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Editor's Introduction

About a year ago I was asked to edit this, the newest version of the Fairmount Folio. I accepted with some trepidation, as I had no idea what would be involved in the creation of this work, but that very fact made this project interesting, challenging, and ultimately very rewarding.

The first thing I learned about this project was the need for help. Dr. Helen Hundley has assisted in several Folios to this point, and her knowledge and hard work are the primary reasons you are reading this volume. Secondly, Theresa St. Romain, the Assistant Editor, covered for me time and time again, providing help with details that I missed for one reason or another. This was especially true as I spent much of the time during the creation of this work in Toronto.

Next, I'd like to thank the Editorial Board which consisted of Dr. Jay Price, Dr. John Duram, and Ms. St. Romain. As the editor, I was allowed to watch the jury process in action and see what the jury was looking for. Being the only one who knew who wrote what, it was especially interesting for me to watch as my own paper was being judged. I would encourage any serious writer to seek such an opportunity, as this can help one see the forest instead of the trees.

Finally, I'd like to thank all those who submitted papers for this edition of the Folio. There were two ways that a paper could be accepted for the folio. The first way is that all papers who won a departmental award for best paper were included automatically. Secondly, papers received in a call for papers were reviewed by the editorial board to determine their inclusion or not. Chris Kemp's paper *An Even Keel: The Judicial Example of John Marshall Harlan*, by the way, deserves note for being selected in both ways.

One of the primary filters during the jury process was that accepted papers needed to be virtually ready to go. The jurors felt that students would likely not have too much time to process any editorial changes, and attempted to ensure that such changes would not detract from what needed to be their primary focus, current schoolwork. As such, there were several submissions whose ideas, research, and writing were interesting and solid, but for whatever reason needed to be edited too much for inclusion in this volume. I hope that these papers will be seen in a future Folio. In any case, while the hard work of those noted above is the reason that the Folio is here, their efforts are dependent upon the solid writing and research of Wichita State University students. The next volume will be edited by Ms. St. Romain, and I hope that even more students submit their work.

There are a few details about this volume that should be mentioned. Generally, the Fairmount Folio includes papers from one school year. However, this volume includes two works which were to have been published in a Folio a year ago. For various reasons, that Folio never made it to print, so these papers have been retained and included in this one.

One unfortunate consequence of this is that the formatting of the footnotes on the Rise *of Nixon* by Megan Kimbrell is not completely correct. I have attempted to clean up these footnotes as best as possible and publish the work nonetheless, as the reasons for the problem lay not with Ms. Kimbrell but with circumstances surrounding that Folio. As such, I felt that it was not right to exclude her work for no fault of her own and I hope the readers will excuse this imperfection.

In any case, we hope you enjoy this work.

Rob Howell
23 August, 2003

How America Sees the Roman Empire

by Barbara Lockett

Situated between the Esquiline and Palatian Hills, near the Tiber River is the shell of an ancient structure that has a history of more than 2000 years. It is the ruins of the Flavian Theater, the largest of the ancient Roman amphitheaters.[1] Most Americans will recognize it whether they have been to Rome or not. Motion pictures and television have given it life and in the American mind it is more than an archaic, decaying pile of bricks. This is the majestic Coliseum, which housed gladiatorial games and wild beast hunts during a time when Rome ruled the world and emperors ruled Rome.

Americans are fascinated by this ancient city; perhaps, as *Ben Hur* star Charlton Heston suggested, because it is the place of our Judeo Christian heritage.[2] Whether or not this is the reason, Americans have an appetite for Roman epics and Hollywood stands ready to serve them.

For decades, filmmakers have laced history with fictitious characters and events to create explosive film epics. Over 400 films have been made about ancient Rome, many of them by American film studios, and these films have shaped the minds of Americans.[3] They have enjoyed a warm reception from modern audiences as they color the past, yet make the connection between antiquity and present day.[4]

Three sand and sandal epics that have particularly helped form my perception of ancient Rome are the high grossing 1959 academy award winning *Ben Hur*, the 1960 box office smash *Spartacus*, and the more recent blockbuster *Gladiator.* These films are representative "of a particular genre

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[1] Eckhart Kohne and Cornelia Ewigleben, eds., *Gladiators and Caesars: The Power of Spectacle in Ancient Rome,* (Berkeley: University of California Press, 2000), 143.

[2] *United Press International*, "'Ben-Hur' Gives Maximus Thumbs-Up," Feb. 28, 2001, p.1008060u4322.

[3] Jon Solomon, *The Ancient World in the Cinema, (*London: A.S. Barnes and Company, 1978), 15; Peter C. Rollins, "Film, Television, and American Studies," 1979, *Hollywood as Historian*, Peter C. Rollins, ed., (Lexington: The University Press of Kentucky, 1983), 1 [1-19].

[4] Martin M. Winkler, "The Roman Empire in American Cinema after 1945," *Imperial Projections: Ancient Rome in Modern Popular Culture,* Sandra R. Joshel, Margaret Malamud and Donald T. McGruire, Jr., eds. (Baltimore and London: The John Hopkins University Press, 2002), 51.

which requires a fixed organization of the story material." [5] They touch on many aspects of life during the time of Roman rule and especially exploit the cultural elements of slavery and spectacles that were so much a part of ancient Roman life. Each film has a specific story to tell as it casts Rome in the role of villain, corrupted by the very power that made it great.[6] Readers, however, are reminded that filmmaking is a business and it is the business of entertainment, not historiography. So how accurate are these historic epics and how much is Hollywood hype?

What appears to be Hollywood magic is, in fact, business, and historical cinema is particularly a risky business. [7] Most Hollywood movies follow formulas and traditions that have proven successful and have achieved the desired audience reaction. One cannot expect an exact historical account from such motion pictures as *Ben-Hur* or *Spartacus* or *Gladiator*. They are, after all, made in Hollywood and, as movie reviewer Alan Taylor pointed out, "everything is a sacrificial lamb . . . to the demands of studio moguls and box office returns."[8] It is difficult for film producers and directors to find a balance between historical accuracy and dramatic effect. They must rely on the critical viewer to take some responsibility in recognizing this balance.[9] *Spartacus*, *Ben Hur* and *Gladiator* were each made for a Judeo-Christian audience, an audience that may be unaware of the filmmaker's agenda. It would take, for example, a scrutinizing eye to recognize the thinly veiled Judeo-Christian overtones in the films *Spartacus* and *Gladiator*, but they are there, albeit not as obviously as they are in *Ben-Hur*.

Ben-Hur is a story of Christ, as indicated in the sub-title of the novel written by Indiana-born Civil War general Lew Wallace, on which the film is based. Wallace was not intending to promote Christianity. Nor was he writing a historical account of the times, though his research was copious and impeccable. He wanted to write a best-selling novel during a time when

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[5] Pierre Sorlin, *The Film in History: Re-staging the Past, (*New York: Barnes and Noble Books, 1980), 26.

[6] Martin M. Winkler, "Star Wars and the Roman Empire," *Classical Myth and Culture in the Cinema*, Martin M. Winkler, ed., (New York: Oxford University Press, 2002), 275 [272-290].

[7] Robert Brent Toplin, *History by Hollywood: The Use and Abuse of the American Past*, (Champaign-Urbana: University of Illinois Press, 1966) 15.

[8] Tony Barta, ed., *Screening the Past: Film and the Representation of History*, (Westport, Connecticut: Praeger, 1998), 168.

[9] Solomon, *The Ancient World in the Cinema*, 21.

Christians were not reading novels. By telling a tale of Christ, he hoped to capture the audience of the best selling book of the time, the Bible.[10]

Ben-Hur was published in 1880. Initially sales were low and it wasn't until after the first year that Wallace began realizing his dream. By the end of the second year sales began to increase and eventually the book sold over two million copies. It became the first best-selling novel and remained on the best-seller list for years.[11]

Spartacus was also made to appeal to the Christian audience, though the events occurred over 70 years before the birth of Christ. The 1960 production is about a Thracian slave who became the leader of the third slave revolt during the Roman Republic. An obvious indication that the film targets a Christian audience is the crucifixion of Spartacus, who, in fact, was not crucified, but died on the battlefield. The film does not stray too far from historical reality though. Appian (*The Spartacus Slave War*) reported that approximately six thousand slaves who survived the final battle were captured and crucified along Appian Way,[12] the backbone of the Roman highway system.[13]

Forty years after the success of *Ben-Hur* and *Spartacus*, the award-winning *Gladiator* splashed across the screen. During this time gap, the Christian stranglehold on American culture had relaxed and Hollywood had come to acknowledge the premise upon which this country was founded – the freedom of religion. By the end of the twentieth century, literary attention, including that of filmmakers, was more obviously focusing on the poorer classes and the oppressed in their fights for freedom and control.[14] Filmmakers found a formula that was more successful with modern audiences and replaced the Supreme Being with the omnipresent hero.

Gladiator maintains the fundamental theme of the sand and sandal epic, but the Judeo-Christian influence was almost subliminal. Rome is still the villain and the message is still that power leads inevitably to corruption.[15] Rome is personified by Commodus, the Roman emperor who reigned from 180-192

[10] Irving McKee, *'Ben-Hur' Wallace*, (Berkeley: University of California Press, 1947), 164.

[11] Solomon, *The Ancient World in the Cinema,* 126.

[12] Brent D. Shaw, *Spartacus and the Slave Wars: A Brief History with Documents,* (Boston and New York: Bedford/St. Martin's, 2001), 140-141.

[13] Gino Lorenzelli, "Paving the Way for the Roman Empire," *The World Paper*, http://worldpaper.com/Archievewp/1998/Dec98/gino.html

[14] Robert Brent Toplin, *Reel History: In Defense of Hollywood,* (Lawrence, Kansas: University Press of Kansas, 2002) 32.

[15] Martin M. Winkler, "Star Wars and the Roman Empire," 286.

A.D.[16] In the film, Commodus is overcome in the arena as he fought against the hero, Maximus. Though Maximus also dies in the battle with Commodus, the film ends leaving the audience with the illusion that Maximus lives on and joined his murdered wife and son in an afterlife of tranquil beauty – a place that many believe to be heaven.

Screenwriters rarely present heroes with serious flaws in their character. If necessary, they clean them up to match their achievements. In Spartacus, for instance, screenwriter Dalton Trumbo and director Stanley Kubrick show the rebel leader of Roman times attempting to end slavery everywhere though little trace remains of his purpose and ambitions.[17] Spartacus was probably not a revolutionary. According to Plutarch (*The Life of Crassus*), his intent was to get his followers out of Italy and returned to their homelands.[18]

Spartacus characterizes the slave leader as a great humanitarian, yet the real Spartacus participated in the slaughter of hundreds of innocent Romans.[19] According to Florus, Spartacus, who led the insurrection that drew Rome into a "disgraceful war against slaves," was not an impressive character; but a vengeful gladiator who sought liberty for the undeserving.[20] According to Appian (*Civil Wars 1.9.116*), Spartacus had once been a Thracian soldier who defected from the Roman auxiliaries,[21] but few historical accounts of the rebellion or its leader are available from antiquity. The writers of the time were the elite of Rome and they "did not find slave rebellion a worthy subject for historical discourse."[22]

The rebellion was summarized in Plutarch's *Parallel Lives* some 100 years after it occurred. In his biography of Crassus, where he presented the Roman general's career, Plutarch sought to demonstrate "the dangers of political

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[16] Marcel Le Glay, Jean-Louis Voisin & Yann Le Bohec, *A History of Rome*, 2nd ed., (Malden, Massachusetts: Blackwell Publishers, 1994), 294.

[17] Maria Wyke, *Projecting the Past: Ancient Rome, Cinema and History*, (New York and London: Routledge, 1997) 35; Keith R. Bradley, *Slaves and Masters in the Roman Empire: A Study in Social Control*, (New York: Oxford University Press, 1987) 146.

[18] Paul Turner, ed., *Selected Lives from the Lives of the Noble Grecians and Romans*, (Carbondale, Illinois: Southern Illinois University Press, 1963), 256.

[19] Toplin, *Reel History: In Defense of Hollywood*, 26.

[20] Wyke, *Projecting the Past: Ancient Rome, Cinema and History*, 35.

[21] Alison Futrell, "Seeing Red," *Imperial Projections: Ancient Rome in Modern Popular Culture*, Sandra R. Joshel, Margaret Malamud and Donald T. McGuire, Jr., eds. (Baltimore and London: The John Hopkins University Press, 2002) 80.

[22] Wyke, *Projecting the Past: Ancient Rome, Cinema and History*, 35.

ambition."[23] Known to most as the Spartacus slave war, Plutarch referred to it as the "commotion of fencers".[24]

One of the earliest known wall drawings from Pompeii is a fresco on an entrance of a house. It dates back to 100-70 B.C., the time when the rebel slave was in gladiatorial training. In the scene are two gladiators on horseback fighting each other. Above the man on the right, written in Oscan, is the word Spartacus (Spartaks). Since Spartacus trained in the nearby gladiator school and since the Thracian name was uncommon to this area, the fresco is thought to be associated with the rebel leader.[25]

It was from Plutarch that we learn of the villainous Lentulus Batiatus and his gladiator school in the city of Capua. Plutarch tells how Batiatus housed slaves in locked barracks, how he trained them and forced them to fight one another until death. It was there, in the gladiatorial training camp that the rebellion began.[26]

Plutarch implicates the inhumane treatment of Batiatus, not the institution of slavery, as being responsible for the rebellion.[27] Appian (*Civil Wars 1.9.116*) believed the gladiators fled not only to escape danger but also shame, "preferring freedom to the ignominy of providing amusement for spectators."[28]

Like the two slave wars before it, the Spartacus slave war began small, with only 78 gladiators successfully escaping the training camp, but escalated to a monumental rebellion.[29] According to Plutarch, herdsmen and shepherds from the nearby countryside soon joined the initial group of trained fighting rebels.[30] Appian suggested that it grew to 120,000,[31] but Eutropius (*Digest 6.7*) estimated it to be only 60,000.[32]

Though the rebel leader has fared well throughout history, gaining esteem and acclaim over the years, he remained a virtual unknown until Karl Marx and other revolutionaries glorified him in the nineteenth century. This historical slave leader and the rebellion he led have been "reworked and reinterpreted in light of

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[23] Ibid.

[24] Turner, *Selected Lives from the Lives of the Noble Grecians and Romans*, 256.

[25] Shaw, *Spartacus and the Slave Wars: A Brief History with Documents,* 15.

[26] Turner, *Selected Lives from the Lives of the Noble Grecians and Romans*, 256.

[27] Ibid.

[28] Futrell, "Seeing Red," 80.

[29] Bradley, *Slaves and Masters in the Roman Empire,* 146; Turner, *Selected Lives from the Lives of the Noble Grecians and Romans*, 256.

[30] Thomas Wiedemann, *Greek and Roman Slavery,* (Baltimore and London The John Hopkins University Press, 1981), 216.

[31] Futrell, "Seeing Red," 80.

[32] Ibid.

contemporary political, social and economic values."[33] The event has been used "as a metaphor for resistance to industrial capitalism."[34] Many historians of the rebellion who wrote during the late nineteenth and early twentieth centuries represented Spartacus as a hero of the oppressed.[35] Among these was Karl Marx.[36]

During the middle of the nineteenth century when Guiseppe Garibaldi was engaged in liberating Sicily and southern Italy from foreign control and the American Civil War was ablaze, Karl Marx was prompted to read about the ancient Roman civil wars. When he was asked by his daughter to name his hero, Marx identified Spartacus as one of the two. [37]

American playwright Dr. Robert Montgomery Bird, whose play *The Gladiator* was first performed in 1831 with Edwin Forrest cast as Spartacus, wrote about the Nat Turner slave rebellion in the state of Virginia:[38]

> If they had had a Spartacus among them to organize the half million of Virginia, the hundreds of thousands of the [other] states, and lead them on in the Crusade of Massacre, what a blessed example might they not give to the world of the excellence of slavery!

The 1960 film version of *Spartacus* was based on the novel written by communist sympathizer Howard Fast. In the dedication to his two children he said he hoped the book would "inspire them to struggle against oppression" and in our own time, to "fulfill the dream of Spartacus."[39] This adulated portrayal of Spartacus is represented in Stanley Kubrick's 1960 film. Dalton Trumbo wrote the screenplay a decade after the publication of Fast's novel.

Fast and Trumbo had been blackballed by the House Un-American Activities Committee (HUAC) during the McCarthy era for their communist ways and for refusing to name others involved in such political actions. Their influence is especially evident in a scene from *Spartacus*, when slaves, who had been promised freedom for identifying their leader, protected him instead, by standing up one after another declaring "I am Spartacus." Maria Wyke suggests that the film has reconstructed the renegade slave into a hero in order

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[33] Futrell, "Seeing Red," 77.
[34] Ibid.
[35] Wyke, *Projecting the Past: Ancient Rome, Cinema and History*, 35.
[36] Shaw, *Spartacus and the Slave Wars: A Brief History with Documents,* 14.
[37] Ibid.
[38] Wyke, *Projecting the Past: Ancient Rome, Cinema and History*, 59.
[39] Ibid., 60.

to "expose the vicious assaults on domestic Communism that had been such a feature of American culture in the Cold War era."[40]

At the end of the film, Spartacus was crucified, not for his religious beliefs, as Christ was a century later, but for his "political challenge to corrupt government."[41] Screenwriter Trumbo opposed the crucifixion of Spartacus in the final scene. He believed it linked the slave rebel to Christ, and thus represented him as a spiritual martyr instead of the political militant he was.[42]

In the final analysis, *Spartacus* is about slavery and a fight for freedom. The film has often been referred to as 'the thinking man's epic', because it "celebrates not the glory and might of Rome but an individual who dared oppose Rome in his struggle for personal freedom."[43]

Slavery was a key element in the social organization of ancient Rome.[44] In the eighth century B.C., Rome was just beginning to grow into a major city, but already its influence was being felt throughout Italy and the Mediterranean basin.[45] The wealth of Rome was the reward of conquest, but with such privilege came the responsibility of feeding the people. Agriculture was, therefore, of great importance, more than mining, industry and commerce combined. The agriculturally based economy relied on the practice of slavery.[46] Slaves were tools; possessions which brought status to their owners.[47]

The majority of slaves throughout the empire were acquired by two sources—war and piracy.[48] Rome could not rely on the reproduction of slaves to maintain the continuously increasing demand. For one thing, such a practice would have been influenced by the number of available slave women and there were far more male than female slaves,[49] maybe because women in Roman

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[40] Ibid., 67.

[41] Ibid., 63.

[42] Ibid.

[43] Jon Solomon, "The Sounds of Cinematic Antiquity" *Classical Myth and Culture in the Cinema*, Martin M. Winkler, ed., (New York: Oxford University Press, 2001) 330 [319-337].

[44] Wiedemann, *Greek and Roman Slavery,* 1.

[45] Bruce Bower, "Early Rome: Surprises Below the Surface," *Science News*, Jan. 14, 1989 v. 135 n2 p20(1).

[46] Shaw *Spartacus and the Slave Wars: A Brief History with Documents* 4; Wiedemann, *Greek and Roman Slavery*, 8.

[47] Valerie Hope, "Status and Identity in the Roman World," in *Experiencing Rome,* Janet Huskinson, ed., (London Routledge, 2000), 128 [125-152]; Wiedemann , *Greek and Roman Slavery*, 8.

[48] John Madden, "Slavery in the Roman Empire" from a lecture given at the Annual Summer School of the Classical Association of Ireland in Galway, August, 1994. http://www.ucd.ie/~classics/ClassicsIreland.html

[49] Bradley, *Slaves and Masters in the Roman Empire,* 147.

society were already relegated to a subservient role.[50] Another cultural aspect that influenced the reproduction of slaves is shown in a scene from *Spartacus* when Varinia is brought to the slave's chamber at the Capua training camp. Spartacus admitted to her that he had never been with a woman. Batiatus and the slave trainer Marcellus watched from above and chided Spartacus, who yelled at them, "I am not an animal!" Varinia was taken from Spartacus and led to the chamber of another slave, showing the Roman practice of rewarding male slaves with the pleasures of a woman. Segregating the male slaves from the women is one practice that may have necessitated the continual conquering of Rome's peripheries and utilizing the conquered as slaves.

The work of a male slave was difficult, especially for agricultural and mining slaves and life expectancy was short. Of the women slaves, there were more in the cities than on country estates or in mining areas.[51] The urban slaves fared better than their agricultural counterparts. Many were educated, some even more than their masters. Though countless stories exist about cruelty to domestic slaves, they were more pampered and privileged than rural slaves.[52]

Slavery was clearly presented as a state of subjection in ancient Rome, where jurists defined "the rights and obligations of each status group."[53] Slaves were thought to be less civilized. Pliney, the Younger (*Letters 3.14*) warned that no master, even a considerate and kind one, was without danger, because "it is their brutality, not their reasoning capacity, which leads slaves to murder masters."[54] The Theodosian Code (*4.8.5*) stated that the first cause of slavery was sin but that slavery was not a permanent state. A slave would remain a slave unless his owner manumitted him according to procedure. Likewise, a free man would remain free unless he became a slave in some legal way.[55] Both situations can be seen in the film *Ben-Hur.*

The story of *Ben Hur* takes place during the reign of Tiberius, second emperor of Rome. During this time an event occurred which permanently impacted the Roman Empire and the entire Western World - the crucifixion of the Christ Jesus of Nazareth. The film, as the novel on which it was based, is subtitled *A Tale of Christ*, but the story follows the life of Judah Ben-Hur, not that of Christ. Both Tiberius and Christ are background figures in the film.

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[50] Ellen Green, "Elegiac Woman: Fantasy, Materia, and Male Desire in Propertius 1.3 and 1.11.", *American Journal of Philosophy*, Summer 1994 v116 n2 p303 (16).

[51] Bradley , *Slaves and Masters in the Roman Empire,* 73.

[52] Keith Hopkins, "Novel evidence for Roman Slavery," *Past & Present*, Feb 1993 n138 p3 (25).

[53] Wiedemann *Greek and Roman Slavery*, 1.

[54] Hope, "Status and Identity in the Roman World," 129.

[55] Wiedemann *Greek and Roman Slavery*, 34.

This Roman/Christian epic is set in Judaea, a hotbed of religious controversy. The people of Judaea were of an ancient and unique culture that was centered on monotheism, that is, believing in one god who revealed divine truths through a set of sacred scriptures.[56] The Romans had a set of "traditional practices that were thought to establish contact between mortals and the gods and so to enable mortals to win divine favor."[57] The Romans feared that any break from tradition would anger the gods and their favor would be lost. The beliefs and religious practices of the rebellious providence of Judaea instilled such a fear in the Romans.

Judah, the prince of Hur, meets his fate with slavery at the hand of his childhood friend Messala, who has become a "brutal militarist"[58] with aspirations of being called to Rome. Messala sees the unyielding providence as his opportunity. He would rid Judaea of its antagonists and impose the Roman beliefs that have so far been met with bitter resistance. The people will submit to the powers of Rome and recognize the emperor as a God. Judah is caught in the clash between the two forces. [59] Here we may see a subtle influence that was so blatant in *Spartacus* – the influence of the McCarthy era. When Messala asks Judah to name the hostile Jews, Judah asks, "Would I retain your friendship if I became an informer?" The word informer is probably making reference to the HUAC and McCarthyism.[60]

The day the new governor rides through the streets of Judaea, Ben Hur joins his mother and sister on the rooftop to watch the procession. As his sister leans forward for a closer look, a loose tile breaks free and crashes to the street near the entourage, threatening the life of the governor. Messala seizes the opportunity to strengthen his own position by leading the Roman soldiers to Judah, whom he accuses and condemns to the galleys. Judah is no longer a free man. His mother and sister are also accused and sentenced to prison. Judah begs Messala to release them, but Messala refuses, choosing to further his own ambitions rather than defend his friend's wishes.

Galley slaves were chained to their rowing stations. Prior to a battle with pirates, Roman commander, Quintus Arrius orders that Ben Hur be unchained. The slave remains in the bowels of the ship with the others, taking his

[56] Bruce Babington, and Peter William Evans, *Biblical Epics: Sacred Narrative in the Hollywood Cinema,* (Manchester and New York: Manchester University Press, 1993), 197; James Rives, "Religion in the Roman Empire," in *Experiencing Rome,* Janet Huskinson, ed., (London: Routledge, 2000), 247 [245-275].

[57] Rives , "Religion in the Roman Empire," 247.

[58] Martin M. Winkler, "The Roman Empire in American Cinema after 1945," 58.

[59] Solomon, *The Ancient World in the Cinema,* 126.

[60] Winkler, "The Roman Empire in American Cinema after 1945," 67.

vengeance out on the oars. During the battle, the galley is rammed and destroyed. Without the chains to confine him, Judah is able to escape and save the distraught Arrius from the sinking vessel. The grateful Arrius, in turn, takes Ben Hur to Rome as a free man and adopts him as a son. Judah Ben Hur is no longer a slave.

Ben-Hur is about more than the feud of two childhood friends, one an aristocratic Jew and the other a Roman soldier who resents the Jews. It is about the oppressed against Rome. Messala represents Rome. "You are a conquered people. You live on . . . myths of the past. . . There is only one reality in the world today. Look to the West, Judah, . . . look to Rome."[61] Judah Ben-Hur represents the oppressed. "Rome is evil. . . the day Rome falls there will be a shout of freedom such as the world has never heard before."[62] Though the film emphasizes the conflict between the oppressed and the Roman Empire through Ben-Hur's estrangement from his childhood friend, it concentrates in parallel on the love Ben-Hur has for his family, a value of the Judeo-Christian audience for which the film was targeted.

Until the release of *Gladiator, Ben-Hur* was unchallenged as the most popular of all Roman Empire epics[63] and "ranks as one of the most successful literary, theatrical, and cinematic productions of all times." [64] After its long-running success as a novel, *Ben Hur* was adapted to the stage, both in London and on Broadway. William Jennings Bryan considered it "the greatest play on the stage."[65]

The first film version of *Ben-Hur* was shot in 1907 and made history of its own. Under the direction of Sidney Olcott, it was filmed by Kalem without permission of the book's publisher. Both Harper Publishing and the Wallace estate sued Kalem, which, after a few years, was forced to pay twenty-five thousand dollars. This set a precedent for all films of the future that were based on novels.[66] On April 16, 1921, *Publisher's Weekly* reported that A.L. Erlanger, Charles B. Dillingham and Florenz Ziegfeld, Jr. purchased all dramatic rights for *Ben Hur* from the Wallace estate. This included the motion picture rights, which cost the record price of $1,000,000.[67]

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[61] Ibid., 66.
[62] Ibid., 69.
[63] Winkler "Star Wars and the Roman Empire," 277.
[64] Solomon, *The Ancient World in the Cinema,* 126.
[65] Ibid., 127.
[66] Ibid.
[67] *Publishers Weekly*, July 1997 v244 n31 p8(2).

The 1926 film version of *Ben-Hur* "established once and for all the credibility and viability of the Hollywood epic."[68] But it is the 1959 version that lives on in the minds of Americans -- not the conflict between Judah and Messala, nor the thin line throughout the film that connects Judah to Jesus. It is the chariot race for which, without a doubt, *Ben Hur* is most remembered. The film's two years of planning, the nine months of shooting, star Charlton Heston's three-hour lessons in driving a *quadrigae* from the day after he arrived in Rome, and the one hundred miles of practice laps all paid off in the end.[69] I asked 20 people if they had ever seen the movie. Half of them had, though most admitted it had been a long time ago. All but one, whether they had seen the film or not, mentioned the chariot race.

In the film, the race took place in Antioch. In Rome, the chariot races were staged in Circus Maximus, the oldest and the largest circus in the Roman Empire. Situated in the long natural declavity just below the Palatine, its location was conducive for large crowds to watch the chariot races and games. With its impressive size and its stone and marble ordered tiers, with the obelisk of Rameses II from Heliopolis gracing the center, the splendor of the circus made a statement about the Roman Empire itself, which was Augustus' intent as he lavishly refurbished it.[70] Today it lay crumpled below a mass of building.

Chariot races and other spectacles, which included gladiatorial combat, wild animal hunts, staged naval battles and theater performances were as much a part of the ancient Roman culture as was slavery. As a sporting event, chariot racing dates back at least as far as the thirteenth century B.C. Archaeological finds in the Greek cities of Knossas, Mycenae, Tiryos and Pylos include hundreds of spoked wheels. The wheels themselves do not indicate that they were used for anything but warfare. It is from the fragments of pottery that we see two or more chariots engaged in a race. It is evident from the increasing use of racing motifs on mosaics, wall paintings and funeral art that there was an increased interest in chariot racing in the early imperial days of Rome.[71] During the reign of Augustus, chariot-racing was the greatest of the spectacles.[72]

Ancient sources are more diverse in their attitudes toward amphitheatre games than they were of chariot races. These games were about death and violence. Included in these games were gladiator fights, wild beast shows and

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[68] Solomon, *The Ancient World in the Cinema,* 127.

[69] Ibid., 134.

[70] John Pearson, *Arena: The Story of the Colosseum*, (New York: McGraw-Hill Book Company, 1973), 39.

[71] Dirk Bennett, "Chariot Racing in the Ancient World," *History Today*, Dec. 1997 v47 n12 p4 (8).

[72] Pearson, *Arena: The Story of the Colosseum,* 41.

the execution of prisoners and criminals. These culturally accepted displays of death might be difficult for us to understand today, but to the Roman, it was an expression of imperial power.[73] The wild beasts, which came from across the vast empire, the executions of criminals and prisoners, the seating arrangements and especially the attendance of the Emperor himself, were all status symbols for the Roman leaders.[74] But ancient writings by some of the educated elite are evidence that not all members of the society were in favor of the dehumanizing displays and what their popularity said about the society.[75]

Trained gladiators took an oath agreeing to be burned, bound, beaten or killed by the sword.[76] The best became heroes and were subjects of graffiti.[77] Some became trainers in gladiatorial schools, which, during imperial times, were controlled by the emperors. Some won and saved money and were in a position to eventually buy their freedom. Others, upon receiving their freedom, continued to fight for wages.[78]

The term "gladiator" came from the name of the roman sword, *gladius*. But not all gladiators fought with a sword, as can be seen in both *Gladiator* and *Spartacus*. Also evident in these films are different types of gladiators, distinguished by their particular types of armor. The armor and the fighting method associated a gladiator with his homeland.[79]

Most gladiators were slaves, criminals, or prisoners-of-war, but some gladiators were freedmen who volunteered to be gladiators, maybe for the fame and excitement. Some lower classes of free men, probably motivated by monetary needs, also became gladiators.[80] Tombstone markings indicate that a surprising number of gladiators were Roman citizens.[81] Roman laws prohibited the upper class from appearing in the arena.[82] Dio Cassius apologized that he could give an eyewitness account of an event where the emperor Commodus disregarded this law. Cassius explained that it was in fear of his life that he attended. He reported what he saw and how he mimicked the

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[73] Janet Huskinson, "Looking for Culture, Identity and Power," *Experiencing Rome,* Janet Huskinson, ed., (London: Routledge, 2000), 9 [2-17].

[74] Thomas Wiedemann, *Emperors and Gladiators*, (London and New York: Routledge, 1992), 23.

[75] Huskinson, "Looking for Culture, Identity and Power," 10.

[76] Wiedemann, *Emperors and Gladiators,*107.

[77]Barbara F. McManus, *Arena: Gladiatorial Games*, The College of New Rochelle: 1999. http://www.vroma.org/%Ebmcmanus/aarena.html

[78] Ibid.

[79] Ibid.

[80] Ibid.

[81] Wiedemann, *Emperors and Gladiators*, 106-107.

[82] Ibid., 102.

other spectators by cheering and applauding when Commodus ostentatiously appeared at the games, or more appalling, when he appeared *in* the games.[83]

Chariot drivers and gladiators became public heroes, yet at the same time, were despised for their lower status. So when Commodus chose to drive chariots and, even worse, to fight gladiators publicly, he brought disdain upon himself and disgrace to the office of Emperor.[84]

The movie *Gladiator* takes place during the reign of Commodus. The story is about the title character, Maximus, and his clash with the emperor. Maximus is the hero, a Roman general who falls into slavery after the death of Marcus Aurelius, for whom he has served. Commodus is the natural born son of Marcus Aurelius. In the film, Aurelius has decided to name Maximus as his successor. Commodus, aware of his father's intent, kills him and orders the death of Maximus. Maximus escapes and returns to his home, only to find that his wife and child have been murdered. He is later taken captive and forced to become a gladiator slave. In this film, the emphasis is more on gladiatorial games than on slavery.

Gladiatorial fights are believed to have begun in 264 B.C. as funerary games, when three pairs of gladiators fought until death at the funeral of Junius Brutus.[85] Originally the matches were held in open spaces, but with their increased popularity and frequency, a permanent structure was needed. In Rome, Circus Maximus was often used, but eventually a building was designed just for this type of spectacle.[86]

In 80 A.D., the Flavian Ampitheater, named after the Flavian dynasty, had a grand opening that was the longest organized massacre in history. According to Suetonius, Emperor Titus and an audience enhanced by the presence of Senators, court officials and priests packed the arena to watch the large-scale slaughter of men and animals for one hundred days.[87]

The building of the arena had begun during the imperial reign of Vespasian, who was determined to restore Rome to its "ancient splendor" after the fires of his despised predecessor Nero. The massive arena would symbolize the sense of order and power of the Flavians.[88]

Nero's Golden House had occupied the site previously, and it took six years to drain the lake, prepare the elephantine foundation and raise the walls. The

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[83] Menen, Aubrey, *Cities in the Sand*, (New York: Dial Press, 1973) 122; Pearson, *Arena: The Story of the Colosseum*, 141-2.

[84] Menen, *Cities in the Sand,* 121.

[85] Wiedemann, *Emperors and Gladiators*, 5.

[86] McManus, *Arena: Gladiatorial Games.*

[87] Pearson, *Arena: The Story of the Colosseum,* 7.

[88] Ibid.

arena was completed during the reign of Vespasian's son and successor Titus. As emperor, Titus financed the outlandish spectacle that named and bequeathed the amphitheater. The arena was his gift to the Roman people. The spectacle was his responsibility, his privilege and it was to assure that his fame and that of the Flavians would live through the annals of time.[89]

In actuality, the arena remained but the Flavian name has been erased from the contemporary mind. Ironically, it was his rancorous predecessor that was responsible for the usurpation. Nero had built his colossal statue near the site of the arena. Rather than destroy it, Vespasian lobbed off its head and replaced it with the head of the sun god Apollo. It was from this colossus that the amphitheater got its immutable name, the Colosseum.[90]

Recreating the Colosseum, with its "marvel of design, construction, and engineering," was the greatest challenge for the producers of *Gladiator*. The challenge was met by constructing a portion of the amphitheater, then using computer imaging to produce the remainder of the structure. The theater was filled with 2,000 cheering extras who were joined by 33,000 computer generated spectators.[91]

It was in this replica of the Colosseum that Maximus becomes a hero after a grueling fight with several other gladiators. He, without armor, is the last to fight another man with helmet and chest covering. Maximus defeats the other gladiator and disarms him of his sword. He shoves this sword, then his own into the chest of his opponent, who remains standing. Then in one rapid movement, he draws both swords from the man and in a cross-armed movement, chops off his head. The body and head drop to the ground. Maximus drops one sword, then throws the other into the crowd, which topples a small table. Maximus looks up at the crowd, which has become silent. "Are you not entertained?" he shouts. "Are you not entertained? Is that not why you are here?" To emphasize his disgust he spits on the ground, then turns to leave the arena. The crowd begins to cheer him. Maximus has become their hero.

Becoming a crowd favorite was advantageous in the arena. A wounded gladiator could concede defeat and his destiny was in the hands of the game sponsor. Emperors, to show a willingness to share their absolute power, were swayed by the attitudes of the audience who expressed their wishes by using

[89] ibid.

[90] Ibid.

[91] Diana Landau, ed., *Gladiator: The Making of the Ridley Scott Epic*, (New York: Newmarket Press, 2000), 81-89.

thumbs up or thumbs down gestures, though there is some controversy whether thumbs up meant "to kill" or "to spare."[92]

Before Ridley Scott was given the script for *Gladiator*, he was given a copy of French artist Jean-Leon Gerome's 1872 painting *Pollice Verso* ("Thumbs Down"). It "spoke to me," says Scott, "of the Roman Empire in all its glory and wickedness."[93] Included in his modern epic is one suspenseful scene where Commodus goes against his own desires and, to please the crowd, spares the life of his antagonist, after Maximus is defeated by another gladiator.

Like Spartacus, Maximus is trained to be a gladiator in a distant province of Rome. Like Spartacus, he meets his death at the hand of his Roman antagonist. But unlike Spartacus, Maximus brings down his evil enemy in the arena. It is with the defeat of Commodus that the audience might believe there is hope for the end of imperial rule, that Rome will become a Republican government once again and enjoy a greater freedom.[94] Maximus' triumph parallels Ben Hur's victory over Messala in the chariot race.

The makers of *Gladiator* used a technique that would make the film more of an action-adventure than a historical commentary. They based the film on a fictitious character, then enriched it with characters and events from history. Robert Toplin refers to this technique as "faction."[95]

The character of Maximus is mostly Hollywood invention though there is some resemblance to Septimius Severus, who claimed to be Marcus Aurelius's son and became emperor several months after the death of Commodus. Roman legions did fight the fierce Germanic tribes of the southern borders of northern Europe, as shown in the film's opening scenes. Marcus Aurelius, an intelligent and respected Roman leader, did die during the Danubian wars and was succeeded by his megalomaniac son, Commodus. Commodus' sister Lucilla did conspire, unsuccessfully, with senators, to bring about her brother's murder. Commodus did, indeed, enter the ring at the Roman Colosseum to ostentatiously spar with gladiators. He was not murdered by a heroic gladiator, however, but by a paid wrestler who had been sent to kill him.[96]

Though Spartacus was not an invented character, most historical films, including *Ben-Hur* and *Gladiator*, will use fictitious principle characters. Invented situations will dominate the foreground. Historical figures and events will be blended into the story but will appear principally in the background. This method

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[92] Wiedemann *Emperors and Gladiators*, 120; McManus *Arena: Gladiatorial Games*.

[93] Landau, *Gladiator: The Making of the Ridley Scott Epic*, 22, 26.

[94] Toplin, *Reel History: In Defense of Hollywood*, 93.

[95] Ibid., 94.

[96] Ibid.

of film-making will be less scrutinized by historians and less criticized for historical liberties.[97]

Unlike a documentary, which presents raw data, a motion picture is an interpretation and presents a particular point of view.[98] Films that present a strong point of view are more apt to catch the attention of the audience and to arouse its emotions.[99] Every scene is designed to draw the gaze of the viewer to the center of interest of that part of the story.[100] To make the hero more heroic, moviemakers often emphasize friction and dramatize the contrast between the hero and the villain by making the villain more evil.[101]

Spartacus, *Ben Hur* and *Gladiator* all tell their stories from the hero's point of view. Rome is cast as the villain. Each story puts Rome at a disadvantage because neither Rome nor its leaders are allowed a point of view. From watching such films, one cannot know what it must have been like to be a Roman citizen, or especially a Roman leader during these times. One cannot begin to understand the complicated inner workings of such a vastly influential political power as that of Ancient Rome. That was not the intent of the filmmakers. Their intent was to make a hero out of the hero and to win audience approval. The motion picture industry is, after all, a business that specializes in entertainment.

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[97] Toplin, *Reel History: In Defense of Hollywood,* 94.
[98] Sorlin, *The Film in History: Re-staging the Past,* 9.
[99] Toplin, *Reel History: In Defense of Hollywood,* 34.
[100] Sorlin, *The Film in History: Re-staging the Past,* xi.
[101] Toplin, *Reel History: In Defense of Hollywood,* 12-13.

Islam as a Heresy: Christendom's Ideological Views of Islam

by Rob Howell

The heresies discussed in the book by Jeffrey Burton Russell, *Dissent and Order in the Middle Ages* cover a variety of types. When heresies appeared across Europe, they were swiftly and often harshly dealt with. Witness the Cathars and the Albigensian Crusade concluding with the massacre of the Cathars at Montsegur in 1244. However, Islam presents a challenge to the student of Christian heresies, for it does not fit neatly into the same category as the Cathars. [1]

Henri Pirenne tells us that Islam made that paragon of Christian kings, Charlemagne, possible[2] and was the force that divided the ancient world of Rome and Greece from the medieval world of Normandy.[3] The massive effect of Islam and the nature of the Crusades tend to lead to a traditional view of Islamic-Christian relations as direct opponents. Despite this, a closer examination of Christendom's understanding and policy towards Islam leads us to question that understanding and we see that Islam was not any one thing to Christendom, not even a heresy, but rather a collection of different viewpoints depending on the circumstances of individual Christians. Even the Crusades were not entirely Moslem against Christian, and thus the traditional picture of two monolithic religions competing never truly existed.

Islam was founded in the sixth century by Mohammed, who claimed to channel God, or Allah, in the creation of the Qur'an, the Moslem holy book. Islam had its basis in many ways as Christianity and Judaism, but claimed to be the last great revelation of God. However, the initial Christian response to Islam

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[1] This paper focuses primarily on the Christian point of view. Two places to start with researching the Moslem point of view are Henri Pirenne's classic on this discussion, *Mohammed and Charlemagne* and a recently released *The Crusades Through Arab Eyes* by Amin Maalouf. This book has some drawbacks in its academic depth, but is a very readable start to shift viewpoints from the West to Islamic way of thinking. There are also some further titles listed to provide more and better academic research.

[2] Henri Pirenne, *Mohammed and Charlemagne* (Totowa, NJ: Barnes & Noble Books, 1980), 234.

[3] Ibid., 284.

was relatively apathetic. "Nothing is more striking on a close observation than the extremely slow penetration of Islam as an intellectually identifiable fact in Western minds..."[4]

However, political considerations were to change this outlook. Islam spread very quickly, and thus quickly grew to threaten Constantinople and the Byzantine Empire. The first converts to Islam were the Arabs, a very energetic and hardy race. "...for the first time the warlike peoples of the Arabian Desert had been united by a common faith and by religious authority. In this way Islam contributed the vital factor that made possible the rapid Arabic conquest of the richest provinces of the eastern Roman Empire."[5] The swift and complete nature of the conquest, combined with the reaction of the local existing Christian population was so striking that the Church began to look very closely at the nature of Islam. There is no doubt the very existence of Islam was the most far-reaching problem facing the medieval Roman Catholic Church.[6] Pirenne concludes that the eastern Roman Empire was in great peril long before it had any real understanding of what it faced.[7]

Islam provided a challenge for Western Christendom in many ways. First, defeating it would prove very difficult. "It [Islam] was immensely successful... It resisted both conquest and conversion, and it refused to wither away."[8] The Roman Catholic Church, especially under the leadership of Pope Gregory VII, felt it was destined to be the predominant religion of the world. Therefore Islam must be defeated and thus, Islam was a threat religiously. "The papal policy was to consolidate and universalize the ecclesiastical empire."[9] Exacerbating this was the basic fact that Islam came from similar roots as Christianity, and "It was resemblance, and not difference, that dominated the dogmatic, liturgical and moral bases of the two religions."[10]

However, it was the political issues pertaining to the Islamic world that concerned the Church the most. Islamic power ultimately threatened not only the Holy Land, but also Western Europe itself. Moslem warriors held to a different, sometimes incomprehensible, code of honor than did Western

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[4] R.W. Southern. *Western Views of Islam in the Middle Ages* (Cambridge, MA: Harvard University Press, 1962), 13.

[5] Norman F. Cantor. *The Civilization of the Middle Ages.* (New York: HarperCollins Publishers, Inc.,1993), 133.

[6] Southern. *Western Views of Islam*, 3.

[7] Pirenne, *Mohammed and Charlemagne,* 148.

[8] Southern. *Western Views of Islam*, 5.

[9] James M. Ludlow. *Epochs of Church History, The Age of the Crusades* (New York: Scribner's and Sons, 1896), 5.

[10] Normal Daniel. *The Arabs and Medieval Europe* (London: Longman Group, Ltd.), 13.

warriors, but whatever their code of honor, they were skilled warriors using tactics much different from those of either the Byzantine Empire or Western Christendom. For various reasons, including greater technology, the Moslem world was economically strong, and as such affected Christendom in that sphere as well. "Western Christendom and Islam not only represented two distinct systems of religion; they were societies extraordinarily unlike from almost every point of view."[11]

Islam's quick success, its deep-rooted similarities, its contesting of same areas both over the control of land and the faith of people should have been very alarming. However, despite all of this and despite that respect for the fighting abilities of the Saracens; the Roman Catholic Church underestimated the potential of Islam and wavered on its position towards the Moslems. "From the earliest moments of awareness that the religion of Islam was not a passing phenomenon but a reality to be reckoned with, Western Christendom evinced a range of responses – fear, ridicule, righteous indignation, theological rejection, scholarly inquisitiveness, cultural fascination."[12] To some churchmen, it was truly a heresy. To others, the people of Islam were in many ways just another infidel, categorized and labeled as similar to the Jew, albeit with control of the Holy Land. "Muslims were usually considered infidels, but from the time of John Damascene (675-749) they were often called heretics and Islam a heresy of Christianity."[13] Peter the Venerable thought Moslems heretics[14], the last and greatest heretics of this world. However, despite both John of Damascus and Peter the Venerable, theologically there was a great deal of debate over the nature and place of Islam in the Christian world. "Was it [Islam] a symptom of the world's last days, or a stage in the Christian development; a heresy, a schism, or a new religion; a work of man or devil; an obscene parody of Christianity, or a system of thought that deserved to be treated with respect."[15]

A look at the nature of heresy is important here. "A heretic was a dissenter formally condemned by an accepted ecclesiastical authority... The term heretic is distinguished from infidel, one who is not Christian at all.[16] These two definitions from Russell show that the problem of determining the relationship of

[11] Southern. *Western Views of Islam*, 7.

[12] Jane I. Smith, "Old French Travel Accounts of Muslim Beliefs Concerning the Afterlife," In *Christian-Muslim Encounters* ed. Yvonne Yazbeck Haddad and Wadi Zaidan Haddad (Gainesville: University Press of Florida), 221.

[13] Jeffrey Burton Russell. *Dissent and Order in the Middle Ages, The Search for Legitimate Authority* (New York: Twayne Publishers, 1992), 3.

[14] Southern, *Western Views of Islam*, 38.

[15] Ibid., 3.

[16] Russell. *Dissent and Order in the Middle Ages*, 3.

Moslem to Christian and shows perhaps why Christian clergy vacillated on its position. For Moslems to be heretics to Christianity they had to be defined as such by the Church, a definition which was late in coming.

It was only in the 13th century that the specific definitions of heresy were created by the Church. Several of the popes in the first half of the century were lawyers by trade, and the nature and detail of canon law expanded during this time. "The canon lawyers' definitions of a heretic included any of the following: one who perverts the sacraments; one who deliberately isolates himself from the Christian community; one who errs in interpreting Scripture; one who founds a new sect; one who believes differently about the articles of faith than the Roman church does; one who publicly and persistently teaches error."[17] Furthermore, the distinction of heretic, infidel, Jew or Moslem during this time began to fade. They began to be lumped together as one unified threat against Christianity. This feeling began to coalesce during the early middle of the 13th century, and a completely unexpected political entity exacerbated and extended this tendency at the end of the century.

The traditional Christian view of Islam is that it was a modified version of the true Christian faith. "The Christian faith was quickly corrupted as Mohammed followed Maurus's abominable and heretical inventions; together they produced a hefty volume, picking and choosing from the Old and New Testaments, put perverting their selections with deliberate obscurity. Thus did Mohammed become the Prophet."[18] It was Maurus, a heretical Arian monk, who instructed Mohammed, who then created Islam himself. In other words, Mohammed, who erred in interpreting Scripture; founded a new sect; believed differently about the articles of faith than the Roman church did; and publicly and persistently taught error, was therefore usually considered a Christian heretic. Furthermore, that traditional Christian view of Mohammed felt that the Moslems worshipped Mohammed as a deity in his own right. "Some Europeans believed that Moslems worshipped Mohammed as a god, but for the most part he was regarded as a heretic."[19] It was only later in the Middle Ages, after the First Crusade in the 12th and 13th centuries that a better understanding of the actual nature of Islam began to appear in Western writing. Even so, much was fanciful and fantastic in these writings, which show in the *Song of Roland* and its ascription of an unholy trinity to Islam. "We can say that the Western view of

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[17] Ibid., 62.

[18] Kenneth Meyer Setton. Western Hostility to Islam and Prophecies of Turkish Doom (Philadelphia: American Philosophical Society, 1992), 3.

[19] Ibid., 4.

Islam... was based on a good deal of sound knowledge, but that is also accepted much that now seems nonsense."[20]

Worse yet, the very concept of Western writing pertaining to Islam as an offshoot to Christianity was insulting. Moslems felt, justifiably, that Islam was a religion of its own. It was not merely an offshoot of anything. The merest fact that Christian writers viewed Islam only through a Christian lens was denigrating to the Moslem faith. This is a trend that has continued up to the latter part of the 20th century, but one which is now changing. "But many Christians have turned away from any such trend and have embarked upon thoughtful attempts to take Islam seriously on its own terms instead of 'recognized' it in ways-by a Christian 'acceptance' of it as an early (or proto-) stage of the biblical revelation or as an offshoot of Christianity-that are in direct conflict with its own sense of identity."[21] This viewpoint, however, of studying Islam through Christianity was to play a large role in the ultimate failure of Christian academics in their attempts to convince Moslems of the truth of the Christian faith.

To the Moslems, these Christian assumptions were completely not true. Mohammed was not a deity; he was the final prophet in the chain including Moses, Abraham and Jesus. Furthermore, the nature of the divinity of Christ was antithetical to the basic monotheism of Islam. The belief that Jesus is part of a trinity was to Moslems polytheism,[22] and monotheism is the primary tenet of Islam. "In the matter of the Trinity, for example – the central issue of contention between the two faiths – the Muslims turned to the Qur'an for such verses as that which exhorts the Christians not to exaggerate in what they say about the Messiah, that he was only a messenger of God, a Word conveyed to Mary and a spirit from God."[23] Jesus, therefore, was a very important worthy religious figure and worthy of respect. However, as with Mohammed, he was not a deity in his own right, merely a prophet of God.

Christendom struggled with this concept, of course, and thus the similarities underlying the two religions caused problems determining the place of Islam in the Christian worldview. The Jewish question both affected the nature of

[20] Daniel. *Islam and the West*, 271.

[21] Willem A. Bijlefeld, "Christian-Muslim Studies, Islamic Studies, and the Future of Christian-Muslim Encounters," In *Christian-Muslim Encounters* ed. Yvonne Yazbeck Haddad and Wadi Zaidan Haddad (Gainesville: University Press of Florida), 21.

[22] Ludlow. *Epochs of Church History, The Age of the Crusades*, 53.

[23] Wadi Z. Haddad, "A Tenth-Century Speculative Theologian's Refutation of the Basic Doctrines of Christianity: Al-Baqillani (d. AD 1013),"In *Christian-Muslim Encounters* ed. Yvonne Yazbeck Haddad and Wadi Zaidan Haddad (Gainesville: University Press of Florida), 83.

Christendom's reaction to Islam and displayed the nature of the problem in placing Islam properly. On the one hand, they [Jews] were respected as God's chosen people to whom the Old Covenant had been given; on the other hand they were condemned for having rejected the New Covenant."[24] Jews were therefore tolerated, but not given a respected place in European society. While persecution towards the Jews existed for centuries in Western Europe, Christendom categorized Jews separately from any other group, including heretics.[25] "A striking difference existed between violent action against Jews and heretics. Whereas violence against heretics was more often provoked by the agents of order than by the mob, it was mobs who usually rose against the Jews, often in defiance of pleas for tolerance by bishops."[26]

Christ's divinity and the nature of the Trinity were just as anathema to the Jew as to the Moslem,[27] which therefore tended to equate these two completely different religions in Christian minds. The Jews had long since been reconciled to the Christian mind and Christian rulers handled Moslems in a similar way. "Within Christendom, we have seen already, subject Muslims were tolerated. The approach of canon law was sober and careful. The gloss on Gratian required that Jews and Muslims be recognised as neighbours in the evangelical sense."[28]

Thus, while we have several clergymen calling Islam a heresy, such as John of Damascus and Peter the Venerable, we have others insisting otherwise and the actions of the Church up to the 13th century also indicated otherwise. Heretical prosecution was much harsher than that against Islam, as shown by a much later example of torture of Christian theologians such as Pedro Ruiz de Alcarez in Spain[29] and, as mentioned before, the Albigensian Crusade. Even Peter the Venerable, who was quite fervent in his support for the Crusades against Moslem heresy, thought that Christians who turn on their own people were far worse. In Peter's case, it was the nobles whose incessant feuds and raiding caused him and the Abbey of Cluny great harm.[30]

The Moslem faith was no more monolithic than its Roman Catholic counterparts. In the early Arab empires, opposition to the state frequently took

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[24] Russell. *Dissent and Order in the Middle Ages.* 39.

[25] Ibid., 3.

[26] Ibid., 39.

[27] Cantor. *The Civilization of the Middle Ages,* 134.

[28] Daniel, *Islam and the West*, 115.

[29] John E. Longhurst. *Erasmus and the Spanish Inquisition, The Case of Juan de Valdes* (Albuquerque: The University of New Mexico Press, 1950), 20.

[30] Gregory A. Smith, "Sine rege since principe: Peter the Venerable on Violence in Twelfth-Century Burgundy," *Speculum Vol. 77, No. 1* (January 2002): 25.

the form of religions schism.[31] Shi'a and Sunni sects to this day are at best uneasy companions, and throughout history have had many bloody conflicts. Furthermore, these are just the two primary sects within Islam, there were many more. John of Damascus' work *Disputatio Saraceni et Christiani* is a discussion between a Moslem and a Christian. In that work, the Moslem says that Saracens considered certain Islamic sects. "This portion of the *Disputatio* reflects clearly the controversy of Orthodox Muslims with the Jahmites and the early Mu'tazilites over those passages in the Qur'an in which God Himself appears to be speaking directly."[32] Ultimately, then various offshoots from both religions existed.[33] Religiously, therefore, the nature of the conflict was more complicated than the misconception of East vs. West. Furthermore, the presence of other groups, most notably the Jews in both the Moslem and Christian worlds, as well as the Mongol armies coming from farther east in Asia both added to the energy around the conflict.

The traditional view at the time of the Crusades was Christendom on one side and Islam on the other, was therefore false. It was also false that the conflicts during this era centered solely on religion. In fact, the political and economic differences were often much more important, and thus consistently created situations where Moslem aided Christian and vice versa. "Muslim-Christian conflicts have involved different cultures, different classes, different forms of social, political, and economic organizations."[34] This was not a conflict that was between two competing poles, but rather between a myriad of individual groups and nations, each of whom may have favored one pole or the other, but who were more concerned with their individual needs and goals rather than the goals of their religion.

In fact, the literature coming from the 12th century, as shown by the stories of *Cantar del Cid* and the *Song of Roland,* are excellent examples of the importance of political goals as opposed to religious. The Cid fights not for his religion but for plunder, he is a professional warrior. In Spain, Moslem rulers consistently used Christian Spanish mercenaries to help defend their borders.[35] Yes, the Cid fights the Moors, but at times allies with them, accepting at one point 3000 marks to fight for a Moslem ruler. At no time is the Cid fighting a

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[31] Ibid., 14.

[32] Daniel J. Sahas. *John of Damascus on Islam, The 'Heresy of the Ismaelites'* (Leiden: E.J. Brill, 1972), 115.

[33] Daniel. *The Arabs and Medieval Europe*, 9.

[34] Suad Joseph and Barbara L.K. Pillsbury. *Muslim-Christian Conflicts: Economic, Political, and Social Origins* (Boulder, CO: Westview Press, 1978), 2-3.

[35] Archibald Lewis. *Nomads and Crusaders AD1000-1368* (Bloomington, IN: Indiana University Press, 1988), 35.

Crusade against the Moslem presence nor does the story ever envision a Spain that is not both Spanish and Moorish.[36]

Written at approximately the same time as the *Cantar del Cid*, the *Song of Roland* is an even better example. The *Song of Roland* is an epic description of betrayal, honor, glory and courage. It is also wholeheartedly Christianity vs. Islam, except that the writing shows the dichotomy of Christian thought towards Islam.

> From Balaguet there cometh an Emir;
> His form is noble, his eyes are bold and clear,
> When on his horse he's mounted in career
> He bears him bravely armed in his battle-gear,
> And for his courage he's famous far and near;
> Were he but Christian, right knightly he'd appear.[37]

This passage and many others like it show that the writer did not despise the Moslem, rather he writes of them with a great deal of respect. In fact, the most despicable character in the story is the Christian Ganelon, who betrays, for political and personal gain, Roland and the Twelve Peers to the Moslems. Throughout *Roland,* the enemies are indeed better dead, but they are generally noble. The difference between 'them' and 'us' is that they serve false gods, and that the devils have their souls."[38] For the purposes of the story, this had to be true, as the heroes must have foes worthy of their steel. However, during the time the *Chanson de Roland* was being composed, Crusaders were bringing back tales of the prowess and skill of Moslem warriors. The peerless knight William the Marshal said of Salah ad-Din that he was "a man of acute genius, prompt in arms, and liberal above average."[39] The tournaments and feasting held between combatants on the two sides during the siege of Acre are another example of this.

In fact, warriors on each side held each on in such high regard that it was only the differences of their respective religions that separated many of them. In the *Song of Roland,* both sides present each other with the opportunity to live and serve honorably in the opposing faith.[40] The Christians who conquered Antioch in the First Crusade offered this same opportunity to the Moslem ruler,

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[36] Daniel. *The Arabs and Medieval Europe*, 81-82.

[37] Dorothy L. Sayers (trans.). *The Song of Roland* (London: Penguin Books, 1957), Passage 72, 87.

[38] Daniel. *The Arabs and Medieval Europe*, 96.

[39] Ibid., 185.

[40] Sayers (trans.). *The Song of Roland*, Passage 260, 188.

Kerbogha and his people. His response was to reply in kind, just as Charlemagne does to Baligent in the poem.[41] In both cases, the offers include the opportunity to serve in the highest friendship. In both cases, the offers include the retention of property. In both cases, the offers are rejected, however, the offers show the esteem both sides held of their opponent. Twelfth century clergyman Guibert of Nogent wrote, "The empire of the Parthians, whom we call Turks by the corruption of language, is superior to that of Babylonians not in extent of territory (for it is smaller) but in the military talent, the chivalrous character, and the magnanimity which characterizes its inhabitants."[42]

Furthermore, the truth underlying the fiction of Roland gives more evidence of the nature of Christian-Moslem conflict. "In the year 777, a deputation of Saracen princes from Spain came to the Emperor Charlemagne to request his assistance against certain enemies of theirs, also of the Moslem faith."[43] The truth behind the epic poetry therefore is obviously much different from the Christian-Moslem conflict it discusses. Charlemagne's actual decision to invade northern Spain came not from a religious fervor, but from sheer potential for political and economic gain, the same motives inspiring the Moslem princes to request his aid. In fact, Charlemagne's biographer Einhard relates to us the friendly terms with which Charlemagne had with Harun-al-Rachid, the King of the Persians.[44] If ever Charlemagne were to have led a Crusade or a religious war it would have been directly to the east where, against the Saxons, was where the primary threat to his kingdom and the greatest opportunity to enlarge that kingdom both awaited.[45] Thus, while it seems to show the ideal of a monolithic struggle between Christianity and Islam, the *Song of Roland* actually shows the importance of political issues and differences within each side.

There was a long tradition throughout the medieval era of alliances between Moslems and Christians. Charlemagne and El Cid are but two examples, but also the conquest of Sicily by the Normans, who faced forces with both Arab and Christian contingents. There are many more examples, and generally wherever there was political gain available by alliance with members of the opposite religion, it was done so. "Alliances between small Christian states and

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[41] Daniel, *The Arabs and Medieval Europe*, 117.

[42] D.C. Munro, "The Western Attitude toward Islam during the Period of the Crusades," *Speculum*, Vol. 6, No. 3. (Jul., 1931), 335.

[43] Sayers (trans.). *The Song of Roland*, 7.

[44] Lewis Thorpe (trans.). *Einhard and Notker the Stammerer, The Two Lives of Charlemagne* (New York: Penguin Books, 1986), 70.

[45] Daniel. *The Arabs and Medieval Europe*, 51.

Arab forces were essentially haphazard."[46] All along, then, political gain outweighed any underlying religious motive. "The willingness of many Christians to make alliances with Arabs should be associated precisely with an indifference to their culture and religion."[47]

Nor was the Church overly concerned, at least originally, with this. "At first, alliances with Arabs were not made against united ecclesiastical disapproval, as in the crusading period, when popes and councils denounced every suggestion of co-operation; in the ninth century this attitude was only coming into existence."[48] It is only in the late 12th and 13th centuries that such cooperation became to be regarded as treacherous to the Christian Church.

However, even when Christian military focus was aimed primarily towards the Moslems, differences arose that prevented a completely unified position. The kingship of Crusader Syria was not a strong monarchy along the lines of Norman England. Rather, the nobles who owed fealty to Baldwin I and his successors were often strong-willed men in their own right, and truly the King of Jerusalem was first among equals. These princes, as the Moslem threat from the east increased, were forced to look to their own defenses first.[49] Furthermore, not once did the combined forces of all of the fiefdoms in Syria and Palestine ever marshal under a single banner. Various contingents served periodically with other contingents, but never did the whole army of the Crusader states muster for battle.[50]

It was not, though, just the secular rulers of the Crusader states that split the focus, and therefore the monolithic nature of the Crusades. The Church, in order to assist in the Crusades, allowed for the creation of religious knightly orders, in particular the Knights of the Hospital of St. John in Jerusalem and the Knights of the Temple of Solomon, which provided a very skilled ecclesiastical military force in Palestine. Unfortunately, the Hospitallers and the Templars became increasingly powerful, and with their independence, secular control of the military campaign disappeared.[51] The united front needed by the Christians, even in Palestine facing an increasingly dangerous and powerful opponent, did not truly exist.

This is not to say that the Crusades would have succeeded had they remained unified as this is not the case. The Crusaders were vastly

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46 Ibid., 75.

47 Ibid., 62.

48 Ibid., 75.

49 John Beeler. *Warfare in Feudal Europe, 730-1200.* (Ithaca: Cornell University Press, 1971), 123.

50 Ibid., 126.

51 Ibid., 128.

outnumbered, as a relatively few Christian nobles went on the Crusades. Many in Europe had seen other options than to travel long distances themselves on such a risky venture. Instead some chose to increase the persecution of the Jews and other non-Christians readily at hand.[52] This was especially true in Northern Europe, which had been relatively isolated from the threat of Islam for quite some time. Local Jewry was readily available, and if one served God by smiting the infidel Moslem, some reasoned, one would also serve God by smiting the infidel Jew. "It was natural that a vast movement of xenophobic character should be accompanied by manifestations of xenophobia against resident foreigners, and, since the form of xenophobia was religious, the infidel Jews were obvious victims. [53]

Nor were they able to expect a great deal of assistance from the local population. Moslem occupation had not been extremely difficult upon the Christians in the Holy Land. John of Damascus, whose father had been an important town leader and who was given the freedom to write pro-Christian literature is an example of this, but this happened wherever the Moslems ruled. "...it was inevitable that the temper of the Christian population should become relaxed. This had happened in the end wherever Islam was established, and it was happening in Spain."[54] Moslem rule was much different than the traditional rule of occupation. Non-Moslems were able to live reasonably well under Moslem rulership, although they faced greater taxes and greater restrictions than the Moslem population. "The great innovation of Islam was to offer a new alternative to the classical tradition of slavery or death; either conversion, which would give full rights to those who accepted it, or submission and toleration."[55]

Furthermore, "In the eighth and ninth centuries the great majority of the Christian populations who lived along the eastern and southern shores of the Mediterranean went over to this new faith founded by Mohammed. It was a great blow for Christianity that its oldest and most intensive centers were lost to Islam."[56] Even those Christians who remained were not well-considered by the Crusaders. "The Christian minority was regarded by the Franks as schismatic at best..."[57] In short, then, the Christians never possessed the political strength and manpower to retain the gains they had achieved in the First Crusade. In the end, that entire host the King of Jerusalem could theoretically field was only

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[52] Russell. *Dissent and Order in the Middle Ages*, 40.
[53] Daniel, *The Arabs and Medieval Europe*, 122.
[54] Southern. *Western Views of Islam*, 21.
[55] Daniel. *The Arabs and Medieval Europe*. 136.
[56] Cantor. *The Civilization of the Middle Ages,* 135.
[57] Beeler. *Warfare in Feudal Europe*, 122.

about 1,800 knights and 10,000 infantry.[58] Even had such an army been fielded, it is difficult to see how effective they could have been against the combined forces of a unified Moslem world directly to their East. This is especially true when one considers the excellent leadership of the Moslems, which peaked with the great Salah-ad-Din. Fulcher, a Christian noble during the Crusades was astonished that so small a kingdom with such few defenders was not attacked.[59]

In fact, they possessed so little strength that it brings up the question how they achieved what few successes they did at all. They originally succeeded because the Islamic world was less monolithic in the 12th century than were the Franks. "So long as the Moslem east was politically fragmented, Frankish commanders, by a display of skill and energy – and great good luck – were able to preserve their foothold on the Syrian coast."[60] However, when the Moslems did unify under leaders such as Zanki, Nur-ed-Din and Salah-ah-Din Crusader Syria was doomed.

Therefore, despite the Crusades, the concept of monolithic opponents still did not materialize, another example of which comes from the scholars of each side. Saracen technology and learning was very advanced compared to Christian. They did not forget mathematics, astronomy, and medicine that ancient Greek philosophers had worked so hard to learn were not forgotten, as in the West.[61] "Before the end of the twelfth century, there was a very rich current of secular thought in the Islamic world, which made Arabic scholars of the tenth and eleventh centuries the greatest philosophers and scientists of their age."[62] This hampered the Western Church in several ways. First, it limited its effectiveness in directly fighting the Moslems. Technology may not have meant as much on the battlefield during the Crusades as it did during the Persian Gulf War, but the side possessing better weaponry will always have better chances.

However, the learning gap was much more insidious. "A Spanish Christian writer of the tenth century tells us that many of his younger contemporaries were converting to Islam not only because of their political ambitions but because of the attractions of Arabic literature and culture."[63] Undoubtedly, many

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[58] Ibid., 126.

[59] Daniel. *The Arabs and Medieval Europe*. 137.

[60] Ibid., 149.

[61] A.S. Turberville. *Medieval History and the Inquisition* (London: Archon Books, 1964), 59.

[62] Cantor. *The Civilization of the Middle Ages*, 138.

[63] Cantor. *The Civilization of the Middle Ages*, 135.

of what might have been the brightest Christian scholars were therefore lost to Rome.

Worse yet was the effect that it had upon the remaining Christian scholars. "...Because the western peoples looked upon the Moslems as perverse and pernicious heretics, they closed their eyes to the benefits they could derive from association with the Arabic peoples."[64] Technological researchers will say that knowing that something can be done is half the battle in learning, but what if those researchers avoid that proof? How often, then, did the simple fact that the Moslems knew something delay that knowledge from its introduction in the West? Furthermore, the Church was suspicious of those places that may have embraced Islamic as well. "In Languedoc, at the schools of Montpellier, Narbonne, Perpignan, Arabian medicine and philosophy flourished."[65] Admittedly, the example of Languedoc is extreme, and the antipathy held towards that region was primarily due to heresies existing there, but is it a coincidence that heresy was so rampant in these areas as well as Moslem learning? In short, scholars of the Christian world, in order to advance their own learning, had to go against the aims of the Roman Catholic Church. Peter the Venerable provides a striking example here. He commissioned and paid for himself a translation of the Qur'an in order to provide more ammunition in the theological debate against Islam. However, other clergymen met with this project at best with apathy, but at worst with open hostility, this against one of the staunchest opponents of Islam.[66]

The aims of both Churches in their academic activities were primarily to discredit the opposing faith, with many works on both sides published. "This [polemic] literature was shaped and influenced by contacts between Muslims and Christians. Each side sought to demonstrate the truth and superiority of its own doctrines."[67] Furthermore, both sides looked to the theological writings of their opponent to support their own theses and to defend their own positions."[68] As noted before, Moslems proved resistant to the various Christian academic arguments, in part because of the arrogant viewpoint by Christian scholars in their works about Islam.

Interestingly enough, at least in Spain, these very attempts to discredit the other religion resulted in perhaps too much familiarity of these scholars for the opposing faith. "Even the religious wars in Palestine did not breed exclusively

[64] Cantor. *The Civilization of the Middle Ages*, 140.
[65] Turberville, *Medieval History and the Inquisition*, 62.
[66] Southern. *Western Views of Islam*, 38-39.
[67] Haddad. "A Tenth-Century Speculative Theologian's Refutation of the Basic Doctrines of Christianity, 82.
[68] Ibid., 83.

antagonism to the faith of the infidel, and friendly intercourse with Saracen Spain and academic interest in Islamic philosophy produced a knowledge that was less critical than sympathetic."[69] "...there is a long period in which Spanish influence [over the Islam question] was very varied but almost wholly rational and beneficent."[70] Obviously later, during the Inquisition, this drastically changes, but it is interesting to note the tolerance and exchange of ideas prior to the Inquisition in that divided state.

Economically, as well, Western Europe suffered in comparison to the Saracens. The amount of trade during the early centuries with the Islamic world was not huge, as Islam's primary trading partners were Byzantium, Kievan Rus, and sub-Saharan Africa, but nonetheless there was some trade going on. In fact, it is likely that the balance of trade in many crucial items favored Western Europe.[71] However, the economic practices and strength of the Islamic world was tremendous. Many Europeans looked with great interest at the trading procedures of Islam, and it is possible that the great trading states of Italy developed where they did is not coincidental. "...And those [merchants] of Amalfi and Venice who were much influenced by the more advanced trading practices which were to be found in the Islamic and Byzantine worlds."[72]

The nature of Islam made it, as mentioned before, difficult for Christian missionaries to achieve conversion. Unlike the pagans with whom the Christians had had so much success, Moslems had a strong religion with a solid foundation of theology with which to cling to. Friar Eleemosyna, a Franciscan missionary, noted with disappointment how little success in conversion Christians were able to achieve in Tunis during the 13th and 14th centuries.[73] This despite a treaty with the King of Tunis allowing these missionaries the freedom to make their case to the Tunisian populace. In fact, as we have seen with the Christians of Syria and Palestine, Islam possessed a distinct advantage in its ability to achieve converts.

This was never so important as with the case of the Mongols. The Mongol invasion was worrisome enough to Western Europe, however, the Roman Catholic church saw a great deal of hope in their arrival. First, the arrival of the Mongols brought word that there were groups of Christians, the Nestorians, living in the East. Second, and more importantly, there was the hope that Christian missionaries might be able to convert the Mongols to Christianity, thereby gaining a tremendously powerful new ally in their goal, which still

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[69] Turberville. *Medieval History and the Inquisition*, 73.
[70] Southern. *Western Views of Islam*, 19.
[71] Lewis. *Nomads and Crusaders*, 39.
[72] Lewis. *Nomads and Crusaders*, 80.
[73] Daniel, *Islam and the West*, 119.

remained, of spreading Christianity across the world. Raymond Lull said: "If the schismatics [the Nestorians] are brought into the fold and the Tartars converted, all the Saracens can easily be destroyed."[74] Nor were these hopes completely far-fetched. Christian emissaries, such as William of Rubroek, visited Karakorum, the seat of Genghis Khan and were well received. "...the Mongols gave a glimpse of an outer world which might be deployed against the Muslim Arabs."[75] William, for example, returned home claiming to have successfully defended Christianity in a debate consisting of representatives from the Latin Church, Nestorian Christians, Islam, and Buddhism.[76] Also, later Khans looked with some concern at the expansion of Persian Moslems in their direction.[77]

However, the great fears of the Western Church were realized late in the 13th century, when under the leadership of Khans Berke and Tuda-Mengu, the entire Golden Horde converted to Islam. The threat inherent to the Catholic Church with the entirety of the Golden Horde turning to Islam is obvious, and Christians such as Ricoldo da Montecroce and Raymond Lull both watched the process of the Horde's conversion with great concern.[78]

The conversion of the Mongols increased the threat from the East and increased the hatred and fear of Islam and its people towards the end of the 13th century, and the attitudes towards learning during this time are evidence of this. "The hospitable reception of Islamic philosophy which had marked the middle years of the thirteenth century gave way increasingly to suspicion and xenophobia."[79] Thus, the political threat to Western Christendom provided by the frightening armies of the Mongols drastically changed Western thought.

A last point to be made in the role of politics in Catholic-Moslem relations comes from the situation existing at the time of Urban II's call for the First Crusade. There were three crucial events occurred prior to 1095 that made it even possible. One was the defeat by Pope Gregory VII of the German emperors. This gave the Popes greater political freedom than ever before. Second was the success of Norman adventurers in Sicily, and the Kingdom of Two Sicilies provided a strong strategic starting point to expand Christian power to the east and south. Third was the utter defeat of Byzantium at the Battle of Manzikert in 1071 by the Moslems. The Byzantine Empire had always provided a bulwark against the Islamic threat, and it was widely considered prior to

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[74] Southern, *Western Views of Islam*, 68.
[75] Daniel. *The Arabs and Medieval Europe*. 322.
[76] Ibid., 48-51.
[77] Janet Martin. *Medieval Russia 980-1584*. (Cambridge: Cambridge University Press, 1996), 144.
[78] Southern. *Western Views of Islam*, 68-69.
[79] Ibid., 73.

Manzikert that Western Europe was safe because of the existence of that empire. However, this defeat was so total that the strategic reliance of Byzantium had to be reconsidered, the West from that point on felt it had to rely on its own strength to defend against the Moslem threat.[80] These political issues, combined with a variety of societal issues, provided Urban II with the chance to expand Christendom's power with the use of the Crusades. Political factors provided for political opportunities.

Whatever else, therefore, the overall response of Christendom to Islam was mixed. The reaction from the papacy varied from pope to pope, as shown by the direct diplomacy of Gregory VII with Islamic rulers less than two decades prior to the preaching of the Crusades by Urban II in 1096.[81] The reaction of various rulers and nobles were just as mixed, but their primary concern remained the opportunity to acquire power and riches.

Was Islam a Christian heresy? Yes, later definitions of canon law made the defining of Islam a heresy simple. However, Islam, whether it was a heresy or not, was treated in some cases similar to Christendom's treatment of the Jews and in some cases as a heresy and in some cases as merely another player in the political arena. Overall, however, any examination of Islam must put forth the result that the political factors outweighed the religious factors in the minds of European rulers, both secular and ecclesiastical, through the 13th century. Heresy it may have been, a vast political force it definitely was.

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[80] Lewis. *Nomads and Crusaders*, 99.

[81] Norman Daniel. *Islam and the West, The Making of an Image* (Edinburgh: The University Press, 1962), 114.

The Effect of the Martin Koszta Affair on American Foreign Policy

by Rob Howell

Secretary of State William L. Marcy formulated the doctrine of domiciliation in 1853 as a response to the Martin Koszta affair. This doctrine helped form part of American foreign policy throughout the 19th century, and it continues today. A closer look at the Koszta affair shows the source and the need for the doctrine, and of course the primary application.

The Martin Koszta affair occurred in June and July of 1853 in the Turkish port city of Smyrna. Koszta was apprehended at the direction of the Austrian consul of the city and was placed on board the Austrian brig *Hussar* in preparation to send him back to Austria to be tried. The USS *St. Louis*, captained by Commander Duncan N. Ingraham, arrived in Smyrna the day after the abduction and American diplomacy, combined with the threat of force by Ingraham, brought about the release of Koszta.

This was, furthermore, a situation which could quite easily have caused the United States and Austria to go to war against each other on the eve of the Crimean War, which started less than four months after the Koszta affair. It was also an action that Ingraham was fully aware would have severe repercussions. In a letter to Secretary of the Navy James Dobbin, Ingraham wrote: "It becomes my duty to report to you an affair at this place in which I have taken upon myself to compromise the American Flag."[1] How and why he chose to go down this path is a very interesting and important question, for this action helped to form American foreign policy in the latter half of the 1800s.

The seeds of this incident were sown in the Hungarian Revolution of 1848 in two ways. The first was Koszta himself, who was a refugee from the Revolution, having served in the Hungarian Army. He was a successful soldier, as seen by the fact of having risen from non-commissioned officer to captain, but he was not one of the leaders of the Revolution. Nonetheless, the Austrian government

[1] Duncan Nathaniel Ingraham. The Letterbook of the USS St. Louis. Leaf 11-12. Ingraham to Secretary of the Navy James Dobbin, 5 July 1853.

knew him for his role in the Revolution, and hoped for opportunities to bring all of the Hungarian refugees to face Austrian justice.

The second seed was America, in the way that America and Hungary viewed each other. Hungarian leaders prior to the Revolution looked across the sea to America and saw much that appealed to them. Several books, including noted Hungarian academic Bölöni Farkas' *Voyage in North America* were written about America, and "for the progressive Hungarian intelligentsia America more and more represented the embodiment of democratic ideals."[2]

The Revolution, therefore, was based on the American model. The Hungarians sought, among other things, freedom of the press, personal and religious freedom, a jury system based on equal representation, and annual sessions of parliament elected by universal suffrage. These goals struck a chord with America and while the United States was watching with pride and hope all of the liberal revolutions of 1848, they were hoping even more for the ultimate success of the Hungarians. "How could Americans, seeming to hear echoes of the Boston Tea Party, of American independence, of inalienable rights, have failed to be moved."[3]

Moved America was and, in fact, sought ways to assist the Hungarians. The importance of this must be noted, as American foreign policy at this time was based upon two overriding principles, isolationism and neutrality. "The cardinal principle undergirding the foreign policy of the young republic was isolationism."[4] "Second only to isolationism as a polestar of American diplomacy in the formative years was the principle of neutrality."[5]

Yet American interest in Hungary was sufficient for us to step away from both principles. President Zachary Taylor sent A. Dudley Mann, a member of the U.S. State Department to the scene and even invested him with the power to recognize Hungary's independence the moment it was sustainable. "The United States was the only major power whose government seriously considered the possibility of recognizing the independence of Hungary at this time."[6]

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[2] Imre Lukinich, "American Democracy as Seen by the Hungarians," *Journal of Central European Affairs 8*, no. 3 (October, 1948): 278.

[3] Andor Klay, *Daring Diplomacy: The Case of the First American Ultimatum* (Minneapolis, MN: University of Minnesota Press, 1957), 13.

[4] Richard W. Leopold, *The Growth of American Foreign Policy* (New York, NY: Alfred A. Knopf, 1962), 17.

[5] Ibid., 18.

[6] George Barany, "The Opening of the Hungarian Diet in 1843: A Contemporary American Account," *Journal of Central European Affairs 22*, no. 2 (July, 1962), 153

Austrian leaders, once this was discovered, were naturally upset at this display of American temerity and interference in what was to Austria a strictly internal affair. Chevalier Johann von Hülsemann, the Austrian minister to the United States, made a stern protest to then Secretary of State Daniel Webster. This protest specifically covered the unjustified interference of the United States in the affairs "in contradiction of the principles of non-intervention professed by the United States."[7] It lightly touched upon the American internal difficulties pertaining to Abolitionism, and also said that if America took an active part in the liberal movements in Europe, it would be subject to potential acts of retaliation.[8]

Webster struck back, saying, "that European sovereigns had on occasion denied the lawfulness of the origin of the government of the United States did not disturb the latter, which covered a rich and fertile region, 'in comparison with which the possessions of the House of Habsburg are but as a patch on the earth's surface.'"[9] He furthermore went on to comment on the possibility of retaliation, saying, "the government and people of the United States are quite willing to take their chances and abide their destiny."[10] The American populace agreed with these sentiments, and "a New York newspaper announced, 'if the Austrian minister [Hülsemann] does not like our interference in the affairs of Hungary, he may go home as soon as he pleases.'"[11]

Relations with Austria were therefore extremely cold. In fact, from late 1850 to Webster's death on 24 October 1852 Hülsemann and Webster had such personal antagonism to each other that all business between the Austrian and American governments in Washington, D.C. were handled by their respective subordinates.

The position of the United States with respect to Austria and Hungary, along with the Hungarians perceptions of America, made the U.S. a natural place for many Hungarian refugees to flee to after the Revolution. In fact, the United States sent several U.S. Navy ships to Turkey to convey these refugees back to America. Included in this group was Martin Koszta, who came to the United States in 1851. He began to make his way in America and, on 31 July 1852,

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[7] H. Barrett Learned, "William Learned Marcy," in *The American Secretaries of States and Their Diplomacy*, ed. Samuel Bemis Flagg (New York, NY: Alfred A. Knopf, 1928) 87.

[8] Ibid., 88.

[9] Samuel Flagg Bemis, *A Diplomatic History of the United States* (New York, NY: Henry Holt and Company, 1942), 311.

[10] Learned "William Learned Marcy," in *The American Secretaries of States and Their Diplomacy*, 90.

[11] Alexander Deconde, *A History of American Foreign Policy, Volume I: Growth to World Power (1700-1914)*, 3rd ed. (New York, NY: Charles Scribner's Sons, 1978), 202.

appeared in a New York court and officially signed his first paper declaring his intent to become an American citizen. In spring 1853, he and his partners decided that Koszta should go to Turkey, taking advantage of Koszta's contacts in the Eastern Mediterranean to set up an importing business.

Immigration was a very touchy subject during the 19th Century. Citizenship questions throughout the world caused consistent diplomatic problems, although not ones that would break out into war.[12] America had a completely different viewpoint about immigration and citizenship than the powers of Europe. "The United States held that citizenship was a status acquired by the voluntary choice of the individual, an affiliation assumed or rejected at will... All European states, by contrast, held to a dynastic view of the relation of subject to crown, by which the inherited loyalty and fealty of each person in the realm remained indissoluble, unaffected by emigration or change in place of residence."[13]

This difference in philosophy had two results. One, all of the Hungarian refugees were still deemed by Austria as Austrian subjects, and therefore still under Austrian law should any of them fall into Austrian hands once more. Secondly, it meant that American immigration laws were completely foreign and generally misunderstood by European powers. "A so-called first paper, duly issued and recorded by a court of justice, was a thing peculiarly American and no one abroad knew for certain just how far its meaning and validity might extend."[14]

That lack of certainty, unfortunately, extended also to the United States, at least with regards to the first paper. Each Secretary of State seemed to have his own interpretation, which they passed on to their ministers and consuls. Secretary of State James Buchanan said in 1848, "a foreigner who has merely declared his intention to become an American citizen without having carried that intention into effect, is not an American citizen." However, in 1852, Secretary of State Edward Everett said that those who possessed first papers should be accorded all proper aid American diplomats could give them, although "it will be for the European authorities to pay such respect to the document as they think proper."[15]

The American Immigration Act of 1813 specified that a person must remain in the United States for a period of five years before becoming eligible to become a citizen. Koszta, therefore, in 1853 fell into that ambiguous category,

[12] Robert W. Tucker and others, ed., *Immigration and U.S. Foreign Policy* (Boulder, CO: Westview Press, 1990), 31.

[13] Ibid., 31-32.

[14] Klay *Daring Diplomacy*, 34.

[15] Ibid., 32-35.

having signed his first paper in 1852. He, however, felt that his first paper would provide sufficient protection in Turkey.

He had some reason to feel this way. Turkey was the home to refugees from across Europe. Koszta had originally come to Turkey when fleeing the end of the Revolution in 1849, and he was familiar with Turkish policies to foreigners. As long as the foreigner in question received the protection of any Western embassy, they were afforded protection in Turkey due to any citizen of that embassy. *Protégés*, as they were termed, existed by the thousands in Turkey. After the incident, American Minister to Turkey George P. Marsh remarked: "Austria herself has numerous *protégés* owing her allegiance neither by birth or naturalization, and the practice is too well established here to admit of its legality being questioned."[16]

Koszta in fact was able to obtain a *tezkereh*, an internal Turkish pass providing protection and privileges due to a visiting foreigner. He received this pass with the assistance of John P. Brown, who was the American *chargé d'affaires* in Constantinople in the absence of Minister George Marsh, who was elsewhere on another mission for most of the Koszta affair. The Turkish government, therefore, had no doubts as to the protection of Koszta. He was a citizen or a *protégé* of the United States, and either way was accorded due protection.

It is symbolic, however, of the whole affair that despite both the *tezkereh* and Brown's assistance in Constantinople that Edward Offley, the American consul in Smyrna and the diplomat at the heart of this affair, had a different interpretation of his instructions from Washington. Ingraham comments about this: "He [Offley] told me the man was a Hungarian Refugee, who had a certificate of Intention to become a Citizen of the U.S. and came here in an American Vessel, but he did not consider him under his protection, having, to his knowledge, no passport."[17]

Koszta in any case was going about his business in Smyrna. He had no concerns as to his personal safety, armed as was with his first paper and *tezkereh*. "Its [the first paper] certified copy, augmented by the Turkish passes obtained at Smyrna and at Constantinople, accompanied him like a bodyguard as he busily traveled around on business for some three months."[18]

These bodyguards were, however, to prove insufficient to prevent the upcoming crisis. On 22 June 1853 agents of the Austrian consul to Smyrna, Peter Ritter Von Weckbecker, kidnapped him. He was rowed out to the Austrian

[16] Ibid., 33

[17] Ingraham. The Letterbook of the USS St. Louis. Leaf 10-11. Ingraham to Secretary of the Navy James Dobbin, 5 July 1853.

[18] Klay *Daring Diplomacy*, 35.

brig *Hussar*, which happened to be in Smyrna at the time. The Austrian consul planned to take Koszta back to Austria where Koszta would be tried for his activities during the Hungarian Revolution in 1848 and most probably executed or imprisoned for life. The only thing halting this was the chance arrival in Smyrna on the next morning of the USS *St. Louis.*

The incident could have ended quickly and easily had the Turkish authorities stepped in. The kidnapping, after all, was a direct affront to Turkey. Weckbecker blatantly ignored the protection the Turkish government promised with the *tezkereh* and committed the act upon the soil of Turkey, without the right or permission to do so. Weckbecker, furthermore, knew he going against Turkey's wishes and "acted without authority and despite the refusal of the Turkish Governor to authorize the arrest."[19] He had in fact gone to Ali Pasha, the Governor of Smyrna, asking permission to arrest "a dangerous Austrian criminal who had allegedly arrived in town,"[20] but the Governor declined, saying it was a job for the Turkish police.

Pasha, however, despite the urgings of Offley and Ingraham, did not choose to do anything about the abduction of Koszta when it came to his attention. Ingraham notes in one of his letters, "I demanded an audience of the Governor and told him I thought this act of the Austrian Consul an outrage upon the Flag of Turkey, and wished to know if he would demand Costa [Koszta]. He told me he could only report the case to Constantinople; the Consuls had a right of taking their subjects."[21]

At this point on the morning of 23 June 1853, Koszta was imprisoned upon the *Hussar*, with other Austrian vessels, a schooner and two mail steamers, in Smyrna. Collectively, these ships outgunned the *St. Louis*, which had just arrived. Commander Ingraham was being apprised of the situation with Offley, and Governor Pasha was choosing to stay out of the incident. This obviously meant that Koszta's hopes rested on Ingraham and Offley.

Ingraham was a career naval officer, having joined the United States Navy at the age of nine. He entered as a midshipman for the War of 1812, and by 1853 had commanded a brig, participated in the capture of Tampico, and for two years was the commander of the Philadelphia Naval Yard. He was very respected for his skill at seamanship, and in 1852 was named as the captain of the sloop-of-war *St. Louis*.[22]

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[19] H Learned "William Learned Marcy," in *The American Secretaries of States and Their Diplomacy*, 270.

[20] Klay *Daring Diplomacy*, 57.

[21] Ingraham. The Letterbook of the USS St. Louis. Leaf 8-9. Ingraham to American Minister to Turkey George P. Marsh, 28 June 1853.

[22] Klay *Daring Diplomacy*, 49.

He was also a very considerate man, concerned with the well being of his crew. An incident later in the same cruise illustrates this very well. He placed one of his midshipmen under arrest for unspecified crimes. Less than a week later, he writes out this order: "As your case must be determined upon by the Commander in Chief, and having no wish to deprive you of an opportunity (which may not again occur) of visiting Rome, you have leave of absence until the 9th Oct. for that purpose."[23]

He was also sensitive to the plight of Koszta. Ingraham concludes one of his letters by saying, "This business has given me much pain and inquietude, but I have done what I thought right, and particularly as the Consul was unwilling on his part to make any claim being fully persuaded he had no right to do so."[24]

Edward was the third member of the Offley family to hold the post of consul in Smyrna. His father had held the post for some time, passed it on to his older brother David, and it fell to Edward when David died. He was also different from many consuls around the world, as it was common practice for businessmen to seek the position in order to further their own enterprises. While Offley was indeed a merchant, he definitely fulfilled the obligations of his post well. He was challenged, in fact, prior to the Koszta affair, by other businessmen in Smyrna who desired the post for themselves, but was retained by Marsh who "found no reason to be dissatisfied with Offley as consul."[25]

The important point to note is that we have two men very capable in their respective fields, but who were unsure of how to proceed in this particular matter. Their instructions were mixed and uncertain, having received no particular directive from current Secretary of State Marcy, and having different instructions from previous Secretaries. There were also no references readily available to Offley. The first issue of General Instructions to the Consuls and Commercial Agents of the United States, a document prepared by the State Department, did not come out until 1855. Ingraham says: "I then came to the conclusion that I could not claim Costa [Koszta] as an American Citizen, for had I done so I should have at once used force to obtain him, and this I would have no right to do unless he was clearly an American Citizen."[26] In another letter, he says: "Should the claim be made, that Costa [Koszta] is an American by

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[23] Ingraham. The Letterbook of the USS St. Louis. Leaf 22. Ingraham to Passed Midshipman Jason Parker, Jr.

[24] Ibid., Leaf 8-9. Ingraham to American Minister to Turkey George P. Marsh, 28 June 1853.

[25] Klay *Daring Diplomacy*, 43.

[26] Ingraham. The Letterbook of the USS St. Louis. Leaf 8-9. Ingraham to American Minister to Turkey George P. Marsh, 28 June 1853.

adoption, it would have to be enforced; and how can this be done when by the Law [Immigration Law of 1813] he has forfeited this claim?"[27]

They decided therefore to obtain direction from *chargé d'affaires* Brown. Both wrote letters to Brown, explaining their respective viewpoints. Each hoped to draw out the situation until a response from Brown could be received. This they were able to do, despite several incidents and the maneuvering of the *St. Louis* to a position in the harbor to prevent the smuggling of Koszta onto a mail steamer and then taken to Austria. The mail arrived on the 2nd of July. Letters from *chargé* Brown to both Offley and Ingraham urged full support of Koszta.

In a letter to Ingraham, Brown states: "I believe that under the circumstances you have a right to persist in demanding him from the Austrian Commander. The *Porte* would wish to leave the matter open between us and the Austrians, and if we could see the poor fellow carried off and hung, to let us take the ignominy of the transaction on our own shoulders."[28] This statement is consistent with the statements of other foreign officers when dealing with immigration issues. "U.S. statesmen took a stand [on immigration issues] not in pursuit of some internal political advantage but out of the conviction that some U.S. ideological interest was involved.[29]

American ideology was definitely involved. The American feelings towards Austria and Hungary almost certainly played a role in this decision making. The perception of the United States by other nations and people would have also suffered had the United States allowed Austria to determine Koszta's fate. Though they exceeded his authority, the State Department therefore upheld Brown's actions. In Secretary Marcy's ultimate treatise, he says: "...compliance with such a demand [to release Koszta to Austria] would be considered a dishonorable subserviency to a foreign power, and an act meriting the reprobation of mankind..."[30]

The immediate result of Brown's letter to Ingraham was the issuance, by Ingraham, of an ultimatum to the Austrians. "I have been directed by the American Charge at Constantinople to demand the person of Martin Costa [Koszta], a Citizen of the United States taken by force from the Turkish soil and now confined on board the Brig "Hussar." And if a refusal is given to take him by force. An answer to this demand must be returned by 4o'clock P.M."[31] An important point of this note is Ingraham's reference to Koszta as a Citizen of the

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[27] Ibid., Leaf 6-7. Ingraham to Langdon, 24 June 1853.

[28] Klay *Daring Diplomacy*, 88.

[29] Tucker and others, ed. *Immigration and U.S. Foreign Policy,* 32.

[30] Klay *Daring Diplomacy,*88

[31] Ingraham. The Letterbook of the USS St. Louis. Leaf 9. Ingraham to the Commander of the Austrian brig *Hussar*, 2 July 1853.

United States, knowing this not to be the case, but also knowing that the Austrians would not understand the American legal distinctions. Another interesting point is Ingraham's willingness to use force, echoing his comments in a previous letter, and this willingness succeeded in obtaining the release of Koszta at approximately 3:30pm.

"And now you Gentlemen of the pen must uphold my act..."[32] Ingraham realized that he had perhaps overstepped his bounds, and he also knew that the ultimate resolution of the affair had to be determined between the cabinets of the two nations. "I know Sir, I have taken a fearful responsibility upon myself by this act, but after Mr. Brown had told me Costa [Koszta] had taken the oath of allegiance to the U.S. and forsworn all allegiance to Austria, and was an American Citizen & had been under the protection of the legation at Constantinople, I could not hesitate to believe he was fully entitled to protection."[33]

Secretary of State William Marcy enters the picture at this point. Chevalier Hülsemann, on the 29th of August, brought the affair to the official attention of Marcy. He demanded the disavowal of the actions of Ingraham and Offley, as well as the return of Koszta to Austrian hands. He also demanded reparations to satisfy Austrian honor.

The affair by this time had reached heroic proportions to the American people. Ingraham was acclaimed everywhere as a national hero, ultimately receiving a gold medal from Congress. Virtually every newspaper reported Hülsemann's demands, and the nation waited eagerly for Marcy's response.

Marcy was a New York lawyer, had been the Governer of New York, and served on the New York Supreme Court. He came very close to winning the Democratic Party's presidential nomination in 1852, an office he very much hoped to achieve. This affair afforded him an excellent opportunity, and "he set himself to write a diplomatic paper that should gain the good-will of the people."[34] From this paper came the doctrine of domiciliation.

The response was very detailed, and it addressed all of Hülsemann's points at length. In short, though, it criticized Austria for abducting Koszta and supported the actions of Ingraham, Brown, and Offley. The most important point was the use of a person's domicile as a determining factor for diplomatic protection. "And although he had not yet become a naturalized citizen, he had established his domicile in the United States and become thereby clothed with the national character." Marcy continued: "Whenever by the operation of the law

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[32] Ibid., Leaf 11-12. Ingraham to George P. Marsh, 5 July 1853.

[33] Ibid., Leaf 10-11. Ingraham to Secretary of the Navy James Dobbin, 5 July 1853.

[34] James Ford Rhodes. *History of the United States From the Compromise of 1850, Vol. I* (London: MacMillan & Co., 1900), 417.

of nations, an individual becomes clothed with our national character, be he native-born or naturalized citizen, an exile driven from his early home by political oppression, or an emigrant enticed from it by the hopes of a better fortune for himself and his posterity, he can claim the protection of this government, and it may respond to that claim without being obliged to explain its conduct to any foreign power; for it is its duty to make its nationality respected by other nations and respectable in every quarter of the globe." [35]

This, therefore, answered to great extent future questions that might arise from American diplomats overseas pertaining to an emigrant's citizenship. The key point is that a first paper does not ensure American citizenship or protection, but the establishment of a permanent domicile in the United States, along with a first paper, does require the United States to offer some diplomatic protection. Sixteen years later, Assistant Secretary of State John Davis wrote: "...the Secretary [Marsh] rests the right of the government to clothe the individual with the attributes of nationality, not upon the declaration of intention to become a citizen, but upon the permanent domicile of the foreigner within the country."[36]

The reaction to Marcy's response was also much more immediate than some possible future crisis. "Irrespective of party divisions, the country voiced approval of Marcy's skill and discernment in handling a difficult matter."[37] The affair, not surprisingly, also set back American and Austrian relations for some time. It became, furthermore, the topic of legal arguments for many years culminating in the 1889 Supreme Court decision supporting the government's handling of the case.

Thus the doctrine became a portion of American diplomatic policy. Ultimately, in 1907, the United States passed a law saying, "when any person has made a declaration of intention...as provided by law and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the government in any foreign country."[38] In the *Instructions to Diplomatic Officers of the United States*, Chapter XII, Part 4 says: "No passport shall be granted or issued to, or verified for, any persons other than those owing allegiance, whether citizens or not, to the United States."[39] The point to

[35] Ibid., 418.

[36] Klay *Daring Diplomacy*, 185.

[37] Learned "William Learned Marcy," in *The American Secretaries of States and Their Diplomacy*, 272.

[38] Klay *Daring Diplomacy*, 194.

[39] A. H. Feller and others, ed. *Diplomatic and Consular Laws and Regulations of Various Countries* (Washington, DC: Carnegie Endowment for International Peace, 1933), 1272.

note is the clause stating "whether citizens or not." Both Offley and Ingraham had hesitated due to the citizenship question of Koszta, hesitation that most likely would not have happened had this regulation been in effect prior to the affair.

Judging by the American people's response to the Martin Koszta affair, such a doctrine was also desirable. Though they were not anxious to involve themselves in European strife[40], from the Monroe Doctrine in 1823 forward, the American people were willing to sacrifice for the concept of self-rule.[41] This meant, by extension, giving all possible support for the emigration of Europeans to the United States, providing a place free from the, in their minds, unjust authoritative monarchies of Europe. The sonnet on the Statue of Liberty reads: "...Give me your tired, your poor, your huddled masses yearning to breathe free..." Noble sentiments that the American people, a people so close to their own immigration, firmly believed in, even though it would be years after the Koszta affair before the Statue was built.

The ultimatum issued by Ingraham was perhaps the first ultimatum issued by America to another nation. The affair and Marcy's response to Hülsemann ignited the nation's spirit. It was, however, the long term affect of the doctrine of domicilitation espoused in that response that truly makes the Martin Koszta affair an important event in American history.

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[40] Bemis, *A Diplomatic History of the United States*, 310.

[41] Cecil V. Crabb. *The Doctrines of American Foreign Policy, Their Meaning, Role, and Future* (Baton Rouge, LA: The Louisiana State University Press, 1982) 381.

Japanese Orientalism in Britain: As Seen through the Eyes of W.S. Gilbert and Arthur Sullivan in their opera, *The Mikado.*

by Nicole Penley

"The Orient was almost an European invention, and had been since antiquity a place of romance, exotic beings, haunting memories and landscapes, [and] remarkable experiences."[1] The Orient, during the nineteenth century, referred to all cultures to the east of Western Europe, from Turkey and the Middle East through Asia and the Pacific Islands.[2] Currently, the term Orientalism, especially in the Arts, is used to describe music and art that was influenced by these eastern cultures but had been filtered through European models. As a result, these pieces often tell more about the European cultures than they do about the culture that they were modeled after. *The Mikado* (1885) is not only one of Gilbert and Sullivan's most popular operas, but it also can illustrate how the British populace viewed the Orient in general and the Japanese in particular.

Relations between Britain and Japan began in earnest, when, in 1857, Queen Victoria presented the Emperor of Japan with a warship as a token of friendship. In return, the Emperor graciously allowed a complete Japanese village to travel to England in order to study Western civilization. When the colony of Japanese was formed at Knightsbridge in 1885, the Japanese were not only able to learn about the British, but the British were able and quite

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[1] Edward Said in an excerpt from his study, *Orientalism*. Michael Beckermann, "The Sword on the Wall: Japanese Elements and their Significance in *The Mikado*," *The Musical Quarterly*, 73 (1989), 317.

[2] It should be acknowledged that in current scholarship, Orientalism has negative connotations and is rarely used except in reference to nineteenth-century European attitudes towards Eastern cultures. Edward Said defines the Orient as existing for the West, being constructed by and in relation to the West. It is the mirror image of what is inferior and alien ("Other") to the West. In the *New Grove Dictionary of Music and Musicians* online catalog, musical Orientalism is defined as the dialects of musical exoticism within Western art music that evoke the East or the orient; the latter taken to mean the Islamic Middle East, or East and South Asia, or all of these together.

willing, to learn all about the Japanese.[3] In fact, a display of Japanese arts and crafts at the 1862 International Exhibition in London had already inspired a vogue for Japanese design.[4]

The popularity of the Japanese village at Knightsbridge is also evidenced by the great amount of publicity that it received. In February of 1885, the *Illustrated London News* ran an article on the transplant of a complete Japanese village to Knightsbridge.[5]

The village contained approximately one hundred men, women, and children, along with all the shops, teahouses, theatres, and places of worship that made up this village in Japan. The *Times* also ran ads inviting people to visit the village and even providing times when traditional Japanese entertainment would be available.[6]

The Mikado, the 9th joint production by Gilbert and Sullivan, premiered during the height of British interest in Japanese arts and culture. Therefore, when *The Mikado* premiered on the 14th of March of 1885 it was an instant success. In fact, *The Mikado* was so successful that it enjoyed an opening run of 672 performances and prompted Gilbert's publisher to request a book version of the story to be written, although due to many factors, including World War I, the book was not published until 1921.

Gilbert's depictions of the Japanese in his book, *The Story of The Mikado*, are particularly indicative of the way that the Japanese were viewed throughout British society and indeed as "Orientals" were viewed in Western culture. Gilbert begins by describing the people of Japan as "brave beyond all measure, amiable to excess, and extraordinarily considerate to each other and strangers."[7] From this description, Gilbert moves on to explain the evolution of Japanese society, beginning from the time in which they regarded the Mikado as "four-fifths a King and one-fifth a god," until they gradually discarded many of their "peculiar tastes, ideas and fashions."[8] Gilbert also concludes that the Japanese discarded many of these particular tastes when "they found out that they did not coincide with the ideas of the more enlightened countries of Europe."[9]

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[3] Cunningham Bridgeman, "The Making of *The Mikado*," *Gilbert and Sullivan Archive*, http://boisestate.edu/gas/mikado/html/mikado.html, October 26, 2002.

[4] D'Oyly Carte Web page, http://www.doylycarte.org.uk/Operas/The_Mikado.htm, March 13, 2003.

[5] Beckerman, "The Sword on the Wall," 305.

[6] *Times* (London), 16 March 1885.

[7] Sir W.S. Gilbert, *The Story of the Mikado* (London: Hazell, Watson and Viney, 1921), p. 1

[8] Ibid., 1.

[9] Ibid., 1-2.

From the very beginning of his book, Gilbert is placing Japan on a different social level than Britain and the other European countries. He seems to be saying that the Japanese are a wonderful people, who wish to be more like the British, but they simply do not fit into the rigid class structure which shaped British society.

Once the reader understands clearly how Japan fits into the social hierarchy of the world, as known by the British populace, Gilbert then launches into an analysis of the British government towards the Japanese. Gilbert begs his audience to "bear in mind" that the British government is "(in their heart of hearts) a little afraid of the Japanese" due to the major defeat that the Russians suffered at the hands of the Japanese during the Russo-Japanese War. He goes on to explain that this fear is not "entertained by the generality of the inhabitants of Great Britain and Ireland . . . but is confined mainly to the good and wise gentlemen who rule us, just now."[10] Gilbert excels at writing for his audience. Obviously, this book was intended for the inhabitants of the British Empire, as much of Gilbert's humor is directed at both the ruling classes and the Japanese.

In *The Mikado* itself, Gilbert's characterizations of the Japanese characters often make them seem as two-dimensional as the figures painted on Japanese dishes. In fact, the opening chorus sings, "If you want to know who we are, we are gentlemen of Japan: on many a vase and jar, on many a screen and fan . . .."[11] Because Gilbert wants the audience to know that the characters are not meant to describe the Japanese, he craftily positions his characters in such a way that although they appear to be Japanese, they are actually caricatures who have much more in common with British than with Japanese society.

Although the characters in this opera are intended to be caricatures of the British, Gilbert still inserts remarks which could be considered directed at the Japanese both into his libretto and in his book. Yum-Yum's dialogue before her solo, "The sun, whose rays are all ablaze," in the Second Act has her declaring, "Sometimes I sit and wonder, in my artless Japanese way, why it is that I am so much more attractive than anybody else in the whole world."[12] This statement could be taken to imply that the Japanese were viewed as innocent and unsophisticated in their dealings with the British. Whether or not the statement was intended to be derogatory or complimentary is unclear.

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[10] Ibid., 2. It should be realized that the Russo-Japanese War of 1904-1905 occurred after *The Mikado* was written. This excerpt from the book was obviously a later addition and not part of the original story.

[11] W.S. Gilbert and Arthur Sullivan, The Mikado, Authentic edition (Milwaukee, WI: Hal Leonard, 1980), pp. 15-16.

[12] Ibid., 145.

In the third verse of "The Criminal Cried," Pooh Bah, the Lord High Everything Else, sings, "Now tho' you'd have said that he was dead (for its owner dead was he), it stood on its neck, with a smile well-bred and bowed three times to me!"[13] This verse caricatures the perpetually smiling, obsequious stereotype of Asian men and women. Although for many people in the audience, the Japanese Village at Knightsbridge would be their only contact with the Japanese, the use of this stereotype serves to reinforce the idea of two-dimensionality for the characters in the opera and the Japanese in general.

An excerpt from Gilbert's book, *The Story of the Mikado*, translates the name Yum-Yum into English as:

> "The full moon of delight which sheds her remarkable beams over a sea of infinite loveliness, thus indicating a glittering path by which she may be approached by those who are willing to brave the perils which necessarily await the daring adventurers who seek to reach her by those means."[14]

Gilbert then comments on the compactness of the Japanese language, "when all those long words can be crammed into two syllables – or rather one syllable repeated."[15] This excerpt also appears to have been influenced from contact with the Japanese and not resulting from caricatures of the British.

A second excerpt from the book reveals another way that the British viewed the Japanese. As the Japanese warriors led the procession of the Mikado into Titipu, they wore "red and black armour, and helmets which concealed their pretty faces."[16] An interesting word choice, "pretty" is not necessarily the first word that would be considered when describing armed troops. It does, however, bring up the bias that many people in the British Empire had against Asian cultures. They believed that Asian men looked feminine especially because of their lack of facial hair and their clothing, which often consisted of brightly-colored silk robes. It was actually considered a great sacrifice when the lead male roles consented to shave their facial hair in order to appear more authentically Japanese in the production. As for the clothing, the brightly colored silks and the similarity to women's clothing made the men uneasy.

Many of the reviews following the first performances of *The Mikado* deal almost exclusively with the costumes and the effect that they had on the audiences. The *Punch* article, "Before the Curtain," contains an anecdote

[13] Ibid., The Mikado, 185.
[14] Gilbert, *The Story of The Mikado*, 4.
[15] Ibid, 4.
[16] Ibid, 91.

whereas the actor who played Ko-Ko (the Lord High Executioner), Mr. George Grossmith, was having problems connecting with his audience. In the Second Act, Mr. Grossmith gave a "kick-up" and showed his "white-stocking'd legs" after which the audience felt relieved because they found out what had been missing all along, his legs. Whether or not the audience really felt uncomfortable seeing the men in the kimonos, which would be considered dresses by the majority of audience members, or whether Mr. Grossmith was uncomfortable wearing them, there is no clear evidence either way. Below is a sketch of George Grossmith in his role as Ko-Ko found in the *Punch* article.[17]

Japanese clothing, however, was considered to be unflattering not only to the male sex. William Beatty-Kingston in his article, "Our Musical-Box," described the costumes as "unbecoming to men and women alike – especially the latter . . . imparting to the prettiest girl's figure the seeming of a bolster loosely wrapped up in a dressing-gown."[18] This blurring of the lines between the sexes was a major issue for the audiences and reviewers that attended these productions. The reviewer from the *London Times* states, "Mr. Grossmith and Mr. Barrington walk and sit as if petticoats had been their ordinary garb since infancy."[19] A reviewer from *The Academy* exclaims, "he [Mr. Barrington] pads about the stage with the half-feminine courtesy and softness which belong to the cultivated male in the Land of the Rising Sun."[20] These statements refer to the point we already made about how the British felt those Japanese males were feminine.

The reviewers of *The Mikado* all exclaimed how authentic the costuming and the mannerisms were in the production. Realizing that it wasn't enough simply to set the opera in Japan, Gilbert found living models in the village at Knightsbridge. A Geisha and a male dancer were given permission by the directors of the Knightsbridge Village to teach the actors and actresses at the Savoy Theatre how to move, act and dress like the Japanese.

When it came time to rehearse the opera, it was evident to Gilbert that the Savoy actors and actresses, had to undo their training in the "noble dignity of action which distinguishes the English stage" and be transformed into Japanese

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[17] Nibbs, "Before the Curtain," *Punch* 88 (1885), 145.

[18] William Beatty-Kingston, "Our Musical-Box," *The Theatre*, New series 5 (1885): 186-90, http://www.sharkli.comsavoy/mikado/mik4.html, October, 17, 2002.

[19] *Times* (London), 16 March 1885.

[20] "The Stage: 'The Mikado'," *The Academy,* New Series 27 (673): 230-231, http://www.sharkli.com/savoy/mikado/mik3.html, October 17, 2002.

who were not the "ideal of perfect grace and loveliness."[21] The Geisha and the male dancer were employed by Gilbert in order to complete this transformation. The Geisha taught the actresses how to walk, run, and dance in "tiny steps with toes turned in, as gracefully as possible" as well as how to "spread and snap a fan either in wrath, delight, homage, and how to giggle behind it."[22]

The Japanese tutors taught not only mannerisms, but also were instrumental in choosing the costumes and make-up. The Japanese were consulted in all costuming decisions and only Japanese fabric was used in the costumes. Some of the costumes used in the production, were genuine "Japanese ones of Ancient date."[23] In fact, Katisha's gown was approximately two hundred years old and the Mikado's robes and headgear were faithful replicas of the "ancient official costume of the Japanese monarch."[24] Copies were made of the armour and masks that belonged to the Mikado's bodyguards, because the originals would not fit anyone over the height of four foot five inches.[25]

The make-up was attended to by the Geisha; addressing details such as hair, eyes and facial features. Hair was a problem, especially for the male actors who had much more facial hair than their Japanese counterparts. Mr. Richard Temple, who played the character of the Mikado, allowed his eyebrows to be shaved off and huge, false ones to be painted on

[21] Bridgeman, "The Making of *The Mikado*."
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.

his forehead in the fashion of former Mikados. This picture is believed to be of Richard Temple as the Mikado on the cover of a book of piano music based on music from the opera, *The Mikado.*[26] In this picture, one can see the oversized eyebrows and the authentic costume of the former Mikados of Japan.

The fan, which can be noticed in the two previous pictures, plays a very important role in the both the costuming and the action of this opera. Everyone in the cast carries a fan, both the women and the men. The Three Little Maids use them to flirt, Pooh-Bah uses his to wave away his admirers, and Ko-Ko uses his to illustrate the beheading of a guinea pig. H. M. Walbrook in his book, *Gilbert and Sullivan Opera: A History and a Comment,* claims that "on the first night the audience was almost as fascinated by the fans as by those who so gracefully managed them."[27] The fans also made an impression on the author of the *Punch* article, "Before the Curtain," for he includes a sketch that he called "The Two Fanny Japs at the Savoy," which is intended to represent Gilbert and Sullivan in full Japanese regalia.[28] The fan that Gilbert, the man on the right, is carrying bears a picture of Mr. D'Oyly Carte, the owner of the Savoy Theatre. The artist who sketched this picture has given Sir Arthur Sullivan, the composer of the music for this opera, music notes on his robes and fan and has also given him a conductor's baton.

The Two Very Fanny Japs at the Savoy.

The music that Sir Arthur Sullivan composed for *The Mikado* also falls into the category of Orientalism because although it is based on a genuine Japanese theme, it has been altered to make it sound more English. There is a consensus among historians that the "Miya Sama" melody is an authentic Japanese tune. It has been traced back to the Restoration War of 1867-68 between the Bakufu or Tokugawa Army, which opposed the Mikado, and the Restoration Army, which supported the new

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[26] Paul Seeley, "The Japanese March in 'The Mikado'," *The Musical Times* CXXVI (1985), 455.

[27] H.M. Walbrook, "Gilbert and Sullivan Opera: A History and a Comment (Chapter X: A Japanese Opera)," *Gilbert and Sullivan Archive,* http://math.boisestate.edu/gas/mikado/html/mikado.html, October 26, 2002.

[28] Nibbs, "Before the Curtain," 145.

Emperor, Meiji.[29] During this war, Commander Shinagawa of the Restoration Army commissioned a march so that he could teach his troops to march in time. The resulting march, "Miya Sama," eventually found its way to London and into the hands of Sullivan.

Due to the large number of rumors that have been published about Gilbert, Sullivan, and their operas, it has been difficult to track down exactly how the "Miya Sama" tune found its way to Sullivan. It is possible that the song came into his hands by way of the Japanese Village at Knightsbridge, although there is no documentation of any musical exchange occurring. Another possibility was published in 1907 when *The Globe* published an article claiming that Mr. Richard Temple, the actor who played the Mikado in the opera, gave the tune to Sullivan.[30] This claim, however, also can not be verified. The one reference to Japanese music that historians can find occurs in Sullivan's diary on January 6, 1885. The entry is simply, "Went to see A. B. Mitford – got some Japanese musical phrases from him."[31] Since this entry is the only reference to Japanese music, it can be concluded that the "Miya Sama" melody came to Sullivan by way of Mitford, who had been Secretary at the British Legation in Tokyo and most likely encountered it there. Further documentation exists in the form of a letter written by Gilbert to Mitford only days after the first production where Gilbert writes, "I must thank you again for your invaluable help."[32]

Sullivan, however, does not use the original "Miya Sama" words or melody in *The Mikado*. He decided to use only the first of four verses and also changed some of the words to allow the singers to articulate more clearly from the stage. For example, the words "hira-hira" in the original were changed to "pira-pira" to give the singers a stronger attack.

This disregard for the meaning of the text shows that Sullivan did not have translation of the text, or if he did, he showed no compunction in adapting it to suit the needs of his opera. There have also been disagreements over the years as to how to translate the refrain and whether or not Sullivan knew of them. Ian Bradley, author of *The Annotated Gilbert and Sullivan*, suggests that "tokoton" is a Japanese slang word for "the finish" and suggests that there are "possible obscene connotations."[33] Kiyoshi Kasahara with the Institute of Cultural Science at the University of Tokyo, however, refutes this idea. He

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[29] Seeley, "The Japanese March in 'The Mikado'," 455.

[30] Ibid., 455.

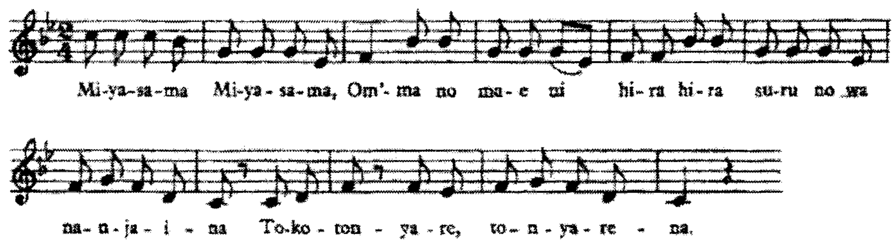
[31] This diary entry actually appears in two separate sources. Seeley, "The Japanese March in 'The Mikado'," 456 and Beckerman, The Sword on the Wall," 312.

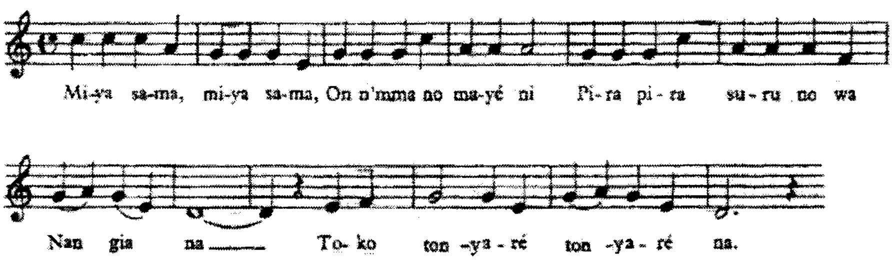
[32] Jane W. Stedman, *W.S. Gilbert: A Classical Victorian and His Theatre*, (Oxford: Oxford University Press, 1996), p. 225.

[33] Seeley, "The Japanese March in 'The Mikado'," 455.

believes that "tokoton-yare, ton-yare-na" is simply an "onomatopoeic representation of the sound and rhythm of drums" and has no direct translation.[34]

Sullivan also chose to alter the original "Miya Sama" melody. Below is the original, written by Commander Ohmura, and the melody as it appears in the opera, written by Sir Arthur Sullivan. Obviously, the two versions are still very





The rhythms have barely been altered - retaining the steady marching beat - and the general shape of the lines has also been maintained. In fact, Sullivan has chosen a tune that sounds Japanese because it has so many repeated notes and is based on a pentatonic scale (D-E-G-A-C) but also can be easily altered to make it sound English for the same reasons. Since much of England's folk music is inherently pentatonic and many of Sullivan's previous accompaniments are based on repeated patterns and notes it was not a large step for Sullivan to incorporate this Japanese melody into his new opera.

If Sullivan's views on Japanese music were similar to those held by the reviewers of the opera, there can be no doubt why Sullivan chose to make the music in this opera sound so English. *The Monthly Musical Record* ran a review in which the author congratulates Sullivan on his avoidance of Japanese music, especially

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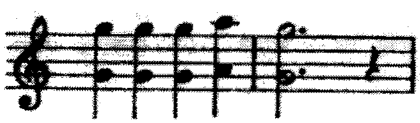
[34] Ibid., 455.

"songs constructed out of the Japanese scale which could only be sung in the Japanese manner, accompanied by that pleasant combination of mewling, squalling in falsetto voice, and thumping on a flabby drum."[35]

The *Times* also claims that Sullivan acted wisely in choosing not to include genuine Japanese music in the opera, although for a slightly different reason. Since, as the author of the review claims, there were perhaps "30 persons among the audience who had so much as heard of a pentatonic scale or a Koto (a 13-stringed dulcimer)," then is was a wise decision not to include genuine Japanese music in the opera.[36] The British opinion of Japanese music being so low, it is no surprise that Sullivan chose to Westernize the "Miya Sama" melody.

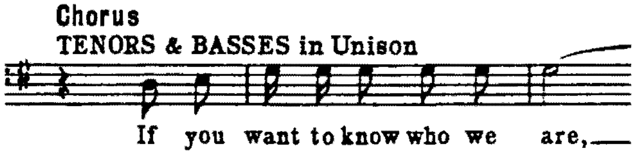
Many of the reviewers, however, were wrong in believing that the only two numbers in the opera that contain Japanese material are the overture and the march for the Mikado. Sullivan actually uses musical motives from the "Miya Sama" melody and places them throughout the opera. There are songs when the Japanese material is clearly audible ("Miya Sama"), when it is submerged ("The Sun Whose Rays") and also when it is vanishes altogether ("Sing a Merry Madrigal").

Sullivan breaks the original melody into fragments, or leitmotifs, which represent the Japanese every time they are played. The first is an open fifth and the second is a repeated



note figure. Both of these leitmotifs can be found throughout the opera, either in this original form or ornamented. For example, the open fifth opens both the opera and the "Miya Sama" melody, but it is also present in "If You Want to Know Who We Are," i.e. starting on D and moving up to the G.[37]

[35]"The Mikado," *The Monthly Musical Record, Gilbert and Sullivan Archive*, http://math.boisestate.edu/gas/mikado/html/mikado.html, October 26, 2002.
[36] *Times* (London), 16 March 1885.
[37] Gilbert and Sullivan, The Mikado, 15.



Another aspect of Japanese music that is used by Sullivan in *The Mikado* is monophony. The English have a long tradition of choral music, specifically pieces such as the English madrigal, of which there is an example in this opera. Such a long standing tradition means that pieces such as "If You Want to Know Who We Are," where all the voices are singing in unison, are extremely unusual.

By taking a look at the overall form of the opera, Sullivan's designs are revealed. In his article "The Sword on the Wall: Japanese Elements and their significance in *The Mikado,*" Michael Beckerman has provided a chart which outlines the numbers in the opera which contain those pseudo-Japanese elements with stars.[38] With this chart, it is easy to see how Sullivan is able to make a cohesive whole out of such little Japanese material. First, Sullivan makes certain that the overture is made up of only songs that contain the "Miya Sama" musical material. Next, he spaces out those songs which are derived from the "Miya Sama" melody throughout the opera, making certain that he begins and ends each act with these songs. These opening and closing songs reinforce the Japanese sounds in the ears of the audience, convincing them that the entire opera sounds the same way. The chart also shows that Sullivan spaced two more songs (16 and 19) into the middle of the longer Second Act to further reinforce the sounds of Japan.

Overture							Act 1											Act 2												
16	13	23	12	23	11	16	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
*	*	*	*	*	*	*	*									*	*	*	*			*			*			?	*	*

All of these characteristics, musical, dramatic, and literary, combine to make *The Mikado* the masterpiece that it has become over the last century. It makes sense, however, to ask what the Japanese themselves would have thought of *The Mikado* at the time of its premiere. Records show that the Japanese who were helping train the actors and actresses at the Savoy found it flattering that the British would write an opera about them.[39] Beckerman, however, believes that the title of the opera would have humiliated the Japanese because in their culture the Japanese were not allowed to even speak the name of their exalted god-like Emperor.[40]

[38] P. 314.
[39] Bridgeman, "The Making of *The Mikado*."
[40] Beckerman, "The Sword on the Wall," 315.

The Japanese could also have objected to being portrayed as bloodthirsty. It is true that all of Gilbert and Sullivan's operas contain references to violence, usually hanging, but this story is unusually filled with talk of beheading, boiling in oil, and being buried alive. In fact, there are more references to cruelty and violence in *The Mikado* than in all the other Gilbert and Sullivan operas combined.[41] Not all of the violent references, however, seem to illustrate Japanese tendencies. In fact, some of these references, such as the dialogue between Ko-Ko and Yum-Yum between numbers 14 and 15, are obviously meant as commentary on British-Indian relations.

> Ko-Ko: I've just ascertained that, by the Mikado's law, when a
> married man is beheaded his wife is buried alive.
> Nanki-Poo and Yum-Yum: Buried Alive!
> Ko-Ko: Buried alive. It's a most unpleasant death.[42]

This excerpt could easily be seen as Gilbert's reference to satie, the tradition in India where a widow throws herself onto her dead husband's funeral pyre thereby committing suicide. Inserting a commentary on British-Indian relations within an opera on Japan is an indication of how Western Europe portrayed all eastern cultures as Oriental without regard for their individuality.

Edward Said contends that Orientalism is not only a passive mode of depiction, it also is a "Western style for dominating, restructuring, and having authority over the Orient."[43] Gilbert and Sullivan's opera, *The Mikado*, fits well into this definition. There is nothing real about the Japan that Gilbert and Sullivan created. They researched the history, the music and the culture and created a wonderland that resembled Japan.

Everything from people to music in this pseudo-Japan that they created had to first be filtered through Western models. "The elusive, omnipotent Mikado is turned into a slightly wacky English gentleman, the stylized Geishas are transformed into giggling schoolgirls, and even the Lord High Executioner is reduced to a lowly, craven tailor."[44]

These characters, which were the most Japanese of all the characters in the opera, had to be made readily identifiable to the British public, therefore they were given identities of common English stereotypes. Even the music in the opera lost its Japanese qualities in order that it might sound more the way that Western culture thought Japanese music should sound. The only true

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[41] Ibid., 316.
[42] Gilbert and Sullivan, The Mikado, 157.
[43] Beckerman, "The Sword on the Wall," 317.
[44] Ibid, 318.

Japanese article left in the opera is the clothing and even that could be considered to be purely ornamental.

The Rise of Nixon

by Megan Kimbrell

Richard Milhous Nixon is one of the most central political figures in American history. Therefore, an analysis of how he rose to national prominence, and so quickly at that, is a worthwhile discussion. For example, Nixon entered the United States House of Representatives in 1946 by defeating the popular Democratic incumbent, Jerry Voorhis. Without previous political experience, Nixon was thrown into Congress where he was promptly placed on the infamous House Committee on Un-American Activities (HUAC). There he gained national fame in the case of Alger Hiss, an accused communist spy. He followed this with a stunning victory in the 1950 senatorial race against Helen Gahagan Douglas. Soon after, Nixon was nominated as the vice presidential candidate in 1952. At the young age of forty, and just six years after his first political campaign, Nixon entered the White House as Dwight D. Eisenhower's vice president. Nixon's meteoric rise to power begs the question of just how exactly he accomplished this feat. The answer to this question is quite simple: Nixon used the issue of communist subversion to further his political career. In fact, the perceived communist threat of the post-World War II era was the chief catalyst in Nixon's rise to the forefront of American politics. His career gained momentum alongside the Red Scare of this era with his public battles against accused communist sympathizers.

Following World War II, Americans became obsessed with the fears of communist subversion. The Cold War produced unstable relations with the Soviet Union and other pro-communist countries, which made for a frightening future. As a result, "Red-baiting," or discrediting those associated with communism, became a way of life for some politicians hoping to get noticed. This was obviously the focal point for men such as Joseph McCarthy, the most notorious Red-baiter of all. In this era, reputations were made or ruined as were careers. Certainly, Nixon's career was furthered, chiefly by the communist issue. The reason for this lies in America's deep concern about communists, and the press that capitalized on those fears.[1]

The influence of the press cannot be overlooked in an assessment of Nixon's rise to fame by way of the communist issue. Journalists obviously understood that their publications sold when they discussed issues that truly concerned the population. The threat of communists in the government was one of those issues, and thus a favorite story for reporters. Therefore, a candidate in an election speaking to this threat or a congressman fighting the evils of communism were both given a great deal of attention, and many times favorably written about in papers and magazines across the United States. Nixon was one of these men to whom journalists paid attention; he was usually involved with an issue that made for a good, sensational story. A look at the influence of the press is important then, for it played a key role in Nixon's political ascendency, beginning with his first election.

Nixon's entry into politics began in September 1945, when he received an offer to run for Congress on the Republican ticket the following election year. The offer came from Herman Perry, an influential banker in Whittier, California, and friend of the Nixon family. Nixon responded enthusiastically to Perry's offer even though he had never held a political office in his life. Shortly after the offer, Nixon heard that the nomination was to actually come from a Republican search committee in the election district of Whittier. This Committee of One Hundred was searching for a candidate that could defeat the popular Democratic congressional incumbent of the Twelfth District, Jerry Voorhis. Therefore, the nomination was not yet Nixon's, for the committee had to interview other candidates before a decision could be rendered. However, when Nixon interviewed with the committee's members, he made a favorable impression upon them. Nixon spoke the Republican credo of the committee when he essentially told them that he did not subscribe to the present government's liberal New Deal policies. Shortly after the interview, Nixon was informed that the nomination was his.[2]

Nixon may have received the nomination, but his challenger in the election was a formidable one. Jerry Voorhis had faced no real challenges to his seat since his entry into Congress in 1937. Voorhis was greatly admired not only in the Twelfth District, but throughout the country. He was also truly respected by his opponents. For example, in 1946 he was dubbed the hardest working member of the House by his colleagues. Even the mainly Republican district of

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[1] Richard M. Fried, *Nightmare in Red: The McCarthy Era in Perspective* (New York: Oxford University, 1990), 3.

[2] Stephen E. Ambrose, *Nixon: The Education of a Politician 1913-1960* (New York: Simon and Schuster, 1987), 118, 120-1.

Whittier consistently elected this New Deal liberal. However, the postwar era witnessed a great deal of ideology changes around the nation. For example, the area of Southern California turned against government controls and a centralized bureaucracy, precisely what the New Deal represented. In this climate, Voorhis was somewhat vulnerable. Still, many political experts considered Nixon, or any other Republican candidate, a lost cause against Voorhis in a congressional campaign.[3]

Preceding the main campaign, both candidates received their respective party nominations, with Voorhis earning 53 percent of the total primary vote. This was a decent showing for Voorhis considering he had not yet begun campaigning. However, Nixon was busy planning how he could turn the campaign around in his favor. Indeed, he needed an issue that could grab the attention of voters. Nixon's future senatorial opponent, Helen Douglas, later claimed that Nixon had nothing to draw on in order to sufficiently debate Voorhis on the issues. Therefore, she argued, he had to wage a vicious campaign to get ahead. A vicious campaign was certainly what it turned into when Nixon claimed that Voorhis was endorsed by a communist organization. The organization was a branch of the local Congress of Industrial Organizations (CIO) called the Political Action Committee (PAC). This was by far the most explosive issue in the campaign.[4]

Shortly after the primaries, Nixon charged that the CIO-PAC openly endorsed Voorhis. Actually, the organization did not support Voorhis. Rather, the National Citizens Political Action Committee (NCPAC) did. Though this organization also contained communists, it was the non-communist liberals of the group that endorsed Voorhis. The NCPAC's communist members fought against this support because of Voorhis's condemnation of the Soviet Union's expansionist policies in Eastern Europe. In turn, Voorhis did not welcome the NCPAC's endorsement. Through all of this, Nixon understood that the CIO-PAC did not really support Voorhis. However, beginning at the infamous South Pasadena debate in September 1946, Nixon convinced the audience and many voters that the CIO-PAC endorsed his opponent.[5]

Nixon and Voorhis debated at the South Pasadena Junior High School on September 13. The most significant part of the debate came towards the end when Voorhis denied, as he had before, an endorsement by the CIO-PAC.

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[3] Kenneth Franklin Kurz, *Nixon's Enemies* (Los Angeles: Lowell House, 1998), 44, 46; Paul Bullock, "Rabbits and Radicals, Richard Nixon's 1946 Campaign Against Jerry Voorhis," *Southern California Quarterly* 55 (Fall 1973), 320.

[4] Bullock. "Rabbits and Radicals", 324-5; Helen Gahagan Douglas, *A Full Life* (New York: Doubleday, 1982), 244.

[5] Kurz. *Nixon's Enemies*, 48.

Unfortunately, Voorhis demanded proof of the endorsement from his opponent. At that moment, Nixon confidently burst across the stage, handed Voorhis a paper, and stated that it proved the charges were correct. Though the paper only (correctly) proclaimed that he was endorsed by the NCPAC, Voorhis was visibly shaken. He tried to point out that the endorsement was from a PAC different than the CIO-PAC, but Nixon rebutted with the statement that the two organizations were virtually the same thing. Voorhis was not heard the rest of the evening over Nixon's accusations and boos from the audience. The damage had been done, as Voorhis's campaign continued to follow a downward spiral leading up to the general election.[6]

Close to election day, Nixon intensified his attacks as he Red-baited Voorhis. For example, the Nixon campaign ran an advertisement in local newspapers charging that, among other things, Voorhis was a registered Socialist and his voting record in Congress was more communistic than Democratic. In the last weeks of the campaign, Nixon came across as a warrior fighting the "Red tide." He told audiences that communist sympathizers were gaining positions in the government, which proved that there was a conspiracy to overthrow the present government in favor of a communist one. These charges helped to pull in more votes for Nixon as the election neared.[7]

On election day, Nixon prevailed in a big way, winning by a margin of 15,000 votes. Nixon was sent to the House with 56 percent of the vote, following in the foot steps of many other Republicans. Indeed, the Republican party enjoyed a large margin of victory in 1946, as they gained a majority in Congress. In the prevailing atmosphere of change, the Democratic party suffered a great loss. However, this does not take away from Nixon's overwhelming victory. Nonetheless, it is still debated by historians as to whether or not the communist issue played the decisive role in Nixon's victory, or if Voorhis's defeat can simply be attributed to the these other Republican victories. It is argued by some scholars that Americans did not even understand the issue of communism in 1946. In fact, it is often cited by historians that Nixon, years later in his memoirs, wrote that communism was not the central issue of the campaign. Nixon claimed that the PAC issue only provided emotional excitement, not motivation for voters. Even a *Time* magazine article from 1946 mentioned that Nixon plugged issues dealing with such topics as veterans' housing, but did not personally attack his opponent.[8]

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[6] Jonathan Aitken, *Nixon: A Life* (Washington, D.C.: Regnery, 1993), 126-7.

[7] Kurz. *Nixon's Enemies*, 49.

[8] Kurz. *Nixon's Enemies*, 52; Richard Milhous Nixon, *The Memoirs of Richard Nixon* (New York: Grossett & Dunlap, 1978), 41; "New Faces in the House," *Time*, 18 November 1946, 26.

Though these arguments may seem convincing, a close assessment of the race proves that communism was the main issue in the campaign. It was the difference between victory and defeat. As noted before, Voorhis was an extremely popular incumbent. Even in the climate of discord following the war, prominent Republicans still believed that Voorhis was unbeatable, and that Nixon running against him was simply a gamble. However, following the Pasadena debate, Voorhis found himself on the defensive as he had never been in his previous campaigns. He not only had to defend himself against an issue that he had never dealt with, but one that grabbed the attention of thousands of Americans following the war. Even Voorhis wrote years later that the tricky way in which Nixon discredited his voting record with the PAC issue, and related it to communism worked very well in 1946. In fact, Voorhis almost mocked Nixon's claim that the communist issue was not central to the campaign. It seems Voorhis himself realized that the frustrations that followed from working to deny the serious issue of endorsements from communist organizations, and a voting record sympathetic to communists, was too much. The PAC issue worked extremely well for many reasons. One reason was because Americans actually did fear communism in 1946. A poll taken in that year found that 52 percent of Americans believed communists should be exposed at whatever cost, even if that meant executing them. It is obvious that there was in fact a concern about communist subversion at the time of the election. Another reason this tool worked so well was due in large part to the press.[9]

Nixon was strongly supported by most of the newspapers in the 1946 election. Early on, the press realized what an explosive issue anything connected to the Soviet Union and communism could be. An example of this is seen in the October 3 issue of the *Monrovia News-Post*, a California paper that carried a story about Voorhis entitled, "Pro-Russian Votes Alleged." The article stated that it was now in doubt as to whether or not Voorhis was pro-Russian. It claimed that Voorhis was sympathetic to Russia because of the revelation that he voted for left-wing programs six times. These votes were seemingly not remotely related to the issue of communism, but the paper grabbed the attention of Americans by claiming that Voorhis was suddenly an enemy of the United States. The same things happened in other newspapers, including the prestigious *Los Angeles Times*, which heavily supported Nixon. This is significant because the *Times* dominated the Twelfth District with its campaign

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[9] Ambrose. *Nixon: The Education of a Politician 1913-1960*, 125; Jerry Voorhis, *The Strange Case of Richard Milhous Nixon* (New York: Paul S. Eriksson, 1972), 10, 12; American Institute of Public Opinion, *The Gallup Poll, Public Opinion 1935-1971* (New York: Random House, 1972), 587, 594.

coverage. More importantly, Kyle Palmer, a political reporter for the paper, picked Nixon out early on as a man with potential for winning campaigns. Accordingly, Palmer enjoyed accusing Voorhis of being a Socialist while praising Nixon. Obviously, Voorhis suffered from a lack of positive coverage from this large newspaper. In fact, even when he tried to set his record straight, the *Times* and other Southern California newspapers did not print his story. Voorhis's daily schedules and rally announcements were also not usually printed in the biased papers. On the other hand, these same papers, especially the *Times*, printed the stories that made Nixon look good while ignoring those that might tarnish his reputation. Due to these circumstances, Nixon prevailed in the election and took off for Washington, where the communist issue changed his life forever.[10]

Nixon was sworn into the Eightieth Congress in January 1947, just a year away from the case that would give further life to his career. Nixon was appointed to HUAC, the House committee notorious for its investigations of alleged communists in the government. HUAC presided over the infamous 1948 Hiss case that pitted a former communist, Whittaker Chambers, against Alger Hiss who was accused of being a communist spy. In the center of the drama was Congressman Nixon. It was the Hiss case that truly started him on the road to fame.

The affair began in July 1948, when Elizabeth Bentley, called "The Red Spy Queen," testified before HUAC. She accused several government officials of being communist agents. This seemed shocking enough, but HUAC had no proof that Bentley was correct. Nixon began his role in the case by persuading Robert Stripling, HUAC's chief investigator, to find a witness that could corroborate Bentley's accusations. That witness turned out to be the senior editor of *Time* magazine, Whittaker Chambers.[11]

The affair intensified when Chambers took the stand a month later, and proceeded to corroborate Bentley's charges. Then, Chambers added another name to the list of supposed communists. That name was Alger Hiss, a former Department of State official. The charge seemed positively ridiculous. When a suave and handsome Hiss took the stand two days later to deny the charges, HUAC was persuaded to drop the case. Most of the committee seemed pleased with Hiss's flat denial of never being a communist. Nixon was not convinced, however.

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[10] Frank Mankiewicz, *Perfectly Clear: Nixon from Whittier to Watergate* (New York: Quadrangle Books, 1973), 44; David Halberstam, *The Powers That Be* (New York: Alfred A. Knopf, 1979), 256-8.

[11] Aitken. *Nixon: A Life*, 150.

Nixon told the story that Hiss's behavior seemed too suspicious. He felt Hiss went overboard in his role as the innocent man wrongly accused. He believed Hiss's performance was too good, and therefore not a convincing denial. When HUAC met to discuss ending the investigation, Nixon took the lead in arguing his point. He claimed that Hiss denied ever knowing anyone by the name of Chambers. However, he felt that it was quite possible Hiss may have known Chambers, only by a different name. Nixon said if Hiss was not truthful about this, he also may have lied about not being a communist. These arguments were obviously quite convincing, for years later in his book *Witness*, Chambers wrote that congressmen rallied around Nixon as he "became the man of decision of the first phase of the Hiss case." Thus, HUAC decided to continue an investigation into a possible relation between Chambers and Hiss. From that point on, Nixon became Hiss's "unofficial prosecutor."[12]

The investigation and prosecution was launched a few days later. First, Chambers was interviewed by Nixon's subcommittee. Chambers revealed that he knew a great deal of personal information about Hiss during the meeting. Then, on August 17, Nixon told Stripling to summon both Chambers and Hiss before the subcommittee. The confrontation took place in New York City at the Commodore Hotel. The most striking part of the confrontation was when Hiss asked Chambers if he had ever gone by the name of George Crosley, to which Chambers denied in a strangely cocky manner with a smile on his face. Following this revealing meeting, Nixon determined that somehow Chambers and Hiss knew each other. The next day, the front page of the *New York Times* read, "Alger Hiss Admits Knowing Chambers." The story provided details of the Commodore meeting, but more importantly, it referred to Nixon a great deal throughout the article. It definitely left the reader with the feeling that Nixon was taking care of the now escalating case. Also of significance, to the left of this article read the headline "Anglican Bishops Fear Communism as a World Peril." It cited that the Bishops considered the menace of communism to Christianity to be their biggest concern. Certainly, this only added to Nixon's role as America's chief investigator of communists. The public was, undoubtedly, now enthralled.[13]

The American audience was further excited by the Hiss case when on August 25, a public hearing of HUAC was broadcast on national television. It

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[12] Nixon. *The Memoirs of Richard Nixon*, 55; Whittaker Chambers, *Witness* (South Bend, Ind.: Regnery/Gateway, 1952), 557; Alger Hiss, *Recollections of a Life* (New York: Seaver/Henry Holt, 1988), 203.

[13] Ambrose. *Nixon: The Education of a Politician 1913-1960*, 182; C.P. Trussell, "Alger Hiss Admits Knowing Chambers; Meet Face to Face," *New York Times*, 18 August 1948, 1.

was the first major congressional hearing to be televised, and undoubtedly damaged Hiss's reputation. Nixon and other members of HUAC succeeded in building a strong case against Hiss as they grilled him for five hours. Magazines and newspaper articles swarmed with the word that Stripling, and especially Nixon, questioned Hiss most sharply, including a *Time* article which provided readers with Nixon's questions and Hiss's testimony. The drama was in full force.[14]

The affair heated up further with the revelation of the "pumpkin papers." In December 1948, Chambers produced evidence that seemingly connected Hiss to the underground communist movement. Chambers led HUAC investigators to a pumpkin patch where he pulled out five roles of film from a hollowed-out pumpkin. The film turned out to be copies of confidential State Department documents concerning trade agreements important to the Soviet Union back in the thirties. Three of these summaries were believed to be in Hiss's handwriting. With this film, the case turned into the biggest and most sensational espionage case in the history of the United States. At the center of it all was Nixon, and many Americans realized this. After Hiss was indicted on two counts of perjury on December 15, 1948, Nixon's role in the case ended. However, the affair continued to affect Nixon's life in a dramatic way.[15]

The Hiss case positively transformed Nixon's career. He emerged from the event a national hero, especially in the eyes of the Republican party. His new reputation as the congressional communist warrior catapulted him into the Senate and the vice presidency. Nixon had a tool to employ in his following campaigns after the Hiss case. He was always able to remind voters of his major role in convicting a perceived communist. In the wake of the two momentous events in 1949: the Soviet Union's explosion of their own atom bomb, and Mao Tse-tung's communist victory in China, Americans became quite worried about communist subversion. Therefore, after a respected government insider such as Hiss was found to be a possible communist, Nixon appeared to many to be a godsend. Of course, Nixon used his new-found notoriety to his advantage. For example, he delivered many speeches following the case that reiterated his important role in the affair. Most notable was his January 26, 1950, speech to the House on this topic. In this speech, Nixon reminded his colleagues of the ways in which he kept the investigation on course. At the same time, he charged the Truman Administration with failure to rid the government of communists. The speech gained a great deal of attention,

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[14] Kurz. *Nixon's Enemies*, 79-80; "Burden of Proof," *Time*, 6 September 1948, 17.
[15] Aitken. *Nixon: A Life*, 170-1.

for it reminded Americans what a crucial role Nixon played in the battle against communism.[16]

One example of the attention Nixon garnered following the case is seen in a Wichita, Kansas, "Prayer Circle Letter" sent out to subscribers by Reverend Gerald B. Winrod. This evangelist led a national movement to alert Americans of threats to their values, including communism. The particular letter in examination said that in searching for a piece of literature that covered the entire problem of communist subversion, Congressman Nixon's great speech dealing with communists in the government was selected. The letter announced that it would send copies of the important speech to those concerned about the issue. Obviously, Nixon's role in the case furthered his career with this sort of attention. The press helped a good deal in this regard as well.[17]

Nixon proved to be quite helpful in relating information of the case to journalists. In fact, he was one of the most outspoken members of HUAC. This is important to note, for reporters were themselves capitalizing upon the case. The hysteria that accompanied the Hiss case made it popular to report on the young Californian chasing a "dangerous" communist. One of the reporters that understood this was Bert Andrews, the bureau chief of the *New York Herald Tribune*. He liked stories that were exciting and dramatic. Therefore, he enjoyed the stories that were coming out of HUAC in 1948. Significantly, Andrews developed a close relationship with Nixon and proceeded to legitimize him with his fellow reporters. As a result, Nixon cultivated a very positive relationship with the press. These good relations were crucial to furthering Nixon's career. Voorhis, Nixon's former congressional opponent, came straight to the point when he wrote that the Hiss case for Nixon was "a publicity gold mine which was to stand him in good stead for years to come." One such group that paid attention to this notoriety was a coalition of California Republicans, which urged Nixon to run for the Senate in the upcoming 1950 election.[18]

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[16] Ibid., 150; United States House of Representatives, *The Hiss Case--A Lesson for the American People*, speech prepared by Richard Milhous Nixon, 81st Cong., 2d sess., 1950; Robert K. Carr, *The House Committee on Un-American Activities 1945-1950* (New York: Cornell University Press, 1952), 234-5.

[17] Gerald B. Winrod, "Prayer Circle Letter, 1950," p. 4, Special Collections, Ablah Library, Wichita State University, Wichita, Ks.

[18] Voorhis. *Strange Case of Richard Milhous Nixon*, 12-13; Theodore H. White, *Breach of Faith: The Fall of Richard Nixon* (New York: Atheneum, 1975), 67-68; Halberstam. *The Powers That Be*, 259-61; "Fighting Quaker," *Time*, 25 August 1952, 15.

The senatorial race between Nixon and Helen Gahagan Douglas made use of red smear tactics never seen before or after. The campaign witnessed Red-baiting at every twist and turn by both candidates. However, a look at the tactics in the race demonstrates that Nixon used the issue of communist subversion much more effectively than Douglas, and therefore not only entered the Senate after four years in politics, but gained the vice presidential nomination shortly thereafter.

The issue of communism was used even before the main campaign commenced. Strangely enough, Nixon did not even begin the Red-baiting. That was left to *Los Angeles Daily News* editor, Manchester Boddy, the Democratic candidate in the 1950 primary. Prior to Boddy's entry into the race, he had favorably covered Douglas's political career for five years.[19]

However, close to the primaries, Boddy dubbed Douglas the "Pink Lady," a tag that epitomized the whole campaign. Boddy and his followers decided to link Douglas with the socialist congressman, Vito Marcantonio, whose voting record led many to believe he was a communist sympathizer. This was accomplished by selling the story that Douglas had voted in the House along the same lines as this left-wing New Yorker. Therefore, she could be considered a socialist herself, or worse, a communist. Years later Nixon wrote that the most damaging accusation for Douglas came before the Democratic primary, when the incumbent, Senator Sheridan Downey, publicly stated that Douglas voted against aid to Greece and Turkey. This was seen as a risky vote since these were countries that could possibly fall into communist hands. In reality, the accusations that Douglas and Marcantonio were voting together were a large misrepresentation given that a good deal of the matching votes had been along party lines. Indeed, Marcantonio was voting the same as most of the Democrats in the House. That did not stop Boddy from claiming that Douglas was a communist sympathizer. However, the accusations also did not prevent Douglas from losing the primary. Her wide margin of victory set her up to face Nixon, as he easily gained his party's nomination as well.[20]

Though Douglas won the primary, many of her supporters worried about the communist label Boddy had pinned on her. *Newsweek* reported that Douglas's backers feared that Boddy's pro-communist attacks on her would end up helping Nixon in the election. In the United States, there was anxiety about

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[19] Ingrid Winther Scobie, "Douglas v Nixon: A Campaign on the Conscience," *History Today* 42 (November 1992), 19.

[20] Congress, House, Committee on Interstate and Foreign Commerce, *Proceedings Against Gerhart Eisler*, 80th Cong., 1st sess., Congressional Record 93, pt. 1 (18 February 1947): 1129-30; Nixon. *The Memoirs of Richard Nixon*, 74; Scobie. "Douglas v Nixon: A Campaign on the Conscience," 20.

McCarthy's Red-baiting as he smeared hundreds of alleged communists. More importantly, in late June the North Korean communists invaded South Korea. Certainly, Nixon realized that he had to turn these public anxieties stemming from the new developments into his own political gain. The Korean War surely simplified Nixon's job.[21]

When the campaign kicked off following the primaries, Nixon began to use the "soft on communism" slogans. Nixon was actually told by some of his campaign strategists not to employ the communist issue so heavily in light of McCarthy's overboard attacks. Nixon insisted that he must use the issue, though, because he found that he received the strongest response from audiences when he discussed the Hiss case. Keeping true to this statement, early on in the campaign Nixon suggested that Douglas voted against efforts to support the Korean War effort. To counter these charges, Douglas went on the attack. She accused Nixon of voting against an aid package for South Korea. She claimed the vote proved Nixon did not understand the communist threat in the Far East. She went so far as to say that Nixon possibly influenced the decision of the communists to invade Korea.[22]

The Nixon camp effectively responded to Douglas's charges by going on the offensive, a tactic that proved to be important to Nixon's victory. The Nixon camp claimed Douglas, herself, had voted against actions to thwart communism, such as voting against military aid to Greece and Turkey. They even charged that she voted against appropriations for HUAC. On all of these occasions, they said, she voted with Congressman Marcantonio, the perceived communist party-liner. They claimed Douglas voted with Marcantonio 353 times. Then, in an innocent but calculating tone, they asked how Douglas could accuse others of communist leanings when 'she had so deservedly earned the title of the Pink Lady?' Through all of this, the Nixon camp was ecstatic about Douglas's earlier charges, for they realized she was attacking Nixon's strengths. Was he not the man who made the Hiss case possible, they asked. Certainly, Nixon realized this, for as *Newsweek* reported, he constantly invoked the Hiss case in his foreign speeches about communist conspiracies and appeasement. The article noted that Nixon's most consistent applause getter came when he demanded that the State Department be cleaned out for its

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[21] "California Foot Race," *Newsweek*, 5 June 1950, 27; Scobie. "Douglas v Nixon: A Campaign on the Conscience," 20.

[22] Greg Mitchell, *Tricky Dick and the Pink Lady* (New York: Random House, 1998), 65.

failure to combat communism. Obviously, Nixon knew how to use his prominence from the Hiss case.[23]

The accusations continued to heat up, and the Red-baiting escalated as the election approached. Even name-calling entered the race, with Nixon referring to Douglas as the Pink Lady and accusing her of being "pink down to her underwear." At the same time, Douglas called Nixon "Tricky Dick," a label that stuck with him throughout his career. Both candidates searched everywhere for anything they could use to link their opponent to communism. However, while Douglas delivered long and boring speeches denying communist leanings, Nixon stayed on the offensive and worked on manipulating her voting record. Certainly, turning her record into one sympathetic to communists went a long way in convincing the voters of Douglas's inability to serve in the Senate. As if this was not bad enough, the most devastating tactic was yet to come.

Douglas most likely brought on the Nixon camp tactic that turned the campaign around. It began when the Douglas campaign distributed a yellow leaflet, which will be referred to here as the "yellow sheet." This leaflet told voters to examine Nixon's voting record and in so doing, "pick the Congressman the Kremlin loves!" It went on to say that Nixon's votes could actually be compared to those of Marcantonio's. The Nixon camp simply turned around and praised the yellow sheet. They viewed it as a fatal mistake on the part of Douglas because once again, she was attacking Nixon's strengths. Nixon easily and convincingly defended his position. The front page of the *Los Angeles Times,* among other papers, reported Nixon as saying that the yellow sheet terribly distorted his voting record and meant to confuse the public. He continued with the accusation that this merely concealed the fact that Douglas actually voted over 350 times with Marcantonio since they had served in Congress together.[24]

The yellow sheet not only sent Nixon on the offensive again, but prompted him to distribute a leaflet of his own, which made a huge impact on voters throughout California. That leaflet became known as the "pink sheet." It accused Douglas of voting with Marcantonio just as Nixon had done previously. The difference was that these accusations were printed on pink paper, an obvious reference to the successful Pink Lady issue. It was an excellent technique that proved quite effective. The bright leaflet easily reached thousands of voters who possibly missed the other smears. Nixon later wrote

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[23] Mitchell. *Tricky Dick and the Pink Lady*, 80; Scobie. "Douglas v Nixon: A Campaign on the Conscience," 21; "Roaring Races," *Newsweek*, 30 October 1950, 21.

[24] Aitken. *Nixon: A Life*, 186-7; Nixon. *The Memoirs of Richard Nixon*, 77; "Vote Record Falsified, Nixon Says: Senate Candidate Accuses Opponent on 'Big Lie' Issue," *Los Angeles Times*, 3 November 1950, sec. 2, 1.

that one of the worst mistakes made by Douglas was the distribution of the yellow sheet claiming that his voting record was more pro-communist, because it only brought on the pink sheet. Even Douglas attested to this fact when she wrote, years later, that the pink leaflet was by far the most damaging tactic used against her. She went on to say that the pink sheet only turned leading Democrats against her, citing that they could no longer support her due to her voting record. Rather, they proceeded to gather support in California from Democrats who would vote for Nixon. More helpful to Nixon, though, was Douglas's response to the leaflet. Instead of returning an attack on Nixon, Douglas presented her very long, rather laborious voting record. This obviously did not stand up to Nixon's tactics, especially in a climate of fear and uncertainty stemming from the Cold War.[25]

In the end, Nixon defeated Douglas in a large way. She was defeated by a margin of 59 percent to 40 percent. This was, in fact, the largest majority achieved by any candidate running for the Senate in 1950. This is not surprising when one considers the time period. As Douglas later wrote, a congressman that chased spies and traitors in an atmosphere of atomic bombs and communist victories "could quickly be seen as a savior." Of course, in the context of the Cold War the press was once again extremely active, and consequently helpful to Nixon.[26]

Nixon discussed nothing but communism in 1950, and therefore he received a huge amount of support from the majors newspaper in California. These papers were out to capitalize on the frightening climate as well. Papers in Los Angeles and San Francisco often reported twice daily on how Douglas could be connected to communism. More importantly, the *Los Angeles Times* once again played a crucial role, for the paper was especially built around reporting on dangerous foreign influences, such as communism. Thus, this paper was extremely harsh on Douglas and certainly made no effort to print stories that portrayed her in a positive light. Douglas could have been on to something when she later wrote in her autobiography about a study conducted, years later, at Stanford dealing with press coverage of the campaign. She claims the study found that 70 percent of the unfavorable statements about her were reported, whereas only 30 percent were reported about Nixon. Accordingly, Nixon was sent to the Senate in 1950, but he did not stay there for long. Soon afterwards, he received the offer to serve as Eisenhower's vice presidential candidate.[26]

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[25] Kurz. *Nixon's Enemies*, 117; Nixon. *The Memoirs of Richard Nixon*, 76; Douglas. *A Full Life*, 315.

[26] Aitken. *Nixon: A Life*, 192; Douglas. *A Full Life*, 296.

Nixon's selection as the vice presidential candidate in 1952 is not that surprising when one considers the time period in which Nixon lived. In the first couple of years of the 1950s, developments in the world proved to be ideal for Nixon's career. These developments included the Americans' defeat in North Korea by the communists, Hiss imprisoned for perjury, and McCarthy's vicious attacks on suspected communists. All of this presented the perfect opportunity for Nixon. The young politician was the Republican party's key speaker. Also, he was extremely successful in terms of fund raising for his party. Anywhere he went, he had the proper credentials to blast the Democrats for their failure to curb communist problems. The combination of his record of bringing supposed communists out into the open, and the atmosphere of the 1950s, meant Nixon was able to capture a great deal of attention. Therefore, when the Eisenhower camp selected Nixon as the vice presidential candidate, not too many could have been shocked. [27]

It was obvious from the start that Eisenhower, and most of the Republican party were impressed with Nixon's credentials. A well-known story concerns Eisenhower telling Nixon, in May 1951, that he was impressed Nixon "not only got Hiss," but that he "got him fairly." Nixon continued to impress the Republicans when in June, he delivered a speech to the National Young Republican Convention in Boston. As always, Nixon stressed the Truman Administration's failure to combat communism and reminded his audience that the Republicans had no fear of finding communist skeletons in their own closets. Next, Nixon spoke at a Republican fund raiser at the Waldorf-Astoria in New York City. Nixon felt that this speech helped him to be selected as the vice presidential candidate. Following the speech, New York Governor Thomas E. Dewey suggested that the Republicans consider Nixon for the vice presidential candidacy. Another man the Republicans considered for their vice presidential candidate, however, was William F. Knowland, California's other senator at this time. Knowland was very similar to Nixon in that they were both young and had congressional experience. He was missing the reputation of a communist warrior, though. This was important, for as an article in *Time* magazine put it, the two primary issues in the 1952 presidential race were communism and corruption in government. Therefore, Nixon was perfect, as he even wrote in his memoirs that his "anticommunist credentials from the Hiss case were what most

[27] Mankiewicz. *Perfectly Clear: Nixon from Whittier to Watergate*, 52-55; Halberstam. *The Powers That Be*, 113, 263; Douglas. *A Full Life*, 328.

tilted the decision" to him. Eisenhower understood these credentials, and as a result Nixon was chosen as the vice presidential nominee.[28]

Obviously, Nixon's selection as the vice presidential candidate served an important purpose for the Republicans. While Eisenhower's role was that of the father figure staying above the fray, Nixon's job was, as a *U. S. News and World Report* article wrote, to do the rough political fighting and pick at the Democrats' failure to combat communism. Nixon gladly did this, and did it well. His record made him an expert on the issue. *The New York Times* captured this when it wrote that Nixon understood his role in the campaign as the political hatchet-man for the Republicans.[29]

Nixon began his hatchet work with accusatory remarks aimed at the 1952 Democratic presidential candidate, Adlai Stevenson. Nixon cast doubts on Stevenson's loyalty to the United States, with shocking and downright cruel remarks. Nixon, along with McCarthy, served as Eisenhower's troops bent on shocking the public with accusations that the Democrats were cowards in the face of communism. One infamous example of this was Nixon's attack on Dean Acheson, Truman's secretary of state. Nixon later wrote that he caught the attention of the voters when he told them about the "Dean Acheson Community College of Communist Containment." Nixon continued with charges that the United States was losing in Korea because of the Truman Administration policies. All of this was a great asset for the Republicans, as no one could claim Nixon or his associates had anything to do with the communist problems. Indeed, this was the man who prosecuted a communist and revealed a congresswoman to be a possible communist sympathizer. Despite these credentials, Nixon came close to being scratched from the ticket when the "slush fund" crisis surfaced.[30]

The issue arose on September 18, 1952, when the New York *Post* carried the headline, "Secret Nixon Fund." It went on to report that a slush fund "keeps Nixon in style far beyond his salary." Nixon's campaign managers, and Nixon himself believed nothing would come of the story since it was considered to be a legal and ethical fund by most politicians. In fact, funds of this sort were kept by countless other politicians. They were simply war chests set up to cover political costs, and the money was supposedly not used for personal reasons.

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[28] Nixon. *The Memoirs of Richard Nixon*, 88; Jeff Broadwater, *Eisenhower and the Anti-Communist Crusade* (Chapel Hill, NC: University of North Carolina Press, 1992), 35; "Wanted: Bright Young Man," *Time*, 21 July 1952, 19.

[29] "Why it's Nixon: He's Young, Californian, a Vote Getter," *U.S. News and World Report*, 18 July 1952, 36; John H. Fenton, "Nixon Takes Role of Naming Names," *New York Times*, 3 September 1952, p. 19.

[30] Kurz. *Nixon's Enemies*, 132; Nixon. *The Memoirs of Richard Nixon*, 110.

Even an article in the *New York Times* noted that one hundred other representatives also had a fund of this sort. It said that these congressman used these funds to fight the evil powers in Washington. However, as the Democrats were taking a beating from the communist warrior in Nixon, any possible controversial issue they could find on their opponent had to be used. Therefore, the Democrats attacked Nixon ferociously. Some newspapers even demanded Nixon resign from the ticket. With all the buzz, Eisenhower became uncertain about his running-mate. In fact, most of Eisenhower's campaign managers began looking for the right time to dump Nixon from the ticket. However, they and most everyone else had temporarily forgotten about Nixon's brilliant use of the communist issue, which had already gotten him so far in his career.[31]

Nixon dealt with the crisis right from the start by reminding voters of his communist warrior background. For example, at a campaign whistle-stop in Marysville, California, Nixon told an audience that he worked on investigating communist subversion, and therefore ever since he began that line of work, the leftists had been trying to smear him in return. He went on to say that he intended to continue to expose the communists the more they smeared him. This defense one again struck a chord with Nixon's audience, and therefore played a role in saving his candidacy at the beginning of the crisis. However, it was the "Checkers" speech that truly saved his career.[32]

Nixon was well aware of the fact that he needed to win back the support of voters if he wanted to remain on the ticket. The fund crisis broadcast, popularly known as the "Checkers" speech, did just that and more. The Republican National Committee paid a handsome sum of money for a thirty minute nationwide television broadcast in order for Nixon to air his side of the story. In the famous September 23 speech, Nixon often made references to his record, such as a referral to his role in the Hiss case. He also discussed his family's dog, for which the speech was named, that was a gift he admitted should have been returned. Nixon almost tearfully stated that this gift could not be taken away from his daughters. This statement showed Nixon's softer side. Nixon then went on to once again discuss his fight against communism. Finally, toward the end of the speech, Nixon told the audience that he loved the United States, but felt it was in danger. Therefore, Eisenhower was the man to elect in

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[31] Ambrose. *Nixon: The Education of a Politician 1913-1960*, 276-77; "Gwinn Says He Got a Fund Like Nixon's and 100 Other Representatives Did, Too," *New York Times*, 24 September 1952, p. 26.

[32] "Republicans: The Remarkable Tornado," *Time*, 29 September 1952, 12.

order to save America. In the final emotional seconds, the television screen went blank. The verdict was left to the public.[33]

The public was enthusiastic about Nixon's speech. A *Newsweek* article focused on the part of Nixon's speech in which he claimed that the fund had gone to defray the expenses of his battle against communism. The following line read that the public reaction was tumultuous. Indeed it was, for the Republican National Committee received over 160,000 telegrams and 250,000 letters that supported Nixon 350 to 1. The most important vote, though, came from Eisenhower. The general could not turn his back on Nixon now, as he had proved that he was still more popular than ever. Certainly, this was due in large measure to his prominence stemming from the Hiss case and his previous elections. Even Nixon wrote in his memoirs that the further prominence he gained after the fund speech revived interest in the Hiss case. Therefore, even something like a fund crisis allowed Nixon and Eisenhower to emphasize the communist subversion issue. Voorhis wrote that following the fund speech, Nixon claimed communists were smearing him with regards to the fund. Therefore, Voorhis argued, who would dare to question Nixon? Obviously, Nixon was kept on the ticket.[34]

On election day, Eisenhower won the presidency by a landslide, garnering thirty-four million votes to Stevenson's twenty-seven million. Nixon became the second youngest vice president in United States history, turning forty years of age following his inauguration in January 1953. Nixon's meteoric rise in American politics can only be compared to John F. Kennedy's ascendency to the presidency in 1961 at age forty-three. This fast rise to the top can be attributed to the time period Nixon lived in. The decades in which he gained political fame provided an intense issue for him to focus on. His election to the vice presidency in 1952, and again in 1956, witnessed Nixon's polished Red-baiting. His use of the communist issue was his key to political ascendency. Once again though, the press also played a crucial role.[35]

The press understood more than ever how explosive the issue of communism was in the 1950s. One of the more influential men regarding press coverage of communist subversion was Henry Luce, the publisher of *Time* and *Life* magazines. He worked a great deal on the promotion of national anti-

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[33] Aitken. *Nixon: A Life*, 213; A. Craig Baird, ed., *Representative American Speeches: 1952-1953*, vol. 25, *Apologia*, by Richard Milhous Nixon, New York: H.W. Wilson, 1953, 81-82.

[34] "Vice-Presidential Elect Nixon," *Newsweek*, 10 November 1952, 25; Aitken. *Nixon: A Life*, 218; Nixon. *The Memoirs of Richard Nixon*, 110; Voorhis. *The Strange Case of Richard Milhous Nixon*, 14.

[35] Aitken. *Nixon: A Life*, 223.

importantly, it said that Nixon was "the most convincing and successful product of them all." Indeed he was.[38]

[38] Who is Richard Nixon," *New Republic*, 8 September 1952, 9-10.

An Even Keel: The Judicial Example of John Marshall Harlan

by Chris Kemp

Norman Dorsen, who clerked for John Marshall Harlan II, did not adopt the same judicial philosophy as the Justice he worked for. He did, however, develop a strong respect for his one-time mentor. The desire of Justice Harlan to provide balance in all things, "to keep things on an even keel," as Dorsen remembers him saying, well represents the judicial philosophy of Harlan.[1] Harlan came from a family of some political and legal prestige, and his upper class background, his commitment to federalism and the separation of powers, and his desire to hold to neutral principles on the Court shaped his judicial philosophy.

The Harlan family immigrated to colonial America to escape the persecution directed toward Quakers in England. Family members migrated westward, and Harlan's great-grandfather, James, became a prominent figure in Kentucky politics prior to the Civil War. He served in the state legislature and as the secretary of state and attorney general, and later, two terms as a member of Congress. His support of the Union cause led Lincoln to appoint James the United States Attorney for Kentucky.

James named one of his sons John Marshall Harlan, after the great Chief Justice. Like his father, John also became active in state politics, and was catapulted into the national political spotlight by helping Rutherford B. Hayes secure the Republican nomination for the presidency in 1876. Following the controversial resolution of the election, Harlan narrowly missed being appointed the administration's Attorney General, but later in 1877, he was appointed to the United States Supreme Court. His thirty-four year tenure remains one of the longest in court history, and his dissent in *Plessy v. Ferguson* remains one of the best-known dissents in the Court's history.

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[1] Norman Dorsen, "John Marshall Harlan and the Warren Court," in *The Warren Court in Political and Historical Perspective*, ed. Mark Tushnet, (Charlottesville: University Press of Virginia, 1995), 109.

During the Civil War, John Marshall Harlan the elder fought for the Union, although he maintained some Southern sympathies. As a member of the Court, he displayed a commitment to the Union; the application of the Thirteenth, Fourteenth, and Fifteenth Amendments to protect black citizens; and the goals of Reconstruction. As a result, he often played the role of dissenter on the conservative Court of the late-nineteenth century.

Harlan's son, John Maynard, was born in 1864 and received his collegiate education at Princeton, the University of Berlin, and what is now George Washington University. He established a successful law practice in Chicago, but was more attracted to the political world. After being elected alderman, John Maynard ran a competitive, but poorly financed, campaign for mayor. He was considered to be too much of a reformer to gain full Republican support, and the opposition Democratic Party had a strong machine establishment in the city. He failed to win the election and returned to his law practice, making a substantial income representing business interests in the Chicago area.

John Marshall Harlan II was born May 20, 1899, one of four children and the only son. Sickly as a child, Harlan was sent to preparatory school in Canada on the advice of a physician who said that a more rigorous climate could either "kill or cure" the boy.[2] After several years in Canada, Harlan was sent to an elite preparatory school in New York in order to develop American connections. In 1916 he enrolled in Princeton, and his strong academic work as an undergraduate led to his being named as a Rhodes scholar. Harlan went on to study law at Oxford's Balliol College, earning a first in jurisprudence and graduating seventh in a class of one hundred twenty.

Upon his return to America, Harlan landed a job at the Wall Street firm, Root, Clark, Buckner, and Harlan. He soon developed a close professional relationship with Emory Buckner, a senior partner at the firm and one of New York's premier trial lawyers. Unlike many other firms at the time, Root, Clark encouraged its attorneys to take advantage of public service opportunities. When Buckner was named United States attorney in New York, Harlan went along as an assistant, becoming part of a group of rising young attorneys known as Buckner's "Boy Scouts." Harlan's outstanding work led Buckner to describe Harlan as "Poise in Motion" and "Persistence Personified."[3]

Harlan spent much of his time trying to enforce New York's liquor laws. Enforcing Prohibition in New York proved difficult for multiple reasons. First, the sheer numbers of violations made prosecution virtually impossible. Each week

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[2] Tinsley Yarbrough, *John Marshall Harlan: Great Dissenter of the Warren Court*, (New York: Oxford University Press, 1992), 6.

[3] J. Edward Lumbard, "John Harlan: In Public Service 1925-1971," *Harvard Law Review* 85 (December 1971): 372.

police arrested thousands, mostly low-level employees like waiters, porters, bartenders and bellhops.[4] Rarely were the owners of the establishments or the distributors of the bootleg liquor charged.

Harlan's work in Prohibition did garner him public attention, due to the "Bathroom Venus" case.[5] A naked showgirl dipped into a tub filled with champagne at an evening party. Several men lowered glasses into the tub and drank the alcohol, violating Prohibition laws. The newspapers certainly filled their columns with the information surrounding the case. Later, Governor Al Smith asked Buckner to investigate the Queens sewer scandal. Again, Harlan assisted his mentor in uncovering bribes and kickbacks. When Justice Learned Hand, then a judge on the United States Court of Appeals for the Second Circuit in New York, read Harlan's brief for the case, he was immediately impressed. John Marshall Harlan was quickly developing a reputation as one of New York's premier attorneys.

Harlan left his career behind in 1942, however, to journey to England and serve in the Operations Analysis Section of the Eighth Bomber Command. By that time he was in his early forties, past the normal age of a soldier, but the army felt that lawyers would be essential for the project due to their expertise at mastering technical information and then communicating it to a general audience.[6] The main problem Harlan faced when assuming his role was that fewer than five percent of the bombs dropped during daylight bombing raids in Germany were falling within five hundred feet of their target. In order to understand the predicament better, Harlan actually accompanied a crew on a bombing mission, keeping his participation a secret from his team, so that they would not prevent him from going. For his work, Harlan received the Legion of Merit and the Croix de Guerre from France and Belgium.

Upon his return from the war, Harlan resumed where he had left off and continued to represent some of the most prominent cases in the New York area, including successfully defending Pierre du Pont in an anti-trust lawsuit. Compared to Earl Warren, his future fellow Supreme Court judge, Harlan had fairly little political experience, but in early 1954, a vacancy appeared on the Court of Appeals for the Second Circuit. Due, in part, to Harlan's longtime friendship with Herbert Brownell, Eisenhower's Attorney General, Harlan was nominated and confirmed. His one year on the court was noncontroversial. The most interesting case was *United States v. Flynn*, in which Harlan upheld the conviction of a dozen second-string members of the American Communist

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[4] Yarbrough, *Harlan*, 17.
[5] Ibid., 39.
[6] Ibid., 58.

Party. Although Harlan deferred to the state government in upholding the convictions, a theme that would dominate his tenure on the Supreme Court, he quickly became upset with McCarthyism and would find ways to limit the influence of the Red Scare once on the high court.

In October 1954 Justice Robert H. Jackson died. Due to his judicial experience and the fact that Jackson had been the only New Yorker on the Court, Harlan seemed the perfect selection to fill the vacancy. Eisenhower had received some criticism for his nomination of Earl Warren and his limited judicial experience, but Harlan had a reputation for being a lawyer's lawyer, expert in his handling of all the details in a given case. Both as an attorney and during his brief tenure as a judge, his legal reputation was sterling. His New York residency would also maintain the geographic balance on the Court. In nominating him to the Court, Eisenhower said Harlan's qualifications were "the highest of any I could find."[7] The American Bar Association concurred and gave Harlan its highest recommendation, as well. In addition, Harlan was supported by such legal experts as Judge Learned Hand, Senator Estes Kefauver, and heavyweight champ Gene Tunney, whom Harlan had represented in an earnings protection case in New York.

With such credentials and support, Harlan seemed like a candidate for a quick confirmation. One conservative friend even wrote Harlan, saying he hoped the new Justice would be able to reign in the liberal leaning of Justice William Douglas.[8] The confirmation, however, would take four months. Several factors delayed the process. First, the Senate had to deal with the decision to censure Senator McCarthy. Second, a bloc of southern senators had decided to take this opportunity once again to make public their dissatisfaction with the Court's rulings regarding race, especially the *Brown* decision. Senator James Eastland (D-Mississippi) was even prepared to disclose Harlan's past affiliation with the Communist Party, until he realized the John Harlan he had information on was from Baltimore.[9] Third, Republican Senator William Langer of North Dakota threatened to hold up the nomination until someone from his state or a state that had yet to receive an appointment to the Court was selected. A fourth problem came from Harlan's experience as a Rhodes scholar. Some feared his time spent in Europe must have made him an internationalist. Despite some senatorial fears that his time at Oxford had made him a "one-worlder" who

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[7] Norman Dorsen, "John Marshall Harlan," in *The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions* vol. IV, ed. Leon Friedman and Fred L. Israel, 2803-46 (New York: Chelsea House Review, 1969), 2805.

[8] Yarbrough, *Harlan*, 72.

[9] Ibid., 103.

would sell out American sovereignty to the United Nation's "world government," Harlan was confirmed by a 71-11 vote on March 16, 1955.[10]

One cannot read about Harlan for very long without seeing him described as a "patrician." Norman Dorsen pointed out the criticism that some might be tempted to conclude "that his frequent unwillingness to accept constitutional claims based on alleged equal treatment of poor persons is somehow related to his failure to understand or to sympathize with poorer members of society."[11] Mark Tushnet extended this criticism, calling Harlan's decision in *Poe v. Ullman* a "jurisprudence of country-club Republicanism.[12] One of the wives of a member of Harlan's Wall Street firm was on the board of Planned Parenthood in Connecticut, and this, according to Tushnet, must have influenced his opinion on the issue of the Connecticut birth control law that ultimately led to the *Griswold* decision concerning the right to marital privacy.

Whatever the influence of Harlan's wealthy background, there are other more clearly identifiable influences on his judicial philosophy. As soon as Harlan was nominated as justice, Felix Frankfurter was delighted at the addition of a member to his restrainist wing of the Court. In *NAACP v. Alabama* (in which the Court ultimately decided the state of Alabama could not force the NAACP to make public its membership roster), Frankfurter heavily lobbied Harlan to delete any First Amendment references in connection with the Fourteenth Amendment from his opinion, in order to avoid any hint of incorporation. Yet Harlan was his own man and felt free to disregard Frankfurter's recommendations, as he did in *Poe v. Ullman*. However, Harlan must have appreciated Frankfurter's guidance in constitutional areas in which his previous law practice had given him little experience. On balance, Harlan agreed with Frankfurter on eighty percent of the cases they heard together.[13]

Perhaps the two strongest guiding stars of Justice Harlan's philosophy were the concepts of federalism and separation of powers. He firmly believed that these were the best safeguards of individual liberty, more so than specific constitutional guarantees. Under the system of divided powers established by

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[10] Nathan Lewin, "John Marshall Harlan," in *The Supreme Court Justices: Illustrated Biographies, 1789-1995*, ed. Clare Cushman, 441-45 (Washington, D.C.: Congressional Quarterly, 1995), 443.

[11] Norman Dorsen, "The Second Mr. Justice Harlan: A Constitutional Conservative," *New York Law Review* 44 (April 1969): 253.

[12] Mark Tushnet, "Members of the Warren Court in Judicial Biography: Themes in Warren Court Biographies." *New York University Law Review*, 1995, http://web.lexis-nexis.com/scholastic, November 2, 2002.

[13] Lewin, "John Marshall Harlan," 444.

the framers, Harlan was willing to grant great authority to the states, as well as a strong role for the legislatures at both the state and national levels.

Harlan was not hesitant in invoking the "abstention" doctrine, which limited the reach of the judiciary's role in matters of judicial intervention, and he proved one of the strongest supporters of the "state action" concept, which stated the Constitution's civil liberties protections extended to state, but not private, activity.[14] He revered precedent, perhaps an influence of the common law tradition he became so familiar with during his stint at Oxford, and would adhere closely to previous decisions, even ones he had disagreed with, and perhaps even registered dissents on in the past. An excerpt from his opinion in *Avery v. Midland County,* a county-level reapportionment case, clearly illustrates his great respect for *stare decisis.*

> I continue to think that these adventures of the Court in the realm of political science are beyond its constitutional powers, for reasons set forth at length in my dissenting opinion in *Reynolds*.... However, now that the Court has decided otherwise, judicial self-discipline requires me to follow the political dogma now constitutionally embedded in consequence of that decision.[15]

The theoretical background for Justice Harlan's philosophy can be found in Herbert Wechsler's concept of neutral principles. According to Kent Greenwalt, who clerked for Harlan, "...no modern Justice had striven harder or more successfully than Justice Harlan to perform his responsibilities in the manner suggested by the model."[16] Wechsler attempted to resolve the inherent conflict of how the act of judicial review could be justified when they inherently involve choices of value. According to Wechsler:

> The answer ... inheres primarily in that they are -- or are obliged to be -- entirely principled. A principled decision is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved.[17]

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[14] Yarbrough, *Harlan,* 158.

[15] *Avery v. Midland County*, 390 U.S. 474 (1968), http://www.findlaw.com, October 24, 2002.

[16] Kent Greenwalt, "The Enduring Significance of Neutral Principles," *Columbia Law Review* 78 (June 1978): 984.

[17] Ibid., 985.

Five general principles explain this concept further. First, a neutral ruling would be one in which a person would be willing to follow the decision in other situations to which it applies. Second, a ruling must possess some degree of generality, addressing the legal principle underlying the case and how related cases ought to be addressed. Third, judges must confine their rulings to principles that have legal relevance; just because an argument is moral does not mean a judge is free to adopt it. Fourth, a principled ruling must address all of the issues in a case, not a select few. Finally, that reasoning must be reflected in the opinion delivered by the court; a court would fail in giving no reasons or false reasons for its decision.[18]

Chief Justice Warren employed a different judicial approach, looking for evidence of fairness in each case. Warren's approach, which often left little room for deference to the legislative bodies, was not based on the reasonableness of neutral principles, but the rightness or morality of the outcome.[18]

With such a different judicial philosophy, it is not surprising that Justice Harlan earned the reputation for being the great dissenter of the Warren Court. Harlan's dissent in *Reynolds v. Sims*, a case concerning Alabama's apportionment of state senatorial districts, summarizes many of the flaws of those who moved away from legal process theory.[19]

> The failure of the Court to consider any of these matters [of intent, language, contemporary understanding, political practice, subsequent amendments, and constitutional decisions] cannot be excused or explained by any concept of "developing" constitutionalism. It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored.[20]

Miranda v. Arizona was one of the most controversial Warren Court decisions. To understand the public outcry against the ruling, one must first understand the context in which it occurred. Decided in 1963 *Gideon v. Wainwright*, mandating that an accused, indigent criminal be provided an attorney for trial was perhaps the only popular criminal procedural decision during its own time that the Warren Court issued. The case revolved around the fundamental unfairness a defendant would face in the technical word of the

[18] Ibid., 985-90.

[19] Norman Dorsen, "John Marshall Harlan," 121.

[20] *Reynolds v. Sims*, 377 US 533 (1964), http://www.findlaw.com, October 24, 2002.

courtroom without adequate representation. The decision, in effect, overturned *Betts v. Brady* (1942), and while Justice Harlan concurred with the decision, his respect for precedent could be seen in the opening lines of his opinion. "I agree that Betts v. Brady should be overruled, but consider it entitled to a more respectful burial than has been accorded."[21] Harlan went on to describe his rationale for supporting Gideon's appeal, while denying the theory that the case incorporated the Sixth Amendment's provision for counsel. *Gideon* raised little controversy because several states already complied with the standards the Supreme Court enunciated, and twenty-two state attorneys general had filed an *amicus* brief on behalf of the defendant.[22]

Once the Court ruled in *Gideon* that the Sixth Amendment applied to the states, they were forced to address the issue of right to counsel. Did the right only begin at trial or when custodial interrogation began?

In *Escobedo v. Illinois* the Court attempted to answer the question. Police had detained Danny Escobedo for questioning in a murder case. He demanded to see his lawyer, and his lawyer, then at the police station, demanded to see his client. The police refused both requests and falsely told Escobedo that he could go home if he implicated another man. They did not tell him that under Illinois law, if he implicated someone else, he also implicated himself.[23] The Court ruled in a controversial 5-4 decision that the right to counsel began when the criminal process shifted from an investigatory to an accusatory nature. Thus, when Escobedo was being questioned, his constitutional right to counsel was violated, and by extension, his right to avoid self-incrimination also was denied. His conviction was reversed and the case remanded to the state for reconsideration.

Justice Harlan began his brief dissent by stating, "...I think the rule announced today is most ill-conceived and that it seriously and unjustifiably fetters perfectly legitimate methods of criminal law enforcement."[24] His reaction showed more restraint than many others. The Los Angeles Chief of Police complained that the decision "handcuffed the police," and New York City Police Chief "Michael J. Murphy agreed, stating the Court's ruling was "akin to

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[21] *Gideon v. Wainwright*, 372 US 335 (1963), http://www.findlaw.com, October 24, 2002.

[22] Yale Kamisar, "The Warren Court and Criminal Justice," in *The Warren Court: A Retrospective*, ed. Bernard Schwartz (New York: Oxford University Press, 1996), 119.

[23] Powe, Lucas A. Jr., *The Warren Court and American Politics* (Cambridge, MA: The Belknap Press of Harvard University Press, 2000), 389.

[24] *Escobedo v. Illinois*, 378 U.S. 478 (1964), http://www.findlaw.com, October 24, 2002.

requiring one boxer to fight by the Marquis of Queensbury rules while permitting the other to butt, gouge, and bite."[25]

More and more Americans were beginning to wonder if the rising crime rate was attributable to what they viewed as permissive court decisions. Bumper stickers stating, "Support Your Local Police" began to appear next to the ones reading, "Impeach Earl Warren." At the 1964 Republican Convention, Eisenhower urged delegates:

> "...not to be guilty of maudlin sympathy for the criminal who, roaming the streets with switchblade knife and illegal firearms seeking a prey, suddenly becomes upon apprehension a poor, underprivileged person who courts upon the compassion of our society and the weakness of many courts to forgive his offense.[26]

According to historian John Morton Blum, "*Escobedo* raised the storm against the Court to gale force."[27]

It was in this hostile atmosphere that *Miranda* reached the Court. The facts of the case are fairly simple. Shortly after midnight on March 4, 1963, Ernesto Miranda accosted and seized an eighteen-year-old woman, forcing her into the back of his car. He bound her, drove to the desert east of Phoenix, and raped her. He then drove her back to her neighborhood and released her. Before departing he said, "Whether you tell your mother what has happened or not is none of my business, but pray for me."[28]

After finding Miranda by tracing a partial license plate number provided by the victim, police asked Miranda to accompany them to the police station for questioning. Miranda voluntarily complied. The victim was unable to identify Miranda from a lineup, so police continued questioning Miranda. He was not provided an attorney, nor did he ask for one. After two hours of interrogation, Miranda admitted his guilt and signed a statement of confession. Found guilty of kidnapping and rape, Miranda was sentenced to twenty to thirty years in prison.

The case was appealed to the Arizona Supreme Court, which upheld the conviction, ruling that Miranda's due process rights were not violated because he had not asked for an attorney. Miranda gained new representation from the

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[25] Powe, *Warren Court*, 391.

[26] Theodore H White, *The Making of the President, 1964* (New York: Atheneum, 1965), 241-42.

[27] John Morton Blum, *Years of Discord: American Politics and Society, 1961-1974* (New York: W.W. Norton, 1991), 210.

[28] Liva Baker, *Miranda: Crime, Law and Politics* (New York: Atheneum, 1983), 5.

American Civil Liberties Union, and the new attorneys filed a petition for a writ of certiorari asking the Supreme Court to hear the case and rule whether an attorney must be provided for an indigent facing police interrogation.

Again, the Court issued a 5-4 decision, with Justices Harlan, White, Clark, and Stewart dissenting. Later, Justice Fortas acknowledged that the majority opinion was "entirely" Warren's, and when Warren announced the decision he spent an hour reading it in the courtroom.[29] The Chief Justice established a four-point summary that would be spoken to individuals taken into custody to ensure the privilege against self-incrimination was not violated.

> He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.[30]

These precautions would not only preserve a Fifth Amendment protection, but Warren also believed they would prevent the "third degree" during police interrogations; ameliorate the disparity between rich and poor in obtaining counsel; and bring police tactics to the same professional level by relying more on strong investigative techniques and less on custodial confessions.

The dissents by Harlan and White were especially sharp. Again, Justice Harlan succinctly presented his view of the majority opinion in his first sentence. "I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large."[31] Harlan believed the warnings that would be issued to all suspects would not end the use of questionable police tactics. Those who had lied before about the practices used in questioning could continue to lie. Worse still, the Court, in Harlan's judgment, was departing from precedent and taking the police power away from the

[29] Paul L Murphy, *The Constitution in Crisis Times, 1918-1969* (New York: Harper & Row, 1971), 381.
[30] *Miranda v. Arizona*, 384 U.S. 436 (1966), http://www.findlaw.com, September 23, 2002.
[31] Ibid.

states, where it had traditionally resided. Perhaps from his years assisting Buckner as a prosecutor, Harlan viewed police questioning as an essential and effective tool when properly used.

Earlier in *Gideon*, Harlan had supported the right of all defendants to have proper counsel at trial, but he denied that the right extended, based on historical precedent, to custodial questioning. While it was true, he said, that innocent people were sometimes detained and questioned, that was a part of our system of justice. "Society has always paid a stiff price for law and order, and peaceful interrogation is not one of the dark moments of the law."[32]

Justice Harlan also attacked the basis of the Chief Justice's decision: the concept of fairness. Miranda confessed after a relatively brief interrogation during daylight hours, with no violence or threat of violence present.

> They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country.[33]

While the goal of the majority may have been to ensure that only voluntary confessions would be extracted in custodial questioning, Harlan believed the ruling went too far.

> "...the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward "voluntariness" in a utopian sense, or to view it from a different angle, voluntariness with a vengeance."[34]

Justice White, in his dissent, was at least as equally harsh. He decried what he viewed as an unfair and dangerous hampering of law enforcement officials'

[32] Ibid.
[33] Ibid.
[34] Ibid.

ability to do their jobs. In a sarcastic swipe at the majority, he claimed a desire to wash his hands of the decision.

> I have no desire whatsoever to share the responsibility for any such impact on the present criminal process. In some unknown number of cases the Court's rule will return a killer, a rapist or other criminal to the streets and to the environment which produced him, to repeat his crime whenever it pleases him. As a consequence, there will not be a gain, but a loss, in human dignity. There is, of course, a saving factor: the next victims are uncertain, unnamed and unrepresented in this case.[35]

Again, public reaction to the decision was strong, even stronger than the reaction to *Escobedo*. One law enforcement official said, "I guess now we'll have to supply all squad cars with lawyers," while another complained that "criminal trials no longer be about a search for truth, but search for technical error."[36]

At hearings that summer, Truman Capote, the author of the recently-released best seller *In Cold Blood* testified the murderers of the Clutter family would have been released had the Miranda ruling been in effect. Comments like these paved the way for the Republicans and Nixon to run a "law and order" campaign in 1968. One of Nixon's favorite lines in a stock campaign speech took advantage of public fear of criminal activity. "In the past forty-five minutes, this is what happened in America. There has been one murder, two rapes, forty-five major crimes of violence, countless robberies and auto thefts."[37] George Wallace also campaigned on the same issue, telling crowds, "If you walk out of this hotel tonight and someone knocks you on the head, he'll be out of jail before you're out of the hospital, and on Monday Morning they'll try the policeman instead of the criminal."[38]

Despite widespread opposition to the ruling, hints of acceptance began to appear. Congress passed the Omnibus Crime Control Act, signed into law by the president, attempting to invalidate the *Miranda* decision, but law enforcement agencies ignored it for the most part, choosing to follow the more stringent guidelines set up in the Court's ruling.

This was not the only example of the nation's gradual acceptance of *Miranda.* Subsequent cases somewhat lessened the public's concern about the

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[35] Ibid.
[36] Powe, *Warren Court*, 399.
[37] Ibid., 410.
[38] Ibid., 410.

lack of police power. *Schmerber v. California,* decided one week after *Miranda*, held that a blood sample could be unwillingly taken from a suspect to help prove guilt or innocence in a crime. By the early 1970s most prominent law officials held the view that *Miranda* did not hamper law enforcement efforts. Most law enforcement officials found that closer attention to procedural safeguards did not hamper their police work.

Miranda has gained even more respectability in the past decade. At her confirmation hearings, Justice Ruth Bader Ginsburg defended the ruling, saying, "It is an assurance that the law is going to be administered even-handedly because, as I said, sophisticated defendants who have counsel ordinarily will know about their rights...."[39] There is no reason to think that Justice Harlan would have accepted this statement by Justice Ginsburg, as it seems to imply an equal protection rationale for supporting the case. Ironically, though, he most likely would uphold *Miranda* today, even as Chief Justice Rehnquist did for a unanimous court in *Dickerson v. United States.*

> We hold that *Miranda*, being a constitutional decision of this Court, may not be in effect overruled by an Act of Congress, and we decline to overrule *Miranda* ourselves. We therefore hold that *Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts.[40]

Miranda has apparently become an accepted volume in the canon of American jurisprudence.

After *Miranda* Harlan continued to serve with distinction on the Court, despite growing ailments and blindness. While he continued to view his judicial philosophy as one of moderation, he increasingly found himself presenting dissenting opinions in many Warren Court decisions. As Harlan's vision worsened, he increasingly relied on his clerks in preparing for cases and in writing decisions. The Court, as an accommodation for Harlan's failing eyesight, allowed him to have one extra clerk his last several years on the bench. He resigned from the Court in late 1971 and died before the year's end.

Ernesto Miranda was retried and again convicted. Due, in part, to his attempts at self-education while in prison he was released on parole almost one year after Justice Harlan died. Later, he was stopped for driving on the wrong side of the road, and a search of the car revealed a gun and illegal drugs,

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[39] Kamisar, "The Warren Court," 119.

[40] *Dickerson v. United States*, 530 U.S. 428 (2000), http://www.findlaw.com, October 24, 2002.

violations of his parole. He was sent back to jail, again paroled, and to supplement his income, sold autographed Miranda cards for $2.00. In 1976 after a bar fight over gambling, Ernesto Miranda was stabbed in the stomach and the upper chest. At the hospital he was pronounced dead on arrival. A suspect in the crime was detained by police, refused to talk, and was released. He has never been seen since.