

Journal of Undergraduate Research
2018-2019

ACKNOWLEDGEMENTS

Many thanks to the Institute for Scholarship in the Liberal Arts for generously supporting the production of the Journal of Undergraduate Research. We are proud to represent the College and to showcase exemplary research from some of its more than sixty academic majors and minors. Special thanks to Karla Cruise for her steadfast encouragement and assistance throughout the previous year.

We also want to express immense gratitude and pride for our board of dedicated Editors. They have devoted respect and care to each paper considered. It has been an honor and a pleasure to oversee the Journal with them this year.

Lastly, it is the *Journal's* readership that makes possible this publication. Thank you!

EDITOR'S NOTE

The past year has revealed the continued importance of credible, long-term research and media coverage to make sense of an ever-changing world. In increasingly tumultuous times, thoughtful and thorough analysis provides a firm foundation for social and academic critiques that can shape how humans view and interact with this world. These analyses, founded in rigorous research, contribute to existing bodies of knowledge and draw new, salient connections.

The University of Notre Dame's undergraduate scholars have consistently demonstrated their dedication to rigorous and nuanced research of this sort, undertaking their research endeavors with minds and hearts turned to the betterment of academia and society as a whole. We are proud to present the work of our peers who have devoted their time and energy to providing insights into their respective fields and the world around them. This year's publication includes nine pieces - five in print and four online - ranging from voting analyses to metacommentary in Milton, from hip-hop to Nietzsche. Our Editorial Board has made every effort to publish a diverse array of research that represents the full breadth of disciplines within the College of Arts and Letters; our print edition this year even includes a piece from a student enrolled in the Moreau College Initiative. We are proud to publish these fine works from our peers who have submitted poignant pieces of original work.

We hope you enjoy.

Claire Doyle, Grace Garvey & James Zwierzynski
Editors in Chief

Editorial Board 2018-2019

Editors-in-Chief

Claire Doyle '19

English

Grace Garvey '19

Anthropology

James Zwierzynski '19

Gender Studies, Philosophy, & Linguistics

Editorial Board

Maddy Del Medico '19

English

Lia Rocchino '19

History

Sabina Fernandez '19

English

Bailey Marie Kendall '19

American Studies & Economics

Sana Sherali '19

Economics & Political Science

Hanna Kennedy '20

English & Spanish

Patrick McKelvey '20

American Studies & Classics

Catherine Truluck '20

English

Sara Rani Reddy '21

Chemistry & French

Mika Inoue '21

Economics & ACMS

Elijah Grammer '21

Philosophy & History

Xucheng "Attina" Zhang '21

Sociology & ACMS

Elizabeth Self '22

Program of Liberal Studies & Political Science

Jackson Oxler '22

Political Science & Global Affairs

Elizabeth Wendel '22

Neuroscience and Behavior

Alina Peterson '22

Anthropology & Political Science

TABLE OF CONTENTS

Zoe Christina Walker

5

Beyond Group Consciousness: Black Voters in the 2016 Presidential Election

Nicole Waddick

31

Undocumented, Invisible to the Government, and Hidden from the Education System:
Understanding the Exclusion of Undocumented Students in the Dominican Republic

Rongxin Kelly Wang

86

The Virtual Nudge

Tianyi Tan

136

Liberty Restricted for Preserving Liberty: Media Censorship During Early French
Revolution

Miles Folsom

218

Metacommentary in Milton

ONLINE EXCLUSIVE

Online access at: <https://isla.nd.edu/journal-of-undergraduate-research/>

Gianna Van Heel

Woman and the Imago Dei: Beatrice and her theological implications in Dante's Earthly Paradise

Annette Cai

The Social Position of Hip-hop in the United States and China

Abigail Whalen

Mitleid Und Stoizismus: Nietzsche's Relationship with Pity

Berfin Çiçek

Telling the Memories of a Massacre: Trauma and Testimonial Narratives from Dersim's 38

BEYOND GROUP CONSCIOUSNESS: BLACK VOTERS IN THE 2016 PRESIDENTIAL ELECTION

ZOE CHRISTINA WALKER is a senior from Indianapolis, Indiana. Upon graduation, she will earn a Bachelor of Arts degree in Political Science and English, with honors. She received both the Frazier Thompson Scholarship and the Doan Scholars award for her academic and service excellence. As a Doan Scholar, she conducted independent research on a variety of political issues and was awarded nationally competitive summer research fellowships to work as a research assistant at Northwestern University and Duke University. She presented her own research at the American Political Science Association's Annual Meeting. She looks forward to beginning a PhD Program in Political Science at the University of Michigan-Ann Arbor in the Fall and continuing to advance the study of black and minority politics.

ABSTRACT

Literature on black politics typically describes racial group consciousness as the driving force behind black political participation. But, new research suggests that other factors, such as perceptions of the efficacy of collective action and beliefs about institutions, may contribute more than group consciousness to the political psychology of black voting. This paper examines the relationship between group consciousness and beliefs about collective action as well as the relationship between efficacy and political trust for black voters following the 2016 presidential election. The results of my OLS regressions show those blacks who believe most strongly in linked fate are also the least likely to feel that their racial group is politically effective. Further, blacks who identify as more ideologically moderate or conservative are more likely to feel satisfied with their group's representation in politics. The results also show that faith in the function of democratic institutions has a strong, significant influence on blacks' beliefs about voting, but neither group consciousness nor group efficacy has a significant influence on these beliefs.

“Even where the polls are open to all, Negroes have shown themselves too slow to exercise their voting privileges. There must be a concerted effort on the part of Negro leaders to arouse their people from their apathetic indifference to this obligation of citizenship. In the past, apathy was a moral failure. Today, it is a form of moral and political suicide.”

Martin Luther King Jr., *Stride Toward Freedom: The Montgomery Story*

2016 did not live up to Dr. King’s expectations for the future of black political participation. Prior to that year, black voter turnout had been on a steady rise since the 1980s, reaching its peak in 2012 with a 66% turnout rate (Pew 2016). In that year, black voter turnout surpassed whites for the first time in history (Pew 2016). But when the next election cycle came around, black turnout dropped to a ten-year low at just 59.6 % (Pew 2016). According to one Pew poll, the drop was even worse amongst black Millennials who were the only Millennial racial group that turned out at a lower rate in 2016 than they did in 2012. Less than half of black Millennials voted in the last presidential election (Pew 2016). Though the overwhelming majority of black voters supported the Democratic Party despite the low turnout, the question of why blacks stopped showing up at the polls remains unanswered (Exit 2016).

The crude sentiment that blacks stopped showing up to the polls because Obama was no longer on the ballot can be supported by much of the seminal research on black political behavior. Literature currently identifies racial solidarity as the prime mover black voting, and has relied on this explanation for a long time. As early as the 1960s, Matthews and Prothro identified the potent, communal bond felt among black Americans as the common source of their political opinions. What they first measured as blacks’ “interest in and identification with other members” of their race

continues to be used as a metric for assessing black voters. While Matthews and Prothro found that nearly 90% of all “negroes” felt “pretty close” to other blacks regardless of if they knew them personally or not, polls taken since then show a waxing and waning of politicized racial solidarity since their initial survey (Matthews & Prothro 1966).

Proportion of Black Americans Perceiving They Share a Common Fate with Other Black Americans

	1984* %	1988* %	1993* %	1996* %	2005* %	2007* %	2008* %	2012* %	2016** %
Yes	73.5 (796)	77.4 (339)	77.9 (904)	83 (954)	65 (601)	59.7 (261)	66.7 (661)	65.3 (667)	67.3 (268)
No	26.5 (287)	22.6 (99)	22.1 (256)	17 (196)	35 (318)	40.3 (176)	33.3 (330)	34.7 (360)	32.7 (130)
Total	100 (1083)	100 (438)	100 (1,160)	100 (1,150)	100 (919)	100 (437)	100 (991)	100 (1037)	100 (398)

*Source: McClain, P.D. and Carew, J.D. (2016). *Can we all get along?: Racial and ethnic minorities in American politics*. New York, NY: Westview Press. pp. 79.

**Source: 2016 American National Elections Study

The fluctuations in black political solidarity are especially interesting when compared with changes in voter turnout. In 2016, perceptions of common fate among blacks were proportionally higher than they were in 2012, but turnout was substantially lower. If black solidarity is no longer an indicator of political behavior, we must consider what other ideas and issues are motivating the black electorate.

While structural factors like oppressive Voter ID legislation importantly shape voter participation amongst blacks, evidence suggests that these laws may have had only a minimal effect on minority voter turnout for the 2016 election (Highton 2017, 149-167; Fraga 2018). This paper will instead focus on the psychological factors that shape black voting. Specifically, I will explore if and how psychological involvement with politics influenced black voters and nonvoters in the 2016 presidential election. My paper will analyze the relationship between two aspects of this involvement: perceptions of group consciousness and believing one's vote makes a difference.

Comparing these psychological influences on black voting behavior is especially important in the wake of the 2016 Presidential Election which revealed the salience and magnitude of race in American politics. Both major party candidates approached black voters as a collective during their campaigns. Donald Trump, for example, identified "living in poverty" with "no good schools" and "no jobs" as descriptive characteristics of all black Americans despite the fact that blacks have a variety of socioeconomic statuses and many are part of the middle class (Jan 2017).

Even the party to whom blacks pledge a majority of their votes is not immune from this approach. Despite receiving overwhelming support from black voters, Hillary Clinton's appeals to the black base of her party were no less hollow. Focusing on symbolic narratives about issues like police brutality and Donald Trump's overt racism, Clinton's campaign used language designed to trigger the sentiment of common fate without providing much substance to back it up (Stockman). The implicit presumption in both tactics was that black votes could easily be obtained by symbolic appeals to racial group solidarity without substantive action or any consideration for how black communities differ

from one. This paper will explain why these tactics are short-sighted and demonstrate that the political psychology behind black voting is much more complex.

Group consciousness and group politics

It is no secret that black Americans, as a group, tend to vote in large numbers for the same political party and even the same candidate. Scholars have used group consciousness, “in-group identification politicized by a set of ideological beliefs about one’s group’s social standing, as well as a view that collective action is the best means by which the group can improve its status and realize its interests,” to explain the historical uniformity of black voting behavior (Matthews & Prothro 1966; Verba & Nie 1972, pp. 158; McClain et al 2009, pp. 476). Their research shows a strong and significant correlation between an interest and identification with the black community and an interest in politics. More racially conscious blacks are thus more likely to be politically conscious.

Dawson’s seminal work *Behind the Mule: Race and Class in African-American Politics* refined the group consciousness thesis by identifying a causal mechanism to bridge the relationship between group consciousness and voting. Dawson labels the psychological component of group consciousness as “linked fate,” or the belief that what happens to the group will necessarily impact the individual (Dawson 1994, pp.78). His research then whittles down the complex calculus blacks consider when deciding to participate in a system that has historically disadvantaged them, into the black utility heuristic, a mental shortcut for making political decisions. Per the heuristic, blacks will defer to group interests as an efficient way to determine whether or not to engage with politics because group interests can act as “a useful proxy for self-interests” (Dawson 1994, pp. 77). Paradoxically, in considering the group, Dawson argues black voters are making a rationally selfish decision.

The question of “linked fate” has long been considered the most robust measure of group consciousness among African Americans because it predicts black voter participation so well based on the National Black Election Study (NBES) of 1984 (McClain et al 2009; Sanchez & Vargas 2016). However, more recent studies of black voting behavior suggest perceptions of linked fate are declining, especially among younger black Americans (McClain & Carew 2018, pp. 79). The norms and pressures induced by group consciousness which pushed black Americans to vote in the 20th century may not hold the same weight with younger blacks who feel less bound by their racial group.

Group consciousness, voting and efficacy

Literature regarding group consciousness and political behavior consistently describes the black utility heuristic as the mechanism that gives meaning to political participation for blacks. But, it is not clear this is, in fact, the driving force behind black voting. An early study on this subject by Pierce and Carey attributes variances in internal efficacy, “the feeling that a person can influence political outcomes through his participation,” amongst black voters to historical context (Pierce & Carey 1971, pp. 202). Their research in the early ‘70s found that black respondents who had positive experiences with political participation were more likely to feel politically effective; conversely, blacks who had negative experiences, like being denied voter registration in the Jim Crow South, felt less politically effective and subsequently, less likely to participate in politics (pp. 221). Pierce and Carey’s work emphasizes the weight of personal experience rather than group experience in blacks’ decisions to vote or abstain from voting. This suggests that beliefs about the group may not act as a proxy for individual beliefs.

Other scholarship on black efficacy identifies group consciousness as the *most* significant factor influencing blacks' beliefs about their ability to effect political change (Shingles 1981; Miller et al 1981). These studies identify politicized group consciousness as a trigger for political cynicism and dissatisfaction with the political institutions. Accordingly, discontent with the status quo coupled with racial consciousness drives black political participation. The conclusion of these studies has ambivalent implications for black voters. If blacks do not trust the political system, why would they want to bring about change through voting? The sentiment underlying such a conclusion is that blacks practice a ritual of protest through democratic participation without considering the potential consequences and results of that participation. I argue that group consciousness alone is a dissatisfying explanation.

Theories on the rational calculus of voting support the idea that group consciousness may not by itself be sufficient to mobilize black voters. According to Riker, the decision to vote is based on receipt of a reward from voting. This reward equates to the cost of voting subtracted from the perceived benefit of voting for a candidate, multiplied by the perceived probability of that candidate winning (Riker 1968; Aldrich 1993). But if the traditional paradigm of group consciousness would hold that blacks do not evaluate the actual benefits derived from supporting a particular candidate. Instead, their perceived benefit would be solidarity with the group which seems like a weak explanation for showing up to the polls. When considered through the lens of rationality, the black utility heuristic diminishes the thought blacks put behind their voting.

Recent research has found explanations for black voter efficacy that move beyond the group consciousness paradigm. Bobo explains that post-Civil Rights, "with the goal of basic civic inclusion

largely accomplished, the black political agenda has shifted” to focus on expanding wealth and resources in black communities rather than pushing for major federal legislation (Bobo & Gilliam 1990, pp. 388). Accordingly, new studies find that blacks’ psychological involvement with politics and elections is more influenced by factors like perceived individual benefits of supporting a particular candidate, partisanship and education (Bobo & Gilliam 1990; Merolla et al 2013, pp. 872). Tate further finds that with the establishment of voting rights, blacks have become incorporated into the American political fabric and thus attach their sense of efficacy to the function of political institutions rather than tying it to their group-specific group’s success alone (Tate 2010).

Studies comparing the NBES of 1984 with the NBES of 1996 find further evidence that voting is shaped by other factors. Chong and Rogers find perceptions of the actual efficacy of group action (not just solidarity alone) have a positive correlation with political participation (Chong & Rogers 2005 pp. 360). Mangum’s analysis of the 1996 NBES further finds that blacks consider how politically effective their racial group is, rather than just assuming the benefits of collective action. Mangum defines *group efficacy* as, “the impact of the group on government’s outputs and government’s responsiveness to group interests” (Mangum 2003, pp. 43). He uses several questions about respondents’ psychological involvement in politics; that is, “the degree to which one is interested in or concerned about politics and believes political participation is worthwhile” (pp. 41). Mangum finds blacks are more likely to participate in politics when they perceive themselves to be a part of an *effective* group and also finds little evidence to support the notion that group consciousness precipitates low political trust and leads to more participation. Mangum’s conclusions emphasize that perceiving strong *group efficacy*, rather than *group consciousness* alone, influences blacks to vote (pp.

47). Conversely, black voters who feel their group is politically ineffective are more likely to feel they are themselves politically ineffective.

A theory for adding to the black utility heuristic

Based on a review of the literature concerning black voting and the psychological involvement of blacks with politics, I argue the black utility heuristic should be revisited in two ways. First, Dawson contends the heuristic is a function of a black voters' perceptions of group interest, socioeconomic status, and utility that flowed to an individual in the past from "the same policy, candidate or political party" (Dawson 1994, pp. 64). In addition to perceptions of group interest, the political calculus for black voters should include a variable for perceptions of black group efficacy. Strong group consciousness does not necessarily indicate strong beliefs in group efficacy. I argue that blacks consider whether or not group action is actually effective for them when they decide to participate in politics. Evidence suggests blacks do tend to feel strongly that the political nature of their identity is tied to others in their group, but also tend to disagree over whether or not group actions actually improve their individual situations (Mangum 2003; Chong & Rogers 2005). This is the difference between group efficacy and group consciousness I wish to probe further.

Second, the heuristic, as is, only accounts for the utility that flows to an individual from a linkage institution like a party, a policy or a candidate. This variable should also account for the utility flowing to an individual from the political system as whole, specifically the representative democracy of the United States. Unlike Shingles, I will not test whether or not blacks trust the way these systems are administered. Instead, I am testing whether or not blacks feel satisfied with the way the system is designed. My hypotheses will address these two areas such that the black utility heuristic will be a

function of perceived group efficacy and perceived satisfaction with the political system in addition to the other variables indicated by Dawson's original equation.

Hypotheses

In order to test the application of these explanatory variables on black political behavior, I propose the following hypotheses:

***H₁**: In 2016, blacks who perceived high levels of group consciousness also perceived high levels of group efficacy.*

This hypothesis proceeds from evidence in several studies that perceptions of group efficacy influence black political behavior in addition to group consciousness (Dawson 1994; Chong & Rogers 2005; Mangum 2003; Merolla et al 2013). The important distinction in this hypothesis is between perceiving group consciousness and perceiving group efficacy. In this test, group consciousness will be measured by the standard linked fate question: how much does the respondent feel that her success is linked to the success of other blacks? (Miller et al 1981; Dawson 1994; Sanchez & Vargas 2016). Group efficacy, as defined by Mangum, will be measured by the question asking respondents how much influence blacks as a whole have on U.S. politics.

***H₂**: In 2016, group efficacy had a greater influence on blacks' beliefs about the benefits of voting than did group consciousness.*

This hypothesis expands on Mangum's analysis which finds beliefs about group efficacy have more of an effect on voter turnout than beliefs about group consciousness. Instead of measuring

group efficacy against turnout, I measure beliefs about group efficacy against beliefs about individual capacity to effect political change (Mangum 2003).

***H₃**: In 2016, blacks who were satisfied with American democracy felt their vote was more effective than blacks who were dissatisfied with American democracy.*

For this hypothesis, I predict blacks who are dissatisfied with the function of democracy should also be more skeptical about their involvement in politics. This hypothesis challenges the paradigm that group consciousness leads to political skepticism and in turn heightens political efficacy. This hypothesis is supported by research showing only a weak relationship between political cynicism and efficacy (Mangum 2003).

My hypothesis approaches political efficacy from a slightly different angle than previous research has. Rather than asking about politicians or parties, this question probes beliefs about the system in the abstract. If black voters do not feel American democracy is itself effective for them, their participation in such a system may be diminished. Alternatively, blacks who are relatively satisfied with the system, even if they are dissatisfied with the performance of their group, should feel more encouraged to vote in order to change the status quo. Either way, I pushback on the notion that those who do not trust political institutions will also feel like their vote makes a difference. A full list of the survey questions used in this paper along with their corresponding response options can be found in Appendix A.

Data

For this paper, I will use a subset of the 2016 American National Election Time Series Study (ANES) with my unit of observation being all respondents who identified as black and non-Hispanic.

There are a total of 1290 variables in the 2016 ANES. This survey data provides a snapshot of black voters shortly before and shortly following the 2016 presidential election. For this study, I want to look specifically at the post- 2016 presidential election climate both because race was a salient issue and also because this election succeeded the last term of Barack Obama, the first black president.

There are, however, substantial limits to this data set, including the fact that only 398 of respondents self-identified as black non-Hispanic. Additionally, of those respondents, turn-out rates are overinflated. Though the national turnout for black Americans in the 2016 presidential election was just under 60% (Pew 2016), the rate of participation among ANES respondents was about 87%. Research has shown self-reported voting, especially among black non-Hispanics, in surveys like ANES is almost always over-inflated, but the answers given by these respondents should still provide useful insight into the black electorate's psychological involvement (Bernstein et al 2003).

The survey was conducted through both face-to-face video calls and self-directed online interviews of respondents in two parts. Pre-election questions were asked between September 7 and November 7, 2016, and post-election questions were asked between November 9, 2016, and January 8, 2017. Control questions (i.e. questions identifying respondents' gender, race, education, age, income and ideology) were asked in the pre-election survey period. The rest of the questions (group consciousness, group efficacy and satisfaction with democracy) were asked during the post-election survey period.

Methods

Variables

I will use two Ordinary Least Squares (OLS) Regressions to test my hypothesis. These tests will include two different dependent variables. For Hypothesis 1, my dependent variable will be respondents' perceptions of linked fate; that is, the belief that what happens generally to other blacks will have an impact on their lives (Miller et al 1981; Shingles, 1981; Dawson 1994; McClain et al, 2009; Sanchez & Vargas 2016). This question operationalizes group consciousness.

For hypotheses 2 and 3, my dependent variables will measure perceptions of *internal efficacy* as defined by Pierce and Carey (pp. 202). Internal efficacy will be operationalized by the question asking respondents how much of a difference they think their vote will make. This question assesses the extent to which respondents think their individual vote is meaningful. Accordingly, those with higher scores on this question perceive their votes to be more politically effective than those with lower scores on this question

My independent variables will measure respondents' answers to questions about group consciousness and group efficacy. My hypotheses argue these variables will influence the degree to which respondents feel their vote makes a difference. Group consciousness will be operationalized as an independent variable in the same way it was operationalized as a dependent variable. Responses are measured on a scale of one to four with one indicating the weakest feelings of linked fate with other blacks.

Group efficacy will be operationalized by the question asking respondents if blacks have too much, too little or just enough influence on U.S. politics (Mangum 2003). Because this question considers blacks as a political unit, it offers insight into how blacks view their groups' ability to effect change. A third independent variable will measure respondents' beliefs about the utility of the

American democratic process. The operational question asks respondents if they are satisfied with the way democracy works in the United States. Responses to this question will gauge respondents' beliefs about the system's capacity to represent them.

In my analysis, I will control for the respondents' gender, levels of education, age, income and political ideology. Ideology is measured on a 7-point scale with 1 indicating a "very liberal" self-identification and 7 indicating a "very conservative" self-identification. The aforementioned controls comprise the standard for evaluating voter efficacy (Miller 1981; Shingles 1981; Merolla et al 2008; Mangum 2003). I am choosing not to control for party identification for two reasons. First, an analysis of this data set showed that more than 90% of black respondents identified as Democrats. Second, when asked about ideology, black respondents were distributed evenly across the spectrum from liberal to conservative and their particular ideological distribution was more normal than the distribution of the entire set of respondents (the ideology of the entire data set skewed right). Therefore, party identification will have little meaningful impact on my dependent variables but ideology may have some impact.

My model for H_1 will test the relationship between group consciousness and group efficacy. My model for H_2 and H_3 will measure the influence of group consciousness and efficacy, as well as beliefs about the function of democracy in the United States, on respondents' beliefs about internal efficacy. For my second model, linked fate will be an independent variable.

Analysis and Results

Table 1 OLS Regression on Group Consciousness

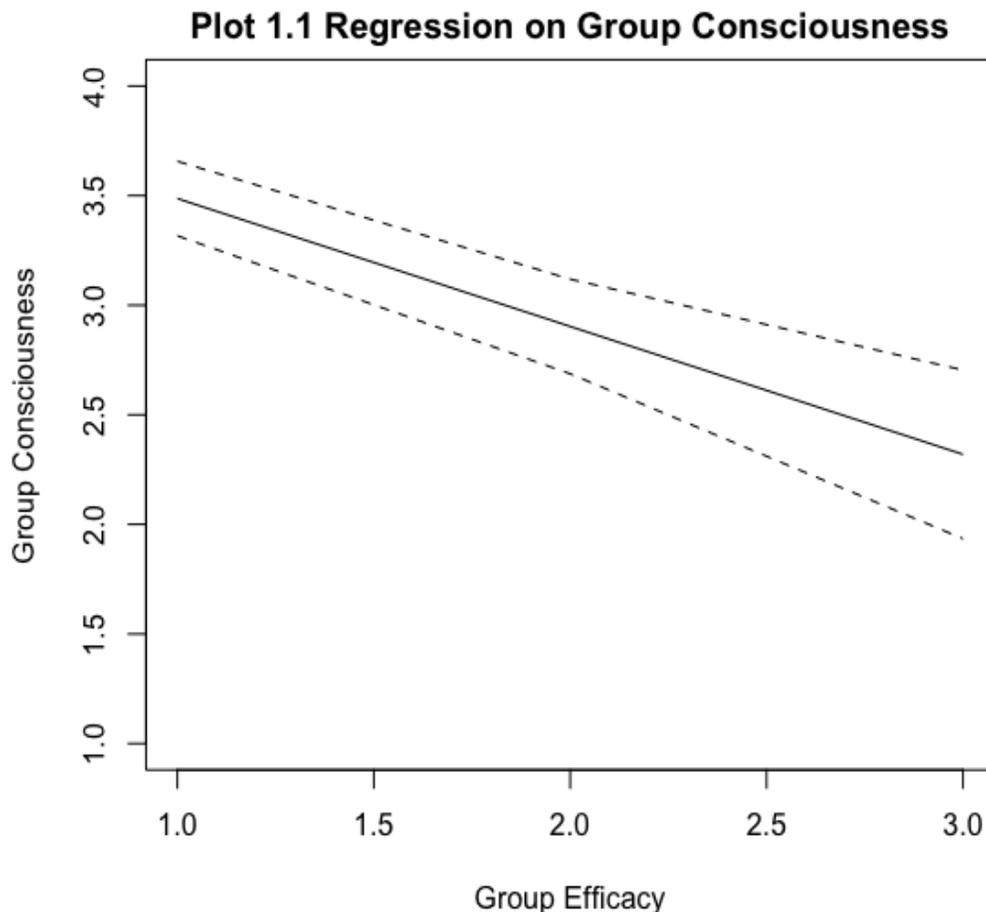
	Group Consciousness
Group Efficacy	-0.584*** (0.102)
Age	-0.043** (0.019)
Education	0.050* (0.029)
Gender (Female)	0.141 (0.129)
Voted in 2016	0.012 (0.202)
Ideology	-0.097** (0.041)
Income	0.014 (0.009)
Constant	3.835*** (0.435)
N	177
R ²	0.300
Adjusted R ²	0.271
Residual Std. Error	0.795 (df = 169)
F Statistic	10.360*** (df = 7; 169)

*p < .1; **p < .05; ***p < .01

Table 1.1. summarizes the results of the multiple regression for my first model. Age is moderately significant at the .05 level, and group efficacy is highly significant at the .001 level. The strong significance of group efficacy indicates that for every one unit increase in perceptions of group efficacy, there is a 0.58 unit *decrease* in perceptions of group consciousness. The scale for group consciousness is measured from one to four with a score of four indicating the strongest belief in

linked fate. Each one-unit increase in perceptions of group efficacy results in a 1/8 leftward shift of the group consciousness scale. In other words, those who felt their success was most linked to the success of blacks as a group were also more likely to feel blacks have too little influence on U.S. politics. Conversely, blacks who felt their fates were *less* tied to members of their racial group were more likely to believe blacks had enough or even too much influence on U.S. politics.

Plot 1.1 illustrates the negative relationship between these two variables. These results indicate the opposite of my hypothesis; high perceptions of group consciousness lead to *low* perceptions of



group efficacy. This result is highly unexpected given that the literature attributes beliefs about the effectiveness of collective action amongst blacks to their perceptions of group consciousness (Shingles

1981; Miller 1981; Mangum 2003). They indicate that blacks consider their ability to make a meaningful impact on politics separately from beliefs about solidarity with their racial group. The results also indicate that as perceptions of group consciousness increase by one unit, respondents' answers on the 7-point ideological scale decrease. Given that lower numbers indicate stronger preference for liberalism (1 = very liberal, 7 = very conservative) group consciousness also appears to be linked with ideology. Thus, those who feel they are less tied to their racial group are more likely to be conservative. They are also more likely to feel satisfied with the level of influence blacks currently have on U.S. politics.

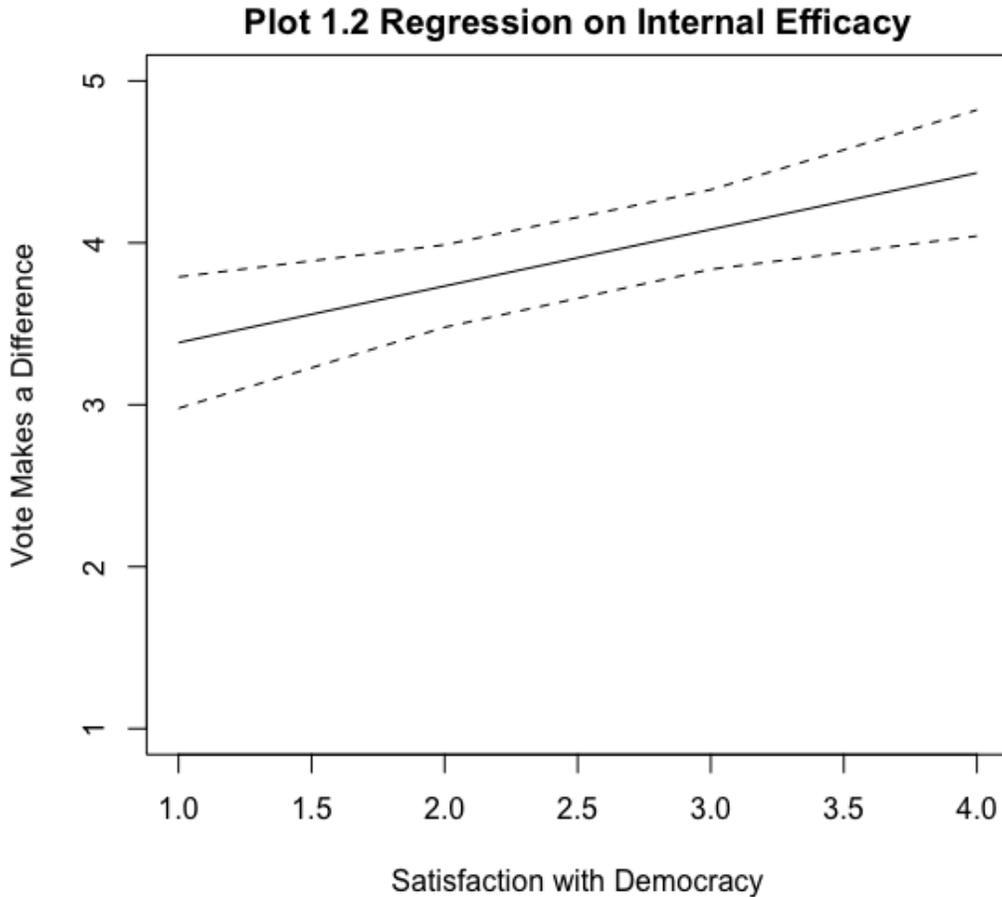
Table 2 OLS Regression on Internal Efficacy

Internal Efficacy (Belief that Vote Makes a Difference)	
Satisfaction with Democracy	0.349*** (0.109)
Group Consciousness	-0.046 (0.111)
Group Efficacy	0.020 (0.165)
Age	0.071** (0.028)
Education Level	-0.009 (0.043)
Gender (Female)	0.318* (0.184)
Ideology	0.069 (0.060)
Income	0.027** (0.013)
Constant	1.921** (0.765)
N	187
R ²	0.165
Adjusted R ²	0.127
Residual Std. Error	1.164 (df = 178)
F Statistic	4.381*** (df = 8; 178)

*p < .1; **p < .05; ***p < .01

Table 2 shows the results of the OLS regression for my second model. Neither group efficacy nor group consciousness had a significant effect on internal efficacy, but group efficacy did have a stronger effect than group conscious. This supports my second hypothesis. Satisfaction with American democracy, age, and income was significant, at the .01, .05 and .05 levels, respectively. Therefore, for

every one unit increase in satisfaction with democracy, there is a .17 unit increase in internal efficacy (i.e., the belief one's vote makes a difference).



Plot 1.2 illustrates the positive relationship between these two variables. This result confirms my hypothesis that faith in political institutions corresponds to increased perceptions of political efficacy. This result challenges the group consciousness paradigm and affirms research showing a weak relationship between group consciousness and voter efficacy. Voters who lack faith in political institutions are significantly less likely to feel their vote makes a difference than blacks who have faith in the function of these institutions. Group consciousness and even group efficacy appear to have no

significant impact on these beliefs but age, gender, and income do. Even amongst blacks, belief in the utility of voting is stronger amongst the older and the wealthier.

Discussion and Conclusion

The results of my analysis offer two implications for the psychology of black political behavior. First, it appears perceptions of black group consciousness are distinct from perceptions of group efficacy. In fact, blacks who feel the most affected by the general condition of other blacks in America are also the most likely to feel blacks have too little influence on politics. Conversely, those who feel blacks have the right amount of influence on politics feel less connected to the group. The magnitude and significance of the coefficient for group efficacy suggest this relationship is substantial. Though my hypothesis was disproven, the opposite result is perhaps more interesting, especially when considered in the context of the controls. More conservative blacks were significantly less likely to believe their fates were tethered to those of other blacks. Age also had a significant impact on these beliefs. In a post-Obama era, the fact that younger blacks, more conservative blacks and blacks who are content with the level of their group's influence on politics feel significantly less linked fate is important when considering political strategies for reaching black voters.

The results of my second regression offer further insight into black voter psychology. Blacks who are satisfied with the capacity of the U.S. democratic system to represent them are more likely to feel their vote makes a difference than blacks who are disillusioned with this system. Importantly, this result suggests faith in a well-functioning representative democracy energizes the black electorate more

than political cynicism, disaffection or mistrust. This is consistent with findings that black voter turnout was especially strong in 2012 because Barack Obama's position in the White House boosted confidence in the political system as a whole (Stout & Tate, 2013). It is also consistent with the reasoning applied to voters more generally: an individual is most likely to turn out to vote if the perceived benefits of voting outweigh the costs (Riker 1968).

Additionally, the fact that neither group consciousness nor group efficacy had a significant effect on internal efficacy is important to evaluate in this analysis. If blacks' personal beliefs about their individual ability to address an issue or correct a problem are not influenced by their perceptions of linked fate or group efficacy, then generalized statements about collective action may have little to no effect on mobilizing black voters. I note here my analysis only evaluates voting in a national election. Collective considerations have been found to greatly influence nontraditional and non-electoral participation activities like protests (Miller 1981; Shingles 1981; Mangum 2003). But when it comes to the act of voting, one explanation does not fit all. The black utility heuristic, appropriately, goes a long way towards explaining why blacks engage in group-based political activities. But beliefs about voting-- a private, individual act-- do not appear to be greatly informed by group considerations.

The problem with extending the group consciousness rationale to individual political acts is it oversimplifies black political behavior. It suggests that blacks think and act as a monolithic unit. Relying on group consciousness inspires politicians to make sweeping appeals to blacks, highlighting race and even racial stereotypes without providing much, if any, substantive solutions for particular communities. Blacks living in the south side of Chicago, for example, may have substantively different political goals from those of blacks living in Atlanta, Georgia. While group consciousness can and does

appear to influence blacks to engage in group-based activities, their political motivations are not singularly or even primarily informed by a group mindset. That is perhaps one reason why the threatening racial animus of Donald Trump, while obtrusive enough to align blacks to support Hillary Clinton, was not enough to mobilize blacks to vote at the same rate they did in 2012 when Barack Obama was on the ballot. This was not because Barack Obama was black, but because he imbued faith in democracy. Black voters seek a system they perceive to be legitimate, responsive and effective for them individually.

This data is, of course, imperfect and inconclusive. The ANES interviewed a small number of black respondents in 2016 and appeared also to over-represent the numbers of blacks who actually voted. But the findings here could offer a starting point for further research, especially regarding the relationship between black voters' perceptions of linked fate and their perception of blacks' ability to act as a cohesive political interest group. This will be especially important to examine among younger and poorer blacks who seem to be less influenced by group consciousness and are also more skeptical about whether or not their votes are meaningful.

Appendix A: Full ANES Questions for Dependent and Independent Variables

Dependents

1. **Linked Fate:** How much do you think that what happens generally to black people in this country will affect what happens in your life? [A lot, some, not very much, or not at all / Not at all, not very much, some, or a lot]?
2. **Internal efficacy/ vote makes a difference:** Some people say that no matter who people vote for, it won't make any difference to what happens. Others say that who people vote for can make a big difference to what happens. Using the scale in the booklet, (where one means that voting won't make any difference to what happens and FIVE means that voting can make a big difference), where would you place yourself?

Independents

1. **Group Efficacy:** Would you say that blacks have [too much influence in American politics, just about the right amount of influence in American politics, or too little influence in American politics]?

2. **Satisfaction with Democracy:** On the whole, are you [very satisfied, fairly satisfied, not very satisfied, or not at all satisfied] with the way democracy works in the United States?

Bibliography

Aldrich, John H. (1993). "Rational choice and turnout." *American Journal of Political Science* 37(1), pp. 246-278. doi:10.2307/2111531

Bernstein, R., Chadha, A., & Montjoy, R. (2003). "Cross-State Bias in Voting and Registration Overreporting in the Current Population Surveys." *State Politics & Policy Quarterly*, 3(4), pp. 367-386. Retrieved from <http://www.jstor.org/stable/40421500>

Bobo, L. and Gilliam, F.D. (1990). Race, Sociopolitical Participation and Black Empowerment. *The American Political Science Review* 84(2), pp. 377-393. doi: 10.2307/1963525

Chong, D. & Rogers, R. (2005) "Racial solidarity and political participation." *Political Behavior* (27) 4, pp. 347-372. doi: 10.1007/s11109-005-5880-5

Dawson, M.C. (1994). *Behind the mule: race and class in African-American politics*. Princeton, NJ: Princeton University Press.

(2016, November 23). "Exit Polls 2016." *CNN*. Retrieved from: <https://www.cnn.com/election/2016/results/exit-polls>

Gamson, W.A. (1968). *Power and discontent*. Homewood, Illinois: The Dorsey Press.

Gurin, P., Miller, A.H. and Gurin, G. (1980). "Stratum identification and consciousness." *Social Psychology Quarterly* (43)1, pp. 30-47. Retrieved from <http://www.jstor.org/stable/3033746>

Highton, Benjamin. 2017. "Voter Identification Laws and Turnout in the United States." *Annual Review of Political Science* 20 (1): 149-167. doi:10.1146/annurev-polisci-051215-022822.

Jan, T. "Trump asked black voters, 'What the hell do you have to lose?' Black lawmakers answer: 'A lot'" (2017, March 23). *The Washington Post*. Retrieved from: https://www.washingtonpost.com/news/wonk/wp/2017/03/23/trump-asked-black-voters-what-the-hell-do-you-have-to-lose-black-lawmakers-answer-a-lot/?utm_term=.5b257d3f4cd7

Matthews D.R., and Prothro, J.W. 1966. *Negroes and the New Southern Politics*. New York: Harcourt, Brace & World.

Mangum, M. (2003). "Psychological involvement and black voter turnout." *Political Research Quarterly* (56) 1, pp. 41-48. Retrieved from: <https://login.proxy.lib.duke.edu/login?url=https://search.proquest.com/docview/58887739?accountid=10598>

McClain, P.D. and Johnson Carew, J.D. (2018). *Can we all get along?: Racial and ethnic minorities in American politics*. New York, NY: Westview Press.

McClain, P.D., Johnson Carew, J.D., Walton, E., and Watts, C.S, (2009). "Group Membership, group identity, and group consciousness: measures of racial identity in American politics?" *Annual Review of Political Science* (12), pp. 471-485. doi: 10.1146/annurev.polisci.10.072805.102452

Merolla, J.L., Sellers, A.H., and Fowler, D.J. (2013). "Descriptive representation, political efficacy and African Americans in the 2008 presidential election." *Political Psychology* 34(6), pp. 863-875.

doi: 10.1111/j.1467-9221.2012.00934.x

Miller, A.H., Gurin, P., Gurin, G., and Malanchuk, O. (1981). "Group consciousness and political participation." *American Journal of Political Science* 25(3), pp. 494-511. Retrieved

from: <http://www.jstor.org/stable/2110816>

Pew Research Center Analysis of the Current Population Survey, November Supplements for 1988-2016. Retrieved from: [http://www.pewresearch.org/fact-tank/2017/05/12/black-voter-](http://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/ft_17-05-10_voter-turnout/)

[turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/ft_17-05-10_voter-turnout/](http://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/ft_17-05-10_voter-turnout/)

Pierce, J.C., and Carey, A. (1971). "Efficacy and Participation: A Study of Black Political Behavior." *Journal of Black Studies*, 2(2), pp. 201-223. Retrieved from

<http://www.jstor.org/stable/2783927>

Riker, W., & Ordeshook, P. (1968). "A Theory of the Calculus of Voting." *The American Political Science Review*, 62(1), pp. 25-42. doi:10.2307/1953324

Sanchez, G.R. and Vargas, E.D. (2016). "Taking A Closer Look at Group Identity: The Link between Theory and Measurement of Group Consciousness and Linked Fate. *Political*

Research Quarterly, (69) 1, pp.160-174. Retrieved from:

<http://www.jstor.org/stable/44018537>

Shingles, R.D. (1981). "Black Consciousness and Political Participation: The Missing Link."

The American Political Science Review (75) 1, pp. 76-91. Retrieved from:

<http://www.jstor.org/stable/1962160>

Stockman, F. (2016, September 19). "The subtle phrases Hillary Clinton uses to sway black voters." *The New York Times*. Retrieved from:

<https://www.nytimes.com/2016/09/30/us/politics/hillary-clinton-black-voters.html>

Stout, C. and Tate, K. (2013). "The 2008 presidential election, political efficacy, and group empowerment." *Politics, Groups and Identities* (1) 2, pp. 143-163. doi:

<https://doi.org/10.1080/21565503.2013.785960>

Tate, K. (1991). "Black political participation in the 1984 and 1988 presidential elections."

American Political Science Review, 85(4), pp. 1159-1176. Retrieved from:

www.jstor.org/stable/1963940.

Verba, S. and Nie, N. H. (1972). *Participation in America*. New York: Harper and Row.

Undocumented, Invisible to the Government, and Hidden from the Education System: Understanding the Exclusion of Undocumented Students in the Dominican Republic

NICOLE WADDICK is a senior studying Political Science and International Development. Originally from Toronto, Canada, she developed a passion for understanding Latin American politics and development throughout her college career, spending a semester abroad in Puebla, Mexico, and two summers conducting research in the Dominican Republic. Her most recent research focused on access to education for undocumented students in the Dominican Republic. After graduation, she will be returning to the Dominican Republic to continue working on education and issues related to undocumented students through a Princeton in Latin America Fellowship. Outside of classes and research, she is Co-President of GlobeMed, a campus social justice club and is involved in intramural sports, the Notre Dame Women's Boxing Club, and student government.

"It is an obligation to have your documents. If you don't have your documents in your country you don't

exist. You don't exist to the government if you are not registered."

-Dominican public school teacher

I. Introduction

Undocumented and stateless individuals are consistently among the most marginalized populations in the world. The quote above, taken from an interview with a teacher in the Dominican Republic (DR), captures the bureaucratic and political invisibility that is the reality of the large undocumented and stateless population of the DR. Individuals in the DR that are unable to obtain or present a birth certificate represent 7.5% of the DR's rural population and 11% of the Cibao Noroeste region, this study's primary area of focus given its proximity to the Dominican-Haitian border.¹ These percentages represent tens of thousands of individuals that are unable to access services that require a birth certificate or identity card; services as fundamental as opening a bank account, registering one's own children, and, as this study will highlight, accessing education. The Dominican Constitution and multiple domestic and international laws guarantee the right to education to all inhabitants of the DR, and the Ministry of Education has emphasized that this guarantee extends to those without documents that prove Dominican residence or nationality.² However, reports of barriers to schools for undocumented students persist.³ Significant, disproportionate challenges for undocumented students raise the question of why policies, which have explicitly outlined undocumented students' right to

¹ Oficina Nacional de Estadística, "Encuesta Nacional de Hogares de Propósitos Múltiples" (Santo Domingo, Dominican Republic, August 2017).

² "Constitución de La República Dominicana" (2010), <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>; "Código de Los Niños, Niñas y Adolescentes," Pub. L. No. Ley No. 136-03, § 45 (2003), http://www.educando.edu.do/Userfiles/P0001%5CFile%5CLey_136-03.pdf; "Ley General de Educación," Pub. L. No. Ley No. 66-97 (1997); "Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe" (UNICEF, 2017), https://www.unicef.org/republicadominicana/RESUMEN_Ninos_Ninas_Fuera_Escuela.pdf.

³ Ernesto Sagas and Ediberto Roman, "Who Belongs: Citizenship and Statelessness in the Dominican Republic," *Georgetown Journal of Law & Modern Critical Race Perspectives* 9 (2017): 35–56; Khaled Alrabe et al., "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education," Fact-Finding Project (Washington D.C.: Georgetown Law Human Rights Institute, 2014), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2018/03/left-behind.pdf>; Raimy Reyes and B. Shaw Drake, "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education (Legal Update)," Fact-Finding Project (Washington D.C.: Georgetown Law Human Rights Institute, September 23, 2016).

education, are not implemented in practice. This disconnect between policy and practice raises the research questions that drive this report:

1. What are the most significant, current barriers to education that impact undocumented students' ability to fully exercise their right to a high school education?
2. What systemic factors contribute to the creation and perpetuation of these barriers to education?

These questions take on particular relevance in light of 2013 rulings from the Dominican Constitutional Court that annulled the citizenship of over 200,000 individuals, primarily Dominicans of Haitian descents, rendering them stateless.⁴ Formalizing decades of discrimination in documentation and registration laws, these rulings were condemned by human rights organizations and the international community.⁵ There is evidence that regularization plans, implemented by the government with the goal of providing individuals with a path to citizenship, have not been as effective as many Dominican-Haitian rights advocates had hoped.⁶ In addition to the large population that is entitled to Dominican citizenship but has been unable to obtain their identity documentation, individuals affected by the rulings from the Constitutional Court represent a large population that is left out of education in a system that does not include those without documents. Such marginalization exacerbates existing inequalities between undocumented persons, one of the most marginalized groups

⁴ Alrabe et al., "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education."

⁵ Alrabe et al.

⁶ Reyes and Drake, "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education (Legal Update)"; Oficina Nacional de Estadística, "Encuesta Nacional de Inmigrantes" (Santo Domingo, Dominican Republic: Oficina Nacional de Estadística, 2017), <http://economia.gob.do/wp-content/uploads/drive/Publicaciones/Resumen%20ENI-2017.pdf>.

in the DR, and the remainder of the population. It also has negative consequences for Dominican development as entire segments of the population are unable to capitalize on the well-established gains associated with education, such as social mobility.

This report aims to shed light on the barriers to access education for undocumented students in some of the most underserved areas of the DR, considering the experiences of individuals that do not have documents for a range of reasons, including irregular migration, bureaucratic discrimination, the Constitutional Court ruling, and prohibitive costs. These groups are distinct, particularly with respect to nationality law and rights to nationality, however, they are all entitled to a secondary education in the DR and experience similar barriers in terms of proving their identity within the education system. Thus, I consider all of these groups under the umbrella of undocumented students in order to comment on trends in documentation based barriers. The majority of the students interviewed for the study were born in the DR.

The report examines barriers associated with three key components of the educational experience: the ability to register in schools and the electronic registration system, the ability to remain in schools if registered, and the motivation to continue one's education. It also examines policy knowledge and practices among individuals at each level of the education system: the Ministry of Education, school district officials, school administrators, and teachers. Some formal work has been done to assess the state of education for undocumented students in the DR. Two previous reports by the Georgetown Human Rights Institute have examined access to education for undocumented

students in the DR and found significant barriers to access for this subset of the population.⁷ They find instances of arbitrary denials of registration, either due to misinformation or intentional abuse. They also find that the eighth grade exam- which historically undocumented students were required to present documents to take- entirely prevented students from entering or completing high school in many cases.⁸

There is a need for more current information regarding barriers to access for undocumented students, particularly given reforms to both the education system and identity documentation processes that have been implemented since the publication of the most recent report. The Dominican government has made a significant commitment to invest in the education system and has implemented sweeping reforms in recent years.⁹ These reforms have transformed the education system, extending the school day from a half-day to a full day and eliminating the eighth grade national exam, the exam which previously represented one of the most significant barriers for undocumented students. In addition to these reforms to the education system, documentation processes have evolved since the publication of the most recent report, as new forms of documentation have been issued in response to the regularization plan discussed above.¹⁰ As well as exploring the current barriers to education in the DR, this report seeks to address the lack of information about teachers and school

⁷ Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education”; Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update).”

⁸ Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education”; Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update).”

⁹ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

¹⁰ Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update).”

officials' knowledge about policies for undocumented students. Although previous reports have suggested that there are high levels of uncertainty among school officials about the correct policies, no previous reports have explored exactly what teachers do and do not know.¹¹ Finally, and most importantly given the focus on qualitative data, the stories shared through this report are presented with the goal of better understanding the perspectives of undocumented students and the school officials that work with them in small towns of the DR.

Through eighty-one interviews with teachers, principals, district education officials, officials with the Ministry of Education, and undocumented families, it was found that there is a large range of misinformation regarding policies and registration protocols for undocumented students. There is little oversight and consequences for education officials that did not comply with Ministry policies of inclusion, creating a system that can be abused by those who wish to exclude undocumented students. It is highly important to note that even when they are allowed to register in schools, undocumented students face strong deterrents to their motivation and uncertainty regarding their place in the classroom. These implicit exclusionary factors create a barrier to school even if students are not explicitly denied entrance to classrooms.

Interestingly, despite systemic challenges such as low policy knowledge and little accountability measures, access to schools varied among the eleven schools that this report covered, ranging from a complete lack of registration to high school completion. These results suggest that there are important factors that can improve access for undocumented students, even when students

¹¹ Reyes and Drake; Alrabe et al., "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education."

are facing consistent socio-economic and structural constraints. As elucidated throughout this report, better understanding these factors could lead to a more productive discussion of practical solutions to improve access for undocumented students in the DR.

This report focuses specifically on the impact of a lack of documentation on students' ability to realize their right to education. However, this challenge is simply one of many that undocumented students face. In highlighting this specific hurdle, I hope that this report will reinforce a sense of urgency surrounding the need for improved access to documentation in the DR. The impact of documentation on the ability of youth to realize their potential and contribute to the development of their communities cannot be understated, as the complexity of the challenges discussed here will demonstrate.

This report will proceed as follows. First, it provides a brief review of the general literature on public service provision for undocumented and stateless populations. Then it delves into the case of the DR, providing a background of migration and citizenship processes in the DR, from the historical practices to recent citizenship laws that have greatly impacted access to documentation. After this, it places this discussion in the context of the Dominican education system as a whole and the policies regarding undocumented students. Following this background and a description of the methodology of this study, findings will be presented in three sections: instances of total exclusion, instances of potential exclusion, and an explanation of important factors that differed between schools where undocumented students were included and schools where they were not. The findings will be followed by a discussion, recommendations based on the challenges found in this report, and a conclusion.

Undocumented, or so-called “invisible,” Dominicans’ inability to exercise their right to education must not become an invisible problem. In order to address violations of their fundamental right to education, further research on the lived realities of undocumented Dominicans within the education system and the best practices to ensure their inclusion is necessary. This report aims to contribute to this conversation, shedding light on current policies and practices regarding undocumented students in the Dominican education system, and contributing to an increased awareness of the complex challenges faced by undocumented individuals in the DR.

II. Literature Review

a. Statelessness and Education

Public service provision for undocumented and stateless individuals has been noted to be a formidable challenge by the literature on statelessness and by international organizations.¹²

Undocumented migrant populations are generally defined as people who enter or remain in a country without the required documents. There are many paths to the irregularity that transcend the typical conception of a migrant who enters a country without authorization. According to the International Organization for Migration (IOM) common paths include: “crossing borders without authorization, unlawfully overstaying a visa period, working in contravention of visa conditions, being born into irregularity, or remaining after a negative decision on an asylum application has been made (20).”¹³

Individuals may also not possess documentation from the state from which they receive their

¹² UNHCR, “Ending Statelessness Within Ten Years” (United Nations, 2014).

¹³ “World Migration Report 2018” (Geneva, Switzerland: International Organization for Migration, 2017), 20. https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf.

nationality due to economic constraints, discriminatory bureaucratic practices, or a decision not to pursue documentation.¹⁴ Stateless persons fall into a different legal category than irregular migrants or undocumented persons. Under international law, a stateless person is defined as an individual that is not recognized as a national by any state.¹⁵ A person can be made stateless if they are unable to obtain nationality at birth or lose a nationality that they previously held, without being able to obtain another.¹⁶ Throughout this study, both stateless individuals and individuals who lack documentation despite holding Dominican or Haitian nationality are taken into account.

Under international law, undocumented and stateless persons are entitled to universal human rights, including those, such as health and education that are ensured through the provision of public services.¹⁷ However, in practice, undocumented persons are often unable to hold the state accountable for the provision of services. Political powerlessness is compounded by the reality that a large proportion of statelessness results from state discrimination or processes that exclude certain populations from access to citizenship or documentation.¹⁸ Thus, states often do not prioritize the provision of services to stateless or undocumented populations. The challenges faced by stateless and undocumented individuals are magnified in the case of stateless children, who represent over a third of the world's stateless people.¹⁹ The United Nations High Commission for Refugees (UNHCR) notes that access to education poses a particular challenge for stateless individuals who may be refused

¹⁴ “World Migration Report 2018.”

¹⁵ UNHCR, “Ending Statelessness Within Ten Years.”

¹⁶ “The World’s Stateless” (The Netherlands: Institute on Statelessness and Inclusion, December 2014).

¹⁷ United Nations General Assembly, “Universal Declaration of Human Rights” (1948).

¹⁸ Kelly Staples, *Re-theorising Statelessness: A Background Theory of Membership in World Politics*, Studies in Global Justice and Human Rights (Edinburgh: Edinburgh University Press, 2012), <http://proxy.library.nd.edu/login?url=http://www.jstor.org/stable/10.3366/j.ctt3fgsgr>.

¹⁹ UNHCR, “Ending Statelessness Within Ten Years.”

entrance to schools or universities or stigmatized by teachers and peers.²⁰ Although broadly recognized as a challenge, there is a need for the literature to understand the country and context-specific challenges to access to education for stateless and undocumented populations around the world.

III. Background

a. Nationality Laws and Documentation Processes in the DR

The Dominican Republic is home to the largest population of stateless individuals in the Americas.²¹ This population, combined with irregular migrants and individuals who have been unable to access identity documentation for a range of other reasons, represent a large group of individuals impacted by restricted access for those without documentation. Those impacted by statelessness and limited access to documentation in the DR are primarily of Haitian descent.²² Thus, in order to understand the challenge of documentation and service provision in the DR, it is essential to consider Dominican-Haitian relations and the experience of Haitians and Dominicans of Haitian descent within Dominican society.

The history of Dominican-Haitian relations and migration is complex. The relatively informal border between the two countries, the recruitment of Haitian workers, and the increasing gaps in economic development between Haiti and the DR have led to large flows of migration from Haiti to the DR. As of 2017, there were 497,825 Haitian-born persons living in the DR, a country with a total

²⁰ UNHCR, “Ending Statelessness Within Ten Years.”

²¹ UNHCR.

²² Sheridan Wigginton, “Blackness as a Barrier to Citizenship and Education: Situating the Example of Dilcia Yean and Violeta Bosico,” *Education, Citizenship and Social Justice* 5, no. 2 (July 1, 2010): 163–70, <https://doi.org/10.1177/1746197910370727>.

population of 10,189,895. There were also 253, 255 individuals born in the DR to Haitian parents.²³

These first and second-generation immigrant populations, in addition to a large population of individuals of Haitian ancestry whose families have been in the DR for generations, compose a significant proportion of the Dominican population, and experience disproportionately high levels of race and class-based discrimination.²⁴

Formal and informal discrimination against Dominicans of Haitian ancestry has deep historical roots. Throughout the twentieth century, racism was institutionalized by confining Haitians or people of Haitian descent to sugar cane plantations, known as *bateyes*, without basic public services, promoting xenophobic historical narratives, and through the development of increasingly exclusionary citizenship laws and practices.²⁵ These practices and others were supported by the United States before, during, and after their occupation of the DR.²⁶ Importantly, discrimination in the DR extends to nationality law.

For the majority of its history, the Dominican citizenship was afforded according to the principles of *jus soli*, or birthright citizenship. Until the 1990's, Dominican citizenship could be acquired by anyone born in the country other than diplomats or foreigners who qualified as 'in transit'

²³ Oficina Nacional de Estadística, "Encuesta Nacional de Inmigrantes."

²⁴ Sagas and Roman, "Who Belongs"; Rachel Afi Quinn, "'No Tienes Que Entenderlo': Xiomara Fortuna, Racism, Feminism, and Other Forces in the Dominican Republic," *Black Scholar* 45, no. 3 (Fall 2015): 54–66, <https://doi.org/10.1080/00064246.2015.1060690>; Wigginton, "Blackness as a Barrier to Citizenship and Education."

²⁵ Wigginton, "Blackness as a Barrier to Citizenship and Education"; Lesley Bartlett, "South-South Migration and Education: The Case of People of Haitian Descent Born in the Dominican Republic," *Compare: A Journal of Comparative and International Education* 42, no. 3 (May 1, 2012): 393–414, <https://doi.org/10.1080/03057925.2011.633738>.

²⁶ Lorgia García-Peña, *The Borders of Dominicanidad: Race, Nation, and Archives of Contradiction*, 1st ed. (Duke University Press, 2016).

because they were in the country for fewer than ten days.²⁷ It is important to note, however, that even when citizenship was legally available to those of Haitian descent, civil registry officials often arbitrarily denied documentation to individuals with darker skin or ‘Haitian-sounding’ names.²⁸ In 2004, informal barriers to citizenship for those of Haitian descent became increasingly institutionalized as Dominican lawmakers passed a migration law that defined all foreign workers in the country without regular migration status as ‘in transit.’ This ruling now extended the qualification previously only applicable to travelers and diplomats to foreign workers, mostly sugar cane workers, many of whom had been in the country for decades, if they were not born there themselves.²⁹ The ruling also meant that all children born to foreign workers or other parents who were ‘in transit’ would not be eligible for citizenship.³⁰ These children were often left in limbo; ineligible for Dominican citizenship due to this law and unable to obtain Haitian citizenship due to their birth in the Dominican Republic and the fact that their families often had homes and jobs that kept them rooted in the Dominican Republic.

In 2007, building off the 2004 Migration Law, the Foreign Registry was established for children born to undocumented foreign mothers. The Central Electoral Board issued *Circular 017*, stipulating that civil registry officials were not to grant any further identity documents to children of

²⁷ Kirk Semple, “Dominican Court’s Ruling on Citizenship Stirs Emotions in New York,” *The New York Times*, October 17, 2013, sec. N.Y. / Region, <https://www.nytimes.com/2013/10/18/nyregion/dominican-courts-ruling-on-citizenship-stirs-emotions-in-new-york.html>.

²⁸ Semple.

²⁹ Raimy Reyes and B. Shaw Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update),” Fact-Finding Project (Washington D.C.: Georgetown Law Human Rights Institute, September 23, 2016).

³⁰ Lesley Bartlett, “South-South Migration and Education: The Case of People of Haitian Descent Born in the Dominican Republic,” *Compare: A Journal of Comparative and International Education* 42, no. 3 (May 1, 2012): 393–414, <https://doi.org/10.1080/03057925.2011.633738>.

foreigners without investigating whether or not their parents had legal residency in documents.³¹ In 2008, officials began to annul citizenship of individuals of Haitian descent registered in the Foreign Registry.³² In 2010, this trend was further enshrined in Dominican law through a Constitutional reform denying Dominican nationality to children born to parents unable to present Dominican documents.³³ Children impacted by this change were again often rendered stateless by this law; subsequently unable to obtain Haitian citizenship given their birth in the Dominican Republic and ineligible to obtain Dominican citizenship.³⁴

In the most concerning recent development in Dominican nationality law, a 2013 constitutional reform, the *Sentencia 168-13*, retroactively applied the definition of ‘in transit.’ This ruling meant that the Civil Registry was required to identify individuals who were granted citizenship when neither parent had legal residency status, annul their citizenship and register their names in the Book of Foreigners.³⁵ The decision rendered over 200,000 Dominicans of Haitian descent stateless.³⁶ The decision has been denounced by the international community, human rights observatories, and the Inter-American Court of Human Rights as a violation of the fundamental right to a nationality.³⁷

³¹ Bartlett.

³² Bartlett.

³³ Semple, “Dominican Court’s Ruling on Citizenship Stirs Emotions in New York.”

³⁴ Bartlett, “South-South Migration and Education.”

³⁵ Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education.”

³⁶ Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update)”; Hintzen, “Historical Forgetting and the Dominican Constitutional Tribunal”; Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education.”

³⁷ Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education.”

The Dominican government has taken steps to respond to the statelessness resulting from the *Sentencia 168-13*. The government first issued Decree 327-13 which was intended to provide for the implementation of a plan, known as the National Regularization Plan for Foreigners (PNRE), to allow individuals who had entered the country irregularly, overstayed their residency permit, or violated conditions that allowed them to enter regularly to obtain their residency.³⁸ This plan was followed by Law 169-14, adopted on May 23, 2014, which was presented as a pathway to citizenship for those affected by the *Sentencia*.³⁹ Law 169-14 established two groups: Group A included individuals that had a birth certificate from the Dominican Civil Registry, while Group B included individuals that had never received a birth certificate. According to Law 169-14, individuals in Group A were entitled to have their citizenship immediately restored, while individuals in Group B were meant to register as foreigners, apply to the Regularization Plan outlined by Decree 327-13, and subsequently obtain Dominican citizenship through naturalization.⁴⁰ As of 2017, the Central Electoral Board of the Dominican Republic reported that 92.78% of the 61, 049 individuals that had been identified as part of Group A had had their documents approved or regularized.⁴¹ However, civil society organizations have noted that many of these beneficiaries would have been unable to actually pick up or receive their

³⁸ Dirección General de Migración (2017). *Plan Nacional de Regularización de Extranjeros*. Retrieved from <https://www.migracion.gob.do/prccm/>; Johns Hopkins University School of Advanced Studies (SAIS), SAIS International Human Rights Clinic, *Torn at the Seam: Migration, Deportations, and Humanitarian Concerns on the Island of Hispaniola (2016)* as cited in Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update).”

³⁹ Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update.)”

⁴⁰ Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update.)”

⁴¹ Inter-American Commission on Human Rights. (2017). “Chapter V: Follow-Up on Recommendations Issued by the IACHR Regarding the Situation of Human Rights in the Dominican Republic (Annual Report 2017).” Washington D.C.

documents or had faced intense challenges throughout the process.⁴² Individuals in Group B were given 180 days to register in the plan and a subsequent two years to pursue the naturalization process.⁴³ The two year naturalization period expired in 2016 and to date no Group B individuals have been naturalized.⁴⁴ Civil society officials spoken to noted uncertainty over the future of those who had yet to receive their documents from the plan or who had been unable to enroll in the Regularization Plan in time. The uncertainty surrounding the meaning of Group A and Group B documentation and their limits has been noted to pose challenges to students' ability to register in schools.⁴⁵

In addition to the population made stateless by the Constitutional Court ruling, there is a significant population of individuals that despite being legally entitled to their Dominican citizenship, have been unable to access formal documentation. The Dominican “En Hogar” (“In Home”) survey conducted in 2017 found that 7.5% of the DR’s rural population did not have a birth certificate.⁴⁶ The percentage rises to 11% in the Northwestern Cibao region, where a large portion of this study was conducted. Many young mothers are unable to access documentation for their children and others are unable to afford fees associated with registrations that occur after the three-month allotted period for registration.⁴⁷ As noted previously, these barriers have been found to disproportionately impact

⁴² Inter-American Commission on Human Rights. “Chapter V: Follow-Up on Recommendations Issued by the IACHR Regarding the Situation of Human Rights in the Dominican Republic.”

⁴³ Inter-American Commission on Human Rights. “Chapter V: Follow-Up on Recommendations Issued by the IACHR Regarding the Situation of Human Rights in the Dominican Republic.”
⁴⁴

⁴⁵ Reyes and Drake, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education (Legal Update.)”

⁴⁶ Oficina Nacional de Estadística, “Encuesta Nacional de Hogares de Propósitos Múltiples” (Santo Domingo, Dominican Republic, August 2017).

⁴⁷ DREAM Project, “Luceros Human Rights and Documentation Project” (Dominican Republic: DREAM Project, June 2018).

individuals of Haitian descent.⁴⁸ These discriminatory bureaucratic practices mean that despite legal rights to citizenship and documentation, these populations often experience exclusion.

In sum, I consider three main groups when I speak about undocumented students in the Dominican Republic. I include individuals who have migrated irregularly or without bringing their documents from their country of birth, individuals born in the DR that have been ruled ineligible for Dominican citizenship as a result of the Constitutional Court ruling, and individuals born in the DR that despite being eligible for Dominican citizenship have not obtained documents for reasons of cost, preference, or bureaucratic barriers. It is very important to note that these groups are viewed very differently with respect to nationality law. However, given my small sample size of undocumented students and families and my desire to comment on the trends in ways that a general lack of documentation impedes interacting with the education system, I group them together in my analysis.

b. Forms of Documentation

The *Junta Central Electoral*, the Central Electoral Board, is responsible for registration processes and the issuance of identity documentation in the Dominican Republic. There are three primary forms of identity documentation used: *certificado de nacimiento*, *acta de nacimiento*, and a *cédula de identidad*. These act as prerequisites for obtaining subsequent forms of documentation and for basic services, including education, bank services, and formal employment. The *certificado de nacimiento* is issued in the hospital immediately upon birth of the child if the child's parents are able to prove that they are Dominican.⁴⁹ In accordance with international and domestic laws, hospitals are

⁴⁸ Bartlett, "South-South Migration and Education."

⁴⁹ Alrabe et al., "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education."

required to provide documentation to all children born in the Dominican Republic.⁵⁰ Children whose parents are unable to demonstrate to hospital officials that they are Dominican are issued a pink, “foreigner” birth certificate.⁵¹

Upon receipt of a *certificado de nacimiento*, parents are able to go to a civil registry office, register their child, and receive an *acta de nacimiento*. The *acta de nacimiento* serves as the primary form of identification for children under eighteen, and is a prerequisite to obtain the *cédula de identidad*, which is used for identification for all adults. The *cédula* is used in almost all components of adult life, including opening a bank account, registering for university, and registering one’s own children.⁵² Children issued a foreigner birth certificate are expected to use the birth certificate to obtain Haitian or other foreign documentation.

c. Education System

In order to understand the experience of students affected by the documentation laws described thus far, it is important to understand the broader context of the Dominican education system and structure. Under the government of current president, President Danilo Medina, the Dominican government has implemented a wide array of structural reforms to the Dominican education system. Importantly, the government made a commitment of 4% of annual GDP to the education system, a promise made after intense civil society pressure and a successful advocacy

⁵⁰ “Amnistía de Declaración Tardía de Nacimiento,” Pub. L. No. 218-07 (2007),

https://www.unicef.org/republicadominicana/Ley_No.218-07_amnistia_declaracion_nacimiento.pdf.

⁵¹ Alrabe et al., “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education.”

⁵² Alrabe et al.

campaign in 2013.⁵³ Prior to 2013, the system was composed of eight years of primary school and four years of secondary school. As part of reforms beginning in 2013, the education system was divided into three levels. The system begins with initial education, which is designed to last from 45 days old to five years, and includes maternal, infant, prekindergarten, kindergarten, and pre-primary education. Initial education is followed by primary education, which includes first grade through sixth grade, and leads into secondary education, which includes sixth through twelfth grade.⁵⁴ The restructuring of the system resulted in the elimination of the eighth grade exam, which previously was necessary for promotion to secondary school.⁵⁵ The Ministry of Education is now conducting annual diagnostic exams, which theoretically do not affect students' ability to be promoted to the next grade. These exams have been applied in third and sixth grade in the past two years since they began.

Despite an increased focus on education as a national priority, the Dominican education system continues to face intense challenges to improved achievement and inclusion. In its analysis of exclusion from the Dominican education system, the Dominican Ministry of Education (MINERD) and the United Nations International Children's Emergency Fund (UNICEF) define two categories of exclusion: potential exclusion and effective exclusion.⁵⁶ These provide helpful categories for an understanding of the challenges experienced by students in the education system. UNICEF and MINERD define effective exclusion as the case of students who find themselves effectively outside of the education system at the initial, primary, or secondary level. Statistics from the 2014-2015 school

⁵³ "Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe."

⁵⁴ "Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe."

⁵⁵ "Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe."

⁵⁶ "Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe."

year demonstrate concerning rates of effective exclusion from school, with 205,000 children and adolescents between five and seventeen years old, or 8% of individuals in this age range, not attending school.⁵⁷ One in four students does not successfully complete the transition between the third and fourth year of secondary school, either because they fail or abandon school.⁵⁸ Potential exclusion, the report outlines, refers to students who are at risk of abandoning primary or secondary education due to the difficulties that they face to remain and advance in school.⁵⁹ Important reasons for potential exclusion from school include precarious incomes and sociocultural factors that contribute to a low value placed on education.⁶⁰ The recent reforms introduced in the education system, despite the progress they have contributed to, have also led to new challenges in the system. In its report, UNICEF noted evident tensions between the pace and demands faced in the daily activities of schools and the demands and suggestions made by school districts.⁶¹ Such tensions can contribute to potential and effective exclusion through a disconnect between policy and practice.

d. School Documentation Requirements

Multiple domestic and international laws ratified in the Dominican Republic enshrine the right to education within the Dominican territory. The 2003 Code for the Protection of the Fundamental Rights of Children and Adolescents states that “[u]nder no circumstances can children or adolescents be denied education for reasons such as . . . lack of documents proving identity . . .”

⁵⁷ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

⁵⁸ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

⁵⁹ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

⁶⁰ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

⁶¹ “Niños y Niñas Fuera de La Escuela En La República Dominicana: Resumen Del Informe.”

(64).⁶² The universal right to education is also outlined in the General Education Law 66-97 and the Dominican Constitution.⁶³ The Ministry of Education has emphasized that the rights guaranteed in the Education Law and the Constitution extend to undocumented children and youth.⁶⁴ According to Ministry policy, when registering students in the electronic registration system, *Sistema de Información para la Gestión Escolar de la República Dominicana* (SIGERD), school officials may ask for a photo of the student, the student's *acta de nacimiento*, the student's vaccination record, their date of birth, and the student's full name.⁶⁵ However, in the case that the student states that they are undeclared or do not have a nationality, the registration may proceed without the information found on the *acta de nacimiento*.⁶⁶

IV. Methods

Taking the consideration the contexts of education and documentation systems in the DR, this report aspires to contribute to the gap on recent knowledge regarding the experiences of undocumented students. The research for this study was conducted through eight weeks of fieldwork in the Dominican Republic from May to July of 2018 and an additional week of fieldwork in January of 2019. The study was approved by the University of Notre Dame's Institutional Review Board. In order to conduct an analysis of information regarding policies for undocumented students among different actors in the education system and to identify possible points of miscommunication, semi-

⁶² Código de los Niños, Niñas y Adolescentes.

⁶³ Constitución de la República Dominicana; Ley General de Educación.

⁶⁴ "Educación Garantiza Inscripción de Estudiantes Sin Importar Nacionalidad | Ministerio de Educación de La República Dominicana," accessed July 31, 2018, <http://www.ministeriodeeducacion.gob.do/comunicaciones/noticias/educacion-garantiza-inscripcion-de-estudiantes-sin-importar-nacionalidad>.

⁶⁵ MINERD Interview 1. (June 2018).; MINERD Interview 2. (June 2018).; MINERD Interview 3. (June 2018).; District Interview 1. (May 2018). Dajabón.

⁶⁶ MINERD Interview 2. (June 2018); District Official Interviews 1, 2, 4. (June-July 2018).

structured interviews were conducted with individuals at the National Ministry of Education, education district officials, school directors, teachers, and undocumented students and families. Given the importance of understanding the reality of those within the education system on the Dominican-Haitian border, which is noted to be one of the poorest and underserved areas of the DR, interviews were conducted in three border provinces: Independencia, Dajabón, and Monte Cristi. Interviews were also conducted in Puerto Plata, a province along the northern coast of the Dominican Republic and in a *batey*, a community historically home to Haitian sugar cane workers in the province of Valverde. The interview sites are marked on the map in Figure 1.



Figure 1. Map of the Dominican Republic showing the six interview sites. In order to protect participant confidentiality, points reflect the general, not exact, location of interviews conducted in each province.

The breakdown of the interviews by province and type are listed in the table in Figure 2.

	Dajabó n	Monte Cristi	Independencia	Valverde	Puerto Plata	Distrito Nacional (Santo Domingo)	Total
Students or Families	n=3	n=0	n=7	n=6	n=1	n=0	n=17
Teachers	n=16	n=3	n=0	n=3	n=1	n=0	n=23
School Director or Vice- Principal	n=7	n=1	n=1	n=3	n=0	n=0	n=12
School District Official	n=4	n=3	n=1	n=1	n=0	n=0	n=9
Ministry of Education Official	N/A	N/A	N/A	N/A	N/A	n=3	n=3
Peace Corps Volunteers	n=4	n=2	n=2	n=0	n=0	n=0	n=8
Member of NGO/Civil Society Organizatio n	n=0	n=0	n=1	n=4	n=3	n=1	n=9
Total	n=34	n=9	N=12	n=17	n=5	n=4	n=81

Figure 2. Interviews conducted, by province and type.

Interview participants were selected according to convenience and snowball sampling. In order to gather a range of responses both by actor type and location, interviews were conducted with individuals at multiple levels at varying locations. Peace Corps volunteers and district officials helped contact undocumented students and parents of undocumented students in the communities where research was conducted. Teachers and school directors were contacted through connections with the United States Peace Corps, a method which allowed to access schools in small districts and towns that otherwise would have been extremely difficult to reach. Once Peace Corps volunteers introduced teachers or school directors, a snowball sampling method was used to contact their colleagues. In every

district where a teacher or school director was interviewed, a visit was also carried to the district office, where I asked to speak with an individual responsible for registration or with knowledge of registration policy, resulting in interviews with nine district officials. These officials included two education district directors, one regional director, and five officials responsible for registration processes. In Valverde, a non-governmental organization helped contact families and school officials. To complement the interviews at the grassroots level of the education system and gain a better understanding of national policy, three interviews were conducted with individuals at the Dominican Ministry of Education in Santo Domingo. These individuals worked in the administration of SIGERD, in programs focused on helping students obtain their documents and in policy generation. Advocates at various NGOs in Santo Domingo helped contact these public officials. The interviews with individuals directly within the education system were complimented by seventeen interviews with various civil society actors, including Haitian-Dominican rights activists, education-focused NGO leaders, and Peace Corps volunteers. These interviews supported a better understanding of systematic challenges within the education and documentation system in the DR.

While speaking with teachers, school directors, and district officials, the interviews focused on questions regarding knowledge of policies for undocumented students, perceived challenges for undocumented students, methods of communication regarding Ministry of Education policies, and general challenges within the education system. To teachers and school directors, vignette style question were asked, presenting the scenario of the registration of an undocumented student. A scenario in which an undocumented student arrived for the first day of school without any form of documentation was described, and teachers and school directors were asked what they would do in

this case. This method allowed to better understand the connection between policy knowledge and practice. When speaking with Ministry officials and district technicians, similar vignette style questions were posed, but asked what they thought teachers and school directors should do in that case. The interviews with families, students, and civil society actors focused on general challenges for undocumented students with a focus on three primary factors for school continuance: motivation, ability to register, and ability to remain in school once registered.

All of the interviews were conducted in Spanish without the presence of a translator. The interviews were transcribed and the qualitative data analyzed through the use of Nvivo software. Through this analysis, for mentions of challenges for undocumented students were coded in each of the three realms studied: motivation, registration, and ability to continue through schooling. Schools and district official's ability to correctly state how long undocumented students could study for and whether or not undocumented students could be registered in SIGERD were also scored. In addition to coding for policy knowledge and challenges, the analysis looked for trends in mentions of accountability and discretion afforded to schools.

Limitations

This study was limited by the inability to interview individuals under the age of eighteen given their inability to give informed consent without the presence of a parent. The absence of perspectives directly from younger students limited the ability to understand the opinions of youths at earlier stages of the education system. There were also limitations given my position as an outsider. In some instances, it seemed that teachers attempted to present the most positive impression of the system and their policies as possible. In others, the impression was that teachers may have presented an overly

negative view of the system, perhaps to garner more support for the challenges that they faced within their schools. The bias that this generated may have skewed the results. Keeping these limitations and possible biases in mind, this report aims to comment on trends that were consistent across several of the interviews in multiple interview sites.

V. Results

a. Documentation Process

Prior to delving into the findings on educational access for undocumented students, The report will briefly discuss the barriers to the documentation process that were highlighted throughout the interviews. The documentation process was not the explicit focus of this study, and thus the report does not make broad statements regarding the current state of access to documentation in the communities that were studied. However, an inability to access education is merely one of many human rights violations that result from an inability to access documentation. One study participant described the experience of undocumented students, saying, “They live a life in limbo. They can only be here in the community. If they go to [a nearby town], they have to travel in fear that maybe the migration authorities are going to pass by and take them.”⁶⁷ Lacking documentation impedes much more than education for these students. Thus, this report would be incomplete without mentioning the general barriers to obtaining documents that were mentioned by participants of this study.

i. Regularization Plan

⁶⁷ Community Interview 1. (January 2019). Valverde.

The Regularization Plan implemented by the Dominican government in response to the *Sentencia* 169-13 closed in August of 2018. Community members in one *batey* mentioned that the Regularization Plan had been successful for some members of the community, noting that approximately nine-hundred members of the community of approximately 2,500 had entered into the plan. Many of these individuals had received legal residency status or an identity card (known in Spanish as a *carnet*). In this *batey*, a local NGO had worked to facilitate a program for community members, traveling with them to the local government office and accompanying them throughout the documentation process. Success in the plan; however, was noted to be highly varied and dependent on luck. One community member described the plan as having “success, but success without much control.”⁶⁸ He shared that some individuals who owned property in the DR and had children that were Dominican citizens had not been able to obtain residency documents, while others had had a relatively easy time obtaining their documents. There was uncertainty among community members and NGO officials regarding what was going to happen next given the closure of the Regularization Plan in August of 2018. No one interviewed as part of this project was aware of options for individuals who had been unable to enter into the Regularization Plan or obtain their documents in time to participate.

ii. Cost

Cost was repeatedly mentioned as a highly prohibitive barrier to documentation by members of the community and NGO workers that supported them. They mentioned that the plan had in most

⁶⁸ Community Interview 1. (January 2019). Valverde.

part been made clear to the NGO prior to the August 2018 deadline for enrollment and employees knew what had to be done in order to obtain documents for individuals in the community. They stated that the local government had been largely receptive to their requests for information and submissions of documentation. However, the costs of purchasing the required scores of documents to enroll in the plan and traveling to Santo Domingo to collect the official documents proved far too expensive for many families in the community, inhibiting their access to documents. As one official at the NGO described it:

“They were asking for twenty documents from people, asking for documents that people could not obtain. They asked someone undocumented to give them documents from the bank, proof of a purchase that [the person] had made under their name, or if they had paid the electricity with their name. If you don’t have documents to do those these, you can’t do anything. Then, since they were asking for things that people couldn’t find, many people were spending 20,000 pesos [\$400], a lot of money for someone who is earning one-hundred or two-hundred pesos a day working in agriculture.”⁶⁹

Another community member in a town in Valverde repeated the importance of individuals’ financial situation as a barrier to obtaining documents, saying, “One of the largest barriers- the largest- is the economic situation. If you don’t have money you don’t have access to anything to get to a place where you can obtain the documents necessary to begin the process of getting your identity documentation...

⁶⁹ NGO Interview. (January, 2019). Valverde.

If you don't have money or relationships [with government officials], something that you could obtain in a week with money is going to take you months. You're not going to have anything."⁷⁰

iii. Discrimination

There continue to be concerning levels of race, class, and language based discrimination in documentation processes. When asked about the biggest challenges to obtaining documents, the first challenge noted by one community member was "to be Haitian or have black skin."⁷¹ Another student, describing his experience obtaining documentation, explained, "I was worried it was going to be difficult because they know me, they know my father and my mother so they say no, you are Haitian, and all that. [They say], you are not part of here. You know, if one is black, everything is difficult."⁷² This discrimination has important consequences on access and the experiences of undocumented individuals in the DR.

b. Access to Education

For undocumented youth, one of the most poignant points of exclusion is the education system. This study sets out to determine the factors influencing the gap between inclusion policies for undocumented students and school practices. This is examined through the lens of three specific points within the school experience: ability to register, ability to remain in school until the end of high school, and challenges to students' motivation to continue. Access and the extent that challenges existed in each of these three realms varied greatly between schools. Among the eleven schools that were studied, there did not appear to be neither a consistent policy of inclusion, nor consistent policies

⁷⁰ Community Interview. (January 2019). Valverde.

⁷¹ Community Interview. (January 2019). Valverde.

⁷² Student Interview 3. (July 2019). Dajabón.

of exclusion. In ten of the schools in which interviews were conducted, undocumented students were afforded at least some level of access to classrooms up until the end of primary school. Access to secondary schools was more limited, as will be discussed in later sections. However, in one primary school in the province of Independencia, there was evidence that no undocumented students of Haitian descent were being registered in schools. This variation in access itself has important consequences for the ways in which these results are understood and interpreted. To consider both the factors that were associated with total lack of registration and the factors that were associated with challenges within the classroom, the case of total exclusion and the cases of the other ten schools will be discussed, prior to discussing commonalities and possible factors leading to the variation. Throughout the section, pseudonyms are used for individuals referred to by name to protect their identity and confidentiality.

i. Instance of Effective Exclusion

In one school in the province of Independencia, families of Haitian descent that did not have documents were not being registered in the Dominican public school. Within the town, there was a distinct separation between individuals of Haitian descent and the rest of the community, in which there was a school that went up to eighth grade. Living conditions in the community of individuals of Haitian descent were notably worse. The paved road stopped at the entrance of the Haitian community, and homes in the community were primarily constructed of sticks, plastic sheeting, and corrugated metal. Most homes in the remainder of the community were constructed of concrete or wood. Notably, this community was not a temporary settlement. One thirty-year old woman

interviewed stated that she had been born there, along with some of her peers.⁷³ Despite the disparate living conditions, the Haitian community was only a five minute walk from the Dominican school that was designated to serve this community. However, according to community members, access for undocumented students from this community was limited to non-existent.

The primary school director in this town reported that all students were able to study, regardless of whether or not they possessed documentation. She noted that there was one “Dominican boy” studying in the school without documentation, notably taking care to mention the fact that he was Dominican.⁷⁴ However, seven out of seven families interviewed in the Haitian community reported that their children were not able to attend the Dominican school without documentation.⁷⁵ Those with Haitian documentation were allowed to attend, but those without any form of documentation were effectively barred from entry. When speaking with Jean*, a father of Haitian descent, he was asked if he knew of any children in his community that were out of school for any reason. Looking at all of the nine children seated around his home, he responded, “None of them are in school.” When asked why, he responded, “Maybe for the lack of documents.”⁷⁶

The families within this Haitian community consistently reiterated that Haitian or Dominican documents were crucial to school access. Another mother in the same community, María*, had enrolled her daughter in the Dominican school because her daughter had Haitian identity documentation. She clearly stated, “Because of [her Haitian document], she

⁷³ Family Interview 1. (June 2018). Independencia.

⁷⁴ School Director Interview. (June 2018). Independencia.

⁷⁵ Family Interview 1; Family Interview 2; Family Interview 3, Family Interview 4, Family Interview 5, Family Interview 6, Family Interview 7. (June 2018). Independencia.

⁷⁶ Family Interview 2. (June 2018). Independencia.

is studying there. If he/she doesn't have their documents, you can't put them in school."⁷⁷ Jean*, the father mentioned above, was asked if the situation for undocumented students had improved since he was forced to leave due to his lack of documents in 2000. Jean* responded, "Maybe it has improved here. In that time, foreigners practically never studied. Now, they do, but only if they have documents."⁷⁸

It was unclear whether undocumented families were being repeatedly denied registration or if negative past experiences with the Dominican school among community members had caused the spread of misinformation regarding registration practices. Negative experiences likely cause significant withdrawals from the education system. A Peace Corps volunteer based in the town attested to the negative treatment that families of Haitian descent had received in the school.⁷⁹ The Peace Corps volunteer had started a preschool for children in the Haitian community. In discussions with parents in the Haitian community, she reported that parents had told her that they would not send their children to the preschool if there were Dominican teachers in the classroom, due to fears of mistreatment.⁸⁰ This fear could suggest that even if individual students were not being explicitly told that they could not register, undocumented persons of Haitian descent were being in part informally forced out as the treatment that they received by the school system was worse than not being in school at all. Options for undocumented students in this community outside of the Peace Corps volunteer outreach and the public school system were limited. The principal source of education for

⁷⁷ Family Interview 4. (June 2018). Independencia.

⁷⁸ Family Interview 2. (June 2018). Independencia.

⁷⁹ Peace Corps Interview 4. (June 2018). Independencia.

⁸⁰

undocumented students was a school run by the local Haitian pastor, who taught primarily in Creole. However, Jean* stated, “It is terrible quality. The pastor gives the classes but he doesn’t teach anything, he only writes things to copy. He doesn’t teach literacy, so those that don’t know how to read, learn almost nothing.”⁸¹

ii. Factors Contributing to Potential Exclusion

The experiences of community members discussed above demonstrate the most extreme cases of school exclusion discovered by this study. The majority of the barriers for undocumented students were less direct, but they still led to school dropouts or exclusion as mutually exacerbating factors which had the potential to lead to exclusion for undocumented students. Understanding the ways in which these factors interact to drive students out of the classroom is highly important. Ensuring that students are not denied access will have little impact if the students’ experiences in the classroom are such that they withdraw from the system. This report will build on the three points of potential exclusion that were set out to study: registration, ability to continue through school, and motivation. The report will also discuss the most important findings at each of these points separately throughout the results section. The report begins with registration, dividing issue areas into two categories:

Electronic Registration and Certification.

1. Electronic Registration in SIGERD

Across all ten schools where undocumented students were given some level of access to public schools, teachers and school directors noted a distinction between an ability to register and an ability

⁸¹ Family Interview 4. (June 2018). Independencia.

to remain in the classroom. Over half of teachers and school directors were uncertain as to whether or not undocumented students could register in the electronic system, the *Sistema de Información para la Gestión Escolar de la República Dominicana* (SIGERD) (See Fig 3).

Responses to the Question: “Can undocumented students register in SIGERD?”

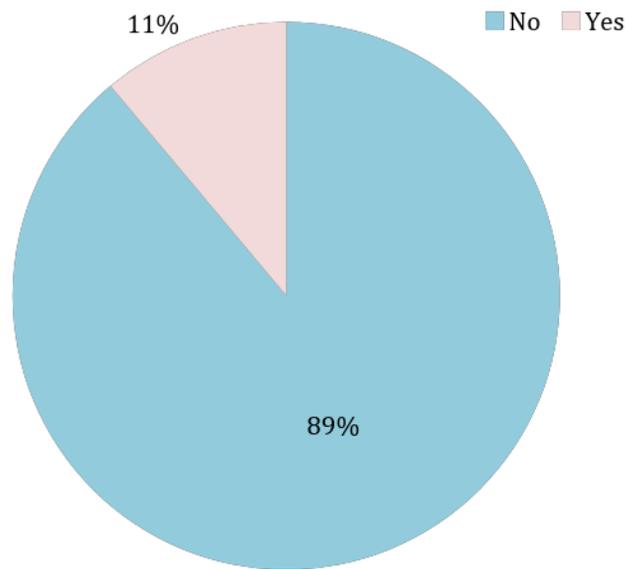


Fig. 3. Of the eighteen teachers that responded to the question, “Can undocumented students register in SIGERD,” sixteen responded that they could not. Only two stated that undocumented students were able to register in the electronic system.

Officials at the Ministry of Education reiterated that when registering a student in SIGERD it is possible to select “undeclared” under the nationality selection.⁸² Education district officials demonstrated this process.⁸³ However, as demonstrated by Figure 3, teachers and school

⁸² MINERD Interview 1. (June 2018). Distrito Nacional.; MINERD Interview 2. (June 2018). Distrito Nacional.; MINERD Interview 3. (June 2018). Distrito Nacional.

⁸³ District Interview 1. (May 2018). Dajabón.; MINERD Interview 2

administrators were not always aware that this was the case. When asked about the registration process for an undocumented student, a guidance counselor responded the following:

Guidance Counselor: Yes, we register them in a notebook.

Principal Investigator: But not in the system?

Guidance Counselor: No, because we don't know what their name is, their birthday, or anything.⁸⁴

Other teachers and administrators mentioned that the practice of registering undocumented students in notebooks or informally while they waited for their documents was common. When asked about undocumented students' ability to register in schools, another teacher noted:

“The only thing is that they are not going to be formally registered until they bring their documents. But they are going to be provisionally registered. When they bring their documents, then their information will be entered into the system and they will be formally registered.”⁸⁵

Despite knowing the name that students came to the school with, teachers were concerned that undocumented students would later obtain documents with another name, and therefore decided that they should not be registered until they had their final documents. One participant, who served as both a teacher and a director at a rural, multi-grade school, mentioned that registration in the system depended on the student's grade-level. When asked about the process of registering an undocumented student, she stated the following, “I go to the parents and ask for the name, the correct name, and the

⁸⁴ Teacher Interview 30. (July 2018). Dajabón.

⁸⁵ Teacher Interview 10. (June 2018). Dajabón.

date of birth. Then I tell them that they must bring me the *acta de nacimiento* so that the child has a space. But if the child goes past first or second grade [without an *acta de nacimiento*], they are lost from the system because they need an *acta de nacimiento*.⁸⁶ In addition to misunderstanding of the registration processes, it was found that there was a potential for the abuse of SIGERD for teachers who wanted to do so. An individual associated with the administration of SIGERD at the national office of the Ministry of Education noted that despite the fact that SIGERD was designed with the intention of not excluding anyone, it could be used otherwise. He stated:

If someone wants to exclude people, they will use any excuse. People have brought reports [to the Ministry of Education] of children and parents, not even Haitians, but people from here in Santo Domingo, that say, 'In the school they told me that in October they won't accept the child in the school anymore because the system no longer accepts the registration.' The system accepts registrations whenever you want. But the school, not wanting to accept the child because it's more work, says, 'No, the Ministry's system can't accept them.' They use that excuse.⁸⁷

The combination of misinformation, potential for abuse, and lack of consequences for not correctly registering students means that despite the fact that SIGERD is designed to include undocumented students, in practice, it often acts as a barrier to the full inclusion of undocumented students within school records.

⁸⁶ Teacher Transcript 2. (June 2018). Dajabón.

⁸⁷ MINERD Interview 2.

The varying accounts of the limits of registration within SIGERD suggested a complex understanding of undocumented students' right to schooling. When discussing their registration policies for undocumented students, teachers and school officials often reiterated the importance of allowing the child to remain in the classroom. The concept of students auditing classes appeared frequently during conversations with teachers. One teacher presented two options when trying to accommodate parents attempting to register a child without documents: “[We would decide] if we leave them as an auditing student in the class or if we would not accept them. But personally, I say that it would be good to leave them as an auditing student to see if they are able to resolve the document issue. In this case, to go on to secondary school, the student would have to have their *acta de nacimiento*. Then in secondary school, the administration could do the same- have them as an auditing student until they see if they resolve the document problem.”⁸⁸ However, although the right to enter the classroom was consistently emphasized by teachers and school directors, being registered in SIGERD, a critical pathway to receiving certification, was not viewed similarly as a right.

In many cases, due to the lack of clear and consistent information on the correct registration processes, the decision of how to include students within the system and the classroom was made at the level of the school administrator, secretary, or teacher. Secretaries were responsible for the actual registration process and likely also had some liberty to determine who was ultimately registered. The central role of individual discretion in registration came up in interviews with teachers, school

⁸⁸ Teacher Interview 20.

administrators and school district officials, all who mentioned that teachers and school administrators had a lot of liberty to navigate registration norms as they saw fit.

Uncertainty regarding undocumented students' ability to register was not universal however. Two of twenty-three teachers did note that all students without documents were able to register in SIGERD. This variation is important to note, as it may suggest that some information regarding correct electronic registration policies is reaching teachers and administrators. However, the practice of registering students informally may have important consequences for certification and resource allocation. If students continue throughout school without ever receiving formal recognition for their attendance, they will be unable to capitalize on many of the economic gains associated with higher schooling. The important links between registration, certification, and educational gains will be discussed throughout the following section.

2. Certification

The challenges faced by undocumented students when attempting to obtain certification of their studies were noted by teachers, school administrators and undocumented students. Eight teachers interviewed noted that without the *acta de nacimiento*, the school would be unable to issue certification of their education. As with registration, teachers and school administrators were concerned over the legitimacy of certificate issuance without identity documentation. When asked whether students could receive their certificates without documents, one teacher responded, "No. One could say, I am María," but how do I know that you are María if you don't show me your

documents?”⁸⁹ Some teachers suggested that students could not move to the next grade if they did not demonstrate their documents; however, this was uncommon. A lack of certification also caused significant challenges when these students attempted to move to a different school. One teacher stated, “They can’t leave [this school] without documents. They can stay here, but they will not accept them if they go to another school. If they do not have documents, even if they pass a course, they can’t go to another school.”⁹⁰ A majority of teachers mentioned that one of the largest contributing factors to dropouts in their schools was the movement of Haitian families as they sought temporary work in different towns along the border. For such families, an ability to transfer schools without documents could present a significant barrier to continuous schooling.

Another significant challenge with certification arose if students eventually obtained their identity documentation under a name different than the one that they studied with. Three district officials responsible for registration recounted cases of students studying with one name and then eventually receiving their birth certificate under a different name, either because a Dominican family decided to support them and register the student with their family name or because their father ultimately decided not to offer his name on their birth certificate. These mismatches in the system were problematic both for the student and for the school officials. One district official stated, “If [students] don’t have the information from the *acta de nacimiento*, that might cause them a problem if, for example, they take the national exam and it doesn’t coincide with the name that they have. They have to do a legal process to be able to receive their high school certificate.”⁹¹ This legal process is

⁸⁹ Teacher Interview 18. June 2018. Dajabón

⁹⁰ Teacher Interview 17. June 2018. Monte Cristi.

⁹¹ District Official Interview 3. June 2018. Dajabón.

expensive and complicated and the subsequent lack of certification impedes students's abilities to enroll in higher education. The same district official mentioned that the first national exams were a significant challenge for students that obtained documentation under a name that was different than the one that they initially studied with, saying:

“If they haven't passed the national exam, I can fix their registration in the system, without a problem. There still isn't any birth certificate or any of that. But if they already passed the exam, I can't do anything for them. Now they belong to the national exams. Now, to do that, they need to do another process, with an official record, with a birth certificate, with the registry. What happens? That has been a big headache.”⁹²

In two schools, there was evidence of promising strategies being implemented to counter this challenge. In a district in the province of Monte Cristi, district officials were promoting the implementation of a *carta de compromiso* (contract). Through the *carta de compromiso*, students that did not have their documents would be registered in the system, provided that they signed a document promising that they would ultimately complete the documentation process using the same name that they studied with. Although this process was not a complete guarantee that there would not be name changes later on since these were sometimes out of the students control, it could potentially alleviate some of the certification concerns of teachers and at least have an effect for students and families who were able to control the documentation process.

iii. Entrance to Secondary School and Effects of a New National Exam System

⁹² District Official Interview 5. June 2018. Independencia.

An important development since the most recent extensive report on education for the undocumented in the DR was the elimination of the eighth grade exam and the implementation of a diagnostic exam, which changes grades annually. In 2017, third graders took the exam, and in late May of 2018, during the course of this study, sixth graders took it. The eighth grade exam was previously a significant barrier for undocumented students, who were required to present documentation to take the exam. According to eight of the nine district officials interviewed and all three individuals at the Ministry of Education, the new diagnostic exams are theoretically meant to act only as a tool for evaluating progress within the Dominican education system as a whole, and thus, students are not required to pass the exam to be promoted to the next grade. Theoretically, students are also not required to present documents to take the exam because their performance on the exam is not tied to their ability to continue in school. Their performance is only meant to be considered in the aggregate. However, this new national exam system may have mixed impacts on the ability of undocumented students to remain in school. Some teachers were aware of the lack of documentation requirements for national exam and actually noted that this had positively impacted undocumented students' ability to remain in school. Concerningly, however, some teachers suggested that students were now required to have their documents prior to the first national exam. This misunderstanding could signify that the removal of the eighth grade exam could result in undocumented students feeling that they are going to have to leave school even earlier than eighth grade, thus reducing the benefits of the removal of the eighth grade exam. Evidence was not found indicating that undocumented students had actually been prevented from taking the diagnostic exam in the schools that were studied. However, if students were being told that they would not be able to take the exam or study beyond eighth grade by teachers who

believed that this was the case, this could lead to uncertainty among undocumented students, potentially leading them to leave school before they reached this barrier.

Even with the removal of the eighth grade exam, entrance to secondary school continues to be a significant challenge. Over half of teachers interviewed were still under the impression that documents were required to enter into secondary school, regardless of whether or not there was an eighth grade exam. In two communities, all students and families interviewed reported that students could not attend secondary school without their documents. Most reported that students with Haitian documents could study until the end of high school, but for those students who do not have any documents, eighth grade continues to represent a stopping point. Both the explicit exclusion of students and confusion regarding abilities to go to secondary school contributes to the barriers for undocumented students to continue their schooling. As will be discussed in the following section, misinformation among teachers could have extremely important effects on the motivation of undocumented students, regardless of whether or not school administrators are actually implementing the restrictive policies that teachers believe to exist.

4. Motivation

During interviews with students and officials, one of the most powerful barriers to undocumented students' access to schools was lack of motivation. This motivation was impacted both by perceptions of future opportunities and the school environment itself. Students and teachers were aware that undocumented students would be unable to pursue a university degree. As discussed previously, the majority also anticipated difficulties obtaining certification of secondary school completion. This awareness could be an extremely important deterrent to undocumented students'

motivation complete their studies, particularly for students facing other barriers to education, such as distance from the school building or poverty. One teacher starkly noted, “Without documents, it’s almost not going to be worth anything to study. One has to have documents to use their education in a career. Many of them come to school, they do what they’re supposed to, they’re smart. But the problem is documents.”⁹³

In addition to these anticipated challenges, another important deterrent to undocumented students’ motivation to continue was the pressure they faced from school officials to bring their documents. For students involved in the lengthy, in some cases impossible, process of attempting to obtain documentation, this could serve as a significant detractor from their motivation to continue coming to school. One teacher observed, “Sometimes they leave because they are waiting for their documents. I’ve seen cases of that.”⁹⁴ Under pressure from school officials to bring their documents and fearing that their child would be unable to study without them, undocumented students’ would occasionally use identity documents from someone else. This generated problems for both the school officials, who were unable able to properly verify students in the system, and for students, who were unable to receive accurate certification for their studies. The process of correcting a false name in the system after a student had studied was noted to be lengthy and expensive. An NGO director who had worked with a lot of undocumented students, noted that he had heard several stories of children who had been publicly bullied by teachers or administrators to bring their documents. Alexander*, a twelfth grade student in Dajabón province, stated, “I thought of leaving school, and that would be it. I

⁹³ Teacher Interview 20.

⁹⁴ Teacher Interview 16. (June 2018). Dajabón.

was going through courses and they were asking me so many questions, about my papers, and to escape from so much uncertainty, I was going to leave.”⁹⁵ Among teachers’ who did know the correct policies, some still noted a practice of denying access to schools with documents as a way to pressure students to go get their documents. For students already struggling with the fact that they may not receive certification for their studies, the negative environment generated by these comments could lead students to drop out.

iii. Systemic Themes and Understanding Variation

As noted at the beginning of this section, the findings suggest that there is not one consistent policy of exclusion nor of inclusion for undocumented students among schools in the border region. The variation found even among the sample of eleven schools suggests that there is not one particular barrier that is hindering undocumented students ability to progress through schools as in the past with the document requirement for the eighth grade exam. Instead, the use of individual discretion among teachers and school directors appears to play a crucial role in determining access. Many teachers noted that, in practice, they often decided to either follow or adjust what they believed to be official Ministry policy. In some cases, this appeared to have been to the benefit of undocumented students. One teacher described the level of discretion afforded to teachers, saying, “There are schools that are more strict with [students without documents], that say, ‘Well if they don’t have documents...’ However, here we give them the opportunity, while also of course, following up with the parents to be sure that they get the child’s documents.”⁹⁶

⁹⁵ Student Interview 1. (June 2018). Dajabón.

⁹⁶ Teacher Interview 11. (June 2018). Dajabón.

However, just as there was space for teachers to use discretion to benefit undocumented students if they did not have concrete information on registration policies, there was also ample space for teachers or school directors who wished to abuse the system to exercise discretion to negatively impact undocumented students' ability to register. In the findings, this discretion appeared to most often come to light with respect to the time that students were given to obtain documents before they were told they could no longer attend school. Some teachers mentioned that if a student did not have documents, they would be given a period of a few months during which they would be asked to bring their documents. If students could not present their documents within this allotted time, they would no longer be allowed to attend school. As one district official responsible for the administration of SIGERD noted, "There are some schools or directors that have their own internal norms and rules and they might not all give the same time to students to bring their documents. Some might be stricter than others. Many might give them a month, many might give multiple months. There might be an established time according to the rules of the education law. But it isn't followed. They don't comply with that."⁹⁷ Concerningly, the district official noted, "In the majority of cases, they give the student more time. But some schools give them one more week and if [the student] doesn't bring [their documents], unfortunately, they could be left outside and lose a year of school."⁹⁸

Given the relevance of individual decision making that was found, understanding why variation among schools exists and what factors influence the most positive outcomes for undocumented students could lead to a much more productive discussion of how to improve access

⁹⁷ District Official Interview 5.

⁹⁸ District Official Interview 5.

for undocumented students within the institutional and resource constraints that exist in the Dominican education system. To begin this discussion on bright spots and weak spots of access, through the remainder of this section, it will be analyzed through the similarities and notable differences that existed between the schools that afforded undocumented students access to the classroom and the school where undocumented students were not being registered at all.

1. Similarities

a. Lack of Policy Knowledge at School Level: In all ten of the schools where students were in the classroom and in the school where they were not being registered, teachers and school directors had a wide range of misinformation regarding registration practices. They consistently gave responses that contradicted information provided by the district and MINERD officials (see Fig. 4).

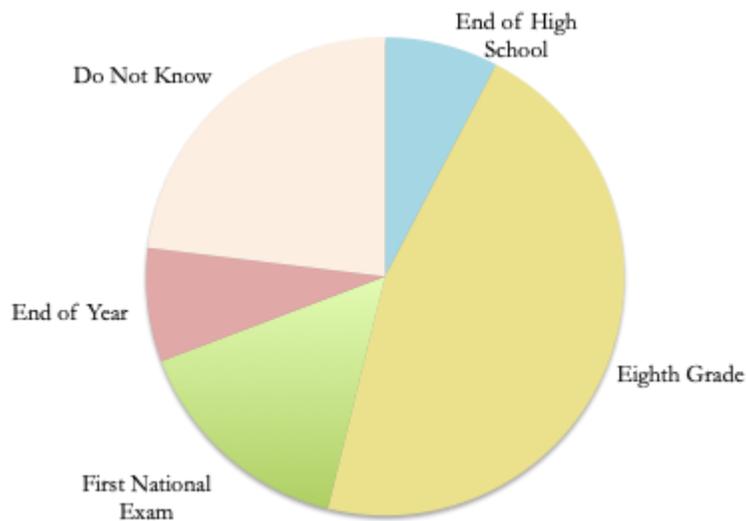


Figure 4. When asked how long undocumented students could study without presenting their documents, teachers (n=23) offered a range of responses, from the one year to the end of high school. The majority of teachers believed that undocumented students could not go beyond eighth grade without their documents.

The school director in the school where children were not being registered reported that undocumented students could study until the end of eighth grade without their documents. Even in schools where it was found that there were undocumented students in schools, teachers and school directors did not consistently report that undocumented students could study until the end of high school according to official policy. In some instances, these responses varied even among teachers within the same school. Thus, the level of policy knowledge among teachers does not appear to be as significant of a determinant of school access as one would expect.

b. Accountability Concerns: The effects of low awareness of correct policies were exacerbated by the absence of consequences for school officials that did not comply with Ministry mandated practices. No teachers mentioned clear consequences for not registering undocumented students. One district official demonstrated the disconnect between Ministry policy and practice by showing a news article in which MINERD stated, “The Dominican government guarantees free access to education for all children and adolescents, regardless of their nationality, migratory status, or whether or not they have an *acta de nacimiento*.”⁹⁹ When asked what happened if schools did not comply with this guarantee, the exchange went like this:

Respondent: No, nothing happens.

Facilitator: Nothing happens. There are no consequences?

Respondent: No, there are no consequences. That was in the past, I don’t know if the current Ministry maintains that position. It’s possible that they changed that order.¹⁰⁰

⁹⁹ “Educación Garantiza Inscripción de Estudiantes Sin Importar Nacionalidad | Ministerio de Educación de La República Dominicana.”

¹⁰⁰ District Official Interview 5. (June 2018). Independencia.

This exchange clearly represents the intersection of low knowledge of policies and little consequences for lack of compliance. When asked what happened if a school official told a student that they could not register in a school, another district official responded, “They can say that, but it’s not correct. The student can look for help from the district or the regional office.” When asked if that school official would face consequences, he stated, “No, the director could be called to attention in this case. But nothing would happen really.”¹⁰¹ One of the Ministry of Education officials interviewed recognized the lack of consequences as a central problem with the system and the administration of SIGERD, saying:

“Consequences.. That is a problem with SIGERD, if not with the entire Ministry of Education- the consequences. All of our laws. Consequences? None. It is a situation in which, if the person knows where to claim their rights, it is resolved. But if the person does not know of the district or where to go to claim their rights, sometimes someone tells them where to claim their rights, but if not, this abuse results in exclusion.”¹⁰²

Schools that afforded higher levels of access to classrooms did not necessarily have higher levels of policy knowledge nor mentions of consequences, suggesting that there was more complexity to the variation in access than levels of knowledge and accountability.

ii. Differing Factors

Policy Knowledge at District Level: Among the eight district officials interviewed in Dajabón, Valverde, and Monte Cristi, where all the schools studied were providing at least some level of access to

¹⁰¹ District Official Interview 1. (June 2018). Dajabón.

¹⁰² MINERD Interview 2.

classrooms, all district officials clearly stated that undocumented students could study up until the end of high school. Some mentioned that there might be difficulties obtaining certification upon completion of high school, but they consistently reiterated that undocumented students were entitled to study until the end of high school. In contrast, in the case of the school where undocumented students were not being registered, the district official responsible for overseeing registration in that district stated that he was uncertain of the current policy for undocumented students.

Integration in School Community: In the community in which undocumented students were not being registered, there was a distinct separation between individuals of Haitian descent and the remainder of the community. As noted, the community of Haitian descent were primarily employed by two large agricultural companies and experienced notably lower living conditions than the remainder of the community. The paved road ended at the entrance to the area where the majority of Haitians and those of Haitian descent lived. There appeared to be little interaction between individuals of Haitian descent and the remainder of the community. In contrast, two of the three undocumented students interviewed that were able to gain access to secondary schools were living with families that were well established within the community where the school was located. The third lived in village immediately outside of the town that was home to both Dominicans of Haitian descent and Dominicans. Both students that were living with Dominican families noted the importance of the support of the Dominican families when navigating the school registration process. The presence of advocates able to assist these students to navigate the registration system and claim their rights appears to be essential. An official at the Ministry of Education noted this particularly poignantly in an interview, saying:

“If families have a clear understanding of their right, they can make other actors respond...

When the parents are empowered and they say my child has the right to education, they go to the school. If the school doesn't attend to them, they go to the district. If the district doesn't attend to them, they go to the regional office. If the regional office doesn't attend to them, they go to the media and make sufficient noise until their rights are realized.”¹⁰³

Undocumented students needed to have both knowledge of their rights and adequate social capital within the education system and district offices to be able to adequately apply the pressure that the Ministry of Education official describes. Integration within the school community and interactions with school officials and powerful families within the school community appear to be an extremely important component of navigating this process.

VI. Discussion

The findings would suggest that the situation of undocumented students in the Dominican Republic has somewhat improved since Drake and Reyes' 2016 report and Alrabe et al.'s 2013 report. Among the school officials and undocumented individuals that commented, there was a shared perception that access had increased. Despite this, significant barriers to education for undocumented students remain. This report does not, by any means, posit that the appropriate measures to ensure the inclusion of undocumented students are being adequately applied. However, progress has been made. The removal of the eighth grade exam represents an important step towards the inclusion of undocumented students in secondary schools. As Drake and Reyes (2016) and Alrabe et al. (2013)

¹⁰³ MINERD Interview 1.

noted, prior to the reforms to the national exam system in 2016, undocumented students were barred from taking the eighth grade exam.¹⁰⁴ School officials, district officials, and individuals at the Ministry of Education all also noted in interviews that historically undocumented students rarely studied beyond the eighth grade national exam. Undocumented students also mentioned that the eighth grade exam almost always represented a stopping point for those without documents in the past. The new diagnostic exams could alleviate this barrier, improving the opportunities for undocumented students to study through secondary school. However, these findings would suggest that the effect of this change might not currently be fully realized, as many school officials believed that students could not study beyond eighth grade without documents, regardless of the exam. Furthermore, there was a misconception that students required documents to take the diagnostic exams, a belief that some all Ministry of Education officials reported to be false. This misconception might cause the removal of the eighth grade exam to have negative consequences, as undocumented students are told that that they will have to stop studying even earlier than eighth grade. There is a need for significant measures to ensure that teachers are aware of the correct exam procedures so that the correct information might be relayed to students.

a. The Role of Teachers

Enhancing teachers' abilities to support undocumented students will be critical to future efforts aimed at the inclusion of undocumented students. Undocumented students noted teachers as one of the most important determinants of their ability to remain in school. When facing the

¹⁰⁴ Alrabe et al., "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education"; Reyes and Drake, "Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education (Legal Update)."

challenges associated with the documentation and education process the support of teachers is essential. Thus, it is critical that teachers have the correct information and are able to provide students with the correct information. Particularly for students coming from low-income families or migrant families with little social capital within the education system, teachers represent the primary face of the education system and education policy for undocumented students. Although in many cases, they might not be responsible for the direct registration of students in the system, if they are providing incorrect or discouraging information to students, they will not be able to provide the necessary support to high-risk undocumented students facing many other deterrents. They are also critical determinants of the classroom culture and whether or not students have a negative experience in the classroom. Ensuring that they receive adequate training and resources to support undocumented students is vital in any effort to ensure that undocumented students are not pushed out of school due to bullying, pressure to bring their documents, or a lack of motivation.

It was found that teachers were often afforded significant discretion with regards to the ways in which they dealt with undocumented students. When they were unaware of the correct policies, this sometimes resulted in positive deviation as teachers allowed students to remain in schools even when they believed that this was against Ministry policy. However, the findings would suggest that their uncertainty was equally if not more likely to result in negative deviations from the correct policies, as teachers suggested that when presented with an undocumented student they would not register them in the electronic system or inform them that they could only remain in schools for a few months until they brought their documents. As discussed earlier, even if administrators did not actually bar students from schools after the time that they were allocated to bring their documents,

this discourse had important negative consequences on students' motivation to remain in schools. Many of these teachers were operating in lower resource environments, in which their attention and time was often divided between trying to adapt to the new extended school day and manage other day to day challenges of teaching. Only the most exceptionally dedicated teachers appeared to go above and beyond to determine the correct policies and take the time and effort to navigate systems to implement them. Publicizing these policies more clearly and creating clearer incentives for teachers to implement them will be essential to ensure more widespread implementation by teachers operating in challenging contexts.

b. The School Environment

As discussed throughout the findings, the majority of dropouts of undocumented students were not a result of an educator explicitly forcing them out of schools. Dropouts were often a result of a complex interaction of factors. Each undocumented student experienced a unique web of these factors, which could lead to them leaving school early if they were not provided with adequate support. The stories of undocumented students suggested that not being registered in electronic registration systems, being consistently- often publicly- pressured to bring their documents, being unsure of whether or not they were going to be able to graduate, and seeing little use for an education in a labor market that was contingent on documents, often all combined in some way to drive students out of schools. If students are receiving negative treatment in the classroom, it will be irrelevant to ensure that policies mandate their inclusion since they will likely be forced out implicitly. Recognizing that the story of the educational experience of undocumented students in the DR is much more

complicated than explicit exclusion has important implications for the type of support that should be advocated for undocumented students.

c. Implications of Variation Within the System

As noted throughout the results, variation in access to schools was an important finding of this report. Among all schools, both those that had undocumented students in the classroom and those that did not, there were low levels of policy knowledge and accountability measures. These consistently low levels suggest that there are other important determinants to school access, beyond the policy and accountability measures that are traditionally understood to be crucial. The finding that integration of undocumented students and contact with school officials was essential suggests that there is an important role for support professionals to help undocumented students obtain the access they are entitled to.

d. Recommendations

Based on the findings and analysis, the recommendations to the various stakeholders involved in the issues are as follows:

I. Dominican Government and Ministry of Education

- a) Engage in policy awareness campaigns among teachers, secretaries, and school directors.
 - i. In teacher and director workshops, emphasize the correct policies for the registration of undocumented students in SIGERD.
 - ii. In teacher and director workshops, emphasize that documents are not required to take diagnostic exams.

- iii. In teacher and director workshops, clearly state that undocumented students are able to study until the end of high school.
 - iv. Provide teachers and school directors with the correct information regarding the policies outlined above and make this information available on the MINERD website.
- b) Develop and execute clear consequences for not following the correct registration procedures.
- c) Expand the program run through the Office of Community Participation that aims to help children obtain their documents.
- i. Ensure that this program is publicized at the district and school level through workshops and memos.
 - ii. Engage in awareness campaigns about documentation and this program in rural communities.
 - iii. Expand funding for this program so that it may further address documentation concerns.
- d) As part of the implementation of workshops through the extended day program, develop technical courses and technical certification programs. Over a quarter of teachers interviewed stated that technical courses would be one of their top policy suggestions for MINERD. Implementing technical courses such as agricultural strategies, entrepreneurship, or construction would provide improved opportunities for both documented and undocumented students.
- e) Publicize and expand strategies such as the *carta de compromiso*, which allows students to guarantee that they will eventually obtain their documents under the name that they study

with. This may alleviate concerns regarding electronic registration that are related to fears of future name changes.

- f) Consider implementing City Identification programs. These programs have been implemented in multiple cities in the United States and provide undocumented persons with an identification card that can be used at hospitals or schools for identification purposes, without necessarily requiring proof of residency.
- g) Train school personnel or hire additional personnel to support undocumented students to navigate the intersections of education and documentations bureaucracies.
- h) Recognize that it is not sufficient to simply mandate inclusion for undocumented students. Ensure that adequate support mechanisms are made available for undocumented students through school and supplementary programming.
- i) Ensure that *bateyes* and communities have a point of contact that regularly visits communities to clarify documentation processes and updates community members about changes to laws and forms of documentation.

II. United States Government and Department of Labor

- a) Pressure the Dominican government to implement and execute the above strategies.
- b) Support the implementation of the strategies highlighted here by making grant funding available and providing technical support.
- c) Undocumented families and organizations working with them consistently reiterated that cost was one of the most significant barriers to their ability to access documents. United States

government agencies should make targeted grant funding available for organizations that demonstrate an ability to work with communities to obtain their documents.

- d) Ensure American companies that employ undocumented workers are held accountable for ensuring the children of their workers access to education.

III. Non-Governmental Organizations

- a) Support the Office of Community Participation in its expansion and execution of its documentation program.
- b) Adopt a holistic support model that focuses on accompanying undocumented students through the documentation process *and* the school process. This model could take the form of assigned mentors.
- c) Participate in awareness raising campaigns regarding the right to education, particularly in highly marginalized or isolated communities.
- d) Work with community members to execute programs to help individuals obtain their documentation. Whenever possible, do so by using community members as program leaders and facilitators.

e. Directions for Future Research

This report does not intend to make a conclusive assessment of the state of education for undocumented students in the Dominican Republic based on this study. It does; however, intend to comment on the themes that were witnessed in the sample and discuss the possible implications of these themes. The variation that were found throughout this research suggests that the experience of undocumented students is not uniform throughout the Dominican Republic. Better understanding

this variation is a very important area for future research. It would be extremely valuable for future research to explore the effect of geographic region, school/class size, teacher experience and training, district accountability measures and other distinguishing factors on the levels of access to schools afforded to undocumented students. Better understanding these factors could allow for more productive discussions of the ways to improve access for undocumented students even within a challenging context. Future research should also explore this issue in a broader geographic area, taking into particular consideration the effect of living in urban versus rural areas. The research also focused primarily on the roles of teachers and school administrators. However, the findings suggest that secretaries are responsible for much of the registration process and may play an even more significant role than teachers in determining access to SIGERD. Future research should explore their role, levels of discretion, and policy awareness.

VII. Conclusion

As evidenced throughout this report, the issue of access for undocumented students in the Dominican Republic is complex and evolving. Based on the results, there is a need for more holistic support mechanisms for undocumented students and conversations regarding the role that teachers can and potentially should be providing to facilitate access. This report addresses just one challenge for undocumented youth in the Dominican Republic. Ultimately, although it is essential to address school exclusion, ensuring that undocumented students are included in schools is a short-term solution to a deeply structural problem. Without documents, even high school graduates will be unable to get a job in the formal labor market, open a bank account to deposit their savings, or leave their community for fear of being stopped at a military checkpoint. My hope is that this report raises

awareness of the challenges of undocumented students, making clear the urgency of the need to work with undocumented families to obtain their documents.

VIII. Acknowledgments

This research and the growth that I experienced as a result of this experience would not have been possible without the support of a large group of individuals, to whom I am incredibly grateful. I thank the teachers, school directors, district officials, and leaders at the Ministry of Education who took the time out of their day to share their opinions and experiences with me. I was constantly amazed by how generously you offered your time and your expertise. I am also deeply thankful for the students and families who shared their stories with me. It is an honor to hear and share your stories and to have been able to meet you.

None of this research would have been possible without the advising of Raimy Reyes and Ivanna Molina Peña at the UNHCR. Thank you for introducing me to this issue, helping me to navigate the nuance of this research, and inspiring me to use my findings to confront the challenges that I discovered. I am also very appreciate of individuals at the DREAM Project, OMBICA, Yspaniola, and CEDES0 that offered their time and their expertise. This research was funded by the Kellogg Institute at the University of Notre Dame, and I am indebted to Holly Rivers, Rachel Thiel, and everyone at Kellogg and the University of Notre Dame who have worked to make my past two summers in the Dominican Republic possible. I am thankful to all of the faculty at Notre Dame who advised me on this project, particularly my advisor, Dr. Jaimie Bleck, who has so generously offered me her time and advice since the very beginning of this project and from whom I have learnt so much about how to execute meaningful research.

I am grateful to all those at United States Peace Corps who welcomed me into their communities and schools, particularly Mariela Vazquez and Julie Sadofsky who acted as my in country advisors and whom I am blessed to call my friends. Julie, thank you for your advice, your friendship, and for teaching me so much about what it means to be a strong woman. Mariela, thank you for your wisdom, for making every joke I've ever wanted to make, and for welcoming me into your Dominican family. To those who have become my Dominican family- Mary Luz, Jaimie, Mikaya, Samantha, Angela, Turca, and Aneesa- and all those in Restauración who laughed at my attempts to joke in Spanish, offered me coffee, and made me feel so welcome, thank you.

THE VIRTUAL NUDGE

RONGXIN KELLY WANG is a senior from the College of Arts and Letters pursuing a degree in Economics and a minor in Philosophy, Politics, and Economics. This thesis was first inspired by a class reading on Libertarian Paternalism for the Justice Seminar. Kelly had the privilege to pursue the spark under the guidance of the Glynn Family Honors Collegiate Professor Paul Weithman. Throughout the research and writing process, Kelly gradually disentangled her gravitation towards the topic. After graduation, she is excited to work in the analytics consulting field.

ABSTRACT

In this thesis, the author will analyze the applicability of Libertarian Paternalism in the digital commercial realm – specifically, to the social media platform of Facebook and the justification of its self-regulatory role. Data misuse incidents, such as the data harvesting of Cambridge Analytica, have directed attention to digital normative responsibilities previously overlooked. On the one hand, more self-regulations have been imposed to respond to criticisms. On the other hand, through those self-regulations, the social media giant gains increasing control over its platform and users. Are those self-regulations paternalistic and to what extent? The central argument is that Facebook is justified in being a self-regulator because justifications of Libertarian Paternalism hold against the potential counter-arguments. People are subject to a similar, if not higher, level of behavioral biases in their digital lives.

Introduction and Structure

“We exploited Facebook to harvest millions of people’s profiles. And built models to exploit what we knew about them and target their inner demons. That was the basis the entire company was built on.”¹⁰⁵ On March 17th, 2018, Christopher Wylie, an internal whistleblower, disclosed the source of data employed in the daily business of Cambridge Analytica, a commercial and political data analytics firm specializing in targeted marketing and campaigning. The personal information of 87 million Facebook users¹⁰⁶ was taken without their knowledge or permission and, with big data analysis, applied to create types of psychographic profiles that improve the accuracy and efficacy of the targeted campaigns.

Ever since the outbreak, unprecedented attention has been drawn to the companies involved as well as the much-overlooked high value of data privacy. Representatives from both Facebook and Cambridge Analytica have been questioned in hearings organized by the US Congress; the UK Digital, Culture, Media and Sport Committee; and the Civil Liberties Committee in the European Parliament. Both companies suffered financially. Facebook witnessed a nearly 20% drop in stock price after releasing its second-quarter financial results on July 25th, 2018.¹⁰⁷ In May 2018, Cambridge Analytica

¹⁰⁵ Cadwalladr, C. and Graham-Harrison E. (2018, March 17). Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach. *The Guardian*. Retrieved from <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

¹⁰⁶ Schroepfer, M. (2018, April 4). An Update on Our Plans to Restrict Data Access on Facebook. *Newsroom*. Retrieved from <https://newsroom.fb.com/news/2018/04/restricting-data-access>.

¹⁰⁷ Stock Chart. (2018). [Graph illustration Facebook Investor Relations Plot Oct 31, 2018]. *Investor Relations*. Retrieved from <https://investor.fb.com/stock-information/?section=stockdata>.

applied for bankruptcy and insolvency proceedings to cease its operations due to “the unfairly negative media coverage.”¹⁰⁸

The data harvesting process traces back to the unethical data collection by an academic researcher named Aleksandr Kogan. He first legitimately set up a Facebook application to collect data from survey participants for academic purposes. Later, however, he continued to scrape data through this academic channel for commercial uses. Further investigations of the incident have diverted public attention to Facebook’s role for protecting users’ data privacy. In response, Facebook has updated its policies and exerts increasing control over the platform. It then exhibits characteristics of a paternalist.

Paternalism is defined as the attempt, using means other than reasoned persuasion, to induce other people to act in ways for their own benefits, either directly benefiting them or preventing them from harm.¹⁰⁹ Facebook as a self-regulator may be categorized as a paternalist if it implements policies that are paternalistic. Paternalism and paternalistic policies typically face challenges based on two grounds: autonomy and welfare. Given its similar position, Facebook may become subject to questions a paternalist can face, such as: “Are you justified to impose paternalistic interventions on autonomy and welfare grounds?”

One type of paternalism has been justified against those challenges. Developed by Cass Sunstein and Richard Thaler, Libertarian Paternalism denotes the type of paternalism that preserves

¹⁰⁸ Cambridge Analytica and SCL Elections Commence Insolvency Proceedings and Release Results of Independent Investigation into Recent Allegations. (2018, May 2). *CA Commercial News*. Retrieved from <https://ca-commercial.com/news/cambridge-analytica-and-scl-elections-commence-insolvency-proceedings-and-release-results-3>.

¹⁰⁹ Scoccia, D. (2008). In Defense of Hard Paternalism. *Law and Philosophy*, Vol.27, No.4, p.352.

freedom of choice and thus renders the typical challenges invalid. Libertarian Paternalism is widely used to support libertarian paternalistic policies – nudge – in the public policy field.

The central argument of this thesis is that, due to people’s behavioral biases and value of data privacy in the digital realm, Facebook is justified to implement libertarian paternalistic policies to its own platform. It should design the choice architecture in such a way as to provide better means to promote the good of its users. This position is justifiable against potential criticisms on autonomy and welfarist grounds through an empirical examination similar to that of Libertarian Paternalism in the public policy field.

The thesis is structured to sequentially refute three objections under the null hypothesis, which are listed below. Admittedly, the list of objections is by no means exhaustive. However, it provides the readers with a basic coherent framework to approach the justifiability question.

NULL HYPOTHESIS. *Facebook cannot be justified in being a self-regulator through Libertarian Paternalism.*

The null hypothesis is what the thesis seeks to refute overall.

OBJECTION 1 (Loose Comparability). *The scenarios are not comparable.*

Objection 1 will be examined in Section I. The section will offer a journalist account for the data harvesting process and the updates Facebook made in response to the incident. Two relevant background theories are explained in this section: 1) behavioral economics and types of behavioral biases, and 2) Libertarian Paternalism and its use in public policy. The section demonstrates the

comparability between Facebook platform builders and social choice architects. In both environments, people are subject to behavioral biases that lead them astray from their ends, and nudges are implemented to provide better means.

OBJECTION 2 (Soundness of Doctrine). *The scenarios are comparable, but Libertarian Paternalism itself is flawed.*

Objection 2 will be examined in Section II. The section will discuss defenses of Libertarian Paternalism on autonomy and welfarist grounds. As the section will analyze, the thin version of autonomy is only used as a proxy for welfare. The thick version of autonomy is confined to System 2, and corresponding criticisms are invalid. Welfarist concerns seem strong theoretically but lose force empirically.

OBJECTION 3 (Applicability). *The scenarios are comparable, and Libertarian Paternalism itself is not flawed, but the justifications do not justify in Facebook's role as a self-regulator.*

OBJECTION 3.1. *Because Libertarian Paternalism does not hold in the digital environment.*

OBJECTION 3.2. *Because although Libertarian Paternalism holds in the digital environment, Facebook's policies are more paternalistic than libertarian paternalistic.*

Objection 3 and its components will be examined in Section III. The section will provide examples of Facebook's updates by category. A close look at those examples shows that most of Facebook's updated policies are not paternalistic in the first place. For those which are paternalistic, they prove to be libertarian based on the same lines of defense for Libertarian Paternalism.

Section I. Cambridge Analytica

Behavioral Biases and Nudge

The concept of behavioral biases is central to two separate disciplines: economics and psychology. Conventional rational-agent models in economics assume that everyone behaves as a rational agent. However, this assumption has been challenged by psychological findings, which has led to the rise of a relatively new field – behavioral economics. Appendix A offers a simple explanation of the most influential psychology theories that have contributed to the development of behavioral economics: the theories of bounded rationality and two cognitive systems.

In a nutshell, “bounded rationality” indicates rationality under constraints of cognitive limitations. It relaxes the rational-agent assumptions of traditional economics models. The latter theory, the dual process theories of two cognitive systems, presents the origin of “bounded rationality.” People have two distinctive cognitive systems, generically labeled as “System 1” and “System 2.”¹¹⁰ In terms analogous to everyday concepts, System 1 roughly corresponds to intuitive thoughts and System 2 to deliberate reasoning.¹¹¹

Behavioral biases occur when System 1 and System 2 have contradictory views, and System 1 prevails due to an inactive System 2. Under this prevalence, even though a person uses the System 2 to

¹¹⁰ Stanovich, K. E. and West, R. F. (2000). Individual differences in reasoning: Implications for the rationality debate? *Behavioral and Brain Sciences*, Vol.23, No.5, p.658.

¹¹¹ Kahneman, D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics. *American Economic Review*, Vol.93, No.5, p.1450.

devise his or her ends, those ends may not be promoted because System 1 does not recognize them and may take actions to move in the opposite direction.

This discrepancy between the two systems is not captured by conventional economic models. In fact, the discrepancy demonstrates the fundamental difference between conventional and behavioral economic models. The conventional models are based on rational-agent assumptions. They intend to describe choices of reasonable men¹¹² who make perfect and ceaseless use of System 2. Such models are prescriptive, since they pertain to what is sensible and reasonable to do. By contrast, behaviorally-oriented models forego the assumption of rationality. They consider people as demonstrating “bounded rationality.” In this way, those models are more descriptive than prescriptive, as they approximate the frequent reliance on System 1 and occasional malfunction of System 2 in reality.

As many traditional market designs in public policy rely on conventional economic models, behavioral findings have caught the attention of public policy makers. When the theoretical assumptions do not hold in the face of behavioral biases, behavioral market failures may occur. Nudge, the type of public policy supported by Libertarian Paternalism, seeks to “remedy behavioral market failures”¹¹³ rooted in behavioral biases.

Nudge seeks to mitigate such behavioral market failures by rethinking market designs. The fundamental rationale is to predict behavioral biases in the market scenario and to consider the impact

¹¹² Kahneman, D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics. *American Economic Review*, Vol.93, No.5, p.1455.

¹¹³ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1836.

of such biases when designing markets. Nudge intends to create an “as-if” rationality within choice architecture,¹¹⁴ the social environment where people make choices.¹¹⁵ The “as-if” rationality means that the social environment is designed in such a way that even System 1 will make the same decision as System 2. In other words, the market design will lead people to choose the best means to promote their ends, whether they fulfill all assumptions of rationality or not. When System 1 is fully in charge, the “as-if” rationality helps mitigate behavioral biases. When System 2 operates, the choice architecture offers a good basis to its reasoning.

The Cambridge Analytica data misuse reveals potential behavioral biases users are subject to in their digital lives. Here the thesis will examine the definitions and associated nudge policies for four relevant biases, namely, “present bias,”¹¹⁶ “ignoring shrouded attribute,”¹¹⁷ “above average effect,”¹¹⁸ and “availability heuristic.”¹¹⁹ It is worth noting that, from this perspective, the data misuse can be considered as a behavioral market failure in the digital realm. If users consider protecting data privacy online as an end, some forms of virtual nudge will be helpful to provide an “as-if” rationality.

Present bias is rooted in the myopic characteristic of System 1 and is prevalent in self-control problems, such as procrastination and inertia. When driven by the present bias, people may make choices that have short-term net benefits but long-term net costs.¹²⁰ For example, they may keep

¹¹⁴ Ibid., p.1895.

¹¹⁵ Ibid., p.1879.

¹¹⁶ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1842-1843.

¹¹⁷ Ibid., p.1845-1848.

¹¹⁸ Ibid., p.1849.

¹¹⁹ Ibid., p.1851.

¹²⁰ Ibid., p.1843.

smoking despite the risk of premature death or delay enrolling in a retirement plan.¹²¹ Techniques to overcome the self-control problems are available in both private markets and public policies. Pre-commitment strategies help people tie their hands and smooth their utility overtime. For example, the 401(k) plan prompts people to save during their younger working age so that those savings can improve their living standards after retirement.

People's natural limitation on attention leads to the bias of ignoring shrouded attribute. As System 2 has its functional limitations, many matters are left for System 1 to handle. Unfortunately, System 1 has a tendency to ignore things that are not salient, whether they are important or not. This inclination is especially strong when the salience of important attributes is "hidden" by the complexity and information overload¹²² of the choice-making process. Information provision techniques, such as checklists and reminders, have been implemented to promote salience. An excellent example of such techniques is the fuel-economy labels produced by the Department of Transportation and the EPA in 2011. Those labels explicitly display the economic effects of fuel economy, a type of "add-on" cost that is often overlooked in consumer decisions.¹²³

The above average effect refers to the optimistic view that one has better luck than the average person. This bias is considered to be resulted from System 1's limitations on discerning probability. This mentality is found among adolescent smokers: while they do not underestimate the statistical

¹²¹ Karlan, D. et al. (2010). Getting to the Top of Mind: How Reminders Increase Saving. *Yale Economics Department*, Working Paper No. 82. Quoted in Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1843.

¹²² Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1846.

¹²³ Sunstein, C. R. (2011). Empirically Informed Regulation. *The University of Chicago Law Review*, Vol.78, No. 4, p.1373. Quoted in Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1847.

risks on health faced by the population of smokers, they believe that their personal risk is less than that of the average smoker.¹²⁴ This unrealistic optimism¹²⁵ further implies the asymmetry in how people process information. They give unequal weights to desired and undesired information and are found to be influenced more by good news than bad news.¹²⁶ To mitigate inaccurate judgements caused by this bias, information provision policies incorporate techniques, such as graphic warnings,¹²⁷ to intensify the undesired information.

Availability heuristic is another technique frequently used by System 1 but not System 2. The heuristic refers to the method System 1 applies to quickly assess probabilities. It considers whether a recent event comes readily to mind¹²⁸ and makes judgments based on this availability. Naturally, the availability is decided by random information one happens to access and one's individual emotional response to the information. Consequently, the judgment is prone to err. For example, the Polar Vortex has caused extremely low temperatures in Chicago in 2019 and may have led many home water pipes to freeze and explode.¹²⁹ Consider when an average Chicagoan, without any background in environmental science or relevant fields, is approached by a home insurance salesman. Under an

¹²⁴ Slovic, P. (1998). Do adolescent smokers know the risks? (Are the Risks Worth Regulating?: Tobacco v. the FDA). *Duke Law Journal*, Vol.47, No.6. Quoted in Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1849.

¹²⁵ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1848.

¹²⁶ Sharot, T. (2012). *The optimism bias: A tour of the irrationally positive brain* (1st ed.). New York: Pantheon Books. Quoted in Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1850.

¹²⁷ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1851.

¹²⁸ Tversky, A., & Kahneman, D. (1973). Availability: A heuristic for judging frequency and probability. *Cognitive Psychology*, Vol.5, No.2, pp.207-221. Quoted in Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1851.

¹²⁹ Webber, T., and Jeff K. (2016). Historic deep freeze could be followed by unprecedented thaw in Midwest. *Chicago Tribune*. Retrieved from <https://www.chicagotribune.com/news/nationworld/ct-polar-vortex-deep-freeze-20190131-story.html>.

extreme effect of the availability heuristic, the Chicagoan will believe that water pipe leakages are likely to happen in winters, although the water pipe at home had never exploded in the past decade. Public policies seek to offset judgment errors of this sort by incorporating well-designed disclosure strategies¹³⁰ to demonstrate the objective circumstances.

The behavioral biases and their paired public policy solutions noted above may have already become intuitive and well-known due to their impact on the daily routines people live out. Students may walk into a school cafeteria with the layout designed to nudge healthy choices. The working population may choose to enroll in 401(k) just because it is the default option. However, the online behavioral biases and their paired virtual nudge are yet to catch people's attention.

The Data Harvesting Process of Cambridge Analytica

Kogan's identity as an academic researcher played a central role in the data harvesting process. Different stages of the data harvesting process were revealed in his written evidence submitted to the UK Parliament.¹³¹ His partnership with Facebook started from legitimate data collection for academic research but later evolved into a cover for commercial activities. Before the data harvest was revealed, he collected both macro-level and individual-level data from Facebook for indicated academic purposes. Subsequently, he provided them for SCL Elections, the commercial data mining company that owns Cambridge Analytica as a subsidiary.

¹³⁰ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1852.

¹³¹ Kogan, A. (2018, April 16). Written evidence submitted by Aleksandr Kogan. *Parliament UK*. pp.1-4. Retrieved from <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Written-evidence-Aleksandr-Kogan.pdf>.

Kogan's CPW Lab App was created for legitimate academic purposes. As a founder and director of the Cambridge Prosociality and Well-being Laboratory (the "CPW Lab"), Kogan conducted research regarding friendship connections and emoticon usage at the University of Cambridge. All his academic work related to social media was reviewed and approved by the University's ethic committees. Through academic collaborations, Facebook provided him with macro-level datasets, aggregated at the country level, that are inaccessible to commercial data collectors. To pair with those aggregate data, Kogan created a Facebook application called the CPW Lab. Through this Facebook App, he collected information of approximately 5,000 to 15,000 survey applicants and their friends in an anonymized manner.¹³² Terms and conditions of the CPW Lab application indicated the academic purposes for data uses.

Kogan's academic and commercial activities intertwined as he registered a company, Global Science Research ("GSR"), whose data collection was interconnected with his academically-focused CPW Lab App. GSR provided SCL with requested specified demographic and personality data and received collection fees in return. Despite this shifted purpose of data collection, Kogan continued to use his previous channel of the CPW Lab App by simply changing its name to the "GSR App." Instead of restarting the research recruiting process, the "GSR App" continued its access to Facebook information of CPW Lab survey participants. The only changes were in the terms and conditions. References to academic use and the University of Cambridge were deleted, and the range of permission was updated:¹³³

¹³² Ibid.

¹³³ Ibid., p.3.

If you click “OKAY” or otherwise use the Application or accept payment, you permit GSR to edit, copy, disseminate, publish, transfer, append or merge with other databases, sell, license (by whatever means and on whatever terms) and archive your contribution and data . . . and grant GSR an irrevocable, sublicensable, assignable, non-exclusive, transferrable and worldwide license to use your data and contribution for any purpose.

Regardless of how participants perceived the new application, Kogan successfully collected and performed analysis on data of survey participants and their friends in, firstly, 11 specified states in late 2014 and, later, all 50 states in early 2015.¹³⁴ The data included the demographic information and “likes” activities. The analysis provided for SCL included personality scores and certain predictions of the participants and their friends.

Multiple lessons can be drawn from the data harvesting process of Cambridge Analytica. Some argue that the oversight and restrictions regarding data access for academic purposes badly need review and updates.¹³⁵ Review requirements are loose when applied to most online data access. Some blame Facebook for its loopholes and loose enforcement of data policies. According to Wylie, although Facebook’s updated restrictive API banned GSR’s way of data harvesting in 2014,¹³⁶ GSR harvested data of survey participants and their friends until late 2015.¹³⁷ While each of the numerous arguments has its own forces, here this thesis zooms in to the one perspective of behavioral biases. Users are subject to behavioral biases due to the counter-intuitiveness of the online environment. Kogan’s

¹³⁴ Ibid.

¹³⁵ Anonymous. (2018, March 29). Cambridge Analytica controversy must spur researchers to update data ethics. *Nature*, Vol.555(7698), pp.559-560.

¹³⁶ House Energy and Commerce Questions for the Record. (2018, June 29). p.111. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹³⁷ Kogan, A. (2018, April 16). Written evidence submitted by Aleksandr Kogan. *Parliament UK*. p.3. Retrieved from <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Written-evidence-Aleksandr-Kogan.pdf>.

previous academic research gained his App trust from the survey participants, and the data harvesting took advantage of this trust and the online behavioral biases that Facebook's platform failed to address.

The data harvesting demonstrates people's behavioral biases in the digital realm. To all appearances, the research mechanism of the application remained unchanged – participants logged into Facebook through the GSR App portal and gave consent. However, the consent was unlikely to be fully voluntary. In fact, participants may have neither read the updated terms and conditions nor noticed changes between the GSR App and the CPW Lab App except for the names. Here the analysis will focus on the four biases discussed earlier: “present bias,” “ignoring shrouded attribute,” “above average effect,” and “availability heuristic.”

The perspective of behavioral biases is likely to be applicable here, because in general people expect log-in to be a quick decision and put System 1 in charge. As the GSR App required consent only before participants logged into their Facebook accounts, they most likely functioned under System 1 to give the consent. The prevalence of System 1 left participants to behavioral biases mentioned above. Under present bias, they would weigh the short-term benefit of accessing Facebook more than the potential long-term loss of data privacy.

The probability of losing data privacy may have been underestimated due to “availability heuristics” and “above average effect.” Before the Cambridge Analytica data harvesting, there was no large-scale data misuse in academia. System 1 may easily conclude that no available cases in the cognitive system could flag the log-in as featuring high risk. Furthermore, the academic nature of the App's data use may also lift up System 1's unrealistic optimism. When making the log-in decision, System 1 may quickly draw on the general trust in academia and the developed smooth relationships

with the CPW Lab researchers. Therefore, participants may consider their risk-level to be much lower than average, even if they were fully clear about the statistical probability of data privacy violation.

In addition, the complicated procedures to access and understand the new terms and conditions “shrouded” the changed purpose of the App’s data collection. The terms and conditions were presented in the form of a link: when participants logged into Facebook through the GSR App portal, Facebook would provide a link to the GSR App’s terms and conditions.¹³⁸ If a participant is to examine the new terms and conditions, he or she has to complete a two-step process. Firstly, he or she must click on the link and take time to read through the entire new statement and, secondly and more importantly, he or she must understand the implication before giving consent. With the accumulated effects of behavioral biases discussed above, participants would very unlikely go through all this trouble. Consequently, they may have remained unaware of the new App’s purpose but kept giving consent to log in through the new App as an established routine.

A close consideration of the new terms and conditions strongly supports the explanations above. The consent to the new terms and conditions indicates a strong yield of rights – the “irrevocable, sublicensable, assignable, non-exclusive, transferrable and worldwide license to use your [one’s] data and contribution for any purpose.”¹³⁹ On the one hand, the updated terms and conditions stated implicitly the non-academic purpose of the new App, so careful participants could not have been motivated by a sacrifice for academia. On the other hand, in his written evidence, Kogan did not

¹³⁸ Kogan, A. (2018, April 16). Written evidence submitted by Aleksandr Kogan. p.3. *Parliament UK*. Retrieved from <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Written-evidence-Aleksandr-Kogan.pdf>.

¹³⁹ *Ibid.*

mention any economic benefits extended to participants in this project, which eliminates powerful economic incentives. A simple cost-benefit comparison rules out the possibility that System 2, unless one identifies a sense of humor in this wording and derives extremely high welfare from it, was fully in charge. Due to the absolute unfairness of the terms and conditions, even System 1 would flag the new App as risky. It naturally follows that participants were heavily reliant on System 1, whose biases restrained them from even reading the updated terms.

As a result, though having updated terms and conditions to meet *de jure* conditions for a voluntary consent process, Kogan's reuse of the CPW Lab App exploited behavioral biases of participants in his previous study for the commercial data collection.

Facebook's Unstated Responsibilities

The data harvesting by Cambridge Analytica reveals the technical loopholes and problems caused by Facebook's loose enforcement of its policies. The disclosure induced public disappointment of Facebook's negligence, negligence towards responsibilities previously less noticed. In Zuckerberg's hearing, questions proposed by Congress reflect the implicit expectations from the public.

The central loophole is the open access to friends' data associated with Facebook Login and Graph API (application programming interface) V1.¹⁴⁰ APIs are "basic technologies that enable two computing systems to 'talk' to one another."¹⁴¹ Before 2014, Facebook's Graph API allowed users to

¹⁴⁰ House Energy and Commerce Questions for the Record. (2018, June 29). p.3. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹⁴¹ *Ibid.*, p.20.

log into third-party applications and share information about friends with those applications, as long as their friends give users access to their information on Facebook.¹⁴² For example, users could log into a music playing application with their Facebook account through Facebook Login. After logging in, users could synchronize their list of Facebook friends and corresponding activities on the music application through the Graph API. Users may see what songs their friends listen to and what artists they follow. In other words, the Graph API expanded the “socially connected” experience on Facebook to other platforms.

However, on the flip side of this convenience, the feature created obstacles for tracking the data collection and data use of software developers. In 2013, the old platform policy enabled Kogan’s CPW Lab App to collect data from Facebook friends of its participants, as long as the data was shared with participants on Facebook.¹⁴³ This policy violates academic standards. From an academic perspective, the data of participants’ Facebook friends were collected without their knowledge or explicit consent, and this data collection should not have been allowed. The severity of the loophole is highlighted by Kogan’s later commercial data harvesting through the “GSR App.”

Although the technical loophole was replaced by an update in 2014, it was continuously taken advantage of due to the loose enforcement. In 2014, Facebook required new applications launched on

¹⁴² HEARING BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY AND THE UNITED STATES SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION. (2018, April 10). Senate Judiciary Committee. p.2. Retrieved from <https://www.judiciary.senate.gov/imo/media/doc/04-10-18%20Zuckerberg%20Testimony.pdf>.

¹⁴³ Wylie, C. (2018, May 16). WRITTEN STATEMENT TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY. Senate Judiciary Committee. p.6. Retrieved from <https://www.judiciary.senate.gov/imo/media/doc/05-16-18%20Wylie%20Testimony.pdf>.

its platform to use a more restrictive API, “Graph API V2,”¹⁴⁴ that more actively engages Facebook and the users. This new API seeks to restrict uninformed data access by the vast mobile/web applications on the platform. Facebook takes on more normative responsibilities through the App Review process. New applications launched have to go through this review to access friends’ data. Without Facebook’s approval, they can only access the basic information of users. Users also gain more granular control over permission for data access.¹⁴⁵ When a third-party application asks to access data, users can choose what access they provide rather than debate on a “nothing or all” decision. The new default setting favors the privacy-seeking users over software developers. If strictly enforced, the new policy would prohibit Apps like Kogan’s from accessing the friends’ data of users unless their friends also give consent.

Nevertheless, the GSR App managed to continue its data scraping due to frictions between the old and new platforms as well as Facebook’s less-than-rigorous manner of policy enforcement.

Regarding the enforcement, Facebook and Christopher Wylie displayed different narratives. Facebook held that it had exhausted all possible ways to deal with the data misuse. It acted in time to ban the

GSR App and contacted Cambridge Analytica right after the data breach was first reported in December 2015.¹⁴⁶ It required Kogan and other stakeholders¹⁴⁷ to execute certifications of deletion of

¹⁴⁴ House Energy and Commerce Questions for the Record. (2018, June 29). p.111. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹⁴⁵ House Energy and Commerce Questions for the Record. (2018, June 29). p.4. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹⁴⁶ Davies, H. (2015, December 11). Ted Cruz using firm that harvested data on millions of unwitting Facebook users. *The Guardian*. Retrieved from <https://www.theguardian.com/us-news/2015/dec/11/senator-ted-cruz-president-campaign-facebook-user-data>.

¹⁴⁷ All who have received data from him, including SCL and Eunoia Technologies which was another company founded by Christopher Wylie.

the data. There was no further room to confirm the deletion because the only method of a forensic audit became impossible due to the UK Information Commissioner's Office's ongoing investigation into Cambridge Analytica.¹⁴⁸ For Facebook, this is all. However, Wylie's view was just the opposite. He was surprised by Facebook's loose attitude: "They waited two years and did absolutely nothing to check that the data was deleted. All they asked me to do was tick a box on a form and post it back."¹⁴⁹ The response of Wylie to a certain extent conveys the public disappointment in Facebook.

What are the unstated expectations of Facebook? The Zuckerberg's hearing offers an informative list. It also indirectly delivers a message: users consider protecting their data privacy online as an end to promote. The inquiry expresses common expectations for Facebook to "self-regulate,"¹⁵⁰ to both match community standards in the real world and address issues specific to the digital society. Roughly, those expected responsibilities fall into three categories:

- 1) *Maintaining community standards on the Facebook platform:*
 - i) Prevention against manipulation of "views" or invalid traffic through fake accounts;¹⁵¹
 - ii) scrutiny of usage of algorithms and artificial intelligence;¹⁵²

¹⁴⁸ House Energy and Commerce Questions for the Record. (2018, June 29). pp.14-15. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹⁴⁹ Cadwalladr, C. and Graham-Harrison E. (2018, March 17). Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach. *The Guardian*. Retrieved from <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

¹⁵⁰ House Energy and Commerce Questions for the Record. (2018, June 29). p.55, for example. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

¹⁵¹ *Ibid.*, p.23, for example.

¹⁵² *Ibid.*, p.23, for example.

- iii) ban on illegal drug sales;¹⁵³
 - iv) special protection for teens;¹⁵⁴
 - v) preservation of the diversity of information available¹⁵⁵;
- 2) *Governance over data use of third-party apps:*
- i) Ex-ante reviews and plans to address potential data misuse,¹⁵⁶ enforcement of platform policies,¹⁵⁷ verification of compliance,¹⁵⁸ de-identification of shared data¹⁵⁹;
 - ii) Tracking and limiting data use of third-party app developers,¹⁶⁰ controlling data use once it leaves the Facebook domain¹⁶¹;
 - iii) Ex-post notification of data scraping and data breach incidents,¹⁶² investigation into data misuses,¹⁶³ transparency regarding results of third-party audits;¹⁶⁴
- 3) *Information provision for users to understand their situation online:*
- i) in a simplified and accessible manner for individual users;¹⁶⁵
 - ii) regarding the practices of the platform;¹⁶⁶

¹⁵³ Ibid., pp.31-32, for example.

¹⁵⁴ Ibid., p.35, for example.

¹⁵⁵ Ibid., pp.41-42, for example.

¹⁵⁶ Ibid., p.10, for example.

¹⁵⁷ Ibid., p.8, for example.

¹⁵⁸ Ibid., p.11, for example.

¹⁵⁹ Ibid., p.18, for example.

¹⁶⁰ Ibid., pp.8, 14, for example.

¹⁶¹ Ibid., p.28, for example.

¹⁶² Ibid., pp.7, 43, for example.

¹⁶³ Ibid., p.7, for example.

¹⁶⁴ Ibid., p.11, for example.

¹⁶⁵ Ibid., pp.9, 13, 28, for example.

¹⁶⁶ Ibid., p.9, for example.

iii) implications of users' privacy setting on potential data harvest.¹⁶⁷

The three general categories highlight what users discern as similarities and differences between the virtual platform and the physical society. As revealed by the first category, the same general moral principles, such as paternalism towards children and promotion of freedom of speech, are expected to be binding on Facebook. The other two categories highlight the differences due to the “artificiality” of the Facebook community. By nature, it features abundant generated data and an environment less navigable than what people can directly approach with physical senses. The second category directly responds to incidents such as Cambridge Analytica's data harvesting. The third category suggests enforcing information provision policies.

Comparability

Digital social platforms like Facebook share many characteristics and functions with the physical society. Regarding activities, users connect and socialize with friends they know in real and virtual lives. Regarding the medium of their activities, they face an inevitable choice architecture when they decide how to select, consume and protect themselves. Correspondingly, in both domains, they are subject to behavioral biases which the choice architecture can in a way mitigate. However, the two domains do have a fundamental difference: online platforms, including its rules and layout, are completely manmade.

¹⁶⁷ Ibid., p.5, for example.

This artificial choice architecture poses a cumulative challenge to users' cognitive systems and may cause behavioral market failures, as shown in Kogan's data harvesting process. On the one hand, users are naturally unfamiliar with the virtual setup. On the other hand, when they use social media, they are more inclined to relax and enjoy the quick processing with System 1. Users are as vulnerable, if not more, to System 1 biases in the artificial environment. In fact, Facebook itself considers improving people's understanding of how digital services work as an industry-wide challenge.¹⁶⁸ In the physical world, regulators have already implemented nudge policies to avoid behavioral market failures. It is imperative to have something equivalent, maybe types of virtual nudge, to mitigate the more challenging biases induced by the artificial digital realm.

As such, the first objection restated below can be refuted, as we have two comparable pairs: 1) the scenarios of the Cambridge Analytica data misuse and behavioral market failures, and 2) the public policy regulators and Facebook as a self-regulator.

OBJECTION 1 (Loose Comparability). *The scenarios are not comparable.*

The pairs are comparable for two reasons. First, behavioral biases are present and thus nudge can be helpfully applied. The data harvest took advantage of behavioral biases that users are subject to when using Facebook. The public disappointment, indirectly explained through the Congress hearing, confirms that data privacy is highly valued by System 2. However, System 1 of Kogan's survey

¹⁶⁸ House Energy and Commerce Questions for the Record. (2018, June 29). pp.13. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

participants seemed to have ignored this high value when logging into Facebook. Second, Facebook has the power to implement nudge and help users better achieve their ends. As the choice architect and platform runner, it can adjust the navigability and regulations of the platform itself to prevent such incidents from happening.

Section II. Libertarian Paternalism and Oppositions

Libertarian Paternalism: Definition

Nudge is supported by the doctrine of Libertarian Paternalism. The implications of Libertarian Paternalism are twofold. On the one hand, to understand Libertarian Paternalism, one needs a basic framework for paternalism. On the other hand, the baseline of the doctrine reflects the libertarian spirit: policy makers should not override people's judgment regarding their own ends. As long as people's decisive freedom is preserved to determine their own ends and choose their means, nudge is a nice aid to promote their welfare.

Paternalism is defined as the attempt, using means other than reasoned persuasion, to induce other people to act in ways for their own benefits, either directly benefiting them or preventing them from harm.¹⁶⁹ Philosophers have divided paternalistic efforts into groups. The two popular distinctions are 1) means and ends paternalism, based on the focus of the attempt, and 2) soft and hard paternalism, based on the level of intervention. Means paternalism takes people's ends as given and

¹⁶⁹ Scoccia, D. (2008). In Defense of Hard Paternalism. *Law and Philosophy*, Vol.27, No.4, p.352.

seeks to help them find the best means to achieve their ends; ends paternalism revisits people's ends and applies its own standards to evaluate and influence them.¹⁷⁰ Soft paternalism qualifies its intervention only to two scenarios: firstly, situations which involve "substantially nonvoluntary" conduct, and secondly, situations in which intervention is necessarily required to determine if the conduct is voluntary or not. The intervention presumes that nonvoluntary choices are not the genuine choices of the person and thus foreign to him or her. Hard paternalism is open to overruling the will – the free and informed consent – of competent adults.¹⁷¹

Though easily understandable in abstract terms, in practice those distinctions function more like spectra than clear boundaries. Sunstein locates Libertarian Paternalism on the soft and means sides of the spectrum and does not offer a clear definition of where the boundaries lie.

Sunstein's "working definition of paternalism"¹⁷² clarifies the extent of Libertarian Paternalism. Fundamentally paternalistic, the efforts aim for the good of the person. Such efforts are needed when System 1 biases constrain the person's judgements and behaviors in the situation.

However, libertarian in spirit, Libertarian Paternalism represents paternalists who "respect people's own views about their ends" and "seek to ensure that their decisions promote those ends."¹⁷³

Libertarian paternalistic interventions, such as nudge, prompt people's own System 2 thinking. They juxtapose an "as-if" rationality, perhaps a reference, in people's choice-making environment. Example

¹⁷⁰ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1855.

¹⁷¹ Feinberg, J. (1986). *The moral limits of the criminal law. Volume 3, Harm to self.* p.12. New York; Oxford: Oxford University Press.

¹⁷² Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1863.

¹⁷³ *Ibid.*, p.1862.

scenarios may include whether one should order food with high calories, put off saving money for retirement, or purchase energy-efficient home appliances. Sunstein holds that Libertarian Paternalism preserves freedom of choice. Therefore, it justifies itself against criticisms, which are mainly based on two grounds – autonomy and welfare.

Autonomy

Sunstein categorizes objections based on autonomy in two types. A thin version of autonomy that is rooted in welfare, and a thick version that considers autonomy as a good in itself.

The thin version of autonomy asserts that “freedom of choice is an ingredient of welfare.”¹⁷⁴ In other words, people gain welfare by making choices for themselves, and autonomy is valued and only valued for its instrumental function to generate welfare. Mill holds a similar welfarist view of individuality, a desirable human characteristic promoted by autonomy. To him, individuality is desirable only because of its potential to increase the welfare of both the individual and society as a whole. For an individual, autonomy constitutes a principal ingredient of happiness when his or her own character, rather than customary traditions, serves as the rule of conduct.¹⁷⁵ As individuals exert their autonomy and are actively engaged in the process of choice-making, they increase welfare by contributing to individual and social progress¹⁷⁶. Mill emphasizes the strong instrumental value of active choice-making to realize collective learning. In fact, he sees it as the only way, because “the human faculties of perception, judgment, discriminative feeling, mental activity, and even moral

¹⁷⁴ Ibid., p.1881.

¹⁷⁵ Mill, J. S. (2001). *On Liberty*. Kitchener, Ontario: Batoche Books. p.33. (Original work published 1859)

¹⁷⁶ Ibid., p.33.

preference, are exercised only in making a choice.”¹⁷⁷ This welfarist approach renders individuality as valuable only because it is a means to human happiness and progress but not a good in itself. As autonomy asserts individuality, it promotes welfare in the same way.

However, the thin version is easily challenged through the welfarist approach of cost-benefit analysis, the most appropriate for objectors who consider welfare as the guiding factor. Empirically, autonomy in choice-making only promotes welfare in certain cases. One representative policy that guarantees autonomy is active choosing. From another perspective, the policy implies that no default option is available and thus people are required to actively decide on a choice. In an extreme case, when people have to make all choices on their own, they will lose autonomy altogether.¹⁷⁸ In less dramatic examples, people lose valuable time and effort making decisions “in complex and unfamiliar domains.”¹⁷⁹ As a result, both autonomy in the thin version and its associated welfare are conditioned. In cases where choices are not burden, autonomy can direct public policy and justify a preference for active choosing rather than a default rule¹⁸⁰. However, where active choosing incurs welfare loss, the existence of choice architecture in fact promotes rather than undermines autonomy, because it ensures individuals that “we [they] will be just fine if we [they] do not make particular decisions, so that we [they] are freed up to concentrate on those matters that most concern us [them].”¹⁸¹

¹⁷⁷ Ibid., p.34.

¹⁷⁸ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1884.

¹⁷⁹ Ibid., p.1882.

¹⁸⁰ Ibid., p.1885.

¹⁸¹ Ibid., p.1887.

The thick version considers autonomy as an end in itself, so a potential welfare gain on balance cannot compensate for the loss of autonomy. This stance mainly derives from Millian and Kantian views on the intrinsic value of human will and dignity. In addition to individuality, Mill attaches much importance to the rightness of will and voluntary choice. He believes that one's voluntary choice determines the best means to pursue his good and is good in itself, because the interference of society may have wrong or misapplied presumptions.¹⁸² The intrinsic value of one's own will is highlighted in Mill's argument that "His [An individual's] voluntary choice is evidence that what he so chooses is desirable, or at least endurable, to him, and his good is on the whole best provided for by allowing him to take his own means of pursuing it."¹⁸³

Kant maintains that man "exists as an end in himself and *not merely as a means* to the discretionary use."¹⁸⁴ Because of their rational capacity – "the ability to set ends, devise plans to achieve chosen ends, and choose actions to further plans"¹⁸⁵ – human beings differentiate themselves from other species. Human beings are objects of respect with absolute value rather than conditional. Consequently, to treat the rational capacity and the rational being as ends in themselves, any trade-off of any amount of rational-agency capacity for any amount of merely finite benefits must be forbidden.

Though the two theories soundly support objections to traditional hard paternalism, they do not address Libertarian Paternalism, because the latter focuses on mitigating behavioral biases that the

¹⁸² Mill, J. S. (2001). *On Liberty*. Kitchener, Ontario: Batoche Books. p.14. (Original work published 1859)

¹⁸³ *Ibid.*, p.94.

¹⁸⁴ Kant, I. (2002). *Groundwork for the Metaphysics of Morals*. (A. W. Wood, Trans. And Ed.) New Haven, CT and London: Yale University Press. Ak 4:428. (Original work published 1785)

¹⁸⁵ Arneson, R. J. (2005). Joel Feinberg and the Justification of Hard Paternalism. *Legal Theory*, Vol.11, No.3, p.276.

two theories “neglect.”¹⁸⁶ However, the original views presume that one’s cognitive system is only composed of System 2. Mill believes that the individual who chooses and executes his plan employs all his faculties – including observation, information gathering, judgment and reasoning, and self-control. Though compatible with the capabilities of System 2, this view cannot hold true when System 1 takes control. No matter how sophisticated one’s System 1 is its intuitive capabilities cannot span all faculties. A similar conclusion can be drawn from the Kantian views on rational capacity. Hence, the Millian and Kantian autonomy is essentially the autonomy of System 2. In this regard, Libertarian Paternalism boosts this autonomy and agrees with Mill and Kant, because it seeks to minimize System 1 biases and free up one’s attention to make decisions via System 2.

Welfare

As of now, there has been much dispute and thus not a definitive understanding of individual or social welfare. According to Sunstein’s broad definition, “welfare” refers to whatever is considered that would make choosers’ lives go well.¹⁸⁷ It is something broader than utility¹⁸⁸ and “not always the same as revealed preference.”¹⁸⁹ Under the same circumstance, choosers and paternalists may understand welfare differently, regarding their ends and/or means to achieve their ends. As a result, paternalists

¹⁸⁶ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1864.

¹⁸⁷ Ibid., p.1862.

¹⁸⁸ Ibid., p.1862.

¹⁸⁹ Thaler, R. H. and Sunstein, C. R. (2003). Libertarian Paternalism. *The American Economic Review*, Vol. 93, No. 2, p.175.

make efforts to align certain aspects (means, ends, or both) of the understanding and actively help people promote their welfare.

Libertarian Paternalism aims to promote welfare in two general situations. The first general situation is where individuals make “inferior choices,”¹⁹⁰ most likely when individuals are subject to behavioral biases. Such choices are deemed inferior, because individuals would change them under better conditions – if they had complete information, unlimited cognitive abilities, and no lack of willpower. Here, libertarian paternalistic policies seek to improve the conditions to mitigate behavioral biases. The second situation is where individuals find choice-making or decision-making a burden rather than benefit, such as in highly technical areas. Here, libertarian paternalistic policies seek to simplify decision-making by offering default options.

Welfarist objections, as Sunstein summarizes, fall into the following five categories:

- 1) officials lack the information that individuals have for their judgments and are thus more likely to err¹⁹¹;
- 2) paternalistic approaches may supersede efforts made in the private sector and thus eliminate benefits from competitive markets, such as rapid adaptation, self-control, and other informational correctives¹⁹²;
- 3) mistakes stimulate learning, so soft paternalism may infantilize the citizens¹⁹³ and thus sacrifice long-term welfare gain to assure short-term welfare gain;

¹⁹⁰ Ibid.

¹⁹¹ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1868.

¹⁹² Ibid., p.1869.

¹⁹³ Ibid., p.1869.

- 4) if homogeneous paternalistic approaches are applied to a population with heterogeneous ends and means, welfare may be reduced on balance¹⁹⁴;
- 5) public officials, as human beings themselves, are also subject to behavioral biases, and avoiding paternalism will be a more risk-averse, though not necessarily better, option.¹⁹⁵

On a relatively abstract level, none of the above critiques are decisive because solutions to mitigate those risks exist. Even if paternalistic approaches turn out to be anticompetitive, competitive firms might make attempts and innovations to counteract with those attempts. The infantilizing critique is only applicable to certain policies, such as default rules, whereas active choosing not only solves this question but also promotes learning through individual decision-making. If infantilizing concerns become serious in one scenario, alternative policies to resolve the situation exist. If resources are available, efforts can be made to design personalized paternalistic approaches catered to heterogeneous demands.

A stronger counter-response to the objections lies in the empirical realm: since certain paternalistic designs are inevitable,¹⁹⁶ the central question lies in which or whose design promotes the most welfare. The premise of this response is highlighted in Sunstein's response to the first critique, as he points government skeptics to the overlooked status quo in the real world: that "countless decisions are already made for us by both public and private institutions."¹⁹⁷ Examples in the private sector

¹⁹⁴ Ibid., p.1870.

¹⁹⁵ Ibid., p.1878.

¹⁹⁶ Ibid., p.1881.

¹⁹⁷ Ibid., p.1874.

include how products are to be designed and manufactured, in a similar way as Facebook decides the available features and layout of its platform.

This status quo highlights an empirical feature that abstract theories fail to take into account – that paternalistic designs have always existed and cannot be completely cleared. For example, individuals cannot always decide all design features for their cars. Instead, they oftentimes take available car models as given and make decisions between the different combinations of colors, materials, shapes, etc. In the private realm, due to resource constraints, individuals and firms specialize to advance overall productivity in society and thus raise the quality and quantity of goods. Another example is the layout of terms of 401(k) plan. Though most readers might only care about the content of the terms, the information cannot be conveyed without the usage of a certain wording and sentence structure, or the order of different terms, or the presence or the lack of explanatory examples. Those designs most likely influence the readers' understanding of those terms, but it is impossible for readers to decide those designs for themselves. Similar to the private sector, the public realm has to offer some choice architecture that people take for granted. Furthermore, because the choice architecture comes with a design, no such architecture can be entirely neutral.¹⁹⁸ The fact that people have taken such paternalistic designs for granted suggests a further empirical claim – that other people *can* make desirable, at least to our standards, decisions and judgments on our behalf.

Given the inevitable nature of such paternalistic designs, the skepticism towards government specifically reflects two fundamental questions to find the best design or choice architecture. The first

¹⁹⁸ Ibid., p.1879.

question one may ask is whether the status quo should be redesigned considering the behavioral findings. Sunstein would say “yes,” because “if welfare is our guide, it is necessary to take behavioral market failures seriously.”¹⁹⁹ In extreme cases where behavioral market failures are causing serious harm, “it is implausible for a form of evidence-free dogmatism to say that a public response [in the form of soft paternalism] is off-limits.”²⁰⁰ Following this answer, the second question would ask who is the best designer or choice architect. Libertarian Paternalism would hold that government is the best choice architect for important and widely shared social environments. All human beings are potentially prone to err, and, among the potential candidates, the government might appear the most objective and effective with its resources of skilled staff devoted to System 2 analysis.

A final alternative stream to generate welfare is through the empirical increase in autonomy, assuming a positive relationship between number of choices and welfare. However, this assumption has to be conditioned. Increased choices can reduce welfare by imposing additional transaction costs, psychic costs, burdens of over-responsibility and negatively altering the original choice situation.²⁰¹ If deeply examined, increased choices themselves do not have a nondiscriminatory instrumental or intrinsic value. Additional choices only have positive value if they offer better and preferred options, and the provision of an obviously non-desirable choice does not add to the chooser’s utility. Therefore, only certain choices have instrumental or intrinsic value, and the rest of additional choices only impose costs to reduce welfare.

¹⁹⁹ Ibid., p.1881.

²⁰⁰ Ibid., p.1881.

²⁰¹ Dworkin, G. (1982). Is More Choice Better than Less? *Midwest Studies in Philosophy*, Vol. 7, No. 1, pp.49-50, 54.

Again, Libertarian Paternalism does not go against this stream of welfare generation. In its ideal version, Libertarian Paternalism does not eliminate choices but reveals more information to help individuals navigate choices. Additional information can save people from the cumbersome effort to research and understand complicated nuances of choices that they would have ruled out in the first place. Consequently, people still enjoy the intrinsic welfare of making a decision but are left to make the “small fraction of the decisions that actually affect them.”²⁰² Though welfarist objections highlight areas for improvement for libertarian paternalistic approaches, those approaches appear capable of reducing costs and thus improving welfare on balance.

All in all, the second objection restated below is refuted in this section.

OBJECTION 2 (Soundness of Doctrine). *The scenarios are comparable, but Libertarian Paternalism itself is flawed.*

In the public sector, libertarian paternalistic policies are justified against criticisms based on autonomy and welfare for two reasons. Theoretically, neither criticism can refute Libertarian Paternalism completely. Empirically, the policies are more versatile and flexible than the doctrines to meet different demands.

Section III. Robustness of Libertarian Paternalism in the context of Facebook

²⁰² Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1874.

Abstract Check

Before evaluating Facebook's specific policies, it is helpful to check the soundness of the doctrine in the new context. In order to apply Libertarian Paternalism, we will assume for now that Facebook's policies are enforced to mitigate behavioral biases and deemed no more paternalistic than libertarian paternalistic.

It is not difficult to see that the main defenses still hold. The thick version of autonomy still will not be applicable in the face of System 1 biases. The commercial and competitive nature implies the limited power of the self-regulation. It also features the innate option to opt out from the platform and all relevant regulations, which guarantees fundamental System 2 autonomy of consumers. The thin version of autonomy and welfarist arguments will pose weaker objections. The flexibilities of empirical policies still hold true. Due to the greater complexity of the artificial environment, cost-benefit analysis will render active-choosing more costly and favor nudge. As a result, Libertarian Paternalism itself is still justified against objections on autonomy and welfarist grounds. Thus the first component of objection 3, restated below, is refuted.

OBJECTION 3 (Applicability). *The scenarios are comparable, and Libertarian Paternalism itself is not flawed, but the justifications do not justify in Facebook's role as a self-regulator.*

OBJECTION 3.1. *Because Libertarian Paternalism does not hold in the digital environment.*

Empirical Check

Different from a pure policymaker, Facebook has a more versatile role in setting platform policies. The different policies range from non-paternalistic to libertarian paternalistic. The paternalistic rationales can be easily explained. Strong public responses to the data misuse highlight an implicit end that has been long neglected – the inherent value of users’ privacy. Facebook’s updates facilitate to achieve this implicit end. Many features, considered as “privacy-friendly,” start to hand more control to users over their own privacy. Others, viewed as “privacy-hindering,” are restricted or even removed.

Examples – Search and Account Recovery, Privacy Shortcut, and Restriction on Facebook Login data – have been selected to represent updates with different levels of paternalism.

All updated features on Facebook aim to serve as better means for users to protect their privacy. They seek to achieve this goal in different ways. The Search and Account Recovery feature was completely shut down, due to concerns with potential data scraping abuses. By mitigating potential biases of ignoring shrouded attribute, the new Privacy Shortcut tool boosts the salience and convenience of available Privacy tools. Restriction on Facebook Login data further restricts third-party Apps’ access to individual users’ information on Facebook.

The Search and Account Recovery feature enables users to find another person on Facebook by entering the associated phone number or email address, instead of the name. The convenience is obvious. When full names are hard to type out in a language, or the same name is shared widely in a region, it is more efficient to enter the alternative information to find someone on Facebook.

According to Facebook, this feature makes up 7% of all searches in Bangladesh.²⁰³ However, this feature is also subject to data scraping abuses. Theoretically, it is easy to acquire information of phone numbers and email addresses. Under this feature, any person or algorithm can easily identify one's name and public profile information on Facebook with a phone number or email address obtained elsewhere. Realistically, Facebook concludes from its observations that such attempts targeting most Facebook users would have been successful. To prevent the highly probable and severe harm to user privacy, Facebook decided to remove the feature.

Although the shutdown of the feature eliminates an option completely from users' choice set, it in fact represents the non-paternalistic category of Facebook's updates. Because of the highly probable severe consequence of data scraping, the removal can be justified by Mill's harm principle.²⁰⁴ The availability of the feature may incur harm to all users. By removing the feature, Facebook prevents

²⁰³ Schroepfer, M. (2018, April 4). An Update on Our Plans to Restrict Data Access on Facebook. *Newsroom*. Retrieved from <https://newsroom.fb.com/news/2018/04/restricting-data-access/>

²⁰⁴ Which states that "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." Mill, J. S. (2001). *On Liberty*. Kitchener, Ontario: Batoche Books. p.13. (Original work published 1859)

harm to users other than those who actively use the feature.

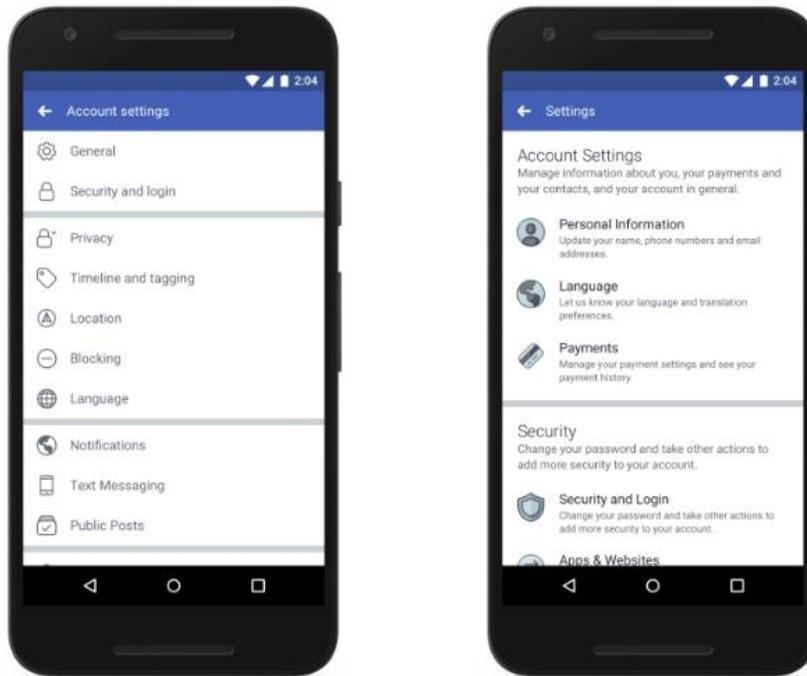


Image: Old vs New Facebook Settings menu

The new Privacy Shortcut tool (on the right in the screenshot²⁰⁵) combines privacy settings that were previously scattered across 20 different screens into one page. This tool is devised to improve the navigability of Facebook’s online choice architecture. As discussed earlier, System 1 is most likely in charge when people use social media for relaxation and leisure. Due to its limited attention span, System 1 may completely ignore privacy settings that are not salient. By offering this shortcut tool, Facebook makes private settings “clearer, more visual, and easy-to-find”²⁰⁶ and boosts the effectiveness of the privacy design.

²⁰⁵ Tiwari, A. (2018, March 29). Facebook’s Big Change: Merges 20 Privacy Screens Into 1 “Privacy Shortcuts.” *Fossbytes*. Retrieved from <https://fossbytes.com/facebook-privacy-shortcuts-access-your-information/>

²⁰⁶ Ibid.

The Privacy Shortcut tool represents updates on the libertarian side of the spectrum of paternalism. With its nature of convenient information provision, this tool serves as a nudge that neither overrides people's judgment nor interfere with their ends. Naturally, no criticism would be posted on the ground of autonomy. Users still decide their setting features for themselves, and their choices remain the same as before, only more assembled and accessible.

For information provision features, welfarist objections may be more relevant, although their strengths vary case by case. For this specific update, doubts on officials' errors, competition, and heterogeneity of users do not hold. In fact, the increased navigability restores control back to the hands of users. It reduces third-party judgment errors and facilitates personalized private settings, thus promoting welfare of the three kinds above.

Here, the strongest welfarist objection, among the five categories summarized by Sunstein, is the infantilizing critique.²⁰⁷ However, even this strongest objection appears weak due to the limited value of the learning process in this context. Because all online platforms are artificially designed by its group of developers, knowledge about how to find scattered privacy features on one specific platform can be too particular. More generally, individual information seeking on one platform can be of limited generalizable value for activities on others. In fact, the shortcut tool increases welfare and boosts learning by assembling the information of possible privacy features. Exempt from the effort to gather the information on their own, users can directly refer to the aggregated menu to understand their available tools.

²⁰⁷ Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, p.1869.

The most complicated case among the three examples is Facebook's restriction of Login data. The Login feature was at the core of Cambridge Analytica's data harvesting. It was through this feature that Kogan's first CPW Lab App collected information of participants for academic purposes legitimately. Later, however, it was also through (the loophole in) the first version of this feature that Kogan accessed the data of participants' friends.

Directly responding to the data misuse, Facebook limits the default level of information a third-party app can access through the new Login feature. "The only data that an app can request without app review will include name, profile photo, and email address. Requesting any other data will require approval from Facebook."²⁰⁸ Furthermore, Apps are completely banned from asking for the access to certain types of information. There will be no chance anymore for Apps to get access to information including religious or political views, relationship status and details, custom friends lists, education and work history, fitness activity, book reading and music listening activity, news reading, video watch activity, and games activity.²⁰⁹

Again, the restrictions do not interfere with the autonomy of either App developers or users, because Facebook's regulation is only applied to activities within Facebook's platform. Let us look at the relevant situation where an App needs to know a specific type of information that is blacklisted by Facebook. While Facebook no longer provides access to such data through Log-in, the App can explicitly ask users to fill them in. Similarly, when the request pop up in the more straightforward way,

²⁰⁸ House Energy and Commerce Questions for the Record. (2018, June 29). p.9. *U.S. House of Representatives Document Repository*. Retrieved from <https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

²⁰⁹ Ibid.

users always have the option to provide the information on their own. In this way, both developers and users still enjoy their autonomy for sharing and obtaining the information, but through a clearer consent process.

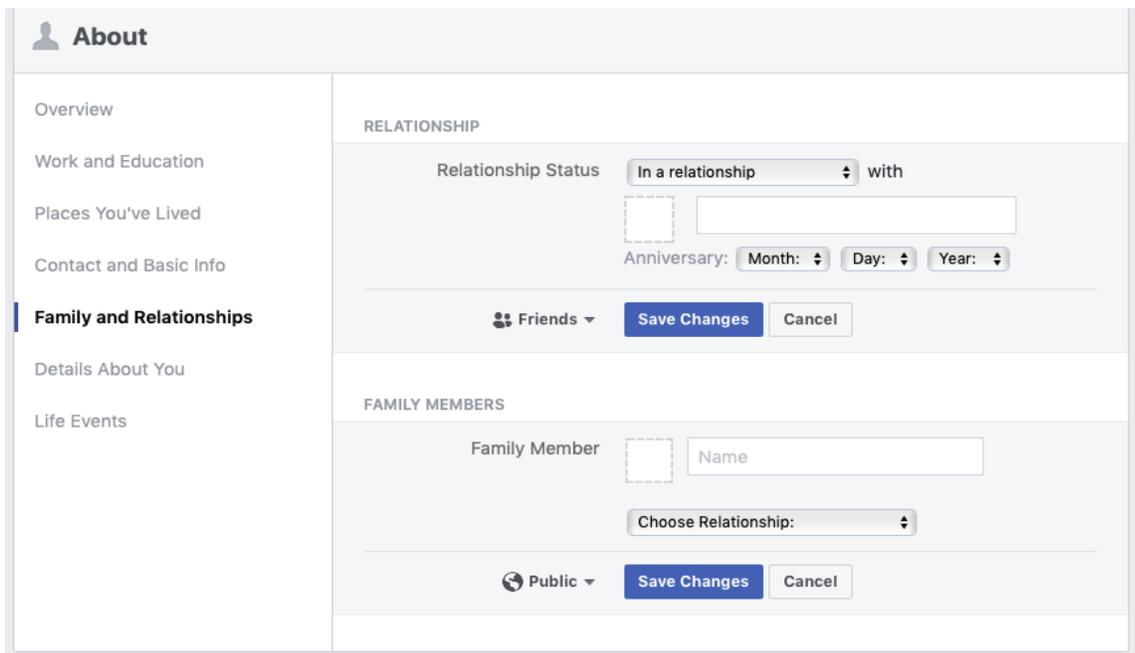
The strong objection is welfarist, as the welfare loss associated with this restriction is obvious. The restriction makes it harder for third-party Apps and users to exchange information both involuntarily and voluntarily. One of the main functions of Facebook is to serve as an intermediary platform between App developers and users. Developers who launch the App on Facebook enjoy two unique benefits – the easy access to both an enormous number of users and the information of their online activities. As the access to Login data is further restricted, the second benefit is restrained and, for certain information types, eliminated. Indeed, for risk averse users, the new default access to Login data reassures them of a higher level of privacy preservation, which can offset the welfare loss from the inconvenience. However, not all types of information blacklisted cause the same level of sensitivity. As a result, the level of reduced welfare of the bans varies with the associated type of information.

Comparatively, the restriction on religious or political views and education and work history incurs the least welfare loss, due to the sensitivity and identifiability of such information. There is a high chance that users would deny the access themselves if asked. Many users may consider their religious or political views as highly sensitive and personal. The complete information on education and work history share a similar level of sensitivity, as it is extremely powerful to identify one's identity. For users not willing to share such information in the first place, the restriction eliminates the possibility of involuntary consent due to System 1 biases and guarantees them a net welfare gain. For users willing to share their information, they are highly likely to have additional benefit from providing

the information on their own, as they can add useful details to the fragments on Facebook. To conclude, regarding highly sensitive and identifiable information, the restriction most likely results in a welfare gain.

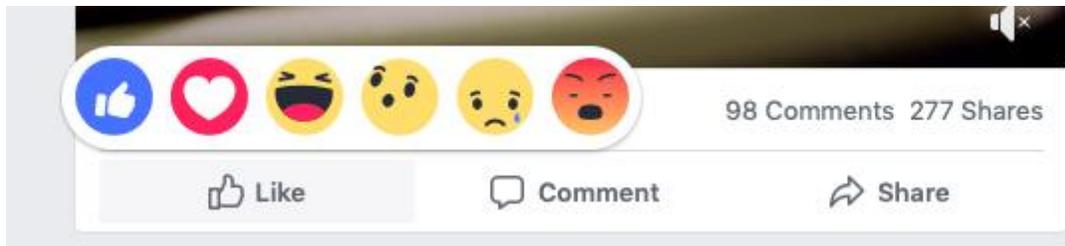
An appeal similar to the harm principle may be applied to the ban on access to relationship status and details and custom friends lists. Relationship status and details as well as custom friends lists are highly relevant to the data harvesting process of Cambridge Analytica, because they can involve other users and have similar characteristics as friends' data. As shown in the screenshot²¹⁰ below, when filling out one's relationship and family members, people may directly link the information with another Facebook user. When users give Apps access to such information, they also indirectly enable such Apps to access the information of the other users involved who have not given any form of voluntary consent to the App. As a result, the ban prevents information collection without the individual's informed consent and the potential associated harm.

²¹⁰ Produced by the author through her Facebook account on 12/08/18.



The most welfare reducing is the loss of hobby data such as fitness activity, book reading and music listening activity, news reading, video watch activity, and games activity. Again, this move does not impede the autonomy of users, because they can always manually log the information regarding their hobbies and tastes into the App if they want. However, such a manual log can be incomplete and time-consuming, which implies welfare loss. Nevertheless, this update may very likely increase the welfare on balance. As users can react to a post in more sophisticated ways (as shown in the screenshot²¹¹ below) rather than a simple like, those data can reveal more information of a user. Algorithms are already powerful enough to create accurate psycho-profiles of users to direct targeted marketing campaigns, and the application in other directions might cause severe misuses and harm. The welfare on balance is preserved.

²¹¹ Produced by the author through her Facebook account on 12/08/18.



As examined through the three examples above, new features on Facebook to protect user privacy range from non-paternalistic to libertarian paternalistic. The commercial essence of Facebook poses natural constraints on the power of its regulations. In this way, it is a less stringent case than public policy cases, and Sunstein's defenses still hold. Under any situation, the fundamental autonomy of users is protected, as they always have the freedom to delete their account and stop abiding by its rules and regulations. For welfarist concerns, the case-by-case cost-benefit analysis works most appropriately.

The examples above refute the second component of objection 3.

OBJECTION 3 (Applicability). The scenarios are comparable, and Libertarian Paternalism itself is not flawed, but the justifications do not justify in Facebook's role as a self-regulator.

OBJECTION 3.2. Because although Libertarian Paternalism holds in the digital environment, Facebook's policies are more paternalistic than libertarian paternalistic.

Indeed, it is impossible to remunerate all policies of Facebook and examine their paternalistic extent. However, it is not our ambition either to establish an all-encompassing doctrine. Our main goal is to

test the applicability of Libertarian Paternalism to the digital real. The libertarian paternalistic (nudge) policies exemplified above demonstrate the robustness.

Section IV. Conclusion

This thesis has demonstrated the applicability of Libertarian Paternalism to Facebook's self-regulatory role and the digital realm in general. The Cambridge Analytica data misuse reveals that people are subject to behavioral biases online, and the public responses to the incident highlight consumers' long overlooked end – data privacy. By assuming a role similar to that of libertarian paternalists in the real world, Facebook can redesign its choice architecture to mitigate those biases to help users better achieve their ends. As Facebook's updated policies demonstrate such paternalistic rationales, the thesis further explains the justifiability of Facebook nudge policies against existing critiques to Libertarian Paternalism in public policy.

Appendix A

First defined by Herbert A. Simon, “bounded rationality” indicates rationality under constraints of cognitive limitations. Those limitations are derived from both knowledge and computational capacity.²¹² The groundbreaking theory directly challenges the assumptions of the traditional economics models, represented by rational-agent models based on the theory of expected utility²¹³ and the theory of subjective utility (SEU theory).²¹⁴ Specifically, implications of bounded rationality relax the assumptions in four ways²¹⁵: 1) *preference*: agents may or may not have a consistent set of preferences; 2) *constraints on choices*: agents generate their own set of alternatives rather than receive all-encompassing information; 3) *knowledge constraint on probability*: probabilities of outcomes, used to calculate the expected utility in the SEU theory, are estimated or absent due to the knowledge constraint on probability; 4) *satisficing strategies*: the final decision is made not through solving the maximization problem of a utility function (“optimizing”) but through a “satisficing”²¹⁶ strategy that can lead to satisfaction at some specified, though not maximum, level of all the needs.

The cognitive limitations employed in Simon’s arguments are further explored by the dual process theories of two cognitive systems. The two distinctive cognitive systems, generically labeled as

²¹² Simon, H. A. (1997). *Models of Bounded Rationality: Empirically grounded economic reason*. Cambridge, MA: MIT Press. p.292.

²¹³ Bernoulli, D. (1738). *Exposition of a New Theory on the Measurement of Risk*. (Sommer, Louise, Trans. 1954.) *Econometrica*, Vol.22, No.1, pp.23-36.

²¹⁴ Friedman, M. and Savage, L. J. (1984). *The Utility Analysis of Choices Involving Risk*. *Journal of Political Economy*, Vol.56, No 4, p.303.

²¹⁵ The author has paraphrased and labeled the influences on traditional assumptions. Interested readers can access Simon’s original work at: Simon, H. A. (1956). *Rational Choice and the Structure of the Environment*. *Psychological Review*, Vol.63, No.2.

²¹⁶ Simon, H. A. (1956). *Rational Choice and the Structure of the Environment*. *Psychological Review*, Vol.63, No.2, p.9.

“System 1” and “System 2,”²¹⁷ present the psychological origin of “bounded rationality.” To explain the two systems in analogy to everyday concepts, System 1 roughly corresponds to intuitive thoughts and System 2 to deliberate reasoning.²¹⁸ One can sort modes of thinking and decision-making into either category based on general characteristics described below:

*The operations of System 1 are fast, automatic, effortless, associative, and often emotionally charged; they are also governed by habit, and are therefore difficult to control or modify. The operations of System 2 are slower, serial, effortful, and deliberately controlled; they are also relatively flexible and potentially rule-governed.*²¹⁹

Though not always simple, through trainings and repetitions, certain operations of System 2 can become intuitive and thus be transformed to the operation of System 1.

System 1 and 2 are distinctive. Facing the same situation, one may make drastically different decisions and judgements under the two systems. Such a distinction is revealed in an example discussed for framing effects²²⁰:

The Context: Imagine that the United States is preparing for the outbreak of an unusual Asian disease, which is expected to kill 600 people. Two alternative programs to combat the disease have

²¹⁷ Stanovich, K. E. and West, R. F. (2000). Individual differences in reasoning: Implications for the rationality debate? *Behavioral and Brain Sciences*, Vol.23, No.5, p.658.

²¹⁸ Kahneman, D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics. *American Economic Review*, Vol.93, No.5, p.1450.

²¹⁹ Ibid. p.1451.

²²⁰ Tversky, A. and Kahneman, D. (1981). The Framing of Decisions and the Psychology of Choice. *Science*, Vol.211, No.4481, p.453.

been proposed. Assume that the exact scientific estimates of the consequences of the programs are as follows:

Problem 1:

If Program A is adopted, 200 people will be saved

If Program B is adopted, there is a one-third probability that 600 people will be saved and a two-thirds probability that no people will be saved

Problem 2:

If Program C is adopted, 400 people will die

If Program D is adopted, there is a one-third probability that nobody will die and a two-thirds probability that 600 people will die

The two problems were given to two separate groups of respondents. The results were drastically different despite a similar size of sample size ($N = 152$ and $N = 155$ respectively). For Problem 1, 72% of the respondents chose A and 28% chose B; for Problem 2, 22% chose C and 78% chose D. Indeed, when given the two ways of framing, System 2 compares the two problems and shows that no substantive difference exists between them. However, when the alternative is not presented, System 1 prevails and limits respondents to certain features of the option but not all. Such a difference caused by System 1 is considered as a behavioral bias, because it leads agents to deviate from decisions they would have made through System 2.

This contrast between the two systems explains the different characteristics of conventional and behavioral economic models. The rationality assumed by conventional rational-agent models corresponds to the perfect and ceaseless use of System 2. As they pertain to what is sensible and reasonable to do, they are prescriptive and intend to describe choices of reasonable men.²²¹ By contrast, behaviorally-oriented models consider “bounded rationality” and admit the frequent reliance on System 1 and occasional malfunction of System 2 in reality. To approximate actual decision-making with nuanced assumptions, they seek to be descriptive rather than prescriptive. The relatively new branch of economics – behavioral economics – has emerged in response to findings of behavioral biases. This new branch complements the conventional branch and has introduced new insights into the field of public policy.

²²¹ Kahneman, D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics. *American Economic Review*, Vol.93, No.5, p.1455.

Bibliography

- §46.104 Exempt research. (n.d.) In *Electronic Code of Federal Regulations*. Retrieved from https://www.ecfr.gov/cgibin/retrieveECFR?gp=&SID=83cd09e1c0f5c6937cd9d7513160fc3f&pitd=20180719&n=pt45.1.46&r=PART&ty=HTML#se45.1.46_1104.
- Anonymous. (2018, March 29). Cambridge Analytica controversy must spur researchers to update data ethics. *Nature*, Vol.555(7698), pp.559-560.
- Arneson, R. J. (2005). Joel Feinberg and the Justification of Hard Paternalism. *Legal Theory*, Vol.11, No.3, pp.259-284.
- Bernoulli, D. (1738). Exposition of a New Theory on the Measurement of Risk. (Sommer, Louise, Trans. 1954.) *Econometrica*, Vol.22, No.1, pp.23-36.
- Cadwalladr, C. and Graham-Harrison E. (2018, March 17). Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach. *The Guardian*. Retrieved from <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.
- Cambridge Analytica and SCL Elections Commence Insolvency Proceedings and Release Results of Independent Investigation into Recent Allegations. (2018, May 2). *CA Commercial News*. Retrieved from <https://ca-commercial.com/news/cambridge-analytica-and-scl-elections-commence-insolvency-proceedings-and-release-results-3>.
- Company Info. (2018, November 6). *Newsroom*. Retrieved from <https://newsroom.fb.com/company-info/>.
- Davies, H. (2015, December 11). Ted Cruz using firm that harvested data on millions of

unwitting Facebook users. *The Guardian*. Retrieved from

<https://www.theguardian.com/us-news/2015/dec/11/senator-ted-cruz-president-campaign-facebook-user-data>.

Dworkin, G. (1982). Is More Choice Better than Less? *Midwest Studies in Philosophy*, Vol. 7, No. 1, pp.47-61.

Feinberg, J. (1986). *The moral limits of the criminal law. Volume 3, Harm to self*. New York; Oxford: Oxford University Press.

Friedman, M. and Savage, L. J. (1984). The Utility Analysis of Choices Involving Risk. *Journal of Political Economy*, Vol.56, No 4, pp.279-304.

HEARING BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
AND THE UNITED STATES SENATE COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION. (2018, April 10). Committee on the Judiciary. Retrieved from
<https://www.judiciary.senate.gov/imo/media/doc/04-10-18%20Zuckerberg%20Testimony.pdf>.

House Energy and Commerce Questions for the Record. (2018, June 29). *U.S. House of Representatives Document Repository*. Retrieved from
<https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411.pdf>.

Jolls, C., Sunstein, C. R. and Thaler, H. (1998). A Behavioral Approach to Law and Economics. *Stanford Law Review*, Vol. 50, No. 5, pp.1471-1550.

Kahneman, D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics.

- American Economic Review*, Vol.93, No.5, pp.1449-1475.
- Kant, I. (2002). *Groundwork for the Metaphysics of Morals*. (A. W. Wood, Trans. And Ed.) New Haven, CT and London: Yale University Press. (Original work published 1785)
- Karlan, D. et al. (2010). Getting to the Top of Mind: How Reminders Increase Saving. *Yale Economics Department*, Working Paper No. 82.
- Kogan, A. (2018, April 16). Written evidence submitted by Aleksandr Kogan. *Parliament UK*. Retrieved from <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Written-evidence-Aleksandr-Kogan.pdf>.
- Mill, J. S. (2001). *On Liberty*. Kitchener, Ontario: Batoche Books.
- Schroepfer, M. (2018, April 4). An Update on Our Plans to Restrict Data Access on Facebook. *Newsroom*. Retrieved from <https://newsroom.fb.com/news/2018/04/restricting-data-access/>.
- Scoccia, D. (2008). In Defense of Hard Paternalism. *Law and Philosophy*, Vol.27, No.4, pp.351-381.
- Sharot, T. (2012). *The optimism bias: A tour of the irrationally positive brain* (1st ed.). New York: Pantheon Books.
- Simon, H. A. (1997). *Models of Bounded Rationality: Empirically grounded economic reason*. Cambridge, MA: MIT Press.
- Slovic, P. (1998). Do adolescent smokers know the risks? (Are the Risks Worth Regulating?: Tobacco v. the FDA). *Duke Law Journal*, Vol.47, No.6.
- Stanovich, K. E. and West, R. F. (2000). Individual differences in reasoning: Implications for the rationality debate? *Behavioral and Brain Sciences*, Vol.23, No.5, pp.645-665.

Stock Chart. (2018). [Graph illustration Facebook Investor Relations Plot Oct 31, 2018]. *Investor Relations*. Retrieved from <https://investor.fb.com/stock-information/?section=stockdata>.

Sunstein, C. R. (2011). Empirically Informed Regulation. *The University of Chicago Law Review*, Vol.78, No. 4, pp.1349-1429.

Sunstein, C. R. (2012). The Storrs Lectures: Behavioral Economics and Paternalism. *Yale Law Journal*, Vol.122, No.7, pp.1826-1867.

Sunstein, C. R. (2014). Nudging: A Very Short Guide. *Journal of Consumer Policy*, Vol.37, No.4, pp.583-588.

Thaler, R. H. and Sunstein, C. R. (2003). Libertarian Paternalism. *The American Economic Review*, Vol. 93, No. 2, p.175.

Tiwari, A. (2018, March 29). Facebook's Big Change: Merges 20 Privacy Screens Into 1 "Privacy Shortcuts." *Fossbytes*. Retrieved from <https://fossbytes.com/facebook-privacy-shortcuts-access-your-information/>.

Tversky, A. and Kahneman, D. (1981). The Framing of Decisions and the Psychology of Choice. *Science*, Vol.211, No.4481, pp.453-458.

Webber, T., and Jeff K. (2016). Historic deep freeze could be followed by unprecedented thaw in Midwest. *Chicago Tribune*. Retrieved from <https://www.chicagotribune.com/news/nationworld/ct-polar-vortex-deep-freeze-20190131-story.html>.

Weinstein, N. D. (1982). Unrealistic Optimism About Susceptibility to Health Problems. *Journal of Behavioral Medicine*, Vol.5, No.4, pp.441-460.

Wong, J. C., Lewis, P. and Davies, H. (2018, April 24). How academic at centre of Facebook scandal tried – and failed – to spin personal data into gold. *The Guardian*. Retrieved from <https://www.theguardian.com/news/2018/apr/24/aleksandr-kogan-cambridge-analytica-facebook-data-business-ventures>.

Wylie, C. (2018, May 16). WRITTEN STATEMENT TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY. Senate Judiciary Committee. Retrieved from <https://www.judiciary.senate.gov/imo/media/doc/05-16-18%20Wylie%20Testimony.pdf>.

LIBERTY RESTRICTED FOR PRESERVING LIBERTY:
MEDIA CENSORSHIP DURING EARLY FRENCH
REVOLUTION

TIANYI TAN graduated from College of Arts and Letters in 2018 with a B.A. in History and Political Science. As an undergraduate student, she focused her studies largely on the intersection of history and political philosophy, while also exploring comparative legal research through the Kellogg International Scholars Program. She would like to express special thanks to her thesis advisor, Professor Katie Jarvis, for all of her support and guidance. Tianyi is now attending law school with the hope of further exploring civil liberty and civil rights in a contemporary setting.

ABSTRACT

Contrary to its well-known proclamation of liberty in general and free expression in particular, the French Revolution witnessed various state censoring activities even in its early stage. This paper aims to provide an overview of the revolutionary censorship, and inquire into the revolutionaries' attempts to reconcile censorship and the fundamental value of liberty.

This paper starts with a brief overview of the Old Regime censorship, which is a crucial point of comparison and reference for the complex revolutionary censorship. Despite the formal abolition of the Old Regime practices by the revolutionaries, the censoring activities during the early Revolution inherited much of the intricacy of their Old Regime precedents. The paper then proceeds to analyze the prerevolutionary appeal for free expression, most evidently and systematically expressed in the *cabiers de doléances* prepared for the Estates-General of 1789, which informed the actual revolutionary legislation on such liberty. With these historical backgrounds in mind, this paper then examines the actual censoring practices seen during the early Revolution up until the Reign of Terror. It also illustrates the revolution that censorship itself underwent from 1789 through 1792. The revolutionary politicization of many forms of expression and the ideological pursuit of virtue transformed both the scope and the objectives of revolutionary censorship from the mere suppression of dissenting opinions. The paper concludes by addressing how the revolutionaries justify their adoption of censoring mechanisms without denying the value of civil liberty. Instead of blatantly relinquishing the promise of free expression, the revolutionaries justified their censoring practices through a combination of exploiting legislative caveats, appealing to state emergency, and professing a pursuit of homogenous republican citizenry naturally in opposition to dissenting voices.

Ultimately, the paper concludes that when facing the dilemma between freedom and regulation, the revolutionaries chose to restrict free expression for the greater Liberty.

ACKNOWLEDGEMENTS

I would first like to express my most earnest gratitude for my thesis advisor, Professor Katie Jarvis, for her patience and guidance throughout my entire research and writing process of this thesis. The numerous conversations we had and all the suggestions Professor Jarvis has given were indispensable to the successful completion of this project. The mentorship that I have received from Professor Jarvis truly makes my thesis project a formative experience, not only of the specific research on the ever-fascinating French Revolution, but also of my understanding of the general craft of history.

I would also like to thank the History Honors Program for giving me the chance to work alongside my peers and with the continual guidance and encouragement from Professor Ocobock. From the practical tips on grant application to the warm words that kept my writing morale high, Professor Ocobock has indeed created a sense of communal bond through HHP.

Finally, I also want to acknowledge the support from Nanovic Institute for European Studies, whose generous Undergraduate Summer Travel & Research Grant made possible my research trip to the French archives during the Summer 2017. The opportunity to examine primary sources at the archives was one of my most precious memories for the thesis project.

Along the way, I have received support and advice from those listed here and many others. Thanks again to all. I am very grateful that I could have the completion of a History senior thesis as part of my Notre Dame memory.

INTRODUCTION

In May 1792, the High Court of France condemned the forty-nine-year-old Jean-Paul Marat for provoking indiscipline in the army with the issue of his newspaper *L'Ami du peuple*.²²² As a punishment, the Court sealed Marat's papers and possessions.²²³ It was not the first time that Marat, editor of this allegedly incendiary journal, experienced troubles because of his radical leftist political expressions. On the other end of the political spectrum, royalist papers such as *L'Ami du roi*, *Gazette de Paris*, and the *Mercure de France* were faring no better with their participation in the revolutionary political discourse. Only three months after Marat's condemnation, the Commune of Paris ordered the suspension of all "anticivic" papers, arrested their writers, and confiscated their presses.²²⁴ The

²²². Emmet Kennedy, *A Cultural History of the French Revolution* (New Haven: Yale University Press, 1991), 322.

²²³. Ibid.

²²⁴. Ibid.

August 17, 1792, session of the National Assembly followed suit. Without resorting to any judicial procedure, the national deputies motioned and managed to close down an “aristocratic” and “counterrevolutionary” journal named *Logographe*, which allegedly produced distorted account of the proceedings of the National Assembly.²²⁵

All three instances exhibited uneasy traces of censorship aggravated by the specific timing of mid-1792. Three years before Marat’s newspaper was targeted, when the Old Regime was still in power, the official condemnation of specific journals was more than commonplace. Multiple authorities, from the King to the Church, enforced surveillance over expressive media such as books and journals. As a midpoint, summer of 1792 was an awkward time: the promises of freedom of expression contained within the 1789 *Declaration of Rights of Man and of Citizen* as well as the Constitution of 1791 were still legally effective. Old Regime censorship had largely fallen apart, the monarchy was abolished, the Republic was proclaimed, but new revolutionary censorship was forming rather gradually. Strictly interpreting the legal stipulations over expression could classify the revolutionaries’ 1792 actions as violating civil liberty. Yet, one brief year later in 1793, the advent of the Reign of Terror made censoring activities an even more common sight, as the radical revolutionaries tightened control over all aspects of the political discourse.

A persisting dichotomy between the words and deeds of the revolutionaries thus emerged. At the same time when the revolutionaries held on to the legal proclamation of liberty, they could not avoid exercising dubious control over individual expressions. In the presumably emancipatory context of the

²²⁵. *Archives parlementaires* (hereafter “AP”), Tome XLVIII, 313.

French Revolution, the oxymoron “revolutionary censorship” became an indisputable reality by 1792.²²⁶ How did revolutionary censorship resemble its Old Regime precedents? Why did the revolutionaries resurrect censorship supposedly abolished in 1789 with the issuance of the *Declaration*? How could the revolutionaries accommodate censorship within the prevailing rhetoric of liberty as a pillar of the Revolution? A study of the tensions between the revolutionary celebration of liberty and the actual state restriction on free expression can shed light on the “failure” and degeneration of the 1789 revolution into the Terror. By exploring various censoring practices during the early revolutionary period from 1789 through 1793, this work aims to provide a general overview of the development of revolutionary censorship and inquire into the revolutionaries’ attempts to reconcile censorship and the fundamental value of liberty.

Perhaps due to the institutional fluidity of revolutionary censorship, which never attained the same clear-cut administration as Old Regime censorship, most of the scholarship on censoring practices during the early Revolution tends to address this topic tangentially. First and foremost, a considerable number of historians have studied Old Regime censorship, most notably Robert Darnton, and have crafted very informative descriptions and analyses of censorship in the eighteenth-century before the Revolution.²²⁷ Overall, the scholarship on Old Regime censorship reveals that instead of using a singular censoring institution, royal authorities employed a multitude of formal and

²²⁶. Christopher Todd, *Political Bias, Censorship and the Dissolution of the “Official” Press in Eighteenth-Century France* (The Edwin Mellen Press, 1991), 311.

²²⁷. See for examples: Robert Darnton, *The Literary Underground of the Old Regime* (Cambridge: Harvard University Press, 1982); Robert Darnton, “Bourbon France: Privilege and Repression” in *Censors at Work: How States Shaped Literature* (New York: W. W. Norton & Company, 2014), 23–86; Jack Censer, and Jeremy Popkin, *Press and Politics in Pre-Revolutionary France* (Berkeley: University of California Press, 1987); and Raymond Birm, *Royal Censorship of Books in Eighteenth-Century France* (Stanford, CA: Stanford University Press, 2012).

informal censoring practices to create a comprehensive surveillance of various aspects of individual expression.²²⁸ The As a residue and a source of inspiration, Old Regime censorship lived its afterlife, with all passed along its intricacy, in the various to revolutionary censoring activities. The scholarship on the Old Regime censorship also helps undermine the stereotype of a clear watershed regarding free expression since 1789, for the revolutionary practices exhibited considerable continuance.

The second most prevalent focus of revolutionary censorship research is precisely its antithesis—the freedom of expression gained by the revolutionaries. Despite the later resurgence of censorship in 1793, the early years of the Revolution did witness a period of unprecedented liberty and thus, proliferation, of the various types of expressive media from printed books and ephemera to other forms, including the theater. Many scholars have dived into this vast universe of expression and have produced in-depth accounts of the specific types of expressive media. For instance, the book *Revolution in Print: The Press in France, 1775–1800*, edited by Robert Darnton and Daniel Roche, compiles articles written by scholars on each type of revolutionary media, ranging from pamphlets to songs. Such scholarship foregrounds the impact of freedom of expression on revolutionary media. However, this focus on the innovative developments of the media inevitably relegates censorship to the margins. Nonetheless, the pervasive media politicization articulated in such works offers a ground for the growing official attention given to the media and the subsequent urge to exert control.

Lastly, a few scholars like Charles Walton indeed highlight the policing of the revolutionary

²²⁸ The only Old Regime censorship institution that explicitly bore the name of “censorship” was the royal censorship on books, but multiple other non-nominal measures such as the book police and theater inspectors constituted an important part of censorship institution without being directly named as “censorship.”

political expressions.²²⁹ Yet, their broad connotations of “policing” extend beyond censorship and oftentimes entail charges of calumny and libel. While the general focus of such studies on speech control does offer some insights into revolutionary surveillance over individual expressions, censorship gets reduced to an element so integral to the overall policing structure that censorship’s own distinctive character receives insufficient attention. To truly restore a picture of revolutionary censorship, it is necessary to separate censorship from other institutions, such as the judicial prosecution of calumny, that potentially restrict free expression. While the boundaries between censorship and other forms of state policing can be unclear at times, this study explicitly takes “censorship” as its primary focal point to offer new insights on how the revolutionaries directly wrestled with the tensions between liberty and censorship in theory and in practice.

Chapter I offers a brief overview of Old Regime censorship, which functions as a crucial point of comparison and reference for examining revolutionary censorship. The composite structure of the Old Regime censorship would partially inform the complexity of revolutionary censorship. Chapter II analyzes the pre-revolutionary appeal for freedom of expression, which informed the actual revolutionary legislation on such liberty. Chapter III examines the actual censoring practices seen during the early Revolution up until the Reign of Terror. It also illustrates the revolution that censorship itself underwent from 1789 through 1792. The revolutionary politicization of many forms of expression and the ideological pursuit of virtue transformed both the scope and the objectives of revolutionary censorship from the mere suppression of dissenting opinions. Finally, Chapter IV

²²⁹. See Charles Walton, *Policing Public Opinion in the French Revolution: the Culture of Calumny and the Problem of Free Speech* (Oxford University Press, 2009).

attempts to address the question of how the revolutionaries could justify their adoption of censoring mechanisms without denying the value of civil liberty. In sum, this work aims to directly examine revolutionary censorship, in contrast to existing scholarship that tangentially addresses this topic, and to explain the paradox of revolutionary liberty and censorship.

AN AMBIVALENT COMPOSITION: OLD REGIME CENSORSHIP REVISITED

Popular narratives tend to simplify the French Revolution into a crude binary, thereby complicating its study. Oftentimes, the Revolution becomes a cliché drama of the confrontation between the heroic revolutionaries and an oppressive Old Regime. The revolutionaries themselves exploited such narratives to articulate what they attempted to destroy among the Old Regime institutions. Their pragmatic concerns partially justify some degree of simplification but also render such accounts more similar to propaganda. Yet many modern portrayals, written over three hundred years later in retrospect, similarly distort the actual history to fit it in a black-and-white worldview. The Old Regime as a whole, including the King Louis XVI, becomes the perfect villain in the story and each element of this “evil” regime attests to its malice.

When such simplistic narratives address censorship, then, it is no surprise that the Old Regime censorship appears as an example of persecution—of the most genius authors in particular. Thus, in oversimplified accounts, when the Revolution brought down this “evil” institution of censorship, justice unequivocally prevailed.

A linear story like this not only deviates from the historical facts but also undermines the significance of the study of the Revolution itself. After all, the revolutionary emancipation seems to be nothing more than a destined redemption of injustice, though presumably long-awaited by the oppressed people, whereas the various revolutionary efforts matter only incidentally. Moreover, as scholars assertively condemn the Old Regime censorship, they are also making an implicit value judgment: free expression is naturally just and timelessly desirable to all human beings. A modern ear

accustomed to the celebration of civil liberty may not hear anything wrong in this statement, but it is anachronistic to assume the same of the pre-revolutionary France. The Old Regime and its people might not have embraced free expression as much as we do today. To truly comprehend censorship in the revolutionary context, we have to cast aside our accusatory progressivism toward the Old Regime. A more careful overview shall reveal the complexities of censorship.

The Haunting Model

With the formal abolition of censorship during the early Revolution, it seems that that the Old Regime censorship became completely obsolete. Once and for all, the shackles on free expression should have been destroyed. The thorough elimination of censorship thus imagined renders the Revolution a clear-cut watershed, after which the people would enjoy perfect liberty. Legal proclamations such as the *Declaration of Rights of Man and of the Citizen* may indeed have managed to abolish the formal institution of Old Regime censorship, but historians have revealed a highly intricate landscape of the actual censoring activities both before and during the Revolution. Contrary to a paradise of liberty, France after 1789 witnessed various censoring activities either as remnants of Old Regime institutions or as the results of the radicalization culminating in the Reign of the Terror.

In the first place, the chaotic legislative scene during the early Revolution failed to translate the newly-granted liberty into functioning statutes. For instance, it was not until 1793 that the revolutionary government passed the first formal law regulating the book trade in the place of the Old Regime Directory of Book Trade and the guilds. Without any clear direction from above, Dieudonné Thiébaud, the Director of the Book Trade, told the censors to enforce the old regulations until instructed otherwise. Consequently, the dwindling group of royal censors hung on to their work till at

least 1791.²³⁰ Such a legislative vacuum inevitably raised much confusion among the people. Moreover, as the third chapter shall present in greater depth, certain Old Regime censoring practices resurged after 1789, albeit not explicitly in the name of censorship. Seizing dissidents, publicly condemning so-called counterrevolutionary works, banning royalist pamphlets...all these practices appear suspiciously similar to what existed under the Old Regime and more importantly, to what modern observers may define as censorship. By studying Old Regime practices, it is possible to discern what the revolutionaries inherited from their Old Regime predecessors while policing expression. The cut from Old Regime censorship was not as clean as the revolutionaries insisted, although they frequently compared their progress to the past. In this sense, Old Regime censorship haunted revolutionary France and functioned as a test strip for revolutionary censoring activities.

Although the revolutionaries drastically revised censorship, studying Old Regime practices is also essential for understanding the development of free expression. The revolutionary promulgation of free expression was largely abstract. Liberty, in the eyes of the revolutionaries, might have been so naturally desirable and self-explanatory that they did not provide much legal explanation of what such liberty truly entails in everyday enforcement. Yet with their selective destruction of the various censoring institutions of the Old Regime, the revolutionaries in fact generated a functioning definition of the freedom of expression. Therefore, a brief overview of the Old Regime censorship will build a crucial context for the examination of the revolutionary period.

Defining Censorship

²³⁰. Robert Darnton and Daniel Roche, *Revolution in Print: the Press in France, 1775–1800* (Berkeley, CA: University of California Press in collaboration with the New York Public Library, 1989), 70.

Censoring, whether as a policy or as a profession, is never easy to define. With its essence being the control over various expressions, censorship may encompass a wide range of fields such as the printing press, the theater, and even the coffee shops where people gather to talk. Moreover, it often requires the collaboration of different governmental organs to enforce comprehensive censorship.

The Old Regime censorship institution displayed precisely such complexity. While the only nominal censorship lay in the hand of the Directory of the Book Trade, the monopolistic guilds and the police both worked at the forefront of the censoring activities. At a more distant level, the King, the Church, and the various universities such as the Sorbonne in Paris all had a considerable influence over what could be published. Among the various censoring mechanisms of the Old Regime, the royal censors were neither the most tangible obstacles to free expression nor the most conspicuous oppressive force. In fact, the duty of royal censors entailed little beyond granting or denying the official permission to publish a work submitted for their review. In essence, royal censorship is prior censorship, i.e. pre-publication censorship. It was the police, not the royal censors, who stormed into a printing shop and seize the copies of a prohibited work; it was also the police who threw into jail the indicted authors or owners of the printing shops.²³¹ The police spies were even monitoring the everyday conversation of the people and would arrest those suspected of seditious talk.²³² Beyond the literal censorship enforced by the royal censors, the Old Regime had multiple censoring practices to ensure the effective control over expressions.

²³¹. Carla Hesse, *Publishing and Cultural Politics in Revolutionary Paris, 1789-1800* (University of California Press, 1991), 12–13.

²³². Todd, *Political Bias*, 10.

Historians disagree over whether to define all these state actions as censorship. Traditional historians, when addressing the freedom of the press, hesitate to expand the definition of censorship beyond the royal censorship.²³³ Indeed, royal censorship was the only institution that bore explicitly the name “censorship” with a well-established work procedure. After all, even as the revolutionaries vowed to celebrate free expression, they only abolished this type of prior censorship.²³⁴ While it is not clear that the revolutionaries considered censorship to consist of prior censorship only, other censoring mechanisms such as the police did seem neglected in the revolutionary legislation. Such a narrow definition cannot avoid overlooking the informal oppressive mechanisms of the Old Regime other than royal censorship. Moreover, by only acknowledging literal censorship, this definition risks oversimplifying the study of both the Old Regime and the revolutionary period. It was not until the Napoleonic era, when the state once again employed formal censors, that formal prior censorship reappeared in France.

Beyond royal censorship, some Old Regime practices appear to have uneasily resurfaced in revolutionary legislation. Nibs of systematic repression appeared as early as in 1791, when the legislation passed by National Assembly resulted in a wave of punishments of allegedly seditious individuals, despite the law’s official and primary intention of curbing rampant calumny.²³⁵ The notorious Law of Suspects, passed on September 17, 1793, targeted with death penalty those who “by their conduct, associations, *comments*, or *writings* have shown themselves partisans of tyranny or

²³³. Hesse, *Publishing and Cultural Politics*, 5.

²³⁴. Walton, *Policing Public Opinion*, 29.

²³⁵. *Ibid.*, 123.

federalism and enemies of liberty.”²³⁶ Strictly defining censorship as prior inspection by the formal censors does not align well with the intricate censoring reality of the Old Regime and of the revolutionary period.

The alternative approach is to adopt a functional definition that goes beyond the work of the royal censors, therefore accommodating the various components of the factual restriction imposed on the authors, the printers, and the people in general.²³⁷ Extending the examination of censorship beyond formal censoring institutions makes possible a more comprehensive study of censorship. Since there are no revolutionary statutes that explicitly resurrected censorship, a broad definition also seems indispensable to any further exploration of revolutionary censoring activities.²³⁸ Nevertheless, this more inclusive approach may engender an overly libertarian philosophy of including anything that may pose even the slightest restriction on expression. When applied to the Old Regime, such a definition could cover normal state actions such as official exhortation and the charge of calumny and libel. While book police and inspectors of the Old Regime indeed facilitated an important part of the censoring activities, regular law enforcement over criminal offenses cannot reasonably fall under the same category. To indiscriminately stuff various actions that may influence free expression into “censorship” is to diffuse its significance. The flexibility of a functional and not nominal definition of censorship risks overstretching the concept. The challenge of determining the indefinite borders of

²³⁶. The italics are my emphasis.

²³⁷. Darnton, “Bourbon France”, 86.

²³⁸. Walton, *Policing Public Opinion*, 29; Hugh Gough, *The Newspaper Press in the French Revolution* (Chicago: The Dorsey Press, 1988), 83.

Old Regime censorship makes this more inclusive approach a general guiding thought but not an unequivocal, positive definition of censorship.

Stereotypes Dispelled

The survey of the miscellaneous censoring mechanisms above illustrates the general complexity of censorship under the Old Regime beyond the work of royal censors. Nonetheless, the actual operations of royal censorship itself contains much intricacy worthy of further examination. Instead of an institution enforcing sheer oppression, royal censorship under the Old Regime was of a composite nature, which makes it hard to determine its exact influence over free expression. In some sense, royal “censorship” managed by the Directory of the Book Trade is a deceptive misnomer. The eighteenth-century French royal censors did wield a legal approbation authority examine manuscripts submitted to them and granted or denied formal approbations for publication accordingly, which seems to fit squarely within the realm of qualify as prior censorship. Yet the typical approbations issued by the censors contradict a simplistic assertion. Often in the form of a letter from the king granting the exclusive right to publish, these approbations state that the works examined are good enough to bear royal sanction. Thus, for works to pass royal censorship, they also had to be of high quality instead of merely having safe content. The qualitative literary requirement for royal sanction appears puzzling to modern eyes.

As historian Robert Darnton argues in *Censors at Work*, Old Regime censorship did not simply “purging heresies,” but offered a positive “royal endorsement” of the book and an “official invitation”

to read it.²³⁹ While there is no doubt that the defense of the king and the Church was a fundamental guideline for the censors, they also worked from the basic assumption that they were primarily responsible for upholding the prestige of royal approbations. Unsurprisingly, more than a handful of otherwise innocuous or even flattering works were turned down, for they were “badly written,” filled with sheer insipidness, written in miserable style, etc.²⁴⁰ Contrary to the wicked image of mechanical detectors of rebellious content, these royal censors were oftentimes authors themselves and specialists on the works they examined.²⁴¹ While Darnton is wary of inspiring undue sympathy for the censors, he convincingly argues that despite some spectacular episodes, the everyday aspect of their work presents a rather different image of royal censorship from the much more accusatory portrayals by some revolutionaries advocating for the freedom of the press.²⁴² The quality-control aspect of its operation indeed constituted a crucial part of the royal censorship. Furthermore, the royal approbation constituted a crude archetype of copyright, for it also affirmed the exclusive right of the author or printer to publish the work thus examined. More than a convenient tool of oppression, royal censorship paradoxically contributed to the quality of works published and to the protection of intellectual property.

Alongside the regulative elements of royal censorship was an unequivocal economic concern. While the royal censors granted only limited formal approbations and regularly rejected works either of poor quality or containing sensitive content, there was a whole “literary underground” beyond the

²³⁹. Darnton, “Bourbon France,” 29.

²⁴⁰. *Ibid.*, 31–32.

²⁴¹. Birn, *Royal Censorship*, 3.

²⁴². Darnton, “Bourbon France,” 49.

reach of official censorship.²⁴³ Authors sent their manuscripts abroad, where state censorship was more relaxed than in France, and the works printed there were shipped back into France and circulated illegally without ever being submitted to official review. In essence, bookdealers and authors sustained this prolific literary underground through smuggling. This unambiguously illegal publishing system was anything but a secret to the state officials, especially the Directory of the Book Trade, who nevertheless rarely tried to crush it. Instead, royal officials strived to cope with the economic drainage it brought about by extending legality through tacit permissions. The censoring authorities preferred to risk circulating the potentially dangerous content in these works than to damage the national economy by completely banning them and allowing foreign bookdealers to illegally earn profits through such works since they would continue to sell them. Contrary to the more rigorous royal approbations, *permissions tacites* granted by the royal censors allowed more French bookdealers and publishers to publish their works in competition with the illegal imports. In this sense, royal censors were working to encourage more publication than to oppress it. Once again, due to its “awkward” seating under the Directory of the Book Trade, royal censorship had to consider factors such as domestic revenues that seemed irrelevant to censorship, which ought to consist solely of the inspection and restriction of written and oral works. With the official connivance from this formal censoring institution, then, the Old Regime witnessed a tacit coexistence of both legal and illegal publication. Moreover, this dual system entailed the collaboration from the authors and printers who maintained a self-imposed line between different ways of publishing.

²⁴³. Multiple works exist on the illegal publishing sector under the Old Regime, for instance, see Robert Darnton, *The Literary Underground* for a detailed description.

Both the regulative nature and the emphasis on economic concerns in the operation of royal censorship translated into a collaborative relationship between the censors and those censored. Under the Old Regime, authors and printers strove to collaborate with the censors, rather than fighting vehemently for the so-called right to liberty that the revolutionaries introduced. Cognizant of the state's tactics of qualified tolerance, authors and publishers regularly engaged in a form of self-censorship through personal consultation with the censors. Among these authors were several famous Enlightenment figures such as Voltaire, Diderot, and even Rousseau when trying to publish *Émile*.²⁴⁴ Such a collaborative symbiosis resulted in a rather low refusal rate of this formal prior censorship under the Old Regime, which was often around 10 percent.²⁴⁵ Within the formal procedural realm of royal censorship, then, its restriction of free expression was limited. The quality-control aspect of royal censorship softened the punitive tone apparent in other informal censoring activities such as the seizure of works and imprisonment of the printers and authors by the police force. The economic concerns of the book trade further facilitated various ways for people to get around requirement of the most rigorous formal approbations. Hence, to abolish royal censorship in its entirety would pose the challenge to the revolutionaries for finding proper alternatives to its regulative and economic functions. The abolition of royal censorship alone would also count little for the freedom of the press, for the much harsher censoring forces of the Old Regime lied in the various informal institutions.

Beyond the Printing World

²⁴⁴. Darnton et al., *Revolution in Print*, 9-11.

²⁴⁵. Darnton, "Bourbon France," 47.

Just as post-publication censorship consisted of non-nominal mechanisms such as the police, Old Regime censorship did not limit itself to the narrow range of the printing world. Theater, for instance, was always one of the venues that the Old Regime authorities watched over with much carefulness. Since 1751, the French state placed soldiers in the privileged Parisian theaters and their vicinities to monitor the crowds.²⁴⁶ While the main duty of the soldiers concerned general crowd control, such as directing the traffic flow and detaining unruly spectators, the presence of a military force within the theatrical space inevitably posed pressures to the spectators as well as the performers. The inspectors of the theaters also produced written reports that described the general atmosphere and the more specific reactions of the audience at the theaters they visited. The close watch of the state authorities over the theater constituted a stifling restriction over the creative interactions between the actors and the audience, for improvisations and overly “demonstrative” reactions could incur them great troubles.²⁴⁷ Although the soldiers and the inspectors at the theater were not present in specific and explicit search for political unrest, they concretized the surveillance and even the tyranny of the state over the theatrical space. To some extent, it was the presence of these authority figures that politicized the pre-revolutionary theater and not the reverse.²⁴⁸ Combined with the police spies who watched over conversations at the coffee shops, the pre-revolutionary French did experience rather comprehensive monitoring of their audiovisual-oral-visual expressions. Even before the Revolution drastically

²⁴⁶. Jeffrey Ravel, *The Contested Parterre: Public Theater and French Political Culture, 1680-1791* (Cornell University Press, 1999), 161.

²⁴⁷. *Ibid.*, 166.

²⁴⁸. *Ibid.*, 161-162.

politicized the various forms of expressions beyond written words, the Old Regime had indeed enforced a stifling control over the diverse aspects of the everyday life of the people.

Paradoxically, such Old Regime censoring practices over the audiovisualoral-visual expressions inspired revolutionary expressions of subversive political opinions and their subsequent censorship at the same time. audiovisualOral-visual media was crucial to a Revolution that mobilized an unprecedentedly popular class, a huge proportion of which was still largely illiterate. Moreover, the relatively high prices of books inevitably excluded the majority of the lower-class population from the market. Songs, political caricatures, and even theaters provided a much more accessible way to disseminate political ideas. In addition, the audiovisualoral-visual media lacked the reassuring distance from the audience that newspapers and books had, for its performance and interpretation occurred in a single arena to an immediate audience.²⁴⁹ The inflammatory potential of the audiovisualoral-visual media hence rendered it still more dangerous. In a revolutionary context where the control of popular opinion could nearly translate into direct political power, the revolutionary authorities naturally hoped to control popular sentiments through any possible measure.

Conclusion

This overview of the Old Regime censorship reveals that it was anything but a simple oppressive force over free expression. Contrary to the classical villain figure perpetuated by simplistic binary narratives composed by revolutionaries and by modern writers, censorship in the pre-revolutionary context entailed all sorts of complexities and contradictions. On the one hand, the formal, royal

²⁴⁹ Laura Mason, *Singing the French Revolution: Popular Culture and Politics, 1787–1799* (Cornell University Press, 1996), 72.

ensorship was much less forceful than the common stereotypes would imagine. On the other hand, Old Regime France did employ a strong combination of censoring mechanisms to watch over almost every aspect of possible expression of the people. From the omnipotent police force to the higher authorities, informal *prosecutive* censorship have perhaps influenced the French people in a much harsher way than the *preventative* royal censorship did. Examining the censoring activities during the early Revolution, however, ironically reveals that it was precisely these prosecutive censoring practices that the revolutionaries tended to inherit from the Old Regime.²⁵⁰

Last but not least, the study of royal censorship also leads to the question over the propelling forces behind growing appeals to free expression. As we will see from the analysis in the following chapter, even on the eve of the Revolution, the French people almost unanimously demanded the right to free expression. If the only nominal censorship under the Old Regime had been mild and collaborative, why would the people harbor such strong sentiments toward its abolition and the freedom of the press? While the Enlightenment's influence certainly provides an indirect explanation, the direct causes of this widespread enthusiasm for free expression remain nebulous. Regardless of the exact catalysts for this appeal to liberty, however, as the Revolution rolled on, people increasingly celebrated free expression. It is within the context of such revolutionary emancipation that the resurgence of censoring practices appears particularly intriguing and worth exploring.

²⁵⁰. Walton, *Policing Public Opinion*, 26–27.

APPEAL FOR FREEDOM: PRE-REVOLUTIONARY DISCOURSE AND REVOLUTIONARY LAWS

“To set forth in a solemn declaration the natural, unalienable, and sacred rights of man...” Such aspirational language of the *Declaration of the Rights of the Man and of Citizen* paints a mythical tone onto many of the revolutionary concepts such as liberty and egalitarianism. It is impossible to overlook the revolutionaries’ emphasis on the “natural” origin of such ideals and rights. Through the incessant repetitions in revolutionary writings, these fundamental ideals have grown to appear as not only endowed by nature, but also long-ingrained in the popular mind even before the onset of the Revolution. Current common narratives share the illusion that when the Revolution arrived, the public already had a mindset equipped with a conscious, earnest longing for the revolutionary values articulated in the *Declaration*.

However, ideals such as liberty and their concrete derivatives like free expression did not grow out of mythical origin; nor had they existed before in the public mind as eternal truths. While we can indeed trace much of the revolutionary discourse to some earlier events such as the Enlightenment, the actual revolutionary agenda would not materialize without the numerous popular campaigns that started shortly before 1789. It is unsurprising that many revolutionaries sought to elevate the status of fundamental values and rights by portraying them as described above. Yet in actuality, the realization of liberty and equality as eternal principles came about more or less arbitrarily in 1789.

The French struggle for free expression is a perfect example of the on-the-ground ideal formation. The 1789 convocation of the Estates-General, which entailed the participation of delegates all over the

country and called for localities to compose grievance lists, played a huge role in prompting a remarkably inclusive discussion over state policies and potential reforms. Continuing the tradition of the Enlightenment, pre-revolutionary intellectuals were also writing about and promoting liberal ideals including free expression. Early revolutionary legislative works responded to and consolidated these relatively vague public sentiments into a formal affirmation of free expression. Therefore, the mobilization of public opinion for the Estates-General, the endeavors of prominent individuals, and the subsequent legislative deliberations joined forces to realize the appeal for free expression.

Liberty Calls

By devoting considerable attention to individual revolutionaries, some common narratives of the French Revolution also tend to cultivate a myth of “great man history.” From Comte de Mirabeau and Abbé Sieyès to Robespierre and Danton, big names of the period seem to monopolize the progress of the Revolution.²⁵¹ “The people,” despite its significance as a congregate entity that one appeals to for legitimacy, blur into the background. These underlying dynamics thus create an image of revolutionary shepherds guiding the impassioned people all along. While individual leaders no doubt played a crucial role in revolutionary proceedings, such depictions prove inaccurate at least in the campaign toward free expression. Contrary to what one may assume, the popular appeal for free expression predated many well-known revolutionary events; it also rose from a much broader base than a handful of leading revolutionaries. Analyzing the grievances lists compiled for the Estates-

²⁵¹. For an instance relevant to our topic, see “Chapter 2: Revolution of the Press (1788-90)” in Jonathan Israel, *Revolutionary Ideas: An Intellectual History of the French Revolution from The Rights of Man to Robespierre*, (Princeton, NJ: Princeton University Press, 2014), 30–52.

General of 1789 offers insights into the popular development of the pre-revolutionary discourse on free expression.

Popular Voices in *Cahiers de doléances*

Having failed to resolve his financial crisis through the reforms of individual ministers and the Assembly of Notables, in 1789 Louis XVI finally adopted the suggestion to convene the Estates-General that had not met since 1614. Contrary to the Assembly of Notables which consisted exclusively of the high-ranking nobles and clergymen, the Estates-General involved all three estates, or orders, of the Old Regime society. The First Estate encompassed the clergy, the Second Estate the nobility, and the Third Estate comprised everyone else. As a traditional component of the Estates-General, *Cahiers de doléances* came to the stage during the early months of 1789 in preparation for the opening meeting of the Estates-General. These cahiers typically included complaints of injustices and suggestions of policies and reforms. The compilation of these lists of grievances engaged, directly or through intermediate representation, people from approximately 40,000 local units nationwide and from all three orders.²⁵² The unprecedentedly wide participation in political discussion concretized into precious specimens of the general public appeals at the eve of the Revolution. As the deputies converged from across the country for the Estates-General in Versailles, they also carried with them these *cahiers* as their local guidelines and agendas. The *cahiers* were not only reflective of the popular political voices but also possessed a high possibility of being translated into actual policies.

²⁵². Gilbert Shapiro and John Markoff, *Revolutionary Demands: A Content Analysis of the Cahiers de Doléances of 1789* (Stanford, CA: Stanford University Press, 1998), xxvi.

The wide base of the *cabiers* and its political implications render their demand for free expression significant.

Alongside the more commonly known petitions for tax exemption and voting reforms, the explicit demand for formal legislation on free expression indeed stood out as a recurrent theme in many *cabiers* from across the country. The *cabiers* repetitively and explicitly demanded that the Estates-General should deliberate and legislate on free expression. A sampling of the *cabiers* now preserved in the *Archives parlementaires* reveals that hundreds of them make claims about and demands for free expression. More importantly, such claims are not restricted to one region or any of the three orders; rather, it is fairly easy to locate a *cabier* from most of the local units called *bailliage* or *sénéchaussée* at the time, and it could well be from the clergy, the nobility, or the Third Estate that comprised the common people.

Given the multitude of the relevant *cabiers*, any choice of examples to illustrate the broad distribution across regions and social classes cannot avoid being arbitrary and incomprehensive. However, examples from each of the three orders taken from different local units permit an analysis of the spectrum here. The *cabier* generated by the clergy of Bailliage d'Alençon demanded that “[the constitution to-be-written should] permit freedom of the press with proper modifications.”²⁵³ At the time when most perceived the clergy to be overwhelmingly conservative, it was indeed a bold and unexpected move of the clergy from Alençon to demand, beyond the specific “freedom of the press,” a written constitution which did not see much promise in the general public in early 1789.

²⁵³. *AP*, Tome I, 709. “Permettre la liberté de la presse avec des modifications convenables.”

Constitutionalism was an unmistakable threat to the absolute monarchy under which Louis XVI still ruled without much indication of collapse. In a similar vein, the nobility in Sénéchaussée de Marseille listed “freedom of the press, with the reserve of the signature of author or printer” as one of their chief demands on the Estates-General.²⁵⁴ Finally, the *cabier* from the Third Estate of Sénéchaussée de Ponthieu expected the constitution to stipulate that “all citizens enjoy the freedom of the press, under the only obligation of the author to sign his manuscript and the printer to put his name on the work.”²⁵⁵ With some slight variations, all three *cabiers* unequivocally asked for free expression. Their divergent backgrounds substantiate the claim that there was a conscious popular appeal for it even before the Revolution.

Instead of the broad term “free expression,” however, most *cabiers* used the phrase *la liberté de la presse* (“freedom of the press”), which may cast doubts over the exact connotation of the freedom so widely demanded. As the people drafted the clauses on such freedom for their *cabiers*, did they mean a narrow freedom of the literal “press,” or were they aiming for a broader freedom that should cover all forms of expression of their ideas and opinions? The evidence supports both possibilities. While many *cabiers* were vague and mentioned only the literal term of “freedom of the press” with no further specifications, others did provide a clearer context that points toward the freedom of only the literal “press.” The aforementioned Marseille noble *cabier* and the Ponthieu Third-Estate *cabier* both qualified “freedom of the press” with the regulatory measure that authors and printers ought to sign their names for accountability. The reference to authors and more importantly, printers, implies that

²⁵⁴. *AP*, Tome III, 700. “La liberté de la presse, avec la réserve de la signature de l'auteur ou de l'imprimeur.”

²⁵⁵. *AP*, Tome V, 437. “Que tous les citoyens jouissent de la liberté de la presse, sous la seule obligation à l'auteur de signer son manuscrit, et à l'imprimeur de mettre son nom à l'ouvrage.”

what the drafters of these *cahiers* had in mind was only the works printed, thus excluding audiovisual-oral-visual forms of expression such as songs and theatrical plays. Similar provisions that specifically mentioned authors and printers in conjunction with freedom of the press are not rare among the *cahiers*. The Third-Estate *cahier* from Sénéchaussée d’Albret, the Third-Estate *cahier* from Bailliage de Bar-le-Duc, the general *cahier* from Colmar, the clergy *cahier* from Sénéchaussée de Nérac, and the noble *cahier* from Bailliage de Touraine also specifically referenced to the printing press.²⁵⁶ The majority of the cahiers, therefore, framed their requests as freedom of the printing press.

Nevertheless, some notable exceptions exist to challenge the potential monopoly of the narrowly-framed request of “freedom of press.” For instance, the Third Estate of Sénéchaussée d’Angoumois wrote in their *cahier* that with regard to the necessary administration, freedom of the press ought to be “without bounds, for the good, but to prohibit for all which corrupts the spirit and the heart.”²⁵⁷ For these cahiers, the abstract goal of “freedom of the press” for “the good” extended beyond the physical printing press to other kinds of expression including audiovisual-oral-visual media such as theatrical performances and popular songs. With the unprecedentedly broad reach of *cahier* compilation, a considerable number of illiterate people such as the peasants would also have contributed to the drafting of the *cahiers* of their own districts. These people, who made up the bulk of the French population at the time, expressed themselves more frequently in forms other than the written or printed works. In particular, they used songs as an effective way to vent their frustrations and

²⁵⁶. See *AP*, Tome I, 705; Tome II, 195; Tome III, 13-14; Tome IV, 230; Tome VI, 39.

²⁵⁷. *AP*, Tome II, 8. “[La liberté] parait devoir être sans bornes, pour le bien, mais prohibée pour tout ce qui peut corrompre l’esprit et le cœur.”

aspirations.²⁵⁸ The prevalent appeal for “freedom of the press” in the Third-Estate *cabiers* would be meaningless for the largely illiterate common population if such appeals only covered the printing press inaccessible to many.

Because many *cabiers* did not use the phrase “freedom of the press” in a consistent fashion, the concept seems to encompass both the literal press and more expansive interpretations of freedom of expression. Even if these *cabiers* did not explicitly lean one way or the other, their language is malleable enough to accommodate a broader retroactive interpretation that encompasses audiovisual-oral-visual expressions. While some *cabiers* qualified freedom of the press with the necessity of regulation, hardly any *cabiers* provided specific measures that could be readily implemented or even legislated. Hence, the textual vagueness of these *cabiers*, combined with the lack of any concrete policy suggestion, makes the *cabiers* more likely a value statement for liberty than actual political platforms to be adopted. Thus, in their *cabiers*, the people demand “freedom of the press” more as an ideal than as a meticulously defined legal right with attendant procedures. Despite its literal constraints, “freedom of the press” in the *cabiers* seems to serve as a convenient catchall for the general freedom of expression.

Intriguingly, the majority of the *cabiers* also emphasized the regulation of abuse of freedom of the press once granted, instead of advocating for the maximal expansion of liberty. Apart from the recurrent request that authors and printers should sign their works to facilitate accountability, the *cabiers* offer virtually no specific regulative methods. Most frequently, the *cabiers* simply add vague dangling phrases to their appeal for free expression, which essentially demand that “appropriate

²⁵⁸. Kennedy, *A Cultural History*, 43.

modifications” should be included. The people probably deferred to the national delegates to specify regulations, but such vagueness can also be the result of disagreements over any concrete limitations. Nevertheless, the nearly unanimous wariness of the potential abuse of liberty is undeniable. The *cabiers* from each of the three orders occasionally specified their concerns, such as making expressions in violation of the common morals or showing disrespect of the King, the state, or the religion.²⁵⁹

Last but not least, a closer examination of the *cabiers* reveals class divergences in the attitudes toward free expression beneath the superficial broad distribution delineated above. While several clergy *cabiers* indeed advocate for free expression with as much enthusiasm as the other two orders do, the most dispassionate demands for moderating free expression also lie within the clerical order. For instance, the Angoumois clergy’s *cabier* betrays a sense of unwillingness as it states that “the clergy is not opposed to freedom of the press, provided that it is modified...”²⁶⁰ The clergy *cabier* of Bailliage d’Amont surpasses the hesitation and adopts a grumpy tone: “Should freedom of press, so universally demanded, to be authorized, the religion [...] and the morals should not suffer because of this freedom; and the public officials will be responsible to devote particular attention to this issue that concerns the social order.”²⁶¹ While this statement implicitly acknowledges the widespread contemporary appeal for free expression, it is at best a resigned acceptance of this trend.

²⁵⁹. For instance, see *AP*, Tome I, 705: “[Les imprimeurs doivent nommer les auteurs] poursuivis par les lois s’ils attaquent la religion et les mœurs. ([The printers should name the authors] who are pursued by law should they attack the religion or the morals.” and *AP*, Tome III, 13: “Qu’on établisse des limites à la liberté de la presse, qui, [...] ne donnent pas ouverture à outrager impunément la religion, les mœurs, la majesté royale, les opérations du gouvernement...(That we should establish the limits of the freedom of the press that would not grant openings to outrage with impunity the religion, the morals, the royal majesty, the operations of the government...)”

²⁶⁰. *AP*, Tome II, 1. “L’ordre du clergé ne s’oppose pas à la liberté de la presse, pourvu qu’elle soit modifiée...”

²⁶¹. *AP*, Tome I, 760. “Que si la liberté de la presse, si universellement demandée, est autorisée, la religion, les maximes d’État, la saine doctrine et les mœurs ne souffriront aucune atteinte de cette liberté, et que les officiers publics seront chargés de donner un attentions plus marquée à cet objet intéressant dans l’ordre social.”

The content analysis of the *cabiers* conducted by Gilbert Shapiro and John Markoff further confirms that three orders were unbalanced in their devotion to the campaign toward free expression.²⁶² Shapiro and Markoff's quantitative approach takes note that, compared to the other two orders, the clerical order addresses less frequently the subjects concerning free expression, such as freedom of speech, the press, and censorship.²⁶³ In addition, whereas censorship is among the top ten topics for both the nobility (five) and the Third Estate (eight), it only ranked two hundred thirty-third for the clergy.²⁶⁴ By contrast, the nobility proves to be the leading order in this campaign and ranks the first in both indexes; the nobles also cared more for legal matters in general.²⁶⁵ As we shall discuss later, many of the themes in the *cabiers* such as the qualified freedom and the legal affirmation of free expression translated into later revolutionary laws.

Dubious Representativeness of the *Cabiers*

As much as the *cabiers* seem to promise to represent the popular voices of the pre-revolutionary French population, some historians have doubted their credibility as a truly representative media of public opinions. Two primary issues cast suspicion on the *cabiers*' representative nature: the widespread illiteracy and the circulation of model *cabiers* during their compilation. Pre-revolutionary illiteracy challenged the technical feasibility of generating *cabiers* that faithfully represented the largely

²⁶². While this study by Shapiro and Markoff is not a literally exhaustive survey of all the *cabiers* available, their scale of analysis does far surpass my own and my sampling here. This study examines primarily two categories of *cabiers*, the general ones from the nobility and the Third Estate and the parish ones that were preliminary *cabiers* of the local rural communities. Their survey covers virtually all the general *cabiers* totaling near 400, and out of the 25,000 extant parish *cabiers*, they have sampled and coded over at least a thousand. For more description on the sampling methods, see Shapiro et al., *Revolutionary Demand*, 219–252; for a list of the *cabiers* studied and their sources, see Appendix III in the same book.

²⁶³. See Appendix Table 1-10 in Shapiro et al., *Revolutionary Demand*, 443.

²⁶⁴. Ibid., 380, Table 20-1 and 611, n16.

²⁶⁵. Ibid., 382.

illiterate Third Estate, and the circulation of model *cabiers* projects opened the project to political manipulations. While the literacy rate increased consistently throughout the eighteenth century, it remained largely inadequate for collective endeavors like the drafting of *cabiers* within the Third Estate, especially among its large rural population. The literacy survey conducted by Louis Maggiolo indicates that on the eve of the Revolution, during the period of 1786–90, the literacy rate of the rural France was roughly 37%. This monolithic figure was not evenly distributed. The North (already 80% literate in 1689–90) surpassed the South (29%), the city was more literate than the countryside, and male (47.4% in 1786-89) literacy outpaced female (26.8%) literacy.²⁶⁶ Even without the clear Parisian outlier, big cities like Lyon (60%) surpassed the countryside by far. Yet, because historians count signatures as a sign of literacy in their surveys, these literacy numbers are inevitably inflated.²⁶⁷ Being able to sign one's name on contracts is far from the full literacy that would allow one to read and write political discourse. With the bulk of the common people being illiterate or having extremely limited literacy, how could they have possibly produced the rather polished prose and clauses seen in their *cabiers*?

The existence of model *cabiers* may provide an answer. As a variant of the proliferating journalistic works such as pamphlets, model *cabiers* sought to influence the contents of the *cabiers* that would be presented to the king and the Estates-General.²⁶⁸ As ready-to-use templates, it is not improbable for these model *cabiers* to have made their way into the actual local *cabiers* and may have manipulated the how the *cabiers* presented their political agendas at the expense of organic creation.

²⁶⁶. Kennedy, *A Cultural History*, 35–39.

²⁶⁷. *Ibid.*, 35.

²⁶⁸. Shapiro et al., *Revolutionary Demand*, 140.

The commonalities in content regarding freedom of the press suggest that they may have taken cues from model *cabiers*. Nevertheless, the textual comparisons conducted by Shapiro and Markoff prove that while model *cabiers* may have influenced the actual cahiers' content, the French selectively drew from them rather than blindly copy them into their actual cahiers.²⁶⁹ People may have borrowed from model *cabiers* more or less, but the action of choosing which parts to incorporate into their own *cabiers* indicates some autonomy. Hence, literal originality should not be the yardstick for measuring the authenticity of the appeals contained by the *cabiers*.

Even with the disquietingly low literacy rate in rural France, local units may have been able to deliberate on their *cabiers* and influence their composition. In the first place, it was highly unlikely that most of the established districts had a monolithic population of only illiterate individuals. Petty bourgeois and the local political leaders were sufficiently capable of compiling the oral ideas expressed by their constituents in convocation assemblies. These more educated people belonged to the same order, the Third Estate, just as the illiterate peasants did; they were composing the *cabiers* for their own order alongside their illiterate peers. Furthermore, the practice of reading aloud the written texts for the illiterate crowds was an effective remedy for their incapability to deliberate directly in composing the actual texts of the *cabiers*. While we cannot assert that the *cabiers* perfectly represent the public opinion, with the multitude of various local *cabiers* available, we can assume the prevalence of the appeal for free expression reflected its importance to people of the Third Estate.

Leading Figures of Free Expression

²⁶⁹. Ibid., 141-142.

The *cabiers* powerfully rebut the myth of the Revolution as orchestrated by a few leading figures alone. The widespread common appeal for free expression reflected by the *cabiers* indicates that the campaign toward free expression entailed more spontaneity than stereotypical impressions of transcendent and pre-existing natural rights can capture. Nevertheless, the *cabiers* also contain a high level of abstraction and vagueness that the deputies could have struggled to transform into actual legislative works. Many tangible details of the later revolutionary legislation of free expression, therefore, drew more from the systematical writings of certain individuals than the *cabiers* at large.

The first type of figures leading the free expression campaign were (ironically) from within the Old Regime censorship institution: the government officials who had worked in areas relevant to the press, such as Chrétien-Guillaume Lamoignon de Malesherbes and Dieudonné Thiébault. As a retired magistrate and the one-time Director of the Book Trade, Malesherbes had been immersed in the world of print and of censorship since the 1750s when his term started. Almost at the same time as Louis XVI strove to convene the Estates-General and demanded the compilation of the *cabiers* in 1788–89, Malesherbes, in his retirement, was writing a comprehensive memoir on freedom of the press. In this work, Malesherbes provided theoretical justifications for freedom of the press, such as its crucial role in promoting the political discussion vital to the state.²⁷⁰ Malesherbes also echoed a desire for limits on the freedom of the press similar to the *cabiers* above, but he went a step further than most by specifying possible transgressions including insult, rebel, and calumny.²⁷¹ In a similar attempt to offer his professional insights, Thiébault, who also worked in the Directory of Book Trade, composed his

²⁷⁰. Chrétien-Guillaume de Lamoignon de Malesherbes, *Mémoires sur la librairie et sur la liberté de la presse* (Paris: H. Agasse, 1809), 265–266.

²⁷¹. *Ibid.*, 273.

own memoir on freedom of the press in 1789. Thiébault also attached meticulous qualifications to the much-demanded freedom of the press. After he lavishly praised the advantages of granting such freedom, he commented that “All proves that we ought to find the best ways to protect our book trade, maybe surveilling it, containing it within some limits and directing it, but certainly [we ought to] encourage and support it.”²⁷² The relatively evasive words of Thiébault could indicate a more conservative stance, but as Thiébault was still in office as he wrote this memoir, it was even more likely that practical concerns led him to be circumspect in advocating for freedom of the press. Regardless of their detailed stances, Malesherbes and Thiébault illustrated through their memoirs a clear consciousness of the popular demand of freedom of press on the eve of the Revolution and offered their own analyses and procedural suggestions, which distinguishes them from the *cabiers*' more generalized laments.

The second group of individuals are the revolutionary writers, including several familiar names such as Comte de Mirabeau. *Sur la liberté de la presse, imité de l'Anglois de Milton*, written by Mirabeau and published in 1788, was arguably one of the most outspoken works that called for free expression. Mirabeau considered the freedom of the press to be the essential pivot of all liberties; he thus demanded absolute, unlimited freedom of expression. Marie-Joseph de Chénier's *Dénonciation des Inquisiteurs de la pensée* published in 1789 is another example of the much more radical and passionate appeal for free expression, which stands in stark contrast to the moderate tones of Malesherbes and Thiébault.

²⁷². Dieudonné Thiebault, *Mémoire sur la liberté de la presse, suivi de quelques autres mémoires concernant la librairie* (n.p., 1789), 8.

The works of Chénier deserves some extra attention as he seeks to expand the connotation of freedom of the press. Whereas the common understanding of freedom of the press, even if including the audiovisual-oral-visual elements, entails thus far only freedom from censorship, Chénier argues that corporate monopolies stifled the free communication of ideas and opinions. In his list of seventeen kinds of “tyranny” on the mind of the citizens, Chénier included the book guilds (and their monopoly) alongside the all too familiar formal censorship.²⁷³ Required by law to obtain royal administrative permits for their businesses and their works to be published, the members of these guilds then became in effect the only lawful, thus privileged, printers and bookdealers. Royal decrees throughout the previous two centuries reinforced the guilds’ monopolizing tendencies by requiring guild membership and by tightening the entrance requirements.²⁷⁴ The novelist Restif de la Bretonne echoed Chénier’s opinion, writing that “If you want freedom of the press, establish freedom of the professions. Without this, thirty-six privileged printers will become more cruel tyrants of thought than all of the censors!”²⁷⁵ The duality of freedom of the press thus emerged as both the freedom of expression and the freedom of entrance into the publishing profession. Significantly, any serious attempt to realize freedom of the press would fall short if it did not also abolish the corporate structure and privileges relevant to the public sphere.

A brief review of both *Cahiers de doléances* and the writings of leading figures shows a complementary relationship between their different appeals for free expression on the eve of the

²⁷³. Darnton et al., *Revolution in Print*, 69.

²⁷⁴. Christine Haynes, *Lost Illusions: The Politics of Publishing in the Nineteenth-Century France*, (Cambridge, MA: Harvard University Press, 2010), 6.

²⁷⁵. Ibid.

Revolution. Whereas the relatively abstract *cabiers* provided a popular base for the campaign for free expression, the more systematic writings of individuals such as Chénier pointed toward how such freedom could be legislated. Moreover, the engagement of both groups not only dispels the myth of select individuals leading revolutionary change but also proves that a conscious widespread pursuit of free expression had existed even before the Revolution loomed near.

Law Responds

Despite the prevalence of the pre-revolutionary campaign for free expression, calls for free expression mostly remained within the theoretical realm. A pursuit for free expression, implicitly one against the arbitrary oppression of the state, could only achieve its completion with formal legislative affirmation. How well did the guiding ideals from these pre-revolutionary endeavors actually translate into or influence the revolutionary legislation? From the general pre-revolutionary discourse, three themes stand out as most imperative among the appeals: the formal legal recognition of free expression, the qualifications of such freedom to avoid abuse, and the abolition of corporate privileges as an indispensable step toward full liberty. With these three themes as referential standards, this section examines the major legislative works between 1789 and 1794 to determine whether they assimilated and reflected the pre-revolutionary ideals.

It is worth noticing that some form of official emancipation of expression had already taken place as early as late 1788 preceding the convocation of the Estates-General. Although likely unintentional, Louis XVI opened up the previously enclosed political sphere to the general public when he ordered the compilation of the *cabiers*. The significance of this call for public opinion becomes clear only if we consider it in the context of the more restrictive Old Regime politics. For the first time in 175 years,

since the last convocation of the Estates-General in 1614, Louis XVI summoned the public to discuss politics and to offer advice. More importantly still, with the use of the *cabiers* as the form to consolidate such public discussions, Louis XVI sent the implicit message that the government was also expected to respond to the popular agenda.²⁷⁶ Although local assemblies and intellectual salons under the Old Regime did provide some platforms for political discussion of the private individuals, they did not reach the unprecedented mobilization of the public during 1788–89. The official encouragement of public discussion seemed to have lent legitimacy to the increasingly voluminous political pamphlet literature.²⁷⁷ Before any formal legislation, some traces of emancipation appeared early in 1788.

Emancipatory Combo of Law

Among the revolutionary decrees that affirm or grant various political liberties including freedom of expression, the best-known is perhaps the *Declaration of the Rights of Man and of the Citizen* passed by the National Assembly in August 1789. Revolutionaries constituting the National Assembly intended the *Declaration* to be a first guiding step toward the new constitution, and the *Declaration* itself did become a preamble to the Constitution of 1791. Therefore, the *Declaration* included various fundamental value statements. Article XI of the *Declaration* famously proclaimed that “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.”²⁷⁸ Before all, the *Declaration* in general and Article XI was the first among the official legislative efforts to acknowledge and protect free expression as a natural right. Far

²⁷⁶. Shapiro et al., *Revolutionary Demand*, 128.

²⁷⁷. *Ibid.*, 103.

²⁷⁸. *Declaration of the Rights of Man and of the Citizen* (hereafter “*DRMC*”) (1789), Article XI.

more fundamental than a privilege granted at royal discretion, the drafters of the *Declaration* speak of the rights it proclaims as “natural, unalienable, and sacred” in the preamble. Thus written, the *Declaration* surpassed the original expectation of many *cabiers*, which appeal for free expression as something to be granted by the Estates-General in concert with the king. Concepts such as monarchy and king were nonexistent in the whole *Declaration*. Moreover, most *cabiers* did not use the literal word of “right (*droit*)” to define the freedom of expression that they asked for. The once-equivocal nature of free expression became firm with the issuance of the *Declaration*.

Moreover, the specific language of Article XI indicates that the freedom it affirms was broader than the literal freedom of the press. Instead of using the literal phrase “freedom of the press,” which the *cabiers* used, the *Declaration* aimed to proclaim “the free communication of ideas and opinions,” for which the printing press is but one technical measure. Citizens, the *Declaration* clarified, shall be free to “speak” as well as “write” and “print.” Thus far, the *Declaration*, with its later incorporation into the Constitution of 1791, realized the basic goal of formally affirming free expression. As an early milestone in revolutionary legislation, the *Declaration* reflected and expanded the pre-revolutionary appeal of liberty.

In addition to affirming free expression in its literal sense by abolishing censorship, the *Declaration* proclaimed another liberty relevant to the realization of freedom of expression. Article VI stated that “all citizens, equal in the eyes of law, are equally admissible to all dignities, places and public employments, according to their capabilities and without any distinction other than that of their

virtues and talents.”²⁷⁹ By implicitly denying the privileges of the guilds that monopolized the publishing trade, the *Declaration* further fulfilled the appeal of Chénier and la Bretonne to remove barriers to entering publishing professions. While the *Declaration* did not explicitly address the free choice of any profession for all citizens, its core assumption that “Men are born and remain free and equal in rights” in the first article provided a theoretical basis for arguing for the eventual abolition of the corporate structure. Nevertheless, the full abolition of the corporate structure would require more explicit legislative policies than the *Declaration* provided.

Fortunately, the revolutionaries more explicitly detailed freedom of profession, most notably in the August Decrees of 1789 and the Chapelier Laws of 1791. While the August Decrees abolished all social, economic, and political privileges, in effect Article XI specifically stated that “All citizens, without distinction of birth, are eligible to any office or dignity, whether ecclesiastical, civil, or military; and no profession shall imply any derogation.”²⁸⁰ While Article XI clearly referred to the public offices as opposed to the private jobs in the printing trade, its association of the abolition of privileges with free entrance into working professions is noteworthy. In this regard, the Chapelier Law of 1791 was a more powerful assault on the corporate structure of publishing that Chénier and la Bretonne so vehemently detested. Passed on June 14, 1791, this law’s first Article stated that “The abolition of any kind of citizen’s guild in the same trade or of the same profession is one of the fundamental bases of the French Constitution, it is forbidden to reestablish them under any pretext or in any form whatsoever.” While the *de facto* dissolution of the guilds took months to implement, the

²⁷⁹. Ibid, Article VI.

²⁸⁰. Ibid, Article XI.

guilds' nominal abolition actually dissolved the stifling publishing monopoly observed by Chénier and la Bretonne.

The *Declaration* alone sufficed to formally proclaim free expression as an abstract right. Given the clear antithesis between censorship and free expression, the abolition of censorship naturally followed the *Declaration*. The abolition of guilds required more, for the conflicts between free expression and guilds were less conceptually linked. Thus, a combination of emancipatory legal provisions as discussed above was indispensable to getting rid of the intellectual monopoly of guilds. In a similar manner, the Le Chapelier law passed on January 13, 1791, specifically liberated theatres from former monopolies. Whereas the Old Regime theatrical system strictly regulated all theaters and divided their privilege-granted repertoires and genres, the 1791 law provides that “all citizens shall henceforth be able to establish a public theater and represent there plays of all genres...”²⁸¹ The intended effects of the Chapelier Law aligned closely with the vision of Chénier and la Bretonne, for it facilitated a meritocracy where free competition replaced rigid Old Regime corporate privileges. Together, the August Decrees and the Le Chapelier Law made possible the literal freedom of expression and the free entrance into the expressive professions. Revolutionary laws echoed the theory and practice of free expression articulated by revolutionary writers like Chénier.

Constitutional Caveats

The third major theme from the pre-revolutionary discourse, the limitation of free expression, also bore a mark on revolutionary laws. As the *cabiers* repetitively stressed, proper modifications and

²⁸¹. *AP*, Tome 22, 214. “Tout citoyen pourra élever un théâtre public, et y faire représenter des pièces de tous les genres, en faisant, préalablement à l'établissement de son théâtre, sa déclaration à la municipalité des lieux.”

regulation ought to accompany the legal affirmation of free expression. The more moderate individual writers such as Malesherbes seconded this position. Even certain provisions of the *Declaration* and the Constitution of 1791 risked providing the theoretical ground for a return of *de facto* censorship. However emancipatory Article XI of the *Declaration* seems at first sight, its qualifying second half stands out: “Every citizen may, accordingly, speak, write, and print with freedom, but *shall be responsible for such abuses of this freedom as shall be defined by law.*” Hugh Gough describes this latter half as the “stumbling rock” for the deputies of the National Assembly, as the legal definition of “abuses” would “bedevil” them at least until 1792.²⁸² Different opinions existed over the appropriateness of promising the people only a qualified freedom of expression. Right-wing deputies and pamphleteers were adamant on such limits so as to prevent anarchy, while the most forceful left-wing voices such as Robespierre and Pétion dismissed the need for any restrictive law.²⁸³

The Constitution of 1791 echoed and elaborated on the limitation of free expression by stating that “yet since freedom consists of nothing but the ability to do all that neither harms the *rights of another* nor endangers *public safety*, the law can establish punishments against those actions which, by attacking public safety or the rights of another, would be harmful to the society.”²⁸⁴ While perfectly in line with the general principle of the *Declaration* as stated in Article IV that liberty should not harm others, this limitation that the Constitution of 1791 imposed on free expression could have negative implications. Without specifically defining what could constitute abuses of the freedom, the broad strokes of the two categories of infringements—on the rights of another and on public safety—leave

²⁸². Gough, *The Newspaper Press*, 45.

²⁸³. *Ibid.*, 46.

²⁸⁴. *The Constitution of 1791*, “Title I Fundamental Provisions Guaranteed by the Constitution.”

room for arbitrariness. As Malesherbes commented in his memoir, the deterrence of censorship lies precisely in its caprice, and to truly protect freedom of the press, more certain rules ought to be in place.²⁸⁵ The Constitution of 1791 failed to eliminate the room for arbitrary or distorted interpretations of “abuse,” which could lend some ostensible legitimacy to censoring activities. This constitution is even more disquieting as it stipulated “the freedom to speak, write, print, and publish one’s ideas without the writing having to be submitted to any censorship or inspection *before* its publication...” A cynical interpretation of this clause can state that the constitution only promises relief from prior censorship. No words exist to ensure that people would be safe from post-publication “persecution.” The drafters likely wrote the Constitution of 1791 with the Old Regime formal censorship in mind and did not intentionally tolerate post-publication censorship. However, future interpreters could abuse these provisions.

Destructive to Constructive

As the revolution radicalized, a transition also occurred in the legislative mindset of the revolutionaries from an emphasis on rights and hints of procedural mechanisms to the more abstract value statements. The *Declaration* and the Constitution of 1791 reflected a more moderate mindset and one oriented toward the destruction of Old Regime practices than the radical counterparts that followed beginning in 1793. The early revolutionaries referred to the Old Regime in a search for rules and institutions that they wished to destroy. Consequently, these revolutionaries were more reserved when drafting the relative legislative works than their legislative successors of 1793 and 1794.

²⁸⁵. Malesherbes, *Mémoires*, 430.

As the Revolution radicalized with growing dominance of the Montagnard party in the Assembly, the legal rhetoric changed significantly. The republican Constitution of 1793 captured such shifts well. This second constitution was approved by a referendum in July 1793, but it was never enacted due to the coming Terror in September.²⁸⁶ Yet the constitutional text still reflects the changing attitudes of the revolutionaries. The two constitutions' similar approaches to free expression indicate the very basic continuity of revolutionary perceptions. For instance, both constitutions characterized free expression as a natural right that should not be limited in principle. The Constitution of 1793 contradicted its predecessor only when it vowed to grant indefinite freedom of the press in its Article 122. Moreover, Article 7 spoke of the abolition of this right to free expression as indicative either of "the renewed presence or of the recent vestiges of tyranny."²⁸⁷ Contrary to the restrained procedural focus of the Constitution of 1791 typical of state legislation, the Constitution of 1793 resembled more a highly theoretical value statement. In this latter constitution, we witness a more romantic vision of the new French Republic in contrast to the previous constitution's efforts to stipulate the basic laws governing the country. Hence, the generosity of the language of the Constitution of 1793 cannot automatically translate into a relaxation of state regulations over individual freedom of expression. The heavily idealistic tone of this constitution prompted further doubts over its practical feasibility and over whether the revolutionaries ever intended to abide by the exact words of this constitutions. Paradoxically, the radical passion driving the drafters of this constitution prompts doubts over their efficacy in actually enforcing their highly idealistic provisions.

²⁸⁶. Kennedy, *A Cultural History*, 209.

²⁸⁷. *Constitution of 24 June 1793*, "Declaration of the Rights of the Man and of Citizen," Article 7.

Perhaps most importantly, the revolutionaries of the 1793 were not simply foolhardy idealists, despite their heavily romantic visions in the constitution. They did construct new legislation. One particular decree also passed in July 1793, on the property rights of authors, composers, and painters, exemplified the constructive mindset of the later revolutionaries.²⁸⁸ Chénier drafted this decree and called it the “declaration of rights of genius,” which provided legal definitions and regulatory procedures for intellectual property.²⁸⁹ While the text of this decree concerned only the property rights, it implicitly acknowledged that apart from the written and printed works, audiovisual-oral-visual products such as music and paintings were also effective forms of creative expression. By grouping writings of all genres with music and paintings, this decree arguably established intellectual property in France and implied that all these forms of creative expressions had enough commonalities to be housed under the same law.

Conclusion

The examination of *Cahiers de doléances* dispels the myth of revolutionary figureheads who set a legislative agenda from above and reveals a pre-revolutionary public campaign for free expression. Across geographical regions and the three orders of the clergy, the nobility, and the Third Estate, these lists of grievances compiled for the Estates-General show striking commonalities in their demand for official deliberation on and acknowledgement of free expression. Given that the three orders diverged in the intensity of their appeals for free expression and that the widespread illiteracy and the

²⁸⁸. The full text in the original print from 1793, under the title *Décret de la Convention nationale, du 19 juillet 1793, l'an second de la République française, relatif aux droits de propriété des auteurs d'écrits en tout genre, des compositeurs de musique, des peintres et des dessinateur* (L'imprimerie de la veuve Simard, 1793) is available at https://archive.org/details/dcretdeconvent00fran_3.

²⁸⁹. Darnton et al., *Revolution in Print*, 80.

circulation of model *cabiers* may diminish their organic nature, the *cabiers* are not *perfect* representations of the pre-revolutionary public opinion. Nevertheless, taking these factors into consideration does not nullify the rather broad support base for free expression from the diverse multitude of *cabiers*. Supplemented by more systematic writings from several leading figures, the widespread demands for free expression had generated concrete themes before the Revolution broke out. Contrary to the common narratives where the Revolution and the revolutionaries prompted and formed the popular yearning for liberty, therefore, the actual story was just the reverse.

Comparing revolutionary legislative works to the pre-revolutionary appeals shows that many of the pre-revolutionary concerns became manifest in actual revolutionary laws. This included the formal affirmation of free expression and the qualifications of freedom against its abuse. Overall, the revolutionary laws are indeed quite responsive to the prior appeals in the *cabiers* and prominent individual writings. Yet, with caveats here and there in the promising legal texts themselves, room existed for the revolutionaries to fall short of fully instituting their ideals of free expression. The next chapter will reveal that, despite their nominal abolition, various censoring activities did exist during the Revolution.

CENSORSHIP IN ACTION DURING THE EARLY REVOLUTION

Together, the considerable mass of pre-revolutionary *cabiers de doléances* and individual writings established a theoretical foundation for the revolutionary emancipation of expression. The various laws, passed in the context of revolutionary tumult and political caprices from 1789 toward the Terror, granted further textual affirmation of the right to free expression. Nonetheless, both the private appeals and public stipulations regarding such unprecedented freedom of expression meant little in isolation; actual legal and policy enforcements were indispensable for truly fulfilling this proclamation of liberty. The period from 1789 to the end of the Terror in July 1794 witnessed incessant changes in the state's attitudes toward the freedom of expression. The original vision of maximum liberty in the expression of opinions, especially political ones, existed only briefly before the revolutionaries resurrected various censoring mechanisms. All the previous legislative deliberation on the construction of the right to free expression thus seemed to have limited efficacy and longevity. From sporadic episodes of surveillance to formal institutions of prosecution, censorship in the revolutionary context underwent its own substantial transformation. While some traces of the Old Regime practices were detectable in the various instances of revolutionary censorship, both its range and objectives changed significantly.

Before state oppression of free expression settled in with radicalization, however, the composite legal structure that the revolutionaries set up did bring about a brief period of tangible liberty in multiple forms of media. The convocation of Estates-General, as stated in the previous chapters, was in itself a crucial gesture toward greater freedom of expression, for the king eased the restriction on the

circulation of political opinions in calling for *cahiers de doléances*. Moreover, even before the onset of the Revolution, there were precursors such as Mirabeau and Jacques Pierre Brissot who ventured to start their own newspapers in defiance of the formal restrictions on the press that were still in place.²⁹⁰

The Revolution moved one step forward with formal, explicit celebration of free expression.

With various Old Regime censoring institutions lifted and monopolistic corporate privileges abolished, profession in printing and theater experienced almost an exponential growth. The printing press expanded not only in response to the unprecedented demand of nationwide communication spurred by the Revolution, but also as a result of the much-reduced business risks had been come with Old Regime censorship. In the serious institutional confusion created by the Revolution, the royal censors barely remained active, and virtually no police force was in place to rush into the printing shops and seize suspicious works. The number of journals published in Paris alone skyrocketed each year from 4 in 1788 to 184 in 1789 and 335 in 1791.²⁹¹ Similarly, pamphlets also flooded the market as the total number recorded in the *Catalogue de l'histoire de France* soared from 819 in 1788 to 3,305 in 1789 and 3,121 in 1790, and even these numbers were still certainly below the actual number of pamphlets seen during this period.²⁹² New printing shops and bookdealers mushroomed accordingly to seize the profits previously exclusive to the licensed few. Notably, ephemeral and periodical products greatly outnumbered books, the latter being “too substantial” for the quick tempo of the Revolution.²⁹³ Even within the realm of books, shorter works were more prevalent: works over 300

²⁹⁰. Kennedy, *A Cultural History*, 316–317.

²⁹¹. Darnton et al., *Revolution in Print*, 92.

²⁹². *Ibid.*, 165.

²⁹³. Kennedy, *A Cultural History*, 317-318

pages dropped from 8 percent in the early Revolution to 2 percent by 1795, while more than 75 percent of the total publication was works under a hundred pages.²⁹⁴ In these early years, freedom of the press stipulated in legal clauses indeed translated into the actual prosperity of the printing press, which facilitated the vibrant political discourse.

The removal of corporate monopolies benefited theater in a peculiar. In addition to enabling the general boom in newly established theaters, the Revolution essentially terminated the previously rigid divisions of repertoires that limited each theater. The Chapelier Law passed on January 13, 1791, created thorough theatrical liberty by permitting citizens to stage performances of all genres, whereas the Old Regime had restricted the repertoire even of the privileged theaters.²⁹⁵ For instance, contrary to the Comédie-Française which had been limited to specializing in classical French tragedy and comedy under the Old Regime, the revolutionary theaters no longer bore such restriction.²⁹⁶ The monopolistic advantages of previous Old Regime theaters dissolved even further as they could not hold on to their exclusive repertoires, which became national literary properties accessible to all theaters without distinction.²⁹⁷ In consequence, the Revolution achieved a proliferation of theatrical plays, which nearly tripled to 1691 in the decade of 1789 to 1799 from the total number of 581 in the previous three decades. The actual performances increased from 19,884 to 39,965 in the same time period.²⁹⁸ The

²⁹⁴. Ibid., 317.

²⁹⁵. AP, Tome XXII, 214. “Article 1. Tout citoyen pourra élever un théâtre public, et y faire représenter des pièces de tous les genres, en faisant, préalablement à l'établissement de son théâtre, sa déclaration à la municipalité des lieux.”

²⁹⁶. Kennedy, *A Cultural History*, 169–170.

²⁹⁷. AP, Tome XXII, 214. “Les ouvrages des auteurs morts depuis cinq ans, et plus, sont une propriété publique et peuvent, nonobstant tous anciens privilèges, qui sont abolis, être représentés sur tous les théâtres indistinctement.”

²⁹⁸. See Appendix A: Table A.2 in Kennedy, *A Cultural History*, 394.

elimination of Old Regime privileges alone generated a more liberal theatrical domain which became sustained by free competition instead of royal patronage.

Much of the revolutionary liberty, as reflected most clearly by the case of the theater, originated not from the simple termination of active censorship but rather from the abolition of privileges. Hence, free expression of the early Revolution consisted not only of the negative liberty (freedom from state inspection and interference) but also of equality in entrance into professions and free competition. Before the revolutionaries dared to express their opinions, it was even more important for them to be able to employ the various media of expression. Precisely as Chénier and la Bretonne had advocated earlier, genuine freedom of expression required that the people have equal access to the diverse devices of expression once controlled by the Old Regime authorities. The early revolutionary legislation managed to bring about a binary freedom of expression as it abolished censorship and affirmed professional egalitarianism. Within these brief years before the eventual radicalization toward the Terror, the revolutionaries indeed attained liberty in practice that corresponded with the theoretical liberty that they proclaimed through legislation.

A Universe of Censoring

Old Regime censorship might have been extensive, but the reach of revolutionary censoring practices was nearly comprehensive beginning in 1792. While revolutionaries did not reinstitute conspicuous and professionalized institutions like the royal censorship, they gradually devised numerous ways to monitor and control the vast terrain of expression that they had previously liberated themselves. Compared to the highly institutionalized and targeted system of censorship under the Old Regime, revolutionary censoring practices exhibited a much more complicated pattern. Often it was

not the specific mediumobject, such as books, that the revolutionaries targeted; instead, revolutionary censoring practices tended to search for seditious or subversive conspiracies in which the actual media mattered only incidentally. While the Old Regime censors no doubt shared the objective to detect rebellious plots, they were confined to the specific categories of media assigned to their jobs. Royal censors did not bother themselves with theatrical performances (as opposed to published scripts), just as inspectors of the theater hardly ever mediated in the realm of printed publications. Revolutionary censorship turned out to be a drastically different beast, where intentions and effects became the focus of examination and the divisions between diverse media categories faded. Consequently, revolutionaries transformed the highly procedural Old Regime censorship into a more unpredictable, and hence menacing, mechanism of reinforcing state authorities.

The broadening scope of revolutionary censorship did not only emanate from the shifting focus to the intentions and effects of expression; more importantly, the Revolution's tendency to politicize all aspects of life simultaneously enlarged the field of expression potentially injurious to the state authorities. Even previously innocuous or marginalized media such as almanacs could perform the function of revolutionary political propaganda, thus arousing the interest of the authorities in the inspection of their content.²⁹⁹ As the revolutionaries wielded every weapon available to attack the Old Regime, their expanded artillery lived on even after its dissolution. Songs, visual arts, and theaters, once harnessed for overt political expression, could not return to their former roles that were seemingly more distant from the political sphere. The revolutionaries effectively used widespread media to

²⁹⁹. Darton et al., *Revolution in Print*, 210.

motivate and educate the huge popular class, often with little literacy, and their successful tactics inspired those of their external enemies as well as internal dissidents. It is striking to realize that the revolutionaries developed more thorough censoring schemes precisely owing to their own knowledge of the more creative ways of expression. The wide politicization of media fueled the early success of the Revolution, but it also backfired under a radicalized regime that sought to preserve revolutionary liberties by restricting freedom of expression.

Given the unique focus on intentions and effects, instead of the actual *media* or form of expression, it is hard to fit all the various instances of revolutionary censoring activities during the Terror into neat statistical charts or categories. Furthermore, the perceivable divergences between individual instances of censoring become obstacles in determining whether each case qualifies for genuine censorship. The more or less arbitrary and independent character of some cases examined below challenges the legitimacy of including them all in an integral definition of censorship.

Nonetheless, a classification of the different censoring practices based on the censored objects can still produce a general overview of the revolutionary censorship. From the more traditional victims such as books and theaters to the less censored realms of education, the revolutionaries truly extended censorship into every aspect of the daily life. Despite the uneasy tension with the promises of liberty ingrained in multiple revolutionary legal codes, censorship gradually became a norm of revolutionary politics and took place on a growing scale during the Terror.

Books

With an entire directory devoted to its circulation and over a hundred specialist royal censors employed to examine its content, the book as a medium of expression no doubt received the most

attention in the Old Regime censorship system. To many revolutionaries as well as modern observers, the censorship of books would largely define the general practice of censoring. It is therefore intriguing to see that the role of books became marginalized in the universe of revolutionary censorship. From 1789 to 1793, the revolutionary government did not employ specialized censors to monitor the content of the published books. Hardly any formal institution existed to replace even the regulatory function of the Directory of Book Trade under the Old Regime. It was not until 1793 that the revolutionaries established the new book registration system called *dépôt légal*, which was essentially a voluntarist institution to which authors or publishers could submit their works, the sole purpose of which was supposedly to keep track of the new works with no hint of potential use for censorship.³⁰⁰ Hence, the dissolution of royal censorship also resulted in the deregulation of the book trade, which was further exacerbated by the revolutionary propensity for shorter works tailored for swift consumption and exchange within political discourse.

As a medium of expression, the book itself lost its habitual audience and relative significance in the context of the Revolution. The exodus of the upper-class population, mostly nobles and high clergymen, meant that the chief audience of dense and lengthy works were leaving France. The existential emergencies of the Revolution further lessened the value of works devoted to pure humanities, fine arts and other “lofty” subjects alike. With the internal tumults and foreign wars, the book trade thus experienced considerable disruption and dropped significantly according to existent records. From around 1,166 books registered in 1788 to only 371 in 1794, the decreasing trend of

³⁰⁰. Ibid., 94.

book publication is clear.³⁰¹

The marginalization of book within revolutionary censorship practices hence corresponded to the medium's own marginalization in the market of production. The lack of a special group of censors devoted to the inspection of books further assured that the incidences of censoring books not only were sporadic in comparison but also oftentimes occurred in conjunction with the denunciation of other printed works in general.

Journals, Pamphlets, and the Press

The liberation of the printing press, combined with the decline of book publications, rendered ephemeral prints the mainstream mediums of expression and communication during the Revolution. As discussed earlier, the early revolutionary period from 1789 to 1792 witnessed an explosion of journals and pamphlets, which transmitted and influenced public opinion throughout France. Whereas the Old Regime press was a self-enclosed sphere protected by privileges and presumably dedicated to the pure circulation of supposedly objective or moderated information, the revolutionary press was filled with wide-ranging subjective commentaries on the political proceedings of the day.³⁰² Given its wide accessibility and its more apparently political nature, the low-cost, periodical, and pamphlet press inevitably incurred much more official attention than the books did. While it was practically impossible and theoretically illegitimate to impose prior censorship on the press at large, revolutionary authorities did adopt various mechanisms to contain the potentially hazardous impact

³⁰¹. See the table “*New Books, 1780–8, and 1794–9 (Estivals 1965)*” in Colin Jones, *The Longman Companion to the French Revolution* (Routledge, 1990), 260.

³⁰². For a detailed overview of the Old Regime press, see Todd, *Political Bias*, especially the chapter “The Privileged Press,” 41-58.

of a “free” press. In addition to harassment by official state agencies, journalists and other press publishers deemed unfavorable suffered assaults from mobs or small political activist groups. The latter, for example, sacked the printing shops of monarchist newspapers in August 1792 and of pro-Girondin publications in March 1793.³⁰³ The crucial moments respectively corresponded to the fall of the monarchy and the loss of Girondin power. The rapid changes in political tides hence put the supposedly “free” press in a rather risky situation of operation.

For the state authorities, however, the most typical measure to suppress their least favorite presses remained a more procedural official denunciation, potentially followed by confiscation of copies, destruction of printing presses, and even the imprisonment of journalists or publishers.³⁰⁴ For instance, the High Court accused Jean-Paul Marat of having provoked indiscipline in the army with the May 3, 1792, issue of his newspaper *L’Ami du Peuple*. This allowed them to seal his papers and possessions.³⁰⁵ In addition, the indictment in this case corroborated the general principle of revolutionary censorship: the High Court’s actions focused on the intentions or effects of a certain work instead of targeting a specific category of media. The Terror treated journalists more severely. Many were guillotined, like Camille Desmoulins, though not solely for practicing journalism.³⁰⁶

Nonetheless, the censoring of the press did not always focus on individuals. More often than not, revolutionary authorities denounced the printed papers of one or more specific political standings and order their general suspension. For instance, alongside its general regulations of the journals and the

³⁰³. Darnton et al., *Revolution in Print*, 147.

³⁰⁴. Kennedy, *A Cultural History*, 322.

³⁰⁵. Ibid.

³⁰⁶. Ibid.

letters issued in August 1792, the Department of Aude specified a list of prohibited journals including *Le Mercure de France* and *L'Ami du Roi*, most of which appeared to be of a royalist or conservative stance.³⁰⁷ According to the decree issued by the Department of Aude, these journals were “dangerous to the public matters and should be prohibited in the entire range of its arrondissements (neighborhoods).”³⁰⁸ Furthermore, the commissioners of the Department were to seize all these papers and, without opening them, to burn them publicly in the streets.³⁰⁹ In this case, the confiscation of these prohibited journals performed an additional function beyond simple censorship: their public burning also served as a public lesson and warning to any potential sympathizers. A strikingly similar list of prohibited journals appeared also in the decree of the Commune of Lyon, which in turn condemned these papers as “anti-constitutional.”³¹⁰ This pattern of condemning presses with unfavorable or outwardly dissenting positions was recurrent in the censoring practices exercised by the revolutionaries. From the suspension of all anti-civic papers on August 12, 1792, in Paris to the oppression of the Girondins’ papers in 1793, authorities selectively and repetitively censored the presses to “purge” voices of opposition.³¹¹ Censorship in such cases functioned as a tool for suppressing dissidents and more importantly, as a forceful weapon in factional conflicts inside and outside the Assembly halls.

Almanacs

³⁰⁷. Archives nationales (hereafter “AN”), F¹⁸ 14 dossier a., *Extrait des registres du Conseil Général du Département de l’Aude, Séance du 30 Août 1792, l’an 4^e de la Liberté, & le 1^{er} de l’Égalité*, 3.

³⁰⁸. Ibid.

³⁰⁹. Ibid.

³¹⁰. AN F¹⁸ 20 dossier 51, *Extrait des registres des délibérations de Conseil Général de la Commune de Lyon en permanence, du Dimanche 5 Août 1792 et de la Liberté, an IV*.

³¹¹. Kennedy, *A Cultural History*, 322.

The last major category of printed materials repetitively subject to revolutionary censorship was almanacs. By its proper definition, almanacs were practical manuals aimed to foretell seasons, wars, and diseases of a coming year, hence removed from the immediate sphere of daily events and politics.³¹² Nonetheless, *political* almanacs debuted during the early Revolution as the result of the revolutionaries' attempts to redefine the symbolic markers of the calendar and as a way to appropriate such a widespread media for political propaganda.³¹³ As much as this creative usage of almanacs renewed their significance, it also opened up this otherwise innocuous genre for political maneuvers and invited censorship.

Authorities would seize allegedly counterrevolutionary almanacs and punish the peddlers and publishers accordingly. The bookseller Bouillart, for instance, was condemned to death for disseminating via peddlers a counterrevolutionary almanac named the *République en vaudevilles* (*The Republic in Vaudevilles*).³¹⁴ Further state actions upon the discovery of counterrevolutionary almanacs were similar to those taken against the presses. For example, the Department of Jura formally denounced a counterrevolutionary almanac named *le Message Boiteux* and ordered its utter prohibition within the department. The Department authorized official searches for suspicious vendors or owners of this almanac.³¹⁵ Departmental decrees specified that individuals connected with the almanac could be indicted for "lack of civil spirit" in the criminal court.³¹⁶ Viewing the almanacs as

³¹². Darnton et al., *Revolution in Print*, 205.

³¹³. Ibid., 210.

³¹⁴. Ibid., 214.

³¹⁵. AN F¹⁸ 17 dossier 39.2, *Arrête de la Commission administrative de Jura qui prohibe la Vente & Distribution d'une contre-façon de l'Almanac de Berne pour 1794, intitulé le Message Boiteux. Du 30 septembre 1793, l'an deux de la République française, une & indivisible.*

³¹⁶. Ibid.

a medium of political propaganda, authorities treated it in a similar manner to that toward the ephemeral prints. Yet the influence of almanacs could be more powerful because their primary audience, country people, consulted them regularly and kept them longer.

Theater

In the revolutionary censorship of the theater, some Old Regime practices continued. Both regimes thoroughly investigated and censored the theater compared to other forms of media.. As places of public congregation, theaters naturally attracted more attention from the authorities, both for the didactic potential of the theater and for its dangerous power of incitation. Although the Le Chapelier Law of 1791 freed the theater from censorship, state control of performances and audiences gradually tightened overtime. Starting with the Committee of Public Safety, led by Georges-August Couthon in 1793, authorities intruded into theatrical liberty with orders to purge the “incivic” repertoires.³¹⁷ Next returned the prior censorship of the scripts (previously abolished in 1791), first in the hands of municipalities under the pretext of maintaining public order, then transferred to the more flagrant national Commission d’instruction publique (Committee on Public Instruction) in April 1794.³¹⁸ The Ministry of the Interior also had secret agents roaming through Paris to observe and report on the general atmosphere during theatrical performances.³¹⁹ Under such close surveillance, little freedom remained within the theatrical sphere. Directors and actors risked imprisonment for their transgressions.

More than any other medium of expression, the theater perhaps suffered the most rigid

³¹⁷. Kennedy, *A Cultural History*, 363.

³¹⁸. Ibid.

³¹⁹. Ibid., 363–364.

revolutionary censorship and enjoyed the least freedom initially promised to it. The possibility of improvisation and double entendre, however, could render even the strictest censorship futile. Such fluidity permitted some acts of resistance against official censorship, but also incurred unparalleled suspicion. In addition, the forceful appeal of the audiovisualoral-visual presentation of the theater heightened its sensitivity in the censoring eyes.

During the onset of the Terror in early September 1793, for instance, authorities condemned the Comédie-Française for its performance of the play *Pamela*, which was suspected of aristocratic overtones due to some minute details and its inclusion of a former noble as one of the characters.³²⁰ The Committee of Public Safety suspended the performance of *Pamela* and eventually arrested the adapter of *Pamela*, François de Neufchâteau, who was imprisoned in Luxembourg throughout the rest of the Terror. The actors were also put in jail in La Force.³²¹ It is reasonable to say that much of the condemnation was paranoid, but this case illustrates that with the radicalization of the Terror, authorities watched over even the smallest detail of theatrical plays and enforced censorship accordingly. In other cases, the authorities condemned the directors for not selecting a repertoire that was civic enough or harbored sufficient republican spirit.³²² Censorship thus enforced went beyond the negative objective of suppressing opposition and demanded positive endorsement.

Education

Inherent in the republican vision of the radical revolutionaries was a desire to raise a whole

³²⁰. Arthur Pougin, *La Comédie française et la Révolution : scènes, récits et notices* (Paris: Magnier Gaultier, 1901), 103–104, as quoted in Kennedy, *A Cultural History*, 179.

³²¹. Ibid.

³²². Kennedy, *A Cultural History*, 181.

generation of virtuous republican children, who would naturally constitute a better republic than the current one. Education was therefore one of the focal points as the revolutionary authorities reviewed their control over the intellectual and cultural sphere. Contrary to the Old Regime, where barely any public education existed beyond the Church who provided it in large part as a charity work, the revolutionary state aimed to provide a universal public education that would generate its future. The stakes of public education thus envisioned were high.

A law proposed by Deputy Gabriel Bouquier and passed by the National Convention on December 19, 1793, was the first formal legislation to establish a new system of universal primary education.³²³ The first clause in the first section of this law stated that “teaching is free.”³²⁴ Ironically, the following section focused exclusively on the various sorts of surveillance that the teachers ought to be subject to, namely, by “the municipality or the section, the fathers, mothers, tutors and curators, and [by] the general surveillance of all the citizens.”³²⁵ The law further obliged the teachers of these public schools to use only the official textbooks. In essence, the stipulations left little discretion to the teachers while proclaiming that teaching was to be free. Perhaps due to the rigid regulation this law imposed on both the teachers and the parents, it did not achieve much success or influence.³²⁶ Few censoring practices were enforced according to the directives of this law. Nonetheless, the censoring mindset of the revolutionaries surfaced in such stipulations. A clear mental dichotomy existed between

³²³. Ibid., 160.

³²⁴. *Procès-verbaux du Comité d'instruction publique de la Convention nationale*, Tome III, 57. “L'enseignement est libre.”

³²⁵. Ibid., 58. “Section II. *De la surveillance de l'enseignement*. Article premier. Les instituteurs et institutrices sont sous la surveillance immédiate de la municipalité ou section, des pères, mères, tuteurs et curateurs, et sous la surveillance générale de tous les citoyens.”

³²⁶. Kennedy, *A Cultural History*, 160–161.

the proclamation of abstract liberty (regarding teaching) and the specific restrictions (regarding textbooks). The paradox between the value of liberty and the desire to exert maximum control was not unique to the censoring of education, but universal to revolutionary censorship.

Public Space

The final aspect of daily life that the revolutionary authorities watched over was the diverse public spaces where people conversed. The cafés, the theaters, the marketplaces...all could be under the direct surveillance of the secret agents employed by the Ministry of the Interior.³²⁷ These agents were not searching specifically for seditious talks, and they did not make arrests.³²⁸ Some of the reports by these agents traced countless and seemingly mundane details to track crucial concerns, such as the working routine of the bakers and the daily supply of bread.³²⁹ These numerous reports constituted one last piece of the all-encompassing censoring institution of the Revolution. From written words and theatrical spectacles to everyday interactions and conversations, the watching eyes of the revolutionary government intruded into every corner of life. Even without the threat of punishment, these secret agents manifested the authoritarian rule of the radical revolutionaries who desired to attain absolute transparency in the state and in the individual life of the citizens.

Contrary to the promises in the two revolutionary constitutions of 1791 and 1793, the revolutionary government eventually granted neither qualified freedom of expression nor absolute liberty to the people. Instead, revolutionary authorities gradually resuscitated the various censoring

³²⁷. Ibid., 313.

³²⁸. Ibid., 314.

³²⁹. For the actual reports of these agents, see Pierre Caron, *Paris pendant la Terreur : rapports des agents secrets du Ministre de l'intérieur* (Paris: Picard, 1910-1978).

techniques seen under the Old Regime, modified them, and further expanded the range of their censorship. In addition to the formal institution of prior censorship reintroduced on the theater, the revolutionaries also inherited the more confrontational usage of the police force to seize suspicious works and the secret inspectors to watch over the crowds. In some sense, the radical revolutionaries far surpassed their predecessors as they intruded upon the supposedly inviolable civil liberty that the subjects of the Old Regime had not been legally entitled to.

One overarching commonality existed between the Old Regime censorship and its revolutionary successor: by distinguishing between different media of expression subject to censorship, they both distinguished between the different groups of people they wish to monitor. The marginalization of book censorship under the Revolution, in spite of the objective decline in its production, was due in part to its much less forceful influence on its educated audience in comparison to the influence of exciting theaters on the common people. After 1789, almanacs received attention both because of their new revolutionary usage as political propaganda and due to their large traditional audience of the country people. Neither the authorities of the Old Regime or the radical revolutionaries enforced censorship blindly; both exhibited pre-meditation on specific censoring strategies. Revolutionary censorship also continued the negative aspect of Old Regime censoring practices in suppressing dissidents to presumably avoid harm to individuals, the state, or other important entities. And genuine libel, seditious speech, and conspiracies faced similar punishments under both regimes.

Besides their technical and strategic similarities, however, revolutionary censorship and the Old Regime censorship still critically diverged in one goal. Revolutionary censorship, with its radical republican zeal, also entailed a positive form of censorship. Illustrated most clearly in the censorship

on the theater, revolutionary authorities found it insufficient for media to be merely innocuous or domicile. “Lack of civic spirit” alone sufficed as grounds for punishment. In other words, instances of positive censorship required works to further the goals of the radical state.

With the great pedagogical potential of the various media, from the printing press to the theater, the radical revolutionaries sought to control them to construct the ideal French Republic. Merely the absence of counterrevolutionary vices was far from enough; to the radical revolutionaries, especially those under the Terror, media ought to be virtuous.³³⁰ As one of the reports of the Popular and Republican Art Association argued, “Actually everything ought to have a moral purpose among a republican people.”³³¹ Toward the Terror, the revolutionaries radicalized to the point where they no longer tolerated the neutral limbo between fervent endorsement of the revolutionary cause and the oppositional stance against their regime. The intolerance of neutrality may explain the extraordinary harshness seen in radical revolutionary censoring activities, which at times even the supposedly tyrannical Old Regime could hardly match. In this sense, revolutionary censorship indeed “upgraded” from the previous model.

Conclusion

The legislative efforts of the early revolutionaries did manage to bring about a brief period of free expression in France. In the years between 1789 and early 1792, expressive media such as the printing press and the theater not only grew significantly in number, but also gained access to an

³³⁰. Kennedy, *A Cultural History*, 325.

³³¹. Athanase Détournelle, *Aux armes et aux arts! Peinture, sculpture, architecture, gravure. Journal de la Société républicaine des arts séant au Louvre* (Paris: Détournelle, n.d.), 155–157, as quoted in Darnton et al., *Revolution in Print*, 288.

unprecedentedly broad base previously monopolized by privileged corporate bodies. The free expression found its manifestation in these early revolutionary years when the different media of expression were not only free but their access and production were equalized.

Nonetheless, the radicalization of the Revolution soon brought back censorship. The innovative revolutionary propaganda that advocated for free expression backfired as it extensively politicized a wide array of media now easily identified as potential fields of censorship. Compared to the Old Regime practices, radical revolutionary censorship not only broadened its scope to include these newly politicized media but also grew to entail positive monitoring of expression. Virtue, instead of innocence, became the ultimate pursuit of the state control over expression. Yet even in their own legislation, the radical revolutionaries exhibited the paradox of proclaiming abstract liberty and stipulating concrete surveillance. The next chapter will consequently explore the possible justifications that the revolutionaries used to reconcile their seemingly necessary control over free expression and the fundamental revolutionary value of liberty.

RADICAL STRATEGIES: REVOLUTIONARY JUSTIFICATIONS FOR CENSORSHIP

From 1792 to 1794, as the Revolution radicalized, numerous prints and coins bore a recurring slogan: “La liberté ou la Mort. (Liberty or Death.)”³³² More elaborate prints also included other fundamental values from Equality and Fraternity to the One and Indivisible Republic. Yet when it came to the tiny space available on the coins, symbols, or letter headings, Liberty was almost invariably the chosen one to be *the* antithesis to Death. This insistence on the vital importance of liberty to the Revolution contradicts the increasingly oppressive rule of the revolutionary regime. After a brief period when free expression prevailed, state censoring activities unmistakably returned in 1792 and intensified toward the end of the Terror. Indictments for crimes of speech and opinion soared throughout France.³³³ Hence, the dichotomy between the emancipatory words and repressive deeds of the revolutionaries persisted. As a supposedly democratic regime rooted in its celebration of liberty, the revolutionary government was constantly facing the risks of destroying its very own basis of legitimacy. How could the revolutionaries justify their censoring activities while upholding the promise of liberty?

Two questions are indispensable for evaluating how the revolutionaries attempted to justify and reconcile their censoring activities with their revolutionary values. To what extent was there a conscious recognition of the nature of such activities as censorship, and how did they continue to

³³². For some examples of these prints and coins, see the Appendix for a small sampling of their images. While numerous images and actual artifacts of such revolutionary products bearing “Liberty or Death” are available in various archives or museums, one possible place for further consultation is the French Revolution Digital Archive accessible at: <https://frda.stanford.edu/en>.

³³³. Walton, *Policing Public Opinion*, 186.

acknowledge liberty? It was unclear whether the revolutionaries generally recognized the ensemble of their various censoring practices as a genuine resurrection of censorship as such. Nonetheless, individual revolutionaries did use the word “censorship” to characterize the pervasive surveillance of expressive media. Antoine Christophe Merlin, member of several legislative bodies during the Revolution, wrote in a pamphlet *Capet et Robespierre* that “both [Louis XVI and Robespierre] submitted to censorship the books, the theatrical pieces, and the journals. We could write except with approbation and privilege.”³³⁴ Written in the short aftermath of the Terror in 1794, this pamphlet compared Robespierre (a leader of the Terror) to Louis XVI (leader of the Old Regime) for their commonality in oppressive ruling. In addition, it explicitly identified the revolutionary surveillance as “censorship.” While it is hard to generalize about the revolutionaries’ perceptions of their censoring practices, it is probable that they did find some essential similarities between the Old Regime and their own rule.

The revolutionaries’ continuous affirmation of liberty as their fundamental value was much more unequivocal. The Constitution of 1793 alone suffices to show that despite the tightening control of expression, the revolutionaries did not abandon freedom of expression, at least at the textual level. Moreover, radical revolutionaries also proclaimed free expression in their more informal speeches and writings. For instance, Robespierre declared in a discussion that the presence of any regulating(?) authority inside theaters was repugnant to free men.³³⁵ It is clear that the revolutionaries, despite

³³⁴. Antoine-Christophe Merlin de Thionville, *Capet et Robespierre* (Paris : n.p. Rue de la Loi, no. 1232, 1794), 3. “Tous deux soumettoient à la censure, et les livres, et les pièces de théâtre, et les journaux. On ne pouvoit écrire qu’avec approbation et privilège.”

³³⁵. Kennedy, *A Cultural History*, 183.

adopting censoring mechanisms, hardly ever make blatant denial of free expression. Quite the contrary, the notorious Law of Suspects even declared suspect those who were “enemies of the liberty” while, in effect, it made possible the further intensification of surveillance that stifled individual expressions.³³⁶

If contemporary individuals did recognize the various surveilling efforts as constituting censorship, and the revolutionaries continued to uphold liberty as a value, how could they possibly tackle this indisputable paradox? The primary justification that the revolutionaries found for enforcing control on expression fell in the legal realm. As explained in Chapter II, both the *Declaration of Rights of Man and of Citizen* and the Constitution of 1791 promised only a qualified freedom of expression and defined its abuse to be either harm done to another individual or to public safety.³³⁷ In other words, the authorities could legitimately prosecute individuals should they pass beyond the defined boundaries of free expression. These legal caveats indeed became the major pretext used by the revolutionaries to justify their actions to assert control over individual expressions.

When condemning an allegedly seditious work named *Le Roi & les traitres dénoncés au Peuple François & à l'Assemblée Nationale* in 1792, the officials of the Department of Meuse used this legal tactic. Their written judgment perfectly illustrated how the legal stipulation on the abuse of free expression could justify their potentially censoring actions. The judgment first affirmed the value of

³³⁶. *Décret qui ordonne l'arrestation des Gens suspects du 17 Septembre 1793*, as reprinted in Louis Rondonneau, comp., *Code militaire, ou Recueil méthodique des décrets relatifs aux troupes de ligne et à la gendarmerie nationale rendus par les Assemblées constituante et législative et par la Convention nationale*, Tome III (Paris: L'Imprimerie du Dépôt des Lois, 1793), 278. “II. Sont réputés gens suspects: 1° ceux qui, soit par leur conduit, soit par leus relations, soit par leurs propos ou leurs écrits, se sont montré, partisans de la tyrannie ou de fédéralisme, et ennemis de la liberté.”

³³⁷. See Chapter II, “Constitutional Caveats,” 39-41.

“the freedom of the press,” which it saw as the strongest support of national liberty and what would “[direct] the French to the glory of a Nation empowered by morals and by reason.”³³⁸ Nonetheless, the judgment found it perfectly just to ban the circulation of the work in question because the Constitution had “foreseen the case where the perverse spirits, abusing this liberty, would purposely provoke disobedience to the Laws, the downfall of the constituted powers and the resistance to their acts.”³³⁹ The departmental authorities drafting this judgment were not only aware of the potential accusation of censorship against them but also preemptively included this explanatory reference to the Constitution. While it was not easy to distinguish between the legitimate prosecution of genuinely seditious or libelous works and broader censoring activities, the legal caveats thus employed were malleable enough to justify both cases. However, while the original legal clauses referred to two possible ways of abusing the freedom of expression, in most cases, the revolutionaries tended to focus only the second one—harming the the nation. They less often prosecuted people for potential calumny or libel directed at other individuals.

By subjecting various forms of expression to the ambiguous charge of endangering public order, the revolutionaries evaded the daunting challenge of pinpointing any specific harm actually caused by the expression. Investigation of resulting injury to the nation (as opposed to an individual) could hardly be feasible. While the infringements upon the rights or interests of another individual were necessarily concrete, the abstract entity of the nation exempted the authorities from having to

³³⁸. *Archives nationales* (hereafter “AN”), F¹⁸ 18, dossier 89.3, *Arrêté du Directoire du Département de la Meuse qui dénonce au Directeur du Juré les Auteurs, Imprimeurs et Distributeurs d’un écrit séditieux ; Du Jeudi 19 Avril 1792, l’an 4^e de la liberté*, 2–3.

³³⁹. *Ibid.*, 3.

articulate the exact effects of a certain expression, thereby granting them greater discretion when accusing and punishing individuals for expressing their opinions and ideas.

It is important to notice, though, that the revolutionaries were not simply exploiting the vagueness of *lèse-nation* (treason, literally “offense against the nation”) as granted by some prior laws. The lack of a clear legal definition of the crime of harming the nation was not the consequence of inadvertent neglect but the result of several deliberate discussions. As the revolutionaries began their legislative work for the newly established government from 1789 to 1791, intense debates took place over whether there should be a legal definition of *lèse-nation*. While the moderates and conservatives unsurprisingly advocated for a firm definition to ensure procedural justice in any possible future prosecution for such a crime, the radical leftists like Robespierre argued that a legal definition did not benefit the exceptionality of the *lèse-nation* crime.³⁴⁰ The radical journalist Louis Prudhomme even questioned that, “What perils will the social body face if, to punish one for *lèse-nation*, it is necessary to legally define it?”³⁴¹ In the eyes of these radicals, a legal definition of *lèse-nation* would only become a guide for conspirators, who could easily maneuver around the specified prohibitions and resort to the inexhaustible variety of other ways of expression emerging during the Revolution.

Nonetheless, this radical approach to defining *lèse-nation* revealed a crucial defect in legal justifications of censorship. The radicals refused to establish a legal definition of *lèse-nation* with the assumption that one cannot tell in advance whether a specific form of expression could harm the nation until it had actually done so. The reference to the clauses regarding the abuse of liberty meant

³⁴⁰. Walton, *Policing Public Opinion*, 173-174.

³⁴¹. *Ibid.*, 174.

that the revolutionaries could only pursue their cases in retrospect. Unless some sort of harm had occurred already, the condition of abusing the freedom of expression would not be met. In other words, to censor various mediums of expression on the legal grounds of injuring the nation, the revolutionaries could only enforce prosecutive, not prior, censorship. Hence, the wide implementation of prior censorship, such as that on theatrical scripts, required justification that went beyond legal caveats.

The second justification of censorship used by revolutionaries was practical concerns for the political emergency at hand. The Revolution destabilized the domestic regime and prompted foreign intervention from multiple monarchical states such as Austria in 1792. France was officially at war with several European states during the entire period of the Revolution until at least 1802. Added to this constant peril of foreign warfare were the threats of conspiracy among the allegedly treacherous émigrés—nobles who have fled France because of the Revolution. From the Great Fear in summer 1789 to the Terror itself, the French state and its authorities were in a constant state of agitation as a result of the actual and imagined dangers against the Revolution. Within the specific realm of expressive media, there were indeed counterrevolutionary campaigns that could constitute “abuse” of the freedom of expression. In autumn 1790, the circulation of a clearly royalist and antirevolutionary tract *Avis aux vrais français* drew the attention of the local authorities.³⁴² The tract asked for the punishment of the participants of the October Days and people who spread “infamous broadsides” against the royal family.³⁴³ An official investigation revealed that a former prévôt comte de Saint-Cyr

³⁴². Ibid., 168.

³⁴³. Ibid.

and the former local canon Gosselin Dupré commissioned the printing of this tract.³⁴⁴ Intriguingly, these two former clergymen used precisely the newly granted “freedom of the press” to assure the hesitant printer when they asked him to print this suspicious tract.³⁴⁵ Real examples existed to strengthen authorities’ suspicions that the counterrevolutionaries could abuse the freedom of expression and endanger the revolutionary cause.

The administrative confusion and potential corruption of the early Revolution even allowed counterrevolutionaries to exploit the official postal system to distribute their works.³⁴⁶ There were instances where counterrevolutionary propaganda falsely bearing the seal of the National Assembly spread via the post.³⁴⁷ At times, dissenting national deputies took advantage of their positions and disseminated antirevolutionary works. For example, Jean-Antoine de Castellás shipped from Paris to Lyon works including *L’Ami du Roi* and the Pope’s *Bref du pape* that condemned the Revolution.³⁴⁸ Revolutionaries were naturally suspicious of a widespread network of counterrevolutionary conspirators who wished to exploit the freedom of expression affirmed by the revolutionary law. When placed in the context of domestic and foreign emergency, these instances led the revolutionaries to develop the conviction in the necessity of establishing a strong, comprehensive control over the various expressive media possibly subject to counterrevolutionary abuse.

The series of decrees and administrative orders, including the notorious Law of Suspects, were explicitly contingent upon the emergency situation that the French state faced. In 1792, the National

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid., 167.

³⁴⁷ Ibid.

³⁴⁸ Ibid., 169–170.

Assembly issued a decree on the different measures of surveillance and policing “necessary for the internal and external security of the State.”³⁴⁹ The decree stated that these measures required “the greatest celerity” in implementation given the current dangers.³⁵⁰ Moreover, this decree made an intriguing distinction among emergency policies by claiming that the National Assembly was adopting all the “legislative measures *or* necessary surveillance” to ensure the security of the state.³⁵¹ The censorship thus justified and enforced was to be exceptional from the normal legislative works and legitimate only for the duration of the emergency. Such a justification framed such censorship as temporary.

Local regulations that reinstated censoring mechanisms echoed this argument for compromising the otherwise absolute freedom of expression. One example is the administrative order issued by the Department of Aude in August 1792, which established the general surveillance of journals and personal correspondence within the department. The departmental authorities were aware that this order of censorship contradicted several previous laws, which protected not only the freedom of expression but also the confidentiality and inviolability of personal letters.³⁵² Nonetheless, the authorities argued that such violations of previous laws were acceptable and necessary given the dire situation of the state at hand. Their order stated that all the previous laws guaranteeing individual freedom and privacy did not forbid the censoring measures, proposed in the time of “universal alarm

³⁴⁹. *Décret relative aux différentes Mesures de surveillance et de police pour la sûreté intérieure et extérieure de l'État. Du 9 au 10 – 24 Août 1792. (N.° 2190.)*, as reprinted in Louis Rondonneau, comp., *Collection générale des lois, décrets, arrêtés, sénatus-consultes, avis du conseil d'état et réglemens d'administration publié depuis 1789 jusqu'au 1.er avril 1814*, Tome III (Paris: L'Imprimerie Royale, 1818), 603–604.

³⁵⁰. *Ibid.*, 603. “[...] considérant que ces mesure exigent la plus grande célérité, DÉCRÈTE ce qui suit...”

³⁵¹. *Ibid.*

³⁵². AN F¹⁸ 14 dossier a., *Extrait des registres du Conseil Général du Département de l'Aude, Séance du 30 Août 1792, l'an 4^e de la Liberté, & le 1^{er} de l'Égalité*, 2.

and imminent peril,” which had never been “more widespread” and “more pressing” than at that “current moment.”³⁵³ The emphasis on the extraordinary emergency, which accordingly justified censorship, implied that the authorities acknowledged the unacceptability of these censoring mechanisms during normal political tranquility.

This emergency justification for enforcing censorship indicated the revolutionaries were aware that it inherently infringed upon individual liberty and should not otherwise be legitimate. In principle, the revolutionaries still acknowledged the value of liberty and expected their censoring activities to be temporary. Nonetheless, they claimed that censorship enforced against counterrevolutionary propaganda should, by definition, be defensive.

While practical concerns could explain preventive and prosecutive censorship targeted at counterrevolutionary content, it could not rationalize the revolutionaries’ positive censorship, i.e. the instances when they punished individual “suspects” for their lack of revolutionary spirit. The 1793 Law of Suspects and other similar decrees identified as “suspect” a wide array of individuals, from those related to former nobles to people who simply failed to acquire a certificate of civism.³⁵⁴ For the relatives or agents of the former nobles and *émigrés*, the Law of Suspects further specified that they would be suspects should they fail to “constantly manifest their attachment to the Revolution.”³⁵⁵ In a similar vein, the revolutionary government issued the certificates of civism to individuals to attest that

³⁵³. Ibid., 2-3. “Considérâmes que la Loi du 14 août 1790, n’est nullement applicable aux circonstances présentes; que celle du 20 juillet 1791, n’interdit les mesures proposées, que hors les temps d’alarme universelle & de péril imminent; & que l’alarme ne fauroit être plus générale ni le péril plus pressant que dans le moment actuel [...]”

³⁵⁴. *Décret qui ordonne l’arrestation des Gens suspects*, 278–279. “Sont réputés gens suspects: [...] 3.° ceux à qui a été refusé des certificats de civisme; [...] 5.° ceux des ci-devant nobles, ensemble les maris, femmes, pères, mères, fils ou filles, frères ou sœurs, et agens d’émigrés...”

³⁵⁵. Ibid., 279.

the recipients had fulfilled their civic duties, which essentially entailed good conduct and political orthodoxy of some sort.³⁵⁶ For either category of these potential suspects, it was insufficient to simply avoid showing counterrevolutionary stances; they had to make manifest an ardent support of the Revolution, and even thus, their liberty was not guaranteed.

Furthermore, the Law of Suspects and other auxiliary decrees issued during the Terror shifted the focus of state surveillance from the specific types of expressive media to individuals. Instead of censoring only the opinions expressed and consolidated via media, the revolutionaries began to directly censor individuals within their own population whose personal connections became as suspicious as their actual expressions. By drastically shifting the focus of censoring from counterrevolutionary expressions to incivic individuals, the revolutionaries switched to positive censorship. Neither former legal caveats nor expediency necessitated by emergency concerns could justify such positive, rather than prosecutive, censoring practices.

Meanwhile, the revolutionaries did not forego their direct surveillance of expressive media, which also took on a clear pattern of positive censorship that punished a lack of civic spirit. The aforementioned 1792 decree on surveillance and policing authorized the municipalities to stop the distribution of journals or public papers which were “notoriously known for preaching incivility *and* counterrevolution.”³⁵⁷ Revolutionary authorities also went beyond banishing the counterrevolutionary works from circulation or theatrical repertoires; they simultaneously set out to

³⁵⁶, Jean Tulard et al., *Histoire et dictionnaire de la Révolution française : 1789–1799* (Paris : Robert Laffont, 1998).

³⁵⁷. *Décret relative aux différentes Mesures de surveillance et de police*, 604. “3. Les municipalités seront autorisées à empêcher la distribution de journaux ou feuilles publiques qui sont notoirement connues pour prêcher l’incivisme et la contre-révolution...”

dictate the *proper* repertoires and curriculums while suppressing the circulation or staging of most other works.³⁵⁸ The radicalization leading into the Terror transformed revolutionary censorship, which attempted then to purge the public discourse by silencing oppositional opinions and by monopolizing public discourse with official orthodoxy.

What truly prompted and explained such positive censorship during radicalization was the revolutionaries' profound ideological reasoning more than their desire to enforce legal texts and or to quickly target an emergency threat. The person, as much as expression, became a target of censorship during the Terror. This enforcement of positive censorship reflected the revolutionaries' organic perception of citizenry, which ideally should be a homogenous people sharing and pursuing the same indivisible set of republican virtues. As Robespierre made clear in his speech on political morality, "there are no citizens in the Republic but the republicans," and he dictated that their primary objective was "to found, to consolidate the Republic."³⁵⁹ In this context of constructive revolution, the lack of civic spirit was no less an antithesis to the Revolution than outright opposition against its cause. For Robespierre and his proponents, "citizens" were inherently good and good citizens could only be those who fervently pursued the revolutionary cause. Dissidents were no different from counterrevolutionaries.

Moreover, this vision of a homogenous citizenry further "justified" the deprivation of free expression from "the others" within the Republic. Robespierre claimed that "social protection is due

³⁵⁸. Kennedy, *A Cultural History*, 182.

³⁵⁹. Maximilien Robespierre, *Rapport sur les principes de morale politique qui doivent guider la Convention nationale dans l'administration intérieure de la République : fait au nom du Comité de salut public, le 18 pluviôse, l'an 2^e de la République* (Paris: De l'Imprimerie nationale, 1794), 6 and 10. "Puisque l'âme de la République est la vertu, l'égalité et que votre but est de fonder, de consolider la République..." and "...il n'y a de citoyens dans la République que les republicans."

only to peaceful citizens.” Besides them, there were only strangers and enemies who did not belong to the republican state and thus naturally were not entitled to civil liberty.³⁶⁰ Nevertheless, with the revolutionary enforcement of preventive censorship, a paradox persisted: individuals remained to be “citizens” until the general surveillance uncovered their counterrevolutionary or incivic expressions, but the enforcement of such surveillance had already infringed upon their civil liberty not yet revoked.

Last but not least, positive censorship took on the function of edifying and alerting the people through its monopolization of public discourse. For the revolutionary authorities, the construction of the republic was as vital as the destruction of any opposing forces. Hence, revolutionaries condemned otherwise innocuous theatrical plays and works for their lack of civic spirit, which did not align well with the revolutionary pursuit of virtue. In some sense, revolutionary positive censorship was reminiscent of the quality-control aspect of the Old Regime royal censorship, for both rejected works that were not good enough.

Conclusion

Even a casual perusal of revolutionary discourse reveals that despite their undeniable adoption of censorship in the radical phase, the revolutionaries never rejected the freedom of expression in principle. Quite the contrary, the revolutionaries continued to celebrate liberty as one of the paramount values of the Revolution. The dichotomy between the words and deeds of revolutionary authorities poses questions as to how the revolutionaries could reconcile this apparent paradox between theoretical liberty and actual censoring practices. First and foremost, the radical

³⁶⁰. Ibid., 10. “La protection sociale n’est due qu’aux citoyens paisibles.”

revolutionaries did not fail to exploit the legal caveats left by their predecessors. By adopting a broad, almost arbitrary, definition of what constituted the abuse of freedom of expression, the revolutionaries were able to legally justify a considerable number of cases where they seemed to enforce censorship. Second, the revolutionaries pointed to existential threats engendered by foreign warfare and internal unrest. The emergency situation arguably justified temporary, exceptional measures including censorship. Last but not least, the ideological pursuit of a homogenous republican citizenry explained much of the revolutionary efforts to purge the public discourse and to censor individuals who seemed poised to disrupt this project.

Hence, however radical revolutionary censorship might seem, especially during the Terror, the revolutionaries were indeed making a strategic decision to implement various censoring mechanisms. Revolutionary censorship was a means to an end and not an arbitrary display of the ruling power. The revolutionaries were likely sincere in their motivation to use censorship for good, as one emergency component of the rule of Terror, to govern a nation in its metamorphosis due to the Revolution. Nonetheless, despite all the justifications and explanations the revolutionaries could find for their censoring practices, the growing restriction on people's free expression was also undeniable. The dilemma between guarding the liberty promised to the people and asserting the seemingly necessary control over expression continued to afflict the revolutionaries even beyond the Terror.

CONCLUSION

For most French Revolution scholars, it is almost inevitable to wonder how a promising revolution moving toward liberty and democracy so rapidly degraded into a tumultuous and nearly totalitarian regime. The Reign of Terror in 1793 hence becomes a thorny watershed for various inquiries into the development of the Revolution. The study of revolutionary censorship seems to be no exception. In fact, the surveilling motives behind the diverse censoring practices befits the stereotypical image of the Terror so well that the presupposition of the Terror producing revolutionary censorship seems given. Yet the actual history unraveled differently. Censorship, as an established institution under the Old Regime, underwent its own revolution across the regimes of the greater Revolution. The Terror might have intensified tangible censoring practices, but the seeds of the resurrection of censorship existed long before the fateful arrival of 1793.

To describe and analyze revolutionary censorship is challenging, for the revolutionaries hardly ever consolidated the various mechanisms they adopted into one formal institution. Moreover, the complexities of the Old Regime precedents further contributed to the intricacy of the revolutionary censorship, which partially inherited the old mechanisms. An examination of the institution of Old Regime censorship reveals that it cannot be simply classified as an insidious tool for tyrannical oppression. While the Old Regime employed multiple measures to comprehensively surveil individual expressions, certain censoring institutions such as the royal censorship over books also undertook some crucial regulative functions. In retrospect, the ambivalent duality of the Old Regime censorship

between censoring and legitimate regulation was not particular to its time; it embodied some universal dilemma of censoring and also foreshadowed the intricacies of revolutionary censorship.

Another common stereotype of the Revolution that this thesis has revealed is false was that it simultaneously aroused the appeal for liberty and granted it to the long-oppressed people. In the specific case of censorship, the Revolution was instead responsive to the pre-revolutionary appeal when the new government legislated on the freedom of expression. The abolition of formal Old Regime institutions of censorship and of the monopoly of privileged corporations brought about a brief period of free, but also unregulated, expression. The early revolutionary laws thus did manage to considerably produce actual freedom of expression, but, before long, various incidents of official censoring resurfaced. Strikingly, the outbreak of the Revolution in 1789 and the subsequent official proclamation of liberty did not create a clear watershed for the fluctuating state surveillance on expression.

The wide politicization of the Revolution, while inspiring new ways of expression, also brought new possible areas of censorship to officials' attention. Consequently, the revolutionary censoring practices encompassed several mediums relatively intact from the Old Regime, such as almanacs and education system. As the revolutionaries shifted from a destructive mindset against the Old Regime to a constructive one aimed at forming a regenerated republic, they implemented positive censorship that demanded virtue from individuals in addition to implementing negative censorship against injurious expressions. While the revolutionaries continued to proclaim the paramount status of liberty in principle, they adopted multiple justifications to legitimize their actual enforcement of censorship, which violated freedom of expression. Valid or not, these justifications cannot counter the actual

restriction that the authorities asserted over the individual freedom of expression, which was unequivocally promised to the people at the start of the Revolution. This paradox of preserving the Revolution and liberty by restricting liberty persisted beyond the Terror.

The limited scope of this study can only shed partial light on the intricate problems of the fluctuating state control over expression throughout the early years of the French Revolution. More research will be indispensable to fully restore the historical reality of censorship during the Revolution. For instance, while this study addresses revolutionary censorship largely through the lens of state authorities, a survey of the popular reactions toward the resurrection of censorship during the Revolution would be of equal interest. Given the context of an ongoing revolution, the right to revolt against tyrannical rule was likely carried much public currency. In fact, the revised *Declaration* in the preface of the Constitution of 1793 explicitly stipulated that, “when the government violates the rights of the people, insurrection is the most sacred of all rights and the most indispensable of all duties for the people and for each portion of the people.”³⁶¹ Did the general public realize the censoring nature of the various measures of surveillance imposed by the revolutionary government? How did the people react to the tightening state control over their freedom of expression? Did they appeal to the legal stipulation of inviolable liberty? To answer these questions, research over a much broader range of materials is necessary.

Our understanding of revolutionary censorship could also be extended by more quantitative analysis. While the largely qualitative analysis of this study offers a general sketch of the censoring

³⁶¹. *Constitution of 24 June 1793*, “Declaration of the Rights of the Man and of Citizen,” Article 35.

practices during the early Revolution, specific statistics can facilitate a more tangible sense of the exact impact of official surveillance over the French population. For instance, a survey of the rich archival sources relevant to the *Comité des recherches* (created specifically for the investigation of potential conspiracies) would generate a more concrete picture of the frequency and types of revolutionary censorship actually enforced.

Censorship continued to develop in France long after the Revolution and the Terror, and its total eradication hardly ever occurred for at least the two centuries after.³⁶² Yet the brief revolutionary emancipation of expression left a persisting challenge for every authority hereafter. Now that the Revolution has virtually perpetuated a notion of civil liberty among the population, state authorities no longer enjoyed an advantage that the Old Regime had: post-Revolution regimes had to justify their censoring actions. While the subjects of the Old Regime had no claim to their individual liberty, including the freedom of expression, the post-Revolution population could presume more or less such freedom as default. Hence, while the French Revolution was not able to resolve the conflicts between the maximum preservation of individual liberty and the necessity of official regulation, it did leave behind a precious legacy of the ingrained popular recognition of the freedom of expression.

In many aspects, the French Revolution is the foundation and archetype of modern democracy and mass politics. Political issues that debuted during the Revolution oftentimes exhibit a timeless applicability. The antithesis between free expression and censorship had such lasting impact. As a foundational document for modern democracy, for instance, the *Universal Declaration of Human*

³⁶². For a brief account of the post-Revolution development of censorship in France, see Todd, *Political Bias*, 311–333.

Rights strikingly echoes the *Declaration of Rights of Man and of Citizen*. Both declarations hold the freedom of expression to be essential and of paramount importance to the protection of human rights.³⁶³ Paradoxically, censorship as the natural antithesis continues to lurk beneath recurrent proclamations of the freedom of expression, whose significance shines most clearly upon its infringement. Thus, the revolutionary authorities were not facing a challenge particular to their age, but one that haunts each democratic regime which has to balance liberty and regulation.

³⁶³. UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A (Paris, 1948), <http://www.un.org/en/universal-declaration-human-rights/>. “Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions with- out interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

APPENDIX

Figure 1. Unattributed. *Unité, indivisibilité de la République. Liberté, égalité, fraternité ou la mort.*



Between 1792 and 1794. Wood Engraving. Bibliothèque nationale de France. <https://purl.stanford.edu/dg050sc1679>.

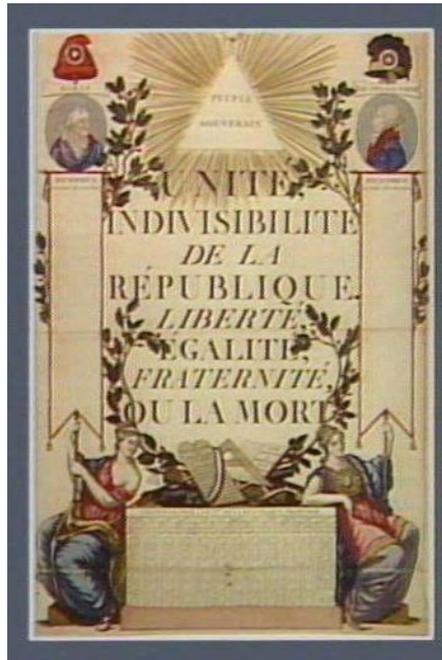
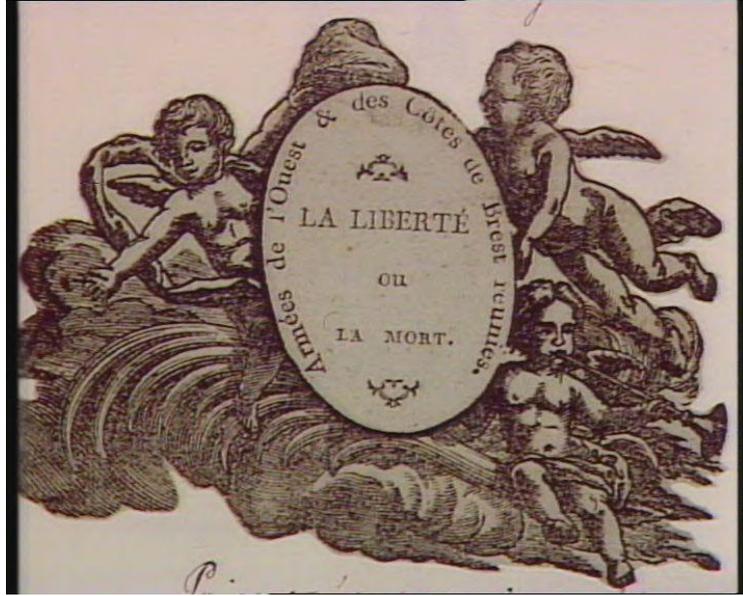


Figure 2. Unattributed. *Unité, indivisibilité de la République, liberté, égalité, fraternité ou la mort ; calendrier pour l'an 2^{ème} de la République française.* 1793. Etching. 72.5 x 51 cm. Bibliothèque nationale de France. <https://purl.stanford.edu/mw839rw9242>.

Figure 3. Unattributed. *La liberté ou la mort; Armées de l'Ouest & des Côtes de Brest réunies.* Between 1793 and 1799. Wood Engraving. 8 x 11 cm. Bibliothèque nationale de France.



<https://purl.stanford.edu/sr026xm4073>.

Figure 4. Unattributed. *Carte d'entrée des administrateurs de police l'an 2^{ème} de la République française : la liberté ou la mort [...]* Administrateur de police. 1793. Etching. 6.5 cm in diameter.



Bibliothèque nationale de France. <https://purl.stanford.edu/wb332hm3309>.

Figure 5. Unattributed. *ÉGALITÉ LIBERTÉ OU LA MORT.* 1793 or 1794. Medal of tin. 3.3 cm in



diameter. Bibliothèque nationale de France. <https://purl.stanford.edu/bw937xf1503>.

Figure 6. Unattributed. *LA LIBERTÉ OU LA MORT*. 1793. Medal of tin. 5.7 cm in diameter.



Bibliothèque nationale de France. <https://purl.stanford.edu/jg250hh1859>.

BIBLIOGRAPHY

Primary Sources

Archives nationales (hereafter “AN”)

AN F¹⁸ 14 dossier a., *Extrait des registres du Conseil Général du Département de l’Aude, Séance du 30 Août 1792, l’an 4^e de la Liberté, & le 1^{er} de l’Égalité.*

AN F¹⁸ 18, dossier 89.3, *Arrêté du Directoire du Département de la Meuse qui dénonce au Directeur du Juré les Auteurs, Imprimeurs et Distributeurs d’un écrit séditieux ; Du Jeudi 19 Avril 1792, l’an 4^e de la liberté.*

AN F¹⁸ 17 dossier 39.2, *Arrête de la Commission administrative de Jura qui prohibe la Vente & Distribution d’une contre-façon de l’Almanac de Berne pour 1794, intitulé le Message Boiteux. Du 30 septembre 1793, l’an deux de la République française, une & indivisible.*

AN F¹⁸ 20 dossier 51, *Extrait des registres des délibérations de Conseil Général de la Commune de Lyon en permanence, du Dimanche 5 Août 1792 et de la Liberté, an IV.*

Décret de la Convention nationale, du 19 juillet 1793, l’an second de la République française, relatif aux droits de propriété des auteurs d’écrits en tout genre, des compositeurs de musique, des peintres et des dessinateur. L’imprimerie de la veuve Simard, 1793. Accessed at https://archive.org/details/dcretdeconvent00fran_3.

Guillaume, James, and Jean-François Robinet, et. al., eds. *Procès-verbaux du Comité d’instruction publique de la Convention nationale.* Paris: Imprimerie nationale, 1891–1958.

Madival, Jérôme, and Émile Laurent, et. al., eds. *Archives parlementaires de 1789 à 1860 : recueil complet des débats législatifs & politiques des Chambres françaises.* Paris: Librairie administrative de P. Dupont, 1862–.

Malesherbes, Chrétien-Guillaume de Lamoignon de. *Mémoires sur la librairie et sur la liberté de la presse.* Paris: H. Agasse, 1809.

Merlin de Thionville, Antoine-Christophe. *Capet et Robespierre.* Paris : n.p. Rue de la Loi, no. 1232, 1794.

Robespierre, Maximilien. *Rapport sur les principes de morale politique qui doivent guider la Convention nationale dans l’administration intérieure de la République : fait au nom du Comité de salut public, le 18 pluviôse, l’an 2^e de la République.* Paris: De l’Imprimerie nationale, 1794.

Rondonneau, Louis, comp. *Code militaire, ou Recueil méthodique des décrets relatifs aux troupes de ligne et à la gendarmerie nationale rendus par les Assemblées constituante et législative et par la Convention nationale*, Tome III. Paris: L'Imprimerie du Dépôt des Lois, 1793.

———. *Collection générale des lois, décrets, arrêtés, sénatus-consultes, avis du conseil d'état et réglemens d'administration publié depuis 1789 jusqu'au 1.^{er} avril 1814*, Tome III. Paris: L'Imprimerie Royale, 1818.

Thiebault, Dieudonné, *Mémoire sur la liberté de la presse, suivi de quelques autres mémoires concernant la librairie*. N.p., 1789.

UN General Assembly. "Universal Declaration of Human Rights." 217 (III) A. Paris, 1948. <http://www.un.org/en/universal-declaration-human-rights/>

Secondary Sources

Birn, Raymond. *Royal Censorship of Books in Eighteenth-Century France*. Stanford, CA: Stanford University Press, 2012.

Censer, Jack, and Jeremy Popkin. *Press and Politics in Pre-Revolutionary France*. Berkeley: University of California Press, 1987.

Caron, Pierre. *Paris pendant la Terreur : rapports des agents secrets du Ministre de l'intérieur*. Paris: Picard, 1910–1978.

Darnton, Robert, and Daniel Roche. *Revolution in Print: The Press in France, 1775-1800*. Berkeley, CA: University of California Press in collaboration with the New York Public Library, 1989.

———. "Bourbon France: Privilege and Repression." In *Censors at Work: How States Shaped Literature*, 23–86. W. W. Norton & Company, 2014.

———. *The Literary Underground of the Old Regime*. Cambridge: Harvard University Press, 1982.

Gough, Hugh. *The Newspaper Press in the French Revolution*. Chicago: The Dorsey Press, 1988.

Haynes, Christine. *Lost Illusions: The Politics of Publishing in the Nineteenth-Century France*. Cambridge, MA: Harvard University Press, 2010.

Hesse, Carla. *Publishing and Cultural Politics in Revolutionary Paris, 1789–1800*. University of California Press, 1991.

Israel, Jonathan. *Revolutionary Ideas: An Intellectual History of the French Revolution from The Rights of Man to Robespierre*. Princeton, NJ: Princeton University Press, 2014.

Jones, Colin. *The Longman Companion to the French Revolution*. Routledge, 1990.

Kennedy, Emmet. *A Cultural History of the French Revolution*. New Haven: Yale University Press, 1991.

Mason, Laura. *Singing the French Revolution: Popular Culture and Politics, 1787–1799*. Ithaca and London: Cornell University Press, 1996.

Ravel, Jeffrey. *The Contested Parterre: Public Theater and French Political Culture, 1680–1791*. Ithaca and London: Cornell University Press, 1999,.

Shapiro, Gilbert, and John Markoff. *Revolutionary Demands: A Content Analysis of the Cahiers de Doléances of 1789*. Stanford, CA: Stanford University Press, 1998.

Todd, Christopher. *Political Bias, Censorship and the Dissolution of the “Official” Press in Eighteenth-Century France*, The Edwin Mellen Press, 1991.

Tulard, Jean, Jean-François Fayard and Alfred Fierro. *Histoire et dictionnaire de la Révolution française : 1789–1799*. Paris: Robert Laffont, 1998.

Walton, Charles. *Policing Public Opinion in the French Revolution: the Culture of Calumny and the Problem of Free Speech*. Oxford University Press, 2009.

METACOMMENTARY IN MILTON'S PARADISE LOST:
MILTONIC ACROSTIC REVEALS SATAN'S FLASH-
FORWARD TO BE THE EGYPTIAN GOD THOTH

MILES FOLSOM is a sophomore pursuing a Liberal Arts degree through the Moreau College Initiative—a joint venture between Notre Dame and Holy Cross College to offer college degree programs at the Westville Correctional Facility. He is interested in the human condition. This paper is the culmination of a ten year struggle to shed light on darkness. His advisor was Dr. Stephen M. Fallon. The two met in a Professor Fallon’s *Shakespeare and Milton* course at the prison. Miles would like to extend his deepest gratitude to both Dr. Fallon and to Notre Dame for gifting him this opportunity and for providing the wealth of resources he used in crafting his thesis.

ABSTRACT

When Milton named his character in *Paradise Lost* “the Son,” he allowed the reader’s mind to flash-forward in time to the footsteps of Jesus. This was such a peculiar literary tactic that scholars began searching for a similar later manifestation for Satan. The search was fruitless. Milton’s use of acrostics, however, offers a new clue in this search; Satan’s later manifestation is shown to be the Egyptian god Thoth. An extensive comparative analysis between Satan and Thoth serves to solidify this connection. Thoth’s association makes sense of the synonymy Milton created between evil and Egypt. By naming Thoth as Satan’s vehicle, Milton capitalizes on the euhemeristic tradition to negotiate the problem of naming evil; euhemerism allows Satan to percolate throughout time and space. Thus, his family-tree manifests itself: Satan-Thoth-Hermes-Mercury-Odin....This feat is unlike the creation of other great epics, because Milton ties his characters to historical counterparts. He transcends the genre of myth by bridging his-story to history through the use of flash-forwards. The facets slide together to create one cohesive whole that is all encompassing.

One of the key components in writing an epic is to possess an encyclopedic knowledge. Having such knowledge gives one access to centuries of genius. The scale of understanding becomes cosmopolitan. Milton's genius is undeniable. His masterpiece, *Paradise Lost*, has been read and taught since its publication. In the 350 odd years since, people are still making new discoveries within the text.

This paper will explore Milton's use of acrostics and their potential importance. Through the many acrostic variations I uncover, I will prove that Milton knowingly used acrostics as a means to provide a deeper reading experience. I will argue that one acrostic holds a greater importance than the rest. For those finding the name-acrostic 'Thoth,' a much broader story unfolds. Thoth is the missing future embodiment that the Son has in Jesus but that Satan is missing. I will argue that the Egyptian god Thoth is the first in a line of euhemerized figures Milton meant to become Satan's delineation through the historical record. I will visit these euhemerized figures, namely Thoth and the Greek god Hermes, in order to make their relation to Satan clear. In concluding, I will argue that Milton raised the bar of what an epic takes by tying his main characters to historical counterparts.

The richness of this work borders on the uncanny. One may argue that pulling acrostics out of verses is a matter of chance rather than forethought. It is a compelling argument. Often enough, this sort of journey borders on mysticism; people see what they want to see—whether it is a hidden message within Shakespeare or apocryphal forebodings in Nostradamus. Mysticism is its own encyclopedia. When opening up our minds to hidden messages, the knee jerk reaction is to laugh it off. And in most cases, I would agree that this reaction is warranted. But Milton was an author unlike most. His brilliance is only comprehensible through discovery.

The discussion on Miltonic acrostics is not new. Previous scholars have noted Milton's use of acrostics. Mark Vaughn and P. J. Klemp found many throughout *Paradise Lost*, but what they thought was a thorough analysis turns out to only be the tip of an iceberg. To find the following acrostics, I systematically read through *PL* multiple times. The prior notation of Miltonic acrostics inspired my search. I will not include all I have found; rather, I will focus on a few to make my argument.

I overlooked many acrostics that were three letter words. The odds of a three letter word appearing by chance are much higher than a four, or more, letter word. The odds of a four letter word appearing by chance is exponentially more unlikely than a three letter word. This makes them worth noting. An acrostic appears early on in book one. It is the word 'lost':

Let us not slip th' occasion, whether scorn,

Or satiate fury yield it from our Foe.

Seest thou yon dreary Plain, forlorn and wild,

The seat of desolation, void of light. (1.178-81; emphasis added)³⁶⁴

Each letter has 26 variables (one variable for each letter of the alphabet it could have been). Those variables then have the variable of being matched up with each other letter to create a word by chance. Any mathematician will explain the probability of this happening, by chance, is extremely low. Nonetheless, I do concede it is possible to have chance formations. However, I argue that because these word formations are coupled with contexts that easily mate to their meanings, they were strategically implanted. For example, the word 'lost' is paired with narration describing a "dreary Plain, forlorn and wild, / The seat of desolation, void of light" (1.181-80). The probability of these chance associations is nil.

Book two reveals much of the same. An acrostic appears in Beelzebub's speech to the other devils after their fall from heaven's battle. He asks how they might, in order to strike back at God, destroy the newly created human race:

By force or subtlety. Though Heaven be shut,

And Heaven's high Arbitrator sit secure

In his own strength, this place may lie exposed,

The utmost border of his kingdom, left. (2.358-61; emphasis added)

The word 'bait' appears alongside this speech. Beelzebub, speaking for Satan, is trying to convince his troupe of devils that there is still more worth fighting for. He, using his superior rhetoric to imply the

³⁶⁴ Unless otherwise specified, I quote Milton's poetry from *The Complete Poetry and Essential Prose*, ed. William Kerrigan, John Rumrich, and Stephen M. Fallon (New York: Modern Library, 2007).

edge of heaven's realm is weaker than the middle, baits his hellish compatriots into taking up the cause: to find earth and pervert its occupants. The letters, the word, and the context all match up.

The practice of implanting acrostics blends well with one of Milton's literary tools: the "turn of words." A 'turn of words' occurs when one "repeats the same words in a reversed or modified order" (Kerrigan et al. xxxv). It arose in the seventeenth and eighteenth centuries. It is well known Milton intended his readers to read both forwards and backwards. It would only make sense that he would also want readers to read up and down. His trickery extends far and wide. Jane Partner argues that "Milton's wider purpose [was] to stimulate the reader's reason by presenting them with an intellectually strenuous interpretative process" (Partner 143). Acrostics augment Milton's intent to ensure that his readers remained vigilant while traversing this epic.

Genius never finds itself in a box. If Milton used acrostics, it is easy to suggest he used different variations. Book VIII presents one for review. Adam, recounting the spontaneous soliloquy in which he thanked God for giving him Eve says:

'This turn hath made amends; thou hast fulfilled

Thy words, Creator bounteous and benign,

Giver of all things fair, but fairest this

Of all thy gifts, nor enviest. I now see

Bone of my bone, flesh of my flesh, my self

Before me; woman is her name, of man

Extracted; for this cause he shall forgo

Father and mother, and to his wife adhere;

And they shall be one flesh, one heart, one soul.' (8.491-9; emphasis added)

This acrostic, built now of first words rather than first letters, points to God being the creator of all things. God created Eve. God is the source by which all things should revolve. As Adam becomes Eve-centric, this warning appears to remind Adam he is extracted from God. This stands as an implicit warning to Adam. It tells him he should always be conscious, before all else, of his intimate relationship with God.

A similar play on words is found in book IX. Satan, in serpent form, is in the garden tempting Eve. He asks:

To happier life, knowledge of good and evil;

Of good, how just? Of evil, if what is evil

Be real, why not known, since easier shunned?

God, therefore, cannot hurt ye, and be just. (9.697-700; emphasis added)

This hybrid acrostic reads: 'To be God'. This is what Satan is tempting Eve with. She does not realize the implications of his speech because he is not direct. Satan skirts the most treacherous form of heresy by saying, "ye shall be gods" rather than the more direct and assaulting implication of being God, the one and only (10.708). Milton both tests and assists us in our struggles against Satan's rhetorical skills.

If Milton uses acrostics to imbed messages, it is consequent to suggest he did even more with word play. In book X, Milton varies from the traditional acrostic form. Eve attempts to convince Adam to join her in eating of the apple. She says:

Between us two let there be peace; both joining,

As joined in injuries, one enmity

Against a Foe by doom express assigned us.
That cruel Serpent. On me exercise not
Thy hatred for this misery befallen -
On me already lost, me than thyself
More miserable. Both have sinned; but thou
Against God only; I against God and thee,
And to the place of judgment will return,
There with my cries impor'tune Heaven, that all
The sentence, from thy head removed, may light
On me, sole cause to thee of all this woe,
Me, me only, just object of His ire (10.924-36; emphasis added)

At first glance, this seems to merely be the repetition of the word 'aattom'. Given what is known of acrostics, it is easy to discredit this ordering as nonsense. It was the chance formation of this word, twice, that grabbed my attention. If chaos is replicated, it is no longer chaos. It becomes a pattern. The key is line 924: "Between us two let there be peace; both joining." When Eve's words are taken into account, as a directional instruction, one understands this acrostic needs synthesizing. After "joining", the word 'atom' is produced. Not only is this a play on words, referring to Adam, but it also derives from the Greek *atomos*, meaning 'undivided'. Adam and Eve are made of the same: Adam. Each 'aattom' represents one of them. They have been separated by sin. Eve's wish is for them to 'rejoin' back into indivisibility. In this example, it is the context and the letter formation that makes this acrostic irrefutable. The chance encounter of either, let alone in conjunction, is mindboggling.

One of the more significant acrostic formations appears in book IX; in desperate protest, as Adam is contemplating whether or not to fall with Eve, he concludes:

Should God create another Eve, and I

Another rib afford, yet loss of thee

Would never from my heart. No, no! I feel

The link of nature draw me: flesh of flesh,

Bone of my bone thou art, and from thy state

Mine never shall be parted, bliss or woe. (9.911-6; emphasis added)

This message is another warning to Adam, or the reader. It harkens back to Adam's words in book VIII, where an acrostic warned him not to overlook his relationship with God. This message demands that the connection to Eve be severed before it is too late. Just as the acrostic ends, Adam plunges our hopes into the abyss; he chooses to stick with Eve—the 'flesh of his flesh, bone of his bone'. It is the fatal line for all of humanity.

One might ask why go through so much trouble to imbed 'mere metacommentary'. These acrostics do not seem to lend a great deal to the work as a whole. However, as discussed with the 'turn of words,' one of Milton's goals was to task his reader with keeping an ever-present awareness. Acrostics are another tool in accomplishing this goal. The messages may not seem like much, but their existence keeps the reader intimately alert while covering the passages. Broadening the complexity of this task is alone reason enough for Milton to have used acrostics in his work.

An equally compelling explanation to Miltonic acrostics is to argue that they are an epic convention. It is widely held that Virgil hid the name-acrostic 'Mars' within the *Aeneid* (Klemp 91-2).

Paul Klemp established Milton's use of a name acrostic within *PL* when he discovered the name 'Satan' (9.510-14). With Milton going above and beyond the normal standards, it should be no surprise to find additional care put forth here. And if acrostics weren't an epic convention before, making the case that Milton replicates Virgil's actions in order to establish them as one would not be too far of a stretch.

One acrostic points to a much larger significance than all the others. It is, arguably, the most important acrostic yet found. It will be the pivot for the rest of this paper. Milton puts in overtime to point it out:

Th' infernal Serpent; hee it was, whose guile
Stirr'd up with Envy and Revenge, deceiv'd
The Mother of Mankind; what time his Pride
Had cast him out from Heav', with all his Host
Of Rebel Angels, by whose aid aspiring
To set himself in Glory above his Peers,
He trusted to have equall'd the most High,
If he oppos'd. (1.34-41; emphasis added)

"Thoth" appears at the first mention of Satan. This is metacommentary, but it is of a much different sort. When Milton alters the meter in line 38, he is effectively pulling double duty to alert the reader of this passage. This line is the first of "the rare lines ending in an unstressed, redundant syllable... [with] less than 1% of the lines" in *PL* having a feminine ending (Hughes ff. 38). If ever Milton uses a blow-horn to get our attention, this is it. The meter shift raises one's awareness of the passage. One's eyes

move from west to east. Then the acrostic moves the eyes from north to south. This eye movement causes the reader's eyes to make the sign of the cross while framing the first mention of Satan within these two alerts. In a feat meant to epitomize the totality of literary consciousness, the Thoth acrostic then moves one from past to present and back again.

This acrostic grants a window into answering the question of who Satan is. Milton left his readers to wonder about the embodiment of postlapsarian evil. The Son is easily identified, through intuitive association, as the one who would be incarnated as Jesus. This connotation allows a wealth of information to color the outline of the Son's character. Milton, in effect, mimics the efforts of St. Paul. St. Paul was the one who originally connected the story of Adam to Jesus. Before he was granted a flash-forward, Adam's significance was practically mute (Ricoeur 6). Without a historical counterpart, Satan's postlapsarian embodiment is strikingly ambiguous. His historical presence is more a placeholder bearing the categorical name 'sin'. Looking back, all readers know of Satan is that he is a fallen angel, previously known as 'Lucifer'. A search of this name finds little. The investigation leads to a dead-end. Looking forward to his future, one is forced into abstraction. Satan is the creator of sin and father of Death; it is assumed all bad things are his progeny. This abstraction is much different from how the Son is seen. As a main character, Satan's lack of temporal contextualization is conspicuous by its absence. It leaves Milton's characters imbalanced.

The Thoth acrostic is the hidden measure meant to provide equilibrium. When Milton creates the Son, he allows the reader's mind to flash-forward, filling in temporal and contextual details. This leaves one to search for Satan's similar temporal shift. Readers have been searching all this time (Kerrigan et al. xv). Complicating things was the disconnect between prelapsarian timelessness and the

present exegetical inclination to define events through historical references. History is itself dependent on time. Thus, this abstraction is birthed. However, when considering Thoth as Satan's historical counterpart, one realizes the leap Milton made. Milton provides him with a future embodiment on par with what the Son finds in Jesus. By implanting Thoth's name, Milton points out the divine plan for Satan's lineage, and affords him a wealth of contextualization.

Naming evil extinguishes its abstraction. In his book, *Symbolism of Evil*, Paul Ricoeur discusses symbols that point *both* backwards and forwards in time. He explains that if we disconnect a symbol from living experience "we take away from the experience that...completes its meaning" (171). Ensuring readers become conscious of the full ramifications of evil is paramount for Milton. This is one of his main concerns throughout books I and II; he goes to great effort to relate Satan to the evil of history. He does this to prove that evil is personified in real people. By naming evil, it become tangible (Hartman 5). However, this is a much harder thing than naming the Savior—the one and only. Evil is personified in a number of figures throughout all time. Milton could not simply point to the Pharaoh as evil, or else people would not look anywhere else for it. The difference between naming the Son and Satan is important to note. Milton must go an extra length to make evil tangible.

Milton negotiates the danger of naming evil by using the euhemeristic tradition. Euhemerism is the practice of translating historical figures into history-transcending gods and goddesses. As time passes, a line of figures can be created—all bearing similar traits derived from a single source. By naming evil as a euhemerized figure, it allows the transference of identity; it is allowed to permeate throughout history, stopping with no one figure. Thoth is the first in a long line of figures spanning

both space and time. As readers trace the Son through history to the footsteps of Jesus, so too can they now trace the footsteps of Satan to Thoth and his euhemerized progeny.

Hiding Satan's flash-forward can be seen as another literary tool. Identity is often used as a means to create mystery within a work. Authors hide it, allowing a future reveal to bring a story together. Aristotle discusses discovery as a means to create an effective plot. Discovery can come when a character is "awakened by something seen" (Aristotle 1471m k, 1455(3)). For Milton, his reader should always be considered a part of the story—the reader is the test subject of this faithful epic. Milton invested so much time in words and rhythm because he wanted to tax his readers with seeing all that was before them. Hiding Satan's flash-forward is a brilliant means of accomplishing this. Milton makes the reader a character awoken by seeing Thoth's name.

Aristotle explains that every tragedy is part complication and part denouement. He defines these as what happened before the act opened, what went on during it, and what the denouement points towards happening afterward (Aristotle 1473, 18 (4)). What occurred before Satan's betrayal is obscured. The betrayal itself is recorded within the text. What the text offers on the future then becomes paramount to this analysis. And there is a wealth of information to wade through; it is through this analysis that Satan's identity is affirmed as Thoth.

Milton makes many associations between Satan and Thoth. Nowhere else in Milton's work is Thoth found by name. The closest one gets is when Milton references Egyptian gods as, "Osiris, Isis, Orus, and their train" (1.478). This train would undeniably have included Thoth. In his time, he was also known as Tehuti and Djhowtey (Budge CXVIII). Under Grecian adoption he became known as

Hermes Trismegistus, or the 'Thrice Great Hermes.' The Romans called him Mercury. The Germans called him Odin. Whichever name you choose, he primarily represented divine intelligence, the giver of wisdom. Wallis Budge, in his translation of *The Egyptian Book of the Dead*, explains that Thoth claimed to be self-produced (CXVIII). Walter Scott, in the *Corpus Hermetica*, expounds that Thoth is missing a place in "the genealogy of the Egyptian gods" (Scott 2: 240). Budge goes on to explain that he was the judge of right and wrong. In his left hand he held a scepter with two snakes entwining it (the caduceus). He was the inventor of writing, scribe of the gods, and founder of all arts and sciences; some of his titles are: "lord of writing," "master of papyrus," "maker of the palette and the ink-jar," "the mighty speaker," "the sweet-tongued." He was the chronologer of heaven and earth, thus becoming god of the moon; by tracking the planets he created astrology and time; the name Tehuti, translates to "the measurer"; as the timekeeper, he had the power to grant life to the deceased. He was often depicted as a man with the head of an ibis, sometimes bearing horns (Budge CXVIII-CXIX).

The traits of Thoth bear a striking similarity to those of Satan. First and foremost, Satan also claims to be self-begotten (5.859-61). Satan was the judger of wisdom before his fall. Raphael speaks to this fact when he laments Satan's fall by saying, "O loss of one in Heaven to judge of wise" (4.904). Satan is portrayed with a diadem and scepter high advanced (4.90). Book I has him bearing on this staff (1.291-5). When Satan orders the building of Pandemonium, music is created. The creation of sport is manifest when the devils are compared to the Olympic Games (2.529-30). Traditionally, Satan's oratory abilities have been recognized as superior to anyone else's. His rhetoric is so impressive that one wonders why Milton would give Satan such a 'sweet tongue'. He is associated with the moon

(1.287). He is represented as a cormorant (4.197). A Cormorant is a wading bird, similar to the ibis of Thoth.

As the ‘judge of wisdom,’ Lucifer-Satan knew more than most. This title should not be taken lightly. Knowledge is powerful, and with great knowledge comes great responsibility. In his *Christian Doctrine*, Milton explains, “the son was entitled to the name of God...in the capacity of a judge” (qtd. in Hughes ff. 10.56).³⁶⁵ Being a judge is no small responsibility for Milton. As the judge of wisdom, Satan must have had the precedents. Satan scribed the books of knowledge by which disputes were resolved. His once comprehensive knowledge is evidenced when he brings up the prophecy of humankind (1.651-56). After Satan’s betrayal, Milton makes multiple references to the books being effaced. This erasure is reminiscent of Satan’s loss of knowledge when bathing in the river Lethe (2.583-5). When Raphael makes the records and time synonymous it implies Satan’s relation to time (8.66-69). Satan’s power over time is further realized when he sires Death, for time is only relevant to those who die.

As father of Death, Satan is given control of the dead. This authority mandates that Satan must be tasked with the weighing of hearts—the same job Thoth has (Budge CXVIII). Milton makes the hardening of the heart an important theme surrounding Satan. Milton uses the word “obdured” to refer to Satan’s plight, which has its root meaning in the Latin for “hardened” (Kerrigan et al. ff. 6.785). This is a peculiar term when considering that both Satan and Thoth must judge the weight, or

³⁶⁵ Also see *CD I.v*, in *The Works of John Milton*, ed. Frank Allen Patterson, et al. (New York: Columbia University Press, 1931-38): XIV.250. This edition referred to below as C.Ed..

hardness, of hearts. Whereas Satan once held the precedents by which to judge wisdom, he now *is* the precedent to judge hard hearts by.

Outside of the Thoth acrostic, Milton leaves a trail of references to associate Satan with Egypt. It is clear that he was fluent in Egyptian myth (Milton 955). Early in book I, the devils are compared to Egyptian cavalry. The cavalry is always to the king, here personified as Busiris—the “mythical Egyptian king often identified as an oppressor of the Hebrews” (Kerrigan et al. ff. 1.304-12). In this exchange, the devils are said to be floating on the Red Sea after God has collapsed the corridor that led Moses and the Hebrews to safety. These instances directly tie Satan to Busiris, the Egyptian ruler.

Evil is geographically attached to the land when the narrator calls the time, “Egypt’s evil day” (1.339). In book V, Milton assigns “Satan to his royal seat / High on a hill, far blazing, as a mount / Raised on a mount, with pyramids and tow’rs” (5.756-58). There are two implications here. One is clear: sitting atop a pyramid equates Satan to being an Egyptian ruler. Secondly, he is said to be sitting atop a mount. Mount could be metaphoric for a pile of rocks, as pyramids quite literally are. It could also come from the name ‘Hermes,’ which is “etymologically transparent and means ‘he from the stone heap’” (Nilsson 109). Both make Satan ruler of Egypt.

Milton further associates Satan to the Egyptian geography through an acrostic. In ancient Egyptian orthodoxy, the way to the underworld is through a “gap” in the mountains (Budge CXVIII). Milton’s first relates the way to hell as a ‘gap’ in book IV. As Satan is speaking to Gabriel, Milton uses an acrostic to emphasize how Satan got in, and will get out of, hell. Satan says:

Gabriel, thou hadst in Heav’n th’ esteem of wise,

And such I held thee; but this question asked

Puts me in doubt. Lives there who loves his pain?

Who would not, finding way, break loose from Hell. (4.886-89; emphasis added)

The second use of the word ‘gap’ comes in book VI. It pairs to the adjacent acrostic. As Raphael is describing heaven’s battle, he says:

With terrors and with furies to the bounds

And crystal wall of Heav’n, which op’ning wide,

Rolled inward, and a spacious *gap* disclosed

Into the wasteful deep; (6.859-62; emphasis added)

Satan and his troupe of devils were swallowed up by this gap. Highlighting the opening of hell as a ‘gap’ leads one to believe it is not only intentional but a key to understanding something greater.

Namely, Egyptian occultism represented the way to hell during biblical times.

Milton also uses metaphor to relate the account of Egyptian ruin to Satan and his devils. As he is about to defeat Satan and his army, the Son says, “stand still in bright array, ye Saints” (6.801). This statement reflects the command of Moses to the Hebrews, “to stand and witness the destruction of Pharaoh’s army” (Kerrigan et al. ff. 6.801).³⁶⁶ This account of Moses witnesses the allure of Egypt’s evil when the Hebrews lose faith during his absence to Mt. Sinai; they begin worshipping Egyptian gods

³⁶⁶ See Exod. 14.13.

through the form of a golden calf. Their spiritual errancy is called an “infection” (1.482-84). By mounting Satan as Pharaoh, Milton sets out to evidence Egypt’s teachings as infectious, corrupting, and corrosive—ideas pushed by none other than Thoth himself.

Evil and Egypt are synonymous in this work. Michael proclaims his opposition to Pharaoh, King of Egypt--“the great dragon that liveth in the midst of these [Egyptian] rivers” (12.191). The serpent Michael opposes represents the Pharaoh’s teachings, which are symbolic of Satan’s rhetoric. Plato, in writing the *Statesmen*, explains that “in Egypt, the king himself is not allowed to reign, unless he have priestly powers; and if he should be one of another class, and have obtained the throne by violence, he must get enrolled in the priestcraft” (qtd. in Hall 293). This means all Pharaohs are corrupted by occultism, sourced through the teachings and influence of Thoth. Furthermore, Merritt Y. Hughes explains that the Pharaoh has long been recognized “as a type of Satan, vera daemonis figura as he is called in the Prologue to the rule of St. Benedict” (Hughes ff. 1.307). Milton, as well as history, clearly establishes the synonymy between Satan and Egypt, as well as Satan and Thoth.

Being a bearer of knowledge is the most important trait for the euhemerized Satan to possess. *PL* raises questions about premature or unbridled pursuit of knowledge. Milton tries everything he can to help his reader understand what is at stake. Stephen Fallon explains that for Milton, “there is a higher purpose for reason than unlocking the secrets of nature, namely the discernment of good and evil” (Fallon 113). The accumulation of knowledge easily leads one to hubris. Satan thought himself “to have equall’d the most High, / If he oppos’d” (1.41-42). He *thought* he was greater than he really

was; his reasoning betrayed the ‘discernment of good and evil,’ thus sin was created. With Thoth being a giver of knowledge, it is all the more appropriate for him to be Satan’s flash-forward.

Milton uses scenes involving Adam to point out the connection between knowledge and sin: Adam warns Eve that they should not “think hard” about the one prohibition God set down but rather take it as intuitively right (4.432); Adam is continuously warned of intellectual appetite; he is told his reason is unlike that of heavenly beings—heavenly intellect is based on intuition whereas Adam’s is based on discourse (5.488-89); Adam’s vulnerability is shown when he mistakes brightness for excellence, as Lucifer does his own starry nature (8.87-94). Abutting this dialogue appears the acrostic “slow”, warning Adam to resist seeking thinking about hidden things (8.167-70). Raphael tells Adam that “the prime wisdom” is what lays right there before them (8.175-79). These inferences come together as Michael explains the Fall to Adam; he says it is the consequence of ill-gotten knowledge. In his parting words, Michael warns Adam to balance both passion and reason (12.83-90).

Milton refers often to instances where wisdom leads to a fall. An implicit reference comes when Adam is depicted sitting underneath a platan tree; this associates him to Socrates—renowned for his wisdom as much as for his demise (Kerrigan et al. ff. 9.478).³⁶⁷ In book IX, there is an allusion to Solomon and his wife (Kerrigan, et al. ff. 9.439-44). Christopher Ricks, in *Milton’s Grand Style*, explains that this reference “recalls how a man of great wisdom showed his famous inability to resist a woman. Solomon is a type of Adam.” More to the point, Solomon’s wife was the daughter of an Egyptian Pharaoh. Wisdom can be personified by a woman. Here, it is the Egyptian knowledge that

³⁶⁷ See Plato’s *Phaedrus* 230a.

leads Solomon astray. If *Paradise Lost* were a poster, the border would be one continuous, repetitious warning about how the pursuit of knowledge leaves one vulnerable.

From Milton's view, knowledge, through errant application, became a disease afflicting Egypt. Indeed, waves of war rolled over Egypt as Christian Kings sought to eradicate the teachings. The line between wisdom and heresy is thin. With this in mind, it becomes much clearer why Milton would choose Thoth. In attempting to conquer the world with his "sweet tongue," he fulfills the role of Satan. Thoth deceived the masses and created countless gods, leading people into slavery—just as Satan fooled the angels to fall. Both are givers of wisdom and master orators. It is hard to imagine a better match.

Those who overlook the Thoth acrostic might overlook the Egyptian associations of evil in *Paradise Lost*. The figure of Hermes provides another opportunity to unearth Milton's strategy. Sequentially, Hermes is the euhemerized figure immediately following Thoth. To avoid redundancy I will not specify all the traits shared between Satan and Hermes. One can generally assume that the majority of Thoth's traits are possessed by Hermes—as the euhemeristic tradition affords. With this baseline already established, the finer points in Satan's association to Hermes bears highlighting.

There should be little doubt that Milton knew both of these figures and their connection. The Greeks, as early as Herodotus identified Thoth and Hermes, and Hermes shared the epithet Trismegistus (Thrice Great) with Thoth ("Hermes Trismegistus"). As early as his 20's, Milton recognized the evil of Hermes. The support for this is found in his lyric poem *Il Penseroso* a poem pared with *L'Allegro*. H. Neville Davies suggests that these poems offer "a choice between two

contrasted modes of life” (“L’Allegro”). *L’Allegro* is the pious man, while *Il Penseroso* is the thoughtful man in danger of knowledge. Hermes is mentioned by name in the latter. It is easy to overlook his association to evil here. However, Francis Yates cut to the quick when she recognized the poem as being a description of the Hermetic trance. She explains that the trance allows the mind to leave the body and mingle with demons (279). Knowing that Milton made the connection between evil and Hermes from the start of his career is important to this analysis; he had a lot of time to contemplate how Hermes related to this work and the work of other epic authors.

Milton points the way for readers to compare Satan to Hermes as he did in establishing the relationship between Satan and Thoth. Neil Forsyth, in his book *The Satanic Epic*, explains that Milton’s battle in heaven is sourced from the works of Hesiod and Appollodorus. In these original accounts, Hermes is found participating in the battle (30-32). One should not be misled by Hermes identification as a ‘helper’; in the *Odyssey*, Hermes displays the audacity to defy omnipotent powers. He is recorded as telling a group of gods that, despite their objections, not even they could stop him from sleeping with the “golden Aphrodite” (Homer 107-8). This is the hubris, mixed with irrational passion, one finds in Satan’s character.

In crafting Satan’s voyage out of Chaos and into Eden, Milton made parallels to Hermes’ excursion to the garden of Calypso (Homer 69-7).³⁶⁸ First and foremost, both characters are described as ‘cormorants’ in their journeys. Charles Darwin witnessed the behavior of this species and could not think of “any other instance where dame Nature appears to willfully cruel” (203-4). The association of

³⁶⁸ See Satan’s journey out of Chaos (2.917-1055).

this particular bird to both characters, on its face, is enough to consider the topic further. A comparative analysis of the two scenes finds overlapping descriptions of each respective garden. Both Homer and Milton take care to describe the beauty of their gardens. In both accounts, each character undergoes a toilsome journey in order to arrive at these far out places. Upon arrival, both show the same wonderment at the bucolic scene before them, going so far as to being captivated by the women of those gardens.

By euhemerizing Satan to Hermes, Milton makes the comparison between Satan gifting the apple to Eve and Hermes gifting Pandora to Epimetheus. Milton makes this inference in book IV (Kerrigan et al. ff. 4.714-19). Furthermore, in the *Doctrine of Divorce*, he explains that we “know not what a consummate and most adorned Pandora was bestowed upon Adam...our true Epimetheus” (qtd. in Hughes ff. 4.714).³⁶⁹ This comment makes it clear that Milton wanted his reader to compare Hermes to Satan. Just as Hermes gifted Epimetheus all the world’s woes, so too did Satan gift Adam the Fall by corrupting Eve.

Milton sought to outdo his rivals—contemporary and ancient. He sought to create an epic unlike all the others. The Son becomes the main character and Satan becomes the pagan hero. There was no bar in creating the Son. Milton was the first to redefine the main character of an epic. The challenge was to create the best epic hero, while still having that hero defeated. And he had to do it without spending an inordinate amount of time on it. Upon finding Thoth’s name, and realizing he is Satan’s flash-forward, Milton surpasses previous epics while weaving through them. The epic hero

³⁶⁹ See also *the Doctrine of Divorce* II. iii (C.Ed. III, 441).

begins in Egypt. He is then euhemerized into Hermes by the Greeks. Homer employs him as the son of Zeus. He rules Greek culture before moving to Rome. There, Virgil knows him as Mercury. In Germany he became euhemerized into Odin (Davidson 140). The pervasion of these euhemeristic figures reverberates across the genre of epic heroes, across the span of the world, and throughout the historical record; Satan-Thoth-Hermes-Mercury-Odin is the evil everywhere at all times.

This level of creativity is truly ingenious. This feat warrants special attention in the tradition of epic poetry. Instead of simply creating fictional figures, as his predecessors did, he used euhemerized ones.³⁷⁰ Milton found a way to base his characters in the historical record, even if the record was manifested by earlier poet. He transformed the traits of what an epic's main character possess by creating the Son. He then exceeded the demand of an epic by the dual creation of an epic anti-hero—secreting away his historical connection for discovery by the reader. By imbedding this flash-forward, Milton liberated himself from the parameters of myth; he established his superiority in the annals of epic poetry; and he solved the problem of naming evil.

³⁷⁰ The plot of Homer's *Iliad* "owe[s] far more too...creative ability than to genuine tradition. Even heroes like Achilles, Hector, or Diomedes are largely fictional" ("Greek Mythology" 405).

Works Cited

Aristotle, "De Poetica." *The Basic Works of Aristotle*, ed. Richard McKeon. New York: Random House, 2001.

The Corpus Hermetica. Edited and Translated by Walter Scott. 4 vols. Oxford: Clarendon Press, 1925.

Davidson, H.R.E. *Gods and Myths of Northern Europe*. Harmondsworth: Penguin, 1990.

Darwin, Charles. "The Voyage of the Beagle." *Harvard Classics: the Five-foot Shelf of Books*. New York: Collier and Company, 1914.

Davies, H. N. "L'Allegro." *The Milton Encyclopedia*. DOT: 129.74250.206 on Wed, 05 Sep 2018 20:10:31 UTC.

- The Egyptian Book of the Dead (The Papyrus of Ani)*. Transliteration and translation by E.A. Wallis Budge. New York: Dover, 1967
- Fallon, Stephen M. "The Fortunate, Unfortunate Fall and Two Varieties of Immortality in *Paradise Lost*." In *Immortality and the Body in the Age of Milton*. Ed. John Rumrich and Stephen M. Fallon. Pp. 107-21. Cambridge: Cambridge University Press, 2018.
- Forsyth, Neil. *The Satanic Epic*. Princeton: Princeton University Press, 2003
- Fowler, Alastair, ed. *John Milton: Paradise Lost*, 2nd Ed. Abingdon, Oxfordshire: Longman, 2003.
- "Greek Mythology." *Encyclopedia Britannica: Macropaedia*. 15th ed. 1974.
- Hall P. Manly. *The Secret Teaching of all Ages: An Encyclopedic Outline of Masonic, Hermetic, Qabbalistic and Rosicrucian Symbolical Philosophy*. New York, Dover, 2010.
- Hartman, Geoffrey. "Milton's Counterplot." *ELH*. 25.1 (Mar. 1958): 5.
- "Hermes Trismegistus." *The Encyclopedia Britannica*. 1911.
https://en.wikisource.org/wiki/1911_Encyclop%C3%A6dia_Britannica/Hermes_Trismegistus; accessed 2.4.2019.
- Homer. "Odyssey." *Harvard Classics: the Five-foot-Shelf of Books*. Trans. S. H. Butcher and A. Lang. New York: Collier and Company, 1937.
- Hughes, Merritt Y., ed. *John Milton's Paradise Lost*. Indianapolis: Hackett Publishing Company, Inc., 2003.
- Hunter B., William. "Milton Thrice Great Hermes." *The Journal of English and Germanic Philology* 45.3 (Jul. 1946): 327-336.
- Klemp, P.J. "Now hid, now seen': An Acrostic in *Paradise Lost*." *Milton Quarterly* 11 (1977): 91-2.
- Milton, John. *The Complete Poetry and Essential Prose of John Milton*. Ed. William Kerrigan, John Rumrich, and Stephen M. Fallon. New York: Modern Library, 2007.
- _____. *The Works*. Ed. Frank Allen Patterson, et al. 18 vols. New York: Columbia University Press, 1931-38.
- Nilsson P., Martin. *A History of Greek Religion*, 2nd ed. New York: W.W. Norton & Company, 1964.
- Partner, Jane. "Satanic Vision and Acrostics in *Paradise Lost*." *Essays in Criticism* 57.2 (2007): 129-146. <http://muse.jdu.edu/article/217147>.

Ricoeur, Paul. *The Symbolism of Evil*. Trans. Emerson Buchanan. New York: Harper & Row, 1967.

Yates A. Francis. *Giordano Bruno and the Hermetic Tradition*. London: Routledge and Kegan Paul, 1964.