

# The Compass

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# Compass

ARCADIA UNIVERSITY'S SCHOLARLY JOURNAL



# ABOUT

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The Compass is an online scholarly journal edited and produced by students in the Arcadia University Honors Program. It is dedicated to providing a platform for undergraduate research and insight so that it may inspire, intrigue, and inform an audience. The journal's primary aim is to cultivate scholarly community and intellectual curiosity by featuring multidisciplinary perspectives, accepting articles from subjects including, but not limited to: Anthropology, Art, Biology, Business, Chemistry, Communications, Education, English, Modern Languages, Gender Studies, Sciences, Sociology, International Studies, Law, Mathematics, Philosophy, Psychology, and Religious Studies. The Compass endeavors to build an intellectual collaborative community that promotes the circulation of research and ideas.

# FORWARD

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The articles in this volume reflect the joy and pride inherent in scholarship. A college or university education should inculcate these feelings in all of us who are part of the enterprise. This edition of *The Compass* represents hours of work on the part of the authors and editors. The authors used their intellectual curiosity to ask an important question and to delve deeply into their topic as they sought the answer. They have applied the standards of intellectual rigor in their respective fields to produce inspired work, worthy of publication. The articles tackle a broad range of topics across multiple disciplines. They are a testament to the breadth and depth of a liberal arts education.

A team of Arcadia students in the Honors Program has overseen every aspect of the production of this issue. This work provides them with valuable experience in editing, business management, project development, communication, logistics, and collaboration. The work of the editorial staff as well as the advisory and extended review boards should be celebrated and commended.

Arcadia University is deeply proud of *The Compass* and of the exceptional quality of work produced by our student led staff and the student writers. We are equally grateful to those who provided guidance and support for the editors and authors.

Nancy G. Rosoff, Ph.D.  
Dean of Graduate and Undergraduate Studies

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# The Courts in National Security Policy

By: Liam Kerr, Gettysburg College

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## Abstract

*Presidential authority in the realm of national security policy has increased since George Washington's administration. The most noticeable expansion of America's position in global hegemon followed the allied victory in World War II. Accompanying the rapid increase in the Executive Branch's authority has been deference from the traditional constraints on the President's power, namely Congress and public opinion. This paper seeks to answer the question of whether the Judicial Branch, specifically the Supreme Court, has acted overall to constrain or enable the expansion of presidential war powers. This question will be examined through a qualitative analysis of existing academic literature and Supreme Court opinions.*

## Introduction

Since the end of World War II, the Executive Branch of the United States government has expanded its scope of power. The rise of American global hegemony was further solidified with the fall of the Soviet Union in 1991. Presidents since George Washington have taken executive actions, which challenged contemporary understandings of the proper role of the office. The Founding Fathers disagreed greatly about the "war powers" of the presidency, evidenced in the Constitution, the Federalist Papers, and other foundational writings of the American democratic philosophy. Writing to fellow founder of the Democratic-Republican Party, James Madison opined to Thomas Jefferson that "The constitution supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the Legisl."<sup>1</sup> On the opposite end of the spectrum was Federalist Alexander Hamilton, a staunch advocate for presidential power according to the English model. Hamilton surmised that the president held significant authority "In the conduct of war, in which the energy of the Executive is the bulwark

of the national security."<sup>2</sup> As the following paper will illustrate, the debate between American policymakers regarding the primacy of the Executive Branch has flourished from the founding of the nation to the war on terrorism.

Jordan, Taylor, Meese, & Nielson (2009) discussed whether there are effective checks on presidential powers and which actors in the policymaking process are most impactful on the distribution of national security authority. They concluded that, in addition to the tensions between the president and Congress, other influential actors include "public opinion, interest groups, the impact of past policies and programs, the responsiveness of the executive bureaucracy, and the views, interests, and expected reactions of other nations."<sup>3</sup> Conspicuously excluded from the list is the Judicial Branch of the US government. This paper will seek to analyze the impact of the courts on US national security policymaking, focusing more specifically on the effect of Supreme Court (SCOTUS) decisions and jurisprudence on legal attitudes and interpretations. In particular, the research presented seeks to answer whether the Supreme Court has enabled or limited the operations of executive policy-making in national security-related issues. Given the national attention drawn to several landmark decisions, such as *Nixon v. U.S.* (discussed later), it is theorized that the following research will demonstrate that SCOTUS acted as a significant overall constraint on constantly expanding presidential powers.

## The Arguments: Jurisprudence and Precedent

The aforementioned debate between America's greatest political philosophers during the time of the nation's founding laid the groundwork for centuries of legal argumentation. Constitutional legal experts have debated the question of presidential war powers from the beginning of our republic on issues such as George Washington's suppression of the Whiskey Rebellion, Thomas Jefferson's deployment of Marines to the

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1 James Madison to Thomas Jefferson, April 2, 1798, in *The Writings of James Madison*, ed. Gaillard Hunt, [http://press-pubs.uchicago.edu/founders/documents/a\\_1\\_8\\_11s8.html](http://press-pubs.uchicago.edu/founders/documents/a_1_8_11s8.html).

2 Alexander Hamilton, *Federalist* No. 70, in *The Federalist*, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-70>

3 Amos A. Jordan, William J. Taylor, Michael J. Meese, and Suzanne C. Nielson, *American National Security*. 6th ed. Baltimore: Johns Hopkins University Press, 2009), 97.



Barbary Coast, James Polk's instigations with Mexico and Abraham Lincoln's suspension of Habeas Corpus rights. The legal arguments surrounding expansionary versus limited war powers parallel broader debates between strict and loose constitutional interpretation. James Baker, a notable public servant under several Republican administrations, struck at the importance of constitutional interpretation when he said, "As the president's national security lawyer, I was initially surprised how often my legal analysis started and often ended, with the text of the Constitution."<sup>4</sup> National security decisions require legal analysis. The following discussion on legal precedent and interpretation will provide the proper backdrop for an analysis of SCOTUS' impact on national security policy.

There are several notable 19th-century examples of judicial review and subsequent constraint of presidential power by the courts. One such example is Chief Justice Taney's opinion in *Ex Parte Merryman*, where he condemns Lincoln's suspension of Habeas Corpus: a power expressly granted to the Legislative Branch.<sup>5</sup> Most modern legal experts, however, tend to focus on a handful of 20th and 21st-century cases when determining executive powers in national security policy. Baker outlines the two cases which represent the two opposing ends of the spectrum of debate.

The first such case is that of *U.S. v. Curtiss-Wright Export Corp.* (1936) in which Justice Sutherland wrote the court's majority opinion. The issue at hand was whether Congress had the ability to delegate to the President power to restrict weapon exports to the parties of the Chaco War. In his opinion, Sutherland concluded that the President is the "sole organ of the federal government in the field of international relations- a power which does not require as a basis for its exercise an act of Congress" and therefore, he, "not Congress, has the better opportunity of knowing conditions which prevail in foreign countries and especially in time of war. He has his confidential sources of information...."<sup>6</sup> Sutherland further added an unprecedented allotment of authority to the execu-

tive by stating "external sovereignty" exists above the confines of the Constitution, inherent to the Union and leaving the President, as the sole organ of international relations, with almost limitless power in national security.<sup>7</sup>

As influential as the *Curtiss-Wright* decision was in national security jurisprudence, another case stands as a more prominent precedent in constitutional law. *Youngstown Sheet & Tube Co. vs. Sawyer* (1952) saw a legal challenge to President Truman's decision to nationalize the steel industry in order to prevent a potential national security crisis resulting from a national steelworker strike. Although there were many significant concurring and dissenting opinions which are all referenced by lawyers today, it is Justice Black's majority opinion and Justice Frankfurter's concurring opinion which have proven most impactful. Black argued that, "Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that [the President] has the ultimate power to take possession of private property."<sup>8</sup> Because this was concerned with domestic powers, it is possible such an assertion is still consistent with Justice Sutherland's *Curtiss-Wright* opinion. Ironically, this case is more widely referenced to justify expanding presidential powers due to what Justice Frankfurter called the executive "gloss" of presidential authority. He states that presidential war powers are justified by "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution."<sup>9</sup> *The Youngstown* case stands as the preeminent backdrop to cases pertaining to executive national security actions.

*Youngstown and Curtiss-Wright* demonstrate the vast differences in Supreme Court decisions. These cases, however, are not the only examples. Chris Edelson discusses the infamous *Korematsu v. United States*, in which Justice Stone led the court in answering "whether, acting in cooperation, Congress and the Executive have constitutional authority to

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4 James E. Baker, *In the Common Defense: National Security Law for Perilous Times* (Cambridge: Cambridge University Press, 2014), 33.

5 Bruce A. Ragsdale, *Ex Parte Merryman, and Debates on Civil Liberties During the Civil War*. Federal Judicial Center. Federal Judicial Center History Office. 2007.

6 Baker, 39.

7 "United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)." Justia Law. Accessed April 17, 2018.

8 Baker, 41.

9 "Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)." Justia Law. Accessed April 17, 2018.

impose the curfew restrictions here complained of.”<sup>10</sup> Mirroring language used in the *Curtiss-Wright* majority opinion and Justice Franklin’s concurring opinion in *Youngstown*, Justice Stone concluded that, “the two branches, acting together, possess the complete war power of the national government.”<sup>11</sup> Therefore, since Congress permitted President Roosevelt to force Japanese-Americans into internment camps during a time of emergency, the action was constitutionally acceptable. It should be pointed out, for reference later in this paper, that Justice Franklin noted in his *Youngstown* concurrence that “no such cooperation between Congress and the President existed and therefore the action was unconstitutional.”

The ageless debate between expansionary and limited presidential ascendancy in national security powers thrived within the walls of the Supreme Court since the founding of the nation. These three 20th century cases often provided the foundational context for further interpretation of the president’s delegated and implied war powers. The question then becomes, has the Supreme Court significantly limited or enabled the expansion of executive power which has taken place, especially since the end of WWII? Scholars disagree regarding this question, but this paper will organize historical examples corroborating both sides of the academic debate into a framework that explains why differences in historical jurisprudence exist.

### ***The Case for Activism***

Those who believe the presidency has been hindered in its pursuit of greater power by the Supreme Court follow the pattern of analyzing cases from the 20th and 21st centuries. Christenson and Kriner examine recent examples relating to the unprecedented levels of presidential imperium during the presidency of George W. Bush and his war on terrorism. Their take on the effectiveness of the courts’ reining in of presidents stems from the notion that, “For most of American history, the courts rationally shied away

from direct confrontations with the executive branch (Fisher 2005). Even some of the rare presidential defeats, such as the landmark ruling in *Youngstown Sheet & Tube Co. v. Sawyer* (1952), may have paradoxically bolstered presidential power in the long term (Silverstein 1997; Bellia 2002).”<sup>12</sup> Despite this historical deference, Christenson and Kriner come to the conclusion that the Supreme Court has increasingly asserted its authority to decide when the executive branch has overstepped its supposed mandate in national security policy-making.

Three cases are cited by Christenson and Kriner as evidence of the trend of increasing judicial activism. In the 2004 case *Hamdi v. Rumsfeld*, the court ruled that “The administration could not hold American citizens as enemy combatants and deny them due process and habeas corpus rights.”<sup>13</sup> Justice O’Connor wrote the majority opinion, asserting that a state of war does not grant “a blank check for the President when it comes to the rights of the Nation’s citizens.”<sup>14</sup> Just two years later, the court ruled in *Hamdan v. Rumsfeld* that the military tribunals created by the President were unconstitutional. Justice Stevens continued by saying the defendant’s argument that “federal courts should respect the balance Congress struck when it created ‘an integrated system of military courts and review procedures’ is inapposite since the tribunal convened to try Hamdan is not part of that integrated system.”<sup>15</sup> In this decision, the court echoes earlier notions that legislative assent to executive action lends greater levels of legitimacy to the executive branch’s national security policy. Finally, the Supreme Court ruled in *Boumediene v. Bush* (2008) that Guantanamo prisoners were entitled to vie for habeas corpus rights. Roger Douglas notes that although there existed an acknowledged “right to detain,” that right “did not necessarily mean a right to detain unfettered by judicial accountability.”<sup>16</sup>

Two notable cases arose during the administration of President Richard Nixon which Edelson

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10 Chris. Edelson, *Emergency Presidential Power from the Drafting of the Constitution to the War on Terror*. Madison: University of Wisconsin Press, 2013.

11 Ibid., 85.

12 Dino P. Christenson and Douglas L. Kriner, “The Specter of Supreme Court Criticism: Public Opinion and Unilateral Action.” *Presidential Studies Quarterly* 47, no. 3 (2017): 471-494.

13 Ibid.

14 *Hamdi v. Rumsfeld*, 542 U. S. 507 (2004)

15 *Hamdan v. Rumsfeld*, 548 U. S. 557 (2006)

16 Roger Douglas, *Law, Liberty, and the Pursuit of Terrorism* (Ann Arbor: University of Michigan Press, 2014), 174.

considers equally as prominent in case law. The first is *New York Times Co. v. United States* (1971), in which Justice Black declared that Nixon overstepped his authority by censoring publication of the leaked Pentagon Papers, which revealed government knowledge of the impossibility of winning the Vietnam War. Black opined, “In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”<sup>17</sup> Noticeably, President Nixon acted without the authorization of Congress and therefore lacked the clout enjoyed by President Roosevelt in *Curtiss-Wright*. Another case involving President Nixon was the more popularly acclaimed case of *United States v. Nixon* (1974) which related to the President’s claim of executive authority in releasing audio recordings of conversations had in the Oval Office. Although this case does not deal with national security issues, the President still claimed that executive privilege derived from concerns over national security information which would be dangerous to release. Justice Burger led the unanimous court in reaffirming that “it is the province and duty of this Court ‘to say what the law is’ with respect to the claim of privilege presented in this case [*Marbury v. Madison*]. . . .”<sup>18</sup>

Edelson, Christenson, Kriner, and Douglas all share the belief that the Supreme Court has significantly constrained the presidency on many issues which are presented to them. While they recognize that the Supreme Court has at other times enhanced presidential authority, they argue that the general trend is an increase of judicial activism as the Executive Branch has grown in size and scope. This stance is followed by the opposite argument: that the Supreme Court has, on the whole, acted to enable the president’s enhancement of power through deference, save a few isolated examples to the contrary.

### ***The Case for Deference***

Conventional academic teaching emphasizes the role of the courts in having authority on the meaning

and proper application of the law in relation to the Constitution and existing case law. What if, however, the President and Congress actually share the responsibility of interpreting the law and the Constitution? Robert Blomquist and other advocates for presidential unilateralism argue that, as constitutional entities with delegated powers, the Executive and Legislative Branches possess the ability to define their roles under the Constitution. Focusing on this power, called ‘presprudence,’ Blomquist perceives the presidency as “the American national security sentinel based on a broad - but not unlimited - interpretation of presidential power.”<sup>19</sup> A familiar argument to constitutional lawyers, such a theory is based heavily on a recurrent assessment of presidential power known as the “sole organ” doctrine, drawn from a speech by John Marshall in 1800.<sup>20</sup> The sole organ doctrine, which was cited as justification in the aforementioned *Curtiss-Wright* decision, has been used to substantiate the notion that the executive is empowered as the primary actor in foreign relations.

Blomquist relies on the sole organ doctrine in defining the concept of presprudence, a term he coined, which has been an assertion made by advocates of presidential power since Alexander Hamilton. It is ironic that the doctrine was conceived by the mastermind of judicial review, particularly since Blomquist uses the doctrine in subjecting presidential action in national security policy to simply “reasonably deferential judicial review.” As the frequent and natural foil to Federalist rhetoric, James Madison provided his input on Hamilton and Marshall’s pronouncement of executive authority when he said “Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded.”<sup>21</sup> Madison’s school won in the infamous case *U.S. v. Nixon*, in which the court asserted its sole authority to interpret the law. Blomquist repeats the frequent concept that “privileging the president’s perspective on national security needs carefully balanced by

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17 *New York Times Co. v. United States*, 403 U. S. 713 (1971) (*per curiam*)

18 *United States v. Nixon*, 418 U. S. 683 (1974)

19 Robert F. Blomquist, “The Theoretical Constitutional Shape (And Shaping) of American National Security Law.” *St. Louis University Public Law Review* 31, no. 1 (2011): 439-473.

20 Fisher, Louis. “The Law: Presidential Inherent Power: The “Sole Organ” Doctrine.” *Presidential Studies Quarterly* 37, no. 1 (March 2007): 139-52.

21 James Madison, *Letters of Helvidius*, nos. 1-4. 24 Aug. - 14 Sept. 1793, in *The Writings of James Madison*, ed. Gaillard Hunt.

Congress' perspective."<sup>22</sup> Yet again, judicial review of presidential action seems to hinge on whether

Congress has granted unilateral presidential dominion over an issue.

Several other scholars have spoken on this topic to reinforce the sentiment that courts have conceded significant authority to the presidency. Gregory McNeal wrote an extended review of an academic book entitled *In the Age of Deference*, by David Rudenstine. Emphasized in the review is an assessment of the classic dichotomy between liberty and security, most famously alluded to by Benjamin Franklin. "Rudenstine claims that 'the Courts deferential stance has substantially harmed the nation-and done so needlessly-by compromising individual liberty, the rule of law, and the democratic process'" (633).<sup>23</sup> The Supreme Court has often decided on issues concerning individual liberties and commonly found that national security concerns rightly supersede privileges guaranteed by the Bill of Rights. Perhaps the most famous example in illustrating this point is the notable case *Schenck v. U.S.* (1919), in which Justice Oliver Wendell Holmes, Jr. issued the unanimous majority opinion that freedom of speech is outweighed by national security concerns expressed under the Espionage Act. Now a colloquial phrase in case law, Justice Holmes inaugurated the "clear and present danger" test in determining whether speech could rightfully be limited. In this case, and in others relating to civil liberties guaranteed by the Constitution, the Supreme Court has a history of occasionally permitting executive national security actions which appear contradictory to the Bill of Rights.

Since the beginning of the War on Terrorism, following the September 11, 2001 attacks on the World Trade Center in New York and the Pentagon in Washington, D.C., national security has been a primary concern of most Americans. The administrations of Presidents George W. Bush, Barack Obama, and Donald J. Trump have used the prevalence of fear in citizen's minds to expand their powers in fighting the War on Terror. Congress authorized unilateral presidential

action in the 2001 Authorization for the Use of Military Force (AUMF) against perpetrators of the attacks and associated groups. The vague language enabled the president to use military force almost anywhere in the world, so long as there was a loose connection to terrorist organizations. In *Hamdi v. Rumsfeld*, the Supreme Court allowed President Bush to detain individuals related to the terrorist attacks, including American citizens. Congress' authorization contributed significant legitimacy to presidential actions since 2001.

Judicial deference to expanding presidential power is nothing new in the modern era, Douglas argues, as he found that "state secrets claims failed in only 4 out of 58 reported cases in the period 1977-2005."<sup>24</sup> In other words, the argument that state secrets are at risk, and therefore a matter beyond the courts' jurisdiction, has largely been successful in modern courtrooms. In 1971, SCOTUS ruled for the first time in the case *Bivens v. Six Unknown Named Agents* that those deprived of constitutional liberties are subject to remedy by the government and such victims have standing to sue before the court. Since the *Bivens* doctrine was conceived, the Court has only weakened its effectiveness through the creation of what Zbrokek calls the "national security exemption."<sup>25</sup> In federal court cases which never reached the Supreme Court, known as *Aulaqi I* and *Aulaqi II*, judges ruled that the family of American citizen Anwar al-Awlaki, who was killed by drone strikes ordered by President Obama, lacked standing to sue and dismissed the case. Plaintiffs argued that al-Awlaki was deprived of life and liberty without constitutional due process and that his estate was subject to remedy according to the *Bivens* doctrine. This is the most recent, yet most extreme, example of the national security exemption. Zbrokek claims that, "By foreclosing *Bivens* actions to victims of government action, the courts have potentially deprived American citizens of constitutional protections and crafted an expansive exemption for national security-related suits."<sup>26</sup> The national security exemption is significant not only in conversations of affording remedies to victims of government action, viewed

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22 Blomquist.

23 Gregory S. McNeal, "Deference, Power, and Emerging Security Threats." *Texas Law Review* 95, no. 3 (2017): 631-650. *Academic Search Premier*, EBSCOhost (accessed March 19, 2018).

24 Douglas, 112.

25 Alexander Steven Zbrokek, "Square Pegs and Round Holes: Moving Beyond *Bivens* in National Security Cases." *Columbia Journal of Law & Social Problems* 47, no. 4 (2014): 485-524.

26 Ibid.



by John Marshall to be essential to the enforcement of constitutional guarantees, but also in simply deciding when or whether government action supersedes civil liberties.

### Preventing an ‘Imperial Presidency’

Responding to weighty evidence suggesting noteworthy judicial acquiescence of authority to presidential sovereignty in external relations, a growing number of American scholars, politicians, and ideological groups have offered actions to rein in presidential power. One such method in preventing the further rise of the “imperial presidency,” a term popularized by presidential historian Arthur Schlesinger, is a reliance on Congress to mandate statutory limits on executive power. The analysis of the extent to which Congress has deferred and enabled the rise of an imperial presidency is a matter for individual analysis. As this paper has demonstrated, however, Congress has an important role in legitimizing presidential power when it comes to judicial interpretation. Likewise, a potential method for reform, identified by Gregory McNeal, is for Congress to “create processes and procedures that bind courts and the Executive. Congress can force structure around doctrine and can even force a conversation about what deference doctrines are constitutionally mandated.”<sup>27</sup> Considering the Legislative Branch has blissfully delegated its power to the Executive Branch in the past, it seems unlikely for any such congressional reform to be implemented.

Focusing on the development of the national security exemption in relation to civil liberties and constitutional guarantees, Alexander Zbrokek offers his prescribed proper judicial reform relating to the *Bivens* doctrine (described as inherently inadequate). Therefore, he advocates for the creation of an “Article I court with jurisdiction over post-deprivation constitutional claims in national security cases.”<sup>28</sup> Would such a court be sufficient in increasing judicial assertiveness overall, or would the statutory scope be so narrow as to inadequately address the larger issue? While the court would “close the rights/remedies gap generated by the national security exception to the *Bivens* doctrine and compel the Government to account for its actions,” it is unlikely that the growth in the authority of the Executive Branch would be sig-

nificantly impacted.

Seeking institutional checks and balances to the growing system of presidential unilateralism on national security matters will likely prove ineffective. As is evidenced by the founding documents and writings of even the staunchest advocates of executive power, checks and balances are central to a functioning American government. In other words, it was expected that the power of the presidency was properly balanced by shared powers between the other two branches of the federal government as well as the states. It appears that, over time, institutional checks are meaningless if the values of the American people change. As has perhaps happened already, “assertions of presidential authority made in *extremis* may become embedded in U.S. practice and law without a corresponding application of checks and balances.” This “may in time diminish both the principles of law that define American life as well as the physical security at which they are directed.”<sup>29</sup> Therefore, James Baker prescribes a “sustained commitment to the rule of law in practice and perception” as the proper response to dynamic and multifaceted threats to American national security. Only through an increased understanding of founding legal principles and constitutional law can existing institutional checks and balances begin significantly limiting presidential power in external relations.

### Conclusion

The goal of this paper was to examine existing scholarly literature and debate surrounding the question of executive authority in national security policymaking, and to subsequently determine whether the Supreme Court has historically enabled or limited presidential power. The hypothesis proposed the existence of considerable evidence would indicate that the Supreme Court has limited the president through judicial review. After careful review of case law and opinions from national security legal experts, it appears that the original hypothesis is null. Through lack of action in the face of executive power-grabs (due to SCOTUS’s nature as a reactionary force), the courts have enabled an expanding definition of presidential war powers. While courts have occasionally limited

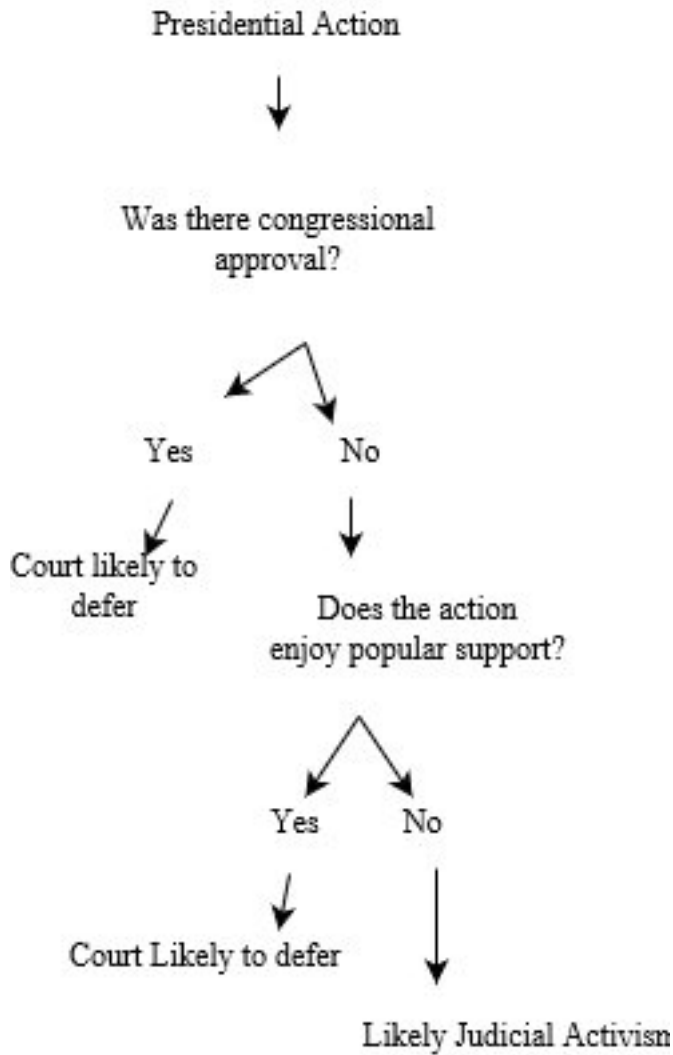
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27 McNeal, 637

28 Zbrokek.

29 Baker, *In the Common Defense*, 307.

powers of the president, these limits occur in very specific circumstances and tend to reinforce Blomquist’s idea of “reasonably deferential judicial review.”



Supreme Court actions can be organized into the following framework to explain the historical variation in levels of deference. First mentioned during the conversation surrounding *Korematsu*, but recurrent throughout this paper, is the idea that Congress lending legitimacy to presidential action cannot be underscored. Christenson, however, discusses the influence of public opinion on presidential action. He further demonstrates how a Supreme Court case surrounding the action influences public opinion, the outcome of the case, and the future actions of the president.

Therefore, the above flowchart helps to explain what considerations matter most in the outcome of national security cases before the Court. It should be noted that these outcomes are only likely according to this research and could change given the personal opinions or ideologies of the particular individuals on the Supreme Court. A good example to illustrate this flowchart is the aforementioned *Ex Parte Merryman* case in which a federal district court ruled against President Lincoln’s suspension of Habeas Corpus. Lincoln did not have approval from Congress to exercise their constitutional responsibility and uproar arose from the American people who were already inclined to call the President a tyrant. Such conditions being met, the court, chaired by Chief Justice Roger Taney, ruled against Lincoln. Lincoln, however, simply ignored the decision and carried on.

The ascendancy of the president in national security policy is the greatest change in American government. Shifting perception of the proper role of the presidency paired with the changing threats facing the United States has led to the primacy of the Executive Branch. Traditionally, public opinion, Congress, and the Courts are most readily equipped to check wrongful assertions of executive power. Resulting from a greater degree of deferral from the public and Congress, however, has been a general trend towards judicial deference. Although the Supreme Court has decided against presidential powers in individual examples, the legal precedents set by *Youngstown* and *Curtiss-Wright* have worked what Blomquist calls ‘presiprudence’ into accepted legal doctrine. Going forward, the Supreme Court is likely to continue in this tradition, given an increased and ill-defined threat from non-state actors, terrorist organizations, significant power tensions, and nuclear weapons.

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# Patterns and Habits Workshop

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## Introduction

Through collaboration with the not-for-profit organization Midnight Basketball Australia, I created a life skills workshop which focuses on assisting individuals with creating daily schedules. Midnight Basketball Australia is a national organization that trains and supports communities to build life skills and foster confidence in teenagers. Other goals of this organization include initiatives to create and support positive mentorships and opportunities within rural and disadvantaged communities. Through their programs, Midnight Basketball Australia aims to reduce the stereotype of degenerate teenagers by reducing deviant behavior.

This paper demonstrates my collaboration with this company by outlining the basis for the positive social change it is aiming to create.<sup>1</sup> While Midnight Basketball Australia's workshop cannot decidedly be the cause of positive social change for teenagers, it is highly correlated with this movement.

## Life Cycles

When dealing with teenagers in high at-risk or disadvantaged communities, it is important to focus on the insurmountable issues that help this cycle to continuously hold these teenagers in their impoverished state. These issues include having access to education, food, security, mentorship, and consistency in their lives.

By creating a sustainable and realistic daily routine, it is likely that teenagers from the aforementioned backgrounds can raise their standard of living and increase their chances of having a good life by cutting out distractions and increasing exposure to mainstream society. Midnight Basketball Australia uses the definition of the Australian Research Alliance for Children and Youth (ARACY) to explain what a 'good life' is.<sup>2</sup> ARACY defines five Key Result Areas to create a good life, including love and safety, health, education, participation, and material basics. These

key results are utilized throughout the paper as an indication of the level of success Midnight Basketball Australia's Program Model has on its participants. These areas are measured qualitatively through stories, relationships, and baseline community feelings.

To achieve success in the areas needed for a good life, teenagers must avoid getting trapped in a negative cycle. A negative cycle is a distraction that may lead to bad decision making. Choosing a positive path is important, as the choices teenagers make, and the effects of those choices, can affect one's life until late adulthood. Bad decisions made in negative cycles, such as early and prolonged exposure to drugs and alcohol, causes higher chances of substance addiction in adulthood.<sup>3</sup> It is often a struggle for adolescents to focus on achieving a positive path, especially if peer pressure is involved. Therefore, in order to help youth find a path to a good life, instead of becoming entrapped in a negative cycle, it is necessary to target their attitudes and actions before they form bad habits.

To aid teenagers in finding a good life, they first must define their own idea of what a good life includes. The majority of the teenagers Midnight Basketball Australia supports define this concept as having a place to live, a stable job, a high school education, feelings of love and support, a sense of belonging in community, and other basic needs. In order to aid teenagers in setting up paths towards a good life and removing themselves from a negative cycle, it is imperative that they understand the idea of scheduling, structure, and accountability. The workshop I created focuses on these concepts. These skills are incredibly important to learn as a teenager, as adolescence is a vital part of development.

## Adolescent Development

In order to help youth avoid being trapped in a negative cycle, it is necessary to protect their developing brains from negative influences. Developing brains are the most sensitive and most vital assets teenagers

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1 "Strategic Overview." *Midnight Basketball Australia*. (2017): 26 (internal document).

2 Australian Research Alliance for Children & Youth. "Report summary: Towards a National Action Plan for child and youth health and wellbeing – setting our future priorities," 2012, <https://www.aracy.org.au/publications-resources/area?command=record&id=229&cid=22>.

3 Paula Nurius, Dana Prince, and Anita Rocha, "Cumulative Disadvantage and Youth Well-Being: A Multi-domain Examination with Life Course Implications," *Child Adolescent Social Work Journal* 32, no. 6 (2015): 568.



have for influencing their trajectories into adulthood. Brains rapidly develop during adolescence, particularly in the prefrontal cortex. This specific section of the brain handles higher-order functioning, such as cognitive flexibility, self-regulation, and risk-reward.<sup>4</sup> If the prefrontal cortex or other developmental areas of the brain are damaged by roadblocks like drug or alcohol use, trauma, or mental illness, teenagers can begin to drift off their path and fall into a negative cycle.<sup>5</sup> By harming the prefrontal cortex through these choices or experiences, the development of connectivity between the prefrontal cortex and other brain areas is damaged.<sup>6</sup> In addition to this issue, the developing brain will not be able to undergo myelination of axons and elimination of synapses.<sup>7</sup> If these processes are damaged, it can lead to mental health issues, emotional irregularities, memory issues, learning problems, and other issues. To protect against these outcomes, it is necessary to understand the causes of these roadblocks and their negative outcomes, as well as various theories about community involvement, independence, and program-based solutions.

### **Causes and Roadblocks**

By targeting areas of teenagers' lives that lead to higher risk behavior, it is possible to make a larger impact on their lives. By focusing on systematic problems that cannot be solved with government assistance programs or charity organizations, it is more likely that teenagers will be able to avoid a negative life cycle. These systematic problems are mainly due to lack of structure, which can lead to boredom, stress, and apathy.

### **Lack of Structure**

Structure within daily routines allows adolescents to better manage their time and focus on important aspects that will help them stay on track towards a good life. A typical schedule for at-risk Midnight Basketball participants on a weekday is rough, vague, and unlikely to be written down or thought about in the adolescents' daily lives. They tend to make no schedules for themselves, but rather follow the whims of others.

**Figure 1.** Typical Daily Weekday Schedule of the Average Midnight Program Participant

Sometime around 8:00 am	Wake Up
8:30	School supposed to start
3:30	Schools supposed to end
All day	Hang out with friends/freetime
Sometimes around 2:00 a.m.	Go to Bed

This schedule seems to be accepted by at-risk teenagers as easy to follow and having little responsibility. This lack of scheduled responsibility allows teenagers to be easily swept up by delinquent youth into bad decision making. The high amount of unstructured time may lead teenagers into a negative cycle and stop them from following a path towards a healthy lifestyle. How adolescents react to unstructured time is unique to the person and situation. While it does not always have negative consequences, it can often result in boredom, stress, and apathy.

### **Boredom**

"Boredom is a state of under stimulation, under arousal, lack of momentum, or a lack of psychological involvement associated with dissatisfaction in the task situation."<sup>8</sup> Boredom in teenagers can often be observed in school programs that are not mentally stimulating or when youth do not believe they are being held accountable to high academic standards. Being bored with school often leads to a lack of interest in completing outside tasks, such as homework or extracurriculars. This overall lack of interest and boredom allows teenagers to set themselves up to fail. Continuing in a negative cycle such as this leads to students distancing themselves from their education, making it difficult to achieve a good life. Without an education, job opportunities are limited. The largest problem is that by the time teenagers realize this, they will most likely have given up mentally on their education. This is shown through a lack of work and drive, as well as

4 Ellen Witt, "Research on alcohol and adolescent brain development: opportunities and future directions," *Alcohol* 44, no. 1(2010): 119-120.

5 Ibid.

6 Ibid, 120-121

7 Ibid.

8 Linda Caldwell, Douglas Kleilber, and Susan Shaw, "Boredom, Stress, and Social Control in the Daily Activities of Adolescents," *Journal of Leisure Research* 28, no. 4 (1996): 276.

decreased attendance at school. If adolescents are not physically attending school, their unstructured free time increases exponentially, and the cycle of possible negative outcomes, as it speeds up, becomes harder for teens to escape. This increased free time may also heighten susceptibility to peer pressure, leading to detrimental behaviors such as delinquency, extreme situation seeking, and substance abuse.<sup>9</sup> As described before, these behaviors can lead to irreversible negative effects in adult life, as they decrease the likelihood of youth being able to follow a path to a good life.

### **Stress**

Stress is a large concern for youth as it leads to a number of negative consequences, such as poor school performance and low self-esteem.<sup>10</sup> Stress can be caused by factors which at-risk teens may experience every day such as problems at home, difficulty at school, and peer pressure to use drugs or commit crimes. To avoid stress, adolescents may engage in impulsive behaviors, releasing endorphins, as a way to cope. Participating in impulsive behaviors due to stress has been linked to negative effects, such as thought disturbance, negative sense of self, decreased ability to enjoy and complete activities, and increased troublesome behavior.<sup>11</sup> Breaking out of the downward spiral of these effects caused by stress becomes increasingly difficult for adolescents as these negative consequences can cause them to be outcast from the adult world and their community. This can make finding the path to a good life even more difficult.

### **Apathy**

A lack of programs aimed towards engaging adolescents in their community can lead to teenagers distancing themselves from the reality of a good life and a fulfilling future. "Lack of goals and engagement make it difficult for adolescents to step out of apathy and head toward more complex and challenging opportunities for action."<sup>12</sup> If adolescents believe they do not have the skills to face the challenges ahead of

them, they will not attempt anything new. This apathy leads to a lack of focus, attention, and/or action. Subsequently, teenagers react to these disadvantages by blaming the system and their environment, claiming their lack of action is out of their control.<sup>13</sup> If adolescents make no change in their actions and become increasingly apathetic, their "consciousness starts to disintegrate, complexity wanes, and potential social maladjustment and deviant behaviors ensue."<sup>14</sup> Without opportunities available to them, adolescents continue to have an abundance of unstructured free time, which aids in creating a greater likelihood of deviant behaviors. By creating programs that help adolescents plan for their future, they can get help breaking out of a negative cycle. Teenagers will be equipped to engage in their communities and be given a perspective of the good life they can have.

### **Negative Outcomes**

If nothing is done to help teenagers understand and overcome the roadblocks mentioned above, many negative outcomes can occur. The Patterns and Habits workshop I created aims to teach Midnight Basketball Australia's participants about these roadblocks and outcomes. This workshop gives them a chance to create a schedule, to hold themselves accountable, and to begin to manage their boredom, stress and apathy.

### **Delinquency**

Delinquency is often imagined as trouble with the law. However, it can also include neglect of one's duty to a society. It is everyone's responsibility to society to maintain their own wellbeing and not purposefully endanger others. Delinquents, solely focused on themselves, may not think about the consequences their actions cause for others. This often leads to teenagers being excluded, because "Delinquency is related to the general exclusion of adolescents from the adult world."<sup>15</sup> This exclusion comes from making bad decisions based on the roadblocks previously discussed and increases the likelihood of further bad decisions being made. Delinquent behavior can be

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9 Ibid

10 Ibid.,275.

11 Leslie Horton, Thomas Kwapil, Donald, Lynam, Sarah Sperry, and Molly Walsh, "Examining the Multidimensional structure of impulsivity in daily life," *Personality and Individual Differences* 94, (2016): 156.

12 Marta Bassi and Antonella Delle Fave, "The quality of experience in adolescents' daily lives: developmental perspectives," *Genetic, Social, and General Psychology Monographs* 126, no. 3, (2000): 362.

13 Ibid.

14 Ibid.,350.

15 L.L. Caldwell. et al., 'Boredom, Stress, and Social Control in the Daily Activities of Adolescents', *Journal of Leisure Research* 28, no. 4 (1996): 275.

planned or impulsive, a lone act or egged on by friends and peers. Regardless, once a teenager is labeled a delinquent by society, they are viewed differently by the community and can be outcast out of fear of additional disruption of social norms. This alienation further increases adolescent stress and can keep them trapped in the negative cycle.

### ***Lack of Education***

Education is necessary for adolescents to find a good path in life, as it offers a protective factor for physical and mental health.<sup>16</sup> Without this protective factor, the trajectory of an adolescent's future path is drastically changed for the worst. Adolescents who cannot overcome roadblocks to focus on school may not be able to complete their education. Not completing one's education has extremely negative consequences and makes it difficult for individuals to find the path to a good life. Additionally, as education requirements for the workforce increase, it is necessary to finish at least secondary schooling to attain a job. Without proper support from their family and community, even this level of schooling may seem unattainable to teenagers.<sup>17</sup>

Today, there are less jobs for strong, young individuals with little education. Even to work in a trade job in Australia, like construction work, you often need to have completed at least Year 10 of schooling. Other requirements include having basic understanding of math, understanding power tool safety, being a team player, and having a sense of accountability.<sup>18</sup> These concepts can become challenging if you have no previous experience with responsibilities, such as having a job, sport, or volunteer position, which educational experiences often provide access to. Education also provides a sense of responsibility and can increase the belief one will be able to obtain a job. Without the belief that attaining a job is possible, youth often disassociate with both school and their communities, becoming disinterested in their education. This leads to teenagers quickly falling further into a negative cycle.

### ***Low Self Esteem***

Low self-esteem stems from feeling inadequate in one's abilities to complete a task. In order to increase self-esteem, adolescents must gain power over their lives by being held accountable for their actions and obtaining an end goal to strive towards.<sup>19</sup> In order to attain power over one's life, teenagers need support from local communities. However, this is difficult to achieve, as many communities often exclude the adolescents they consider delinquents. Without the support of a community, teenagers with low self-esteem are not able take control of their free time for productive uses because they lack the internal motivation needed. An additional negative effect due to low self-esteem and lack of support is teenagers struggling to learn to believe in themselves. Without believing in themselves or having anyone believe in them, teenagers are easily led into negative lifestyles and off the path towards successful lives.

### ***Cumulative Disadvantage***

Cumulative disadvantage is the overall picture of at-risk teenagers' lives. At-risk teenagers have a wide variety of roadblocks creating various challenges towards achieving their good life. "One explanation for the impact of cumulative disadvantage on youth health and achievement problems is through accelerated adulthood, early workforce participation, high school dropout, or early cohabitation, increasing likelihood of early parenthood, truncated educational attainment and poor occupational status."<sup>20</sup> Accelerated adulthood is a major component in causing adolescents to be unprepared when an obstacle arises. If teenagers are not taught proper life skills and lessons as they develop, they will be unable to mentally and physically cope with other challenges. Without those skills, teenagers can get stuck in their negative cycle. For example, the increased likelihood of early parenthood can stem from a lack of knowledge about sexual education, contraceptives, healthy relationships, and the hardships of raising a child.

Cumulative disadvantage becomes heightened

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16 Nurius, Prince, and Rocha, Anita, "Cumulative Disadvantage and Youth Well-Being," 568.

17 Garner Clancey. "Young People, Crime and its Prevention – A Report for Midnight Basketball Australia," *Sydney Institute of Criminology*, (2012).

18 Careers Online, "Do you want to be a Construction Worker," 2017, <http://www.careersonline.com.au/jobs/construction-worker.html>.

19 Nurius, Prince, and Rocha, Anita, "Cumulative Disadvantage and Youth Well-Being."

20 Ibid., 568

when talking about how “the stacking of social statuses associated with marginalization—immigrant or domestic racial minority member and status-based discrimination experiences—constitute powerful threats to lifetime developmental trajectories.”<sup>21</sup> The idea that adolescents often are at a disadvantage due to their marginalization is not new. The more disadvantages an at-risk teenager has, the more likely societies and communities are to misunderstand and outcast them. This can easily add to the stress often experienced by disadvantaged adolescents and become a major roadblock to a good life.

Stress can also be caused by generational change. With years of stigma facing aboriginal and at-risk communities, involvement must come from all generations or teenagers will feel excluded from opportunities. “When young people experience a ‘combination of problems’, such as unemployment, discrimination, poor skills, low incomes, poor housing, high crime and family breakdown these problems can prevent social inclusion and can be reinforced through generations.”<sup>22</sup> Generational change is difficult to accomplish, as stereotypes and fear are taught at a young age. Without personal connection to disadvantaged youth, older generations will not have a chance to change their opinions or soften their mental picture of the youth. If those changes are not accomplished, teenagers will have less opportunities to break out of their negative cycle and continue along their path to a good life.

### **Model of Change**

In order to begin to help adolescents overcome roadblocks and get onto a path to a good life, Midnight Basketball Australia has employed multiple techniques. One highly popular model to aid adolescents in positive development is based on program participation. Participation in a program allows teenagers to become involved in the community, causing members to soften their judgements of the youth. This new interaction between adolescents and their community, if fostered properly, can help lead to more

independence in the teenager’s daily lives. With more independence, teenagers will have higher self-esteem and a higher ability to stay focused on a good life in the future.

### **Program Based Solutions**

One basis of program-based solutions for aiding adolescents on the path to a better life is that it is possible to divert them from delinquent behavior. However, the solution of participation alone is a short term one: it may work for the duration of the program, but when the program ends, delinquent adolescents will often return to their previous nefarious activities. Rather than targeting roadblocks, program-based solutions focusing on participation alone only ensure delinquents don’t have the time to commit any errant behaviors.

To address these issues, Midnight Basketball Australia’s program goes beyond participation and draws teens in by giving them a chance to learn, have fun, and grow in a community. Participation in community activities is especially important for at-risk teenagers, as it is associated with less psychological distress, better mental health, and both personal and neighborhood wellbeing.<sup>23</sup> By creating a community activity, teenagers and adults in the community can bond and perhaps create a greater impact outside the program. When teenagers feel like they are part of the community, they are more likely to participate in organized recreation activities. This can have positive benefits for all of society since it reduces the amount of unstructured free time at-risk teenagers have, which in turn reduces the risk of teenagers straying from the path to a good life.<sup>24</sup>

### **Community Involvement**

The idea of community involvement comes from teenagers having a formal or informal mentorship or role model, often provided by family, school, religious, or broader community members. “An individual’s ability to encounter other members of their community is rooted in his/her daily behavioral regularity, explaining the emergence of familiar strangers in daily

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21 Ibid.,572

22 Cultural and Indigenous Research Centre Australia, “*Evaluation Report Midnight Basketball: Evaluation of CIRCA Player Survey Reports 2006-2010*,” (2011): 17 (internal document)..

23 Cultural and Indigenous Research Centre Australia, “*Evaluation Report Midnight Basketball: Evaluation of CIRCA Player Survey Reports 2006-2010*,” (2011): 17.

24 Caldwell, Kleiber, and Shaw, “Boredom, Stress, and Social Control in the Daily Activities of Adolescents,” 275.



life.”<sup>25</sup> This idea is rooted in simple interactions that youth have with community members on a daily basis. These “interactions may emerge from social contagion enabled by physical proximity: from not noticing each other, to unintentionally interacting, to intentional communicating, to mutual trust.”<sup>26</sup> It can also be formed during a structured community program that relies on volunteers from the community to ensure its success. Interactions can occur in a variety of situations such as at work, school, on public transportation, or in any social setting. These moments of positive interaction slowly allow the perception of adolescents to change in the mindsets of community members. However, this concept of forming happenstance relationships and positive memories is challenged if the adolescent is never in the same place at the same times.

As adults begin to trust in the adolescents of their community, their mental picture of the youth may begin to shift. This can open opportunities for interaction between the two distanced groups. A program like Midnight Basketball provides the grounds for this interaction to begin. It gives an “opportunity for attitudinal change and potential re-engagement in education and employment as volunteers have the willingness to advocate for these young people.”<sup>27</sup> With increased advocacy and involvement in the community, teens are able to get help breaking free of negative patterns and staying on their path towards a good life.

### **Independence**

Independence stems from communication between teenagers and adults. As communication is facilitated between an adult and a teenager, adolescents are given more choices through education, occupation, recreation, and other opportunities. Making ongoing independent choices is associated with increased motivation and efficient learning.<sup>28</sup> This helps with the roadblock of apathy by allowing teenagers to focus on topics of interest to them. Additionally, increased independence addresses another roadblock by building

self-esteem in adolescents. This creates a positive cycle of empowerment that can help lead youth out of a negative lifestyle and back onto a path towards a good life.

By allowing adolescents to have a say in their lives and their schedule throughout the day, the positive results are proven to be greater than a condition forced upon them.<sup>29</sup> By writing down their schedules and being accountable for them, teenagers begin to take pride in their activities. Alongside positive reinforcement from the community, this could become the best way to ensure youth continue on the path to a good life.

### **Future Focus**

Another model of change focuses on teaching youth to positively reappraise stressors toward regulating negative emotion in combination with maintaining a future focus. This tactic is called cognitive reappraisal. The method assists teenagers in having less stress, which addresses one of the roadblocks towards fostering better health and functioning.<sup>30</sup> With added involvement from community members and a teaching component, adolescents can feel more connected to the program and the lessons they are learning. This method focuses on giving youth the tools to cope with stresses caused by family life, school problems, peer pressure, boredom, trouble with the law, and many other daily stressors. The program also ensures youth are able to use these tools following this program. By allowing youth to shift away from these stressors, it is also possible to give adolescents tools to help foster positive effects that lead towards a good life.

While it creates positive effects and addresses roadblocks like stress, an important part of the shift and persist model is that it focuses on the future through the setting of goals. In the Midnight Basketball Australia program, a goal must be SMART: specific, measurable, attainable, realistic, and time bound. If youth do not believe they can attain their goal, they will disassociate more quickly. By creating small mile-

25 Kay Axhausen, Xianfeng Huang, Der-Hong Lee, and Lijun Sun, “Understanding Metropolitan Patterns of Daily Encounters,” *Proceedings of the National Academy of Sciences of the United States of America* 110, no. 34 (2013): 13774.

26 Ibid.

27 Cultural and Indigenous Research Centre Australia, “Evaluation Report Midnight Basketball: Evaluation of CIRCA Player Survey Reports 2006-2010,” 17.

28 Jae Patterson and Elizabeth Sanli, “Learning Effects of Self-Controlled Practice Scheduling For Children and Adults: Are the Advantages Different?,” *61 Perceptual & Motor Skills: Learning & Memory* 116, no. 3 (2013): 742.

29 Ibid., 746

30 Nurius, Prince, and Rocha, 574

stones to help adolescents feel good about sticking to their goals, it may be possible to hold adolescents' attention long enough to help them break out of their negative cycle. With each completed goal, adolescents will learn new methods of coping, gain more confidence in their abilities, and change the perception the community has of them.

### **Workshop**

Through program-based solutions such as ones offered by Midnight Basketball Australia, community interactions, increased chances for independence, and future oriented skills, at-risk adolescents are able to focus on staying on a path towards a positive lifestyle. These solutions are especially effective when they target various roadblocks that can lead at-risk teenagers into a negative cycle.

The workshop I created synthesizes these solutions, as well as targets roadblocks, by assisting teenagers in working with community members to create an independently structured schedule. To begin the workshop, teenagers are prompted by adult community members to think critically about what needs to be accomplished throughout the day to meet necessary needs for themselves, their family members, school-work, and activities. This demonstrates the solution of community interactions, which assist in providing a role model for an at-risk teenager, as well as changes perceptions of delinquent teenagers in the community.

Teenagers begin creating their schedule by simply listing all their activities, then prioritizing them by importance. This allows them to achieve both independence as well as utilize future-oriented tools and target the roadblock of unstructured free time. By prioritizing their day, teenagers begin to independently overcome roadblocks, as well as practice the skills necessary to do so, helping them avoid falling into a negative cycle currently and in the future.

At the end of the workshop, teenagers fill in a pre-designed daily calendar and discuss how they will ensure the tasks are accomplished. Through this, at-risk teenagers begin holding themselves accountable for their actions and gain a sense of accomplishment.

By learning the skills to avoid falling into a negative cycle, at-risk adolescents are much more likely to achieve their definition of a good life. This

good life typically includes the basic necessities, such as a place to live; a stable job; a high school education; and feeling loved, supported, and included in their family and community. The workshop I created aims to assist at-risk teenagers with these goals by building on Midnight Basketball Australia's current program-based solutions. Through creating more evidence-based solutions such as this program and aiming to target the aforementioned roadblocks, it is possible to both alter the idea of delinquent teenagers in the perceptions of society and assist at-risk teenagers in becoming happy, functioning members of society.

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# Queering Sex Ed: The Need for Inclusivity in Sexual Education Curricula

By: Sage Burdge, *Arcadia University*

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## Introduction

From its beginning, sexual education in the United States has been widely debated by scholars, educators, parents, and policymakers. Almost everyone has an opinion on what the curriculum should include, as well as how and when it should be taught. In earlier days, the population these decisions affected the most, the youth, were not included in this conversation; however, contemporary literature has begun to make up for this shortcoming. Much of the work in this field focused on students' perceptions and thoughts on how sex education programs in their schools serve them. Scholars found the typical models of sex education today omit an often-silenced group: LGBTQ+ youth. This omission proved to have detrimental effects on the sexual and mental well-being of this population, such as a higher risk of sexually transmitted infections, intimate partner violence, and higher rates of suicide and substance abuse. This review highlights the ways current sex education curricula fail sexual minorities and illustrates how this exclusion perpetuates social inequality of the LGBTQ+ community.

## Background

In this paper, the term LGBTQ+ is synonymous with "sexual minorities" and is defined as any sexual or gender identity that is not heterosexual and cisgender. This includes, but is not limited to, lesbian, gay, bisexual, transgender (nonbinary, genderqueer, or agender), queer/questioning, asexual/aromantic, and intersex. Heterosexual is used when referring to any person who identifies as heterosexual and cisgender. Cisgender is defined as a person whose gender aligns with the sex assigned at birth.

Currently, there are a few different categories of sex education programs generally recognized by experts in this field. The categories referred to in this paper are comprehensive, abstinence-only, inclusive, and exclusive. Comprehensive education refers to programs that instruct students on specific subjects of sexuality and relationships, such as birth control use,

sexually transmitted infections, anatomy, and healthy relationships. Abstinence-only programs advocate exclusively for abstinence until marriage for all students and do not include any instruction on sexual health practices. Inclusive sex education programs include all sexual and gender identities in the content of the program, rather than just heterosexuality. Exclusive programs are the opposite of inclusive, comprised only of content applicable to heterosexual sex.

Combinations of these described characteristics can be present in a single set of sexual education curriculum. For example, a program can include comprehensive sexual health information but still be exclusive of sexual minorities. Any program that excludes sexual minorities can be described as heteronormative. The content of heteronormative programs focuses only on heterosexuality, assumes heterosexuality of all students and the general population, and places it above all other sexualities in terms of acceptability and legitimacy.

## Review of the Literature

### Introduction

Sexual education programs in schools vary in content and approach, but most of these programs exclude, pathologize, or ignore sexual minorities. The mainstream politics of sex education ignores this issue; most often the argument is between whether or not sex education programs should even include information on sexual health or merely advocate for abstinence until marriage. This diminishes the consequences posed by excluding sexual minorities from sex education. The absence of information relevant to sexual minorities in sex education programs can result in negative consequences, such as discrimination and higher incidences of unsafe sexual practices. LGBTQ+ youth may also feel alienated from their peers because of the exclusion of their identities from the curriculum. Sex education that is inclusive of all identities is necessary to improve school climate and prepare sexual minorities to practice safe sex. Scholars support



this statement but, in order to drive progress, studies on existing programs and comprehensive proposals for improvement are needed.

### **History of Sex Education in the United States**

Since its inception in the early 20th century, sexual education has been predominantly heteronormative. Initially, sexual reform in education disguised intent to maintain the institution of marriage and instill values of socially acceptable sexuality in youths. This phenomenon grew in popularity quickly in the U.S., with nearly 3,000 schools offering some form of sexuality-related education to students by 1920.<sup>1</sup> Around this time, the federal government became more involved in controlling public sexual health information, initially focusing on reducing the spread of sexually transmitted infections. The federal government continues to exercise control over sexual education to this day.

Sexual education remained intensely conservative until the 1960s, when the birth control pill came on the market and began to garner attention; with this came a push from liberal organizations for reform in sex education. The public demanded more accessible and comprehensive sexual health information to supplement the growing awareness of both government controlled information and sexuality in American society. In the 1980s, with the threat of AIDS looming, the federal government began to fund strict abstinence-only sex education programs, built mostly on misinformation that instilled fear and shame. Contemporarily, the federal government continues to fund abstinence-only programs. However, many states have begun to turn away from abstinence-only education, shifting to comprehensive based programs. In recent years, the mainstream argument over best practices in sex education exists between abstinence-only and comprehensive programs. This debate ignores the lack of inclusivity for marginalized identities within sex education.

### **Heteronormativity and Exclusion in Contemporary Sex Education**

One of the cornerstones of abstinence-on-

ly programs is the prevention of unplanned teenage pregnancy. This is a significant representation of the heteronormativity and exclusion in sexual education simply because of its disregard for students in same-sex relationships who do not need pregnancy prevention. However, many of the comprehensive curricula also lack information for sexual minorities. Typical comprehensive programs, much like abstinence-only programs, focus on heterosexual relations and pregnancy prevention. The comprehensive programs that include LGBTQ+ information often attach a negative social stigma to non-heterosexuality. One of the most well-known instances of this are programs that only include homosexuality in instruction on HIV/AIDS.<sup>2</sup>

Several authors have broken down sexual education curricula into a spectrum ranging from inclusive to exclusive. Many programs on the exclusive side actively silence, ignore, and pathologize any behaviors existing outside of heterosexuality.<sup>3</sup> Pathologizing minority sexualities is even more harmful than complete ignorance because this implies sexual minorities are a lesser alternative to heterosexuality. These programs LGBTQ+ content is inherently dangerous. Most sexual education not only is exclusive of LGBTQ+ youth, but also covertly promotes a certain brand of heterosexuality that excludes anyone outside of the white, middle-class image.<sup>4</sup> Scholars refer to this phenomenon as the “hidden curriculum” within sex education. Additionally, sexual curricula often only recognize vaginal intercourse as sex, which excludes other forms of sexual expression and behaviors. This limits LGBTQ+ individuals, while leaving heterosexual students with only a partial understanding of sexual practices and behaviors.

Despite being focused on the inclusion of all sexual minorities, most scholarly work on inclusive sex education seems to omit any mention of intersex, asexuality, and gender identities outside of the binary. These identities are crucial in creating an inclusive sexual education curriculum that genuinely includes all students. There is a need for further research to fill this gap and address these identities.

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1 Jonathan Zimmerman, *Too Hot to Handle: A Global History of Sex Education* (Princeton: Princeton University Press, 2015).

2 Robert McGarry, “Build a Curriculum That Includes Everyone,” *Phi Delta Kappan* 94, no. 5 (2013): 27-31; Kris L. Gowen and Nichole Winges-Yanez, “Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youths’ Perspectives of Inclusive School-Based Sexuality Education,” *Journal of Sex Research* 51, no. 7 (2014): 788-800.

3 McGarry, “Build a Curriculum,” 27-31; Gowen and Winges-Yanez, “Youths’ Perspectives,” 788-800.

4 Tanya McNeill, “Sex Education and the Promotion of Heteronormativity,” *Sexualities*, 16, no. 7 (2013): 826-846.

## Implications for Exclusive Education and the Need for Inclusivity

The push for inclusivity in sex education is not just for the sake of doing so. Many studies have shown that LGBTQ+ youth face great hardship because of their identities.<sup>5</sup> LGBTQ+ youth experience higher rates of suicide and mental illness that are often the result of experiencing homophobia.<sup>6</sup> They also have been shown to engage in risky sexual behaviors and to use drugs and alcohol more frequently in comparison to heterosexual youth.<sup>7</sup> A study conducted by the Gay, Lesbian, and Straight Education Network (GLSEN) shows that hostile school climates can harm students' grades, attendance, and other extracurricular or academic achievements.<sup>8</sup> It can also negatively affect students' mental well-being and self-esteem.<sup>9</sup> It is undeniably essential for all students to feel safe and welcome in their schools. The introduction of inclusive education can lessen the struggles of sexual minorities and the discrimination they face by reducing the stigma surrounding them and improving the climate for LGBTQ+ youth in schools. This inclusivity can lead to better school experiences for sexual minorities in which they can reach their full potential and have opportunities equal to their peers.

Implementing inclusive education would improve school climate concerning the treatment of LGBTQ+ students. Inclusive sex education has also been shown to lead to healthier relationships, to significantly increase students' knowledge of sexual health, and more importantly, to increase the likelihood of application of this knowledge.<sup>10</sup> The information presented in inclusive sex education can benefit heterosexual, cisgender students and teachers as well. Being more aware of LGBTQ+ topics can lead them to a better understanding of their sexualities and their

relationships with non-heterosexual people in their lives.

## Suggestions for Improvement

Scholarly works on inclusivity in sex education often make suggestions to educators and administrators on how to move towards more inclusive curricula.<sup>11</sup> Many go beyond sexual health and relationship content to discuss broadening the curriculum by including themes of social justice and anti-oppressive messages and attitudes. The National School Climate Survey by GLSEN suggests enacting bullying prevention policies and ensuring exposure to LGBTQ+ content areas of academic study outside of sex education in order to make school environments more inclusive for LGBTQ+ youth.<sup>12</sup> Administrative support of Gay-Straight Alliances and other LGBTQ+ clubs in schools is another manner in which schools can be more inclusive for sexual minorities. The approaches mentioned above are often motivated by a concern for the "hidden curriculum", or potentially harmful climate toward LGBTQ+ students. The approaches emphasize how providing sex education that includes all identities will work to improve school climate by boosting tolerance and acceptance.

As demonstrated, there is an abundance of suggestions focused on school climate and broader approaches to increase inclusivity. While focusing on school climate is essential, scholars seem to take for granted an administrator's ability to know what information would best benefit minorities when reforming sex education. Despite the push for improving programs and plenty of work describing the positive outcomes of doing so, there is a simultaneous lack of concrete discussion or information on how to accomplish such a task. All of these suggestions from scholars, along with actual LGBTQ+ inclusive sexual

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5 Maxime Charest, Peggy J. Kleinplatz, and Jessie I. Lund, "Sexual health information disparities between heterosexual and LGBTQ+ young adults: Implications for sexual health" *The Canadian Journal of Human Sexuality* 25, no. 2 (2016): 74-85; John Elia and Mickey Eliason, "Dangerous Omissions: Abstinence-Only-Until-Marriage School-Based Sexuality Education and the Betrayal of LGBTQ Youth," *American Journal of Sexuality Education* 5, no. 1 (2010): 17-35; Joseph Kosciw, et al, "The 2011 National School Climate Survey" (New York: GLSEN, 2012); Carla Schlesinger, Cassandra Davis, and John Kelly, "Substance Use by Same Sex Attracted Young People: Prevalence, perceptions, and homophobia," *Drug and Alcohol Review* 10, nos. 1-2 (2015): 358-365.

6 Elia, "Dangerous Omissions," 17-35.

7 Charest, "Implications for sexual health," 74-85; Schlesinger, "Prevalence, perceptions, and homophobia," 17-35.

8 Kosciw, "School Climate Survey."

9 Elia, "Dangerous Omissions," 17-35.

10 Brian Mustanski, et al, "Feasibility, Acceptability, and Initial Efficacy of an Online Sexual Health Promotion Program for LGBT Youth: The Queer Sex Ed Intervention," *Journal of Sex Research* 52, no. 2 (2015): 220-230.

11 Elia, "Dangerous Omissions," 17-35; Gowen, "Youths' Perspectives," 788-800; Kosciw, "School Climate Survey"; McGarry, "Curriculum," 27-31.

12 Kosciw, "School Climate Survey."

health information, must be made into a concrete curriculum that can be used in schools.

Additionally, there is a lack of data on already existing inclusive sex education programs. This suggests there are not many inclusive programs, and the ones that do exist are not being evaluated or discussed in the professional sphere. Mustanski's study investigating the efficacy of an online sex education program for LGBTQ+ youth is one of the only works that studies a specific program and how the participants received aspects of the program.<sup>13</sup> This study showed positive user feedback and increased learning from the participants, boding well for much needed future research. Other scholars, like Gowen and Winges-Yanez, have studied how students feel about the programs they have experienced, but these studies include many different programs without going into detail about the sexual health content missing from the programs, further demonstrating the need for future research.<sup>14</sup>

### **Theoretical Background**

In Bourdieu's social and cultural reproduction theory, he argues that education systems favoring the middle class leave lower class students behind, in turn reproducing their class status.<sup>15</sup> This theory is applicable when considering the exclusivity of sex education. Most contemporary programs only cater to cisgender and heterosexual people, leaving sexual minorities out of the curriculum. In line with Bourdieu, one can say heterosexual students, already having the upper hand over sexual minorities coming into adulthood, will continue to be given this advantage through exclusive sex education. The cultural capital (a set of cultural knowledge, skills, and behaviors that act as social assets) both groups hold continues to be reproduced, which means a continued disadvantage for sexual minorities.

Another aspect of Bourdieu's theory can be applied when considering sex education. He argues the kind of education described above socializes students in a way that perpetuates the privilege of the dominant group.<sup>16</sup> If schools shape culture, then exclusive education will continue to shape a society in which sexual minorities are excluded and oppressed. Addi-

tionally, students on an individual level will internalize these values of exclusion and develop a disposition of discrimination against sexual minorities.

### **Argument One**

LGBTQ+ inclusive sex education is needed in schools to improve the well-being of sexual minorities. The primary goal of sex education is to provide students with information on sexual health and relationships. Current sex education is failing in this regard for sexual minorities. Therefore, reform must be enacted to have a curriculum that serves all students and gives them the knowledge to be careful and healthy. Inclusive education is needed to ensure this goal so that sexual minorities have the same opportunities as their peers.

As highlighted previously in the literature review, the school climate for sexual minorities is dependent mainly on their inclusion in the curriculum. Studies have shown that most schools in the U.S. have adverse climates toward LGBTQ+ students, which can lead to poor attendance, poor academic performance, and poor mental and physical well-being for these students.<sup>17</sup> An inclusive sex education program would be a step in the right direction towards the improved treatment of sexual minorities from peers and staff for a better school experience.

Inclusive education would also play a significant role in working toward a solution for an issue that many sexual minorities face: acceptance of their own identities. Many sexual minorities struggle at young ages to accept and understand themselves, since most have been socialized in an environment where being LGBTQ+ is wrong or unusual. By introducing sex education that includes information on the LGBTQ+ community early in students' education, the community would be normalized. This normalization would aid minorities in understanding and accepting their own identities sooner and with less distress. It would also lead to more sensitivity and tolerance from heterosexuals, since being exposed to this information would reinforce the normalcy of the LGBTQ+ community. Finally, due to all of these outcomes, inclusive education is a form of activism which works towards

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13 Mustanski, "Feasibility," 220-230.

14 Gowen, "Youths' Perspectives," 788-800.

15 Roy Nash, "Bourdieu on Education and Social and Cultural Reproduction," *British Journal of Sociology of Education* 11, no. 4 (1990): 431-447.

16 Nash, "Bourdieu," 431-447.

17 Kosciw, "School Climate Survey."

equality for the LGBTQ+ community by demanding visibility.

Perhaps the most persuasive part of the argument for inclusive education is that it remains unchallenged by academic professionals. They understand the necessity of positive representation of all gender and sexual identities in curricula. That being said, it is also essential to recognize the opposition that stagnates progress. Parents voice most of the opposition to inclusive education, grounded in religious reasoning or prejudice toward the LGBTQ+ community. It is difficult to argue with people who are unwilling to hear out the opposing side. However, it is crucial when challenging this argument to remember that exclusive education is dangerous for LGBTQ+ youth, and students' safety in schools should be a top concern.<sup>18</sup>

### **Argument Two**

There is a need for more inclusive, accessible, and specific information regarding the improvement of current sex education programs. Many scholars push for inclusive sex education in schools and make suggestions for ways to work toward this goal, but these suggestions are often vague and do not include specific sexual health information that would be useful to sexual minorities. To effect real change in sex education, it is essential to give administrators and educators the tools to achieve it. The clearer and more accessible the information is, the better the chances are educators will use it to improve the curriculum. Creating accessible curricula or comprehensive plans for improvement to current curricula is the next step for the inclusive education movement.

The current studies in this field are often exclusive of asexual, intersex, and nonbinary identities. It is crucial to include these identities when proposing sexual education reform, as they are often generally underrepresented. Administrators are not always aware of these often-forgotten identities and therefore must be aided during reform so these identities will not continue to be left out.

### **Conclusion**

With all of the struggles the youth of this age face, schools must do their part in providing an accepting environment that supports inclusive learning and discovery. Most current sex education programs inhibit this process, as they lack the ability to educate

and inform sexual minorities on sexual health and romantic relationships. Therefore, major reform in sex education is needed to achieve this goal and, in turn, foster acceptance and respect for students of all identities in schools. Inclusive programs prove essential for improving the well-being of LGBTQ+ youth and progressing toward social equality for the LGBTQ+ community. Because school is a central part of development and socialization for youth, the introduction of LGBTQ+ topics early into students' lives will normalize the LGBTQ+ community and reduce prejudice from heterosexual peers. It will also help sexual minorities to accept their own identities with greater ease and at an earlier age. While there are pieces of literature in this field of study supporting these objectives, there is a lack of representation of all sexual minorities, specifically in inclusive sex education literature. The strongest parts of current programs and the proposed improvements offered by scholars must be gathered and amalgamated to create a cohesive, comprehensive curriculum. The inclusive education that results will instill in LGBTQ+ youth the notion that they are just as deserving of equal education and opportunities as their heterosexual peers.

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18 Charest, "Implications for sexual health," 74-85; Elia, "Dangerous Omissions," 17-35; Kosciw, "School Climate Survey;" Schlesinger, "Prevalence, perceptions, and homophobia," 17-35.

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# Subversion, Self-Determination, and the *Portrait of the Gozzadini Family*

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The Renaissance family portrait served a nobler role than a simple work of art. It functioned instead as a representation of history, a preservation of legacy, a record of lineage, and/or a documentation of relationships. It could be memorializing or celebratory, or it could feign to be so while carrying a much grimmer and more pointed message.

Lavinia Fontana's 1584 *Portrait of the Gozzadini Family* (Fig. 1), commissioned by Laudomia Gozzadini in Bologna, exemplifies the latter. The patroness herself sits dressed in red with her sister Ginevra, who was deceased at the time. Between them sits their father Ulisse, also deceased, and at the fringes stand Laudomia's husband, Camillo, and Ginevra's husband, Annibale.<sup>1</sup> To a casual eye, the purpose of this painting seems mundane: to celebrate the marriages and to honor relatives post mortem. However, to dismiss this work as a simple commemoration of the double marriage and a tribute to the conjugal bond would be to miss the nuances of the painting, which tell a far more discordant story.

Closer analysis shows Fontana diverging greatly from portraits of similar typology and social standards of the time. Fontana transgresses cultural norms by compositionally diminishing the husbands' authority over their wives and returning the women to the household of their father, thereby emphasizing the patrilineal rights of her patroness. This reassociation and the power ascribed to Laudomia independently are achieved through an integration of cues from the



Figure 1, Lavinia Fontana, *Portrait of the Gozzadini Family*

composition, the clothing and objects depicted, the public and private relationships of the subjects, the inscription on the back of the work, and the divergent typology and style. With these elements, Lavinia Fontana creates a portrait entirely atypical for its time.

Compositionally, it is immediately clear who the dominant and secondary figures of the *Portrait* are. The sisters Laudomia and Ginevra sit in the foreground, occupying more space than any of the men, their rich ornamentation contrasting sharply with the dark simplicity of the men's garb. Ulisse Gozzadini, while painted further in the background than his daughters, is almost dead center. By contrast, Annibale and Camillo fade into shadow, greatly obscured by their wives in front of them. The prominence of the father and the insignificance of the husbands in relation to their wives is too marked for a common conjugal reading to be plausible. In addition, Annibale and Camillo have no seat at the table, the space occupied only by the family of origin. They are closed out of the inner circle, met almost entirely with the backs of Ulisse, Ginevra, and Laudomia, which suggests they are unwanted and peripheral. Fontana adds a connection between spouses in the form of their hands resting on their wives' shoulders, but the slight, timid nature suggests it is a nominal gesture only. In the case of Laudomia, it is unclear whether her husband's fingertips are even touching her shoulder or just hovering slightly above it. A complete separation could have explicitly conveyed a chill between the spouses, but deliberately including what seems to be an ineffectual attempt at connection evokes (at least to the contemporary viewer) a hint of the sisters' scorn. In this way, Annibale and Camillo appear as outcasts within their own family, evincing an unusual alteration to the power dynamic.

Because the husbands are openly slighted, the women's clothing – exact replicas of the dresses and jewels supposedly purchased with their father's money

1 Caroline P. Murphy, "Lavinia Fontana and Le Dame Della Citta: Understanding Female Artistic Patronage in Late Sixteenth-Century Bologna," *Renaissance Studies* 10, no. 2 (1996): 195.

for their marriages – seems suspiciously out of place.<sup>2</sup> In contrast to the sisters' well-lit dresses, shadows almost obscure the garb of Annibale and Camillo, but what is visible seems far too plain to be wedding attire. Laudomia and Ginevra, as was customary, brought substantive dowries when they married their distant cousins in 1570, the usufruct of which was paid to them by the trustees of Ulisse's estate.<sup>3</sup> The sisters also inherited money from the deaths of other family members, a sum of which they jointly invested in land.<sup>4</sup> However, after the deaths of Ginevra and several aging trustees, Annibale assumed full control of the management of Ulisse's entire estate, including Laudomia's dowry and the sisters' land in 1576 and 1581 respectively.<sup>5</sup> Unfortunately for Laudomia, Annibale, swayed by the corruptive influence of power, began withholding money from her as early as 1579.<sup>6</sup> The wealth of her own family started slipping inexorably from her grasp. Thus the wedding gowns and jewelry in the *Portrait of the Gozzadini Family* serve as a pointed reminder about where ownership of that money rightfully ought to lie.<sup>7</sup> The exactitude of the replication supports this interpretation because Fontana's attention to detail on every jewel the sisters wear and the conspicuous lack of matching riches sported by the husbands evinces Laudomia's desire to emphasize the sisters' patrilineal wealth. This choice closely associates the women with their father and his estate while distancing them from their husbands' households. In Renaissance Italy, the transfer of a bride from her family of origin to her husband's family was absolute, and much like a sale.<sup>8</sup> To diminish the impact of that exchange while her husband still lived profoundly undermined the established marriage practices of the time.

Despite the sisters' conspicuous marriage attire, several aspects of their clothing do not correspond with a typical reading of marriage celebration. The

black lace overdress, an addition by Fontana, is suited for mourning, perhaps symbolic of the deaths of Ginevra, Ulisse, and all the children the sisters had buried; four of Ginevra's children and six of Laudomia's had not survived infancy.<sup>9</sup> The physical, pictorial darkness on the dresses may also cast a metaphorical shadow on the marriages that those dresses represent.<sup>10</sup> After all, these two marriages saddled Laudomia with a dishonest, controlling brother-in-law and, evident in stipulations from her will that Camillo's bastard children never receive her money, an unfaithful husband.<sup>11</sup> By this interpretation, the husbands' general inclusion in the portrait becomes complicated. Perhaps Laudomia felt she gained a certain authority through her marital state and the resulting implications of legitimate adulthood. The other original element of Laudomia's appearance is the lynx pelt draped over her lap, which symbolizes chastity and sharp sight.<sup>12</sup> The latter implication might subtly state that she was aware of the ways in which Annibale and Camillo were mistreating her, and indicate her unwillingness to be deceived. The implication of chastity is potentially another way of symbolically separating Laudomia from her husband in favor of her birth family. Laudomia showed herself to be fertile, albeit bearing only two children who survived infancy, but after the death of her only son, the pregnancies stopped. The loss of an heir must have disappointed Camillo bitterly, perhaps putting an end to their sexual relationship. Under this reading, the lynx pelt might then allude to the distance between Camillo and Laudomia, recalling the days of her virginity, during which time the only male with whom she could be associated with was her father. This further minimized the stated relevance of her husband.

This emphasis on birth family is marked very visually. Ulisse and his daughters are all around one table, the light striking their brows in much the

2 Caroline P. Murphy, *Lavinia Fontana: a painter and her patrons in sixteenth-century Bologna* (New Haven: Yale University Press, 2003), 119 and 122.

3 Caroline P. Murphy, "Lavinia Fontana: an artist and her society in late sixteenth century Bologna" (PhD diss., University of London, 1996), 164.

4 Murphy, *Lavinia Fontana: a painter*, 123.

5 Ibid., 121-123

6 Ibid., 124

7 Murphy, *Lavinia Fontana and Le Dame della Citta*, 198.

8 Christiane Klapisch-Zuber, *Women, Family, and Ritual in Renaissance Italy* (Chicago: The University of Chicago Press, 1987), 215.

9 Murphy, *Lavinia Fontana: a painter*, 126-127

10 Murphy, *Lavinia Fontana: an artist*, 176

11 Murphy, *Lavinia Fontana: a painter*, 130

12 Ibid., 127

same way, whereas Annibale and Camillo stand in the shadows. The small dog on the table, caressed by Laudomia, is most likely a *fides* motif.<sup>13</sup> Lapdogs commonly accompanied noblewomen in portraiture, as seen in one of Fontana's other works, *Portrait of Constanza Alidosi* (Fig. 2). However, the dog lies on the center of the table – dominated by the family of origin – and not Laudomia's lap, allowing Fontana to imply Laudomia is faithful to a very specific (and here, literal) circle of people. When a woman was married, her allegiance was supposed to transfer to her husband and her new family, but the targeted nature of her loyalty symbol seems to suggest the opposite in Laudomia's case.<sup>14</sup>

Despite the numerous allusions to the collective power and importance of Laudomia's birth family, it is not always emphasized as a single undifferentiated unit. Power is ascribed to Laudomia specifically, (and to Ginevra too, to a lesser degree), through color and composition choice. The vividness of her red dress is striking in comparison to the dark and neutral attire of the other subjects, setting her apart and evoking life, strength, and boldness. While Laudomia gives her father the middle of the paint-



Figure 2, Lavinia Fontana *Portrait of Constanza Alidosi*



Figure 3, Sofonisba Anguissola, *Portrait of the Artist's Family*

ing, he points towards her as if redirecting the viewer's attention; in this way, Laudomia expresses both daughterly piety by ceding overt centrality to him and her own legitimacy through her father's pointed approval of her. Although all the subjects face the viewer directly, they are also angled toward Laudomia, guiding the viewer's eye toward her as well. Both sisters are accorded importance by the massive amount of space they occupy in the foreground. Both also benefit from the inscription on the back of the painting. The subjects' names and ages are specified, along with, surprisingly, the men's identification relative to the women.<sup>15</sup> They are the "father of" or "husband of," while the sisters are simply named, when traditionally it would be the other way around. That the sisters are quite literally not defined by the men present is a remarkably progressive statement that Laudomia and Fontana have made.<sup>16</sup> Inscribed beneath Laudomia's name is "fece fare la presente opera," meaning, "she has had made this present work."<sup>17</sup> Though she yields the center space to her father, ownership of the entire scene is hers. While the majority of the compositional cues emphasize Laudomia's association with her father's family, these other details give her authority of her own, clearly communicating her proprietorship and intentionality. Finally, Fontana painted the *Portrait of the Gozzadini Family* with dimensions of 253.5cm by 191cm. The *Portrait* is enormous for its kind, its subjects almost life-sized and its dimensions more appropriate to an altarpiece



Figure 4, Giovanni Antonio Fasolo, *Family Group Portrait*

13 Ibid., 127.

14 Diane Owen Hughes. "Sumptuary Law and Social Relations in Renaissance Italy," in *Disputes and Settlements: Law and Human Relations in the West*, edited by John Bossy (Cambridge: Cambridge University Press, 1983), 98.

15 Murphy, *Lavinia Fontana: an artist*, 157.

16 Murphy, *Lavinia Fontana: a painter*, 118.

17 Murphy, *Le Dame della Cita*, 195.



than a family portrait of that era. The grandeur of such a large painting makes it, and Laudomia's assertion of patrilineal authority, unignorable.

The *Portrait of the Gozzadini Family* transgresses more than just size typological norms. Portraits of adult women with their fathers were all but nonexistent. When a woman was grown, she married or went into a convent; either way she was separated from her parents. Painting Laudomia and Ginevra with Ulisse at all, ignoring the other connections described previously, had to have been a very deliberate association that strongly undermined the fact of their marriages. This transgression then makes the *Portrait*, and by consequence its intended message, difficult to categorize. One category of family portraiture is parent(s)-and-child(ren), typically done to document legacy and lineage, as seen in Sofonisba Anguissola's 1558-9 *Portrait of the Artist's Family* (Fig. 3) or any of the family portraits of Giovanni Antonio Fasolo (Fig. 4, Fig. 5).<sup>18</sup> Fasolo's *Portrait of a Family Group* (Fig. 5) shows a typical parent-children scene: the patriarch



Figure 5, Giovanni Antonio Fasolo, *Portrait of a Family Group*



Figure 6, Lorenzo Lotto, *Conjugal Portrait*

– his dominance evinced by his size and centrality – surrounded by his progeny, with his offspring in arm's reach. His children are young and presumably unmarried, tied only to his household, so their relevance in the painting is grounded in their relationship to their father as his heirs. Fontana treats the sisters similarly in the *Portrait of the Gozzadini Family*, drawing them back home to their father.

Precluding that categorization from fitting well, however, is the fact that this type of portraiture is notably not done with adult children, especially not married adult daughters who are essentially no longer part of the family.<sup>19</sup> The inclusion of the husbands makes this reading even more questionable. Furthermore, that Laudomia's two daughters and Ginevra's three sons were alive but not pictured sidesteps the purpose of commissioning such a portrait. Fontana is economical, painting only enough of the necessary players to recount the Gozzadini drama. Her omissions eliminate lineage as the intended subject and prompt the viewer to consider the anomalous nature of the relationships between the people shown.

Another potential category for the *Portrait of the Gozzadini Family* is a conjugal portrait, but the centrality of the father and the discrepancies of the spouses' depictions disputes that interpretation. The conjugal portraits of Lorenzo Lotto (Fig. 6, Fig. 7) feature spouses who are alone with each other (or alone save a cherub or *fides* symbol) and unambiguously central. Lotto's depiction of Micer Marsilio Cassotti and Faustina Cassotti (Fig. 6) demonstrates tropes of the genre conspicuously absent from the *Portrait of the Gozzadini Family*. The groom clearly presents a ring, the proud



Figure 7, Lorenzo Lotto, *Conjugal Portrait*

18 Diane Owen Hughes. "Representing the Family: Portraits and Purposes in Early Modern Italy." *Journal of Interdisciplinary History* 17, no. 1 (1986): 26; Jacqueline M. Musacchio, "The Material Culture of Family Life in Italy and Beyond," in *A Companion to Renaissance and Baroque Art*, edited by Babette Bohn and James M. Saslow (Chichester: Wiley-Blackwell, 2013), 283

19 Klapisch-Zuber, *Women, Family, and Ritual*, 224-225.

symbol of marriage, for the viewer to see as he reaches across to slip it onto his bride's finger. Lotto's bride and groom are on the same level as each other, making contact not only by holding hands but also by sitting close enough to press their legs together. This physical connection is a far cry from the chilly hovering of Camillo's fingertips over Laudomia's shoulder. While a grinning, winged Cupid literally links Lotto's couple with a yoke, Fontana does everything possible to distance her patroness from her marital commitment. Lotto's couple also dominates the compositional space with rough equality in terms of the attention given to each person. Neither is shuffled off to the side or relegated to obscurity as in Fontana's painting. Fontana's refusal to adhere to any particular category of portrait is a powerful indicator of the dysfunctionality of the family shown.

As well as being typologically transgressive, the *Portrait* is stylistically abnormal. There is a great stillness about the scene that is unusual in most group portraiture. Laudomia arches one brow as though she is waiting for something from the viewer: acknowledgement of

her story, perhaps, with all its subtle implications. None of the subjects look at each other; all stare outwards confrontationally, or perhaps expectantly, due to their unwavering intensity. Tension becomes apparent in the stiff and minimal nature of what little interaction there is. Compare this with Bernardino Licinio's *Portrait of Arrigo Licinio and His Family* (Fig. 8) or another Fontana *Family Portrait* (Fig. 9), in which the subjects look at each other, reach out for each other, raise their hands to speak, and display or proffer objects. From this dearth of interaction, Fontana thus hints at the unusual relationships between her subjects, as well as the



Figure 8, Bernardino Licinio, *Portrait of Arrigo Licinio and His Family*

twining histories that composed the story of the *Portrait*.

Also contributing to these stylistic clues is the jarringly unflattering portrayal of Ginevra. In an era where women were idealized in art, often to the point of being unrecognizable, this is a strange choice.<sup>20</sup> Perhaps Laudomia, unable to produce a single surviving heir, made this decision out of resentment for her sister who produced several; in immortalizing herself as the more beautiful sister, Laudomia could, in a small way, assert a bodily triumph of her own.<sup>21</sup> Perhaps, though, it reflects the unflattering truths about the family that culminated in the commissioning of the portrait. Fontana conspicuously abstains from glossing over her subjects' flaws to stress this brutal truthfulness with which the Gozzadini narrative is related.

Lavinia Fontana's compositional and stylistic choices in rendering the Gozzadini family subvert social expectations by stressing the sisters' connection to their father's household and minimizing their connections to their husbands. Laudomia Gozzadini, financially dependent on an unscrupulous brother-in-law and tied to an adulterous husband, commissioned the *Portrait of the Gozzadini Family* subtly to assert her patrilineal rights, to express the offenses committed against her, and to communicate her chosen allegiances. Robbed of control of her circumstances, she nonetheless took control of her image for posterity. Eventually, in a lawsuit conducted from 1609 to 1614, she recovered what was hers. Annibale's dishonesty came to an end, but Laudomia's profound statement of self-determination remained immortalized by Lavinia Fontana's hand.<sup>22</sup>



Figure 9, Lavinia Fontana, *Family Portrait*

20 Rachel D. Masters, "The Portraiture of Women during the Italian Renaissance," (Honors thesis, University of Southern Mississippi, 2013).

21 Murphy, *Lavinia Fontana and Le Dame Della Citta*, 198.

22 Murphy, *Lavinia Fontana: a painter*, 135.

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# Suicide: From Sin to Sickness

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From Judas to Kurt Cobain, suicide has not been a stranger to both ancient and modern cultures. However, Western cultures have come to view suicide differently. Since Christianity became Western society's largest practiced religion, suicide has been considered to be a mortal sin. However, as more research has been done on mental illness, Westerners have begun to view suicide sympathetically as a sign of severe mental suffering.

From the very early days of Christianity, religious doctrines made it clear that suicide was against God's will and human morality. However, suicide was not officially labeled an unforgivable sin until St. Augustine determined that it violated the Fifth Commandment: God's command 'Thou shalt not kill,' is to be taken as forbidding self-destruction, especially as it does not add 'thy neighbor', as it does when it forbids false witness, 'Thou shalt not bear false witness against thy neighbor.'<sup>1</sup>

In addition to St. Augustine, theologian St. Thomas Aquinas also agreed with prohibiting suicide. Aquinas believed suicide dishonored the sacrifice of Jesus, harmed an individual's entire community, and dishonored God's gift of life. As a result of both theologians declaring suicide as sinful, it became Christian law that the body of a person who died by suicide was desecrated by the church and denied a proper Christian burial.<sup>2</sup>

Subsequently, in the Elizabethan era, Christian sanctions against suicide were particularly strict. If an individual attempted suicide, the individual was believed to have committed the deadliest sin and was thus convicted of a crime known as *felonia de seipso*, which translates to "a vile crime against oneself."<sup>3</sup> Believing that victims were directly influenced by the devil, the Elizabethans inflicted harsh punishments upon them, dead or alive. Ironically, people who sur-

vived their suicide attempt were sentenced to death by hanging. If the person committed suicide, their naked body was carried by other Christians during the night to a randomly-located pit. Then, the body was thrown into the pit with a wooden stake hammered through it, pinning it to the ground. Finally, the pit was re-covered with dirt. During this ceremony, no minister was present and no prayers were said. Along with the body being disrespected, family members of the suicide victim also suffered. The court would take away all of the deceased's possessions and give them to the royal family. The only way to avoid such a punishment was if one was found to be insane; however, this event rarely occurred.<sup>4</sup>

For nearly 200 years after the Elizabethan era ended, Christianity remained a vital part of life in Western cultures. However, with an increased focus on the treatment of mental illness, people started to view suicide differently. This road to treating the mentally ill properly proved to be a long one. During the Medieval period, the mentally ill were viewed as less than human. It was widely believed that the mentally ill were either bewitched or possessed by the devil. Therefore, they were often subjected to exorcisms at the hands of Church officials. In some cases, a hole was drilled into the skulls of the afflicted in order to release the "evil spirit" from their bodies. Known as "trephining," the majority of people who underwent this procedure died. In addition to exorcisms and trephinations, the mentally ill were often imprisoned in inhumane conditions or publicly executed.<sup>5</sup>

During the eighteenth century, Westerners stopped executing the mentally ill but continued to lock them in asylums, separating them from "proper" society. Asylums were known to be horrific and disgusting places. There is evidence that patients were often chained to their beds, beaten on a daily basis,

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1 St. Augustine, In M. Dods. *The City of God* (New York: Modern Library, 1950), <http://www.newadvent.org/fathers/120101.htm>

2 Michael Cholbi. "Suicide," in *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta. Metaphysics Research Lab, Stanford University, 2017. Section 2.2, <https://plato.stanford.edu/archives/fall2017/entries/suicide/>

3 Elsinore UCSC. "Ophelia's Burial." University of California, Santa Cruz, [elsinore.ucsc.edu/burial/burialSuicide.html](http://elsinore.ucsc.edu/burial/burialSuicide.html).

4 Ibid

5 Psychology OpenStax College, "Mental Health Treatment: Past and Present," *Lumen*, SUNY Textbooks, [courses.lumenlearning.com/wsusandbox/chapter/mental-health-treatment-past-and-present/](https://courses.lumenlearning.com/wsusandbox/chapter/mental-health-treatment-past-and-present/).

and left to care for their own basic needs.<sup>6</sup> Although most people viewed this treatment of the mentally ill as acceptable, Phillipe Pinel of France did not. Pinel observed the conditions of French asylums and found them appalling. Thus, he began advocating for better treatment, including measures such as unchaining patients from their beds and talking to them. Furthermore, when Pinel finally instituted his reforms, he found that these simple measures greatly improved the patients' sanity and morale.<sup>7</sup> Following in Philippe Pinel's footsteps, American Dorothea Dix spent the majority of her life campaigning for humane treatment of the mentally ill. Beginning her work in the 1840s, Dix found that those admitted to asylums were often uncared for and abused. She also realized that the asylums had no regulation and very little funding from the government. Lobbying in both state legislature and Congress, Dix argued that the United States mental health care system needed to be reformed in order to benefit its patients. Her efforts were successful, and she soon witnessed the opening of the first government-funded asylums.<sup>8</sup>

Despite the establishment of government-funded asylums in the United States, the cruel treatment of the mentally ill continued for over a century. From the mid-nineteenth and mid-twentieth centuries, asylums were said to be disgustingly dirty, and the patients were said to be treated more like prisoners. In addition, patients continued to experience cruel treatments at the hands of the asylum's staff. A common treatment utilized in many American asylums was the act of taking patients and completely submerging them in a bathtub filled with freezing water. This technique was meant to cleanse the patient of their unhealthy thoughts. Furthermore, electroshock therapy was extremely popular during this time. When undergoing electroshock therapy, patients would be placed in a chair and receive the full force of an electrical shock into their brains. Since there were no precautions taken to protect the patients from the shock, memory loss and bodily harm were common.<sup>9</sup>

In 1935, doctors believed that they had discovered an effective treatment for the mentally ill: the lobotomy. During a lobotomy, doctors surgically removed the frontal lobe from a patient's brain to subdue them. However, not long after the first lobotomies were performed, the doctors noticed that the procedure had adverse side effects. Instead of just becoming calmer versions of themselves, many patients lost their entire personalities. They no longer had feelings, motivation, maturity, or impulse control. For these reasons, lobotomies were eventually outlawed in the late 1960s.<sup>10</sup>

Nearly fifteen years after the first lobotomy, the first psychoactive drugs were developed and prescribed. Psychoactive drugs are chemical substances that help to improve the feelings and thoughts of a mentally ill person. The very first psychoactive drug, lithium, was created in 1949. This drug was groundbreaking in the field of psychology, as studies showed that it was effective in treating the symptoms of mental illness rather than simply sedating a patient. As time progressed, more psychoactive drugs, such as Chlorpromazine, Valium, Prozac, Paxil, Zoloft, and Luvox, were successfully prescribed to treat a variety of mental illnesses.<sup>11</sup>

The end of the government-funded asylums came in 1963, when President Kennedy signed the Mental Retardation Facilities and Community Health Centers Constitution Act. This act supported community mental health centers rather than asylums through government-issued funding. Soon after the act was put into place, large asylums closed in a process called deinstitutionalization, allowing the mentally ill to seek mental health care near the comforts of their own homes.<sup>12</sup>

Today, medical treatment for the mentally ill has become a vital part of the American healthcare system, making sure those with mental illnesses are treated with respect and dignity. In nearly every town in the United States and Western Europe, counselors and psychologists are available to help people cope

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6 Ibid

7 Ibid.

8 Ibid

9 Ibid

10 Allison M. Foerschner, "The History of Mental Illness: From 'Skull Drills' to 'Happy Pills'," *Inquiries Journal* 2, no. 9 (2010): 1-4. <http://www.inquiriesjournal.com/a?id=1673>.

11 Ibid

12 Psychology OpenStax College

with and learn how to manage their mental illnesses. Psychologists focus on psychotherapy and teaching coping skills. They have been involved in schools, universities, hospitals, prisons, and a number of workplaces. In addition to psychologists, psychiatrists are medically-trained doctors that serve to prescribe psychoactive drugs to patients. In hospitals, there are still psychiatric wards, but they are only for patients who are in imminent danger of harming others or themselves. Most patients can only stay in the psych ward for seventy-two hours before they are released into the custody of family members or into another mental health facility. If they choose to go to a mental health facility, they will spend a few months in a safe, clean environment with various mental health professionals. There, patients will learn how to care for themselves and overcome their illnesses. Overall, those who suffer from mental illnesses today have many opportunities to be a part of society and live a life full of happiness, despite their diagnoses.<sup>13</sup>

As the treatment of the mentally ill evolved, Western people have begun to move away from their staunch religious views on suicide and have begun to view it as a sign that the victim may have suffered from a mental illness. According to studies performed by the University of Washington School of Social Work, over 90 percent of suicide victims suffer from mental illnesses, demonstrating that having a mental illness of any kind increases a person's chance of committing suicide.<sup>14</sup> For these reasons, modern Western society tends to view suicide in a sympathetic manner, caring more about the state of the person's mental health than their chances of attaining eternal life. Since society's feelings about suicide have changed, the ways in which people respond to suicides have also reformed. In the past, the topic of suicide was taboo, and anyone who committed one was punished through an improper burial. However, in the twenty-first century, people talk openly about suicide, which raises awareness and helps prevent future suicides.<sup>15</sup>

There are many ways in which people bring attention to the issue of suicide. One way is to educate individuals about the risk factors and warning signs

of potentially suicidal thoughts or actions. Some risk factors that people are taught to be aware of include a person's current mental health, substance abuse, loss of a job or relationship, exposure to other suicide victims, and feelings of hopelessness. Similarly, some warning signs are severe mood swings, isolation from society, reckless behavior, and comments regarding self-harm.<sup>16</sup> By learning to recognize and identify these symptoms, people can help someone struggling with suicidal thoughts before it is too late.

In addition to educating the general public, around-the-clock resources are in place to help people considering suicide. For example, numerous suicide hotlines allow a person to seek psychological help anonymously over the phone. Additionally, crisis centers exist in nearly every town, where people considering suicide have access to counselors who can give them immediate support and assist them in establishing a long-term treatment plan. Furthermore, those who have already attempted suicide have plentiful resources. Once they recover from their injuries, surviving suicide victims can choose to enter a treatment center for a number of months. Here, they will be monitored, given access to counseling, and treated for their mental illness until they are ready to seek treatment outside of the facility.<sup>17</sup> With these numerous resources in place for those at risk, Western society is encouraging those who are suicidal to seek treatment.

Many times, the families of suicide victims contribute to the efforts being made to prevent suicide in honor of their family member. For example, when both Jason Arkin and Sara Prideaux committed suicide in 2015, their families came together to form the Speak Up Foundation. With the main goal of bringing suicide education and awareness to communities around the United States, the Speak Up Foundation participates in multiple activities to spread their message. In high schools, they send a suicide survivor to speak to the students with the hope that it will inspire those with suicidal thoughts to get help. Through donations, the foundation makes it possible for teachers to receive suicide awareness training. Outside of schools, the Speak Up Foundation set up a campaign

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13 Ibid

14 University of Washington School of Social Work, "Facts About Mental Illness and Suicide." *Mental Health Reporting- UW School of Social Work*, University of Washington School of Social Work, 2018. [depts.washington.edu/mhreport/facts\\_suicide.php](https://depts.washington.edu/mhreport/facts_suicide.php).

15 Ibid

16 National Suicide Prevention Hotline, "We Can All Prevent Suicide," 2018. [suicidepreventionlifeline.org/how-we-can-all-prevent-suicide/](https://suicidepreventionlifeline.org/how-we-can-all-prevent-suicide/).

17 Ibid

called *You Be You*, which creates merchandise that emphasize uniqueness rather than perfection. The money that is made on these products goes directly back into the foundation to fund their other efforts. Lastly, Speak Up holds a walk in the founders' hometown in Kansas to raise the entire community's awareness on suicide.<sup>18</sup> By setting up a foundation, not only are the families of suicide victims helping in the fight against suicide, but they are also memorializing their family member in a manner that is healthy for them.

Every day, new efforts to prevent suicides are made. Most recently, the popular social media website Twitter hosted an open discussion on depression and suicide for teens, sponsored by the National Institute of Mental Health. Teens were able to learn about the symptoms of depression and suicide, as well as ask any personal questions that they had during this discussion.<sup>19</sup> In addition to their collaboration with Twitter, the National Institute of Mental Health is currently funding research efforts to reduce the extremely high suicide rates in children of Native American and Alaskan descent.<sup>20</sup> With new measures like these being created daily, Western society shows that it will continue to provide resources to help suicide victims. Hence, as our society moves forward, the sympathetic viewing of suicide will become widely accepted.

Ultimately, the change from viewing suicide as a mortal sin to a sign that a person needs help with issues of mental illness has greatly benefitted Western cultures. While Westerners of the past were preoccupied with pleasing God and punishing those who disobeyed Him, Westerners of the present are more concerned with helping others to overcome their struggles. Not only does helping others allow the people in the community to be happier and healthier individuals, but it also allows them to feel that their peers will support them. Therefore, with the shift in ideas regarding suicide over time, the Western world has become a healthier and stronger community.

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18 Speak Up, "You Be You Youth Campaign," Speak Up Foundation. 2015. <http://speakup.us/helpandresources/teen-campaign/>

19 NIMH Institute Update, "NIMH to Host Twitter Chat on Teen Depression," *National Institute of Mental Health*, U.S. Department of Health and Human Services, 16 Apr. 2018. [www.nimh.nih.gov/news/science-news/2018/nimh-to-host-twitter-chat-on-teen-depression.shtml](http://www.nimh.nih.gov/news/science-news/2018/nimh-to-host-twitter-chat-on-teen-depression.shtml).

20 NIMH Science Update, "Hubs Help Native American Communities Address Youth Suicide," *National Institute of Mental Health*, U.S. Department of Health and Human Services. [www.nimh.nih.gov/news/science-news/2018/hubs-help-native-american-communities-address-youth-suicide.shtml](http://www.nimh.nih.gov/news/science-news/2018/hubs-help-native-american-communities-address-youth-suicide.shtml).

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