sup> Smallholder renters can only be responsible for the dearth of scale farms if conditions have disincentivized these smallholder renters from further scaling up their operations over time. The most plausible explanation is China’s unusually low levels of agricultural machinery. While many studies have indicated that scale farming is generally associated with mechanization, China’s persistent non-mechanization despite rapidly increasing rural wealth is not well understood.<sup>65</sup> With that being said, several factors unique to China may be disincentivizing machinery investments, and, therefore, limiting scale farming. (23)

Plot fragmentation is one such likely disincentive. The HRS divides villages’ land into plots, often of less than 0.1 ha, and contracts several of these plots to each household. To ensure that each household’s land is equally arable, the village committee assesses the quality of each parcel and allocates an equal proportion of “good” and “bad” parcels to each household.<sup>66</sup> Due to China’s mountainous terrain, which often causes the farmland within a given village to vary dramatically in quality, many households are thus given several completely noncontiguous plots.<sup>67</sup> This extreme fragmentation essentially neutralizes the economies of scale associated with mechanization.<sup>68</sup> To give one provocative example, from 1980 (when much farmland was still collectivized) to 1988 (when much land was on plots of less than 1 hectare), the percentage of farmland “under mechanized operations” *decreased* by 5.8 percent despite unprecedentedly rapid rural income growth.<sup>69</sup> Such trends continue today: Tan<sup>70</sup> finds that rice farmers from China’s Jiangxi province with more fragmented land had higher labor costs but lower tractor costs, indicating they were less mechanized. (24)

Alternatively, it may be that China’s land renters do not mechanize simply because their labor-to-land ratio under the HRS land distribution gives them no reason to. Most of China’s rural households still have lower marginal returns to labor than the prevailing non-agricultural wage rate, indicating labor surpluses—which is to say, they do not have enough land to need as many on-farm workers as they have.<sup>71</sup> Why these households’ “surplus laborers” continue to farm even though they could make more money from non-farming work is unclear.

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64 MacDonal, Korb, and Hoppe, “Farm Size and the Organization of U.S. Crop Farming,” 47.

65 Wang et al., “Wage Growth, Landholding, and Mechanization in Chinese Agriculture.”

66 Wu et al., “Policy Distortions, Farm Size, and the Overuse of Agricultural Chemicals in China.”

67 Tan, Heerink, and Qu, “Land Fragmentation and Its Driving Forces in China.”

68 Hu, “Household Land Tenure Reform in China,” 177.

69 Ibid., 178.

70 Tan et al., “Do Fragmented Landholdings Have Higher Production Costs?”

71 Cook, “Surplus Labour and Productivity in Chinese Agriculture.”

<sup>72</sup> Nonetheless, it is evident that these households have enough labor capital to take on significantly more land while remaining land-efficient without needing to mechanize. (25)

It is important to note that most smallholder land renters may not have the ability to purchase machinery. As previously mentioned, a primary driver of land renting among Chinese smallholders appears to be the extraordinarily cheap availability of local land for rent.<sup>73</sup> As such, the typical Chinese land renter may not have the means--or the desire--to make large fixed investments into agriculture. Given the ever-evolving nature of China's urban work opportunities, renting land may simply be households' way of temporarily allocating their labor capital more efficiently, without incurring fixed costs or financially committing to agriculture long-term. Such households would be willing to rent up to, but not beyond, the maximum land they could manage without machinery given their labor endowments, thus precluding the transition to scale farming. (26)

The size distribution of land renters' landholdings illustrates the salience of this hypothesis. Of the land renters from the sample used for the present study, 83 percent had total landholdings, including land they were renting, of less than 30 mu, or 2 hectares [Fig. 1].<sup>74</sup> While labor efficiency varies for different types of farms, 2 hectares can typically be farmed land-efficiently by a family of four—roughly China's mean household size—without machinery.<sup>75</sup> It is likely no coincidence that 85 percent of households from the same sample had zero “agricultural asset” value.<sup>76</sup> Even households from villages where the LCP had been completed rarely exceeded these labor-intensive-friendly farm sizes: only one of the sample's 48 land renters whose villages had completed the LCP had more than 20 mu of landholdings, further indicating that barriers to scale renting exist independent of land tenure security.<sup>77</sup> (27)

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<sup>72</sup> Cook proposes that quotas may contribute to agricultural over-employment by forcing households to dedicate enough labor capital to farming to meet quotas during the most productive seasons. However, it is equally plausible that farm labor surpluses primarily result from the limited supply of off-farm jobs.

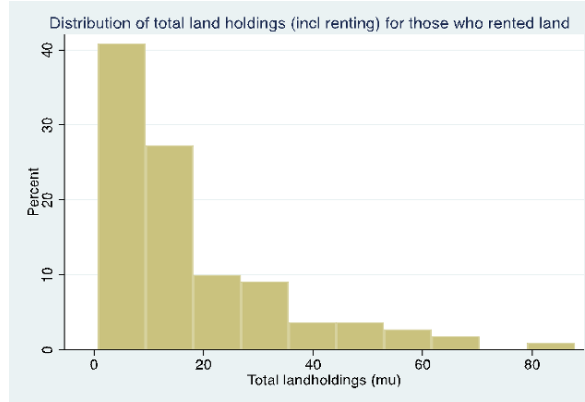
<sup>73</sup> Wang, Riedinger, and Jin, “Land Documents,” 223.

<sup>74</sup> Data from: Zhang, Cao, and Bai, “The Impact of the Land Certificated Program.” Author's calculation.

<sup>75</sup> Cook, “Surplus Labour and Productivity in Chinese Agriculture,” 21.

<sup>76</sup> Zhang, Cao, and Bai, “The Impact of the Land Certificated Program.”

<sup>77</sup> Data collected by the Center for Chinese Agricultural Policy.

Fig. 1<sup>78</sup>

It is not necessarily possible to determine the causal relationship between rental land holding and mechanization due to reverse causality concerns: not having enough land to need machines may discourage mechanization, and not having machines may also discourage renting an amount of land that cannot be farmed without machines. However, given the fixed nature of machinery costs (those who currently own machinery most likely did not buy it within the past year), examining the relationship between machinery ownership and year-to-year land renting behavior *change* may provide some insight into the impact of non-mechanization. (28)

## Methodology

### *Data sources*

To test how each of these sets of factors may be influencing land transfer behavior on what levels, I examine data on households that had either completed or not yet started implementation of the 2011 Land Certificate Program by 2015. Specifically, I use Probit/Tobit regressions to examine the relationship between various measures of land rental markets and LCP completion, machinery ownership, and village per capita income. Probit regressions are used to regress on binary variables (i.e. household likelihood of renting land), whereas Tobit regressions are used to estimate linear relationships between “censored” variables where not all “zero” observations can be considered equivalent (i.e. the amount of land that a household rents, a variable which does not consider that some non-renters rent out land). (29)

The data used for this paper was collected by the Center for Chinese Agricul-

<sup>78</sup> Data collected by the Center for Chinese Agricultural Policy.



tural Policy. It was originally used for Zhang's<sup>79</sup> investigation of the early impacts of the LCP on land rental markets. Several households were surveyed from each of 100 randomly selected villages distributed across China. The dependent variables used for the present study were households' land renting participation (yes/no), intensity (percent of the household's total contract land rented), and amount (mu).<sup>80</sup> LCP implementation was conceived of as a "treatment" variable, which is to say, its causality is unidirectional (LCP implementation could cause more people to rent, but more people renting probably could not make LCP implementation more likely).<sup>81</sup> Other data collected included machinery ownership (log asset value),<sup>82</sup> off-farm migrant workers and off-farm local employment (by the number of household members), and village per capita income (yuan). Control variables included household head education, gender, and age, original contract land (mu), and county location. (30)

Two new variables were created for the present study. *2014 rent %* measures the household's 2014 land renting intensity; I derive this from dividing 2014 renting quantity by contract land. This enables testing of 2015 renting intensity controlling for 2014 intensity, which functionally approximates year-to-year renting intensity change. *Rented 2014* simply measures whether 2014 land renting quantity was greater than zero; this similarly enables examination of 2015 rental market participation controlling for 2014 participation. (31)

#### *Theoretical framework*

While Zhang<sup>83</sup> finds LCP completion was correlated not only with the likelihood of renting land, this measure may be insufficient, because, with most transfers being of similar scale with quantity rented (not controlling for whether one rented land), one's land renting quantity is strongly correlated with whether one

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79 For details on the study's sampling strategy, data collection methods, technical variable definitions, etc., see: Zhang, Cao, and Bai, "The Impact of the Land Certificated Program."

80 While potentially useful data was collected on land rented out as well, it seems to have been skewed by data collection limitations: the study seems to have disproportionately sampled those families who were present within the village (or who could be readily reached by phone). Thus, it includes very few migrant families who rented out 100% of their land. Therefore, I only use the data on land renting rather than land renting out.

81 Ibid.

82 The original study's results regarding machinery ownership were skewed by log transformation issues with the "agricultural assets" variable, which measured log of asset value by 10,000 yuan. Because most farmers who had machinery had less than 10,000 yuan of machinery asset value, the data contained many negative values of this variable for machinery owners, whereas non-owners were coded as zero value. This issue was fixed for the present paper by transforming nonzero values to give a log of asset value by yuan, rather than by 10,000 yuan.

83 Ibid.

rented land.<sup>84</sup> Thus, the fact that the LCP impacted quantity rented does not tell us whether mean land renting quantity increased because more people rented land, or because a few people started renting larger amounts of land. The former result would support the smallholder-to-smallholder hypothesis, whereas the latter would indicate nascent scale consolidation and thus imply that tenure insecurity was directly holding back the consolidation of scale farms. (32)

To reflect the need to isolate which variables impact whether the individual rented land versus how much land was rented by the individual, the basic demand-side model of land rental intensity and amount:

$$Y_i = \beta_0 + \beta_1 LCP_i + \beta_2 M_i + \dots + \Sigma_i$$

can be deconstructed into the following two specifications:

$$\begin{aligned} 1) Y_i &= \beta_0^\theta + \beta_1^\theta R_i + \beta_2^\theta LCP_i + \beta_3^\theta M_i + \dots + \Sigma_i \\ 2) p(R_i = 1) &= \beta_0^P + \beta_1^P LCP_i + \beta_2^P M_i + \dots + \Sigma_i \end{aligned}$$

Where Y = land renting amount/percentage, R = whether one rented or not, LCP = whether the village had completed the LCP, M = asset value of agricultural machinery (log yuan).

Essentially, equation (2) tells us the likelihood that someone will rent land given their levels of other factors. Equation (1) tells us how much land they can be expected to rent given their levels of other factors, including whether they rent land. Therefore, holding constant  $R_i = 1$  (by limiting the sample to those who rented land), equation (1) now tells us how much land *those who rent land* can be expected to rent given their levels of the same other factors from equation (2). Then, what this deconstruction does is separate each independent variable's impact on the household's total land rental quantity or percentage into 1) its impact on whether they rent land, 2) its impact on how much land they rent, or what percentage of their land they rent *if* they rent land. (33)

### Regression results (truncated)<sup>85</sup>

Table 1. Impact on the likelihood of renting land

Probit regression		
Dependent variable: Whether rented land (1 = yes; 0 = no)		
	w/o lag	w/ whether rented 2014
log ag assets (yuan)	0.049*	0.038
	(0.02)	(0.33)

<sup>84</sup> See table 7 (appendix).

<sup>85</sup> See Appendix for full

implemented LCP	0.643*	0.520
	(0.29)	(0.45)
log village incomes	0.331	0.435
	(0.22)	(0.35)
Household characteristics	Yes	Yes
Village characteristics	Yes	Yes
County id dummies	Yes	Yes

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

Table 2. Impact on renting quantity ( $\mu$ ), intensity (percent of contract land rented) for only those who rented

Tobit regression, for only those who rented ( <b>holding R = 1</b> )				
Dependent variable: (2) Renting quantity (left), (3) renting intensity (right)				
	Quantity		Intensity	
	w/o lagged	w/ 2014 rent ( $\mu$ )	w/o lagged	w/ 2014 rent (%)
log ag assets (yuan)	0.623*	0.510**	9.814**	5.049**
	(0.29)	(0.16)	(3.68)	(1.60)
implemented LCP	-0.226	-3.196	69.338	-38.870
	(5.27)	(2.89)	(66.45)	(34.26)
log village incomes	-0.330	-2.493	-18.553	-25.825
	(3.60)	(1.98)	(45.41)	(19.85)
Household characteristics	Yes	Yes	Yes	Yes
Village characteristics	Yes	Yes	Yes	Yes
county id dummies	Yes	Yes	Yes	Yes

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

## Discussion

### *Impact of LCP*

LCP completion is positively correlated with land rental market participation [Table 1]. However, for rental market participants, it is not significantly correlated with how much land they rented [Table 2, col 1], what percentage of their land they rented [Table 2, col 3], land renting quantity year-to-year change [Table 2, col 2], or renting percentage year-to-year change [Table 2, col 4]. This suggests that, while the LCP increased the total number of land rental transactions, it did not necessarily impact the size of the transactions that occurred. (34)

This does not necessarily mean the LCP did not improve incentives for scale farming; for instance, improved land tenure security would likely have increased prospective corporate renters' confidence that they could keep the land they rented for the specified term. However, these results provide no evidence that the LCP more significantly facilitated scale renting than it did smallholder-to-smallholder rentals. This provides further support for the hypothesis that while land tenure in-

security may constrain the emergence of rental markets, other constraints on *scale* renting exist that tenure insecurity cannot account for. (35)

Moreover, the demand-side impact of land tenure insecurity on scale renting is likely to mirror the impact of limited-term leases since both similarly decrease the length of time that people, especially non-village residents, can expect to keep their rental holdings, disincentivizing renting by operations that require high fixed costs. Thus, the non-correlation of LCP completion with rental scale may suggest that drivers of smallholder-to-smallholder renting other than limited-term leases, including diseconomies of scale due to fragmentation and cheap rent empowering local renting, likely contribute to non-consolidation. (36)

#### *Impact of machinery*

Machinery ownership is strongly positively correlated with renting land by nearly every measure: whether one rented land [Table 1], how much land one rented if they rented land [Table 2, col 1], what percentage of one's land one rented if they rented land [Table 2, col 3], land renting quantity year-to-year change [Table 2, col 2], and renting percentage year-to-year change [Table 2, col 4]. (37)

Although causal implications of the rental-machinery relationship cannot necessarily be determined, it is noteworthy that renting quantity year-to-year change is positively correlated with machinery ownership. Because it is unlikely that most machines were purchased within the past year, this may suggest that those who purchased machinery subsequently began renting more land, rather than vice versa. This indicates machinery non-ownership may be constraining scale renting. On the other hand, when controlling for 2014 land rental market *participation*, machines were not correlated with 2015 participation, which may indicate that machinery purchase did not prompt an increased likelihood of entering the rental market [Table 1]. This supports the hypothesis that, due to labor surpluses enabling farmers to expand their landholdings without needing to mechanize, machinery non-ownership does not constrain rental market participation—it just constrains how much land renters rent. (38)

#### *Impact of village per capita income*

There is no evidence that village income level is correlated with rental market participation [Table 1], the quantity for those who rented [Table 2, col 1], or intensity for those who rented [Table 2, col 3]. This may support the hypothesis that cheap land rent prices have made renting land widely financially accessible. Moreover, controlling for total landholdings, village income level is not correlated with machinery ownership [Table 6]. While past studies have proposed wealthier households having more off-farm employment may be responsible for machinery investments not rising with rural incomes,<sup>86</sup> the present study controls for off-farm

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<sup>86</sup> Wang et al., “Wage Growth, Landholding, and Mechanization in Chinese Agriculture.”

employment. This result, therefore, gives credence to the idea that machine ownership is constrained not by insufficient financial capital, but by disincentives to mechanization. Specifically, machine use is likely disincentivized by labor surpluses and plot fragmentation. (39)

### Conclusion

Many interconnected factors contribute to China's dearth of scale farms; however, the way these factors interact is not well understood. By deconstructing the existing models of how various factors impact China's land rental markets, we can more clearly observe the specific dynamics that constrain scale farming. The findings of this paper offer a more granular, though still not comprehensive, model of these processes. (40)

Specifically, (1) the LCP improved rental market participation, but there is no evidence that it increased the scale of renters' rental holdings, indicating that tenure insecurity may constrain rental markets but cannot solely account for non-consolidation. Further, (2) machinery ownership may spur increased land renting quantity, though not necessarily increased renting participation, indicating that households may not need machines to rent land but they do need them to rent at scale; (3) machinery purchase seems to be mainly constrained not by financial capital but by incentive structure; (4) village incomes do not seem to significantly impact rental markets, which may suggest rent prices have become cheap enough to no longer be a barrier to renting. Together, these findings suggest that a policy environment that incentivizes smallholders and disincentivizes companies to rent land, along with a land tenure structure that disincentivizes smallholder renters to mechanize, helps to constrain the expansion of scale farming. (41)

China's experience shows that under the right set of structural conditions, land market liberalization need not necessarily give rise to the large-scale consolidation and corporatization of farms, a finding that may be encouraging to proponents of both liberalization and local food systems. Indeed, while there are some indications that China's top policymakers had hoped to facilitate the development of large-scale farming companies through land tenure reform, the current trends offer arguably even more cause for optimism. First, given that smallholder-to-smallholder rentals have been accelerating, the typical Chinese farm will increasingly move further down the U-shaped curve of total societal costs of farming by farm size,<sup>87</sup> even if most renters continue to rent 2 hectares or less. Moreover, these low-level rentals may be slowly mitigating the labor surplus problem. With the expansion of urban work opportunities, more farmers will rent their land out to their neighbors, causing the remaining farms to converge toward allocatively efficient

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87 Duffy, "Economies of Size in Production Agriculture," 389.

sizes (absent machinery) for their respective households' labor endowments. Finally, Huang notes that China's increasing need for crop diversification may turn the plot fragmentation that persists under the HRS into a boon rather than a liability.<sup>88</sup> While major problems persist, China may be moving toward an enviable equilibrium: maximum agricultural output, crop diversity, fewer environmental externalities, with the countryside not only "absorbing labor" but also providing critical social insurance to those with rural *hukous*. (42)<sup>89</sup>

Globally, food security is increasingly under threat from many unprecedented sources, including global supply chain disruptions and climate change.<sup>90</sup> These threats call for countries to renew their commitments to ensure they can sufficiently and sustainably feed their own populations. Countries with low land endowments per capita face unique obstacles to realizing sustainable self-sufficiency; China's farm economy exhibits such challenges even independent of its distinctive policy conditions.<sup>91</sup> Given these unique challenges, it is worth interrogating whether the same labor-optimizing strategies used by countries with more land and fewer people, where maximizing land efficiency need not be paramount, really represent the optimal rural development model for "land-poor" countries like China. Time will tell whether China's current combination of liberalized land markets and structural deterrents to the establishment of large corporate farms will survive ongoing political challenges, and, if so, whether it will prove beneficial to the welfare of the country's rural population. (43)

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88 Huang, "China's New-Age Small Farms and Their Vertical Integration."

89 刘江, "近5年农民工收入年均增8.8% 累计培训农民工超1亿人次."

90 Vermeulen, Campbell, and Ingram, "Climate Change and Food Systems."

91 Huang, "China's New-Age Small Farms and Their Vertical Integration."

## Appendix

Table 3. *Impact on the likelihood of renting land (expanded)*

Probit regression

Dependent variable: Whether rented land (1=yes, 0=no)

	Few controls b/se	Household, village characteristics controls b/se
log ag assets	0.054* (0.02)	0.049* (0.02)
implemented LCP	0.515* (0.26)	0.643* (0.29)
Age		0.135 (0.08)
square of age		-0.001* (0.00)
1=male, 0=female		0.162 (0.24)
education level		0.060 (0.21)
contract land		0.003 (0.01)
# local off-farm laborers		-0.093 (0.07)
# migrant laborers		-0.133 (0.08)
log village incomes		0.331 (0.22)
Village irrigated land (mu)		0.000* (0.00)
county id dummies	Yes	Yes
_cons	-1.412*** (0.41)	-11.250** (3.56)
r2		
df_r		
bic	643.094	680.543

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

Table 4. *Impact on rental quantity (mu) for those who rented (expanded)*

Tobit regression

Dependent variable: Household's total rental quantity (mu)

	Without lagged		Controlling for 2014 mu	
	Renters only b/se	Everyone b/se	Renters b/se	Everyone b/se
log ag assets	0.623* (0.29)	0.408*** (0.09)	0.510** (0.16)	0.099* (0.05)
implemented LCP	-0.226 (5.27)	0.933 (1.03)	-3.196 (2.89)	-0.004 (0.52)
age	-1.418 (1.38)	0.096 (0.24)	1.136 (0.77)	0.076 (0.12)
square of age	0.011 (0.01)	-0.001 (0.00)	-0.011 (0.01)	-0.001 (0.00)
1=male, 0=female	5.232 (3.88)	0.765 (0.85)	-0.248 (2.15)	-0.226 (0.43)
education level	3.723 (3.56)	1.062 (0.77)	4.705* (1.95)	0.402 (0.39)
contract land	0.156 (0.16)	0.005 (0.03)	0.397*** (0.09)	0.027 (0.02)
# local off-farm labor	0.053 (1.03)	-0.015 (0.26)	-1.099 (0.57)	-0.048 (0.13)
# migrant laborers	-1.435 (1.16)	-0.356 (0.28)	-0.958 (0.64)	-0.105 (0.14)
log village incomes	-0.330 (3.60)	1.872* (0.78)	-2.493 (1.98)	0.303 (0.40)
Village irrigated land	-0.004 (0.00)	0.001* (0.00)	-0.002 (0.00)	0.000 (0.00)
County id dummies	Yes	Yes	Yes	Yes
Land rented 2014 (mu)			0.851*** (0.05)	0.909*** (0.02)
_cons	83.448 (59.53)	-28.268* (11.31)	13.473 (32.90)	-4.683 (5.73)
/				
var(e.d06_1)	71.136*** (9.59)	34.867*** (1.95)	21.339*** (2.88)	8.868*** (0.50)
r2				
df_r	87.000	617.000	86.000	616.000
bic	898.784	4250.761	771.036	3380.973

\* p&lt;0.05, \*\* p&lt;0.01, \*\*\* p&lt;0.001

\* p&lt;0.05, \*\* p&lt;0.01, \*\*\* p&lt;0.001



# Economics

Table 5. *Impact on rental intensity (% of contract land) for those who rented (expanded)*

Dependent variable: Household's renting intensity (% of contract land rented)

Without lagged

Controlling for 2014 %

	Renters only	Everyone	Renters	Everyone
b/se	b/se	b/se	b/se	
log ag assets	9.814** (3.68)	5.594*** (1.11)	5.049** (1.60)	2.235*** (0.61)
implemented LCP	69.338 (66.45)	24.243* (12.14)	-38.870 (34.26)	14.619* (7.09)
age	6.181 (17.33)	3.926 (2.79)	16.965* (7.76)	3.135 (1.70)
square of age	-0.060 (0.15)	-0.040 (0.02)	-0.163* (0.07)	-0.030* (0.01)
1=male, 0=female	40.039 (48.90)	14.390 (10.06)	-3.480 (22.00)	0.334 (5.78)
education level	13.545 (44.81)	4.957 (9.06)	51.549** (18.91)	8.113 (5.26)
contract land	-6.671** (2.04)	-0.723 (0.39)	-0.167 (1.07)	-0.228 (0.22)
# local off-farm laborers	-6.979 (13.03)	-1.670 (3.12)	-15.816** (5.68)	-0.613 (1.75)
# migrant laborers	2.065 (14.63)	-3.873 (3.31)	-12.294 (6.71)	-1.075 (1.84)
log village incomes	-18.553 (45.41)	14.912 (9.24)	-25.825 (19.85)	5.557 (5.11)
Village irrigated land	-0.020 (0.05)	0.015* (0.01)	-0.007 (0.02)	0.007 (0.00)
Renting intensity 2014 (%)			0.869*** (0.04)	0.846*** (0.02)
County id dummies	Yes	Yes	Yes	Yes
_cons	172.586 (750.25)	-365.169** (133.37)	-76.147 (345.77)	-197.343* (84.72)
/				
var(e.RP)	11297.401*** (1523.34)	4844.843*** (270.83)	1988.835*** (275.80)	1343.439*** (80.94)
r2				
df_r	87.000	617.000	80.000	527.000
bic	1456.235	7408.607	1205.805	5696.622

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

Table 6. *Impact of village incomes on mechanization*

Log machines (asset value, yuan)	
	b/se
log village incomes	-0.438 (0.33)
amt of irrigated land	0.000 (0.00)
implemented LCP	0.426 (0.43)
# local off-farm laborer	-0.169 (0.11)
# migrant laborers	0.224 (0.12)
years	0.014 (0.10)
square of age	-0.000 (0.00)
1=male, 0=female	0.455 (0.35)
education level	-0.218 (0.32)
landholdings incl rent	0.042*** (0.01)
County id dummies	Yes
_cons	1.495 (4.71)
/	
var(e.lnMachines)	6.024*** (0.34)
r2	
df_r	618.000
bic	3120.613
* p<0.05, ** p<0.01, *** p<0.001	

Table 7. *Impact of whether one rented land on how much land they rented*

Quantity land rented	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
Rented land (yes/no)	7.579743	.5436414	13.94	0.000	6.5122	8.647285
_cons	.1920755	.2253818	0.85	0.394	-.2505044	.6346553

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# God Save the Fish: The Abyss of Electoral Politics in Trade Talks – a Brexit Case Study

Eleanor Ruscitti



*“The EU is continuing to make demands that are incompatible with our independence...  
we cannot accept a deal that doesn’t leave us in control of our own laws or waters”  
~ Boris Johnson on December 20, 2020<sup>2</sup>*

## Abstract

During the “exit negotiations” between the United Kingdom (UK) and the European Union (EU), the relatively economically insignificant fishing industry received a disproportionate share of not just UK media attention, but global press as well; not to men-

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1 Robert Fisk, “Boris’s Last Push for Brexit Sees Him Kissing Fish and Posing for Selfies as New Poll Gives Leave the Narrowest of Leads,” *The Sun* (The Sun, June 22, 2016), <https://www.thesun.co.uk/news/1326026/boriss-last-push-for-brexit-sees-him-kissing-fish-and-posing-for-selfies-in-a-gruelling-final-day-of-campaigning/>.

2 Raf Casert, “EU-UK Trade Talks Floundering over Fish as Cutoff Day Nears,” *Associated Press*, December 20, 2020, <https://apnews.com/article/brexit-europe-global-trade-boris-johnson-europe-94ead6da2c46c87efc51328893cd3590>.



tion an array of political machinations, which almost halted a free trade agreement between two of the world's largest trading partners. This evaluation seeks to understand why such disproportional influence existed. Why were both the EU and the UK coming to blows over something as seemingly innocuous as fishing, and willing to risk the most significant trade agreement in recent European history? Existing subject matter literature cites history and symbolism as the main factors that brought fishing into the limelight, almost killing a multi-billion-dollar trade deal between these two primary trade partners. While this paper concurs with existing analysis, it finds further illumination in the murky waters of electoral politics. It argues that the Conservative Party brought fishing to the trade talk surface to demonstrate that they were protecting a disenfranchised industry while aiming to convey the benefits of Brexit to maintain votes and prevent Scottish secession. More broadly, this paper sheds light on the potential ramifications that domestic politicians have on free trade agreements, especially in this new global populist era where the leverage of the disenfranchised is key; an affirmation of the American colloquialism that "all politics is local."<sup>3</sup>

### **I: Introduction**

#### ***A Fishy Paradox***

From many perspectives, most of the Brexit drama did not make sense. From an economic point of view, it made more sense for the United Kingdom (UK) to remain in the European Union (EU) to keep access to the European Single Market (Single Market) and their largest and longest trading partners, especially in an era of increasing globalization. However, even though the vast majority of expert opinions concluded that leaving the EU would be economically disastrous for the UK, in the summer of 2016, its citizens voted to leave. Brexit was not just about economics, though. It was a reaction of nostalgia and entrenchment *vis-à-vis* a world that was rapidly becoming more interconnected with the EU leading the way.

As the offshoring of lower productivity sectors of the economy and the development of more technologically advanced goods and services providers sailed ahead, once-thriving industries were no longer key to the economy. These changes left many in the UK workforce feeling stranded in an unnavigable wake of market disruption, while Brussels charted a course toward ever-increasing globalization. The

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<sup>3</sup> Thomas Phillip "Tip" O'Neill

disenfranchised felt as though they were under the thumb of Brussels, having to abide by laws that they believed were unfavorable to the UK. A rather sentimental notion of sovereignty and the call for “taking back control” resonated within certain portions of the British populace. Their goal was to withdraw from their largest economic market to regain full regulatory control yet maintain access to the Single Market via a free trade deal that represented over 40 percent of its exports.<sup>4</sup>

When the time came to negotiate this free trade deal, economic reasoning took a back seat, again. As the final days of the deal approached, most of the negotiations had been settled. However, over a dinner of pumpkin soup, scallops, and steamed turbot with mashed potatoes (a not-so-subtle nod to the feud) UK Prime Minister Boris Johnson and EU President of the Commission Ursula von der Leyen almost derailed the entire deal for the seemingly economically insignificant fishing industry.<sup>5</sup> Johnson left the dinner asserting that “very large gaps remain between the two sides (regarding a fishing deal) and it is still unclear whether these can be bridged.” Von der Leyen said that “we understand each other’s positions. But [we] remain far apart.”<sup>6</sup> With only 15 days left to seal the deal, and no consensus on fishing in sight, many were left confused and frustrated.

The fishing industry employs roughly 12,000 workers out of a UK workforce of over 33 million (excluding the processing industry, which employs a larger portion); represents 0.1 percent of British domestic output; 0.2 percent of EU GDP; and accounts for just 0.8 percent of total EU-UK trade.<sup>7,8,9,10</sup> It produces a little more than £1 billion of the total £300 billion worth of UK exports. It seemed that the UK was effectively putting at risk over 99 percent of its trade with the EU to

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4 Avery Koop, “Visualizing the UK and EU Trade Relationship,” Visual Capitalist, February 9, 2021, <https://www.visualcapitalist.com/visualizing-the-uk-and-eu-trade-relationship/>.

5 Adam Coghlan, “Breaking Bread Over Brexit With Fish in Brussels, a Short Story,” *Eater London*, December 10, 2020, <https://london.eater.com/2020/12/10/22167244/no-deal-brexit-fishing-boris-johnson-ursula-von-der-leven-dinner>.

6 Daniel Boffey, “The Brexit Brussels Dinner: Fish and Frank Talk but No One Left Satisfied,” *The Guardian*, December 10, 2020, <https://www.theguardian.com/politics/2020/dec/10/the-brexit-brussels-dinner-fish-and-frank-talk-but-no-one-left-satisfied>.

7 Elena Ares et al., “UK Fisheries Statistics,” *House of Commons Library*, November 23, 2020, <https://commonslibrary.parliament.uk/research-briefings/sn02788/>.

8 Reuters Staff, “PM Sold out Fish in Brexit Trade Deal, Fishermen Say,” *Reuters*, December 26, 2020, <https://www.reuters.com/article/uk-britain-eu-fish/pm-sold-out-fish-in-brexit-trade-deal-fishermen-say-idUSKBN2900KG>.

9 Kat Haladus, “Fisheries: An Industry That’s Worth 0.1% of the UK’s GDP Is Holding up the Talks,” *UK Customs Solutions*, December 23, 2020, <https://ukcustomssolutions.co.uk/2020/12/23/fisheries-an-industry-thats-worth-0-1-of-the-uks-gdp-is-holding-up-the-talks/>.

10 Matt Bevington, Professor Anand Menon, and Professor Jonathan Portes, “Fishing: Why Is It Such a Tricky Issue in UK-EU Negotiations?” *UK in a Changing Europe*, November 10, 2020, <https://ukandeu.ac.uk/explainers/fishing-why-is-it-such-a-tricky-issue-in-uk-eu-negotiations/>.

defend an industry that accounted for a mere fraction of the world's sixth-largest economy. Even Harrods in London contributes more to the British economy.<sup>11</sup> Many questioned why the British government was prepared to risk the most important trade negotiations in recent British history over an industry that barely even touches the economic needle, let alone moves it.

## *Literature Review*

Academics and journalists alike, such as Professor Anand Menon,<sup>12</sup> Jeremy Phillipson,<sup>13</sup> Sophia Kopela,<sup>14</sup> and Stijn Billiet,<sup>15</sup> tried to address the paradox, but the vast majority failed to account for the genesis of the paradox by failing to consider the role of elections and electoral politics. Professor Menon argued that the British government's focus on the repatriation of fishing rights was instrumentally relevant because it was symbolic and represented a commitment to the "left behind." Menon asserted that the media's amplification of the issue brought it to relevance, and in a sense, forced Johnson to act.<sup>16,17</sup> Other scholars, such as Craig McAngus, Christopher Huggins, and John Connolly concluded that since fishing was one of the most Europeanized policies for the UK, it would receive the most attention throughout the trade talks.<sup>18,19</sup>

On par with the rest of Brexit, the answer lies in convoluted domestic politics rather than economic reasoning. As mentioned in previous analyses, the fishing industry was perceived as a symbol for the wider movement fueling Brexit: "taking back control" and revitalizing a domestic industry that was lost under the heel of the EU boot. Politicians focused on it in order to create an image that the government was helping the citizens, and particularly, the disenfranchised.<sup>20</sup> The

11 British Sea Fishing, "Brexit and Britain's Fisheries," British Sea Fishing, January 20, 2021, <https://britishseafishing.co.uk/brexit-and-britains-fisheries/>.

12 Anand Menon and UK in a Changing Europe Team, "Fisheries and Brexit," *The UK in a Changing Europe*, June 2020, <https://ukandeu.ac.uk/wp-content/uploads/2020/06/Fisheries-and-Brexit.pdf>.

13 Jeremy Phillipson and David Symes, "'A Sea of Troubles': Brexit and the Fisheries Question" 90 (2018): pp. 168-173, <https://doi.org/10.31230/osf.io/fxnqj>.

14 Sophia Kopela, "Historic Fishing Rights in the Law of the Sea and Brexit," *Leiden Journal of International Law* 32, no. 4 (2019): pp. 695-713, <https://doi.org/10.1017/s0922156519000438>.

15 Stijn Billiet, "Brexit and Fisheries: Fish and Chips Aplenty?" *The Political Quarterly* 90, no. 4 (2019): pp. 611-619, <https://doi.org/10.1111/1467-923x.12748>.

16 Tom McTague, "Why Britain's Brexit Mayhem Was Worth It," *The Atlantic* (Atlantic Media Company, December 24, 2020), <https://www.theatlantic.com/international/archive/2020/12/brexit-trade-deal-uk-eu/617509/>.

17 Anand Menon and UK in a Changing Europe Team, "Fisheries and Brexit".

18 Craig McAngus and Christopher Huggins, et al., "The Politics and Governance of UK Fisheries after Brexit," *Political Insight* 9, no. 3 (September 2018): 8-11 <https://doi.org/10.1177/2041905818796570>.

19 John Connolly et al., "The Governance Capacities of Brexit from a Scottish Perspective: The Case of Fisheries Policy," *Public Policy and Administration*, January 2020, p. 095207672093632, <https://doi.org/10.1177/0952076720936328>.

20 Matt Bevington, Professor Anand Menon, and Professor Jonathan Portes, "Fishing:

cause for this might not be just because of the media's influence, as per Menon's analysis, but rather because of a synergistically strong confluence of the Scottish fishing lobby, an upcoming Scottish general election, and the Conservative party's political agenda.

## **II: Why Do Politicians Protect and Amplify Certain Industries in Free-Trade Agreements?**

### ***Theoretical Frameworks: Lobbying Influence and the Self-Serving Politician***

There are a multitude of theories regarding the significance of certain industries in trade talks, often finding answers in lobby groups and politicians' electoral objectives. Typically, democratically elected/appointed officials ultimately determine trade agreements. As theorized by Robert Putnam in 1988, the politics of trade agreements are often a two-level game in which public sector officials/politicians are simultaneously in negotiations at both the international and the domestic levels.<sup>21</sup> Putnam assessed that domestic groups pressure the officials to adopt favorable policies and, in turn, these officials seek to amplify their power by developing relationships with these groups who offer support via votes or campaign contributions.<sup>22</sup> Politicians then go to the international level and seek to maximize their ability to satisfy domestic pressures while balancing the needs of their international partners.<sup>23</sup>

Following Putnam's two-level game theory, Gene Grossman and Elhanan Helpman introduced special-interest politics into the analysis, analyzing profit-maximizing lobbying groups. They found that, "lobbies seek to curry favor with politicians who covet their financial support... seeking to maximize the aggregate welfare of the lobby groups' members."<sup>24</sup> As the politician's objective is to maximize their own political welfare—which often relies on having a large number of contributions—they champion the policy of those who donate the most. In other words, those who donate the most have purchased the most access to influence during trade talks.

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Why Is It Such a Tricky Issue in UK-EU Negotiations?"

21 Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-Level Games." *International Organization* 42, no. 3 (1988): 427–60. doi:10.1017/S0020818300027697.

22 Corneliu Bjola and Ilan Manor, "In the Long Run," In the Long Run, July 19, 2018, <http://www.inthelongrun.org/criviavews/article/revisiting-putnams-two-level-game-theory-in-the-digital-age-domestic-digita/>.

23 Eugénia da Conceição-Heldt and Patrick A. Mello, "Two-Level Games in Foreign Policy Analysis," *Oxford Research Encyclopedia of Politics*, 2017, <https://doi.org/10.1093/acrefore/9780190228637.013.496>.

24 Gene Grossman and Elhanan Helpman, "Trade Wars and Trade Talks," *Journal of Political Economy* 103, no. 4 (1995): pp. 678, [https://dash.harvard.edu/bitstream/handle/1/3450062/Helpman\\_TradeWars.pdf](https://dash.harvard.edu/bitstream/handle/1/3450062/Helpman_TradeWars.pdf)

Sometimes, though, the most influence comes from industries that do not have deep pockets. In 1982, Arye Hillman assessed why politicians put their support behind declining industries that have little special-interest money and/or little economic or voting influence.<sup>25</sup> Hillman found that politicians protect and promote declining industries for self-interest motives to maximize political support, rather than for altruistic ideals, as the industry will still typically decline even with protection.<sup>26</sup>

However, a strong influence of a declining industry may not solely manifest from a politician's political agenda. In "Entry and Asymmetric Lobbying: Why Governments Pick Losers", Richard Baldwin and Frederic Robert-Nicoud use Grossman and Helpman's 1994 pressure group approach to conclude that while government policy is influenced by pressure groups that employ expensive lobbying tactics, losers (such as declining industries) lobby more diligently through less expensive means.<sup>27</sup> They concluded that it is not just the government that picks the losers, but rather it is also the losers that pick the government.<sup>28</sup>

### ***The Fishing Industry as a "Loser" Lobbyist***

It is helpful to use Grossman and Helpman's campaign finance lobbying, Hillman's self-serving/re-election interests, and Baldwin's and Robert-Nicoud loser lobbying framework to contextualize the fishing paradox. To begin, one must view the fishing industry as a lobbyist and Johnson as a political welfare maximizer. However, the fishing industry is not the lobbyist illustrated by Grossman and Helpman.

After analyzing over 7,000 donations to both Conservative Party and Unionist Party between 2016-2020, the Scottish Fishing Federation and the National Federation of Fishermen did not appear to make meaningful contributions to the party. Several material contributions came from the fishing towns, yet such donations did not correlate with the amount of influence achieved. From 2016-2020, of the £169,449,385 donated to both parties, only £275,950 came from relevant coastal towns—roughly 0.163 percent.<sup>29</sup> It is a bit of a conundrum, as according to Grossman and Helpman, the more robust sectors that donate the most would

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25 Arye L. Hillman, "Declining Industries and Political-Support Protectionist Motives." *The American Economic Review* 72, no. 5 (1982): 1180-187. <http://www.jstor.org/stable/1812033>.

26 Hilman, 1186.

27 Richard E. Baldwin and Robert-Nicoud, Frédéric, "Entry and asymmetric lobbying: why governments pick losers." PSPE working papers, March 2007. Department of Government, London School of Economics and Political Science, London, UK.

28 Ibid.

29 Data collected by Eleanor Ruscitti via the UK Electoral Commission donation reports from 2016-2020, <http://search.electoralcommission.org.uk/?currentPage=1&rows=10&sort=AcceptedDate&order=desc&tab=1&open=filter&et=pp&isIrishSourceYes=true&isIrishSourceNo=true&prePoll=false&postPoll=true&register=gb&register=ni&optCols=IsAggregation>.

receive the highest levels of government support. When applying Baldwin and Robert-Nicod's theory, though, it becomes clear that the fishers were not campaign contribution lobbyists, rather they were "loser" lobbyists who were loud and deliberate. They saw the Brexit movement as their policy opportunity and harnessed their symbolic nature to make themselves quite relevant in final trade talks.

Concurrently, Johnson acted as a political welfare maximizer. When applying Hillman's theory, the declining fishing community became relevant to the Conservatives, who hoped to maximize political support for electoral gains, re-election, and legacy. The newly formed Johnson administration needed to amplify an easy-to-understand industry that resonated with Brexit supporters and exemplified regained sovereignty. But it is often overlooked that the Conservatives also needed an industry that could help maintain the Tory Scottish Parliament seats and form a bulwark against the growing post-Brexit Scottish independence movement. The industry that conveniently and succinctly represented these values was the Scottish fishing industry.

To see how this fits together, the story of Brexit and the fishing industry should be traced. First, we will examine the path to Brexit and the ways in which fishing—particularly the Scottish fisher—was influential from the beginning. Then we will scrutinize the trade talks and the political machinations of each actor. We will see that the political endgames of politicians are apparent in trade talks and domestic electoral gains often materially influence their tack as they adjust for the ever-changing political winds.

### **III: A Deep-Seated History**

#### **Part 1: How Did the UK Get to Brexit?**

##### ***An Overview of UK/EU Relationship: A Troubled Beginning***

As Professors Vivien Schmidt and Jolyon Howorth note, "Brexit was, in many ways, an accident waiting to happen."<sup>30</sup> The UK and the EU always had an ambivalent relationship—a noncommittal half-in, half-out—in which the UK has been referred to as the "awkward partner" that never really embraced the deeper political, cultural, and ideological ambitions of her partners across the Channel. In the aftermath of WWII, the European Coal and Steel Community (ECSC) was created in 1951 to ensure stability across the continent by linking economies. While the UK embraced the idea of a united Europe, she saw herself as a separate entity—not just physically, but culturally as well. She was an island empire on which the sun had never set. But as the empire declined in stature and size during

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<sup>30</sup> Vivien Schmidt and Jolyon Howorth, "Brexit: What Happened? What Is Going to Happen?" *Politique Étrangère*, no. 4 (2016): pp. 123-138, <https://doi.org/10.3917/pe.164.0123>.

the post-war recovery period, she realized that in order to achieve her global ambitions in the new post-imperial world, she may find herself in a useful position to be the bridge between the US and the new ECSC: the European Economic Community (EEC).

After two prior attempts, the UK finally joined in 1973 under Tory Prime Minister Edward Heath.<sup>31</sup> However, Euroscepticism reigned from the get-go. Labour leader Hugh Gaitskell argued that a federal Europe would mean the “end of Britain as an independent European state” and promised to hold a referendum if elected.<sup>32</sup> Two years later, in 1975, Labour formed a government under Harold Wilson and held the UK’s first EU referendum.<sup>33</sup> Although closely divided, the UK would vote “Yes” to a united Europe, with the then-Europhile Conservative leader Margret Thatcher leading the way for the Conservatives, while Labour remained extremely divided over the subject.<sup>34</sup>

Thatcher’s Europhilism, however, was short-lived. A staunch supporter of the Single Market, Thatcher ultimately changed course due to the contentious Common Agricultural Policy (CAP) and its budget contributions.<sup>35</sup> She felt that the UK contributed more than its fair share of funding. Rhetoric of losing power and control to Brussels became common in her speeches and while her Eurosceptic agenda and rhetoric would ultimately become her downfall, it planted the seed for a growing anti-Europe movement that divided both parties internally.<sup>36</sup> This seed later found its political moment amongst the disenfranchised in 2016 after a Conservative political opportunist called another EU referendum in hopes of bridging a divided Tory Party and securing a re-election win.

Divisions within the Tories regarding Europe had been brewing since the Thatcher years, and were proving to be problematic for David Cameron’s upcoming general election as the rise of a relatively new right-wing populist party, the UK Independence Party (UKIP), began siphoning off the Conservative Eurosceptic votes. Hoping to mitigate Tory Europhile defections, Cameron promised an EU membership referendum if re-elected, believing that the party would vote to remain.<sup>37</sup> The result was a complete miscalculation as he underestimated just how powerful Euroscepticism had become.

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<sup>31</sup> Ibid, 4.

<sup>32</sup> Kevin H. O’Rourke, “A Short History of Brexit: from Brentry to Backstop,” in *A Short History of Brexit: from Brentry to Backstop* (London: Pelican, 2019), p. 74.

<sup>33</sup> James Walsh, “Britain’s 1975 Europe Referendum: What Was It like Last Time?” *The Guardian*, February 25, 2016, <https://www.theguardian.com/politics/2016/feb/25/britains-1975-europe-referendum-what-was-it-like-last-time>.

<sup>34</sup> Ibid.

<sup>35</sup> Pan Pylas, “Britain’s EU Journey: When Thatcher Turned All Euroskeptical,” *Associated Press* (January 23, 2020), <https://apnews.com/article/64855d1ff67454443db5132bdfb22ea6>.

<sup>36</sup> Ibid.

<sup>37</sup> Vivien Schmidt and Jolyon Howorth, 7.



The country split into two camps: Leave vs. Remain. The Remain campaign took a negative approach, focusing their argument on the economic consequences of a vote to leave.<sup>38</sup> As mentioned, however, Brexit was not about economics and, as such, it did not resonate at the doorstep. The Leave campaigns led by Boris Johnson and former UKIP leader Nigel Farage took a more emotional, visceral approach that resonated well with the disenfranchised who felt that the globally interconnected EU was the source of all their problems. They had seen their employment opportunities evaporate as the industrial sector left the country and viewed the EU as their scapegoat. The campaigns of Vote Leave and Leave.EU tapped into this discontent, arguing to “take back control” of a trade by creating their own trade deals, revitalizing declining industries, and bringing jobs back to Britain.<sup>39</sup>

The Take Back Control mantra percolated throughout the country and was succinctly exemplified with the vignette of the fishing industry. The fishing industry perfectly embodied the Conservative Leave movement—it was an industry key to the British identity, but was disenfranchised and felt powerless and expendable, and held deep-seated resentment towards Europe. This resentment was a manifestation of an EU policy known as the Common Fisheries Policy (CFP) that seeks to conserve fishing stocks and ensure fair competition in European waters by setting catching quotas for European fishing vessels based on 1983 catch activity.<sup>40,41</sup> The EU can determine quotas in each boundary as the policy requires that each member state pool its sovereignty and open its Exclusive Economic Zone (EEZ) to all member states, creating a ‘European Water’ and overriding the UN Convention on the Law of the Sea.<sup>42</sup> To understand why the British held deep resentment towards this policy, one must understand the fishing wars.

## Part 2: Fishing Wars

### *To Control or Not to Control, That is the Question*

As an island nation, Britain has had an obsession with claiming ownership and sovereignty of its waters, at times to the point of belligerency. Fishing has always

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<sup>38</sup> Ibid, 4.

<sup>39</sup> Jorge Martins Rosa and Cristian Jiménez Ruiz, “Reason vs. Emotion in the Brexit Campaign: How Key Political Actors and Their Followers Used Twitter,” *First Monday* 25, no. 3 (March 2, 2020), <https://doi.org/10.5210/fm.v25i3.9601>.

<sup>40</sup> European Commission, “The Common Fisheries Policy (CFP),” European Commission, 2015, [https://ec.europa.eu/fisheries/cfp\\_en](https://ec.europa.eu/fisheries/cfp_en).

<sup>41</sup> Andy Forse, Ben Drakeford, and Jonathan Potts, “Fish Fights: Britain Has a Long History of Trading Away Access to Coastal Waters,” *The Conversation*, March 25, 2019, <https://theconversation.com/fish-fights-britain-has-a-long-history-of-trading-away-access-to-coastal-waters-112988>.

<sup>42</sup> *Convention on the Law of the Sea*, New York, 10 December 1982, United Nations Treaty Series, pg. 40. [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)



been key to British identity, especially Scottish identity, which makes it a rather sensitive topic.

The tension between the Island and the Continent regarding the open seas dates back to the Anglo-Dutch wars and grew throughout the Anglo-French rivalry and crescendoed with the infamous 1950s-70s Cod Wars where the UK and Iceland faced off over British access to the rich cod waters off the coast of Iceland.<sup>43,44</sup> These violent showdowns repeated throughout multiple decades, with Iceland almost leaving NATO and falling into the Soviet orbit.<sup>45</sup>

The clash ended with the UK's long-distance fishing fleets losing access to Iceland's lucrative fishing grounds followed by a sharp decline in fishing industry revenues. Around the same time, the UK joined the EU and was required to join the contentious CFP.

The UK's fishing industry was wary about entering the CFP and pooling access to its waters, relinquishing control over its EEZ. Academics, politicians, and journalists alike wondered why the Heath government did not try to negotiate an opt-out of the CFP—an action for which the UK is famous—or even negotiate a better deal for the UK.<sup>46</sup> The answer circles back to Iceland. When the UK lost its long-distance access to Iceland, there was little inshore activity to replace it as the nation had become so dependent on the white fish from the more northern seas.<sup>47</sup> British fishers were not fishing near the British coast. As such, most of the quota rights for inshore fishing went to the French, Dutch, and Danish fishers during the accession negotiations.<sup>48</sup>

### ***The Resentful Fishers***

This did not sit well with the fishers, particularly the Scottish fishers, who watched their industry decline just as the EU gained access to UK waters. When asked about Britain's entrance into the CFP, Scottish fisher Baden Gibson insisted that:

“The EU and its fisheries policy have destroyed businesses beyond fishing... If you fish outside of your quota the penalties can be fierce—

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43 Thomas Wemyss Fulton, “The Fisheries,” in *The Sovereignty of the Sea: an Historical Account of the Claims of England to the Dominion of the British Seas, and of the Evolution of the Territorial Waters; with Special Reference to the Rights of Fishing and the Naval Salute* (London: William Blackwood and Sons, 1911), pp. 25-57. <https://www.gutenberg.org/files/54977/54977-h/54977-h.htm>.

44 Keith Johnson, “So Long, and Say Thanks for All the Fish,” *Foreign Policy*, February 28, 2020, <https://foreignpolicy.com/2020/02/28/fishing-uk-european-union-brex-it-trade-talks-cfp/>.

45 Ibid.

46 Dan Roberts, “‘We Have Been Hijacked’: Fishermen Feel Used over Brexit,” *The Guardian* (Guardian News and Media, March 23, 2018), <https://www.theguardian.com/politics/2018/mar/23/we-have-been-hijacked-fishermen-feel-used-over-brex-it>.

47 Ibid.

48 Ibid.

my worry would be that I would lose my boat and then I would lose everything. I realize that there must be quotas, but it should be fishing organizations who set those quotas” rather than Brussels.<sup>49</sup>

Fishers felt a loss of control and that the government sold them out for access to the Single Market. This was further exacerbated when it came down to ownership of the quotas. Over the years, more and more foreign entities started to own British fishing fleets, with 50 percent of all English quotas “owned” by British-flagged ships that were actually Spanish, Dutch, or Icelandic; that is about £160 million worth of England’s fishing quota.<sup>50,51</sup> The feeling of loss of control was palpable.

It must be noted that it was not necessarily Brussels causing the decline. Rather, it was overfishing and advances in technology that prevented fishers from achieving previous catching thresholds as well as the aftermath of the Cod Wars that prevented them from fishing in certain areas. Another factor was the rise of multimillion-dollar fishing companies in the UK.<sup>52</sup> Nonetheless, British fishers did not see it this way. From their perspective, the correlation was objectively clear: the UK fishing industry thrived before EU membership, but as part of the EU, it died at the hands of the quotas.

### ***Reforming the Common Fisheries Policy***

Calls were made by the fishing industry to reform the CFP, and in 2014, the European Commission tried to do so, putting forth reforms that would increase the labor market mobility of fishers.<sup>53</sup> These schemes were criticized as they did not consider the local and cultural factors enough and did not give countries sufficient control over the quota issue. The reforms adjusted the European Maritime and Fisheries Fund and allowed member states to manage 89 percent of it, while the European Commission would manage 11 percent.<sup>54</sup> However, that still did not fix the unpopular element of being too distant and top-down with rules dictated by Brussels, far away from the UK and even further from understanding the local fishers’ needs.<sup>55</sup> The fishers wanted a greater say in fishery management; they

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49 Serena Kutchinsky, “Is Nigel Farage the Fisherman’s Friend?” *Newsweek*, June 27, 2016, <https://www.newsweek.com/eu-referendum-brexit-fishing-policy-nigel-farage-scotland-snp-473435>.

50 John Litchfield, “Ukip Is Wrong: British Fishing Answers to Westminster Not Brussels,” *The Guardian*, April 6, 2018, <https://www.theguardian.com/commentisfree/2018/apr/06/ukip-british-fishing-westminster-brussels-brexit>.

51 Oliver Barnes and Chris Morris, “Brexit Trade Deal: Who Really Owns UK Fishing Quotas?” *BBC News*, January 1, 2021, <https://www.bbc.com/news/52420116>.

52 Keith Johnson, “So Long, and Say Thanks for All the Fish.”

53 European Commission, “The Common Fisheries Policy (CFP): the essentials of the new CFP,” 2015.

54 *Ibid.*

55 Craig McAngus, “A Survey of Scottish Fishermen Ahead of Brexit: Political, Social and Constitutional Attitudes,” *Maritime Studies* 17, no. 1 (2018): pp. 41-54, <https://doi.org/10.1007/s11204-018-0911-1>.

wanted to decentralize the decision-making structures as they felt like bystanders in decisions that impacted them greatly.

## Part 1: The Referendum

### *Brexit as a Policy Window for Fishers*

The EU referendum was the fishing industry's "policy window" under Leave's rally cry of "Take Back Control." It was finally time to expel the European vessels from British waters and manage their fish stocks independently. Rather than lobbying via campaign contributions, as Grossman and Helpman's theory predicts, the fishing industry-aligned more with Baldwin and Robert-Nicoud's theory of lobbying diligently through less expensive means. In this case, the less expensive means came in the form of a new 21st-century campaign tool: social media.

UKIP's Nigel Farage teamed up with the campaign group Fishing for Leave (FFL) to storm social media and conduct demonstrations, calling for the UK to leave the EU and leave the CFP. To make a public display of discontent and grievances a few days before the referendum, Farage led a 35-boat flotilla of fishers up the Thames, asserting that "today's flotilla is not a celebration or a party but a full-throttled protest. We want our waters back."<sup>56</sup> He also said that "one thing I can promise you, is that you are about to hear a lot about the fishing industry."<sup>57</sup> They were vociferous lobbyists who would become a key electoral constituency for the Conservatives. The hope, and promise, was that leaving the EU would allow the UK to reclaim fishing dominance and sovereignty over their territorial waters, which would, in turn, see fishing communities thrive again with replenished stock and the return of jobs.

On June 26, 2016, the referendum was held, and the UK voted to leave 51 percent to 48 percent. The fishing industry, as predicted, was a firm supporter, especially the Scottish fishers.<sup>58</sup> A pre-referendum survey indicated that 92 percent of Scottish fishers intended to vote to leave.<sup>59</sup> Fishing communities such as Banff and Buchan voted for Brexit, with around 54 percent voting to leave, but were outnumbered by the rest of Scotland who largely voted to remain.<sup>60</sup> They were

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org/10.1007/s40152-018-0090-z.

<sup>56</sup> Daniel Boffey, "UK Fishermen May Not Win Waters Back after Brexit, EU Memo Reveals," *The Guardian*, February 15, 2017, <https://www.theguardian.com/environment/2017/feb/15/uk-fishermen-may-not-win-waters-back-after-brexit-eu-memo-reveals>.

<sup>57</sup> Severin Carrell, "Nigel Farage to Lead pro-Brexit Flotilla up Thames," *The Guardian*, June 3, 2016, <https://www.theguardian.com/politics/2016/jun/03/nigel-farage-pro-brexit-flotilla-thames-eu-referendum-leave-campaign>.

<sup>58</sup> Chris Morris and Oliver Barnes, "Brexit Trade Deal: What Does It Mean for Fishing?" *BBC News*, January 20, 2021, <https://www.bbc.com/news/46401558>.

<sup>59</sup> Craig McAngus, "A Survey of Scottish Fishermen Ahead of Brexit: Political, Social and Constitutional Attitudes."

<sup>60</sup> The Newsroom, "Scottish Constituency of Banff and Buchan "Voted for Brexit,"

a small, disenfranchised group within a larger community that found a policy window and representation within the Brexiteers. They would become incredibly important to the Conservatives who needed to keep a seat at the team in Scotland.

## **Part 2: The Trade Talks**

### ***The Conservative's Seat at the Scottish Table: The Rise of the Politically Important Scottish Fishers***

The Scottish fishers were Brexiteers, but that did not necessarily mean they were pro-Tory. After Heath's historic 1973 betrayal of fishing, Scotland's northeast fishing community channeled its anger by voting with the pro-independence, social democratic Scottish National Party (SNP) for the following decades. The Tories were treacherous in the eyes of the fishers, best underscored by the 1973 quote from a UK civil servant: "In light of Britain's wider European interests they, the Scottish fishermen, are expendable."<sup>61</sup> While the Scottish Tories initially lost the community's trust, gaining it back was easier than one may think as the Scottish fisheries did not ideologically align with the rest of Scotland and the SNP.

Leading up to the referendum, Scottish scholar Dr. Craig McAngus conducted a survey of Scottish fishers' demographic characteristics as well as their political, social, and constitutional attitudes. McAngus found that they were: (1) a unionized industrial working class made up of mostly middle-aged men with standard grade qualifications who value self-sufficiency and sense of freedom to succeed in their profession and take on a libertarian ideology that is skeptical of state intervention; (2) very Eurosceptic, portraying themselves as "victims of an overly bureaucratic and unsympathetic governance regime," and would lean towards the Conservative Party rather than the Labour Party whose values of collectivism and socialist principles conflicted with their notion of an unsympathetic governance regime; (3) differing from the rest of the Scottish population in that they tended to trust the UK Government more than the Scottish Government, which seems contradictory at first given Heath's 1973 betrayal for access to the Single Market, however, their support relates to the Scottish independence movement. As the Scottish Government is currently led by the SNP, and as the fishers tend to be more British-unionist, conflicts often arise between the secession-seeking Scottish government and the union-seeking fishing industry.

### ***How the British Government Attempted to Divert Fisher's Support Away from SNP to Scottish Tory via Brexit***

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The Scotsman, November 22, 2016, <https://www.scotsman.com/news/politics/scottish-constituency-banff-and-buchan-voted-brexit-1462018>.

<sup>61</sup> Kevin McKenna, "Scotland's Fishermen Feel a Sickening Sense of Betrayal Yet Again," The Guardian, March 24, 2018, <https://www.theguardian.com/uk-news/2018/mar/24/scotland-fishermen-betrayal-peterhead-brexit>.

Scottish independence from the UK has been a divisive topic ever since Scotland joined the UK in 1707. In a 2014 independence referendum, Scotland voted to remain in the UK, 55 percent to 45 percent, but the debate never settled. Scotland's First Minister Nicola Sturgeon continued to push for another referendum, rather than receiving additional devolved powers from Westminster (which had been done in the past as a way for Westminster to circumvent Scottish independence). After the Brexit referendum, her calls for independence grew louder than ever as the majority of Scotland voted to remain in the EU—62 percent to 32 percent. Sturgeon argued that it was undemocratic for Scotland to be “dragged out of the EU against its will,” demanding another independence referendum—*indyref2*—and then hoping to re-join the EU.<sup>62</sup> But, to hold another referendum on Scottish independence, the UK's Prime Minister must grant formal permission and the newly minted PM Boris Johnson did not support such. Johnson and other supporters of a unified UK argued that the 2014 referendum was a once-in-a-generation opportunity—a phrase Sturgeon campaigned on back in 2014—and asserted that under this reasoning, another referendum should not be held for another 40+ years.

On the horizon, however, was the upcoming May 2021 Scottish Parliament election, thus Johnson and his Scottish Tory counterparts were finding themselves in a political pickle. Opinion polls saw a sizable shift from a slight majority of pro-independence voters in 2019 to a solid majority in 2020. Analysts attributed this shift to Brexit, and also to Sturgeon's handling of the Coronavirus, which many believed had been better than Johnson's. With polls indicating that the SNP was on course to win an overall majority in the May 2021 Scottish Parliament election, polling expert Sir John Curtice said that the country “seem[ed] headed for a significant clash between the UK and Scottish governments over whether another independence referendum should be held.”<sup>63</sup> Conservatives started to worry that if they lost their Scottish Tory seats to the SNP, the Scottish Parliament would be comprised mostly, if not all, of the SNP. Scottish Tories would lose their voice in the Scottish Government, and Westminster would have to grant an independence referendum if asked, or risk being further branded as undemocratic. There was, however, a Brexit-supporting Scottish constituency that could potentially save the Scottish Tories: the Scottish fishers.

As mentioned previously, fisheries have been caught between supporting the SNP and the Tories for decades. The fisheries voted SNP in the years after Heath's

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<sup>62</sup> “Scottish Independence: Will There Be a Second Referendum?” BBC News (BBC, March 22, 2021), <https://www.bbc.com/news/uk-scotland-scotland-politics-50813510>.

<sup>63</sup> Ibid.

“betrayal,” as the then-SNP Leader Alex Salmond sought to bring Scotland out of the CFP.<sup>64</sup> During the 2014 independence referendum, Salmond made fishing a material role in the SNP’s campaign, asserting that if independence was gained, fishing would be the #1 national priority and would have direct representation in the EU.<sup>65</sup> The issue, however, was that the fishers wanted out of the CFP, not more EU representation, which is what Salmond was campaigning for. As a result, SNP lost a large majority of the fisheries in the 2015 Scottish Parliament election. The hemorrhaging of fishing votes continued when the Brexiteers campaigned to “Take Back Control” during the 2016 EU/UK referendum. The 2017 Scottish Parliament elections saw a loss of fishing votes from SNP to Scottish Conservatives. The Tories increased their hold from one seat in 2015 to 13 in 2017, gaining the northeast fishing community seats as per figure 11.<sup>66,67</sup>

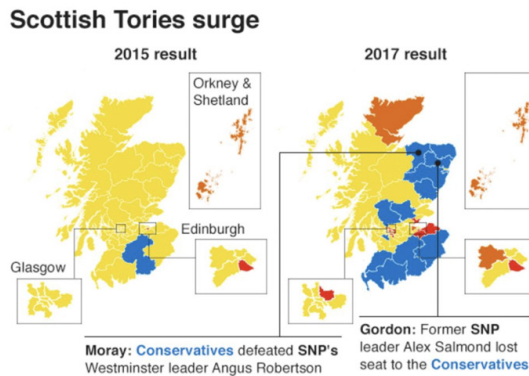


Figure 11<sup>68</sup>

*Yellow indicates SNP seats, orange indicates Liberal Democrats, red indicates Labour, and blue indicates Scottish Tory.*

Brexit was the perfect opportunity for the Conservative Party to regain both the fishers’ trust and seats in the Scottish Parliament. Once they regained that support, they could potentially prevent independence by keeping the vote. The game was not over, though. The SNP made it its goal to regain coastal communities by

<sup>64</sup> Scotland Correspondent, “SNP Tries to Dump EU Fisheries Policy” (The Times, March 31, 2010), <https://www.thetimes.co.uk/article/snp-tries-to-dump-eu-fisheries-policy-7b8tnlq3gw5>.

<sup>65</sup> Scottish Government, “Scotland’s Future and Scottish Fisheries,” Scottish Government, August 14, 2014, <https://www.gov.scot/publications/scotlands-future-scottish-fisheries/pages/2/>.

<sup>66</sup> “General Election 2017: Former SNP Leader Alex Salmond Loses Seat,” BBC, June 9, 2017, <https://www.bbc.com/news/uk-scotland-scotland-politics-40212541>.

<sup>67</sup> “General Election 2017: SNP Lose a Third of Seats amid Tory Surge,” BBC News, June 9, 2017, <https://www.bbc.com/news/uk-scotland-scotland-politics-40192707>.

<sup>68</sup> Ibid.

illustrating that the Tories could not be trusted in looking out for Scotland's best interests.<sup>69</sup> Conservatives then countered by making fishing a key part of the "exit-negotiations."

### ***A Hiccup: When May did not prioritize the Fisheries***

After the referendum, Cameron stepped down and Theresa May assumed Tory leadership in 2016. May called a snap election in 2017 in hopes of increasing her party's slim majority in the lower house and having a stronger mandate to negotiate a Brexit deal with the EU. However, due to a resurgent Labour Party, May did not gain a majority and had to form a confidence-and-supply agreement with ten MPs of Northern Ireland's Democratic Unionist Party (DUP).<sup>70</sup> That being said, May did gain some Scottish coastal seats due to the 2017 surge in Scottish Tory support. Suddenly, Scottish fishers—as well as the DUP—became one of the preeminent interest groups for May's coalition, as they were some of the few who kept her party from anemic minority status. Appeasing them and creating and maintaining trust would be necessary to get her Brexit deal approved and to keep Scottish Parliament seats.

May proceeded with her Brexit plans and announced a Fisheries Bill to take back control of British waters and remove fishing quotas after the country withdrew from the EU.<sup>71</sup> This pleased the fishers, but as 2017 progressed, the EU countries whose fishing industries were heavily dependent on access to UK waters became worried that access to the waters would be completely severed and that the EU would set an undesirable precedent for its member nations. Denmark claimed it had historical rights to fish in British waters dating back to the 1400s, while other EU countries claimed that the UN Convention on the Law of the Sea stated that countries must respect each other's "traditional fishing rights", and the ability to access British waters fell under traditional rights.<sup>72</sup>

In March of 2018, then-Brexit Secretary David Davis and the EU's Brexit Negotiator Michel Barnier announced that the UK and the EU had agreed on a Brexit transition deal. However, to achieve the deal, the UK partially conceded its fishing contentions: fisheries would be required to follow the CFP rules until the end of the December 2020 Brexit transition period.<sup>73</sup> The UK fishing industry was infuriated. Bertie Armstrong, CEO of the Scottish Fishermen's Federation, said, "This falls far short of an acceptable deal. We will leave the EU and leave the CFP, but hand back sovereignty over our seas a few seconds later... Our fishing commu-

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<sup>69</sup> "Letters: Tories Could Not Be Trusted to Negotiate in Good Faith in Independence Talks," *HeraldScotland*, November 11, 2020, <https://www.heraldsotland.com/news/18864349.letters-tories-not-trusted-negotiate-good-faith-independence-talks/>.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> British Sea Fishing, "Brexit and Britain's Fisheries."

<sup>73</sup> *Ibid.*



nities' fortunes will still be subject to the whim and largesse of the EU for another two years."<sup>74</sup> Again, Nigel Farage protested on a fishing boat floating along the Thames outside of Parliament while chucking dead haddock into the river. SNP leader Nicola Sturgeon took to Twitter hoping to sway the fishers back over to the SNP stating: "This is shaping up to be a massive sellout of the Scottish fishing industry by the Tories."<sup>75</sup> The thirteen Scottish Conservative MPs announced that the deal was like "drink[ing] a pint of cold sick" and assured that they would be prepared to vote against their own party if they did not see a return to full control of British waters as "the EU does not care about Scottish fishermen and neither do the SNP government who wants us to re-join the Common Fisheries Policy and the EU."<sup>76</sup> A sense of betrayal was palpable, and May's fellow Conservative politicians started to understand that prioritizing fishermen would need to be on their political agenda.

May would go on to put forth two other Brexit deals but was met with sound political rejection. In June 2019, she stepped down and Boris Johnson assumed leadership in July.

### ***The Hiccup Continues: Johnson Learning to Prioritize Fish***

With May's Brexit failure in the rearview mirror, Johnson was keen on steering the UK out of the EU. However, after May's perceived slight, he found little support amongst the Scottish Conservatives and fishers. In August, Scottish Tory leader Ruth Davidson resigned. She worried that a Johnson government would boost support for independence, given that his hard-liner Brexit stance stood in complete opposition to the majority opinion of Scotland and the SNP.<sup>77</sup> Johnson, however, had a different agenda; one that was keen on maintaining the union and appeasing the fishing industry was one way of doing so.

In July 2019, Johnson made his first visit to Scotland and pledged that fishing access would not be sacrificed in the new Brexit deal.<sup>78</sup> The Scottish fishers welcomed his rhetoric, with Bertie Armstrong stating, "We have been looking for a straight and direct answer and that's exactly what we have got... Scottish fishing's

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<sup>74</sup> The Newsroom, "Fishing Industry's Anger as UK and EU Strike Brexit Transition Deal," *The Scotsman*, March 19, 2018, <https://www.scotsman.com/country-and-farming/fishing-industrys-anger-uk-and-eu-strike-brexit-transition-deal-318889>.

<sup>75</sup> Ibid.

<sup>76</sup> Jenni Davidson, "Brexit Deal for Fisheries like 'A Pint of Cold Sick', Conservative MP Douglas Ross Says," *Holyrood Website*, October 4, 2019, [https://www.holyrood.com/news/view,brexit-deal-for-fisheries-like-a-pint-of-cold-sick-conservative-mp-douglas-ross-says\\_13762.htm](https://www.holyrood.com/news/view,brexit-deal-for-fisheries-like-a-pint-of-cold-sick-conservative-mp-douglas-ross-says_13762.htm).

<sup>77</sup> Libby Brooks, "Scottish Tories Still Anxious over Johnson's Impact on the Union," *The Guardian*, July 23, 2019, <https://www.theguardian.com/politics/2019/jul/23/scottish-tories-still-anxious-over-johnson-impact-on-the-union-independence-ruth-davidson>.

<sup>78</sup> Tom Peterkin, "Boris Johnson Pledges That Access to Fishing Will Not Be Sacrificed in New Brexit Deal," *Press and Journal*, July 30, 2019, <https://www.pressandjournal.co>.



sea of opportunity lies on the other side of Brexit.”<sup>79</sup> Additionally, Johnson assured fishers that he would “strengthen the union” and pledged £300 million for boosting growth in the devolved nations (Scotland, Wales, and Northern Ireland) as a way to try to counteract critics who said his no-deal strategy would break up the UK.<sup>80</sup> Among those critics was Nicola Sturgeon, who branded Johnson as the “last prime minister of the UK”.<sup>81</sup>

After a series of controversial events in the Fall of 2019—proroguing Parliament and then withdrawing the whip from 21 MPs (effectively expelling them from the party)—Johnson was left with no majority in Parliament and found it impossible to get Brexit legislation through. He enacted the Benn Act to extend the divorce date from October 19<sup>th</sup>, 2019 to January 31<sup>st</sup>, 2020, and then called a snap election for December 12<sup>th</sup>, 2019. While Johnson took a strong stance against Scottish independence, his attention to fishing seemed to wane during the snap election.

Johnson did keep Scotland in his sights, but most of his attention was to mainland England, hoping to gain back the English voters who defected to Labour in 2017.<sup>82</sup> He visited Scotland once during the campaign, where he delivered the Scottish Conservative manifesto and claimed that Scotland was “paralyzed” by the SNP. Johnson asserted that “a vote for the Scottish Conservatives is a vote to stop a second independence referendum and to get Brexit done... Only a vote for the Conservatives will stop the SNP’s plans to break up the UK.”<sup>83,84</sup>

However, given that May lost many British votes to Labour in 2017, he also needed to prioritize issues that were of interest to larger voting blocs, such as the NHS, the police, and the British education system. To do so, as is now second nature to many politicians, Johnson harnessed Twitter to connect with constituents. On Twitter, Johnson spoke less about fishing and more about those three campaign stances. In total, Johnson tweeted 62 times regarding his campaign agenda on those issues, while only tweeting about fishing five times and Scotland nine times.

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<sup>79</sup> Ibid.

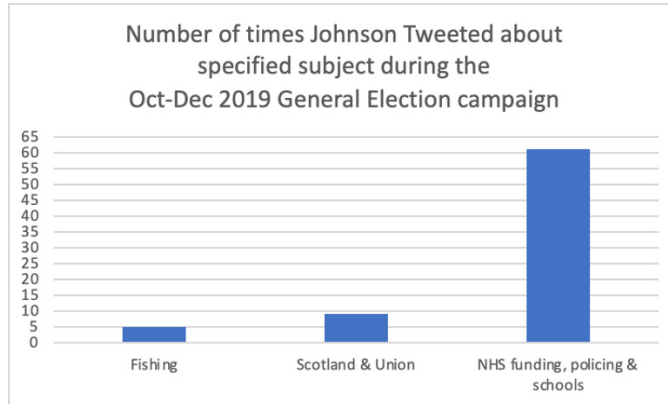
<sup>80</sup> Rowena Mason and Libby Brooks, “Boris Johnson Heads to Scotland to Deliver £300m Pledge,” *The Guardian*, July 28, 2019, <https://www.theguardian.com/politics/2019/jul/28/boris-johnson-heads-to-scotland-to-deliver-300m-pledge>.

<sup>81</sup> Ibid.

<sup>82</sup> Tim Ross, “Boris Johnson’s Tories Abandoned Scotland to Win Their Big Victory,” *Bloomberg*, December 23, 2019, <https://www.bloomberg.com/news/articles/2019-12-23/how-johnson-s-tories-ditched-scotland-to-rule-a-divided-kingdom>.

<sup>83</sup> “General Election 2019: Boris Johnson Claims Scotland ‘Paralysed’ by SNP,” *BBC News*, November 26, 2019, <https://www.bbc.com/news/election-2019-50561993>.

<sup>84</sup> Reuters Staff, “Boris Johnson to Tell Scotland: Vote Conservative to Stop Independence Bid,” *Reuters*, November 6, 2019, <https://www.reuters.com/article/us-britain-election-scotland/boris-johnson-to-tell-scotland-vote-conservative-to-stop-independence-bid-idUSKBN1XG333>.

Figure 13<sup>85</sup>

*Illustrates the number of times Johnson Tweeted about a specific subject: 5 times about fishing; 9 times about Scotland; and 62 times about the NHS, policing, and schooling.*

With much focus on Johnson's campaign, fishers in coastal Scottish towns were growing worried that fishing was not his top priority. These fishers became more apprehensive and began questioning Johnson's true intentions: "There's a calculation that the fishing industry is making that there's a heavy risk they will get sold out on the way out of the EU, just like they did on the way in" and that maybe "the SNP might get a better deal for Scottish fishing from the EU"<sup>86</sup> especially since Johnson "changes his mind like the weather."<sup>87</sup> A growing number of fishers were unsure whether Johnson would protect the fishing industry or divert his focus towards other aspects in the UK during the trade talks.

Election day came, and while Johnson won the largest Parliamentary majority since Thatcher in 1987, he lost several crucial seats in Scotland, which resulted in a small swing back to the SNP, who won 48 out of 59 seats.<sup>88</sup> Although a tabloid journalist, Torcuil Crichton provided some thoughtful insight by noting that Scottish Tory 2017 gains were halved in 2019, and any further "betrayal" of the fishing industry "will fuel the independence argument and undermine the principles Brexit was fought on."<sup>89</sup>

<sup>85</sup> Data collected by Eleanor Ruscitti via Boris Johnson's Twitter account

<sup>86</sup> Alistair Grant and Rohese Devereux Taylor, "Constituency Profile: Fishing for Votes in Scottish Coastal Communities," HeraldScotland, December 1, 2019, <https://www.heraldsotland.com/news/18072191.general-election-2019-fishing-votes-scottish-coastal-communities/>.

<sup>87</sup> Ibid.

<sup>88</sup> "Results of the 2019 General Election," BBC News, <https://www.bbc.com/news/election/2019/results>.

<sup>89</sup> Torcuil Crichton, "Why Scottish Fishing Rights Are a Brexit Deal Breaker in EU Trade Talks," Daily Record, October 15, 2020, <https://www.dailyrecord.co.uk/news/>

Suddenly, the importance of Scottish independence began to sink in. Johnson needed to show Scotland the benefits of staying in the UK and that Brexit was good for Scottish communities. The fishing industry was the perfect political tool for this end. Johnson could argue that he was going to secure them a good deal, stand up for the disenfranchised against an “overbearing” Brussels, and bring back the domestic industry. He could argue that the UK’s government was paying attention to Scottish needs and, as such, Scotland should stay in the UK rather than back the independence-preoccupied SNP. It is for this reason that fishing was greatly amplified during the trade talks. The Tories needed to secure the Scottish fishing industry a good deal—the rare Scottish industry that embodied the Brexit movement, had yet to back SNP fully, and were against independence—or else potentially be forced to consider calling an independence referendum. Fishing was the fulcrum for Johnson’s political leverage.

### ***The Talks and the Deal***

With the general election behind him and the risk of Scottish independence at the forefront of his mind, Johnson entered the trade talks as a strong counter to Macron and other EU officials who wanted the *status quo ante*. The issue has now come full circle, back to the famed scallop and turbot dinner on December 9<sup>th</sup>, 2020, when Johnson and von der Leyen sat down to hash out the final open issue. Britain demanded 80 percent of the EU’s catch to be returned to the UK, but reduced this to 60 percent as a compromise; the EU countered with 20 percent.<sup>90</sup> The UK demanded that this transition would take no longer than three years, while the EU asked for a 14-year transition period, which they then reduced to seven. The EU asked for its fishing vessels to be able to fish in the six-to-twelve-mile zone from the British coastline, but the UK insisted that EU vessels be banned from this zone. Von der Leyen left the dinner saying the two sides remained “far apart.”<sup>91</sup> The whole trade deal was on the line, with only a few days to go. Finally, on Christmas Eve, after four-and-a-half years of bitter negotiations and only a week to spare before the UK would crash out of the EU, they came to a deal. The 1,200-page document was passed by MPs on December 30<sup>th</sup>, 521 to 73, and it goes as follows:

The transition will be phased over five and a half years, during which EU vessels will still be able to fish in the UK waters. During the adjustment period, EU quotas will decrease by 15 percent in the first year, and then two and a half percent for the following four years. That means by year five, the UK will regain 25 percent of the current EU catch in British waters;

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politics/scottish-fishing-rights-brexit-deal-22850163.

<sup>90</sup> British Sea Fishing, “Brexit and Britain’s Fisheries.”

<sup>91</sup> Ibid.

Fish will continue to be traded between the two parties with no tariffs imposed;

After the five-year adjustment period is over, the UK and EU will enter annual negotiations to determine the quota of fish that EU vessels are allowed to catch in UK waters.<sup>92</sup>

Johnson announced the deal while wearing a fish patterned tie and praised it as a great deal in which fishers would see their hauls increase from half of the fish quota in British waters under CFP, to about two-thirds by the end of the adjustment period.<sup>93</sup> However, neither the fisheries, the French, nor the other EU nations, saw it this way. A deal had been made, but the saga was far from over.

## V: Conclusions

### *Summary of Findings*

While fisheries were the “losers” that lobbied hard to grab the government’s attention initially during the Brexit campaign (much like Baldwin and Robert-Nicoud’s theory), it appears that the Conservatives needed the fishers during the exit negotiations and thus took a hard position on access to UK waters, not for social merit, but rather for their electoral and political gains (much like Hillmen’s theory). Matt Bevington, an analyst with the UK in a Changing Europe, pointed out that Johnson saw fishing as one of the few areas where the government would be able to score a “win” to tout as evidence of Brexit’s success.<sup>94</sup> Barrie Deas, CEO of the National Federation of Fishermen’s Organization, said that the fishing industry was a “litmus test” for Brexit since we will not know most of the effects of the Brexit deal for many years, but the effects for fishing will be realized immediately.<sup>95</sup> *The Guardian* journalist Daniel Boffey noted that fisheries were important to Johnson as he needed to show some benefit of Brexit to Scottish communities as Sturgeon was ramping up her demands for another independence referendum.<sup>96</sup> In a similar vein, Denis Staunton of the *Irish Times* emphasized that North East Scotland is now essential to Johnson’s electoral constituency and will play an important role in the Scottish independence debate over the next few years.<sup>97</sup> How-

<sup>92</sup> Chris Morris and Oliver Barnes, “Brexit Trade Deal: What Does It Mean for Fishing?”

<sup>93</sup> Harry Taylor, “Kipper Tie: Boris Johnson Sports Fish Symbol in Brexit Message,” *The Guardian*, December 24, 2020, <https://www.theguardian.com/politics/2020/dec/24/net-gains-boris-points-up-his-ties-to-the-fishing-industries>.

<sup>94</sup> Jeremy Kahn, “A Fine Kettle: How Fishing Became the Issue That Could Sink a Post-Brexit U.K.-EU Trade Deal,” *Fortune*, October 15, 2020, <https://fortune.com/2020/10/15/fishing-rights-brexit-u-k-eu-trade-deal/>.

<sup>95</sup> Barrie Deas, “Opinion Piece,” NFFO, October 9, 2020, <https://nffo.org.uk/news/opinion-piece.html>.

<sup>96</sup> Daniel Boffey, “Catches, Quotas and Communities: the Key Fisheries Issues at Stake,” *The Guardian*, October 17, 2020, <https://www.theguardian.com/business/2020/oct/17/catches-quotas-and-communities-the-key-fisheries-issues-at-stake>.

<sup>97</sup> Denis Staunton, “Johnson Covers Brexit Win on Fish to Show He’s ‘Taking Back Control,’” *The Irish Times*, December 4, 2020, <https://www.irishtimes.com/news/world/>

ever, if he remains unable to please the Scottish fishers, the SNP may snatch up those who feel expendable to the Tories. This will again potentially embolden the independence movement since no politician wants to be known as the last Prime Minister.

### ***Lessons Learnt***

While the deal itself was a “Christmas miracle” to the Tories, in many respects, its aftermath has not been so merry. Johnson was unable to provide the fishing industry the deal that they wanted, and more importantly, that they were expecting. While the Scottish Tories matched their 2016 performance in the May 2021 Scottish elections, the fishing debacle still plagues the Johnson government with many lessons to be taught to future politicians.<sup>98</sup> Hoping to illustrate the UK government’s commitment to the disenfranchised and their commitment to taking back control from the EU, many promises were made. These promises, however, were not plausible, let alone achievable—especially in regards to the fishing industry. Now, the Scottish independence movement has re-emerged, with the SNP harnessing the fishing failure as another reason for why they should leave the UK. Electoral politics influenced the amplification of the industry during the talks. In so doing, it amplified a delicate social, economic, and political bond that is about to snap. However, the main lessons scholars may glean from this case study is the extreme influence of domestic electoral politics in trade agreements:

1. An industry being economically insignificant does not mean that it will be insignificant in the international arena. Not everything in trade talks distills down to economics. More likely than not, declining domestic industries will be protected in trade talks for political purposes.

2. That is not to say, however, that economics is not influential. Johnson was a champion of the industry throughout the trade talks, but ultimately, he had to secure a deal that would allow European vessels access to UK waters for a limited time in order to salvage a trade relationship. In other words, economic interests were prioritized over politics towards the end of the talks. As Barrie Deas said, “It’s what we always feared... When you get to the endgame in the negotiations it becomes a binary choice and economics prevails over politics. I think that’s what’s happened and it’s really not good news.” Ultimately, for better or for worse, Johnson needed a deal.<sup>99</sup>

3. Politicians often pick easily understood industries to get their message across. While much of the fishing industry is quite complex, once dissected, its

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uk/johnson-covets-brexit-win-on-fish-to-show-he-s-taking-back-control-1.4426956.

<sup>98</sup> “Scottish Election 2021: Conservative Match Best Scottish Election Results,” BBC News (BBC, May 8, 2021), <https://www.bbc.com/news/uk-scotland-scotland-politics-57042432>.

<sup>99</sup> Dan Roberts, “‘We Have Been Hijacked’: Fishermen Feel Used over Brexit.”

disenfranchised status is not. Johnson harnessed the underserved with a message centered around one question: “what does Brussels know about potholes in London?” His intent with the fishing industry was to illustrate an example of him protecting locals to show (1) that Brexit can be a success and (2) that he was fighting for the British (and Scottish) industry. Fishing was an industry that many people could understand as it portrayed Brussels as treating them unfairly with “draconian quotas.” It would have been difficult if, for example, Johnson had tried to highlight intellectual property rights; few people would latch on to that due to its highly technical nature. Here, success revolves around clear messaging, which is something the Remain camp struggled to achieve. In the eyes of the Brexiteers, these were local fishers—the heart and soul of the UK, even if they were no longer as economically significant—being taken advantage of by Brussels. Fishers also happened to be politically right-leaning and resided in the “hostile” territory of Scotland. As the world enters a more global epoch, there has been a greater emphasis on interdependence and transnationalism, which often glazes over domestic factors. But, as former Speaker of the House of Representatives Tip O’Neill (D-MA) famously quipped: “all politics is local,” or, rather, “all local politics are global,” especially in free-trade agreements. Constituents care more about what is happening on the home front, rather than what is going on in Brussels. They care about how Brussels affects them at home more than being in an economically efficient partnership with the EU.

4. Thus, as Putnam theorized in 1988, international negotiations are a two-level game in which domestic groups pressure the government to adopt favorable policies, as the politicians seek to amplify their power by consulting coalitions of these groups. The politicians then go to the international level and seek to maximize their ability to satisfy domestic pressures while balancing the needs of their international partners. However, the need to get reelected and to preserve legacy presides over the strategy they bring to the negotiation table and the industries they choose to protect. Electoral politics is at the heart of all politics, especially in free trade arrangements.

### ***Future Research***

It has been eight months since this paper was originally completed, and fishing still remains top of the fold. The UK and France are in continuous disputes, threatening sanctions and denying each other licenses to harvest in each other’s seas. To understand this continued conflict, scholars and politicians must look at the EU’s perspective as well as the British perspective. While this paper sought to understand why British politicians amplified the fishing industry during the talks, the UK was not its only amplifier.

Just as with the UK, fishing is an economically insignificant industry for the EU

overall, yet it continues to be amplified by EU member states. From the EU's perspective, British waters have fish that are the staple of the European diet: herring, mackerel, sole, and shellfish.<sup>100</sup> Herring and mackerel are Denmark's most popular seafood, and it would be impossible to catch their quota if they could no longer fish in UK waters. This would devastate Denmark's industry, culture, and customs. For France, on the other hand, it is more about political weight, similar to what we saw in Scotland with Prime Minister Johnson. As journalist John Lichfield pointed out, "The north of France, around Boulogne, is hugely important for the presidential election in 2022... The regional president... might well be one of Macron's main rivals at that time, so [Macron] needs to be seen to be supporting what is already a struggling area economically."<sup>101</sup> Additionally, the EU was determined to not set an undesirable precedent. They could not let Britain dictate access to such waters, which could potentially portray the EU as weak to other countries trying the same. This was one of the reasons the EU insisted that the previous level of access to UK waters be maintained, and why Phil Hogan, the EU's Trade Commissioner, assured Johnson that if he wanted to gain access to EU financial markets, the UK would have to allow EU vessels in British fishing waters.<sup>102</sup> Both sides took hardline positions for their constituents, thinking that they were doing their best while also serving their political agendas.

Now, though, both British and EU constituents and their businesses are the ones suffering from the fallout of the deal. As stated by Olivier Lepretre, the head of the Hauts-de-France regional fishers association, they want to move on with their lives: "Fishers really don't care about the politics" anymore, "they just want to work, to go to sea."<sup>103</sup> But, Brexit always was, and still is, a political initiative at its core, and as such, the politics remain. The continued fishing feud illuminates much larger and more profound structural relationship issues that will play out over the next few decades as the two former partners navigate these uncharted waters and tack against the political winds.

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100 Laura Hughes, "Brexit: Why Fishing Threatens to Derail EU-UK Trade Talks."

101 Lucy Williamson, "Brexit: Why France Is Raising the Stakes Over Fishing" (BBC, October 13, 2020), <https://www.bbc.com/news/world-europe-54526145>.

102 British Sea Fishing, "Brexit and Britain's Fisheries."

103 Jon Henley, "French Fishing Industry Divided over Sanctions on UK Trawlers," *The Guardian* (Guardian News and Media, November 1, 2021), <https://www.theguardian.com/business/2021/nov/01/french-fishing-industry-divided-over-sanctions-on-uk-trawlers>.



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# The Black Bourgeoisie: The Chief Propagators of “Buy Black” and Black Capitalism

Noah Tesfaye

## Introduction

Following the murder of George Floyd, there was a resurgence in a phrase all-too-common in the recent US political zeitgeist: “Buy Black.” Instantly, Black businesses received an overwhelming outpour of support as many non-Black people sought performative or material actions to support the Black Lives Matter movement. Centering the narrative and vision behind these ideas of “Buying Black” was not only affluent white people but the Black commercial media and the Black bourgeois at large.<sup>1</sup>

Amidst claims to defund and abolish the police, wealthy Black people called, as rapper and activist Killer Mike said in reference to Atlanta, “to not burn your own house down” but to instead support Black businesses and seek justice righteously.<sup>2</sup> In this press conference with Atlanta Mayor Keisha Lance Bottoms, the stark contrast between the masses of Black people who own little to no land in the city and the select few bourgeoisie celebrities who proclaim “Buying Black” as a liberatory practice for Black people was evident. Therefore, developing a framework of a racialized political economy allows us to view the racialized motivations of capitalism to diversify and maintain power with a critical lens. For instance, revolutionary scholar Cedric Robinson attributes the origins of racism to “the ‘internal’

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1 The term “Black bourgeoisie” used here is not directly related to E. Franklin Frazier’s text *Black Bourgeoisie* in which the term is used to refer to the Black middle class rather than the Black capitalist class. Along these lines, by the capitalist class, I am referring to the class that does not earn money solely through labor but also through the accumulation and exchange of assets.

2 Emmrich, Stuart, “Atlanta Mayor Keisha Lance Bottoms’s Press Conference Shows True Leadership During A Crisis.”



relations of European peoples.”<sup>3</sup> He maintains that racial capitalism arose from “the development, organization, and expansion of capitalist society [that] pursued essentially racial directions.”<sup>4</sup> There is a vested interest in subverting claims of Black liberation by the Black bourgeoisie to build up the “myth and propaganda of Black buying power,” as Jared Ball coins in his book of the same title, to maintain their capitalist interests. It is through the collective efforts of the Black bourgeoisie to propagate Black capitalism that they accept the continued exploitation of working-class Black people.

### **A Relevant History to US Racial Capitalism**

To develop a racialized political economy framework and examine how Black people have assimilated into capitalism, it is imperative to center the conditions of Black Americans more broadly today. First, we will look at how race has played a role in the justification of the exploitation of Black people in America. Then, we will investigate how wealthy Black people have been able to exploit these conditions to further perpetuate such inequality within a racial capitalist hierarchy.

Race is integral to understanding the economic position of Black people, not just because of the way Black people arrived on the continent but also in the legacy of government policies that have contributed to the economic segregation of today. As a result, Black people have next to no wealth in the United States; by 2053, it is estimated that median Black household wealth will be zero.<sup>5</sup> The asset that many Americans often associate with wealth-building is buying a home. However, for decades, Black people have had little access to affordable housing and loans at market interest rates. Established in 1933, the Home Owners Loan Corporation institutionalized abstract criteria, such as “desirability,” to fulfill a loan.<sup>6</sup> Furthermore, “the HOLC’s actions attributed property values to the racial or ethnic identity of residents then helped codify it into a national housing policy.”<sup>7</sup> This resulted in the creation of domestic colonial projects through restrictions on the purchase of real estate and allowed for the “economic serfdom of Negroes by its reluctance to give loans and insurance to Negro businesses.”<sup>8</sup> Meanwhile, mortgage lenders redlined neighborhoods by deeming populations as having “detrimental influences,” as a means to justify offering conservative loans with bad terms or no loans at

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3 Robinson, Cedric, *Black Marxism: The Making of the Black Radical Tradition*, 2.

4 Ibid, 2.

5 Asante-Muhammad, Dedrick et al, *The Road to Zero Wealth: How the Racial Wealth Divide Is Hollowing Out America’s Middle Class*,” 5.

6 Taylor, Keeanga-Yamahatta, “Back to the Neoliberal Moment: Race Taxes and the Political Economy of Black Urban Housing in the 1960s,” 189.

7 Ibid, 189.

8 Ibid, 191.

all to Black people.<sup>9</sup>

Practices executed by the HOLC as well as state and local legislators to justify redlining also expanded into the creation of what is known as the “ghetto tax,” whereby grocery and convenience store items in inner-city communities were sometimes more expensive and sold under exploitative installment plans.<sup>10</sup> It is not just that the economic conditions of Black people have been poor or fraught with challenges, but that with that context and contrast, a vision of “Buying Black” is hollow. Today, instead of focusing efforts towards highlighting the much higher risks Black people have faced concerning eviction since the start of the COVID-19 pandemic<sup>11</sup>, the Black bourgeois have asked Black people to build and support Black business.

### **Origins of Black Buying Power & Black Capitalism**

The origins in this rhetoric about Black capitalism and “Buying Black” in more modern examples are not from Black Americans but from the US government. Corporate America, in conjunction with the Black bourgeoisie, further developed the rhetoric of Black capitalism to exacerbate racial inequality. As discussed in *Franchise: The Golden Arches in Black America*, it was the Nixon administration that began to prop up this vision for Black capitalism as a means towards suppressing radical movements. The author Marcia Chatelain notes that “[i]n lieu of supporting critical civil rights protections for fair housing and school desegregation, Nixon promoted legislation that provided business loans, economic development grants, and affirmative action provisions on federally contracted projects as a means of suppressing black rage and securing black endorsements.”<sup>12</sup> Amidst Nixon’s efforts towards building his Southern Strategy and winning the 1968 presidential election, he ran on the premise that Black capitalism would ensure racial equality.<sup>13</sup> Yet, due to the logistical restraints of there being so few Black entrepreneurs along with the clear intentions Nixon had in stifling revolutionary activity, Black capitalism was, from the outset, designed to selectively help Black people.<sup>14</sup>

What is more surprising than the Nixon administration seeking to subvert and crush Black radicals is the way in which wealthier Black people began to propagate Nixon’s agenda. As fast-food restaurants were being established in areas where Black people were offered franchisee licenses during the 1970s, Black “franchise

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<sup>9</sup> Ibid, 189.

<sup>10</sup> Ibid, 195.

<sup>11</sup> Thomas, Taylor Miller, “Coronavirus Relief Favors White Households, Leaving Many People of Color at Risk of Being Evicted.”

<sup>12</sup> Chatelain, Marcia, *Franchise: The Golden Arches in Black America*, 14.

<sup>13</sup> Weems, Robert E., and Lewis A. Randolph, “The National Response to Richard M. Nixon’s Black Capitalism Initiative: The Success of Domestic Detente,” 67.

<sup>14</sup> Weems, 68.

pioneers believed that business would save the day and the days to come for their people.”<sup>15</sup> Franchise owners were complicit in letting the federal government and those in control of capital across the country use the support of their businesses as a justification to divest from public programs and instead invest in less accessible resources. In the 1980s, Black fraternities and sororities, one of the more prominent symbols of the Black elite class, even went so far as to partner with McDonald’s on an advertising campaign commercial called the “Fraternity Chant.”<sup>16</sup> If corporate America could get the Black bourgeoisie to more openly endorse and support policies centered around Black capitalism, instead of seeking people’s programs or organizing with Black liberation groups such as the Black Panthers, US racial capitalism could persist.

### **Significance of Race to Studying the Bourgeois**

There is no shortage of books, *New York Times* articles, or *60 Minutes* segments on the racial wealth gap. Texts like *How to Be an Antiracist* or articles that imply that racial inequality is simply a matter of a “battle between the souls of America”<sup>17</sup> do not adequately address, with nuance, the Black bourgeoisie’s influence on upholding racial capitalism. Rather than seeking to identify how and why these conditions continue to be perpetuated, many point to “the government” or “Republicans.”

As Cedric Robinson theorized, race has been integral to capitalism since its foundation. Due to the development of neoliberalism in the US and the heightened sense of individualism in a consumerist society, Black neoliberal politics manifests into upholding the status quo of American politics rather than taking significant measures to directly address inequality. Amidst the advancement of globalization spearheaded by the Clinton administration, the Black working class was abandoned even further due expansion in the prison industrial complex, aided by the passing of the Crime Bill of 1994. This, in conjunction with the rise in the commercialization of hip hop and mainstream Black art writ large, helped propel Black individualism to its prominent position today as an antagonism to the “superpredator” attitude the likes of Hillary Clinton and other politicians had for Black people.

Black people can also utilize and exploit racial capitalism to their benefit at the expense of others. To really understand how Black people continue to be exploited and disincentivized from seeking collective organization and liberation, we must look beyond Black entrepreneurship, Twitter, and Black real estate Instagram

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<sup>15</sup> Chatelain, *Franchise*, 15.

<sup>16</sup> Ibid, 177.

<sup>17</sup> Kendi, Ibram X, “A Battle between the Two Souls of America.”

pages, for these are individualized success stories within racial capitalism.

In their article “Black Politics & the Neoliberal Racial Order,” Michael C. Dawson and Meghan Ming Francis attempt to trace through the ways in which Black people have assimilated into neoliberalism and diversified capitalism. As they see it, Black neoliberalism emphasizes “self-reliance, excessive consumerism, and individualism.”<sup>18</sup> To buy into capitalism, Black people must shed their traditions in collectivism and community-building. Neoliberalism demands Black people to concede grassroots organizing and to instead make the most of society as it is currently constructed. That became the central mindset and rhetoric espoused as the Black bourgeoisie began to take shape. Former President Barack Obama once equated “raising one’s children, paying a decent salary,” and other private, voluntary acts to “marching.”<sup>19</sup> Rather than proposing Black people seek to remedy the conditions they face, the same conditions that are routinely echoed throughout mainstream media, Obama implied that mere existence was a form of fighting for one’s rights. This is an example of individualizing systemic oppression; instead of calling to dismantle the entire class system that exploits poor Black people, the Black bourgeois would rather make poor Black people feel as though they are largely responsible for their class position. Obama is asking Black people to focus on their own immediate conditions as a form of struggle, instead of demanding for a greater fight for Black liberation because that call protects his class interests and not poor Black people.

### **The Black Bourgeois and their Propaganda**

What makes this development of Black neoliberalism so insidious is how “neoliberalism often allows small segments of communities to be helped through community/voluntary action and activists’ searches for best practices and policies.”<sup>20</sup> The emphasis here is “small segments.” It is not that a Black business would not benefit from more financial support as we saw in the summer of 2020, but the larger ramifications of supporting Black businesses can only go so far when correcting for centuries of irreparable harm done to Black people in and by America. Black people can and continue to receive small wins amidst the continuously shrinking wealth within the population as a whole. If Black people are truly building power and seeking to create cooperative businesses that sustain communities instead of cultivating resources within capitalism, corporations would not advertise or publicly support Black businesses like they have since June. Are we supposed to presume that Oprah or Tyler Perry or any prominent members of the Black bour-

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<sup>18</sup> Dawson, Michael C. and Meghan Ming Francis, “Black Politics and the Neoliberal Racial Order,” 46.

<sup>19</sup> Ibid, 48.

<sup>20</sup> Ibid, 48.

geoisie are unaware of the centuries of inequality and believe that “Buying Black” will be a substantive fix for the plight of the Black masses? No.

It is not to say that wealthier Black people are acting completely with malicious intent; however, Black bourgeoisie members collectively are helping sell and deliver this Black capitalism, “Buy Black” propaganda to the masses of working-class Black people. They continue to perpetuate and oftentimes expand on rhetoric that upholds Black capitalism by blaming individuals for not working hard enough or not being smart enough to make more money. “The Story of O.J.” by JAY-Z, a song released in 2017, breaks down how Black people are not building enough wealth and how Jewish people spent money on real estate while Black people would spend it at the strip club. The song in short “is a metaphor for opportunities wasted due to poor individual choices and is meant, as Jay-Z has said, to be more than just a song, saying that it is really about ‘... we as a culture, having a plan, how we’re gonna push this forward...’”<sup>21</sup> In reality, “The Story of O.J.” symbolizes revisionist Black history - of the centuries of exploitation Black people have faced. As JAY-Z continues to profess that the only means towards freedom is to flip buildings, buy paintings, and “Buy Black,” his words limit the scope and imagination of the masses for a politic beyond the present conditions. Even if JAY-Z is from a working class background and he was lucky to attain massive success with his music, his current class conditions prevent him from adequately calling for more substantive changes to correct for centuries of Black inequality.

To a similar end “the expressed ‘plan’ is to eschew politics in favor of a sole focus on economics, Black capitalist economics with buying power as a central philosophy as the ‘only hope’ for freedom, and all presented as progressive, pro-Black, empowerment messaging.”<sup>22</sup> If there exists any chance to adequately analyze the US through a comprehensive racialized political economy framework and come up with solutions to free people of such dehumanizing conditions, it must be with the consideration that even those of oppressed backgrounds can uphold racial capitalism. The Black bourgeoisie has shown through their actions that they are not interested in engaging substantively or seeking to liberate the masses because they themselves have become comfortable with the comforts of capitalism even while the rest of their “people” suffer.

### Looking forward

Black radical organizers in America today are not “interested in making capitalism fairer, safer, and less racist. They know this is impossible. Rather, they want

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<sup>21</sup> Ball, Jared, *The Myth and Propaganda of Black Buying Power*, 2.

<sup>22</sup> Ibid, 2.

nothing less than to bring an end to ‘racial capitalism.’”<sup>23</sup> The policy proposition that rose to prominence again this summer, in spite of uprisings and more imaginative visions for a just world, was instead to “buy Black” and “support Black businesses.” It was through the likes of Killer Mike, Beyoncé, and other members of the Black bourgeoisie who touted such demands rather than stand in line with the movement-building going on in the streets. Rihanna, for example, benefits from Black capitalism because her consumers consider supporting her business as “woke” even as it is financed and backed by white capital. “Buying Black” can act as a means not just towards individualizing the ends of this policy plan, whereby the owner of a particular business will reap the benefits of sale, but it also individualizes the way that we as citizens need to behave. We are asked to consume and spend more rather than create and collectively stand together. It is not that the Black elites are unaware of the conditions that working-class, poor Black people face, but rather they collectively have sought to propagate this vision of “Buying Black” as a means to an end to centuries of state-waged war against Black people - an end for which there is no economic policy that could help the masses. There is a reason why James Warren coined this group in 2005 “The Black Misleadership Class.” The Black bourgeoisie traffic misinformation and are purposefully complicit in the continued strife of the masses of Black people in the United States.

If we hope to build a political and economic vision for a world where Black people are no longer exploited, oppressed, marginalized, or silenced, it is crucial that we seek to contextualize both the race and class position of Black people within American society to then mobilize against the Black bourgeois and against US racial capitalism. If history is anything to go by, we must be prepared to stand and organize together, collectively, against the Black Misleadership Class to build a world where Black people can truly be liberated.

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<sup>23</sup> Robinson, *Black Marxism*, xi.

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