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CONTENTS

Volume 6 | Issue III | September 2022

<i>Interdisciplinary Musicology</i> The ROLI Seaboard: Toward A New Understanding of Musical Interfaces	1
	<i>Shu Xu '23</i> Shanghai United International School Shanghai, China
<i>US History</i> The Grant Administration's Decisive Role in the Collapse of Reconstruction	20
	<i>Rithik Mathew '23</i> Westwood High School Massachusetts, USA
<i>Interdisciplinary: Literature, History</i> Understanding the Myth and Reality of the Lost Generation	38
	<i>Ava Rahman '23</i> Commonwealth School Massachusetts, USA
<i>Public Policy</i> The Quest to Innovate: Clinton's Nuanced Approach to Tech Industry Regulation	51
	<i>Aaron Joy '23</i> Phillips Exeter Academy New Hampshire, USA
<i>Philosophy</i> Shooting the Messenger: Examining Whistleblowing as Civil Disobedience through the Works of John Rawls	72
	<i>James Horowitz '23</i> Brookline High School Massachusetts, USA

The ROLI Seaboard: Toward A New Understanding of Musical Interfaces

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Abstract

In the realm of music technology, the concept of interfacing with technical objects has largely been examined with a singular focus on physical components (buttons, dials, keyboards, etc.) Despite the utility of a technocentric emphasis, musicologists and STS scholars have shed light on how the designs of musical interfaces are inextricably linked to cultural perceptions and relevant social groups. However, two decades of growth in MIDI controllers and computer synthesis software created new realities that weakened the social determinist view of electronic instruments. This paper seeks to argue for an expanded conceptualization of how musicians interact with musical instruments, whereby software, hardware, and cultural components are analyzed as equal actors constituting the entire interaction during a musical performance. This argument is demonstrated through an empirical analysis of the ROLI Seaboard, an instrument that challenges the boundaries between electronic and classical music, digital and physical technologies, and general and technical usages. This study applies the theoretical framework of Actor-Network Theory to explore the ways, by which heterogeneous elements contribute to the totality of interface design. Also, the analysis utilizes an ethnographic methodological approach to understand the network in question. The research is performed by engaging in community discussions and conducting expert interviews. The framework presented in this research could be applied to the study of several newly emerging musical interfaces.

Introduction

The field of music technology and musicology shared a sustained interest in the study of musical interfaces. While the former invests itself in the technicalities of engineering, the latter concerns questions of how social-cultural values shape the designs of interfaces.¹ Simultaneously, Science and Technology Studies (STS), staying true to its interdisciplinary nature, continually pushes the boundaries of sociological, philosophical, and anthropological approaches to the realm of science and technology.² STS has been critical in fostering connections between the technical and sociocultural aspects of musical interfaces. Notable works by Hennion,³ Théberge,⁴ Frith,⁵ and many other STS scholars have inspired innovative theories regarding musical sound and technological mediations. Moreover, pioneering scholars in the field of STS have contributed significantly to the development of Sound Studies, an interdisciplinary field examining sound, music, and new technology.⁶ As such, STS offers a wealth of knowledge about the interconnectedness of technology, music, and society.

Guided by the STS framework of Actor-Network Theory (ANT), and drawing upon the historical backdrop of music technology, the present research seeks to expand the way engineers and musicologists conceptualize musical interfaces in an era of digital music instruments. More than two decades of technological changes created new realities distinct from many of the previous research. New trends in the development of electronic music, namely the proliferation of computer synthesis software and MIDI controllers, have arguably created drastic changes to the technical and cultural landscape of contemporary digital music.

As Pinch and Bijsterveld noted, “the introduction of new technologies into music (could be seen) as a set of ‘breaching

¹ Dolan EI (2012) Toward a musicology of interfaces. *Keyboard Perspectives* 5: 1–12.

² Sismondo S (2011) *Introduction to Science and Technology Studies*. John Wiley & Sons.

³ Hennion A and Muecke S (2016) From ANT to Pragmatism: A Journey with Bruno Latour at the CSI. *New Literary History* 47(2–3): 289–308. DOI: 10.1353/nlh.2016.0015.

⁴ Théberge P (1989) The ‘sound’ of music: Technological rationalization and the production of popular music. *New Formations* 8: 99–111.

⁵ Frith S (1986) Art versus technology: The strange case of popular music. *Media, Culture & Society* 8(3). Sage Publications: 263–279.

⁶ Pinch T and Bijsterveld K (2004) *Sound Studies*. *Soc Stud Sci* 34(5): 635–648. DOI: 10.1177/0306312704047615.

experiments.”⁷ Such breaching experiments reveal established norms and values delegated to both humans and technology. Under this approach, the paper examines how a new musical instrument, the ROLI Seaboard, breaches traditional understandings of interface design and reveals a network of cultural, technological, and human relationships.

The ROLI Seaboard

In a 2013 interview with CNN, renowned soundtrack composer Hans Zimmer was seen playing an odd-looking instrument. Viewers observed how the tonality of the sounds changes and evolves as Zimmer wiggles his fingers up and down the controller. With just the two hands of the composer, a grand orchestral symphony is recreated via an almost alien technology. The dark, rubbery, and keyboard-shaped invention is the first generation of the ROLI Seaboard, or as the article called it, the “piano of the future”.⁸

Hans Zimmer, who is lauded for his fusion of orchestral and electronic elements in soundtracks, is perhaps the best human embodiment of the Seaboard. Like Zimmer, the avant-garde instrument also seeks to fuse the tactile expressiveness of classical instruments with the software technologies afforded by modern digital music. It achieves this by allowing musicians to articulate various musical gestures by pressing, striking, sliding, wiggling, and gliding the finger across the wave-like keyboard.⁹ But this is perhaps where the similarity ends. While Hollywood embraced Zimmer’s electro-orchestral fusion,¹⁰ the Seaboard failed to achieve the rate of adoption as envisioned by its makers. On September 3rd, 2021, ROLI, the company renowned for producing the innovative controller filed for bankruptcy. Roland Lamb, founder of ROLI attributed the bankruptcy to the company’s pursuit of hypergrowth in the face of a niche marketplace.¹¹

⁷ Pinch T and Bijsterveld K (2004) Sound Studies. *Soc Stud Sci* 34(5): 635–648. DOI: 10.1177/0306312704047615.

⁸ McNicoll A and CNN B (2013) Hans Zimmer Plays the Piano of The Future | CNN Business. Available at: <https://www.cnn.com/2013/09/27/tech/innovation/hans-zimmer-seaboard-future-piano/index.html> (accessed 26 June 2022).

⁹ Symons M (2018) ROLI Seaboard Block Review: A Full Band in A Squishy, Portable Package. Available at: <https://www.imore.com/roli-seaboard-block-review-full-band-squishy-portable-package> (accessed 25 June 2022).

¹⁰ Lehman F (2016) Manufacturing the Epic Score: Hans Zimmer and the Sounds of Significance. 41–70. DOI: 10.4324/9781315690025-10.

¹¹ Ghosh S (2021) Pharrell- And Grimes-backed Music Startup Roli Files for Administration and Reboots as Luminary to Refocus on Beginner Musicians. Available at: <https://www.businessinsider.com/roli-administration-luminary-hoxton-seaboard-lumi-music-2021-9> (accessed 4 July 2022).

Seaboard, along with other expressive controllers, was proclaimed to bring about the future of electronic instruments. The juxtaposition between this grand vision and the instrument's slow adoption highlighted multiple hindrances preventing an unobstructed interaction with the Seaboard. Such hindrances, as the essay shall later explore, reveal a need for recognizing musical interfaces as an amalgamation of hardware, software, and cultural components. But before that, an analysis of the historical development that differentiated 21st-century digital music interfaces with acoustic and analog instruments is required.

Literature Review: A Chasm between Sound and Interface

Schizophonia, a term coined by R. Murry Schafer in 1969 described the growing phenomenon of sound being increasingly dislocated from the physical object that engendered it.¹² The chasm between sound and its point of production has been a continual trend in musical history, present in multiple periods of technological change. The advent of new recording technologies, modern orchestration, innovation in analog synthesizers, and many other events served to widen this dislocation.¹³ For this section, I want to illustrate how the phenomenon of schizophonia is taken to an entirely new level due to the simultaneous development of two key technologies, the MIDI protocol, and personal computers.

Bridging Computers and Instruments: the MIDI Protocol

MIDI, short for Musical Instrument Digital Interface, is a digital communications specification that standardized the transmission of musical data across musical technologies. It is important to note that MIDI itself is not music or sound, but a common communications standard that allows instruments and software to “talk” to each other.

Owing largely to the collaboration of leading manufacturers of commercial synthesizers such as Sequential Circuits, Roland, Korg, and Yamaha.¹⁴ The MIDI protocol became one of the quickest communication standards to be widely adopted. Three years after its initial inception, most synthesizer companies already adopted MIDI as a communication standard for their products.¹⁵

¹² Schafer RM (1994) *The Soundscape: Our Sonic Environment and the Tuning of the World*. 1977. Rochester, VT: Destiny Books 12

¹³ Dolan EI (2012) Toward a musicology of interfaces. *Keyboard Perspectives* 5: 1-12.

¹⁴ Holmes T (2015) *Electronic and Experimental Music*. Routledge.

¹⁵ Manning P (2013) *Electronic and Computer Music*. Oxford University Press.

The successful establishment of the MIDI protocol prompted a wave of new MIDI-based digital synthesis products that gradually outcompeted manufacturers of analog synthesizers, setting the stage for the growth of computer music software and complementary hardware controllers.

From the Physical to the Virtual: Personal Computers and Music Software

The dream of a machine that could process, manipulate, and output music could be traced back to the very beginning of computing history. In 1843, Ada Lovelace, widely regarded as the world's first computer programmer, envisioned an engine that could "compose elaborate in scientific pieces of music of any degree of complexity".¹⁶ More than a century later, this dream would begin to be realized, starting with the advent of the personal computer.

Beginning in the early 1980s, the market shifted from favoring expensive and large machines to smaller and accessible personal computers. Increased accessibility of computers for musicians inspired research into technologies that could fulfill the demand for musical creativity.¹⁷

The advancements in hardware are quickly accompanied by developments in software-based music applications, including audio recording systems, synthesis, and audio processing software. One notable example of such virtual music-making programs is CSOUND, a software that enables the real-time synthesis of electronic sounds. When combined with MIDI technologies, the software effectively becomes a programmable virtual synthesizer. This approach quickly opened the possibility of creating more software-simulated instruments.¹⁸

Apart from playing virtual instruments, early programs such as Protools and Cubase expanded the possibilities of computer music by allowing users to arrange audio recordings and host multiple computer instruments/effects. The latter development was pioneered by Steinberg, which introduced Virtual Studio Technology (VST), a digital interface standard that allowed for the running of multiple software instruments as modules in a single digital audio environment.¹⁹ One early example of

¹⁶ Isaacson W (2015) *Innovators*. Simon and Schuster.

¹⁷ Holmes T (2015) *Electronic and Experimental Music*. Routledge.

¹⁸ Manning P (2013) *Electronic and Computer Music*. Oxford University Press.

¹⁹ Model E, VST instrument by Steinberg (n.d.). Available at: <https://freevsts.com/steinberg-model-e/> (accessed 5 July 2022).

a VST instrument is the Model E, which emulated the famous analog synthesizer, Minimoog.²⁰

The rapid technological innovation in computer music created a significant impact on the music industry. According to Holms: By the year 2000, the availability of increasingly affordable memory and processing power led to a wholesale migration of computer music activity to the desktop or laptop platform, broadening its reach and appeal well beyond academia into all genres of music.²¹

The appeal of an integrated software music environment is self-evident. Users could flexibly switch between their VST instruments, add audio effects, and conduct audio manipulation without the need for complex physical wiring and expensive hardware.

However, one disadvantage of software interfaces is becoming increasingly apparent, the lack of interfacing hardware. Using the mouse to tweak parameters and the QWERTY keyboard to play notes made computers undesirable instruments to perform with. As such, a new generation of electronic music controllers that focuses solely on the sending of MIDI data to virtual instruments emerged.

These instruments are referred to generally as MIDI controllers, instruments that are designed to be connected to virtual instruments on a computer and contain no sound generators. Thus, they could not produce sounds independently. A performer who interacts with the controller generates MIDI data which triggers sounds on the computer software.

The cheap production cost of MIDI controllers, in combination with ever more accessible software technologies allowed for a democratization of music making.²² As Huber explained, “The MIDI keyboard controller has grown in popularity, to the point that it is standard in most production setups.”²³

When taken together, it’s easy to see how a proliferation of software technologies and MIDI keyboards ushered in a new era of

²⁰ Manning P (2013) *Electronic and Computer Music*. Oxford University Press.

²¹ Holmes T (2015) *Electronic and Experimental Music*. Routledge.

²² Gosling E (2020) *How Design Is Helping to Democratize Music Making* | Adobe XD Ideas. Available at: <https://xd.adobe.com/ideas/perspectives/social-impact/how-design-helps-democratize-music-making/> (accessed 5 July 2022).

²³ Huber DM (2020) *MIDI Manual 4e*. Routledge.

musical interfacing. The physical instrument is increasingly entangled in a dependency on software infrastructures. A phenomenon where sounds are further separated from their physical origin. In STS, it is widely agreed that sound is the key mediator for musical experiences.²⁴ As such, in an era of digital music, a singular understanding of interface as solely the physical object is inadequate. Our understanding should instead include a network of factors that the instrument is dependent upon. This demands an inquiry into the cultural and technical relationships between the various components that constitute the entire interface: how do users interact with the hardware? How do users interact with the software? How do hardware and software systems interact? How do cultural perceptions shape the users? In the following analysis, I shall demonstrate how each of these questions is equally important to the Seaboard interface.

STS Framework

Actor-network theory, an STS framework developed by Latour, Law, and Callon during the 1980s, states that all situations could be seen as the product of an interconnected network of heterogeneous elements. Each component (actant) within the network should be regarded as equally important. Actor-network theory is especially applicable to framing a new conceptualization of musical interfaces for multiple reasons.

First, actor-network theory suggests that both social and technical factors are equally involved in the construction of artifacts.²⁵ This concept is explored early on with Law and Callon's network analysis of the TSR 2 British military aircraft project. The analysis illustrated how technical challenges such as an aircraft's weight and sociopolitical demands such as the need for long-range aircraft simultaneously served to shape the technical artifact.²⁶ The same concept could be extended to the realm of music, where "techniques, settings, and devices exchange their properties with humans."²⁷ This is indeed true for the creation and designing of musical interfaces, as both technological innovation and

²⁴ Born G and Barry A (2018) Music, Mediation Theories and Actor-Network Theory. *Contemporary Music Review* 37(5–6): 443–487. DOI: 10.1080/07494467.2018.1578107.

²⁵ Latour B (2007) *Reassembling the Social*. OUP Oxford.

²⁶ Law J and Callon M (1988) Engineering and Sociology in a Military Aircraft Project: A Network Analysis of Technological Change. *Social Problems* 35(3): 284–297. DOI: 10.2307/800623.

²⁷ Prior N (2008) Putting a Glitch in the Field: Bourdieu, Actor-Network Theory and Contemporary Music. *Cultural Sociology* 2(3): 301–319. DOI: 10.1177/1749975508095614.

cultural expectations are key factors in determining the development of interfaces.

Second, ANT focuses on the associations between actors, and how these interactions create value. A single actor is not significant in and of itself.²⁸ Music is created through the interactions that composers and performers form with instruments and technologies, an instrument would not produce sounds without a human actor, and neither could musicians without instruments.

Third, an actor network “stabilizes” when the associations between various actors solidify and become organized. As John Law has suggested, “the stability and form of artifacts should be seen as a function of the interaction of heterogeneous elements as these are shaped and assimilated into a network”.²⁹ The concept of stabilization is central to the mass adoption of new musical equipment, as musicians accept the new technology as an established part of musical culture. During the 19th century, linked-key mechanisms and valves are first introduced and applied to woodwinds and brass instruments. This technology was met with “opposing opinions and the sustained discussions about the ... disadvantages of those technical innovations.”³⁰ Fast forward to the present day, the technology is widely accepted as a part of woodwind instruments, as such the musical technology has “stabilized”. In this research, the same concept of actor network and stabilization will be applied to the ROLI keyboard. An analysis of the actor network of a Seaboard reveals different elements that contribute to or obstruct the stabilization of the interfacing experience. Furthermore, tracing the development of the ROLI Seaboard allows us to visualize how connections between a collection of actors change over time, which could help inform us about future improvements that could potentially enhance Seaboard’s interface.

Finally, ANT introduces the concept of “heterogeneous engineers”, innovators who “seek to associate entities that range from people, through skills, to artifacts and natural phenomena.”³¹ Under this

²⁸ Law J (2004) *After Method*. Routledge.

²⁹ Law J, Bijker W, Hughes TP, et al. (2012) *Technology and heterogeneous engineering: The case of Portuguese expansion. The social construction of technological systems: New directions in the sociology and history of technology*. MIT Press Cambridge, MA: 105–127.

³⁰ Ahrens C and Zedlacher I (1996) *Technological Innovations in Nineteenth-Century Instrument Making and Their Consequences*. *The Musical Quarterly* 80(2): 332–340. DOI: 10.1093/mq/80.2.332.

³¹ Law J, Bijker W, Hughes TP, et al. (2012) *Technology and heterogeneous engineering: The case of Portuguese expansion. The social construction of*

view, inventions of heterogeneous engineers are best seen as heterogeneous networks that “maintain some degree of stability in the face of the attempts of other entities or systems to dissociate them...”³² The “strength” of the network against dissociating factors determines the degree of success of an invention. Similarly, designers of music interfaces have to associate multiple actors to achieve a relatively stable product. I encourage designers of new musical instruments and controllers to view themselves as heterogeneous engineers and consider the social-technical components involved in their designs.

Research Methodology

To understand the genuine interfacing experience that users had with the Seaboard, as well as the wider cultural perspectives they reserved towards the instrument, an ethnographic approach was taken to procure user experiences. To elicit responses, I entered the forums of ROLI users as well as other communities of electronic music makers. The forums involved in the study include r/synthesizers, a community of people “obsessed with synthesizers: hardware & software,” created in 2009, with 242,000 members; r/WeAreTheMusicMakers, a community “for discussing the music-making process - writing, composing, recording, live performance, mixing and mastering,” founded in 2008, with 1.8 million members; and r/midi, a forum dedicated to “discussions, questions and general knowledge about the Musical Instrument Digital Interface specification and its implementations,” established in 2009, with 6,000 members.

In each community, I initiated discussions about the user’s experiences and expectations for the ROLI Seaboard. The first question that I posed seeks to understand the types of users that engage with the Seaboard as well as their interfacing process with the instrument. The second question engages members on their personal views regarding the limitations of the Seaboard.

Apart from understanding the community of users, I interviewed educators and industry professionals to provide further insights into the status quo of computer music and their views on the ROLI Seaboard. The interview is text-based and in some cases, mediated by online

technological systems: New directions in the sociology and history of technology. MIT Press Cambridge, MA: 105–127.

³² Law J, Bijker W, Hughes TP, et al. (2012) Technology and heterogeneous engineering: The case of Portuguese expansion. The social construction of technological systems: New directions in the sociology and history of technology. MIT Press Cambridge, MA: 105–127.

chatting platforms. Among the interviewees are Rishabh Rajan (faculty in the Electronic Production & Design department, teaches the MIDI specification), Dennis DeSantis (composer, sound designer, percussionist, and author, head of documentation for Ableton), and Matthew Davidson (software interface designer, associate professor, musical user interface designer at MOTU, Cycling '74, and others); Zhao Yi Tian (composer, vice president of the Shanghai Computer Music Association), and Yang Jia (AI music researcher) from the Shanghai Computer Music Association; as well as Roger B. Dannenberg (computer music engineer, Professor of Computer Science, Art & Music at Carnegie Mellon University). These individuals come from various backgrounds (musicians, researchers, and engineers) and cover the perspectives of diverse relevant social groups. Their insights diversified the range of perspectives contributing to the present research, leading to a more holistic and empirical analysis of the Seaboard interface.

Application of ANT to the ROLI Seaboard

The Seaboard alone does not produce sounds. An operational Seaboard requires a synergy between multiple actors: hardware, software, musicians, etc. For a user to smoothly interact with the instruments, all heterogeneous components must be associated.

Associating the Seaboard with Culture: Cultural Perception of the Keyboard

Roland Lamb, creator of the Seaboard once described his design philosophy as making “living musical instruments”:

A living musical instrument is ten percent physical, ninety percent cultural... Say you go to a museum and see some old instrument, but nobody knows how to play it or what the music was like that was made with it. Then it's just a dead object.³³

Being aware of how cultural perceptions influence musical interfaces, the first sets of heterogeneous components that the engineer associated together are the physical design of the Seaboard and wider cultural perceptions regarding musical interfaces.

ROLI presented the Seaboard instrument as striking the ideal balance between opposing sets of values in instrument design, “(The Seaboard GRAND) has the timeless elegance and enduring solidity of an

³³ Vincent J (2015) Feeling the Music with Roli's Squishy, Pressure-sensitive Keyboard. Available at: <https://www.theverge.com/2015/9/23/9372961/roli-seaboard-rise-grand-hands-on> (accessed 27 June 2022).

older instrument. But after one moment of touch, you'll know that it's part of the future."³⁴ Indeed, the physical interface of the Seaboard simultaneously contains elements of discreteness and continuity in design. It is discreet in the sense that by morphing together notes into one continuous wave-shaped surface, the Seaboard is suggestive of separating itself from the "MIDI keyboard" design format that has permeated through the digital music culture. When musicologist Emily Dolan explored the cultural perception surrounding the keyboard interface, she concluded that "in the quest to create a keyboard instrument with ever greater nuance and control, the keyboard becomes itself a model of control and organization."³⁵ The keyboard, under this view, becomes a cultural manifestation of rigidity, sacrificing musical expressiveness for greater tonal control. Thus, it is not surprising that throughout the history of modern electronic music, numerous engineers have attempted to embark on a crusade of "de-keyboardification". The late 1980s saw the launching of the WX7 MIDI, a controller that sought to disrupt the keyboard paradigm by designing an interface that models the physical characteristics of woodwind instruments. The ZETA violin, introduced in the same decade, used sensors to register vibrations, thus creating a MIDI string instrument controller. Other examples include the MIDI Theremin, the Buchla Lightning, the Hypercello, the Sensor Chair, the Sensor Frame, and the Digital Baton introduced in the 90s, all of which detect and respond to physical movements in nontraditional ways.³⁶

The Seaboard, under this view, also follows the cultural desire for "de-keyboardification". By utilizing a continuous wave-shaped surface, the Seaboard has disrupted the rigidity embedded within the keyboard interface, allowing for microtonal expressiveness. This design successfully appealed to musicians who also seek to break away from the cultural trappings of the keyboard format. Such an effect is demonstrated through the responses gained from online discussions, out of the 57 total responses to the question "What kind of people uses the ROLI Seaboard?" 38 users identified themselves as musicians seeking greater expressiveness out of their instrument.

However, when compared to the ZETA violin or the WX7 MIDI, it is blatantly clear that the Seaboard maintains the general structure, and the 12 notes per octave layout of a keyboard. As such, the

³⁴ Seaboard RISE 2 | ROLI (n.d.). Available at:

<https://rol.com/products/seaboard/rise2> (accessed 26 June 2022).

³⁵ Dolan EI (2012) Toward a musicology of interfaces. *Keyboard Perspectives* 5: 1–12.

³⁶ Manning P (2013) *Electronic and Computer Music*. Oxford University Press.

design is not merely a de-keyboardification like so many other interfaces that came before the Seaboard. Instead, the wave-like design is a clever reconciliation between expressiveness and control.

The keyboard interface, as explored by Trevor Pinch and Frank Trocco, has played a pivotal role in establishing the success of synthesizer engineer Robert Moog. The keyboard signaled to consumers the instrumentality of their avant-garde modular synthesizer. This design allowed for increased commercialization of the technology to pop and rock bands as the instrument became increasingly adopted by keyboardists. Furthermore, the keyboard layout incentivized a wave of “Switched-On” music, where electronic musicians recreate classical pieces using the Moog synthesizer. The commercial success of these musicians and albums quickly established the synthesizer as a keyboard instrument.³⁷

Similar to how Robert Moog drew upon the cultural perception of keyboards as classical instruments to highlight the instrumentality of his synthesizer, ROLI attempts to elicit the same cultural perceptions of the MIDI keyboard as the standard interface for digital music to indicate that the Seaboard is inherently a MIDI technology for electronic musicians. The effect of this strategy is supported by forum discussions, where 23 out of 57 users identified themselves as using the instrument for electronic music practices such as sound design and synthesis.

So far, we have analyzed how the hardware interface of the Seaboard was associated with cultural perceptions. But a singular focus on the hardware components does not fully compass the entire actor network of the interface, nor does it reveal the destabilizing components that shaped the instrument’s development. As such, we must extend our analysis into the dependencies between hardware interfaces and software ecosystems.

Assembling the Seaboard with Software

As was outlined in the literature review, the simultaneous development of personal computers along with MIDI controllers created the phenomenon where sound no longer originates from the hardware controller but instead through virtual instruments hosted by digital music software. New musical instruments must adapt themselves to the software ecosystem of computer music before they could be utilized with flexibility by musicians. The interfacing process of a musician not

³⁷ Pinch T (2009) *Analog Days*. Harvard University Press.

only involves interacting with the hardware surface but also with software parameters, configurations, and mappings.

One of the key linkages between controllers and computers is via MIDI, the digital language that enables the hardware to connect and trigger music events. To understand the agency that MIDI exerts on the network, we must first understand the limitations of this protocol.

In the MIDI architecture, the “note on” message is sent whenever a keystroke is made on an electronic instrument. The message consists of three bytes of data indicating the type, pitch, and loudness of a key press. Since MIDI only allows 7 bits of data to be sent, the value of pitch and loudness must be in a range from 0 to 127.³⁸ This architecture has, “important implications arising from the underlying requirement that all frequency information must be rationalized in terms of fixed pitch specifications.”³⁹ While this approach to conveying pitch and dynamics successfully models the playing style of the traditional keyboard, it does not correlate well with instruments that involve continuous microtonal changes, such as woodwinds or strings.⁴⁰ Relating to the ROLI Seaboard, it becomes clear how this digital protocol acts as a hindrance in the interfacing process of the instrument. The MIDI has solidified the keyboard paradigm. The Seaboard has always triumphed itself in being able to create microtonal changes, its hardware design invites musicians to wiggle, slide and bend notes like a string instrument. As such, the compatibility between ROLI and software is hampered, and engineers must come up with solutions to associate the instrument with software and provide a complete interfacing experience.

One such solution came in the form of an enhancement based on the MIDI protocol, known as MIDI Polyphonic Expression (MPE). Introduced in 2018, the enhancement allowed “music-making products (such as the ROLI Seaboard) to take advantage of this so that musicians can apply multiple dimensions of finger movement control: left and right, forward and back, downward pressure, and more”⁴¹ As more computer software start integrating MPE into their products, the seaboard could be increasingly connected to virtual instruments.

³⁸ Huber DM (2020) MIDI Manual 4e. Routledge.

³⁹ Manning P (2013) Electronic and Computer Music. Oxford University Press.

⁴⁰ Manning P (2013) Electronic and Computer Music. Oxford University Press.

⁴¹ Keller D (2018) MIDI Manufacturers Association (MMA) Adopts New MIDI Polyphonic Expression (MPE) Enhancement to the MIDI Specification. 28 January.

However, different software companies have varying priorities, resulting in inconsistent degrees of MPE incorporation.^{42 43 44 45} This leads many users to be unable to incorporate the Seaboard into their music-making process. Out of 158 responses to the limitations of the Seaboard, 45 cited the lack of software standards and poor integration with virtual instruments as impediments to their user experience.

Furthermore, many digital music-making techniques and virtual instruments are fundamentally incompatible with the playing style of the Seaboard.^{46 47 48} For example, synthesis methods are “inherently ‘note independent’”, this process could not be shaped on a Seaboard,⁴⁹ and sampling techniques also could not achieve the temporal manipulations required by the Seaboard.⁵⁰

The issues identified in this section highlighted the agency that MIDI and computer music software have on the actor network of the Seaboard, without a robust connection with music software the Seaboard interface is essentially incomplete. Associating these technologies is also identified as both a technological (the capacity to improve upon existing digital protocols) and an economical (agendas of different software companies) issue.

Musical Interfaces: A Fluid Network

Tracing the longitudinal development of the ROLI Seaboard, from its initial conception to the status quo, we see that the network surrounding the instrument is constantly shifting. As new social groups and technologies join the network, an interface begins harnessing expanded functionalities and becomes accessible to different users.

When the Seaboard was first conceived by ROLI, the company’s emphasis lies in the creation of innovative hardware. Computer music thrives on being able to leverage a wide range of digital instruments, and the lack of consideration for existing software infrastructure limited the extent to which Seaboard users could interface with virtual instruments.

⁴² Interview with Rishabh Rajan on Jun 23, 2022, conducted via text message

⁴³ Interview with Matthew Davidson Jun 29, 2022, conducted via video

⁴⁴ Interview with Dennis DeSantis on Jun 29, 2022, conducted via text message

⁴⁵ Interview with Zhao Yi Tian on Jun 20, 2022, conducted via video

⁴⁶ Interview with Zhao Yi Tian on Jun 20, 2022, conducted via video

⁴⁷ Interview with Yang Jia on Jun 20, 2022, conducted via video

⁴⁸ Interview with Roger B. Dannenberg on Jun 28, 2022, conducted via text message

⁴⁹ Interview with Yang Jia on Jun 20, 2022, conducted via video

⁵⁰ Interview with Roger B. Dannenberg on Jun 28, 2022, conducted via text message

But as new user groups, corporations, and technologies become integral components of the same network, the Seaboard is allowed to expand and evolve. The adoption of the MPE expansion by the MIDI Association and the subsequent incorporation of MPE technologies into software instruments allowed for the interfacing experience of users to slowly stabilize. Although in the status quo, varying levels of compatibility still induce levels of stabilization on the network, future developments such as the potential incorporation of MIDI 2.0 into computer software may bring about greater associations between the various components of the Seaboard network.

Conclusion

As musical interfaces are not simply physical, with the increasing separation between hardware and sound, it is important to consider culture, sound, digital protocols, and software environments as integral parts of a musical interface network.

Conceptualizing a musical interface as a culmination of components in a network has two advantages. Firstly, it highlighted the role of interface designers as “heterogeneous engineers”. As the paper demonstrates, the creators of Seaboard carry the responsibility of associating together a multitude of human and nonhuman actors. A simplified understanding of interface as a physical object creates the illusion that an innovative interface could inherently attract success. This thus falls into the same trappings as the early Seaboard experienced. Secondly, analyzing the components surrounding an interface also serves to make visible the hidden agencies exerted by culture and nonhuman actors. By applying actor-network theory to the Seaboard, the cultural perceptions surrounding the keyboard and the effects that the MIDI protocol had on computer music are highlighted.

As hardware instruments and software technologies become increasingly entangled in the web of associations, the framework presented by this research could be applied to a growing number of new musical interfaces. By extension, the findings presented by this paper could be applied to other digital entertainment industries, such as game controllers and virtual reality. These technologies are similarly shaped by diverse cultures and are dependent on software systems to create a complete interface.

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The Grant Administration's Decisive Role in the Collapse of Reconstruction

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Abstract

Reconstruction sought to address the two most prominent issues after the Civil War: a disunified America and the millions of African Americans who needed social footing after emancipation. While the Union was restored, it is widely accepted that Reconstruction failed to secure civil rights for African Americans in the postbellum South. Indeed, this very failure spawned later efforts to promote the equality of Afro-Americans, such as the civil rights movement of the 1960s. While the causes of Reconstruction's shortcomings are many, the most momentous reason for its failure took place during the Grant administration (1869-1877). This paper begins with the Radical Republican's ascendancy in Congress following the Civil War, and Ulysses S. Grant's relationship with the Republican Party, and evaluates the Grant administration's disastrous role in the continuation of Reconstruction policy and its devastating implications for African American civil rights in the late 19th century and beyond. Overall, this study argues that despite extensive efforts to promote civil rights, the collapse of Reconstruction can be largely attributed to Grant and his administration; heavily publicized scandals and poor responses to economic turmoil fractured the Republican Party and invited the resurgence of a Democratic agenda hostile to African American rights.

Ulysses S. Grant and Radical Republican Control in Congress

After Lincoln's assassination in April of 1865, Vice President Andrew Johnson assumed the presidency. Johnson had been a Democrat until he joined the National Union ticket with Lincoln, chosen solely to promote a message of national unity in Lincoln's re-election campaign. He continued with the rapid reunification of the fractured United States after the bloody Civil War by Lincoln's plans. Grant was committed to working with Johnson, in part because of his immense respect for Lincoln, hoping the government would run in its "old channel."¹ In his role as commander of the army, he worked to implement Johnson's Reconstruction policy in the South.

While Lincoln wanted a quick reunification, Johnson's endeavors for speedy restoration of the union dismayed the 'radical' faction of the Republican Party. Johnson had already allowed the reinstatement of former Confederates to office in the South, essentially paving the way for second-class citizenship for African Americans.² The Radicals were particularly fearful of unabating Southern contempt for the Union and African American rights, which they believed to be a byproduct of hasty reunification. Indeed, Radical Republican Schuyler Colfax, the Speaker of the House, addressed Johnson's imprudent policy in a keynote speech that underscored the need to move slowly in carrying out the restoration process in contrast to Johnson's relatively speedy plans for Reconstruction. Congress would decide against seating senators from the former Confederate states, he predicted, until legislation protecting the rights of emancipated blacks had been enacted.³ The speech was lauded by both moderate and radical Republicans,⁴ demonstrating their collective repudiation of Johnson's policy which was intrinsically unconcerned with the status of freedmen in the South. While initially optimistic about Johnson, Grant's relationship with the president would quickly deteriorate. As commander of the army, Grant worked to enforce the Civil Rights Act of 1866 which was passed that April with a

¹ D. L. Wilson, 'Ulysses S. Grant and Reconstruction,' *OAH Magazine of History*, vol. 4, no. 1, 1989, p. 47-48, <https://www.jstor.org/stable/25162637>, (accessed 7 Jul. 2022).

² J. L. Bell, 'Andrew Johnson, National Politics, and Presidential Reconstruction in South Carolina,' *The South Carolina Historical Magazine*, vol. 82, no. 4, 1981, p. 354-358, <https://www.jstor.org/stable/27567711>, (accessed 7 Jul. 2022).

³ D. G. Nieman, 'Andrew Johnson, the Freedmen's Bureau, and the Problem of Equal Rights, 1865-1866,' *The Journal of Southern History*, vol. 44, no. 3, 1978, p. 415, <https://www.jstor.org/stable/2208049>, (accessed 10 Jul. 2022).

⁴ *Ibid.*, 415-416.

two-thirds majority over Johnson's veto.⁵ Johnson was bitter about Grant's 'support' for the Radicals' plan for Reconstruction,⁶ and soon the conflict between Johnson, Grant, and the Radicals would come to a head as the decisive midterm Congressional elections of 1866 approached.

Needing Grant's immense national appeal to help promote his Reconstruction policies ahead of the 1866 elections, Johnson took him on a disastrous speaking campaign across the nation known as the 'Swing Around the Circle.' Johnson's stubborn personality and his ineptitude as a leader increasingly pushed Republican moderates towards a more radical position, including Grant.⁷ Moreover, his lack of prowess as a politician only generated more popular support for Radicals. During Johnson's campaign tours, he was constantly heckled by mobs and he responded by striking back at critics fiercely and without grace, tainting his image as a national leader,⁸ and giving further credibility to Radicals. Privately, Grant referred to Johnson's speeches as a "national disgrace," and left the tour before it had run its course.⁹ Johnson was also unable to adequately broadcast his speeches. Nearly four million citizens voted in the congressional elections of 1866.¹⁰ Even if the highest reasonable estimates of the audiences for his speeches were taken, and it was assumed that all of them voted in the elections, they would not comprise even ten percent of the total number of voters.¹¹ Johnson's ineptitude propelled the Radical Republicans to a triumph at the polls, giving them a significant majority in Congress. Even before the victorious elections in the fall of 1866, the party was moving to develop measures to initiate a more extensive Reconstruction plan in direct contrast to Johnson's

⁵ 'The Enforcement Provisions of the Civil Rights Act of 1866: A Legislative History in Light of *Runyon v. McCrary*,' *The Yale Law Journal*, vol. 98, no. 3, 1989, pp. 577-578, <https://www.jstor.org/stable/796630>, (accessed 8 Jul. 2022).

⁶ D. L. Wilson, 'Ulysses S. Grant and Reconstruction,' *OAH Magazine of History*, vol. 4, no. 1, 1989, p. 47-48, <https://www.jstor.org/stable/25162637>, (accessed 8 Jul. 2022).

⁷ E. Foner, 'If Lincoln Hadn't Died,' *American Heritage*, vol. 58, no. 6, 2009, pp. 1-2, <https://www.americanheritage.com/if-lincoln-hadnt-died>, (accessed 20 Feb. 2022).

⁸ M. L. Strong, 'POST-WAR CONGRESSIONAL ELECTIONS,' *Current History*, vol. 10, no. 57, 1946, pp. 439-441, <https://www.jstor.org/stable/45306903>, (accessed 20 Feb. 2022).

⁹ H.W. Brands, 'The Man Who Saved the Union: Ulysses Grant in War and Peace,' p. 463, https://books.google.com/books/about/The_Man_Who_Saved_the_Union.html?id=fGn2t-tuQBMC, (accessed 7 Jul. 2022).

¹⁰ M. L. Strong, 'POST-WAR CONGRESSIONAL ELECTIONS,' *Current History*, vol. 10, no. 57, 1946, pp. 439-441, <https://www.jstor.org/stable/45306903>, (accessed 20 Feb. 2022).

¹¹ G. Phifer, 'Andrew Johnson Loses His Battle,' *Tennessee Historical Quarterly*, vol. 11, no. 4, 1952, p. 294, <https://www.jstor.org/stable/42621739>, (accessed 20 Feb. 2022).

leniency for Southern Whites and his lack of consideration for the fortunes of freedmen. The elections guaranteed that they could control legislation and override another presidential veto.

Grant's departure from Johnson's policies continued when Congress passed the First Reconstruction Act in March of 1867, overriding Johnson's anticipated veto. This bill and two passed later, provided for military Reconstruction of the South. Protecting Grant, Congress also passed the Command of the Army Act, preventing his removal. The legislation also stipulated that Johnson could not give orders directly to the army: commands went through Grant.

Tensions continued when Grant reluctantly agreed to become secretary of war in *ad interim* in August of 1867 after Johnson suspended then Secretary Edwin M. Stanton, taking the job to protect the interests of the army and to prevent a conservative appointee from impeding Reconstruction.¹² The Senate's restoration of Stanton to office in 1868 created a permanent (and very public) rift between Johnson and Grant.¹³ Grant became convinced that Johnson's removal as president was necessary for the country's interests. The escalating conflict between the two left Grant disillusioned with Johnson's Reconstruction policies, moving him increasingly towards association with the radical faction of the Republican Party.¹⁴ His opposition to Johnson and his shifting viewpoints significantly boosted his popularity among the Radicals, and his nomination for the presidency was all but certain given his national prestige.

Scandals and Radical Republican Opposition to Grant

Grant would go on to win the presidential election of 1868. Prominent Radical Republicans in Congress, such as Charles Sumner and Lyman Trumbull, were overwhelmingly in support of Grant at the beginning of his presidency. Such support was derived from the belief

¹² UVA Miller Center, 'February 11, 1868: Messages Regarding Correspondence with General U.S. Grant,' <https://millercenter.org/the-presidency/presidential-speeches/february-11-1868-messages-regarding-correspondence-general-us>, (accessed 28 Jul. 2022); D. L. Wilson, 'Ulysses S. Grant and Reconstruction,' *OAH Magazine of History*, vol. 4, no. 1, 1989, p. 49, <https://www.jstor.org/stable/25162637>, (accessed 8 Jul. 2022).

¹³ D. L. Wilson, 'Ulysses S. Grant and Reconstruction,' *OAH Magazine of History*, vol. 4, no. 1, 1989, p. 49-50, <https://www.jstor.org/stable/25162637>, (accessed 8 Jul. 2022).

¹⁴ P. Feuerherd, 'Why Ulysses S. Grant Was More Important Than You Think,' 2020, <https://daily.jstor.org/why-ulysses-s-grant-was-more-important-than-you-think/>, (accessed 7 Jul. 2022).

that Grant and his administration were keen on promoting the welfare of the freedmen. This reputation was, in large part, based on Grant's record before his presidency. Under Johnson's administration, Grant issued numerous orders to military officers, a prominent example being to protect African Americans from unjust prosecutions "for which white persons are not prosecuted or punished in the same manner."¹⁵ His rigorous and well-known¹⁶ defense of African American welfare appealed to the Radicals. By 1869, however, many Radicals were sharply critical of Grant's failure as president to provide adequate protection for the freedmen in the South. Violence against blacks was a frequent occurrence since the end of the Civil War; with the emergence of the Ku Klux Klan around 1868,¹⁷ white conservatives had a platform to mobilize against southern state governments' support for pro-black federal policy.¹⁸ Intimidation, rape, and brutal public killings aimed to wrench political, social, and economic gains away from southern African Americans. While Ku Klux Klan violence amplified, Grant's summer vacation at Long Branch¹⁹ troubled abolitionists and Radical Republicans alike. To these groups, Grant's negligence was paving the way for the re-subjugation of Blacks in the South. *The National Anti-Slavery Standard*, a newspaper attuned to abolitionist and Radical sentiment,²⁰ wrote: "The President smokes. . . [and]. . . dances at Long Branch [while] the Ku-Klux flourish."²¹ David L. Child, the journalist who managed the newspaper, also wrote to Charles Sumner expressing personal dismay at

¹⁵ John Y. Simon 'The Papers of Ulysses S. Grant, Volume 16: 1866,' vol. 16, no. 8, <https://scholarsjunction.msstate.edu/usg-volumes/>, (accessed 29 Jul. 2022).

¹⁶ P. Feuerherd, 'Why Ulysses S. Grant Was More Important Than You Think,' 2020, <https://daily.jstor.org/why-ulysses-s-grant-was-more-important-than-you-think/>, (accessed 7 Jul. 2022).

¹⁷ H. Shapiro, 'The Ku Klux Klan During Reconstruction: The South Carolina Episode,' *The Journal of Negro History*, vol. 49, no. 1, 1964, pp. 35-38, <https://www.jstor.org/stable/2716475>, (accessed 29 Jul. 2022).

¹⁸ M. J. Pfeifer, 'The Origins of Postbellum Lynching: Collective Violence in Reconstruction Louisiana,' *Louisiana History: The Journal of the Louisiana Historical Association*, vol. 50, no. 2, 2009, pp. 192-194, 196, <https://www.jstor.org/stable/25478643>, (accessed 12 Mar. 2022).

¹⁹ J. M. McPherson, 'Grant or Greeley? The Abolitionist Dilemma in the Election of 1872,' *The American Historical Review*, vol. 71, no. 1, 1965, p. 44, <https://www.jstor.org/stable/1863035>, (accessed 11 Jul. 2022).

²⁰ C. H. Wesley, 'The Participation of Negroes in Anti-Slavery Political Parties,' *The Journal of Negro History*, vol. 29, no. 1, 1944, pp. 42-43, 63, <https://www.jstor.org/stable/2714753>, (accessed 11 Jul. 2022); New York Heritage, 'National Anti-Slavery Standard,' 1840-1870, <https://nyheritage.org/collections/national-anti-slavery-standard>, (accessed 11 Jul. 2022).

²¹ J. M. McPherson, 'Grant or Greeley? The Abolitionist Dilemma in the Election of 1872,' *The American Historical Review*, vol. 71, no. 1, 1965, pp. 44-45, <https://www.jstor.org/stable/1863035>, (accessed 11 Jul. 2022).

Grant's lack of action.²² Such an intimate letter between the two reinforces the notion that Child and *The Standard* were intertwined with prominent Radical opinion, conveying the prevailing sense that Grant wasn't doing enough in the South.

Grant also began to face scrutiny as a result of his connections to corrupt figures. In 1869, Wall Street financiers Jay Gould and Jim Fisk attempted to corner the US gold market. As part of their intricate plan, they bribed the Assistant Secretary of the Treasury, Daniel Butterfield.²³ Butterfield was critical in the success of the conspiracy; the federal government essentially could set the price of gold, so Butterfield provided Gould and Fisk with information on government actions in the market.²⁴ Moreover, Gould and Fisk used Grant's brother-in-law to get closer to the president, hoping to influence national economic policy to benefit their scheme. Before their plot failed, it triggered a stock market crash. While Grant himself was not directly involved in the scheme, the scandal was the first to taint his administration. As an 1869 Congressional investigation into the Gold Panic began, the public became aware of personnel in Grant's government, such as Butterfield, who was involved in gold speculation.²⁵ Radicals in Congress quickly became concerned with Grant's credibility, fearing that corruption within the administration would tarnish the reputation of Republicans in the eyes of the public.²⁶

In response to complaints within the party and his feelings of personal obligation to help the freedmen in the South, Grant increased his efforts to coordinate with the party during the two congressional sessions in the coming years (1869-1871), with the primary intentions of

²² David L. Child letter to Charles Sumner, Oct. 19, 1869, Houghton Library, Harvard University.

²³ T. Klitgaard & J. Narron, 'Crisis Chronicles: The Long Depression and the Panic of 1873,' 2016, <https://libertystreeteconomics.newyorkfed.org/2016/02/crisis-chronicles-the-long-depression-and-the-panic-of-1873/> (accessed 10 Jul. 2022).

²⁴ R. C. Kennedy, 'On This Day: October 16, 1869 - The New York Times Web Archive,' 2001, <https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/harp/1016.html>, (accessed 29 Jul. 2022)

²⁵ J. P. Jones, 'Trumbull's Private Opinion of the Grant Scandals,' *Journal of the Illinois State Historical Society*, vol. 54, no. 1, 1961, p. 52, <https://www.jstor.org/stable/40189703>, (accessed 13 Jul. 2022).

²⁶ S. A. West, 'Remembering Reconstruction in Its Twilight: Ulysses S. Grant and James G. Blaine on the Origins of Black Suffrage,' *Journal of the Civil War Era*, vol. 10, no. 4, 2020, pp. 500-501, <https://www.jstor.org/stable/26977403>, (accessed 12 Jul. 2022); J. M. McPherson, 'Grant or Greeley? The Abolitionist Dilemma in the Election of 1872,' *The American Historical Review*, vol. 71, no. 1, 1965, p. 47, <https://www.jstor.org/stable/1863035>, (accessed 13 Jul. 2022).

passing legislation to ensure African American voting rights and to quell the Ku Klux Klan.²⁷ He felt it paramount that the 15th Amendment, which prevented states from denying a citizen's right to vote based on race, be enforced rigorously in the South, a view that was shared by many Radicals in Congress.²⁸ To this effect, Grant and Congress passed the three Enforcement Acts in 1870-1871. Significantly, Congress codified federal protection for Black voting rights and the most famous of the three Enforcement Acts, known as the Ku Klux Klan Act, outlawed the terror tactics the Klan had employed in their attempts to overthrow the Reconstruction governments and intimidate African Americans. This extensive protection machinery proved to be effective in the early years of its enforcement; hundreds of offenders were arrested and thousands of cases related to the Klan were tried, with the government winning a majority of their enforcement cases in the early 1870s.²⁹ The rigorous action taken against anti-Black terrorism effectively destroyed the Klan in the early years of the 1870s. Grant's robust measures and advocacy prompted a considerable portion of Radicals once again to feel favorable about him. Yet at the same time, perhaps an even more critical number of Republicans became increasingly weary of the Grant administration's continued involvement in scandals, despite progress with civil rights.

In 1872, Congress carried out two investigations into the New York Custom House, discovering that two Grant collector appointees, Tom Murphy, and Moses H. Grinnell, allowed merchants to store goods not claimed at the docks in a private warehouse to charge them higher fees. Additionally, two of Grant's secretaries shared in these profits.³⁰ While Grant also worked to coordinate an investigation led by Secretary George S. Boutwell, the sheer number of his appointments that participated in the scandal tarnished the reputation of his administration.³¹ As before, while he wasn't involved in this scheme, his penchant for appointing corrupt officials, in addition to several other smaller scandals within the administration, worked to diminish his support among Radicals. When prominent Radicals such as Charles

²⁷ Cong Globe, 41st Cong, 2nd Sess 359; Cong Globe, 41st Cong, 3rd Sess 214

²⁸ Ibid., 2nd Sess 359-361.

²⁹ E. Swinney, 'Enforcing the Fifteenth Amendment, 1870-1877,' *The Journal of Southern History*, vol. 28, no. 2, 1962, pp. 205-206, <https://www.jstor.org/stable/2205188>, (accessed 10 Jul. 2022).

³⁰ G. W. Julian, 'The Death-Struggle of the Republican Party,' *The North American Review*, vol. 126, no. 261, 1878, p. 270, <https://www.jstor.org/stable/pdf/25110185.pdf>, (accessed 12 Jul. 2022).

³¹ Ibid., 271; J. M. McPherson, 'Grant or Greeley? The Abolitionist Dilemma in the Election of 1872,' *The American Historical Review*, vol. 71, no. 1, 1965, pp. 47, 49, <https://www.jstor.org/stable/1863035>, (accessed 11 Jul. 2022).

Sumner and Lyman Trumbull, two figures who were both responsible for the creation of landmark Reconstruction legislation, split divisively with the rest of the party, they were accompanied by a significant number of other Radicals, who had quickly become disillusioned with Grant's connections to corruption, and sought reform or a break from the party.

Radical Republican opposition to Grant had even begun as early as 1870 when Radicals attempted an internal reform of the party. Failing in this effort, many of them dissociated with the Republican Party under Grant and formed the breakaway Liberal Republican Party in 1872. From the liberal viewpoint, the Grant administration's support of 'carpetbag' rule in the South had resulted in the 'corruption' of Southern governments.³² Technically, a 'carpetbagger' was simply a northerner who moved to the South after the Civil War and participated in Republican Party politics, a definition that was given a decidedly pejorative hue by Southerners in the following years. Obstinate Southerners began to perpetuate the notion of 'carpetbag' rule in the late 1860s after viable Republican governments had been established.³³ The idea they sought to portray hinged on the image of thieving, corrupt Republican officials who were unfairly controlling the South; while corrupt officials were certainly present, the extent to which they dominated the South was greatly exaggerated.³⁴ White southern conservatives and northern Democrats used this idea as a common language to express their disdain for the Republican governments that sought to uphold the protection of freedmen. Northerners couldn't help but take notice of the clamor, initially dismissing it even as the Democratic chorus denouncing carpetbag corruption – real or imagined – continued unabated.³⁵ Eventually, some northern Republicans came to accept the carpetbagger stereotype.³⁶ The reason for the acceptance of such stereotypes, and the resulting formation of the Liberal Republican Party, was facilitated by the Grant administration's reputation for corruption. Given Grant's past appointments of corrupt officials³⁷ and his ties to political and economic spoilsmen, Liberal Republicans and

³² T. Tunnell, 'Creating "The Propaganda of History": Southern Editors and the Origins of "Carpetbagger and Scalawag,"' *The Journal of Southern History*, vol. 72, no. 4, 2006, pp. 791-793, <https://www.jstor.org/stable/27649233>, (accessed 12 Jul. 2022).

³³ *Ibid.*, 792, 800.

³⁴ K. S. Prince, 'Legitimacy and Interventionism: Northern Republicans, the "Terrible Carpetbagger," and the Retreat from Reconstruction,' *Journal of the Civil War Era*, vol. 2, no. 4, 2012, p. 539, <https://www.jstor.org/stable/26070276>, (accessed 29 Jul. 2022).

³⁵ *Ibid.*, 540-541.

³⁶ *Ibid.*, 544.

³⁷ *Ibid.*, 545-546.

others in the North found it conceivable that he had amassed a circle of devoted appointees in the South, keeping them in power in return for their support of his policies.³⁸ The tarnished reputation of the Grant administration, a result of prior involvement in corrupt activities, was instrumental in the perpetuation of the ‘carpetbag’ stereotype and the subsequent Liberal Republican split. Inevitably, the Liberal Republican faction attempted to ally with Southern conservatives, promising to address corruption and work towards home rule in return for the promise of accepting the Reconstruction amendments and guaranteeing basic rights for freedmen.³⁹ While the Liberal Republicans failed massively to derail Grant’s bid for reelection in 1872, their relationship with the Democratic party would prove to be decisive in the following years.

Response to the Panic of 1873

Another financial crisis struck the nation shortly after Grant’s reelection. The recession, known as the Panic of 1873, followed the failure of the Jay and Cooke Company, a major component of the country’s banking establishment. News of the failure stunned Americans and the financial clout and high publicity of the firm created panic.⁴⁰ This precipitated a major crash, and banks failed en masse as credit was withdrawn from the market.⁴¹ Coincidentally, Grant was a guest at Cooke’s mansion the night before the crash. Once back in the capital, he was informed about the events as financiers began pressuring him to increase the money supply with ‘greenbacks,’ government-printed paper currency.⁴² Grant himself had previously advocated an opposing ‘hard money’ policy – national currency fixed to the value of gold, rather than paper currency whose value was determined by supply and demand. He ultimately decided against the printing of more greenbacks, contracting

³⁸ Ibid., 546-547.

³⁹ J. M. McPherson, ‘Grant or Greeley? The Abolitionist Dilemma in the Election of 1872,’ *The American Historical Review*, vol. 71, no. 1, 1965, p. 47, <https://www.jstor.org/stable/1863035>, (accessed 25 Jul. 2022).

⁴⁰ R. A. Margo, ‘The Labor Force in the Nineteenth Century,’ 1992, NBER Working Paper No. h0040, <https://ssrn.com/abstract=995451>, (accessed 22 Jul. 2022).

⁴¹ D.E. VandeCreek, ‘The Panic of 1873 and Its Aftermath: 1873-1876,’ Northern Illinois University, 2016, <https://digital.lib.niu.edu/illinois/gildedage/chronological3>, (accessed 24 Jul. 2022).

⁴² R. C. Kennedy, ‘On This Day: October 11, 1873 - The New York Times Web Archive,’ 2001, <https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/harp/1011.html>, (accessed 22 Jul. 2022).

the money supply to avoid inflation.⁴³ While it certainly can be argued that this decision was beneficial in the long term, its immediate effects were disastrous. The monetary contraction prevented businesses from spending much-needed capital to sustain themselves, and trade and international commerce stagnated as a result. The subsequent drop in prices dragged down industrial wages and farm income. Thousands were laid off in the coal and iron industries of Illinois, Ohio, and Pennsylvania; approximately a quarter of the labor force in New York City was unemployed in the winter after the panic.⁴⁴ The United States faced the prospect of a ‘Long Depression,’ which would prevail until the final years of the century. Republican lawyer George T. Strong wrote in his diary that a lack of action from the Republican Party would precipitate a Democratic resurgence in the 1874 elections: a “hard, blue winter,”⁴⁵ as he put it.

At the heart of the issue was the ‘money question,’ a debate that had aired in Congress immediately after the conclusion of the Civil War, but had intensified during the Panic. Much of the country believed that the Panic could be remedied if the ‘money question’ were resolved, or if the Grant administration took action through compromise, economic aid, etc.⁴⁶ The debate crystallized into two clear positions: the ‘hard-money’ and ‘soft-money’ factions. Looking at the Grant administration’s economic policy and its influence on Reconstruction, there are a few important factors to note. On one hand, advocates of ‘hard money’ desired a fixed currency value tied to the price of gold, which would prevent inflation. On the other hand, more democratic voices defended ‘soft money,’ or paper dollars, as the money of the people, not the bankers.⁴⁷ The second important detail to note is that the issue pitted those in the Northeast against those in the Midwest, the former advocating an increase in the circulation of greenbacks, and the latter a

⁴³ R. F. Bruner, ‘The Panic of 1873 and the “Long Depression,”’ Darden Case No. UVA-F-1824, 2018, pp. 1-3, <http://dx.doi.org/10.2139/ssrn.3233302>, (accessed 24 Jul. 2022).

⁴⁴ N. Barreyre, ‘The Politics of Economic Crisis: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,’ *The Journal of the Gilded Age and Progressive Era*, vol. 10, no. 4, 2011, pp. 408-409, <https://www.jstor.org/stable/23045120>, (accessed 22 Jul. 2022).

⁴⁵ *Ibid.*, 416; A. Nevins & M. Thomas, ‘The Diary of George Templeton Strong,’ 1952, vol. 4, p. 498.

⁴⁶ N. Barreyre, ‘The Politics of Economic Crisis: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,’ *The Journal of the Gilded Age and Progressive Era*, vol. 10, no. 4, 2011, p. 413, <https://www.jstor.org/stable/23045120>, (accessed 22 Jul. 2022).

⁴⁷ *Ibid.*, 411.

return to payments made only with gold currency.⁴⁸ The reason for this difference in opinion is reflected in their respective economies. Although manufacturers were hit hard in the north, gold was still used for two prominent classes of payments: duties on imports and foreign payments.⁴⁹ These two activities, critical to northern manufacturing interests,⁵⁰ solidified the hard-money position of most northerners. The economy of the Midwest, contrastingly, heavily relied on agriculture and farming. The money market was too tight in this region since farmers drained their cash to pay railroad rates to transport their crops.⁵¹ Thus, Midwesterners advocated for the issuing of more greenbacks, believing that temporary loans kept farmers afloat.⁵² Thus, Northeastern Republicans clamored for specie payments, while Midwestern Republicans urged more greenbacks. The Republican Party was fractured but compromises on the ‘money question’ were indeed possible, evidenced by the Public Credit Act a few years before the Panic, which arose out of negotiations between the two factions within the Republican Party.⁵³ It was up to Grant and his administration to stabilize the party through a compromise, or explore other avenues to limit the damage caused by the Panic.

At this point, the significance of the Liberal Republican split two years prior became all too apparent. Given that the ‘money question’ had dominated party politics, Grant needed to use Reconstruction as a means

⁴⁸ C. V. Harris, ‘Right Fork or Left Fork? The Section-Party Alignments of Southern Democrats in Congress, 1873-1897,’ *The Journal of Southern History*, vol. 42, no. 4, 1976, p. 478, <https://www.jstor.org/stable/2208003>, (accessed 24 Jul. 2022).

⁴⁹ G. D. Hancock, ‘The National Gold Banks,’ *The Quarterly Journal of Economics*, vol. 22, no. 4, 1908, p. 602, <https://www.jstor.org/stable/pdf/1884918.pdf>, (accessed 29 Jul. 2022).

⁵⁰ *Ibid.*, 603.

⁵¹ H.C. Wallace, ‘The Farmers and the Railroads,’ *Proceedings of the Academy of Political Science in the City of New York*, vol. 10, no. 1, 1922, p. 65, <https://www.jstor.org/stable/1172105>, (accessed 29 Jul. 2022); N. Barreyre, ‘The Politics of Economic Crisis: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,’ *The Journal of the Gilded Age and Progressive Era*, vol. 10, no. 4, 2011, p. 413, <https://www.jstor.org/stable/23045120>, (accessed 22 Jul. 2022).

⁵² G. D. Hancock, ‘The National Gold Banks,’ *The Quarterly Journal of Economics*, vol. 22, no. 4, 1908, pp. 603-604, <https://www.jstor.org/stable/pdf/1884918.pdf>, (accessed 29 Jul. 2022).

⁵³ B. G. Carruthers & S. Babb, ‘The Color of Money and the Nature of Value: Greenbacks and Gold in Postbellum America,’ *American Journal of Sociology*, vol. 101, no. 6, 1996, p. 1565, <https://www.jstor.org/stable/2782112>, (accessed 27 Jul. 2022); N. Barreyre, ‘The Politics of Economic Crisis: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,’ *The Journal of the Gilded Age and Progressive Era*, vol. 10, no. 4, 2011, p. 414, <https://www.jstor.org/stable/23045120>, (accessed 22 Jul. 2022).

to unite a badly divided party. Yet the considerable number of Radical Republican abolitionists who had jumped ship meant that he lacked the necessary support. Tensions came to a head when the Inflation Bill of 1874 passed through Congress, aiming to inject millions of dollars into the economy through national banknotes.⁵⁴ Midwestern Republicans supported the measure, while Northeasterners opposed it. Ultimately, Grant decided to veto the bill, enraging the party's Midwestern soft-money faction. In a letter between Midwestern Republicans John Deweese and John Logan, both inquired about Grant's decision: "Does he wish to break up the Republican Party by his infernal veto?"⁵⁵

The issue was not simply that Grant vetoed the bill; after all, it appeared that the factions within the party had hardened to such a degree that a satisfactory compromise would be nearly impossible to achieve. The money question would rage on until the turn of the century. The main issue lay in the lack of action following the veto. He offered no hint of compromise for those in the Midwest. Simply put, Grant was not politically savvy in the aftermath of the veto. Aware of the deep divides within the party,⁵⁶ he did not seek to appease his Republican colleagues in the Midwest in any meaningful capacity. The region had been hit particularly hard by the Panic, more so than the North, with numerous railroad businesses collapsing under the weight of the recession, requiring at least some degree of economic aid.⁵⁷ Some compromise, some action, was desperately needed across the nation. Grant belatedly oversaw the passing of a law that released 26 million dollars of greenbacks, which were stored in the vaults of banks as reserves against bank circulation (issued with Grant's approval).⁵⁸ The law also authorized the redistribution of wealth from some New England banks to the rest of the country, according to the ratio of wealth and population in each state.⁵⁹ This minuscule attempt at a compromise left all parties unsatisfied. Grant and his administration had failed to properly recognize the fractured state of the Republican Party and failed to provide financial solutions, particularly in the Midwest, to

⁵⁴ A. Comstock, 'INFLATION: Greenbackism and Free Silver,' *Current History*, vol. 24, no. 141, 1953, p. 276, <https://www.jstor.org/stable/45308415>, (accessed 24 Jul. 2022).

⁵⁵ John Deweese to John Logan, 'John Alexander Logan Family Papers,' 1874, Library of Congress, <https://www.loc.gov/item/mm79030445/>, (accessed 23 Jul. 2022).

⁵⁶ A. L. Slap, 'Liberal Republicans Try Again, 1872–1876,' 2007, ch. 10, <https://doi.org/10.5422/fso/9780823227099.003.0010>, (accessed 24 Jul. 2022).

⁵⁷ S. Mixon, 'The Crisis of 1873: Perspectives from Multiple Asset Classes,' *The Journal of Economic History*, vol. 68, no. 3, 2008, pp. 725-726, <https://www.jstor.org/stable/40056436>, (accessed 24 Jul. 2022).

⁵⁸ Cong Record, 43rd Cong, 1st Sess 489.

⁵⁹ *Ibid.*, 489-490.

help stabilize the tumultuous atmosphere in Congress. Moreover, the administration had failed to coordinate any sort of remedy either for the economic crisis or the situation that had precipitated it. While Grant had managed to prevent a complete collapse of the Republican Party, American citizens were distraught with the political and economic state of the nation. Grant's missteps would spell doom for the congressional elections of 1874.

The drop in Republican fortunes was spectacular. In the House alone, they fell from a 70 percent majority to a 37 percent minority, keeping a majority of seats in only 12 of the 37 states and losing key midwestern territories such as Ohio, Illinois (significantly Grant's home state), and Indiana.⁶⁰ The gubernatorial elections were equally disastrous, with states such as Massachusetts, formerly a Republican stronghold, succumbing to the Democratic vote. Republican candidates and newspapers across the nation scrambled to justify Grant's actions in the wake of accusations that he had 'sold out' to the rich northeasterners, accusations that gave credence to the administration's involvement in numerous scandals. The new Democratic majority in the House would make it certain that no new Reconstruction legislation would pass through in the next session of Congress. Given these factors, a growing number of Republicans in the North became convinced that Reconstruction was hopeless. Moreover, the Panic of 1873 eroded national support for Congressional Reconstruction. Northerners were preoccupied with their financial issues and turned away from thinking about the fate of the freedmen. With that, the government began to pursue a more moderate Reconstruction policy, to the detriment of the African Americans trapped in a hostile South.

A marked decrease in the enforcement of Reconstruction legislation followed the elections. The Enforcement Acts of 1870-1871 sought justice against those who used violence to terrorize African Americans in the South. The government won 74 percent of its enforcement cases in 1870; just 4 years later, the conviction rate rarely passed the 10 percent mark and often fell well below it.⁶¹ Reconstruction policies were rolled back, leaving racial violence in the South relatively unchecked. Between 1874 and 1876 alone, thousands of African Americans were murdered in the South, with their killers free to walk in

⁶⁰ N. Barreyre, 'The Politics of Economic Crisis: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,' *The Journal of the Gilded Age and Progressive Era*, vol. 10, no. 4, 2011, p. 416, <https://www.jstor.org/stable/23045120>, (accessed 23 Jul. 2022).

⁶¹ E. Swinney, 'Enforcing the Fifteenth Amendment, 1870-1877,' *The Journal of Southern History*, vol. 28, no. 2, 1962, pp. 205-206, <https://www.jstor.org/stable/2205188>. Accessed 23 Jul. 2022.

almost all cases.⁶² The troops stationed in the South, so vital to the successful implementation of legislation, were reduced. In the face of amplified intimidation tactics, with a smaller number of troops for protection, many blacks were unwilling to testify in courts; doing so could result in property damage, harassment, or death. After gaining control of the House, Democrats were able to set up a congressional committee to investigate the funds allocated to the Department of Justice, the sector of the government responsible for the maintenance of Southern courts that protected African American rights. As a result, they cut the judicial appropriations for 1876-1877 by half a million dollars. While funds were an issue since the inception of the Acts, the Grant administration's blunders essentially made them dead laws. Protections for African Americans were largely eroded after the Republican electoral defeats of 1874.

Conclusion

The Grant administration and the Republicans in Congress were able to pass the Civil Rights Act in 1875 after a hard-won compromise. It was the last legislation of Reconstruction. Because the Supreme Court delayed ruling on its constitutionality, lower courts slowed down their decision-making, which encouraged a disregard for the law by the public and state officials. The primary effect was an exacerbation of African American reluctance to go to court.⁶³ The Grant administration's efforts to promote African American civil rights deserve to be praised; its far-reaching and idealistic legislation was ahead of its time. But the extensive failures of the administration – the numerous scandals, the inability to take decisive action after the Panic of 1873 – fractured the Republican Party, and drove voters to initiate a Democratic resurgence. Reconstruction would formally end in the Compromise of 1877 when Republicans agreed to withdraw the remaining troops in the South in return for the presidency. However, the Grant administration's shortcomings caused Reconstruction to collapse long before this compromise, and African Americans were relegated to second-class citizenship as Jim Crow laws guaranteed a tragic fate for blacks in the South, stripping their political standing and economic independence.

⁶² EJI Reports, 'Documenting Reconstruction Violence,' ch. 3, 2020, <https://eji.org/report/reconstruction-in-america/documenting-reconstruction-violence/>, (accessed 23 Jul. 2022).

⁶³ V. W. Weaver, 'The Failure of Civil Rights 1875-1883 and its Repercussions,' *The Journal of Negro History*, vol. 54, no. 4, 1969, pp. 368-369, <https://www.jstor.org/stable/2716730>, (accessed 24 Jul. 2022).

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*Interdisciplinary:
Literature, History*

Understanding the Myth and Reality of the Lost Generation

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Abstract

The term 'lost generation' evokes both the gilded decadence of the 1920s and the pulsing undercurrent of post-war disillusion, themes dominating seminal literary works of the 20th century. The writers of the lost generation were artists and intellectuals, standing on the outskirts of culture, while simultaneously creating what would become epitomes of the modern condition. For this reason, many historians argue that the lost generation is a myth. However, this claim overlooks the fact that many of the writers indeed felt 'lost.' In truth, the term is a broad generalization that erases the complexity of the collective mood among many people, including the writers, during an age of tumult. This essay attempts to clarify the ambiguity surrounding the term Lost Generation. It begins with a documentation of the term's origins and evolution, followed by an analysis of the autobiographies, fiction, and lives of three Lost Generation writers: Ernest Hemingway, F. Scott Fitzgerald, and T.S. Eliot. The exploration of their literary works, alongside their lives, offers an insight into understanding their worldview and whether the term 'Lost Generation' accurately encapsulates their sentiments. This essay further reveals nuances layered in our current understanding of the Lost Generation and shows how it is a truth in abstraction, having some resonance with the 20th century, without taking full account of the experience of American intellectuals.

Evolution of Meaning from WWI Youths to Expatriate Intellectuals

The origins of the term ‘lost generation’ lie in Europe. It was first mentioned in 1912 by Franz Pfemfert in the German literary and political magazine *Die Aktion*.¹ It is difficult to know whether the connotations of disillusionment attached to this generation existed in reality because the term was not created by the masses but the intellectuals: Franz Pfemfert was a German expressionist, and therefore, according to historian Robert Wohl, implicated with “twentieth-century generationists...members of a small elite...keenly aware of their uniqueness.”² Adding to this ambiguity is the fact that the supposedly singular generation was composed of multiple³ and that each European country had its understanding of the term’s meaning. The American meaning, introduced in Hemingway’s *The Sun Also Rises*, held many of these European connotations, perhaps because Hemingway’s famous conversation with Gertrude Stein, which inspired his epigraph “you are all a lost generation” in *The Sun Also Rises*, took place in Paris.

As we see from Hemingway’s account of the conversation in his memoir *A Moveable Feast*, neither he nor Stein created the phrase, but they added further nuance in using it. Gertrude Stein overheard the ‘patron’ of a garage scolding the young man fixing her car, who had served in the war, exclaiming “You are all a *génération perdue*.”⁴ She then repeated the phrase to Hemingway: “That’s what you are... All of you young people who served in the war,” adhering to the European usage of the phrase meaning the war youth. However, over the course of the conversation, the term evolved from being the shared experience of war to an attitude of insolent indifference as Stein added, “You have no respect for anything. You drink yourselves to death.” At this moment, she no longer referred to the young soldiers of World War I but to her and Hemingway’s social circle. Stein explained her understanding of the lost generation further in her work *Everybody’s Autobiography*, published before *A Moveable Feast*. Here, the young war generation was lost because of their immaturity, without ‘the influences of women of parents and preparation.’⁵ Hemingway took offense to Stein’s implication of his shiftlessness, believing himself to be more disciplined than her and her

¹ Marc Dolan, “The (Hi)story of their Lives: Mythic Autobiography and ‘The Lost Generation,’” *Journal of American Studies* 27, no.1 (April 1993): 52.

² Wohl, *The Generation of 1914*, 5.

³ *Ibid.*, 36.

⁴ Ernest Hemingway, *A Moveable Feast: The Restored Edition* (New York: Scribner, [1964] 2010), 61.

⁵ As quoted in Craig Monk, *Writing the Lost Generation: Expatriate Autobiography and American Modernism* (Iowa City: University of Iowa Press, 2008), 28.

contemporaries. However, despite his condemnation of Stein's 'lost generation talk and all the dirty, easy labels,' the idea of a shared experience resonated with him when he wondered whether 'the boy in the garage...had ever been hauled in one of those vehicles when they were converted to ambulances,'⁶ as he had done during the war.

Hemingway's depiction of the lost generation in *The Sun Also Rises* adds another important association to the term: expatriation. When the protagonist Jake Barnes and his friend Bill Gorton retreat to a fishing trip, Bill accuses Jake of being 'an expatriate:' "You've lost touch with soil... You drink yourself to death. You become obsessed with sex. You spend all your time talking, not working... You hang around cafés."⁷ 'Expatriation' here is conflated with 'lost generation.' It is easy to see Stein's influence on Hemingway's understanding of both ideas. Expatriation to Europe was a trend among many of the lost-generation writers. However, leaving America was not simply a 'rejection of homeland,'⁸ as Donald Pizer terms it, but a way for them to participate in the international modernist movement, to form connections with other established artists while living cheaply and comfortably, something that was impossible in the US.⁹ In this way, expatriation was not symbolic of alienation from a former culture; many writers, such as Stein¹⁰ and Pound,¹¹ still considered the US their home. Rather, it was an attempt to find a foothold in the artistic world to inspire their work and make a name for themselves. Bill's description of expatriates misses their vital motivations for the fulfillment, turning the association between being 'lost' and being an expatriate into a cliché.

Intellectual Dramatization

It was the intellectuals after the 1920s that dramatized the writers' existential attitudes. In *After the Lost Generation*, written in 1958, Aldridge believed that the 'lost generation,' living with the trauma of war and the modern uncertainty that gave way to Dada, surrealism, and existentialism, 'understood only the immediate present and past...[worshipping] only the gods of sex, liquor, violence, and art...because they had known nothing else.'¹² Aldridge's metaphors

⁶ Hemingway, *A Moveable Feast*, 62.

⁷ Ernest Hemingway, *The Sun Also Rises: The Hemingway Library Edition* (New York: Scribner, [1926] 2014), 24.

⁸ As quoted in Monk, *Writing the Lost Generation*, 28.

⁹ Monk, *Writing the Lost Generation*, 38.

¹⁰ Warren Susman, "A Second Country: The Expatriate Image" *Texas Studies in Language and Literature* 3, no.2 (Summer 1961): 180.

¹¹ Susman, "A Second Country," 177.

¹² Aldridge, *After the Lost Generation*, 14.

exaggerate the carelessness of the writers' lives and remove their individuality. Along this same line of thinking, Charles Glicksberg claimed that "they [defied] death; they [courted] danger; they [made] a ritualistic cult of bullfighting and of hunting big game in Africa; they [committed] 'gratuitous' crimes; they experiment[ed] with suicide."¹³ In one fell sweep, Glicksberg compared Hemingway's hobbies of bullfighting and hunting to the murder committed by Leopold and Loeb in the name of Nietzsche and existentialism, tying them indelibly to their modern surroundings and making the lost generation a caricature of what they were.

Constructed Autobiographies

After the 1920s, many expatriate writers published autobiographies which, despite their inaccuracy, played an important role in shaping the public's understanding of the lost generation.¹⁴ As Hugh Kenner noted, the story of their movement was written 'by the canonized themselves, who were apt to be aware of a collective enterprise, and repeatedly acknowledged one another.' The 1920s saw the beginnings of fandoms,¹⁵ where people began finding identity in celebrities rather than the influences in their own lives, and the autobiography fulfilled a desire to uncover the façade of Parisian life. Most likely, the lost generation writers accrued fame not because of their work but because of their celebrity status. Therefore, it is not surprising that Gertrude Stein's only bestseller was *The Autobiography of Alice B. Toklas*. Written through the eyes of her companion, the work defies the traditional guise of objectivity in an autobiography. Self-consciously, it describes its conception: "About six weeks ago, Gertrude Stein said, it does not look to me as if you were ever going to write that autobiography... I am going to write it as simply as Defoe did the autobiography of Robinson Crusoe. And she has and this is it."¹⁶ Following her precedent, Hemingway confesses in his memoir *A Moveable Feast* that "this book contains material from the *remises* of my memory and of my heart. Even if the one has been tampered with and the other does not exist,"¹⁷ while his manuscript states that "this is a book of fiction and should be read as such."¹⁸ The memoir, mostly written in first person, frequently switches to second person, a choice which he heavily debated in his manuscripts, crossing out 'you' to

¹³ Charles I. Glicksberg, "The Lost Generation of Literature," *Southwest Review* 38, no.3 (Summer 1953): 4.

¹⁴ Dolan, "The (Hi)story of their Lives," 40.

¹⁵ *Ibid.*, 52.

¹⁶ As quoted in Monk, *Writing the Lost Generation*, 44.

¹⁷ Hemingway, *A Moveable Feast*, 225.

¹⁸ *Ibid.*, 232.

replace with 'I,' then changing it back.¹⁹ When he describes what it is like to walk through the Luxembourg Gardens, "you were accustomed to see the bare trees against the sky," "you walked on the fresh-washed gravel paths," and "you were reconciled to [the trees]."²⁰ The effect of using a direct address to the reader is to fully immerse them in his reality and establish his experiences as universal facts, true not only for himself but for anyone who reads his book. Similarly, Fitzgerald uses 'we' in his autobiography *Crack-Up*. In this way, despite their fictional nature in the case of Stein and Hemingway, these lost generation writers inadvertently used the autobiography as a way to mold the public's perception of their personal lives and the idea of a 'Lost Generation.'

The Lives and Literature of the Lost Generation Writers

Within their literature, general themes are adhering to the idea of a lost generation, but each writer nevertheless had their conception of the modern human condition. As for their personal lives, the 'myth' of the lost generation is in some ways true, as Hemingway, Fitzgerald, and T.S. Eliot, among other writers, struggled with anxiety and disillusionment as a result of the war, their difficult love lives, and creative unfulfillment.

Hemingway and Loss

Hemingway's protagonists, including himself in *A Moveable Feast*, are lost in the sense that their loss has pushed them to disillusionment with their agency. Although they are often detached from society and themselves, it is not because of indifference, as Stein suggests, but skepticism. The characters of *The Sun Also Rises* feel out of control, 'sick,' and 'miserable.' They distract themselves with escapades across France and Spain to drink and watch bullfights but are ultimately unable to escape the shadow of war and the difficulty of love. Jake Barnes cannot be with the girl he loves because of his impotence from a war injury and he doesn't know what he lives by or for. At the beginning of the book, he thinks about the world in transactional terms, slipping into Hemingway's characteristic second person: "Enjoying living was learning to get your money's worth and knowing when you had it... It seemed like a fine philosophy."²¹ Later, he re-evaluates this belief, then resolves that "I did not care what it was all about. All I wanted to know was how to live in it; only then could you [maybe learn]...what it was all about." Religion offers him no solace. After an attempt to pray in a church, he

¹⁹ Hemingway, *A Moveable Feast*, photo insert.

²⁰ *Ibid.*, 21.

²¹ Hemingway, *The Sun Also Rises*, 37.

concludes that “I was a little ashamed, and regretted that I was such a rotten Catholic, but realized there was nothing I could do about it...and I only wished I felt religious and maybe I would next time.”²² His half-heartedness in these cases stems from his belief in his lack of control over his internal and external experiences. His reality becomes a monotonous blur of traveling, drinking, bullfights, and socializing only broken into two scenes: fishing with Bill and his trip to San Sebastian. There, immersed in nature, he reclaims inner peace and a romantic vision of fulfillment. However, the tranquil moments in San Sebastian where he spends his days swimming in the ocean are shattered in the final chapters of the book upon his return to Brett, his love interest. The book ends when Brett laments “Oh Jake...we could have had such a damned good time together,” to which Jake replies “Yes... Isn’t it pretty to think so,”²³ a final line encapsulating his disillusionment in love. As writer William Adair observes, the characters are defined by their “emotional and spiritual longing, a ‘hunger’ for love, order, meaning, intensity, purpose” and therefore are characterized by lack. Moreover, within the frame of the epigraph from Ecclesiastes, “one generation passeth away, and another generation cometh; but the earth abideth forever...”²⁴ their emptiness perhaps stems from the awareness of the transience of their lives.

These themes are carried over in many of Hemingway’s later works. *A Farewell to Arms*, published in 1929, is about a young American ambulance driver, Frederick Henry, fighting on the Italian side in World War I. His role in the war and his later experiences of becoming injured in an explosion and being nursed to health by the nurse he falls in love with mirror Hemingway’s own life. Unlike Jake, Frederick’s love for the nurse, Catherine, gives him a new meaning and purpose; as Catherine says to him, “You’re my religion. You’re all I’ve got.”²⁵ But just as the war looms in the background, death inevitably takes her away from him. When Catherine dies after giving birth, Frederick gets no sense of closure, as “it was like saying good-by to a statue.”²⁶ *A Moveable Feast* reveals that much of Catherine and Frederick’s story is Hemingway and Hadley’s rather than Hemingway and the nurse’s. Hemingway acknowledges in his transcripts that she is Hemingway’s heroine²⁷ and the memoir is an ‘account of the people and the places when Hadley and

²² Ibid., 17.

²³ Ibid., 76.

²⁴ Ibid., epigraph.

²⁵ Ernest Hemingway, *Farewell to Arms*, 49.

²⁶ Ernest Hemingway, *A Farewell to Arms: Kindle Edition* (New York: Scribner, [1929] 1997), 142.

²⁷ Hemingway, *A Moveable Feast*, 230.

I believed we were invulnerable²⁸ before Hemingway's affair that unraveled his marriage. Like Jake, Hemingway experienced a lack of fulfillment: "I was getting tired of the literary life if this was the life that I was leading...and I felt the death loneliness that comes at the end of every day that is wasted in your life."²⁹ Like Frederick, he lost the love that made him happiest and gave him the courage to face life. His own experiences made him well acquainted with loss, from the traumatic suicide of his father; his war injury, which took away his 'great illusion of immortality';³⁰ and his experiences of love with the nurse that left him and Hadley who divorced him. Because of these fictional and nonfictional experiences, Adair aptly characterizes Hemingway's work as 'loss, the fear of loss...and the aftermath of loss.'³¹

Fitzgerald and Identity

On the other hand, Fitzgerald's vision of disillusionment is one of material delusion. Hemingway's characters may not have a God, but they do have a moral code.³² Fitzgerald's characters, however, lack both values and identity. *The Beautiful and Damned*, published in 1922, describes the tragedy of Anthony Patch and Gloria Gilbert, painfully aware of their mortality and their dissipating love beneath the façade of their glamorous lifestyle. *This Side of Paradise*, the book where Fitzgerald seems most self-conscious of ideas of disillusionment and lostness, follows Amory Blaine, a Princeton student who enlists in the war and falls in love with a young debutante, who ends up breaking off their engagement upon realizing Amory cannot financially support her lifestyle – a series of events resembling Fitzgerald's experiences with his wife, Zelda Sayre. Amory realizes both an individual and collective emptiness: "For the first time in his life, he rather longed for death to roll over his generation, obliterating their petty fevers and struggles and exultations. His youth seemed never so vanished as now in the contrast between the utter loneliness of this visit and that riotous, joyful party of four years before. Things that had been the merest commonplaces of his life then, deep sleep, the sense of beauty around him, all desire, had flown away and the gaps they left were filled only with the great listlessness of his disillusion."³³ Adding Jay Gatsby to the pair, these three protagonists are

²⁸ Ibid., 221.

²⁹ Ibid., 141.

³⁰ Thomas Putnam, "Hemingway on War and its Aftermath," *Prologue Magazine* 38, no.1 (Spring 2006), accessed April 24, 2022, <https://www.archives.gov/publications/prologue/2006/spring/hemingway.html>.

³¹ Adair, "The Poetics of Loss," 17.

³² Aldridge, *After the Lost Generation*, 236.

³³ F. Scott Fitzgerald, *This Side of Paradise*, (New York: Scribner, [1920] 2008), book 2 ch. 4, Project Gutenberg.

initially propelled by all-consuming desires for love, money, or status. When they lose these objects or realize their unattainability, all they are left with is themselves: Anthony appears to two observers to have gone crazy and realizes how ‘he had been alone, alone – facing it all;’³⁴ Amory, walking through the Princeton campus, initially triumphs that “I know myself” but concludes ‘but that is all;’³⁵ and Jay Gatsby, now Fitzgerald’s most famous protagonist, dies trapped in his illusion of the green light, a representation of the unattainable dreams built around his ill-fated love of Daisy Buchanan.

It is no surprise that Fitzgerald writes of these themes, for they were reflections of the world he knew. His time at Princeton paralleled the popularity of what Piper calls “the cult of the ‘new disillusion’”³⁶ on college campuses, beginning around 1912 before the Great War. His correspondence with friends reveals a shared existential hopelessness about the war, the loss of their youth, and their inability to return to when their life had been simpler.³⁷ One of his friends contemplated suicide, and later in his life, Fitzgerald noticed that ‘by this time contemporaries of mine had begun to disappear into the dark maw of violence,’³⁸ referring to the series of suicides at the end of the 1920s including that of Harry Crosby.³⁹ His reckoning came when he experienced a mental break-down at ‘this side of forty-nine,’⁴⁰ which he called his ‘crack-up.’ He “realiz[ed] that for two years my life had been drawing on resources that I did not possess, that I had been mortgaging myself physically and spiritually to the hilt...every act of life from the morning tooth-brush to the friend at dinner had become an effort.” As a result, he felt “a vast irresponsibility toward every obligation, a deflation of all my values” and found that “there was not an ‘I’ any more – not a basis on which I could organize my self-respect – save my limitless capacity for toil it seemed I possessed no more.”⁴¹ Fitzgerald felt that he didn’t have an identity of his own: his ‘intellectual conscience’ was Edmund Wilson’s; his moral compass was an unnamed friend living in the Northwest; his ‘artistic conscience’ was another contemporary, perhaps Hemingway; his public and social life was ‘dictate[ed]’ by an

³⁴ F. Scott Fitzgerald, *The Beautiful and the Damned*, (New York: Scribner, [1922] 2004), book 3 “No Matter!”, Project Gutenberg.

³⁵ Fitzgerald, *This Side of Paradise*, book 2 ch.4.

³⁶ Henry Dan Piper, “Fitzgerald’s Cult of Disillusion,” *American Quarterly* 3, no.1 (Spring, 1951), 72.

³⁷ Piper, “Cult of Disillusion,” 76-78

³⁸ F. Scott Fitzgerald, *The Crack-Up*, ed. Edmund Wilson (New York: New Directions Books, [1945] 1993), 20.

³⁹ Monk, *Writing the Lost Generation*, 8 and Aldridge, *After the Lost Generation*, 20.

⁴⁰ Fitzgerald, *The Crack-Up*, 72.

⁴¹ *Ibid.*, 79.

agent; and his ‘political conscience’ was mostly nonexistent.⁴² At this moment, Fitzgerald was the epitome of a lost generation figure whose unsteady values, along with modern cultural changes, led to a crippling sense of self.⁴³ His experiences mirror those of his characters, though he conceived of them eleven or more years earlier, suggesting that the feelings that came to a breaking point in 1936 ran beneath the surface during the earlier periods of his life.

The Unusual Example of Eliot

T.S. Eliot too was keenly aware of the spiritual and cultural breakdown of his time, but unlike Fitzgerald and Hemingway, he reflected this not within a particular generation, but in the world as a whole. His seminal poem *The Waste Land*, written in 1922, continues to be interpreted within the scope of the collapse of Western culture after World War I even though Eliot himself was adamant that the poem was only inspired by personal experiences. In his essay *Thoughts After Lambeth*, he declared, “I dislike the word ‘generation,’ which has been a talisman for the last years; when I wrote a poem called *The Waste Land* some of the more approving critics said that I had expressed the ‘disillusionment of a generation,’ which is nonsense. I may have expressed for them their illusion of being disillusioned, but that did not form part of my intention.”⁴⁴ In *The Waste Land*, he explores themes such as the relationship between death and rebirth, dysfunctional love, war, and destruction. The poem is truly modernist in the way it is a fragmented kaleidoscope of different characters, voices, allusions, metaphors, and even languages. However, the overarching theme is that of the waste land where nothing grows for lack of water. From the beginning, April, a month of spring and rebirth, becomes the “cruellest month, breeding/ Lilacs out of the dead land, mixing/ Memory and desire.”⁴⁵ The only rebirth possible in the waste land is forced and artificial. Moreover, like its people, the landscape cannot reach any plane of security: “What are the roots that clutch, what branches grow/ Out of this stony rubbish? Son of man,/ You cannot say, or guess, for you only know/ A heap of broken images, where the sun beats,/ And the dead tree gives no shelter, the cricket no relief/ And the dry stone no sound of water.”⁴⁶ Eliot has reversed the biblical image of the lush, fertile promise-land described in

⁴² Fitzgerald, *The Crack-Up*, 79.

⁴³ *Ibid.*, 78.

⁴⁴ T. S. Eliot, “Thoughts After Lambeth,” *The Imaginative Conservative*, accessed April 24, 2022, <https://theimaginativeconservative.org/2012/05/lambeth-conference-1930.html>.

⁴⁵ T. S. Eliot, *The Waste Land and Other Writings* (New York: The Modern Library, [1922] 2002), 38.

⁴⁶ Eliot, *The Waste Land*, 38-39.

texts such as Jeremiah and Isaiah,⁴⁷ as well as the necessary climate for faith in Jesus's Parable of the Sower in the New Testament, implying both physical and spiritual barrenness. One reason for this may be war. In snatches of conversation, a young man recognizes a Stetson, a fellow soldier who fought with him at Mylae;⁴⁸ a woman, Lil, is told to give her husband a good time' because 'he's been in the army four years';⁴⁹ and in a violent depiction of destruction there are "cracks and reforms and bursts/ in the violet air/ Falling towers/ Jerusalem Athens Alexandria/ Vienna London."⁵⁰ However, these allusions are not specific to World War I, but encompass wars over the course of history: the Battle of Mylae took place during the first Punic War and the 'cracks and reforms and bursts' reverberate across time from the ancient cities of 'Jerusalem Athens Alexandria' to the modern cities of 'Vienna London.' Likewise, the relationships depicted, including the myth of the rape of Philomela, a broken dialogue between an estranged couple, and an affair characterized by 'indifference,' paint a picture of pervading disconnection that metaphorically links to the sterile environment. The image that most evoke lostness is his description of the 'unreal city:' "A crowd flowed over London Bridge, so many,/ I had not thought death had undone so many. Sighs, short and infrequent were exhaled,/ And each man fixed his eyes before his feet."⁵¹ Here, he alludes to the limbo of Dante's *Inferno*, where the souls, belonging to neither heaven nor hell, are doomed to mournful discontent.⁵² The only relief comes at the end with the thunder that may promise rain, the potential attainment of salvation, and the final line 'shantih shantih shantih' which Eliot translates as 'the peace which passeth understanding,' either some mystical revelation or death.

In his personal life, Eliot struggled to feel fulfilled in his writing and his marriage, leading to a mental breakdown in 1921 when he felt 'neurasthenic,' 'tired,' and 'depressed.'⁵³ He went to Margate to recover, explaining the lines "On Margate Sands./ I can connect/ Nothing with nothing" in *The Waste Land*. His wife's struggles with mental illness took

⁴⁷ See Jeremiah 2:3-7 and 17:7-8, Isaiah 35:1-2, and Ezekiel 20:15 for examples

⁴⁸ Eliot, *The Waste Land*, 40.

⁴⁹ *Ibid.*, 42.

⁵⁰ *Ibid.*, 49-50.

⁵¹ *Ibid.*, 40.

⁵² Dante Alighieri, *Inferno*, trans. Anthony Esolen (New York: The Modern Library, 2003), 23-32

⁵³ Jonathan McAloon, "TS Eliot's *The Waste Land* remains one of the finest reflections on mental illness ever written," *The Guardian* (February, 2018), <https://www.theguardian.com/books/booksblog/2018/feb/13/ts-eliot-the-waste-land-mental-illness#:~:text=When%20Eliot%27s%20breakdown%20came%20in,take%20three%20months%20off%20work.>

a toll on him, and when the war came, he saw that ‘the violence was inseparable from a collapse of common ground in culture, the loss of the mythic substructure that enables the individual to understand his relatedness to anyone or anything.’⁵⁴ This breakdown, permeating the poem and his life, resembles ideas attached to the lost generation, but as a whole, *The Waste Land*, with its diverse cast of characters and literary references, strives towards a more nuanced and universal picture of the human experience.

Conclusion

The idea of a lost generation left a lasting impression on the 20th century. Its origins with the war generation of 1914 and writers of the 1920s marked the beginning of generationism, defining individuals by the generation they were born into. With the Great Depression and World War II came new generations of Americans who were perpetually lost: the Depression youth, the existentialist graduates of the 40s and 50s, the soldiers of World War II, and the Beat Generation. Thus, the lost generation evolved from a select group of intellectuals and writers in Europe and the US to the characterization of an era. As Hemingway observed in *A Moveable Feast*, ‘All generations were lost by something and always had been and always would be.’⁵⁵

⁵⁴ The Poetry Foundation, “T. S. Eliot,” *The Poetry Foundation*, accessed April 24, 2022, <https://www.poetryfoundation.org/poets/t-s-eliot>.

⁵⁵ Hemingway, *A Moveable Feast*, 62.

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The Quest to Innovate: President Clinton’s Nuanced Approach to Tech Industry Regulation

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Abstract

Democratic President Bill Clinton was known for his “Third Way” approach, which consisted of centrist-leaning policies that included a largely laissez-faire economic philosophy, in contrast to the more interventionist beliefs of prior New Deal Democrats. President Clinton’s approach in this regard was especially relevant at a time when the American economy, specifically the technology industry, boomed in the United States. Along with his hands-off tendencies, however, President Clinton is also widely known for the antitrust case that was leveled against Microsoft Corporation during his presidency – an interventionist action. This begs the question of how his generally hands-off approach to regulation can be reconciled with the economic intervention attempted through the Microsoft case. This paper seeks to answer this question and argues that the common thread in President Clinton’s approach was a prioritization of innovation, which has set his antitrust and regulatory philosophy apart from both the traditional schools of economic thought that dominated the 20th century and from much of the views on technology industry regulation that succeeded his time in office. To do so, the paper analyzes regulatory paradigms of the 20th and 21st centuries, focusing specifically on the regulatory approach of the Clinton Administration towards the technology industry, including its antitrust case against Microsoft.

The world changed course in the late 20th century with the rise of new computing and internet technologies that became increasingly innovative and accessible to the American public. During this same period, in 1992, the United States elected a Democrat, Bill Clinton, after twelve years of Republicans. Unlike the tendencies of many preceding Democrats, Clinton's approach to the technology industry demonstrated a willingness to provide a loosely regulated environment to bolster the rapid growth of the industry. His actions were often reminiscent of preceding Republicans. However, Clinton's strategy was not that of universal anti-intervention as was displayed in the antitrust case against Microsoft Corporation during his presidency. President Bill Clinton's actions regarding the emerging technology industry, including the ostensibly anti-industry antitrust case against Microsoft Corporation, demonstrate his unique brand of neoliberalism, which centered around a desire for technology industry innovation.

Democratic and Republican Approaches to Economic Policy, 1933-1993

Since Franklin D. Roosevelt's presidency in the 1930s, the Democratic Party's public policy platform for large businesses in several industries centered on a framework of heightened regulation and intervention. During the recovery from the Great Depression, as a part of his New Deal, Roosevelt passed unprecedented regulatory reform, including the National Industrial Recovery Act of 1933, which increased consumer protections among other things, and the Glass-Steagall Act, which regulated the financial sector by separating commercial and investment banking.¹ Another part of Roosevelt's overall approach to fiscal policy was to increase taxes on corporations, which further disgruntled much of the business community.² In addition, to combat price discrimination, the Roosevelt Administration passed the Robinson-Patman Act in 1936, as an amendment to the Clayton Antitrust Act of 1914.³ This tendency to regulate, sometimes reducing the profits of

¹ W. Leuchtenburg, 'Franklin D. Roosevelt: Domestic Affairs,' *Miller Center*, July 24, 2018, <https://millercenter.org/president/fdroosevelt/domestic-affairs>, (accessed April 18, 2022); 'FDR and the Wagner Act', *FDR Library and Museum*, 2016, <https://www.fdrlibrary.org/wagner-act>, (accessed April 17, 2022); J. Maues, *Banking Act of 1933 (Glass-Steagall)*, Federal Reserve History, November 22, 2013, <https://www.federalreservehistory.org/essays/glass-steagall-act>, (accessed April 18, 2022); R. Daniels, *Franklin D. Roosevelt: Road to the New Deal, 1882-1939*, University of Illinois Press, 2015, pp. 218-219.

² R. Blakey, et al., 'The Revenue Act of 1936', *The American Economic Review*, vol. 26, no. 3, September 1936, pp. 466-482.

³ D. S. Campagna, 'Robinson-Patman Act', *Encyclopedia Britannica Online*, April 18, 2017, <https://www.britannica.com/biography/Bill-Clinton>, (accessed June 2, 2022).

wealthy corporations, became a core tenet of much of the Democratic Party until the presidency of Jimmy Carter. Carter was forced to handle another economic crisis driven by high inflation coupled with high unemployment. Faced with this, especially difficult combination and prefaced by the rise of neoliberal economics, Carter, in the 1970s, deviated from his party's historically pro-regulation stance and took more neoliberal measures to alleviate the stress. For example, to kickstart the economy, his administration took steps to deregulate parts of the financial services industry.⁴

Succeeding Carter, the conservative Republican Ronald Reagan became president in 1981 and utilized an even more laissez-faire approach to business regulation and economics as a whole. This supply-side economic philosophy was dubbed "Reaganomics." Reagan significantly reduced taxes on the wealthy and deregulated industry, predicated on the idea that such deregulation would "trickle down" into benefits for the lower classes and consumers. Reagan's approach extended to a near-universal hands-off approach to large businesses, including in the field of antitrust.⁵ Reagan's antitrust policy was largely based on the anti-interventionist school of Robert Bork, a law professor and Supreme Court Justice nominee of Reagan. The Bork model, which was explicated in Bork's 1978 book, *The Antitrust Paradox*, professed that the purpose of antitrust is to solely uphold consumer welfare. Bork alleged that the Sherman Antitrust Act, which was written in 1890 and was the nation's most robust antitrust legislation, was enacted as a "consumer welfare prescription." Premised on this interpretation, Bork believed that antitrust actions often ran counter to consumer welfare, and he was thus largely opposed to them. Many other scholars, however, believe the Bork model to have ulterior motives of promoting corporate profits and power, further fitting into the Reaganomics narrative.⁶ This economic philosophy continued beyond Reagan's presidency.

Reagan's vice president George H.W. Bush succeeded him as president and followed Reagan's approach to antitrust enforcement and

⁴ R. Strong, 'Jimmy Carter: Domestic Affairs', *Miller Center*, July 17, 2017, <https://millercenter.org/president/carter/domestic-affairs>, (accessed April 24, 2022).

⁵ M. Feldstein, *American Economic Policy in the 1980s*, Chicago, University of Chicago Press, 1994, pp. 364-375, 574-575; G. Troy, *Morning in America: How Ronald Reagan Invented the 1980's*, Princeton, Princeton University Press, 2007, pp. 203-234.

⁶ R. Bork, *The Antitrust Paradox*, New York City, Bork Publishing LLC., 1978, p. 66; D. Crane, 'The Tempting of Antitrust: Robert Bork and the Goals of Antitrust Policy', *University of Michigan Law School Antitrust Journal*, vol. 79, no. 3, 2014, pp. 835-853, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2549&context=articles> (accessed April 24, 2022).

business regulation, however, the latter was to a lesser degree.⁷ Bush created the Council on Competitiveness, which was called the “Quayle Council” as it was led by his vice president, Dan Quayle. This body was criticized for providing corporations with the approval to skirt regulations.⁸ Notably, somewhat deviating from Reaganomics, Bush defied his campaign promise by raising taxes on Americans due to immense spending on American involvement in the Persian Gulf War.⁹ Bush, however, still largely stuck to the conservative model in terms of economics.

Bush, a member of the “Greatest Generation,” represented a desire to return to the older values of America, and followed the lead of Reagan, who often used the slogan “Let’s Make America Great Again.”¹⁰ Bush’s desire was demonstrated in much of his socially conservative rhetoric, policies, and demeanor, and this was often highlighted. For instance, although later proven false, the mainstream media, including the New York Times, circulated a rumor that Bush had interacted with a scanner for the first time in 1992 (they had been around for far longer) and was enthralled by it.¹¹ Bush, in the 1992 election, was bested by a contrasting Bill Clinton, who in part prevailed due to his youthful and innovative image. While campaigning, to deride Bush’s message and highlight their own, Clinton’s running mate Al Gore said in 1992, “Bush is out of time.”¹²

President Clinton’s ‘Third Way’ Economic Policy

Bill Clinton, a baby boomer, became president in 1993, and he established himself to be unique in terms of his economic philosophy and general appeal. Before his successful bid for the presidency, Clinton

⁷ ‘US Economics & Finance’, *George W. Bush Presidential Library and Museum*, n.d., <https://www.georgewbushlibrary.gov/research/topic-guides/us-economics-finance>, (accessed April 28, 2022).

⁸ R.J. Duffy, ‘Divided Government and Institutional Combat: The Case of the Quayle Council on Competitiveness’, *Polity*, vol. 28, no. 3, 1996, pp. 379-399.

⁹ M. Nelson and B.A. Perry (eds), *41: Inside the Presidency of George H. W. Bush*, Ithaca, Cornell University Press, 2014, p. 162.

¹⁰ E. Margolin, ‘Make America Great Again’-Who Said It First?, *NBC News*, February 7, 2017, <https://www.nbcnews.com/politics/2016-election/make-america-great-again-who-said-it-first-n645716>, (accessed April 25, 2022).

¹¹ A. Rosenthal, ‘Bush Encounters the Supermarket – Amazed’, *New York Times*, February 5, 1992, <https://www.nytimes.com/1992/02/05/us/bush-encounters-the-supermarket-amazed.html>, (accessed May 1, 2022).

¹² R. Suro, ‘The 1992 Campaign: The Youth Vote; Democrats Court Youngest Voters’, *The New York Times*, October 30, 1992, <https://www.nytimes.com/1992/10/30/us/the-1992-campaign-the-youth-vote-democrats-court-youngest-voters.html>, (accessed, May 1, 2022).

served as the governor of Arkansas, the then-youngest governor of the United States.¹³ Throughout his political career, Clinton branded himself as a different breed of Democrat – presenting himself as charismatic, affable, and comparatively centrist, one of the “third-way.” During his term as governor, he also served as the chairman of the Democratic Leadership Council, a group of politicians and business leaders seeking to move the Democratic Party further to the center of the political spectrum, and away from the older, more economically interventionist New Deal approach.¹⁴ Such beliefs continued into Clinton’s actions and legacy as president.¹⁵

Clinton’s hybrid approach to economic affairs was evident from the beginning of his administration. As president, in his 1996 State of the Union Address, Clinton proclaimed, “The era of big government is over,” seeming to echo the Reagan-era sentiment of promoting small government. However, he followed this by saying, “[But] we cannot go back to the time when our citizens were left to fend for themselves. We must...meet the challenges we face together.”¹⁶ In this, he emphasized the importance of government efficiency along with the importance of a government that would actively attempt to solve problems. Demonstrating this, for example, through welfare reform, Clinton was able to put the government budget into surplus between 1998 and 2001, accomplishing a task that Reagan had only spoken of.¹⁷ His appeal resonated well, capturing both the conservative and libertarian-leaning base that had propelled Reagan to victory along with those who were more liberal and sought greater governmental support for Americans.¹⁸

President Clinton’s Hands-Off Tendencies in Regulating the Tech Industry

Clinton’s presidency began not long after the inception of a technological revolution. This period of immense technological advancement was largely fueled by the rapidly expanding adoption of

¹³ The Editors of Encyclopedia Britannica, ‘Bill Clinton’, *Encyclopedia Britannica Online*, August 15, 2021, <https://www.britannica.com/biography/Bill-Clinton>, (accessed April 20, 2022).

¹⁴ J.F. Hale, ‘The Making of the New Democrats’, *Political Science Quarterly*, vol. 110, no. 2, 1995, p. 207.

¹⁵ The Editors of Encyclopedia Britannica, ‘Bill Clinton’.

¹⁶ B. Clinton, ‘State of the Union Address’ [speech], January 23, 1996, Clinton Administration Website Version 4, Clinton Digital Library, <https://clintonwhitehouse4.archives.gov/WH/New/other/sotu.html>, (accessed May 5, 2022).

¹⁷ ‘President Clinton’, June 26, 2017, <https://www.clintonfoundation.org/about/president-clinton>, (accessed May 6, 2022).

¹⁸ The Editors of Encyclopedia Britannica, ‘Bill Clinton’.

personal computing and the Internet, and it transformed large companies like Microsoft into behemoths along with birthing a new era of companies based on the Internet – companies like Amazon and Pets.com that rapidly grew in the 1990s.¹⁹ While the latter ended up failing at the turn of the millennium, others like Amazon created widely-used products and services, and these companies continued to thrive into the 21st century.²⁰ In fact, during the decade of the 1990s, the NASDAQ, an index of predominantly American technology companies, soared by 300 percent.²¹ These companies fundamentally changed the impact of business on the American lifestyle and presented politicians with a new means to demonstrate an affinity with a public that increasingly adopted these new technologies.

President Clinton chose to embrace this wave of development and the innovation that came with it by adopting a neoliberal approach toward his policy on the technology industry. Immediately after taking office, Clinton said in his inaugural address in 1993, “Technology is almost magical... [and] profound and powerful forces are shaking and remaking our world.” He furthered, “[We] can make change our friend and not our enemy.”²² By making such a remark in his inaugural address, Clinton foretold that encouraging the technology boom would be at the forefront of his agenda. In 1996, the Clinton administration released “A Framework for Global Electronic Commerce” whose first principle stated,

The private sector should lead. The Internet should develop as a market-driven arena, not a regulated industry. Even where collective action is necessary, governments should encourage industry self-regulation and private sector leadership where possible.

The second principle from this framework said,

Governments should refrain from imposing new and unnecessary regulations, bureaucratic procedures, or new

¹⁹ M.R. Pakko, ‘The High-Tech Investment Boom and Economic Growth in the 1990s: Accounting for Quality’, *Federal Reserve Bank of St. Louis*, <https://doi.org/10.3886/icpsr01263>, (accessed May 4, 2022).

²⁰ L. Feiner, ‘Amazon Stock Hits a New All-Time High as It Sees Unprecedented Demand’, *CNBC*, April 14, 2020, <https://www.cnbc.com/2020/04/14/amazon-stock-hits-a-new-all-time-high.html>, (accessed May 4, 2022); D. Goldman, ‘10 Big Dot.com Flops’, *CNN Money*, March 10, 2010, https://money.cnn.com/galleries/2010/technology/1003/gallery.dot_com_busts/, (accessed May 12, 2022).

²¹ ‘Nasdaq NMS Composite Index Stock Price’, *CNBC*, 2022, <https://www.cnbc.com/quotes/.ixic>, (accessed May 3, 2022).

²² B. Clinton, ‘State of the Union Address.’

taxes and tariffs on commercial activities that take place via the Internet.²³

Clinton made it clear that he supported a loosely regulated environment, in the wake of a brand-new generation of industry – an approach he believed would spur the greatest amount of growth. Demonstrating the huge degree of Clinton’s support for the technology industry, Diane Smirolfo, spokesperson of the Business Software Alliance, an organization of fourteen major technology companies, expressed gratitude to the administration for their policies regarding the industry in 1997.²⁴

The Clinton administration’s emphasis on hands-off regulation was premised on a free market. This operated with a mechanism of consumer choice, in which consumers could essentially regulate by choosing where to spend their dollars. This would cause companies that acted in a manner beneficial to consumers to thrive and would cause others to fall. The results of this “self-regulation” were visible to an extent, and the administration touted, “The number of Internet sites with privacy policies...increased from 15 percent to 66 percent.”²⁵ But, along with this statistic demonstrating that over a third of sites still lacked privacy policies, the general approach of self-regulation, when isolated, did not necessarily guarantee a positive environment for consumers. First, when companies were able to obtain dominant market shares, consumers were not left with a choice. Second, in this new era of industry, technology products, and services were often seemingly free (they sometimes still had hidden fees). Therefore, from a price standpoint, choosing one good or service instead of another was often no longer as straightforward.²⁶

²³ Clinton-Gore Administration, ‘A Framework for Global Electronic Commerce Executive Summary’, *Clinton Administration Website Version 4*, Clinton Digital Library, July 1, 1997, <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/summary.html>, (accessed May 8, 2022).

²⁴ S. Sobieraj, ‘Clinton Issues ‘Hands Off’ Policy on Internet Commerce’, *The New York Times*, 1997, <https://archive.nytimes.com/www.nytimes.com/library/cyber/week/070297commerce.html>, (accessed May 8, 2022).

²⁵ ‘The Clinton Presidency: Unleashing the New Economy - Expanding Access to Technology’, *Clinton Administration Website Version 5*, n.d., <https://clintonwhitehouse5.archives.gov/WH/Accomplishments/eightyears-09.html>, (accessed May 10, 2022).

²⁶ R. Nader, ‘Consumer Harm in the Microsoft Case’, *Ralph Nader*, December 15, 1999, <https://nader.org/1999/12/15/consumer-harm-in-the-microsoft-case/>, (accessed May 18, 2022).

Clinton's policies towards overall business regulation (not limited to technology), however, also displayed a greater willingness to regulate, when compared to preceding Republicans. For example, the administration shut down the (Quayle) Council on Competitiveness. Clinton's vice president, Al Gore, said, "Today we are sending a clear message to the special interests who used the Council on Competitiveness as a back door to avoid the law...No longer will special interests receive special favors."²⁷ Similarly, when comparing antitrust enforcement across all sectors, Clinton's Department of Justice (DOJ) pursued significantly more cases than those of his predecessors.²⁸ However, due to the ostensible regulatory soft spot that Clinton had for specifically the technology industry, it is thus seemingly paradoxical that one of the most prominent regulatory actions during the Clinton presidency was an antitrust case against Microsoft Corporation, which Clinton sought to break up.

Intervention in Pursuit of Innovation: The Microsoft Case

The DOJ under Clinton had been pursuing Microsoft throughout much of his time in office due to behavior that hindered the growth of their competition. Their operating systems, beginning with the Microsoft Disc Operating System (MS-DOS), had overwhelming market shares in a booming personal computing industry because of a widely compatible product along with strategically placed pricing incentives in licensing their software with personal computer (PC) manufacturers. Their product, which could be used on the machines of various manufacturers stood in contrast to other operating systems like that of Apple, which could only be used on Apple machines. Microsoft also took steps to ensure dominance by creating certain licensing agreements with hardware manufacturers. Among other actions, Microsoft gave manufacturers a significant discount to use MS-DOS in exchange for a royalty for all machines they sold (irrespective of whether that machine used MS-DOS). It thus obviously made financial sense for manufacturers to almost exclusively package their machines with MS-DOS instead of competing operating systems.²⁹ In response, the Federal

²⁷ A. Gore, 'Statement on the Council on Competitiveness' [statement], January 21, 1993, full statement in *Presidential Studies Quarterly* 27, no. 1, 1997, p. 71.

²⁸ D.A. Balto, 'Antitrust Enforcement in the Clinton Administration', *Cornell Journal of Law and Public Policy*, vol. 9, no. 1, 1999, pp. 62-132, <https://core.ac.uk/download/pdf/216743959.pdf>, (accessed May 17, 2022).

²⁹ *United States v. Microsoft Corp.* (D.D.C., November 5, 1999) *TPJ* 98-CV-1233, <https://www.justice.gov/atr/us-v-microsoft-courts-findings-fact>, (accessed May 11, 2022).

Trade Commission (FTC) and DOJ required Microsoft to sign a Consent Decree in 1994 requiring them to cease such behavior.³⁰

Microsoft, however, continued its anticompetitive behavior, which pushed the DOJ to take an even firmer stance. Microsoft, for example, to protect its dominance, was found to restrict the middleware of Sun Microsystems. Middleware is software that allows an application to run on multiple operating systems without having to be rewritten for each one. Middleware would thus remove the ability of Microsoft's operating system to be the predominant entity that could provide consumers with desired applications. After such conduct by Microsoft, the breaking point was regarding the Internet, when they clashed with Netscape Communications Corporation. Netscape, which began as a startup in the early 1990s, had established itself as a dominating player in the browser market, and Microsoft, wanting to gain such dominance in that market, along with the feeling that Netscape threatened the Microsoft ecosystem, was determined to crush them. In 1996, Microsoft Chief Executive Officer Bill Gates wrote in an email to another Microsoft executive, "Winning Internet browser share is a very, very important goal for us."³¹ Microsoft created Internet Explorer, and as a massive corporation, made this browser free; this contrasted with Netscape, which charged for their browser. Moreover, Internet Explorer became the default browser for Microsoft's operating systems, and the company made Internet Explorer difficult to delete, thus strongly encouraging and arguably pressuring consumers to use their browser. Between 1996 and 1998, Internet Explorer's market share had increased from 18 percent to 45 percent, while Netscape's market share had decreased by 28 percentage points (by 2000, Internet Explorer captured a whopping 79 percent market share).³² Netscape, furious, complained to the DOJ claiming that Microsoft's conduct was anticompetitive and the company exploited its platform to prioritize Microsoft products.³³ Finally, assessing the mounting complaints against Microsoft throughout the decade and the corporation's perceived impediment to innovation,

³⁰ I. Fried, 'Microsoft's 1994 Consent Decree: Boon or Bust?', *CNET*, July 9, 2004, <https://www.cnet.com/news/microsofts-1994-consent-decree-boon-or-bust/>, (accessed May 14, 2022).

³¹ *Videotaped Deposition Excerpts of Bill Gates* [deposition of Bill Gates with New York Attorney General Stephen Houck], 1996, US Department of Justice, 2006, <https://www.justice.gov/atr/videotaped-deposition-excerpts-bill-gates>, (accessed May 15, 2022).

³² N. Routley, 'Internet Browser Market Share (1996–2019)', *Visual Capitalist*, January 20, 2020, <https://www.visualcapitalist.com/internet-browser-market-share/>, (accessed May 13, 2022).

³³ 'Netscape Complains to Government About Microsoft', *Associated Press*, August 7, 1996, <https://apnews.com/article/e18dd20836b41f4176ddcc931a6c1f9f> (accessed May 14, 2022).

the DOJ, whose antitrust chief Joel Klein was a Clinton appointee, leveled a massive antitrust case against the company in 1998 based on violating the Sherman Act, and the DOJ gained the explicit support of the Clinton administration.³⁴

Clinton exemplified his nuanced political philosophy in the dealings of Microsoft, which still emphasized a prioritization of technology innovation. In the case, the DOJ primarily focused on the detrimental impacts of Microsoft's vertical integration to innovation. In the complaint submitted by the United States in 1998, written by Klein and other DOJ attorneys, one section said,

Neither the antitrust laws nor this action seeks to inhibit Microsoft from competing on the merits by innovation or otherwise. Rather, the Complaint challenges only Microsoft's concerted attempts to maintain its monopoly... [which] deter[s] innovation, exclude[s] competition, and rob[s] customers of their right to choose among competing alternatives.³⁵

In the above quote and others, the filings mention the consumer, however, this was mostly regarding a lack of consumer choice, rather than financial coercion imposed on consumers by Microsoft. This lack of focus on consumer price was criticized by consumer welfare activists like Ralph Nader.³⁶ In its case against Microsoft, Clinton's DOJ saw consumer choice as a mechanism for business innovation, in which consumers could dictate product success based on its innovative impact. Such innovation would eventually better the consumer experience, however, the prioritization of the proceedings against Microsoft was on business innovation.

Comparisons to Competing Models of Antitrust

Those less neoliberal than Clinton in terms of business regulation, like Nader, disagreed with this relative lack of focus on the consumer. Nader, a fierce consumer advocate, and former Green Party presidential candidate, agreed with the necessity to prosecute Microsoft. However, while mentioning the importance of innovation, Nader felt that a larger concern was consumer welfare due to what he alleged as high costs for consumers. He said, "The scope of the government lawsuit ...in terms

³⁴ J. Brinkley, 'Clinton Team in Final Plea on Microsoft', *The New York Times*, January 13, 2001, <https://www.nytimes.com/2001/01/13/business/clinton-team-in-final-plea-on-microsoft.html>, (accessed May 18, 2022).

³⁵ *United States v. Microsoft Corp.* (D.D.C. May 8, 1998) 98-CV-1232, <https://www.justice.gov/atr/complaint-us-v-microsoft-corp> (accessed May 16, 2022)

³⁶ Nader, 'Consumer Harm in the Microsoft Case'.

of the types of anticompetitive conduct and the harm to consumers... understates the harm of Microsoft's monopoly to consumers." Nader argued that Microsoft's large power, which was fueled by their anticompetitive conduct regarding Internet Explorer allowed them to charge high prices to manufacturers, which translated into high prices for consumers.³⁷ The disparity between those like Nader and Clinton demonstrates how Clinton differentiated himself even from others who believed in government intervention in business.

Clinton's philosophy of business innovation in the Microsoft antitrust case came into further contrast with members of the various ideological sides of antitrust regulation. His approach was different from that of progressive trust-busting initiatives of the early 20th century, which hallmarked the formation of antitrust policy and enforcement in the United States. For example, one of the largest antitrust enforcement events in American history was the breakup of the monopolistic Standard Oil in 1911, which had been engaging in horizontal consolidation, price fixing, and price gouging. Like Microsoft, Standard Oil had been accused of violating the Sherman Antitrust Act. However, the rationale for the breakup of Standard Oil was to combat predatory pricing and lower prices for consumers.³⁸ On the contrary, Microsoft's Internet Explorer was (at least seemingly) free to consumers, especially when compared to Netscape. Clinton's adaptation of antitrust philosophy to be more innovation-centric was thus radical, given the context of the prior consumer price-based justifications relating to hard commodities.

Clinton's antitrust philosophy varied from neoliberal Republicans. His antitrust policy, due to his focus on innovation, was significantly different from the influential Bork Model, whether the model's genuine intent is assumed or not. Unlike the Bork Model, which stressed a hands-off approach for the benefit of consumer welfare, the DOJ intervened based on an entirely different spectrum: innovation. The Clinton administration also deviated from the corporate profit-focused interpretation of the Bork Model because the DOJ's case against Microsoft dealt a blow to the company. Displaying the damage to the company, Microsoft's stock only recovered to its pre-antitrust highs in 2015 – almost two decades later.³⁹

³⁷ Nader, 'Consumer Harm in the Microsoft Case'.

³⁸ The Editors of Encyclopedia Britannica Online, 'Standard Oil', *Encyclopedia Britannica*, March 24, 2020, <https://www.britannica.com/topic/Standard-Oil>, (accessed April 30, 2022).

³⁹ M. Rosoff, 'Microsoft's Stock Just Hit the Highest Point since a Judge Ruled It Broke Antitrust Law Back in 2000', *Business Insider*, October 22, 2015,

Clinton further differentiated himself from Reagan’s approach to antitrust policy due to a willingness to prosecute structures different from those of horizontal monopolies. While the DOJ under Reagan broke up American Telephone and Telegraph (AT&T) in 1982, in a case beginning with the administration of President Gerald Ford in the 1970s, this was due to AT&T’s horizontal control, which impacted consumer prices to a severe degree.⁴⁰ When asked by a journalist about vertical integration, however, Reagan’s Assistant Attorney General and chief of the Antitrust Division of the DOJ, William Baxter (the individual who oversaw the breakup of AT&T), answered in 1981, “I’ve said many times that vertical mergers are never anti-competitive.”⁴¹ In the case against Microsoft, however, the Clinton administration and the DOJ proposed the breakup of a vertically integrated structure. Further speaking to this ideological difference, Charles Rule, one of the leaders of DOJ’s Antitrust Division under Reagan, strongly opposed the antitrust case against Microsoft. This further demonstrated a disparity between the philosophies of Clinton and Reagan.⁴² By supporting the antitrust case against Microsoft, Clinton demonstrated that while adopting some more neoliberal positions, he was still more interventionist in his approach than his Republican predecessors.

Other members of Congress, both Democratic and Republican, were split on the issue of the Microsoft antitrust case, but this was sometimes due to external factors such as lobbying by Microsoft and its corporate enemies like Netscape, along with political pressures, as opposed to genuine ideological leanings. This view is corroborated by Bob Levy, a senior fellow at the Cato Institute, who said regarding the Microsoft case, “Politicians are motivated by self-interest, not necessarily what helps competition or consumers.”⁴³ On the whole, Microsoft and its employees increased political contributions fivefold between the 1996 and the 1997/1998 election cycle. Microsoft’s opponents increased theirs by fourfold. Furthermore, members of Microsoft’s board, like Thomas Downey, were former Democratic politicians who still had deep

<https://www.businessinsider.com/microsoft-stock-recovers-from-antitrust-hit-2015-10>, (accessed May 6, 2022).

⁴⁰ D.S. Katz, ‘What Prompted the Breakup of AT&T?’, *Mackinac Center for Public Policy*, 2004, <https://www.mackinac.org/6769>, (accessed May 3, 2022).

⁴¹ W.F. Baxter, ‘Merger Surge Is a Test of Reagan Policy’, *US News & World Report*, vol. 91, no. 5, August 3, 1981, pp. 51–52.

⁴² J. Clausing, ‘Senator Takes on Microsoft in Antitrust Hearings’, *The New York Times*, November 5, 1997, <https://archive.nytimes.com/www.nytimes.com/library/cyber/week/110597senate.html>, (accessed May 20, 2022).

⁴³ ‘Republicans Split on Microsoft’, *CNET*, March 3, 1998, <https://www.cnet.com/news/republicans-split-on-microsoft/>, (accessed May 18, 2022).

connections to the party.⁴⁴ One of Microsoft's strongest opponents in Congress was the Republican Senator Orrin Hatch of Utah. Hatch's political action committee, however, received over \$17,500 from Netscape and Sun Microsystems executives. Furthermore, Hatch's home state of Utah was home to Novell Inc., one of Microsoft's competitors, which employed 6,000 people. On the contrary, one of Microsoft's strongest supporters was Republican Senator Slade Gorton of Washington, which housed Microsoft's headquarters and its thousands of employees.⁴⁵ Like Hatch, Gorton's actions were thus likely influenced by the importance of Microsoft's success to his electoral power, and so he held a position in support of the corporation.

Eventually, the Clinton administration requested a breakup of Microsoft in 2001, in which Internet Explorer would be spun off into its own company.⁴⁶ The breakup ultimately failed as Microsoft was able to appeal in late 2001, during the George W. Bush Administration. However, Microsoft was still forced to abandon some of its anticompetitive practices.⁴⁷ Because of this, the actions of the Clinton administration are still widely credited to have spurred further technological growth of companies like Apple, Google, and Facebook as Microsoft's abusive conduct was tamed. The industry as a whole, was thus able to sustain continued development.⁴⁸

As opposed to a seeming oscillation of regulatory policies and actions, Clinton's paradigm for technology industry regulation was fairly consistent throughout his time in office. His actions of deregulating the industry were geared to allow the rapid growth and development of technology companies. His principles of self-regulation, while potentially detrimental to the consumer at times, enabled businesses and their investors to have the environment to thrive free of government obstacles. However, when a bright line of corporate conduct was reached – when a company's actions prevented greater industry

⁴⁴ R. Chrasekaran and J. Mintz, 'Microsoft's Window of Influence', *The Washington Post*, May 7, 1999, <https://www.washingtonpost.com/archive/politics/1999/05/07/microsofts-window-of-influence/424f0b28-e86c-42cf-a4c8-cb2db173715d/>, (accessed May 21, 2022).

⁴⁵ 'Republicans Split on Microsoft'.

⁴⁶ Brinkley, 'Clinton Team in Final Plea on Microsoft'.

⁴⁷ A. Fitzpatrick, 'The Microsoft Monopoly Ruling Aftermath: Why Microsoft Didn't Split', *Time*, November 5, 2014, <https://time.com/3553242/microsoft-monopoly/>, (accessed May 22, 2022).

⁴⁸ J. Swartz, 'Big Tech Was Built by the Same Type of Antitrust Actions That Could Now Tear It Down', *MarketWatch*, June 17, 2019, <https://www.marketwatch.com/story/big-tech-was-built-by-the-same-type-of-antitrust-actions-that-could-now-tear-it-down-2019-06-12>, (accessed May 21, 2022).

innovation – Clinton supported intervention to allow the industry as a whole to succeed.

President Clinton’s Legacy and the Microsoft Case

The Clinton model has still proven itself to be unique when compared to the subsequent Democratic presidency of the Obama administration due to Clinton’s greater willingness to challenge large technology corporations. Like Clinton, President Barack Obama sought a ‘trendy’, charismatic image, and similar to Clinton, demonstrated this with his embrace of the technology revolution. For example, Obama instructed staffers to publicly carry and use Apple iPads.⁴⁹ Moreover Obama, like Clinton, in a broader sense, was generally more pro-antitrust than Republicans and pledged to be tough on antitrust enforcement early on in his presidency.⁵⁰ Crucially, however, Obama’s embrace of technology deviated from Clinton’s prioritization of innovation, and he was more cautious in using antitrust enforcement as a means to regulate technology corporations. The most prominent action, or lack thereof, that demonstrates this was Obama’s DOJ’s allowance of the corporation Facebook to acquire Instagram, essentially eliminating competition in a predominant subset of social media. The lack of competition would benefit Facebook, however, would destroy the mechanism of choice that the Clinton model relied on.⁵¹

President Clinton’s regulatory approach, built with anti-intervention so long as fair competition existed, coupled with a willingness to intervene if such competition was infringed upon, displayed his desire for a robust and innovative technology sector. Clinton’s philosophy of business regulation was reflective of a shift away from the Roosevelt brand of Democrats, and a shift towards a more neoliberal economic position that still differed from most laissez-faire Republicans. Clinton’s actions further demonstrated that the constraints of partisan politics could be broken and that doing so could enable political success – a Democratic Party trend that has persisted in the

⁴⁹ K. Hart and A. Parnes, ‘The IPresident’, *Politico*, September 3, 2011, <https://www.politico.com/story/2011/09/the-ipresident-062590>, (accessed May 22, 2022).

⁵⁰ S.A. Mahoney, ‘Antitrust Enforcement Under President Obama: Where Have We Been and Where Are We Going?’, *The Antitrust Counselor*, vol. 71, 2013, pp. 1-5, <https://www.morganlewis.com/~media/files/docs/archive/antitrust-enforcement-under-president-obama-where-have-we-been-and-where-are-we-going.ashx>, (accessed May 22, 2022).

⁵¹ S. Shead, ‘Facebook Owns the Four Most Downloaded Apps of the Decade’, *BBC News*, December 18, 2019, <https://www.bbc.com/news/technology-50838013>, (accessed May 22, 2022).

scope of antitrust enforcement in the Obama administration. Notably, after the Obama administration, a new anti-Bork, pro-antitrust enforcement movement known as the New Brandeis School, named after liberal Supreme Court Justice Louis Brandeis (who served from 1916-1939), emerged. This movement has taken a primary focus on data privacy violations and disinformation dissemination by technology corporations, and it argues that these abuses are fatal to American democracy.⁵² One of the movement's pioneers, Lina Khan, was nominated by the Biden administration and confirmed to lead the Federal Trade Commission in 2021.⁵³ While the school's philosophies (not necessarily the explicit naming of the "New Brandeis School") have received bipartisan support, these beliefs still are significantly different from Clinton's focus on innovation.⁵⁴ Across a broad range of regulatory frameworks, the Clinton model of antitrust and regulation has proven itself to be unique with its prioritization of industry innovation, compared to both previous and subsequent administrations.

⁵² L. Khan, 'The New Brandeis Movement: America's Antimonopoly Debate', *Journal of European Competition Law & Practice*, vol. 9, no. 3, March 1, 2018, pp. 131-132.

⁵³ 'Lina M. Khan Sworn in as Chair of the FTC', *Federal Trade Commission*, June 15, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/06/lina-m-khan-sworn-chair-ftc>, (accessed April 25, 2022).

⁵⁴ B. Kendall and R. Tracy, 'Congress Eyes Antitrust Changes to Counter Big Tech, Consolidation', *The Wall Street Journal*, <https://www.wsj.com/articles/congress-eyes-antitrust-changes-to-counter-big-tech-consolidation-11615458603>, (accessed May 25, 2022).

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Shooting the Messenger: Examining Whistleblowing as Civil Disobedience through the Works of John Rawls

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Abstract

The United States has a long-standing history of its civilians speaking out against legal injustices through illegal methods, a practice often known as civil disobedience. Civil disobedience is a highly contentious and enduring topic in philosophy, but further, ethical and political questions surrounding civil disobedience have become increasingly relevant in modern times when citizens violate the laws to bring to light legal but unjust actions. This paper draws on the definition of civil disobedience developed by the philosopher John Rawls to consider the ethics and politics of two famous acts of whistleblowing in modern American history. It first outlines the leak of the Pentagon Papers in 1971 by Daniel Ellsberg and Edward Snowden's exposure of an extensive domestic surveillance system used by the American government, detailing the motivations, actions, and stated justifications of both men. The paper then examines John Rawls' thoughts on civil disobedience, particularly around his standards of 'valid' acts of civil disobedience. Finally, the paper borrows Rawls' criteria for civil disobedience to assess the actions and legacies of both whistleblowers and shows how government whistleblowing remains an important – if increasingly at-risk – a form of civil disobedience in a just, democratic society.

Introduction

America has long fostered and embraced a culture of civic responsibility to protect and benefit the public good. From the nation's earliest days, this has included the public release of potentially sensitive government documents and information. As far back as 1773, Benjamin Franklin exposed confidential letters showing that the royally appointed governor of Massachusetts had intentionally misled Parliament to promote a military buildup in the Colonies. Similarly, in 1777 two US naval officers unveiled the torture of British POWs by their commanding officer. Both cases called for the violation of official confidentiality, with citizens balancing risks to their reputation against civic responsibility to uphold a more transparent, democratic form of government.¹ "Government whistleblowers" more commonly referred to as simply "whistleblowers," partake in the unauthorized acquisition and disclosure of classified information about the state or government. Whistleblowers often break the law to retrieve and release their information to the public. Whistleblowing is in many regards similar to civil disobedience, functioning as a means of bringing to light potential injustices or misdoings of the state in an attempt to remedy them. Despite heightened prosecution of government whistleblowers during his administration, former President Barack Obama has praised their actions, saying they are "often the best source of information about waste, fraud, and abuse in government."²

Despite this rich history of men and women who have sometimes sacrificed their careers or even lives to deliver the truth to the American people, it can be difficult to make moral and political sense of government whistleblowing because it often involves the release of state secrets. Look no further than Daniel Ellsberg, who leaked the Pentagon Papers in 1971, and Edward Snowden, who exposed extensive government data tracking on American citizens and foreign allies in 2013. Ellsberg and Snowden both blew the whistle on morally and legally questionable actions by the American government and were subsequently charged as traitors. Despite surface-level similarities, important differences between these cases also complicate their easy labeling as examples of either patriotic civil disobedience or traitorous criminal breaches.

¹ "Whistleblowers in the United States - Document - Gale in Context: US History," accessed June 14, 2022, https://go.gale.com/ps/i.do?p=UHIC&u=mlln_m_brookhs&id=GALE|YMEBJF961884584&v=2.1&it=r&sid=bookmark-UHIC&password=NostimonHmar&ugroup=outside.

² Candice Delmas, "The Ethics of Government Whistleblowing," *Social Theory and Practice* 41, no. 1 (2015): 77–105.

John Rawls, one of the preeminent American philosophers of the twentieth century, offers a clear-cut definition of civil disobedience that can help us to clarify the similarities and differences between these two famous whistleblowers, provide insights into the political contexts of their actions, and offer a broader perspective on future acts of whistleblowing and civil disobedience in America. To reach that point, this paper will first briefly outline the biographies and actions of Daniel Ellsberg and Edward Snowden. It will then examine John Rawls' definition and qualifications for civil disobedience. Finally, it will use Rawls' definition to compare and contrast the actions of these two famous government whistleblowers through the lens of civil disobedience. Through this comparison, this paper provides a framework for interpreting future acts of government whistleblowing as civil disobedience and outlines the importance of a just, democratic state to protect citizens who bring legal injustices to light. But before engaging with Rawls' understanding of civil disobedience, the following section will first briefly sketch brief accounts of two of the most famous (or infamous) government whistleblowers in modern US history.

The Lives of the Leakers

Daniel Ellsberg was born in Chicago, Illinois in 1931 during the Great Depression. He attended Harvard University where he studied economics. He enlisted in the Marine Corps in 1954 and remained there for two years as a platoon leader and company commander. During this time Ellsberg developed a respect and understanding for the military, which propelled him to a role as a strategic analyst at the RAND Organization, a think tank for the Defense Department. During his time at RAND, Ellsberg eagerly supported escalating US military policies in Vietnam.³

In 1965, Ellsberg volunteered to assist Major General Edward Lansdale in evaluating the success of the Civilian Pacification Program in Vietnam. Ellsberg carried out his mission with enthusiasm, often volunteering to accompany soldiers to the front line. These experiences gradually convinced Ellsberg that the war was a quagmire from which the United States would eventually be forced to withdraw, with the delay measured in further loss of lives and resources. It was during this time

³ Jose Valente, "American History Daniel Ellsberg," accessed June 14, 2022, https://americanhistory.abc-clio.com/Search/Display/246754?webSiteCode=SLN_AMHIST&token=4C7A0339B36B9BB036ADD8EB93607A17&casError=False.

that Ellsberg began to see both the war and the government in a negative light.⁴

In the summer of 1967, Secretary of Defense Robert McNamara commissioned a group of thirty-six scholars to write a secret history of the Vietnam War. The project took a year and a half, ran to seven thousand pages, and filled forty-seven volumes. Ellsberg was recruited to work on a section of the project, which had been dubbed “The Pentagon Papers.” The Papers detailed the US government’s complete history of activity in Vietnam. Only a handful of full copies were made, and most were kept under high security in Washington D.C. One set, however, ended up at the RAND Corporation, where Ellsberg read it from cover to cover. Increasingly disillusioned with the American government, Ellsberg felt that the lies and deceit revealed by the Pentagon Papers needed to be public information. Over the course of months, Ellsberg copied each page of the Papers until he had them in their entirety. Ellsberg initially tried to get the information into the public domain by offering the Papers to Democratic Senators J. William Fulbright, George McGovern, and Mike Gravel, all of whom declined to use them for fear of controversy.⁵ Seeing no other option, Ellsberg gave the Papers to *New York Times* reporter Neil Sheehan, and the paper published the first installment on June 13, 1971.

Outraged, the government obtained an injunction forbidding the *Times* from publishing further articles based on the Pentagon Papers, but more sections were already being published by *The Washington Post* and *The Boston Globe*. After publicly admitting his role in the release of the Papers, Ellsberg was charged with violations of the 1917 Espionage Act, though Ellsberg later had his charges dropped due to mistrial procedures by the prosecution.⁶ Despite being charged with espionage, he was seen

⁴ “Daniel Ellsberg - Document - Gale In Context: Biography,” accessed June 13, 2022, https://go.gale.com/ps/retrieve.do?tabID=Biographies&resultListType=RESULT_LIST&searchResultsType=MultiTab&hitCount=3&searchType=PersonSearchForm¤tPosition=2&docId=GALE%7CH1000029136&docType=Biography&sort=Relevance&contentSegment=ZXAM-MOD1&prodId=BIC&pageNum=1&contentSet=GALE%7CH1000029136&searchId=R2&userGroupName=mlln_m_brookhs&inPS=true.

⁵ Marvin Kalb, “Ellsberg and Snowden,” Pulitzer Center, accessed June 13, 2022, <https://pulitzercenter.org/stories/ellsberg-and-snowden>.

⁶ Ellsberg’s office had been illegally searched by “plumbers” sent by the Nixon Administration. The same “plumbers” used against Ellsberg also broke into Democratic headquarters at the Watergate Hotel in Washington in 1972, and the illegal government activities in Ellsberg’s case added fuel to that fire, all of which eventually led to an investigation into a cover-up and attempted bribery by Nixon, and Nixon’s resignation.

as a hero in the eyes of an American public who felt misled by the government over the war in Vietnam.⁷ The information he leaked further strengthened anti-war sentiment, providing even more impetus to withdraw US troops from Vietnam. Just two years later, in 1973, a peace treaty was signed and the US military involvement in Vietnam came to an end.

Edward Snowden was born in 1983, twelve years after Ellsberg's famous act of whistleblowing. Snowden was quick with technology and interested in computers but failed to complete his high school education, earning his high school equivalency certificate at a small Maryland community college where he studied computer science.⁸ In 2003 Snowden enlisted in the military but was discharged four months later after an incident left him with two broken legs.⁹ Later, in 2007, Snowden joined the Central Intelligence Agency (CIA) as a low-level technician. His skill with computers allowed him to quickly work his way up the ladder and he was given an intelligence post maintaining computer-network security in Geneva, Switzerland. He later said that it was during this time in Switzerland that he began to feel conflicted about his work.¹⁰ The top-secret information to which he was given access indicated that President George W. Bush had authorized the creation of secret spy programs to intercept terrorist communications within the United States. According to documents obtained by Snowden, the National Security Agency (NSA) hacked into the computers of foreign nations and intercepted the communications of foreign diplomats at the United Nations headquarters in New York City.¹¹ More troubling to Snowden, however, was the fact that the programs also collected and stored information on American citizens, including their phone calls, emails, and Internet histories. Snowden saw this as a grave breach of American

⁷ Malcolm Gladwell, "Daniel Ellsberg, Edward Snowden, and the Modern Whistle-Blower," *The New Yorker*, December 2016, <http://www.newyorker.com/magazine/2016/12/19/daniel-ellsberg-edward-snowden-and-the-modern-whistle-blower>.

⁸ "Edward Snowden | Biography & Facts | Britannica," accessed July 6, 2022, <https://www.britannica.com/biography/Edward-Snowden>.

⁹ Stephanie Gaskell, "Snowden Lasted 5 Months in Army," *POLITICO*, accessed July 6, 2022, <https://www.politico.com/story/2013/06/edward-snowden-army-discharge-092486>.

¹⁰ "Edward Snowden - Document - Gale In Context: Middle School," accessed June 13, 2022, https://go.gale.com/ps/i.do?p=MSIC&u=milin_m_brookhs&id=GALE|K1618005944&v=2.1&it=r&sid=bookmark-MSIC&password=NostimonHmar&ugroup=outside.

¹¹ "Edward Snowden - Document - Gale in Context: Middle School."

freedom and privacy, and this mass surveillance system was indeed ultimately deemed illegal in September 2020 by a US federal court.¹²

In 2008 Snowden began to gather evidence on these programs and in 2009 he left his job at the CIA to begin working for the NSA. Snowden used his high-security clearance to continue building a dossier of evidence exposing the domestic spy programs. During this time, he examined almost 1.7 million files, and after he believed he had sufficient evidence, he contacted the press.¹³ In May 2013, Snowden left the country and took refuge in Hong Kong, and a month later the *Guardian* and *Washington Post* broke Snowden's stories to the public. The populations of numerous countries were outraged at the revelations, and the American government came under fire domestically for its allegedly unconstitutional acts. Despite these criticisms, the US government justified its action by pointing to national security concerns after 9/11. By releasing the information he gathered, Snowden changed the rules in the United States for its surveillance of phone and Internet activities and sparked a nationwide debate over the privacy of personal information versus national security concerns in a post-9/11 world.¹⁴ Currently, Snowden is under temporary asylum in Russia, which he renews every year. While the American government has charged Snowden with espionage along with other criminal charges and called for his trial, he has not returned to the country or been forced to do so.

Examining Civil Disobedience through Rawls' Theory

Having briefly outlined the lives and actions of these two famous whistleblowers, we can now begin to develop a framework for understanding their actions. John Rawls is perhaps the most important American philosopher of the 20th century. While known mostly for his writings regarding justice, Rawls also wrote repeatedly on the subject of civil disobedience. Rawls' distinct theory of civil disobedience carries both important analytic and moral components and provides a useful test case for assessing the actions and legacies of Daniel Ellsberg and Edward Snowden. To use Rawls to understand these acts of whistleblowing as potential acts of civil disobedience, we must first

¹² Steve Nelson, "Edward Snowden Unpopular at Home, A Hero Abroad, Poll Finds," *US News & World Report*, accessed June 2, 2022, [//www.usnews.com/news/articles/2015/04/21/edward-snowden-unpopular-at-home-a-hero-abroad-poll-finds](https://www.usnews.com/news/articles/2015/04/21/edward-snowden-unpopular-at-home-a-hero-abroad-poll-finds).

¹³ Malcolm Gladwell, "Daniel Ellsberg, Edward Snowden, and the Modern Whistle-Blower," *The New Yorker*, December 2016, <http://www.newyorker.com/magazine/2016/12/19/daniel-ellsberg-edward-snowden-and-the-modern-whistle-blower>.

¹⁴ "Edward Snowden - Document - Gale in Context: Middle School."

understand Rawls' concept of civil disobedience on its terms. Rawls defines civil disobedience as “a public, nonviolent, conscientious yet political act contrary to law usually done to bring about a change in the law or policies of the government.”¹⁵ Such a dissenting act must meet specific criteria to be classified as civil disobedience according to Rawls.

First, such an act must be public. Civil disobedience is addressed to public principles and therefore done in public. It cannot be secretive or covert. Part of the public nature of civil disobedience is ensuring that the act is engaged openly with fair notice to the public. In this sense, Rawls compares it to acts of public speech.¹⁶ Rawls also requires an explanation of the act to the public as a qualifying condition for civil disobedience. Such an explanation must be done to appeal to the wider community because the action is taking place in the public forum.¹⁷

Second, civil disobedience is an act guided by the principles and presumed justice of a given political regime. Rawls viewed civil disobedience as a means of holding governments to their highest ideals and the stated letter of their laws. In this sense, civil disobedience is “a political act not only in a sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally.”¹⁸ As a result, Rawls holds that all cases of civil disobedience must take place in a *nearly* just society. A nearly just society is “one that is well-ordered for the most part, but some serious violations of justice occur.”¹⁹ It is these violations of justice by the government that elicit the use of civil disobedience. Acts of civil disobedience are not based on personal interest, but rather on the conception of justice that a specific constitution is founded upon. While the two may coincide, any civilly disobedient act must be justifiable politically by these principles.

The final and related requirement for civil disobedience, according to Rawls, is for the dissenter to display some sort of fidelity to the law. Rawls states:

“Disobedience to the law within the limits of fidelity to law, although it is at the outer edge thereof. The law is

¹⁵ John Rawls, *A Theory of Justice*, Original edition.. (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971), 364, <http://proxy.library.nd.edu/login?url=https://www.jstor.org/stable/10.2307/j.ctvjf9z6v>.

¹⁶ *Ibid.*, 366.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 365.

¹⁹ *Ibid.*, 363.

broken, but fidelity to law is expressed by the public and nonviolent nature of the act, [and] by the willingness to accept legal consequences of one's act."²⁰

Civil disobedience is thus understood as dissent aimed at resisting a specific authority or law, whilst recognizing the political system to which they are dissenting as legitimate and binding. There are possibilities in which the dissenter can avoid the full consequences of the law. Rawls states that "courts should take into account the civilly disobedient nature of the protester's act, and the fact that is justifiable by the political principles underlying the constitution and, on these grounds, reduce or in some cases suspend the legal sanction."²¹ However, such an outcome still requires the disobedient to submit to the legal authority of the presiding political power.

The justifications for any act of disobedience similarly rest on a "triple-pronged normativity" that covers political, moral, and legal aspects.²² The political aspect mirrors what was stated above: it must be justified by the principles of a preconceived notion of justice of the political regime in charge. Acts of civil disobedience cannot occur whenever a citizen of a state does not agree with a given law. According to Rawls, civil disobedience is again restricted to "serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity."²³ Rawls explicitly names laws limiting minorities' rights to vote or other oppressive practices as moments where civil disobedience is justified while suggesting that tax laws that primarily impact the wealthy, for example, are not strong enough violations of political justice to prompt civil disobedience.²⁴

The second aspect is the legal area. According to Rawls, all legal avenues must be ineffective before illegal actions become justifiable. Civil disobedience is therefore a last resort option, and legal action must initially be taken to attempt to fix the injustice. However, Rawls says this condition is a presumption – some cases may be so extreme that there may be no duty to use first only legal means of political opposition.²⁵ If

²⁰ Ibid., 366.

²¹ Ibid., 387.

²² William E. Scheuerman, "What Edward Snowden Can Teach Theorists of Conscientious Law-Breaking," *Philosophy & Social Criticism* 42, no. 10 (2016): 958–964, doi:10.1177/0191453716631169.

²³ Rawls, *A Theory of Justice*, 372.

²⁴ Ibid., 372.

²⁵ John Rawls, *A Theory of Justice*, Original edition. (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971), 375,

the legal system or law in place is extremely corrupt, it can become appropriate to violate unjust laws before utilizing legal strategies.

The final aspect of justifying civil disobedience is the dimension of moral utility. If all the other conditions for civil disobedience are fulfilled, it is still necessary to ask whether it is morally wise to act based on anticipated consequences. As Rawls says, “We may be acting within our rights but unwisely if our conduct only serves to provoke the harsh retaliation of the majority.”²⁶ The actual decision to disobey must be a calculated one that intends to have an overall positive impact. This means those that plan on dissenting must sometimes make personal sacrifices to ensure the effectiveness and success of their actions on the greater society.

In *A Theory of Justice*, Rawls also discusses important examples that do *not* meet the criteria for civil disobedience. Key to this discussion is Rawls’ notion of the militant. The militant strays from civil disobedience by either using force or evading the law. The difference between a militant and a civil disobedient is that the militant is much more opposed to the existing political regime: “he does not accept it as one which is nearly just or reasonably so; he believes either that it departs widely from its professed principles or that it pursues a mistaken conception of justice altogether.”²⁷ The militant can use forcible resistance at times, and because they doubt the legitimacy of the legal system, they are not prepared to accept the legal consequences of any violations of the law. In these aspects, the actions of the militant fail to satisfy the conditions for civil disobedience that Rawls established.

Actions in Light of Rawls’ Theory

Using the understanding of civil disobedience outlined by Rawls, we can now reassess the actions and legacies of the two famous whistleblowers discussed above, and outline a rough framework for making sense of future acts of government whistleblowing as a form of civil disobedience. The cases of Ellsberg and Snowden have important differences that impact the validity of their claims of civil disobedience under Rawls’ definition. In many respects, Ellsberg offers a nearly perfect encapsulation of Rawlsian civil disobedience, while Snowden requires a deeper look into the specifics of Rawls’ definition and the context within which Snowden acted. This context, read through Rawls’

<http://proxy.library.nd.edu/login?url=https://www.jstor.org/stable/10.2307/j.ctvjf9z6v>.

²⁶ Ibid., 376.

²⁷ Ibid., 367.

notion of civil disobedience, will in turn provide insights into the future of whistleblowing as an act of civil disobedience in the US.

If Rawls were to have a “poster child” for his understanding of civil disobedience, Ellsberg would surely be in the running. Ellsberg’s actions and his justifications meet all the stipulations set forth by Rawls: his act of whistleblowing was public, he displayed fidelity to the law, and he acted in good faith within what he perceived was a nearly just society. Ellsberg’s release of the Pentagon Papers was undoubtedly public. He released them to popular publications such as *The New York Times*, *Washington Post*, and *The Boston Globe*, while also disclosing himself as their source. While Ellsberg was under indictment, he was granted bail by the court. Free to speak to the media, at rallies, and in public lectures, Ellsberg was actively advocating against the American government’s policies in Vietnam.²⁸ By doing so he also fulfilled the requirement of Rawls for an explanation of the act to the public as a qualifying condition for civil disobedience. By turning himself over to authorities and facing up to 115 years in prison on 12 felony counts – including theft and violation of the Espionage Act – Ellsberg demonstrated his fidelity to the law even as he questioned the justice of specific government policies.

Proving that 1971 America was a “nearly just society,” per Rawls’ requirements, is a vague and somewhat difficult task. However, following the disclosure of a break-in at the office of Ellsberg’s psychiatrist, where the prosecution hoped to find incriminating information, the trial judge dismissed his case in May 1973.²⁹ This act by the US justice system provides at least some evidence of Ellsberg inhabiting what Rawls might consider a nearly just society, insofar as the government at the time prioritized a fair trial over the prosecution and silencing of a citizen it also declared “the most dangerous man in America.”³⁰ The ‘near justice’ of the America Ellsberg lived in will come into further focus when contrasted with the experiences of Edward Snowden below.

Ellsberg’s justifications also meet the legal, political, and moral stipulations for civil disobedience outlined by Rawls. Politically, Ellsberg

²⁸ Timothy Lee, “Has the US Become the Type of Nation from Which You Have to Seek Asylum? - The Washington Post,” accessed June 14, 2022, <https://www.washingtonpost.com/news/wonk/wp/2013/06/09/has-the-us-become-the-kind-of-nation-from-which-you-have-to-seek-asylum/>.

²⁹ “Pentagon Papers, Watergate and Trials |,” accessed June 15, 2022, <https://www.umass.edu/ellsberg/featured-documents/pentagon-papers-watergate-and-trials/>.

³⁰ “Pentagon Papers, Watergate and Trials |.”

saw the deceit by the US government as a great infringement upon American notions of justice. Legally, Ellsberg also repeatedly attempted legal avenues for raising his concerns by giving the Pentagon Papers to officials inside the government so they could properly reveal the information before going to the press to leak the documents. According to Rawls, he was therefore justified to break the law to deliver the truth. Finally, Ellsberg offered a moral justification for his actions consistent with American constitutional principles. In 1965, 61 percent of Americans believed that sending troops to Vietnam was not a mistake, but by 1971 that number had dropped to 33 percent.³¹ As a majority of the public disagreed with Vietnam War policies being purposefully misrepresented by the government, Ellsberg's exposure of secrecy and lying by the government was therefore by the country's moral democratic principles. Ellsberg's actions not only meet all the requirements of Rawls' definition of civil disobedience, but his justifications do as well.

Read in light of Rawls' understanding of civil disobedience, the case of Edward Snowden is less clear-cut. Snowden's leaks of NSA data and domestic surveillance occurred through the press, like Ellsberg, and were therefore similarly public. Snowden also pre-recorded interviews before he fled that was nationally televised, and he has written an autobiography explaining his actions, satisfying many of Rawls' demands for public justification.³²

However, unlike Ellsberg, Snowden appears to fall short of Rawls' requirements in his display of fidelity to the law. By fleeing to Hong Kong, and later Russia, Snowden intentionally sought to avoid the legal repercussions of his actions. This apparent infidelity to the law seems to immediately disqualify his actions as civil disobedience, according to Rawls' definition.

Author Kimberly Brownlee argues that Snowden did indeed display fidelity to the law in a more modest sense. "Through his disclosures and his self-exposure, he showed he was willing to bear the *risk* of being punished as well as endure the substantial losses of his citizenship rights and residence rights in the USA," Brownlee writes, an approach to risk that she deems this as "non-evasiveness broadly

³¹ William L. Luch and Peter W. Sperlich, "American Public Opinion and the War in Vietnam," *The Western Political Quarterly* 32, no. 1 (1979): 21–44, doi:10.2307/447561.

³² Edward Snowden, *Permanent Record* (London, England: Pan Books, n.d.).

construed.”³³ And to Brownlee’s point, Snowden has indeed borne some of the consequences of his actions through his loss of a US passport and residence rights. However, because Snowden refused to bear full legal responsibility by avoiding a trial in the United States, according to Rawls he would seem not to have displayed fidelity to the law to fail.

Authors such as William Scheurman believe that despite Snowden’s failure to display fidelity to the American law, he still displayed a Rawlsian version of civil disobedience. Schuerman says a “disobedient who accepts the legitimacy of criminal proceedings which are secret, irregular, arbitrary, or unduly brutal does not, in fact, necessarily uphold legality. On the contrary, by participating in them she risks becoming complicit in the regime’s attack on the law.”³⁴

A closer look back at Rawls’ stipulations for civil disobedience allows us to clarify and extend Scheurman’s reasoning, with particular resonance for the case of Snowden. However, one of Rawls’ key qualifications for civil disobedience is that it requires a society that is ‘nearly just.’ An argument that the society in which Snowden leaked the data was unjust has been made by no less than Ellsberg himself. As Ellsberg states regarding Snowden’s decision to flee prosecution, “The country I stayed in was a different America, a long time ago.”³⁵

Counterfactuals for Snowden’s treatment, if he had stayed, are not hard to find. We can contrast Ellsberg’s relative freedom during his trial with the treatment of Chelsea Manning, a US Army soldier who released classified military and diplomatic documents to WikiLeaks in 2010. The diplomatic cables leaked by Manning contained frank discussions of policy and American descriptions of foreign leaders, many of whom found cause to be offended; other leaks revealed shocking truths about the wars in Iraq and Afghanistan.³⁶ Manning was held for three years without trial, including 11 months when she was held in de

³³ Kimberley Brownlee, “The Civil Disobedience of Edward Snowden: A Reply to William Scheurman,” *Philosophy & Social Criticism* 42, no. 10 (2016): 965–970, doi:10.1177/0191453716631167.

³⁴ William E. Scheurman, “What Edward Snowden Can Teach Theorists of Conscientious Law-Breaking,” *Philosophy & Social Criticism* 42, no. 10 (2016): 958–964, doi:10.1177/0191453716631169.

³⁵ Daniel Ellsberg, “Daniel Ellsberg: NSA Leaker Snowden Made the Right Call,” *Washington Post*, July 2013, sec. Opinions, https://www.washingtonpost.com/opinions/daniel-ellsberg-nsa-leaker-snowden-made-the-right-call/2013/07/07/0b46d96c-e5b7-11e2-af3-339619eab080_story.html.

³⁶ History.com Editors, “WikiLeaks Publishes the First Documents Leaked by Chelsea Manning,” HISTORY, accessed July 6, 2022, <https://www.history.com/this-day-in-history/wikileaks-publishes-first-documents-leaked-by-chelsea-manning>.

facto solitary confinement. During some of this period, she was forced to sleep naked at night, allegedly to prevent her from committing suicide.³⁷ Since Ellsberg's day, when he could speak to the media, at rallies, and public lectures, the American government has shifted in its treatment towards whistleblowing as a form of civil disobedience. Particularly in the context of the War on Terror, whistleblowers have received demonstrably harsher treatments and punishments, justified in the name of "national security."³⁸ Snowden thus had good reason to question whether he would be treated in a 'nearly just' manner by the American justice system, and these doubts raise serious questions about the present and future viability of government whistleblowing as a form of civil disobedience in a nearly just democratic society.

The Future of Whistleblowers and Civil Disobedience in American Society

It is beyond the scope of this paper to verify whether the United States in 2013, when Snowden's actions occurred, was a 'nearly just' society. This admission complicates the act of evaluating Snowden's civil disobedience under Rawls' definition. However, the prospect of arguably unjust legal treatment by their government means that potential whistleblowers will be less likely to come forward in acts of good-faith civil disobedience of the type imagined by Rawls. Government whistleblowers are capable of adhering to the rigorous stipulations for civil disobedience that Rawls set forth, and such civil disobedience provides a function in society by revealing injustices to the public and forcing the government to adhere to its stated principles. Yet the consequences of the actions that whistleblowers now must take to display this commitment threaten the basic principles of justice that Rawls viewed as reflected in a nearly just constitutional order. As we can see in the case of Manning, American national security interests have led to the silencing of voices that promote uncomfortable truths in the public interest. Going as far back as the 1770s, whistleblowing and civil disobedience has helped keep the country's population informed and its government subject to democratic accountability. Yet the evident changes in the expectations of justice between the cases of Ellsberg to Snowden reflect a restriction of opportunities for civil disobedience in the Rawlsian sense. Amendments as recent as June 2022 to the federal Whistleblower Protection Act are a step in the right direction to allow

³⁷ Lee, "Has the US Become the Type of Nation from Which You Have to Seek Asylum?" - The Washington Post."

³⁸ Calvin Woodward, "AP FACT CHECK: Obama Was Harsh against Leakers | AP News," accessed June 20, 2022, <https://apnews.com/article/north-america-donald-trump-ap-top-news-elections-barack-obama-9d9a76067d5b47e5a290dc9832369c92>.

for principled resistance to unjust laws and government practices.³⁹ But for America to qualify as the kind of ‘nearly just’ society Rawls envisioned, care must be taken to ensure fair treatment under the law for whistleblowing as an act of civil disobedience.

³⁹ “Whistleblower Protection Act FAQ,” National Whistleblower Center, accessed August 28, 2022, <https://www.whistleblowers.org/faq/whistleblower-protection-act-faq/>.

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