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Theories of History and Biography: The United States Supreme Court and the Grateful Dead

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This paper explores the question of agency and the degree to which we regard biographical subjects as the driving characters of history. History is at least two things at once: It is the grand theater across which forces gather—the violence of class warfare, the insidious rub of racism, the manifestation of deep human longings that we hold in common and over which we have little control—and it also is the stage onto which individuals stride to make their marks. If modern history takes its energy from the emergent demands of labor against the ruling class, it also finds expression in the epiphany of the inventor, the illumination of the writer, the lonely decision of a world leader. So, is history better understood through the large lens of forces or the more intimate explorations of individuals?

To examine that question, this paper considers two biographical subjects who share some unexpected characteristics and history, as well as ample but equally revealing differences. Both emerged from California in the middle of the twentieth century, during which time their lives overlapped, though without any contact between them; both achieved their influence through groups and their lives thus reflect the complexities of leadership and group dynamic; and both left lasting and profound marks on the larger society. The first is Earl Warren, governor of California from 1943 to 1953 and Chief Justice of the United States from 1953 to 1969. The other is Jerry Garcia, founder, lead guitarist, singer, and songwriter for the Grateful Dead.

Before considering their stories and surrounding histories, a word of caution: In one sense, the influence of historical forces is simply context, and seen that way, seems essentially undeniable. The Warren Court could not, for instance, have wielded the influence that it did in the field of civil rights without the nation first having confronted the horrors of Nazi racism or embraced the example of Jackie Robinson. The Grateful Dead did not arrive at their musical style without first learning the blues, jazz, and folk. And that context is true of place as well. Earl Warren's experience as governor of California was meaningful to his service as Chief Justice; it mattered that he came from the West, outside the civil rights battleground areas of the Northeast and Deep South. Jerry Garcia would not be the Jerry Garcia we know if he had grown up in, say, Miami. But those who see history as the result of forces mean something larger than that—not just that those forces are the backdrop for individual experience but that they are the essence of history itself, such powerful determinants that individual stories are merely distractions from the larger narrative at work. To some degree, they suggest that biography is irrelevant, a position I respect and appreciate but do not share. Based on my research and experience as a biographer, it seems to me that the more sophisticated truth is found in some vortex where large ideas and ideologies collide with individual determination, creating something new.

In that spirit, then, we turn first to Warren. Earl Warren was born in Los Angeles in 1898. He was of Scandinavian descent, the son of a railroad worker. His father was caught up in the Pullman Strike of 1894 and in its aftermath was forced to move the family to Bakersfield, where Earl Warren spent his youth until leaving for Berkeley to attend college and then law school. Warren was a mediocre student but an affable and gregarious young man. He soaked up the culture of Northern California in the early twentieth century and came away deeply impressed by the lessons of the California Progressives, especially Hiram Johnson, a flashy trial lawyer who was elected governor in 1910. Warren admired Johnson's tenacity and identification with small businessmen and working people, along with Johnson's prescriptions for containing the influence of what we now call "special interests." When Warren was elected governor in 1942—the first of three consecutive terms—he hung just one portrait in his office, that of Hiram Johnson.

Warren's upbringing imprinted several important values on his later life. He possessed a lifelong horror of mob action, which he attributed to early memories of the Pullman Strike, and a distaste for extremism of all stripes. He fashioned his own political career as a centrist—"leadership, not partisanship" was one campaign slogan—and as a consensus builder rather than an ideological figure. He was a Republican, a veteran, a Mason, and a prosecutor all before becoming governor, and though he is now remembered for his pioneering and generally liberal jurisprudence as Chief Justice of the United States, he came to that position not so much by deep reflection as by the steady accumulation of experience.

Warren arrived at the Supreme Court in 1953 and set out to fashion consensus there. His first major case—some would say the most important case of its era or perhaps in all of American history—was *Brown v. Board of Education*. Before Warren's arrival, the justices were badly split over *Brown* and had put the matter over from the 1953 term to the 1954 term in the hope that more argument and more time might allow the justices to find a way out of their logjam. It is difficult to know with certainty how the Supreme Court would have resolved *Brown* without Warren, but it seems certain that the court would have been badly split, with at least three justices, including the chief justice, prepared to uphold school segregation. When Chief Justice Fred Vinson died in the fall of 1953, Justice Felix Frankfurter remarked that it was the first solid evidence he had ever received of the existence of God (Brust 2004, 40).

Warren's experience served him well in *Brown* and many cases thereafter. His instincts toward consensus helped deliver a unanimous court in *Brown* and helped shaped areas such as criminal justice, voting rights, and free speech in the sixteen years he led the court. Sometimes that instinct failed him—he and the court got lost, for instance, in their attempts to find a rational way to regulate pornography—but in general, Warren was shaped by his early life and political rise in California, and he exported those lessons effectively to the nation through his position on the Supreme Court. His record shapes American life today: every time a suspect is read his rights or a poor defendant receives a lawyer or a woman seeks to end a pregnancy or a school administrator is reminded that students cannot be forced to pray, Warren's legacy is at work.

Jerry Garcia's early life and experiences crafted a far different set of values, but he, too, was a product of a particular time and place. Garcia had a rough and, in many ways, traumatic childhood. He lost much of the middle finger on his right hand when his brother accidently chopped it off; his father drowned in 1947 when he and Jerry, just a few weeks past his fifth birthday, were on a fishing trip together (Associated Press 1947). Garcia's mother was overwhelmed by the task of raising him and his brother alone, and for a time, he grew up in the care of his grandmother on Harrington Street in San Francisco. He bounced around high school, joined the Army and was found psychologically unfit for duty. He was discharged in December of 1960 after a commanding officer concluded that he was "unreliable, irresponsible, immature, unwilling to accept authority and completely lacking in soldierly qualities" (Dohney 1960).

Garcia's expulsion from the military landed him in Palo Alto and placed him amidst a culture that would prove formative. That is generally understood in musical terms: Palo Alto was a hub of folk and bluegrass experimentation in the early 1960s, and Garcia's exposure to those musical idioms helped shape his developing commitment to musicianship—just as his time at Kepler's Books helped stimulate his intellectual growth (cf. Doyle 2012). Jarred to action by the fateful car crash that took the life of his teenage friend Paul Speegle on February 20, 1961, Garcia devoted himself to his craft and developed it in a rich blend of folk, jazz, jug band, blues and emergent rock and roll.[1] Combined with the talents of Phil Lesh, Ron McKernan, Bill Kreutzmann, Bob Weir and, later, Mickey Hart, the result was the singular sound that was the Grateful Dead.

But the psychological and cultural aspects of that upbringing left their mark on Garcia. As Sara Ruppenthal, Garcia's first wife, said after his death, Jerry's young life was one of "loss, utter loss" (Greenfield 1996, 38). Perhaps understandably, Garcia would forever crave a larger community in which to participate, perform, and learn. His family was unorthodox by most standards—a fact that can in part be understood by realizing the absence of structure he had to emulate. He found and created family in ways both familiar and unique. Garcia and the Dead were embraced by Ken Kesey and the Merry Pranksters, and the Dead discovered a new relationship between performer and audience over the course of the Acid

Tests. From that grew the larger Grateful Dead community, with the musicians at the center and radiating spokes of spouses, children, crew, and Deadheads emanating outward.

These biographical details of Warren and Garcia suggest that personal history is formative, that the experiences of one's youth establish the basis of one's adulthood and that those accumulated influences then help to explain a biographical subject's contribution to a larger history, whether it be legal, political, musical, or cultural. That is a biographer's inclination. It is important to note, however, that not all students of history accept that idea. Indeed, many reject it entirely. No less an influential historian than Karl Marx, for instance, subscribed instead to the formulation that history is shaped not by individuals but by forces. As one leading student of Marx notes, "ethics, law and politics are only derivative phenomena determined by the economic factor in accordance with the conditions of each particular people in every phase of history" (Ferri 2009, 160). From Marx's perspective, individuals really are incidental: The real story is forces—in his formulation, economic forces—that press individuals into a historical narrative, creating the class conflicts that manifest time and again, lurching into battle and forging progress.

Some of the same can be said of other historical theories—Freudian theory or feminist theory, for instance, or Critical Race Theory, about which so much has been said and so little understood. These are ideas that presuppose conflict, either of gender or race, and slot individuals into their construct. Individual women who battle for autonomy or equality or agency, in a feminist construct, are less notable than the larger cause that sweeps them up. Racism, through the prism of Critical Race Theory, is an endemic aspect of American life and law, and the actions of individuals are guided by such principles as convergence, which helps explain lurching moments of progress and long periods of stasis or backsliding (Crenshaw et al. 1996).

Viewed through the lens of what I would call "force theory," both the Warren Court and the Grateful Dead appear less as extensions of individuals, Earl Warren and Jerry Garcia, and more as moments of historical inevitability. The Warren Court ploughed the essential earth of desegregation not so much because Warren joined it in 1953 as because

the Cold War created conditions under which suddenly America's White majority and Black minority had a common interest in projecting America at home and abroad as a place of fairness and equality. From that perspective, *Brown v. Board of Education* is less a triumph of Warren and his colleagues than it is an expression of convergence. And its aftermath, the painfully slow process of actually integrating schools, reflects the subsequent divergence of priorities, as the White majority had accomplished its international goal with the announcement of *Brown* and lost interest in the domestic objective of following through with it.

For the Garcia and the Dead, the question is whether the musical and cultural currents of the early 1960s found unique expression in their contribution or whether they are more properly thought of as a vessel into which those currents flowed. Put another way, would something or someone else have come along to do what the Dead did had the Dead not done it? There is no way to answer that, of course, but there are arguments in both directions. Surely, much of the cultural and political energy of the 1960s would have expressed itself without the Dead to guide or shape it. We know that because much of it did—in the music of too many bands to mention; in the art of painters, sculptors, and graphic artists; in poetry, novels, and groundbreaking journalism; in politics that ranged from the John Birch Society to the Black Panthers. But it is just as undeniable that the Grateful Dead provided a gathering point, a space for the intermingling of the threads of that period that enlarged its meaning and impact. In the 1970s, if one wanted to find a folk singer, a Hells Angel, and a Black Panther under the same roof, the best place to look was at a Dead show.

This continuing tension between individually based and force-based history undergirds any biography, but it is particularly salient when it comes to the court and to the Dead. There are at least two reasons for that: the nature of the institutions and the nature of their influence. The Dead and the Supreme Court are groups with identified leaders whose influence over those groups is mostly that of personality. True, the Chief Justice of the United States has some formal authority over the court. Most notably, the chief justice chooses which justice on his side of a case will write the opinion (if the court is split, the senior justice on the other side assigns the opinion for that camp). But that's a fairly minor formal power. The

chief justice's real authority is subtler: it is as the person around whom the court is most identified. We refer, for instance, to the Warren Court or the Roberts Court, even when the chief justice is not pivotal vote or leading intellect. The chief justice is the court's most public face and its identified namesake, which bestows on that individual power both within and outside the court: Warren's arrival at the court in 1953 moved it from bitterly divided over school desegregation to unanimously in support of it, lending moral authority to the court's legal conclusion. He also became its most visible point of opposition, leading to calls for his ouster and the John Birch Society's ubiquitous campaign that dotted American highways with billboards calling to "Save Our Republic: Impeach Earl Warren" (Darcy 2022).

Differently, but with some parallels, Garcia's leadership over the Grateful Dead was both ambiguous and yet very real. He fought any attempt to designate himself as the Dead's functional leader, but he was its fulcrum: true, Pigpen was the catalyst that spurred the band's formation, but Garcia was the pivotal and most accomplished musician; in that sense, the Dead began with him and ended with him. Garcia pushed back even harder against being labeled a spokesman for anything beyond the band. Asked by Charles Reich in 1972 about his reputation as a "spiritual advisor" to the San Francisco music scene, Garcia responded, "That's a crock of shit, quite frankly … I'm just the guy who found myself in the place of doing the talking every time there was an interview with the Grateful Dead" (Garcia, Reich and Wenner 1972, 69; 70). Nevertheless, Garcia was aware of the power he possessed. He famously held his tongue before audiences, wary of the power of what he called "psychological fascism," and he fended off attempts to regard him as enlightened or gifted (McNally 2015, 121).

Warren and Garcia helmed influential groups, and those groups were not static. Members came and went, and that meant changes in direction and emphasis. For the court, the signature change of membership during Warren's tenure came with Frankfurter's departure in 1962 and his replacement by Arthur Goldberg. By the early 1960s, Frankfurter's commitment to judicial restraint was becoming a prison that confined his philosophical inclinations in areas such as criminal justice and race rela-

tions; it also embittered him toward Warren, whom he nicknamed "the Dumb Swede" (qtd. in Newton 2011). When Frankfurter left, it freed the Warren Court to embark on its expansion of the rights of criminal defendants—the right to have a lawyer in state proceedings, the right to refuse to speak to a police officer, and the right to be informed of those rights, famously decided in the *Miranda* case in 1965. For the Dead, the defining change of membership came with Ron "Pigpen" McKernan's gradual withdrawal onstage, from frontman and keyboardist to more occasional vocalist and incidental percussionist and finally off tour entirely before his untimely death in 1973. Pigpen's departure marked the Dead's move away from their earthier, bluesier roots and allowed the band to stretch, first into the psychedelic sphere and later into the jazzier sounds that Keith Godchaux facilitated. Pigpen's early presence anchored the band's sound and provided a visual identity—his cowboy hat and throaty vocals crystallized the band's persona in the *Workingman's Dead* period—but his departure and replacement also opened up new vistas and range. Such is the nature of a group.

Finally, there is the way these groups manifested their influence. Here, there are both obvious differences and yet intriguingly hidden similarities. The most glaring difference is that of power: The United States Supreme Court is the ultimate arbiter of Constitutional authority under the American system of justice. Justice Robert Jackson famously observed that the Court is not final because it is infallible, but it is infallible because it is final (cf. Lazarus 2014). No authority can overrule it in matters of deciding what the Constitution permits or forbids. It goes beyond obvious to observe that the influence of a rock and roll band is of a different sort.

Still, the court and the Dead actually do depend to a surprising degree on informal influence. The court has no police force, no army to command obedience. Its great fear, notably in the civil rights era, was that it would issue an opinion and the country would simply ignore it. The court's formal authority derives from its place in the Constitution, but its real power is that of persuasion and influence. People obey it because they are convinced that it is right. In some measure, that, too, is the influence of the Dead. Deadheads or others who learned from the band took away life messages—ideas about peace and coexistence, the vitality of

joy, the binding agent of community, the sheer exuberance of fun—not because the Dead demanded it but because the Dead demonstrated it. Garcia understood that influence better than most. That is why it alarmed him and why he took great care not to abuse it. Garcia did not have power because the Constitution gave it to him; he had it by virtue of vision and talent and connection to deep currents of idealism and energy. Those are not the words that one conventionally uses to describe the authority of the Supreme Court, but they are apt in that context as well. The court and the Dead influence society because they persuade society that they matter.

As I have searched for answers about great figures in history and the forces that shape and define modern America, especially California, I have been lucky to peruse piles of records and reflections and to meet men and women who have played a part in that history—whether it be justices, presidents, governors or members of the San Francisco counterculture. Most recently, I had the lovely experience of spending a couple of days with Carolyn Garcia, who still goes by the nickname "MG," short for her Prankster nickname, Mountain Girl. We sat in her living room in Eugene, Oregon, with a Dead show playing in the background and reminisced about Jerry Garcia and the band and the years and culture they presented and shaped. We talked about the music and children and the exciting and challenging life she led for so many years with the Dead and Jerry. At one point, I asked her the question that is at the center of this paper: whether Jerry Garcia and the Dead were part of a stream of history or whether that history formed around them. She did not hesitate. The Dead, she said, were the "rennet," the activating agent in cheese (Garcia 2022). Rennet is the enzyme that turns milk into something else—something more substantial, life-sustaining; food. Her metaphor is apt; indeed, I can think of no better way to describe how cultural forces interact with the influence of personalities. The great forces of history form the milk of human experience, but without the rennet of individuals, there is no cheese, just spoiled milk.

It is an idea that works especially well with the two institutions addressed here. The Warren Court and the Grateful Dead existed amidst a swirl of ingredients: of activism and musical traditions, politics and cultural change, the pull of the past and the explosive demand for some-

thing new. Those forces were implacable, inexorable, and they might well have found expression without the specific personalities of Earl Warren or Jerry Garcia. But those two men, through their very different methods and approaches, brought those forces together and gave them life. Mid-century American culture provided the milk; Warren and Garcia made the cheese. We are, as a people, better off for their lives and work.

Notes

An earlier version of this essay was given at the second meeting of the Grateful Dead Studies Association at the Popular Culture Association conference, online, April 13, 2022.

1. For details of the accident, see "Crash …" (1961). In an oft-quoted article, Garcia cited the accident as a turning point: "That's where my life began … Before then I was always living at less than capacity. I was idling. That was the slingshot for the rest of my life. It was like a second chance. Then I got serious" (Abbott 2000, 142–43).

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