Expose

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In 1780, after being struck by her mistress with a heated shovel, an enslaved African-American woman named Mum Bett sued for her freedom and won. Later in life she reflected: “Anytime, anytime while I was a slave, if one minute of freedom had been offered to me, and I had been told I must die at the end of that minute, I would have taken it—just to stand on God’s earth a free woman.”

Mum Bett valued freedom more than life, emancipation over existence. Her courage and resolve deserve our highest admiration, and her staunch position leaves us with much to consider. Surely we can empathize with Bett’s plight and understand her motivation, but what can we say about freedom itself? As Americans, we consider freedom to be a good; that much is certain. But do we understand what freedom is? Enough to die for it? The pursuit of freedom has inspired every American armed conflict from the Revolutionary War to the current occupation of Iraq, but how do we define freedom? The nature of freedom is intricate and diverse. Far from providing a comprehensive analysis, our opinion holds that there are two ideas central to the American notion of freedom: movement and choice.

The history of America has been one of motion; we have defined ourselves through progress, through the limitless expansion of Manifest Destiny, and the eternal promise of individual escape. The relation of movement to freedom is highly visible in our material culture. Artifacts that restrict our movement are also thought to restrict our freedom. Consider handcuffs, prison cells, and straightjackets. Each of these items limits our freedom to move, and consequently, each is used to limit a person’s freedom, be it for his or her own good or the good of society. The movement-freedom relation is also evident in the high value Americans give to automobiles. Obtaining a driver’s license and eventually a car is seen as necessary achievements on the way to personal liberty. The ability to move at will has almost become a necessary condition for the attainment of freedom in its American incarnation.

But in its contemporary manifestation, American freedom is probably more about choice than movement. We stroll through the supermarket and revel in our freedom to choose between hundreds of breakfast cereals; our educators pride themselves on the pluralistic choices made possible by our nation’s intellectual freedom. Indeed, the essence of the American Dream is the belief that each of us
may *choose* what we will become rather than having our destiny impressed upon us by the weight of history.

Freedom of choice, however, carries powerful consequences. Citizens who freely choose to own guns must accept that they are also freely choosing to increase the risk of violent crime and accidental death. Freedom, it seems, is a Promethean gift: one encompassing the power to liberate as well as the power to destroy. It is an awesome privilege and a tremendous burden.

For every Mum Bett who would gladly die for sixty seconds of precious freedom, there are hundreds more who have willingly traded away bits and pieces of their freedom for security, comfort, and the desire to conform. Indeed, this is arguably the most compelling paradox of contemporary American liberal democracy. Why do citizens of the most free society the world has ever known deny their freedom by anesthetizing themselves with drugs, television, and religious fanaticism (to name but a few of the most popular methods)? Why do so many of us casually ignore the freedom to choose our elected officials or partake in state and local government? In a global sense, this deliberate renunciation of freedom is mirrored in the rear-guard oppression of Muslim extremism and Communist regimes. What about freedom is so frightening that whole ideologies are designed to curtail and control it? Through the brutal lessons of history, humanity has leaned to fear itself. We have learned to fear the potential for destruction when our freedom goes unchecked. Ultimately, the choice we need to make is simply whether we have the courage to embrace our freedom, or whether we will allow ourselves to be determined and controlled by the artificiality of self-imposed constraints. Perhaps, as Sartre said, “we are condemned to freedom.”

The authors contributing to this issue address these questions from a variety of academic viewpoints and personal experiences. Sometimes frustrating, often enigmatic, the problems of freedom cannot be ignored. Indeed, they demand to be exposed.
The Ambiguity of Freedom

By J. Melvin Woody
Professor of Philosophy

In the heady days after the French Revolution, the trinity of Liberty, Equality and Fraternity began to displace the Christian trinity in revolutionary works of art. Etchings showed cherubs bearing liberty, rather than Mary, aloft toward the heavens. This elevation of freedom to the central role once held by divinity found political expression in the displacement of the divine right of hereditary Kings by the principles of democratic self-government. We live in that post-revolutionary world, where liberal democracy has displaced theocracy and freedom has become a paramount value for which men are prepared to lay down their lives. The President tells us that we have conquered Iraq in order to free the Iraqis — and we did depose a viciously repressive regime. Whether anything positive will come of it remains to be seen. Freedom’s victories have all too often given way to chaos or terror or fresh repression. And small wonder that they do, since there’s so little agreement about what freedom means. Every faction and party in every political dispute invokes freedom as their aim and justification — from free market libertarians to activist state liberals to anti-statist anarchists. Armies and nations go to war in the name of freedom as they once claimed to have God on their side. Libertines seek freedom in debauchery, while ascetics find freedom in self-discipline.

But if everyone claims to champion freedom, doesn’t that leave it an empty ideal that means whatever you happen to like or choose? The diversity of meanings does lead back to choice, not so as to empty freedom of meaning, but so as to remind us that the reality of freedom centers in choice. People pursue freedom as a goal when they find themselves thwarted, when circumstances block or oppress them so that they cannot do as they choose or when the world doesn’t even allow them any significant choices at all. We therefore conceive freedom as liberation from those particular constraints, as overcoming the obstacles that thwart us. But nothing is an obstacle in and of itself. What appears as an obstacle or constraint depends upon what purpose I seek to realize and, therefore, upon what goals I choose to pursue. For laissez faire, libertarian liberals, the state is a threat to individual choice; for welfare liberals, the state is an instrument of collaborative
action for public ends. Their conflicting conceptions of freedom are the product of a prior exercise of freedom in choosing the values and goals that define their horizons. The endless disputes and ambiguities about freedom are indeed rooted in the nature of freedom itself. But they testify to its fertility rather than its emptiness. For the reality of freedom resides in its exercise through the particular decisions whereby we select our obstacles along with our goals. A neutral, noncommittal conception of freedom would indeed be empty. Yet to accept any committed definition would preempt all the others unjustifiably. To do justice to freedom therefore means seeking a just social order that can respect and harmonize the choices of each and all.
STUDENT CONTRIBUTIONS

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Re-Describing Omniscience

By Joshua Duclos
Class of 2004

Few philosophical issues are as hotly contested and inherently divisive as the problem of free will. Intellectual battle-lines have traditionally been drawn between the incompatibilists, who consider omniscience and free will mutually exclusive, and the compatibilists who see no contradiction. In "Re-Describing Omniscience", Mr. Duclos offers an original interpretation of the incompatibilist argument. Omniscience, he argues, should be understood as the perfection of moral rather than factual knowledge. He believes this re-definition presents a viable solution to the free will dilemma.

If God is omniscient, can human beings have free will? For example, if God knows now and has known for eternity that I will watch a movie tonight, can I possibly be free to read a book instead? This dilemma, stated here in an extremely concise manner, is known as the problem of divine omniscience and human freedom. The purpose of this paper is to reexamine the issue, particularly as it is addressed by the contributors to Louis Pojman’s anthology, Philosophy of Religion, and if necessary introduce a new solution. Pojman’s contributors present us with the two traditional sides of the argument: compatibilism and incompatibilism. While St. Augustine and Alvin Plantinga argue that divine omniscience leaves more than enough room for human freedom, Nelson Pike dissents, arguing that if God is omniscient, human beings cannot act freely. These philosophers have engaged an issue with extreme existential import, and the positions they endorse deserve careful consideration.

There is, however, one premise that must precede all discussion of omniscience and free will, regardless of the position we favor. It must precede all discussion because once asserted and accepted, as I believe it must be, this premise will limit and direct how any useful discussion of the issue should proceed. The premise is this: Human beings have free will, and even if we cannot be certain of this, we must act as if it is absolutely true. Let’s call this statement premise 1. Seeing as Pojman’s contributors fail to acknowledge premise 1, I will try in this paper to justify its validity and consider what implications it creates for the problem of
divine omniscience and human freedom.

Before explaining how premise 1 affects our discussion, I need to explain two things: first, what significance this premise has, and second, why we must accept it as true. Both explanations can be made with ease. Let’s consider the idea of responsibility. What does it mean to say that we were responsible for a certain action? It means that we had control over that action, that we exercised volitional intent, and that we could have done otherwise. For example, if I am held responsible for turning this paper in on time, it must be considered within my power to have it finished by the time it is due. If it was not within my power to have it done on time, how could I be held responsible? We cannot be held responsible for that which we cannot control. I am responsible for completing my assignments on time; I am not responsible for tomorrow’s weather.

Now, let us imagine a world in which, for whatever reason, free will does not exist. In this world people cannot have control over their actions, and without control over their actions there can be no placement of responsibility; rather than being freely chosen, human actions are determined. Now imagine that a student from this world is late turning in a paper. How can his professor possibly hold him responsible? Without free will we can have no control over our actions, and without control over our actions we cannot reasonably be considered responsible for anything we do. My point is, without free will, there can be no just placement of responsibility, nor a reasonable concept of accountability.

As said above, I have no deductive proof for free will, but neither do I think I need one. By now it should be becoming clear why I think that free will must be postulated as absolutely true and treated accordingly. Philosophers enjoy musing about determinism, but let one of them try to run a society based on that position and they will see the complete impracticality and irrationality of actually accepting it. Let me give some examples to flesh out this rather robust assertion. To start off small, consider an academic awards ceremony in which honors are distributed to students who displayed exceptional merit. What sense does it make to honor students who, in a world without free will, were not in any way responsible for the achievements on which their awards are based? If honors and awards of any kind (this includes grades, letters of recommendation, promotions, etc.) are to have any meaning or importance, we must believe that the recipients are responsible for their achievements, and thus do possess free will. Responsibility necessitates control, and control necessitates free will. A matter of much greater importance is crime. What rational per-
son could condone sending a man to prison for life unless he believed that the accused was responsible for his actions? Our entire criminal justice system is based on the belief that human beings are free, rational agents whose actions are volitional. The reason the insanity defense works is because it appeals to the idea that the accused person did not have control over her actions, and therefore did not have free will. The only way to justify giving out a speeding ticket, sending a burglar to prison, or executing a serial killer is to assume that in each case the accused was responsible for his or her misconduct, and as we have seen, responsibility necessitates free will.

The position I am advocating is an essentially pragmatic notion of free will. For society to function in a just and rational way, we must act as if human beings have free will. If we deny free will we deny responsibility, and if we deny responsibility I fail to see how a rational professor could fail a student for turning in a later paper, or how a rational judge could send a man to prison for stealing. For the reasons I have given, we have no choice but to wholeheartedly assert that human beings have free will. Having presented and defended premise 1, it is time to consider what effects it has on the problem of omniscience and human freedom.

Pojman’s treatment of the problem presents two premises:

1) God is omniscient.
2) Human beings have free will.

From these premises two traditional conclusions have been drawn. The first, compatibilism, sees no inherent contradiction in accepting both premises as true. The second, incompatibilism, argues that one or the other may be true, but to say that both are true is to engage oneself in a logical contradiction. This is where premise 1 begins to have an effect. Together, compatibilism and incompatibilism offer three possible conclusions to the problem of divine omniscience and human freedom. They are:

a) Human beings are free and God is omniscient (compatibilism)
b) Human beings are free and God is not omniscient (incompatibilism)
c) God is omniscient and human beings are not free (incompatibilism)

Premise 1 immediately necessitates that we dismiss conclusion (c). Any
conclusion that denies free will is unacceptable. We are left with (a) and (b), the former a compatibilist solution, and the latter, incompatibilist. We now must ask ourselves if (a) and (b) stand up any better once premise 1 is applied.

We cannot immediately rule out the compatibilist conclusion (a) because it does not contradict premise 1; human freedom is maintained. But is the conclusion coherent? I don’t think so. Pojman and his contributors define omniscience in the following way: "For any proposition, God knows whether it is true or false. That is, all God’s beliefs are justified and true. He holds no false beliefs at all" (Pojman, 231a). Under this definition of omniscience, I find conclusion (a) is incoherent. Furthermore, I maintain that compatibilism, as Augustine and Plantinga understand it, is impossible. Let me explain why.

Compatibilists and incompatibilists agree that an omniscient God knows at Time-1 what Person-X will do at Time-2. Pike, our incompatibilist representative, makes his case in the following way. If God believes at Time-1 (say 2000 years ago) that I will watch a movie tonight, then I have no power, no control, no ability to do anything else. I cannot read a book instead. Why not? If I decide to read a book instead then I will have brought it about that at Time-1, 2000 years ago, God held a false belief. After all, 2000 years ago God believed that I would watch a movie tonight. If tonight, I do anything other than watch a movie it follows that 2000 years ago God held a false belief, and if God held a false belief, he cannot, by Pojman’s definition, be omniscient. Through an argument like this one, Pike concludes that we can have free will if God is not omniscient, but if we are going to believe in an omniscient God free will is impossible.

Augustine and Plantinga will try to defend compatibilism by arguing that divine foreknowledge does not mean divine foreordination. Essentially, they contend that God’s omniscience entails foreknowledge of our willful choices. God does not cause us to act this way or the other, he merely know how we will choose to act; he knows our will. This seems like an acceptable solution, but the question remains, is it coherent? Like Pike, I don’t think so. Suppose that at Time-1 God knew I would choose to do X at Time-2. The fact remains, that at Time-2 I am not free to do anything other than X lest I bring it about that God held a false belief at Time-1; I am not free to change my choice. All the compatibilists have done, it seems to me, is insert the word "choose" in the equation. The word "choose" certainly implies a willful act and thus gives the appearance of freedom, but the fact remains that unless we are free to do other than X at Time-2 we are not free. The compatibilists have engaged us in a language game. Fortunately, Pike has
revealed the insubstantial nature of their position, a position that amounts to nothing more than the incompatibilist argument with the word “choice” thrown in the mix. 

Compatibilism is incoherent, so we can’t accept conclusion (a). Conclusion (c) has also been rejected because it violates premise 1. The last conclusion offered by Pojman’s contributors is (b), the incompatibilist suggestion that human beings have free will, but God lacks omniscience. This conclusion is correct to deny the compatibility of human freedom and divine omniscience, at least as it is defined by Pojman. It is also correct in concluding that if the two states of being are incompatible, divine omniscience must be abandoned so as to make room for human freedom. Is this it, then? Has our inquiry run its course? Shall we end our discussion by endorsing conclusion (b)? Not quite yet. Conclusion (b) satisfies premise 1, but it does so only at the expense of divine omniscience. I wonder, is there no way to have both? Though we just finished dismissing compatibilism, our dismissal really should have contained a qualification. The qualification I want to offer is this: human freedom and divine omniscience are incompatible if by omniscience we understand Pojman’s definition, i.e., the inability to hold false beliefs. My suspicion is that Pojman’s definition is inaccurate, and as such our dismissal of compatibilism is based on a false understanding. There are now two questions that I need to address. First, why is Pojman’s definition of omniscience inaccurate, and second, how should the word be understood?

Pojman’s definition of omniscience, essentially the same definition used by Pike, Plantinga, and Augustine, is unacceptable for one, simple reason. God, as I understand God, is perfect. I am quite certain that Pojman, Plantinga, Pike, and Augustine would concur. Now here is the problem: would a perfect God prohibit or encourage human freedom? My belief is that he would encourage it, and again I expect no argument from Pojman and his contributors. So a perfect God would encourage human freedom, but what bearing does this have on the problem of omniscience? Well, as we have seen, omniscience, as we have defined it, makes human freedom impossible. Therefore, a God who is omniscient in Pojman’s sense of the word cannot be perfect because he would have made human freedom impossible, and a perfect God is one who encourages such freedom. At this point we have no choice but to abandon either our belief that God is perfect, or our belief that God is omniscient in Pojman’s sense of word. My suggestion is that we abandon the latter.

The traditional, Pojmanian understanding of omniscience smacks of ana-
lytic mechanicalism. The divine takes on the appearance of an awesomely intricate and infinitely sophisticated piece of machinery. A being that holds no false beliefs, that has complete knowledge for all space and time – this being is nothing more than a vastly superior human. After all, we humans possess a great deal of knowledge, and we desire to gain as much as we can about every space and time imaginable. As civilization has progressed, humanity has slowly advanced towards this "ideal of knowledge" we call omniscience. Think about our example of whether or not I will watch a movie tonight. Already human beings have invented psychology, neuroscience, and sociology, all disciplines used to help predict or "know" future actions. If a good psychologist or sociologist was given an hour to talk with me, I am confident that she could predict (know) several of my future actions. Her knowledge would not be perfect, but as these disciplines advance it is reasonable to assume that their ability to predict and know future actions will increase. The same is true for knowledge of the past. Haven't the historical sciences brought us knowledge about past space and time, knowledge we didn't have 2000 years ago? In fact, it occurs to me that my education has given me knowledge of so many different times and places that I seem to be moving towards Pojmanian omniscience (not that I expect to arrive there, but with unlimited time, who knows?). In the end, Pojmanian omniscience may be the kind of omniscience that human beings desire, but I very much doubt that it is the kind of omniscience we should ascribe to God.

God's omniscience is not a higher form of human knowledge; it is not a knowledge of true and false. Instead, I suggest we think about God's omniscience as a complete knowledge of good and bad. God's omniscience is moral, not factual. In a similar consideration of omnipotence, Kierkegaard rejects the traditional view that considers divine omnipotence as human power made infinite. God's power is not human power magnified. It is not the ability to move mountains or part the ocean waters. He may be able to do that, yes, but that is not his omnipotence. His omnipotence is his goodness.

"The absolutely greatest thing that can be done for a being, greater than anything one could make it into, is to make it free.

–Kierkegaard
thing one could make it into, is to make it free. It is exactly here that omnipotence is required…. The art of power consists precisely in the capacity to set free". From this it follows that God's omnipotence, his infinite power, is his ability to make us free.

Just as God’s omnipotence can be understood as his perfect ability to create freedom, I believe we should understand God’s omniscience as his perfect ability to know good from bad. Human beings can know true from false, and as we continue to evolve and progress, our skill at determining the one from the other is increasing. One thousand years ago we could say very little that was either true or false about the universe, and now it appears that we can say a great deal. I am sure that in another thousand years we will have even more to say. But our knowledge of good and bad, our moral development, remains arrested. Socrates and Plato had as much insight regarding the good as Descartes or Locke, Sartre or Heidegger. Moral knowledge, knowledge of good and bad—this is the knowledge upon which human beings flounder. And it is precisely this kind of knowledge that is the essence of God's omniscience. Truth and falsity we can figure out on our own – it is morality we need help with.

I have introduced a definition of omniscience that fits remarkably well with Kierkegaard’s notion of omnipotence. For Kierkegaard, freedom is the highest good, so it follows that an omnibenevolent and omnipotent God would both desire the good and be able to make it actual. The only piece missing is God’s infinite and absolute knowledge of what the good is. If, however, we accept my suggestion that omniscience is infinite and absolute knowledge of good and bad, then we are able to understand a God who is omnibenevolent (desires the good), omniscient (knows the good), and omnipotent (has the power to do the good). This God desires to set us free, knows how to set us free, and has the power us free. This God is all good, all powerful, and all knowing, but not at the expense of human freedom. Indeed, he is all these things to the benefit of human freedom!

If omniscience is going to leave room for free will, it needs to be an omniscience of moral knowledge rather than factual. Not only does this notion of omniscience leave room for free will, it shows us a God whose knowledge is truly superior and beyond ours, not merely a better version of what we already have.

WORK CITED
Pojman, Louis. Philosophy of Religion. 2002
The Gift Outright

The land was ours before we were the land's.
She was our land more than a hundred years
Before we were her people. She was ours
In Massachusetts, in Virginia,
But we were England's, still colonials,
Possessing what we still were unpossessed by,
Possessed by what we now no more possessed.
Something we were withholding made us weak
Until we found out that it was ourselves
We were withholding from our land of living,
And forthwith found salvation in surrender.
Such as we were we gave ourselves outright
(The deed of gift was many deeds of war)
To the land vaguely realizing westward,
But still unstoried artless unenhanced,
Such as she was, such as she would become.

– Robert Frost
In “The Gift Outright,” Robert Frost—one of America’s most beloved poets—complements his overlying trademark love of the land with subtly “patriotic” undertones. In many ways, the sanctity of America as a physical, temporal place is inextricably tied to the sanctity and preservation of the most cherished American ideals, which cannot be as easily defined. In other words, the land contained within the borders of the United States is the body in which the soul, or beliefs, resides; the two cannot be separated. Although Frost does not state this explicitly, the feeling is there, beneath the surface. During the Revolutionary War that marked this country’s founding, and many times since then, Americans have been called to defend the physical safety of this country and its inhabitants. Few people would disagree, however, that this was all we were fighting to maintain. Frost’s direct references to British colonialism, and his allusions to what America “would become,” once she was free from literal and metaphorical “possession,” demonstrate that this is the case. Often, the violation of America itself—its land or its people—powerfully symbolizes a perceived violation of Americaness—the American belief in democracy, freedom, equality, opportunity, and so on. Frost’s poem is so intertwined in both the history and future of America that it should not be read in isolation, but with regard to other relevant documents and speeches that also testify to the inseparability of the soul of America from its body.

In many ways, “The Gift Outright” parallels the Declaration of Independence. Both use similar language in support of similar ideals, namely that Americans believe in independence, democracy, and self-determination. For the purposes of the analysis of this poem, it is not necessary to define exactly what these terms mean,
but rather, to determine if such ideals—however you define them—are in fact dependent on physical freedom and a sense of security about that freedom. In writing the poem, Frost clearly had the Revolutionary War in mind, which was consistent with his tendency to retrospect back and use themes from the past, with an almost nostalgic tone (“The Poetry of Robert Frost,” 2002). “She [the land] was ours / In Massachusetts, in Virginia, / But we were England’s, still “colonials” Frost writes; just as the authors of the Declaration asserted that it had become “necessary for one people to dissolve the political bonds which have connected them with another…” (“The Declaration of Independence: A Transcript,” 2002). In both, physical or territorial independence and “political” independence—that is, the establishment of a society based on distinctively American ideals—were inseparable. England and America, then the colonies, were not just separate physical entities separated by a vast ocean; they were separate political or ideological entities as well. The colonists had to, as Frost put it, be completely “possessed by” the land—and “surrender” to the demand that we belong to the land—before they could realize the dream of a society founded on “American” values. Likewise, in the Declaration, it was deemed crucial to the development and viability of American beliefs, later put forth in the Constitution, that the colonies “assume...the separate and equal station to which the laws of Nature and of Nature’s God entitle them...” (“The Declaration of Independence: A Transcript”, 2002).

At this point it would be beneficial to look at the last part of this previous excerpt from the Declaration—that “Nature” and “Nature’s God”—support or sanction American autonomy, and are thus embodied in the beliefs that provide the foundation for American society and thought. This supposition is also contained in Frost’s use of the word “gift” in his title and several other times throughout the poem. According to Webster, a “gift” is something which is “voluntarily transferred by one person to another without compensation.” This first portion of the definition is inapplicable, in this context. The British certainly did not transfer their colonial properties to the Americans willingly; nor did this forced transference occur without compensation. The compensation was in fact very high, and came in the deaths of many soldiers and civilians on both sides. However, there is another aspect to the definition that is highly relevant: a gift “often implies special favor by God or Nature.” Indeed, Americans truly believed, and still believe, that God supports their endeavors, and that God’s commandments are consistent with those set forth in the Declaration and the Bill of Rights. This belief is frequently expressed in the evo-
cation of the name of God in connection with America, and especially in the sentiment, “God Bless America”, which has been evoked in songs and speeches—especially since September 11th.

As with any piece of literature or art, the historical time period in which it was written influences the writer or artist, but it also influences modern interpretations of the piece—"The Gift Outright" is no exception. Frost wrote this poem in 1942; probably less than a year after the United States became involved in World War II after the bombing of Pearl Harbor ("The Poetry of Robert Frost", 2002). Undoubtedly, Frost had this tragic incident in the back of his mind when writing this poem. There are connections that can be drawn between Frost’s implied motivations behind the Revolutionary War and the reasons the US joined the Allied effort, as stated by President Franklin Roosevelt when he addressed the nation after the attack. In this line, significantly enclosed in parentheses,— “(The deed of gift was many deeds of war)” —Frost suggests that the price Americans paid, or the qualifications of the “deed,” for “our land of living” was war. But it seems highly unlikely that future Americans or so-called patriots who fought in the Revolutionary War would have been willing to sacrifice their lives for a mere body of land. The land must represent something else; these future Americans believed that they were also acquiring the “deeds” to freedom, democracy, liberty, and countless other terms used to describe the nature of America. As a side note, the parentheses signify the belief that sacrifices for the American “cause” are secondary to the cause itself; that revolution is necessary in order to gain and maintain American as a being—both body and soul. Thus, this something else would have been a very valuable “gift” indeed, and certainly one worth sacrificing one’s life for in order to gain.

Perhaps the events of December 7, 1941, which Roosevelt called “a date which will live in infamy,” reminded Frost of his belief that this country was founded on the conviction that the inherent sanctity of the land represented—and was preserved or threatened concurrently with—the sanctity of American beliefs (“Pearl Harbor Speech,” 2002). As mentioned previously, the physical violation of Americans, on American soil, is nearly universally viewed as far more tragic and reprehensible than, for instance, soldiers or even diplomats or civilians being killed abroad, on foreign soil. This supports the hypothesis that the vast “body” of American soil is cherished insomuch as it shelters more abstract, fragile American ideals. The hypothesis is further corroborated by Roosevelt’s proclamation that first and foremost, “our people”, then, “our territory”, and last of all, “our interests are in grave danger”
Significantly, he mentioned that “our territory”, or land was at risk before adding that our “interests”—the security of inherent Americaness—is also at risk. Likewise, Frost first mentions that we fought for the gift of the land, before adding that this is a land that is open to the spread of American ideals, and that it was up to us to transform it from being “unstoried, artless, and unenhanced” by furthering American civilization and its ideals. Like the colonists in Frost’s poem, Roosevelt refused to “withhold” the United States’ support for the Allied efforts any longer, and realized that we would have to “[give] ourselves outright” in defense of American land, people, and above all, indefinable, beloved American values.

Frost recited “The Gift Outright” from memory at President John F. Kennedy’s inauguration in January of 1961. Originally, Frost had intended to read a poem he wrote especially for the inauguration, entitled “Dedication”; but the glare of the sun off the snow prevented the aged Frost—who was then eighty-seven years old—from reading what he had written (The Poetry of Robert Frost, 2002). So, instead, he decided to recite “The Gift Outright.” It turns out that this was a very appropriate choice when it is considered in the context of Kennedy’s administration. Frost refers to “the land vaguely realizing westward,” toward the end of the poem. This line anticipates not only the conquering of the unexplored “wild west,” but also the spread of American society and the beliefs at its core. Thus, Frost believed—as many Americans believe—that the land, or temporal, and the ideals, or figurative America are bound together, and each one depends on the other.

In a striking parallel, in his inaugural address, Kennedy memorably stated, “We stand at the edge of a New Frontier”; subsequently, the “New Frontier” was used to refer to the programs of his administration (“John F. Kennedy,” 2002). Kennedy, of course, was not referring to a physical frontier—and neither, as is has been argued, was Frost—but rather a metaphorical one. Kennedy’s “New Frontier” represents the continued anticipation that strength of American ideals would continue to conquer the “common enemies of man: tyranny, poverty, disease, and war itself”, through a “revolution of hope” (“JFK’s Inaugural Address”, 2002). Furthermore, Kennedy himself acknowledges the connection between the current “revolution” and the one which marked this country’s inception. “We are the heirs of that first revolution”, he said, and as heirs we must continue to protect the ideals upon which this society was founded (“JFK’s Inaugural Address,” 2002). They must not just be protected on our own soil, but promoted abroad, as would become evident in later years,
such as during the Vietnam Conflict.

The poem “The Gift Outright” symbolizes and gives voice to an inherent American belief: that the sanctity of the land is inextricably and necessarily allied with the perception of the sanctity of American ideals. These ideals can encompass freedom, liberty, independence, equality, and numerous others, the definitions of which, and the order in which they are ranked in terms of importance, will vary depending on whom you ask. Is it possible that far more Americans would agree that the inseparability of the body and soul of America is something we hold to be inherently true, and that this is a belief which plays a leading role in the play of America’s conscience? Robert Frost, I have argued, would agree. And so do I.

WORKS CITED

*JFK’s Inaugural Address*

www.cnn.com/SPECIALS/cold.war/episodes/13/documents/


“Pearl Harbor Speech.”

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“The Declaration of Independence: A Transcription.”

National Archives and Records Administration.


The most divisive, enduring battles for freedom rage within the individual. Addiction, self-doubt, fear—each of these inerently personal struggles must be won before an individual can claim to be free. Stifled internally, Mr. Roesler’s protagonist looks for a means of escape, running into direct conflict with societal limits to his freedom. His short screenplay questions the choices that stand before us: Are they genuine or illusory? Is freedom obtainable if we are imprisoned by our own internal demons?

FADE IN:

EXT. CROWDED INTERSTATE – DAY

In the grass median between a six-lane interstate there’s a RUNNING MAN. He is thin, middle aged, with dark features. As he runs his arms flail spastically as cars pass by with incredible speed. He runs with a desperation that exists between elation and extreme yearning. Every angle of his journey is documented: from his back, to his chest, to his profile, and around his head.

The RUNNING MAN smiles and runs as the cars begin to honk. As the cars honk he grows more spastic, he makes offensive gestures to the travelers, and increases speed. There is sweat and saliva pouring from his face, but he doesn't care. He keeps running.

A police cruiser pulls up next to him.

CUT TO:

EXT. INTERSTATE MEDIAN – DAY
The RUNNING MAN is standing on the side of the road, by the same police cruiser from the previous shot. There is an OFFICER standing close by and he appears to be writing the RUNNING MAN a citation.

The OFFICER is talking and while we can hear distantly that he is telling the man that this sort of behavior is not allowed and that legal action can be brought against him if he persists, we can see that THE RUNNING MAN is not listening. The closer and closer we come to the RUNNING MAN we see that he is in his mind, that his eyes are reflecting. He is somewhere else.

CUT TO:

EXT. CAMBRIDGE, MA – DAY

Massachusetts Avenue is sick with traffic. Trucks, buses, and cars are caught in each other’s throes as they struggle to get where they want. The day is gray and dark.

It begins to rain.

CUT TO:

EXT. STOREFRONT OFFICE WINDOWS - DAY

The business windows of Meridian Travel Agency are cluttered and suffocating with picture advertisements of exotic travel spots, for affordable rates. Through the windows we see the RUNNING MAN making himself coffee in his small, one room, office.

CUT TO:

INT. MERIDIAN TRAVEL AGENCY – DAY

ALEXANDER WATTERS/RUNNING MAN sits at his desk with coffee in hand. He sits and stares at the walls, ignoring the papers and the computer that await his touch. Traveling around the walls of his office several posters become apparent. Unlike the posters head-locking the outside windows, however, these ads all point to one
place. Slogans like: LET THE YU–CON-NECT TO YOU!! Escape to ALASKA!! STEP OUT YOUR FRONT-DOOR INTO THE LAST-FRONTIER!! If they ASKYA WHAT YOU’RE DOING TOMORROW, TELL THEM “I’M GOING TO ALASKA”!! become annoyingly apparent.

ALEX stares at these posters. He drinks his coffee.

After ten seconds of staring ALEX picks up some papers and looks over his finances. The red ink of impending economic doom makes itself noticeable all over his desk. ALEX, however, gathers the paper together, puts one sheet face down on his desk and then places another on top, perpendicular to the last sheet. He continues this stacking until all the papers once in his hand, are now in a neat pile. He then places the pile at a far corner of his desk, and looks at it, with pride.

After another ten seconds the door to the office opens and a severe OLD WOMAN enters. She is well dressed and wealthy enough to support a habit of traveling. Without asking to come in or sit, she comes in and sits.

OLDER WOMAN
I am furious, Mr. Watters.

ALEX
(dozing)
Yukon? I'm sorry... I mean ‘hi,’ What's wrong?

O.W.
(in stride)
My vacation, if you can call it that, was and still is the problem, Mr. Watters.

ALEX
(pulling himself together)
Oh really? What went wrong?

O.W.
The entire trip was a disaster. Starting with the location!
ALEX
Really? You didn’t like it?

O.W.
I asked for WARM, Mr. Watters. I asked for tropical. You gave me neither! What I got out of you was frost-bite and severe weather rash. I wanted one thing, one thing!

And, please, don’t look at me with that “what’s going on here” look all over your face… you do know what that one thing was.

I wanted to parasail! That was all I asked for from you and you boggled it with cold, oil, trash, wool, persistent fever, and seal meat! I have never been so horrified!

CUT TO:

MONTAGE:

A) OLD WOMAN standing outside an almost deserted airport, in the cold, waiting for a taxi.
B) OLD WOMAN looking down into her toilet only to find ice in the bowl.
C) OLD WOMAN standing on a beach and looking at her shoes, which are covered in oil.
D) OLD WOMAN battling a blizzard as she rides on the back of a dog sled.
E) OLD WOMAN sitting inside an ice fishing shack with two old men drinking from a paper sack.
F) OLD WOMAN lying in bed with severe sickness.
G) OLD WOMAN throwing up outside her dilapidated hotel.

CUT TO:

INT. MERIDIAN TRAVEL AGENCY - DAY
ALEX shifts in his chair nervously, fiddles with his new pile, and looks sheepishly at O.W.

ALEX
They have parasailing -

O.W.
I don’t care Mr. Watters! I want a refund, or I will drag you so far under with Bad Business that you’ll end up shoveling snow in that forgotten wasteland you sent me to.

ALEX
(mumbling)
Yeah, look... I’m...

O.W.
(continuing without noticing)
So that’s that, Mr. Watters...

ALEX starts to play with a small figurine on his desk. He realizes that O.W. has been staring at him for several seconds. He throws down the figurine quickly.

ALEX
Ummm, no, please won’t you let me make it up to you by scheduling a new trip? I think some communication was lost on the first attempt and, if you let me, we can give it another try.

O.W.
Mr. Watters I would not use your service again if you held a gun to the head of my youngest grandchild. I expect a check from you within the week, or else, and I promise you this, the consequences will be severe.

After this tirade the irate OLDER WOMAN storms out of the office, slamming the door behind her as she goes.
AND ALEX takes a deep breath and puts his hands on the desk.
ALEX is about to reach into his desk to grab something, but the second he does
the door opens again and another IRATE WOMAN, this one slightly younger, walks in.

CUT TO:

THE WOMAN is now sitting in the chair. All the characters in this next segment
should be sitting in that same chair.

IRATE WOMAN #1
I did not ask for ALASKA, MR. WATTERS!

CUT TO:

IRATE WOMAN #2
TOO COLD, MR. WATTERS!!

CUT TO:

IRATE MAN #1
…got my foot caught in some ice…

CUT TO:

IRATE WOMAN #3
…damn polar bear pissed on my bags…

CUT TO:

IRATE MAN #2
…the worst dog racing experience that I have ever
been through…
CUT TO:

IRATE WOMAN #4
…do you send all of your customers to Alaska? If you do, I really think that you should reconsider…

CUT TO:

IRATE MAN #3
…this is the worst travel agency I have ever used…

CUT TO:

EACH PRECEDING CHARACTER
I WANT MY MONEY BACK!

CUT TO:

JANE MISKEL
I really enjoyed myself.

INT. MERIDIAN TRAVEL AGENCY - DAY

ALEX'S head is buried in his desk. The montage has stopped.

JANE MISKEL, a woman who is in her late thirties: petite, attractive, a little mousy. She speaks softly out of consideration, not out of fear.

And ALEX looks up at her in wonder.

ALEX
You really liked it?

JANE
(softly, with hesitation)
Oh, sure. It was actually one of those places that I always wanted to go to and never really got the
chance. I was a little nervous when I first arrived, especially since I asked for something warmer, but as the trip went on I found myself really having a good time.

ALEX
Really? That’s… That’s what I want… I’ve always really wanted people to get that out of it.

JANE
Well, alright, that’s fine. But don’t you know? Haven’t you been there?

ALEX
Never once.

JANE
Never? But there’re posters for it all over your wall… Mr. Watters?

ALEX is staring at the pile on his desk again. He looks up and smiles at Jane.

ALEX
I’m sorry, what? Oh, the posters… Yeah, I know… I keep them there because I’ve always wanted to go there. They’re just about as close as I can get, I guess.

JANE smiles at ALEX’S apparent distraction. She brings her chair closer to his desk.

JANE
Well, why haven’t you?

ALEX
Why haven’t I what?

JANE
Why haven’t you gone to Alaska?

ALEX
You really don’t want to know.

JANE
Try me, Mr. Watters.

ALEX
All right, this is going to come quickly. If I don’t get it all out in one shot, well then I tend to stumble. I hate stumbling. I also hate being called Mr. Watters. The name is weird; it’s got that two T thing going. What’s that about? Some people say you should know where your name comes from, but I never really bought into that bullshit. A name’s just a GD name, and it sucks when that name is –

JANE
Alex?

ALEX
Yup?

JANE
You’re stumbling.

ALEX
Shit, sorry.

JANE
It’s fine, just tell me.

ALEX
Ok, working up to it. I don’t often tell people this but I have a severe, and what I am told is a self deprecat- ing, addiction to gambling. It’s bad - especially at the tracks. I barely make it to work because I tried waiting out ESPN. It’s like masturbation, you know? You always think you have more time than you do, but the clock
goes by and you find yourself five past when you should be at work and you still think its ok. I just sit there and wait, and then I don't take a shower – that gets bad. I hav-

JANE
Alex?

ALEX
Stumbling?

JANE
Yeah.

ALEX
Ok, well, so that's where the money goes. And I also seem to have an off and on trouble controlling my use of pot, I mean marijuana.

Therefore the money that I would use to go with doesn't seem to stick around too often, when I have it. So I am here, basically when I am not gambling, sitting at my desk, listening to people bitch about their vacations. It's all shit, ya know?

JANE is shocked. Sits back in her chair quickly to the point where she almost tips it over.

JANE
Oh, alright.

ALEX
More than you wanted to know, right?

JANE
Oh, no. It’s not that, I was just expecting something a little less… technical.
ALEX
(sighing)
So was I...

JANE
What was that?

ALEX
(taken aback slightly, then going on)
Life should be simpler, that’s all.

JANE
Oh, yes, you’re right.

ALEX looks at her, and then looks at the floor. Gets up from behind his desk, goes over to one of the chairs opposite his desk and talks directly to JANE.

ALEX
I mean, don’t you ever feel that way? That instead of sitting at a race track, or in the armpit of some casino, or in a fucking travel agency - that you should be fly fishing? Or building a log house? I mean it’s this shit (gesturing) that pulls us into our own miseries. And now I get crap because every place that I send people has to be warmer, and easier. Why does everything need to be easy? I don’t know what easy means, anymore. I am supposed to be this travel agent, and I really don’t know what I’m fucking doing! (beat) Sorry, that was building up all day.

JANE takes ALEX’S hand.

JANE
(surprised, collects) You’re right.

And ALEX looks ashamed. He lets her hand go.
ALEX
I know.

JANE
Well you should do something about it.

ALEX
Thanks for the gesture. I know.

JANE
Well what are you going to do?

ALEX
I don’t know.

JANE
(slightly frustrated)
Well figure it out.

ALEX
Thanks. That’s not so easy, Miss Miskell.

JANE rises and looks like she wants to say more, but doesn’t. She looks down at ALEX with apprehension.

JANE
You’re welcome… thanks for the trip advice.

ALEX
It’s what I do.

JANE
Well, thanks anyway.

She gets up and leaves the office. ALEX sits and stares off after her and then after a second takes a joint out of his desk, and lights up in blatant disregard for the
people on the sidewalk. He sits back in his chair and sighs; the beginnings of tears form at his eyes. He starts to cry.

AND then the door to the office opens.

It is JANE MISKEL. ALEX, in surprise, drops his joint in his lap and severely beats his own crotch to diffuse the impending fire. He is in obvious pain, but JANE does not notice as she sits.

She never does anything like this.

JANE  
I came back.

ALEX, in order to play off what he has been doing, puts his feet on his desk. The second his feet cross one another, however, the pain from the crotch-beating escalates, and he almost falls forward.

ALEX  
(wincing) I can see that.

JANE  
I don't know why, Mr. Watters, but I want to help you.

ALEX  
Oh yeah? Why is that?

JANE  
(rushing) Because there is more to this than just taking things for granted. You have some obvious problems, and to say that I don't is a terrible lie, but I had the thought on the way out of here that if I left you behind then I would be just stupid. I think you are attractive, I liked where you sent me for my vacation, you don't seem together enough to be an intellectual or physical threat, and I
have never done this before in my life.

Would you like to have dinner with me?

ALEX
No.

JANE
Alright, good. I wasn’t prepared for that. You got me, Alex. Why not?

ALEX looks at the floor, behind his desk where the joint is still burning. Smoke tendrils out as it burns and ALEX looks at it in pitiful fascination. There are mechanics alert in ALEX’s mind that are processing, but not too quickly. JANE waits patiently.

ALEX picks up the joint and shows it to JANE.

ALEX
Because there is something I want to show you first…

CUT TO:

EXT. INTERSTATE MEDIAN – DAY

ALEX and JANE are standing in the median. They are both waiting, standing side by side. Suddenly Alex starts to run, and Jane follows.

JANE
(breathless)
So, what is this supposed to do?

ALEX
(jubilant)
Run faster! Try to make the cars honk!

They are both running together, wildly out of control. They laugh and push as one tries to keep up with the other.
CUT TO:

EXT. INTERSTATE MEDIAN – DAY

Topographical view of Alex and Jane as they run.

Both man and woman run faster and faster. On the side of the median the same police cruiser from the beginning is visible.

And ALEX and JANE run on as the cruiser tries to flag them down.

FADE OUT

END
The Scope of the Rights of the Accused Under the Burger and Rehnquist Courts

By Andrew McDowell
Class of 2005

The judicial branch of the U.S. government was created to check the decisions of the executive and legislative branches in order to help guarantee and secure the freedoms of Americans. In this essay, Mr. McDowell examines how the Supreme Court has influenced the rights of the accused through important decisions during the Burger and Rehnquist Courts. He asserts that the rights of the accused have been slowly chipped away since the Warren Court and proposes changes to the current set of standards regarding the accused.

Under the guidance of Chief Justice Earl Warren, the Supreme Court developed a coherent and expansive guide for the rights of persons accused of crimes, using the Fourth, Fifth, Sixth and Eighth Amendments as a base. The Chief Justices of the Supreme Courts who followed Warren, Warren Burger and William Rehnquist, have slowly chipped away at many of the Warren Court’s decisions and have severely limited them in scope. In the years following Chief Justice Warren’s retirement from the High Court in 1969, the more conservative Burger and Rehnquist Courts have taken a harder line concerning the rights of the accused. In doing so, the decisions that have come down from the post-Warren-Courts have given law enforcement officials more room to enforce the law, but have also substantially reduced the rights of those accused of crimes and significantly narrowed the scope of the Warren Court’s decisions.

The Fifth Amendment: Protection Against Compulsory Self-Incrimination

The Fifth Amendment of the United States Constitution protects against self-incrimination in
criminal cases. The Amendment states that no person “shall be compelled in any criminal case to be a witness against himself.” This Amendment intends to protect all people against confessions forced out of them by the police in order to achieve a conviction.

In 1966 the Warren Court set out broad and all-encompassing guidelines for protection against self-incrimination. In *Miranda v. Arizona* (1966) the Court laid out rules for obtaining a confession from a suspect. Prior to this ruling, suspects did not have to be informed of their rights concerning self-incrimination and the assistance of legal counsel. After the Warren decision, all arresting officers have to recite an “incantation” which informs the suspect of their rights. This recitation’s intent is twofold. The first is to inform suspects of their constitutional rights. The second is to help officers obtain confessions from criminals that will stand up in criminal court regardless of what procedural arguments are made. This set up broad protections for the accused which would slowly be whittled away by Court rulings in the Burger and Rehnquist Courts.

In *New York v. Quarles* (1984) the Burger Court started to shave down the rights of the accused. Here the Court allowed exceptions for Mirandizing suspects if there was a “public safety” issue at the time of the arrest. In the *Quarles* case, a suspect was arrested after a reported rape at gun point. When the suspect was detained, his shoulder holster did not contain a weapon. The arresting officer asked the suspect where the weapon was before informing Quarles of his Miranda Rights out of fear that a loaded weapon could pose a significant threat to public safety. The Supreme Court agreed that such limited questioning of suspects before, they are informed of their rights is acceptable if a danger to public safety, such as a missing gun, is present. During the time between the arrest and the suspect being informed of his or her rights, utterances may be made that could be used against the suspect in criminal proceedings. These vocalizations might not have been made if the suspect was informed of his or her rights against self-incrimination. This is a much weaker version of the strict standard the Warren Court intended.

The decision of the Rehnquist Court in *Illinois v. Perkins* (1990) follows in the same vein as the *Quarles* decision. Here, the Court held that an undercover agent placed in a cell with a prisoner to obtain information is not required to inform a suspect of his or her Miranda Rights. The Court’s holding here does not water down the rights of the accused as much as the *Quarles* decision, but, it still backs away from the strict interpretation of the Warren Court. Because the entire point of such an undercover operation is to obtain
information that would not be otherwise available to police officers, the embedded agents would not be able to undertake their mission if they had to make it clear that they were law enforcement officers. Furthermore, the Court stated that since the suspect did not know he was speaking to a law enforcement agent, the confession was voluntary and therefore admissible.

In *Davis v. United States* (1994), the Court held that a suspect hinting he wished to speak with a lawyer did not require officers of the law to cease the questioning of said suspect. In *Edwards v. Arizona* (1981), the Court held that upon the suspect’s request for legal counsel, police officers must halt all questioning, bar none. In *Davis*, the suspect waived his right to remain silent, as well as to counsel, in oral and written form. After the questioning had proceeded for a time, the suspect stated “Maybe I should talk to a lawyer.” When investigators stated that they were going to respect his Fifth Amendment rights and send for a lawyer, the suspect stated, “No, I’m not asking for a lawyer... No, I don’t want a lawyer.” Since the suspect did not formally request a lawyer, and actually waived his right to have one present during his questioning, the precedent set down in *Edwards* is not controlling here. Unless a suspect formally invokes his constitutional rights protecting him against self-incrimination, the police are under no obligation to stop questioning the subject, and any evidence or statements gained from the interrogation will be admissible in criminal court. In other words, the question of “Do I get to see a lawyer?” does not equate to a statement of “I want to speak to my lawyer now.” Ambiguous references to the right to have a lawyer present at the time of questioning do not require interrogators to halt their questioning.

In *Dickerson v. United States* (2000), the Rehnquist Court upheld the procedures stemming from *Miranda* in the face of a congressional challenge. The Court held that Congress cannot override a Supreme Court ruling, even if it has been significantly weakened by subsequent holdings. The Congress passed a law which determined the admissibility of statements given under interrogation based on whether or not they were given voluntarily. The Rehnquist Court stated that the *Miranda*
case established constitutional rules that Congress cannot override. Furthermore, Congress gave no justification for overturning *Miranda*, even if its strength has been diminished by subsequent Court decisions. The *Miranda* ruling “has become embedded in routine police procedures to the point where the warnings have become part of our national culture.” The removal of this standard and its replacement with the standards Congress suggested would place an undue constraint on law enforcement, to the detriment of civil society, public order and safety. Furthermore, Congress’ proposed standards were more difficult for officers to adhere to. This would make it easier for defendants to have their statements ruled inadmissible in a case. The standards proposed in the legislation would have strengthened the rights of the accused to be more in line with the Warren Court’s view; this is the exact opposite of what the Rehnquist and Burger Courts were attempting to do in their previous rulings regarding the Fifth Amendment.

The present law in this area has been greatly weakened since the Warren Court. As a result of the many exceptions made to the *Miranda* holding by the Rehnquist and Burger Courts, accused persons’ rights have been greatly limited concerning their protections against self-incrimination. The Miranda Rights are still controlling in this area, but they are greatly weakened. Statements made by suspects are more likely to be allowed in criminal cases because the Court’s decisions have given courts more latitude in deciding what is admissible. The *Quarles* holding is a good example of this. By allowing utterances, including admissions of guilt made before a suspect has been informed of his rights, to be admissible in courts, the protections of those who would be otherwise oblivious of their rights are greatly decreased. In addition, a holding such as that of *Quarles* opens the way for investigators to twist what “public safety” means to obtain useable evidence. As a result of Supreme Court rulings, the scope of Warren Court holdings in this area has been reduced.

"In New York V. Quarles, the Burger Court started to shave down the rights of the accused."
The Sixth Amendment: Assistance of Counsel

The Sixth Amendment to the U.S. Constitution grants all persons accused of crimes the absolute right to the assistance of a competent and helpful lawyer to argue their cases before the court and be present during questioning by law enforcement. The Amendment states “In all criminal proceedings, the accused shall enjoy the right... to have the Assistance of Counsel for his defense.” This right only applies to criminal cases, as the penalties associated with this type of case can carry much harsher penalties than civil cases. It is in this area of law in which we see less degradation in the strength of Warren Court decisions.

In *Gideon v. Wainwright* (1963), the Warren Court confirmed that the Sixth Amendment is applicable not only to the states because of the “Due Process” clause of the Fourteenth Amendment, but is also applicable to all types of crimes. In a unanimous decision, the Court held that all of the accused are guaranteed legal counsel, regardless of the severity of their crimes.

The *Strickland v. Washington* (1984) case refined the definition of “competent” with regard to the counsel provided to the accused. The Burger Court established standards for deciding if the lawyer provided to the accused is competent. In her opinion written on behalf of the Court, Justice O’Connor stated that the “benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.”

This “benchmark” must be proved solely by the defendant. This places a difficult task on the shoulders of the defendant. He must demonstrate that the lawyer provided to him by the state was so derelict in his responsibilities that the verdict of the jury would have been different if the counsel had been more apt. While this holding does not whittle away at the holding in *Gideon*, it does make life more difficult for the accused. The requirements placed before them to demonstrate the ineffectiveness of their lawyers are very difficult to meet. It is unlikely that a layman could reach this standard unless his lawyer was dead drunk during court proceedings. If the standards set by the Court’s holding in *Strickland* are met, it is grounds for the conviction to be thrown out and a new trial convened.

Presently, the law regarding the assistance of counsel and the Sixth Amendment is very much as it is laid out in the Bill of Rights. All accused criminals are to be given a legal advisor who will do his best to act in their defense. This lawyer must be competent enough to understand the law and undertake a coherent and sound
defense. Despite a decisive burden being placed on the defendant to prove that his lawyer is inept, the decisions made by the Burger Court do very little to narrow the scope of the rights of the accused.

**The Eighth Amendment: The Death Penalty and Cruel and Unusual Punishment**

The Eighth Amendment to the Constitution prohibits cruel and unusual punishment being given as a sentence to those convicted of crimes, regardless of the type. This is often referred to as the “punishment must fit the crime” amendment. An individual cannot be sentenced to death for stealing a loaf of bread, nor can a serial killer be ordered to do ten hours of community service for his crimes. One of the most contentious issues regarding cruel and unusual punishment is whether the death penalty constitutes a prohibited form of punishment. In a series of four cases, the Burger and Rehnquist Supreme Courts have both upheld the use of the death penalty and expanded its use.

In *Gregg v. Georgia* (1976), the Burger Court declared that the sentence of death in a criminal case was not cruel and unusual punishment. In the opinion of the Court, Justice Stewart put forward the proper uses of the death penalty. He wrote that the penalty must not be out of line with the crime, and can be used as long as the statute which allows its use specifies the aggravating factors for which a jury may impose the death penalty, such as if the crime was premeditated or not, as well as the mitigating factors which must be taken into consideration when determining if the penalty is appropriate for the case, such as the defendant’s being mentally ill. This, in and of itself, does not narrow the rights of the accused. However decisions which followed in its wake would greatly do so.

The Rehnquist Court took several large steps towards removing many opportunities to appeal the sentence of death as well as procedural obstacles to carrying out the death sentence of prisoners on death row. Since the Rehnquist Court has taken these steps, the number of executions in the United States has risen dramatically. The first step the Rehnquist Court took towards this end was in *Stanford v. Kentucky* (1989). In this case, the Court held that individuals who committed capital crimes after the age of sixteen could be legally and constitutionally executed. This overturned a longstanding opinion held by many in the government and on the Court that the Eighth Amendment prohibited the sentence of death being handed down to anyone under the age of eighteen.

In *Payne v. Tennessee* (1991), the
Court moved to allow the execution of mentally impaired/retarded prisoners. The High Court also upheld the use of “victim impact statements” during the sentencing phase of the trial. These statements are delivered by the families of the victims. The impact statements are highly emotional pleas to the sentencing body which are intended to demonstrate the impact that the loss of the victim has had on his family and why the death penalty is the only justified punishment, in their opinion, for the crime committed. In doing so, the jury or judge can be informed of the “specific harm caused by the crime in question,” a form of evidence that has been long accepted by courts. This type of evidence can be viewed as narrowing the accused’s rights because it could bias the jury against him to such an extent that capital punishment would be delivered when it might otherwise not have been. Furthermore, such charged statements move away from the impersonal and detached atmosphere that is commonly associated with justice.

In *Calderon v. Thompson* (1998), the Rehnquist Court admonished a California appeals court for dragging its heels in carrying out an execution based on dubious legal grounds. The Court stated that for an appeals court to hold up the wheels of justice is an abuse of its constitutionally granted power. In *Thompson*, the condemned man had already been granted many reviews of his case and several appeals. Given this, the High Court argued that to delay the execution because of relatively insignificant mistakes in the appeals process was inexcusable. The procedural obstacles thrown up in the face of carrying out the sentence resulted from the judges in question being uncomfortable with the most severe punishment available. In smashing through procedural obstacles in this case, the Court limits the right of the accused to appeals. This decision could be expanded to deny prisoners second or third appeals, chances to be saved from death that should be granted to all people regardless of their crimes.

At present, the death penalty is still a valid form of punishment; individuals under the age of eighteen can be executed and the appeals process for convicted felons is greatly limited. Mentally impaired convicts, however, cannot be sentenced to death because

*The Court has made it significantly more difficult for a layman to understand his rights under the law.*
of the Supreme Court holding in *Atkins v. Virginia* (2002).

**What Should the Controlling Test Be?**

Given the above cases, I would take a different approach to what the controlling test should be in the areas concerning the rights of the accused. While the Courts’ decisions make legal sense and have some grounding in the Constitution, I find many of them to be completely unacceptable and, in some cases, reprehensible. The Courts under Chief Justices Burger and Rehnquist have run roughshod over many rights enumerated in the Constitution by restricting its scope and providing loopholes for law enforcement to exploit people and situations to obtain convictions which may or may not be those of guilty parties.

**Prohibitions and Protections against Compulsory Self-Incrimination**

In my opinion, the controlling test in this area would closely follow that of the Court in most areas. The “incantation” created in the *Miranda* case should be read to suspects before questioning. If it is unreasonable for a suspect to be informed of his or her rights, as in *Quarles* or *Perkins*, then exceptions can be made. Barring this, however, if a suspect is to be asked any question relating to his activities, he must be informed of his rights under the Fifth Amendment. Ambiguous references to counsel, however, should necessitate a pause in questioning. If a suspect asks “Can I speak to my lawyer?” or some other phrase along those lines, the interrogators should be required to halt their questioning and remind the suspect of his right to an attorney and make one hundred percent positive that the individual under interrogation is not requesting a lawyer at the time or otherwise attempting to invoke his constitutional rights.

This issue is currently in the news in the Washington, D.C. sniper case focusing on Lee Boyd Malvo. Malvo, a 17 year old, is accused of shooting and killing several people in the area around Washington, D.C. During his questioning, he made several references which, under the present Court’s definition, are considered “ambiguous.” In these comments, Malvo asked “Do I get to see my attorney?” and other questions along that line. The interrogation of the suspect continued despite these questions because the Court’s standard does not define exactly what a request for a lawyer is. As a result, Malvo’s confession may not be permitted as evidence because the police may or may not have followed the standards required for admission in a case. My standard would remedy this confusion and enable inves-
tigators to better do their jobs.

My standards are quite similar to the Court’s in this area as they require suspects to be informed of their rights, but allow for exceptions to be made in certain circumstances. I feel that this is appropriate as this standard protects all parties involved and ensures that suspects are aware of their rights, but does not unduly hinder the investigators with too many responsibilities. Furthermore, I feel that this standard works equally for both sides and does not place a significant burden on either party.

The Assistance of Counsel

As in the previous section, I would closely follow the Court’s approach to the right to counsel. The Sixth Amendment grants the absolute right to legal aid to all persons accused of crimes in the United States. If the counsel used by a defendant is incompetent, whether the counsel be hired privately or provided by the state, the defendant has the right, and the state an obligation, to a new trial and a new lawyer. I would differ from the Court, however, in where the responsibility lies to prove a lawyer incompetent. If allegations regarding the quality of the defense are raised, and there is evidence present, the state should undertake the investigation. This differs from the Court’s approach in that it is the state, not the defendant, who has the responsibility to prove a lawyer incompetent. This would be my standard as it is nearly impossible for a layman to prove the Court’s standard without the assistance of a person who was trained in the law. The state, however, has ample resources to do so. For this reason it should be the government’s responsibility. In addition, the Court’s standard is discriminatory on a socio-economic basis. Defendants of lower socio-economic brackets cannot afford the assistance needed to prove the Court’s standard, bringing into question whether the standards set by the Court violate the Constitutional promise to equal protection under the law.

Since Chief Justice Earl Warren stepped down, the Supreme Court has taken steps to greatly narrow the rights of the accused granted by the Constitution. In doing so, the Court has greatly aided police and criminal investigators in carrying out their jobs. At the same time, however, the Court has made it significantly more difficult for a layman to understand his rights under the law. Additionally, the accused have rights so restrained by the Court’s holdings under the guidance of Chief Justices Burger and Rehnquist that areas which were considered protected are no longer. The latitude granted to the police and that taken away from suspects in crimes makes the United States court system somewhat suspect in whether the “justice” it doles out is as of
high quality as it should and can be.

ENDNOTES

2 Ibid.
3 Ibid.

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Envisioning the Colonial Body:
Visual Art in the Formation of a Collective Social Consciousness in 18th Century Mexico

By Rachel Levin
Class of 2004

Ms. Levin uses artistic analysis to expose critical issues of race, class, and identity in 18th century Mexico. As she discusses the means by which the Spanish and Creole elite sought to preserve a crumbling culture through rigid caste segregation and racial oppression, she raises important questions about freedom. Can freedom ever be realized, even for those at the top of the socio-economic hierarchy, when it is based on oppression and self-deception?

In Mexico, contemporary visual art in the eighteenth century heavily influenced and reflected the construction of identity. Due in part to the diverse social climate created by the influence of Spanish colonization, paintings became a vehicle through which class-related tensions were expressed. An analysis of eighteenth-century paintings of people from mixed backgrounds, or castas, shows that these images were a visual manifestation of the fear castas inspired in Spanish and Creole elites. In addition, the paintings reflected the resulting elite attempt to reassure itself that an increasingly complex racial and social order and the blurring of lines could somehow be reversed or neatly catalogued. An examination of the role of calidad (status or quality) in the social climate of late-colonial Mexico provides evidence for the culture of trepidation that was a result of Spanish colonialism in Latin America.

It is necessary to consider why the construction of identity was crucial in eighteenth-century Mexico in order to understand the contemporary social climate. In the two hundred years after Spanish explorers reached American soil, a substantial intermixing of Spaniards and natives occurred. However, the Spanish view that “all matter, including people, fits within a linear and hierarchical world, according to principles of natural law,” was still widely held, especially among the
upper-classes. The observations of Manuel Abad y Queipo, a peninsular Spaniard who arrived in Mexico in 1786, are particularly revealing: “New Spain has close upon four and a half million inhabitants, and these can be divided into three classes, Spaniards, Indians, and castas.” Individuals of mixed background “posed the first and most central problem of definition and classification.” According to these categories, “If an individual could (at least on paper) trace their raza, or lineage, back to the Iberian Peninsula, it was likely that, legally, they would be entitled to special treatment.” However, the “defect of impure blood” would surely annul privileges such as tax exemptions, admittance to universities, and inheritance rights. Spanish and Creole elites occupied the top percent of the hierarchy due to their “pure” lineage, while those whose raza was unclear were categorized by the elites in order to reflect the natural order on which they were so dependent. This linear construction enabled elites to separate themselves from the remainder of the population and, as a result, construct an idyllic view of the rest of society.

As art is a visual expression of culture, it is important to consider significant social, economic, and political trends during the late-eighteenth century in order to understand the climate in which these paintings were being created. “Images shape and are shaped by material (social, political, and cultural) conditions, both at the moment of their production and at the moment of their circulation and reception in various times and places,” writes current scholar María del Carmen Suescun Pozas. At this time, “a great part of the population of Spanish America was on the move, and the likeliest destinations were the larger cities,” which served as “the frame of reference for any notion or thing considered worthy” for Spaniards. With the infiltration of castas into urban environments, the Spanish and Creole elites residing at the top of this hierarchy felt threatened. In his article, “The City as Vision—The Development of Urban Culture in Latin America,” Mark D. Szuchman writes,

These mestizos...raised concerns among the authorities. A seemingly endless cycle of attempted control followed by failure took place: ordinances restricting contact and movement, followed by longer lists of racial categories, followed by more restrictive ordinances. Ultimately, no ordinance could counter the reality of racial mixture or the tendency for people to migrate as needed.

In a social system controlled by an “absolute belief in the supremacy of their ways over all others’, the Spaniards constructed a cultural edifice that shut out all disallowed or inexplicable beliefs and behaviors.” According
to art historian Magali Marie Carrera, the multi-layered construction of calidad and, “the associated mechanisms of mimicry, ambiguity, and hybridity appeared across various material manifestations of late-colonial culture, in particular the visual practices.” The elites’ failure to control the amplified level of racial mixing due to political, geographic, and economic factors prompted a greater attempt to categorize and, in effect, distance themselves from the lower classes. Paintings of the “troublesome” castas are a reflection of this endeavor.

Despite their efforts, “The Spaniards’ intention of keeping the races apart dissolved in the reality of daily urban contact.” In terms of the arts, elites were frequently shown in portraits, as their position provided for such luxuries. However, in the late eighteenth century, people of mixed blood were also represented in the visual media known as cuadros de castas, or casta paintings. According to Carrera, “these visually engaging paintings portray men, women, and their offspring classified in hierarchical order according to their proportion of Spanish blood.” Thus, these portraits denote the relative social importance of their subjects in comparison to those without mixed lineage.

The first painting in such a series executed by Miguel Cabrera (1695-1768), an accomplished portraitist of both elites and non-elite castas, titled, “From a Spanish man and an Indian woman with their offspring, a mestiza,” echoes typical social customs. Reflecting the accepted elite male prerogative to be seen in public spaces, a Spanish man is identified by his European-style clothing, his body...
placed in profile and his head turned toward the other figures in the scene, away from the viewer. Opposite him, an Indian woman (whose calidad, in a different way, also associates her with public spaces) dressed in a mixture of traditional European and Indian clothing, places each of her hands on the mestiza child in front of her and regards the Spaniard as well as the viewer with a sideways glance. According to Carrera, “The presence of the child serves as a sign of the miscegenation of Indian and Spanish lineage.” As the content of this painting demonstrates, these canvases served simultaneously as evidence of the elites’ fear that cultural mixing was taking place, and, at least visually, a forum in which to remedy the problem through social control and categorization.

When compared with the first painting, an additional portrait from the same group by Cabrera highlights characteristics that were used in this process of social categorization and the resulting reflection of calidad. Number 11 in Cabrera’s 1763 casta series shows a lobo, an Indian woman, and their offspring, an albarasado (white-spotted) boy. In both casta portraits, the calidades of the individuals are defined by their clothing, skin color, surrounding objects, and their position within the composition of the painting. For example, the women in both scenes are designated by the same label: Indian. However, it becomes clear through an examination of skin color and clothing that the female in portrait 1 is a member of a more elite calidad than her counterpart in portrait 11. She has significantly lighter skin, her clothing is embellished with lace, and both she and her daughter wear pearl ornaments around their necks. Drawing a parallel between the painted scenes and their creator, it is important to realize that although Cabrera himself was a mestizo, he was admitted into the viceregal court and executed “portraits of a number of the most powerful secular and religious personalities in Mexico.” Thus, status or
Caste in this society was more “a sociocultural group than an exclusively racial one,” demonstrated though appearance and circumstance. As a result, these paintings “offer insight into the eighteenth-century elaboration of attitudes and prejudices toward miscegenation which, to some extent...would have been shared by painters and patrons” such as Cabrera and the elites for whom he worked.

Cabrera’s placement of the female figure in portrait 11 is also an indicator of calidad. She is located in an open outdoor space, clearly on display for the visual enjoyment of the Spanish man. The Indian woman in portrait 11 is dressed in a loose-fitting huipil, a “burlaplike cloth used to carry a box is wrapped around her shoulders, and she holds a tray of fruit, probably indicating that she is a street vendor.” The undesirable state of existence described by this painting is reflected in Abad y Queipo’s text as well. He writes, “The color, ignorance, and poverty of the Indians place them at an infinite distance from a Spaniard,” articulating the visual sentiments that display the realities of the castas’ station in the painting.

Further analysis reveals other categorizing elements that appear in these portraits, such as the subject’s environment and personal deportment. In another work by Cabrera of an elite Spanish woman, Doña María de la Luz Padilla y Cervantes, it is the space in which figures are placed that contributes the most to the viewer’s impression of the sitter’s status. Here, “the calidad of an elite woman is indexed to specific ideas about elite identity, which include the visual references of genteel bearing, the refined appearance of her clothing, and placement in a narrow, protected space.”

The cloistering of elite women signified male and female honor among elites in eighteenth-century Mexican culture. In contrast, despite her fine jewelry and clothing, the Indian woman in portrait 1’s non-elite status is made clear through the details of the picture. Instead of being placed in a confined interior space, “she is located in front of a stall where bolts of fabrics woven with traditional indigenous designs are stacked neatly on shelves.” It is clear that there were different social and cultural expectations for each caste.
The respective hierarchies of public and private space as well as those of an individual’s physical appearance reflect the overarching social hierarchy present in eighteenth-century Mexican society. As a result, the construction of identity in late-colonial Mexico fed significantly on both the repression and examination of casta culture in the visual arts. According to Kenneth Mills and William B. Taylor, casta paintings can be conceived as “another dimension of the increased regard for scientific inquiry in an ‘enlightened’ and order-seeking Bourbon era, a general interest in descriptive classification and rationalization here delivered with a blunt message of Spanish racial superiority.” Cabrera’s paintings, “portrayed the kind of society that elite Spaniards had always longed for: hierarchical, orderly, and controlled,” allowing elites to feel more secure with their position in an urbane world whose population was becoming increasingly overwhelmed by mestizos.

According to María del Carmen Sucescu Pozas, “images provide mechanisms of articulation through which the theme may, on the one hand, be problematized and exposed in its complexity or, alternatively, be simplified so that some sets of meanings are privileged and others subsumed in an ongoing ‘othering’ process that produces an ‘outsider’ versus a ‘unifying us’.” The visual construction of difference in casta paintings provides an example of this idea of defining an individual based on his or her deficiencies. The preference among elites for “hierarchy, precedence, status, and religious exclusivism” is a result of this construction, reinforcing caste distinctions and integrating them into the fabric of contemporary Mexican culture.

In the late eighteenth-century, with civil unrest on the rise among castas, it became increasingly important for elites to reinforce the constructed social and cultural identities seen in casta paintings. While “stability was traditionally maintained by the polarization of Andean society between creoles and Indians,” with the “blurring distinction between ‘here’ and ‘there,’ and between ‘us’ and ‘them,’” came the fact that, “in the end, the perfectly structured world in which all that was known had a pre-defined place simply could not be sustained.” According to scholar R. Douglas Cope, “elite attempts at racial or ethnic categorizations met with resistance as non-Spaniards pursued their own, often contradictory, ends: social mobility, group solidarity, self-definition.” There were certainly some “upwardly mobile castas [that] also served as ‘good examples,’ proving that a better life was possible if one worked within the system” the elites had created, such as Cabrera, the portraitist. Although in many learned as well as popular circles, “mestizaje—miscegena-
tion or racial mixture—was perceived as detrimental, bringing about the deterioration of human character, ability, and intelligence," it did not stop individuals from rising through the sociocultural hierarchy to which they had once been subject. Cope writes, "the casta paintings...circulated among the elite and may have given them some psychological comfort, but they had little or no effect on the castas themselves." Therefore, the visual depiction of castas as "the very agents of chaos" in eighteenth century Mexican society allowed Spanish and Creole elites to alleviate the blame of a crumbling society while legitimizing their effort to organize their world.

ENDNOTES
2 American-born Spaniards.
3 Szuchman, Mark D. "The City as Vision—The Development of Urban Culture in Latin America," pp. 5.
6 Carrera, pp. 4.
7 Carrera, pp. 1.
8 Carrera, pp. 4.
10 Szuchman, pp. 10.
11 Szuchman, pp. 1.
12 Ibid.
13 Szuchman, pp. 8.
14 Szuchman, pp. 5.
15 Carrera, pp. 21.
16 Cope, pp. 4.
17 Szuchman, pp. 5.
18 Carrera, pp. 26-27.
19 Carrera, pp. 27.
21 1. De Español, y de India; Mestisa (1763), Translation from Carrera, pp. 27-28, figure 2.3.
22 Carrera, pp. 28.
23 Carrera, pp. 28.
24 Literally "wolf," a name most often assigned to the offspring of a Black African and an Indian. Carrera, pp. 28.
25 Carrera, pp. 29. Figure 2.4. Miguel Cabrera. 11. De Lobo, y de India; Albarasado, (1763).
27 Abad y Queipo, pp. 174.
28 Carrera, pp. 1.
30 A traditional Indian garment made of panels of oblong panels of woven cloth, often with geometric designs, sewn to form a rectangular shape with slits for the arms and head. Carrera, pp.24.
31 Carrera, pp. 29.
32 Abad y Queipo, pp. 175.
33 Carrera, pp. 23. Figure 2.2. Miguel Cabrera. Doña María de la Luz Padilla y Cervantes. (c.1775-1760).
34 Carrera, pp. 25.
35 Carrera, pp. 28.
36 Carrera, pp. 28.
38 Cope, pp. 161.
WORKS CITED


What is Freedom?
40 Acres and a Mule?

By Zachary Manditch-Prottas
Class of 2006

What is freedom? 40 acres and a mule?
30 thousand a year to get drunk at school?
Is it the right to vote?
Is the decision of the youth to decide if they won’t?
Is it life liberty and the pursuit of land?
Is it the ability to make an empire expand?
Am I free at 18 years of age?
Was Malcolm free when he found his identity in a cage?
Am I free in the choices I will?
If one is not free to murder why are soldiers decorated when they kill?
Was Mumia free to speak?
Is the lower class free if they live by the decisions of the elite?
Was Lucifer free when he defied the rules of heaven?
Did he take away my freedom when he limited my righteousness to seven?
They say you’re free when you’re in good health?
How can my mental be free when I’m spoon fed false images of wealth?
Do I want to be free if it’s going to hurt like this forever?
It’s time to take our freedom, will it be given to us? Never
There is currently a movement in Congress to pass a constitutional amendment prohibiting flag desecration, which will be defined in this paper as knowingly mutilating, defacing, physically defiling, burning, or trampling upon the American flag. The Flag Protection Act of 1989 reads, “The Congress shall have power to prohibit the physical desecration of the flag of the United States” (108 S.J. 4; 108 H.J. 4). The issues surrounding this amendment hark back to the ideas of federalism and anti-federalism. The Federalist ideology already dominates the Constitution, as the United States is a federal government. However, the Anti-Federalists, through the Bill of Rights and minor changes to the draft of the Constitution, presented reasonable checks to balance an overwhelmingly centralized government. Should this amendment pass, the balance of Federalist and Anti-Federalist ideas within the Constitution would be disturbed, with the ideas of the Federalists gaining disproportional power, thus altering the very values for which the flag stands.

An amendment proscribing flag desecration has never passed before because such an amendment has always been barred by the First Amendment, the cornerstone of the Constitutional balance of the Anti-Federalist ideology against the Federalist ideology. The First Amendment is one of the biggest checks on the government, allowing

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It is the court system, perhaps more than any other single American institution, that limits and defines freedom. Nowhere else in American democracy is freedom so explicitly debated and regulated, and, paradoxically, nowhere is it more threatened. Some of the most publicly divisive cases ever to confront the courts concern flag desecration and free speech. Mr. DiGiammarino draws heavily on court precedent and the philosophical underpinnings of American government in his defense of free expression.

Flag Desecration Amendment: Shifting the Constitutional Balance

By David DiGiammarino
Class of 2006
people to speak out against the system. The proposed flag desecration amendment is supposedly an attempt to return the law to its state previous to the 1989 U.S. Supreme Court Case of Texas v. Johnson (Jewett 1995). This Supreme Court Case overturned the conviction of Gregory Lee Johnson. Johnson had been sentenced by a Texas Court to a one-year imprisonment and a $2,000 fine for burning the American flag in protest of Reagan’s nomination outside the 1984 Republican National Convention (Texas v. Johnson). However, “speech,” as protected by the First Amendment, is not limited to the literal act of speaking (Waldman 1997, 1847). The Supreme Court decided that desecrating the flag, with or without intent, communicates a message that is strong enough to be deemed symbolic speech, which has the protection of the First Amendment (Texas v. Johnson). Thus, the First Amendment applied to Johnson’s actions, and he could not be punished for them. However, the American public overwhelmingly denounced the Court’s ruling in Texas v. Johnson, saying that since the flag was an extremely recognizable symbol of freedom, desecrating it crossed a line (Goldstein 1996, 115). Congress reacted quickly and passed an amendment to Title 18 of United States Code, Section 700, commonly known as The Flag Protection of 1989. This act provided the punishment of imprisonment and a $1,000 fine to anyone who committed flag desecration. Yet, once again, Congress was checked when the Flag Protection Act of 1989 was nullified by the 1990 U.S. Supreme Court Case of United States v. Eichman. This case ruled that prosecution under the Flag Protection Act of 1989 (FPA) violated the first amendment. Under the provisions of the FPA, the United States Government prosecuted seven citizens who had desecrated the flag. Nonetheless, it was once again held that each defendant’s desecration of the flag was symbolic speech and protected under the First Amendment. Had the Supreme Court not recognized the protection of the First Amendment, the freedoms of individual citizens would have been lost to the power of the central government.

The Anti-Federalist and Federalist schools of thought revolved around the ideas of individual citizens and centralized government. The Federalists looked at men as vicious and untrustworthy beings who if left to their own devices, would not be able to create a sustainable government (Federalist 1). Because of this, they valued having a strong government to protect those individuals. However, the Federalists realized that factions would form to attempt to penetrate the government. They could not prevent factions from forming without taking away liberty, so their solution was to have internal govern-
mental controls to combat them (Federalist 10). The Anti-Federalists, on the other hand, believed men were virtuous, and consequently make moral laws (Anti-Federalist 55). Yet, in order to limit corruption, they championed having a government that was closer to the people, for even though men were considered generally virtuous, they could easily be corrupted (Anti-Federalist 55). These beliefs were balanced in the Constitution and its amendments, yet the proposed amendment is extremely Federalist and would unfavorably shift that balance.

If this amendment were passed, Congress would approve severe censorship within the United States in terms of making this country more Federalist. The federalism in the current amendment becomes strikingly apparent when one looks at the arguments for attempting to implement such an amendment. Currently, the amendment has 56 cosponsors in the Senate and 205 cosponsors in the House of Representatives, so there must be compelling argument (Bill Tracking S. J. Res. 4; Bill Tracking H. J. Res. 4). People argue that it is the American duty to continue to protect a flag for which so many individuals have died (Citizens Flag Alliance). This argument is simply irrational. Our soldiers have not died for a piece of cloth; they have died for the freedoms that a piece of cloth represents. However, to a Federalist, the flag is a strong symbol that represents the federal government. If individuals were allowed to desecrate the flag, they would be able to symbolically undercut the power of the government. This ability is much too powerful to be bestowed upon an ignorant vicious individual. Conversely, the Anti-Federalist realizes the need for individuals to be allowed to desecrate the flag if they so desire. The ability for an individual to have that power brings the government closer to the people, thus preventing corruption. (Anti-Federalist 55) If the proposed amendment were to pass, the government would become more detached from the people, and consequently would become more corrupt. The government would no longer have to listen to the people because of how detached it would have become, and the people would have fewer means of legally checking the government, because of the censorship bestowed upon them.

Arguments from the Federalist perspective do exist, but carry little weight. Federalists could question that if Anti-Federalists support flag burning, something that Federalists would view as radical, why they would not support the Ku Klux Klan. The reason is that flag burning is an act of virtue, while discrimination through the Ku Klux Klan is not. When a flag is burned by a citizen of the United States, he has been driven to a desperate measure and is obviously trying to communicate an idea.
through an action that is clearly not popular. This inference is reasonable because a citizen whose idea is supported by the majority would not commit an action that might alienate the very people who support him. Anti-Federalists assume that people are generally virtuous and that whatever point a citizen is trying to communicate must be an honorable one. Additionally, the possible Federalist argument that by opposing flag desecration people are attempting to control factions is unfounded. Flag desecrators are not a faction; in a period spanning more than two hundred years, from 1777 to 1989, there have been only forty-five recorded acts of flag burning (Haines 2000). The majority of the recorded flag burning took place during the Vietnam War and was part of generally peaceful protests against the United States Government (Haines 2000). Something that occurs this infrequently and sporadically is not factional, it is an action that citizens utilize to express their views to the government.

As paradoxical as it may seem, the prohibition of one’s right to dissent through the desecration of the American flag actually soils the national symbol in a way that physical harm could never do. The Constitution, which is fundamental in defining how the United States differs from the world, would become unbalanced and could no longer be held to the same standard. The world would begin to look upon American freedoms in a very different way. It is rather sad that very few Americans realize how fortunate they are to live in a country where they are free enough to check their own government through actions such as flag desecration (Goldstein 1996, 371). It is even sadder that there is an attempt to take away this astounding freedom and permanently shift the liberty and ideals for which the American flag stands towards the central government.
Personal Statement

By Michael Nguyen
Class of 2007

While it is easy to conceive of freedom in abstract ideas of government and philosophy, often the most intense battles for freedom are fought day to day within our own lives. With unflinching honesty, Mr. Nguyen illustrates the profoundly personal nature of freedom, prompting us to consider the effects of sexuality, race, and childhood on this most important notion.

Freshman year. My Algebra teacher, Ms. Reyes, expected students to go up to the board and work out problems every day. I made mistakes virtually every time I was up there, dropping the large, beige chalk-stick that would shatter into tiny little pieces, pieces that I would have to bend over to pick up. I felt mortified for the rest of the day. Whenever I had to talk about a problem out loud to the class, I could feel the muscles in my neck trembling. I felt like the volume of my voice was set at zero and could not go any higher. Marcus, a classmate, would often tell me that I had a "stupid voice." He's the same guy who enjoyed calling me a "fag," a fashionable choice among several classmates. My eyes often dampened, but I made fists with my hands to hold back tight the tears that I wished would be invisible. The word mate includes synonyms: friend, pal, chum, buddy, and helper. Classmate, for me, didn't fit the definition. I was focused on surviving the day without being humiliated instead of being excited by all the cool subjects I could learn about.

At home I idolized the movie Dennis The Menace, but I realized my family was nowhere close to one that lived in a white house with a picket fence and a fluffy little terrier dog. Living under the same roof with a violent father and a violent brother, both of whom were chain-smokers, one of whom was a marijuana smoker (my brother); a miserable mom; and a confused nine-year-old sister, made a horrible day at school look pretty decent. My dad would accuse my mom of cheating on him, calling her "cock sucker" or "whore;" it sounded even worse in Vietnamese. The little time that she had after a busy workday at a factory, my mom spent cooking dinner. When my dad wasn't satisfied, which was
often, he would dump all the food into the trash. He insulted her intelligence, comparing her to a cow. He would demand sex from her when he felt like it. I remember these words that my mom wailed: "If you don't love me, then don't fuck me!" Similar to Marcus at school, my brother hounded me. But my brother was worse. He said the whole word. He called me "faggot!" That hit me so much harder than just "fag." My sister would ask me questions about why our family was this way. I could never tell her why. I didn't know myself.

Senior year. My humanities teacher, Ms. Rourke, asked that we name a person from any point in time that we'd be interested in meeting and why. Despite the chorus of "whatever" and "who cares?" from half the students, I talked about Jonathan Kozol and how his book *Amazing Grace* has opened me up to the complexities of poverty in the South Bronx of New York City, and the United States as a whole. The depth of Kozol's conversations with Mrs. Alice Washington (a hard-working woman dying of AIDS who waits days-on-end in the emergency room of the local hospital before she can get medical attention) has further inspired me to commit the rest of my life to social activism. The same day I talked about Jonathan Kozol, I wore my gay pride necklace with beads of rainbow colors at school for the first time. This was the same day I raised my hand when my trigonometry teacher, Ms. Ortiz, asked the class for a volunteer to go up to the board and explain a word problem that most of the class had difficulty understanding. I'm not afraid of dropping the chalk anymore.

At home my dad and my brother continue with their practice of intimidation, but I no longer let their ruthlessness wear me down. I now see that my mom has a lot of strength to love me and believe in me despite the ugliness of her world. My sister was the first and only person in my family to know that I'm gay. My sister hugged me and said "that's cool" and asked me if she could have a gay pride flag. I gave one to her and ever since she's been educating her friends about having respect for the GLTBQ community. In addition to my biological family, the Albany Park Theater Project (APTP) is also my family. This family embraces me with hugs as I walk in to the office after school; they are excited to know how my presentations at school went, like the one I did on Black mathematicians; and they circle around the piano to listen to a sonata I just learned. Dennis the Menace couldn't top this family.

In between. Within four years, I have gone from being embarrassed about my identity, apathetic about school, and insensitive about my community, to
being proud of who I am, excited to learn, and eager to celebrate other cultures. This transformation comes from the commitment and energy that I’ve put into my work at APTP, an independent, not-for-profit, year-round, ongoing ensemble of teenagers who create original, professional theater out of the real-life stories that come from the Albany Park neighborhood. APTP is a place that inspires me to be honest because fellow company members have the courage to share stories about escaping the tormenting hands of a sexually abusive father, and about living on just bologna and bread for months, and about hiding to evade the likelihood of deportation. APTP is a place that inspires me to be a creative, confident, shrewd, talented, thoughtful teenager because fellow company members probe deep into the complexities of abortion rights, and read science journals in order to embody a character ill with schizophrenia, and think outside of the stereotypes society has imprinted onto our heads about Muslims. It’s a place where I am inspired to celebrate my own vibrant, richly diverse, immigrant, working-class neighborhood because a long rehearsal day includes breaks to eat Persian Koubideh (skewers of ground meat) or Cuban arroz con pollo (rice with chicken), and because we create music with instruments from India or Spain, and because we take trips to see dancers from Uganda or see water puppeteers from Vietnam.

By playing the title character in a piece called "Huy Time" last spring, I came to appreciate my own culture as the cast sat in a quaint Vietnamese restaurant, enjoying a steaming bowl of Pho (a traditional beef and noodle soup), while discussing the hundreds of years that Vietnam has been oppressed by countries such as France, and by communist dictators and war. I found empathy for my own culture as I played a Vietnamese refugee fleeing the shores of my homeland, risking my life on a small fishing boat in search of family and freedom. I came to be grateful for my ability to translate fluently between English and Vietnamese as I taught non-speaking cast members lines in Vietnamese. I discovered my drive to dance as my entire body, standing on a Vietnam beach, mirrored the surging motion of the dark sea ahead of me. I discovered a new level of commitment when our performance in 100-degree weather still inspired audiences to give a standing ovation. I found compassion for other cultures when a Black audience member shared that "Huy Time" moved her for the first time to think about the similarities between the plight of Vietnam refugees and her own ancestors’ journey on ships from Africa to the new world.

I took on the role of lead ethnographer during the summer for APTP’s 3-year Going/Places project to investi-
gate the neighborhood’s history and the current spurts of gentrification. I will ultimately express my opposition to these creeping neighborhood changes as I work on APTP’s next show, doing justice to the voices of low-income immigrant families, including my own, who are politically oppressed. Angie lives in an apartment building going condo and clutches multiple minimum wage jobs just to keep up with the rent; I’ve discovered that I’m an activist by asking detailed questions about what she expects to do when the eviction notice comes. I’m an activist by wanting to learn more about why the City of Chicago waited until there were condo developments with flawless green yards and polished doorknobs before adding a new structure to increase classroom space at the overcrowded neighborhood grammar school. I’m an activist by working hard with APTP to craft powerful theater that reveals a condo owner’s euphemistic statement that "the neighborhood will get better when the ‘bad’ people move out," and that will voice a story from Esther Deer, a 95-year-old Jewish woman who has lived in Albany Park for almost 60 years, about fighting for civil rights during the 1950s.

I shared a story about my mother with APTP, which was staged for our last show as a multi-disciplinary performance piece called "Like My Mom." The piece followed my mother’s journey from the school where books were weighted on her arms as punishment for "being so stupid;" to the political chaos that made her a refugee; to the beautiful but simple white ao dai (long dress) that she wore for her wedding; to the green and orange bed sheets upon which she was brutally beaten with a vacuum cleaner pipe by my father in front of an audience of family members who didn’t bother to stop it; to the beautiful photographs of her in sheer and shimmering dresses. By sharing this story and being one of the artists who developed it for the stage, I came to understand my mom’s resilience, and I feel empowered to change the world as she tells me each morning to "do your best and learn because you are the one." As the singer and co-composer of "La’s Lament" for the piece, I came to appreciate my experience of catharsis and vulnerability as I broke down singing the words, "Deafening sounds, and trembling grounds,

My sister would ask me questions about why our family was this way. I could never tell her why.
nowhere safe to go," which referred to the bombs that burst before my mom, creating a flood of people running for their lives. I also came to value the opportunity to let the world know the respect I have for my mom as people read the Chicago Magazine article on my story and as they woke up listening to my voice on two separate morning radio shows. I came to cherish my ability to inspire audience members as they, total strangers, came up to me with tears dripping down their faces, to say, "Michael. Thank you for sharing your story."

Freshman year. My Modern Dance instructor, Professor Wang, expects students to go up to the stage and work out movement phrases every day. I make mistakes virtually every time I go up there, but I grow as I take risks, and as I get supportive attention. My voice is set at ten because I have ideas to share, and the caring, curious, and excited people at Connecticut College listen. On my way to Creative Writing class, I walk down a beautiful campus path and think, "I can't wait to pick up that book my professor recommended yesterday, of essays on the inequalities in public education." Later in the day, after working with a fellow musician to embellish a piano composition he wrote, I head to the theater to rehearse an original dance-theater performance piece protesting war in Iraq. I meet friends at the coffee house, where we immerse ourselves in thoughtful conversations long after classes have ended. The word mate has meaning here. Too inspired to sleep, I stay up until two o’clock in the morning writing an argument for the anti-removal of Cherokee Indians during the Jackson administration. Tomorrow morning I’ll book my flight to Chicago for break to visit APTP, and I’ll look forward to sharing with the company how my work with the Program in Community Action is making an impact on the New London community. As I greet my mom and sister in Vietnamese at the airport, I’ll tell them about all that I’ve learned, and my sister will say, "I can't wait to go to college."