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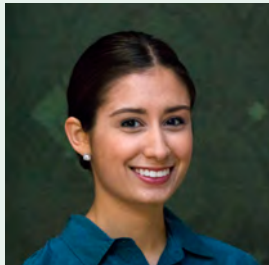




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PARALLELING SYSTEMS OF CONTROL:

Jim Crow and Mass Incarceration

BY LEAH BACON '18

This paper discusses the systematic biases that follow ex-felons after their release from imprisonment and then parallels this disenfranchisement with the mistreatment of free blacks during the Jim Crow era. It begins by outlining the political, economic and social fabrics ex-felons face through biased housing policies, employment discrimination, lack of public services and educational support, and exemption from politics. Similarly, during Jim Crow free blacks were disregarded in the political and economic realm and socially targeted through fear inducing tactics, such as lynching, due to their perceived threat to the hegemonic powers. Bacon argues, ex-felons and free blacks had their rights revoked and were removed from being active participants in society, ultimately leading to a negative sense of self and the acceptance of their “lower caste” position.





There are currently 2.3 million people confined by the American criminal justice system, 820,000 people on parole, and 3.8 million people on probation. In the 2010 United States census, the black population made up 13% of the total population, but 40% of the prison population.¹ Racial ideologies and bigotry have created a system designed to limit the black population in every aspect of life—social, political, and economic. The injustices within the system are corrupt, but even as ex-felons leave the system they are unfairly targeted. Ex-felons are denied housing, face employment discrimination, are limited in access to non-existent public benefits, have a reduced political voice, and are unable to participate in equal educational growth. These crises uncannily parallel the disenfranchisement of free blacks during Jim Crow who were deprived their right to safety, political roles, and economic growth because of their believed threat to the hegemonic forces. I argue these two systems of control are similar based on their lack of opportunity for the black community, the dominating role of the white community, and the black community’s internalization of their “other” role.

An individual who leaves prison must find a place to stay, but with a lack of income and unfair housing policies, meeting this basic human right becomes a daunting task for the formerly incarcerated. President Ronald Reagan, a proponent of the War on Drugs, initiated the Anti-Drug Abuse Act in 1988 for stricter leases on public housing and eviction of tenants engaged in criminal activity.² This legislation targeted the types of families who lived in public housing. The American Community Survey noted that black households are 12%

of all households, but make up 26% of Extremely Low Income (ELI) renters. Blacks and Hispanics living in public housing are “four times more likely than white public housing residents to live in high poverty neighborhoods.”³ This policy led to Bill Clinton passing the ‘One Strike and You’re Out’ legislation in 1996. The rules for eviction became more stern and “strongly urged that drug offenders be automatically excluded from public housing based on their criminal records.”⁴ The Prison Policy Initiative notes that 1 in 5 incarcerated people are locked up due to drug offenses; that means that 20% of the released prison-population are automatically barred from public housing.⁵ Similarly, the Quality Housing and Work Responsibility Act of 1998 also excluded those who had been convicted of and those who were believed to be, abusing alcohol or illegal drugs.⁶ The policy also extended to people living or visiting the tenant.

Racial ideologies and bigotry have created a system designed to limit the black population in every aspect of life—social, political, and economic.

This was known as the “no fault clause” and in the Supreme Court case *Rucker v. Davis* the U.S. Supreme Court deemed it unconstitutional, yet four years later in 2002 the Court reversed their decision. The Court stated, “housing tenants can be evicted regardless of whether they had knowledge in or participated in alleged criminal activity.”⁷ This policy is not only hurting the ex-convict, (who has already served their time) but hurts the liveli-

hood of the family unit. In some cases the families were evicted and had nowhere else to go, thus adding to the homeless population. For example, in California it is estimated that 30 to 50 percent of individuals under parole in San Francisco and Los Angeles are homeless. Michelle Alexander exclaims, “decent stable, and affordable housing is a basic human right, and it also increases substantially the likelihood a person with a past criminal record will obtain and retain employment and remain drug and crime free.”⁸ People who have served their time in prison deserve a fair chance to live and improve their life. By unfairly discriminating against convicted individuals (and families) from public housing the system forces them to seek other measures in order to thrive.

If one is unable to live in public housing, they must be able to receive a living wage that allows them private housing, but employer discrimination prevents them from doing so. Currently, the job opportunities are bleak because approximately 70% of prisoners are high school dropouts and 50% are illiterate.⁹ Ex-offenders are typically restricted to jobs within the construction and manufacturing sector. As ex-felons leave prison, 40 out of 51 jurisdictions expect them to find a job quickly and *maintain* this job or else face additional more prison time.¹⁰ How is this a realistic expectation when the formerly incarcerated face active discrimination from employers *before* they even receive an interview? In 1987 the Equal Employment Opportunity Commission (EEOC) stated that discrimination against people with criminal histories is permissible *only if* employers “consider” the nature of the offenses.¹¹ In theory this law is supposed to protect ex-felons from bias, but in practice

40/50

states can deny jobs to people who were arrested—not convicted—of a crime

employers are able to disregard it, either intentionally or unintentionally. Additionally, employers in 40 of the 50 states can deny jobs to people who were simply arrested for of a crime, even if there was no conviction.¹² An individual does not have to spend time behind bars to become a permanent symbol of criminalization. Some employers who may follow the EEOC have to “see beyond” the conviction and judge the applicant without knowledge of their past history. Some agencies go as far to remove the “convicted box” on applications, yet “proxies for criminality—such as race, receipt of public assistance, low educational attainment, and gaps in work history—could be used by employers when no box is available on the application form.”¹³ An employer could have internal biases that push them to classify certain groups of people, such as black males, as being “ex-offenders.” They might not *intentionally* dismiss a person based on their prior convictions, but these stereotypes and prejudices are components engraved within the system. An ex-felon’s inability to find a job discourages that person from establishing “a positive role in the community, develop a healthy self-image, and keep a distance from negative influences and opportunities for illegal behavior.”¹⁴ Without a job, ex-felons have no income

to maintain a home, support a family, or meet their own needs. This lack of adequate livelihood forces the previously incarcerated to turn to other forms of assistance, both legal and illegal, to get them out of their dire state.

After a person has been convicted of a crime they are unable to receive public assistance. The welfare system is fueled with racial undertones. The Clinton Administration in 1996 pushed for the passage of the Temporary Assistance for Needy Family Program (TANF), which creates a five-year lifetime limit on benefits. It also requires those receiving federal finances to prove employment to receive benefits.¹⁵ The program does not provide substantial payments, but it can help meet a family's basic needs. Unfortunately, the law "requires that states *permanently* bar individuals with drug-related felony convictions from receiving federally funded public assistance."¹⁶ This means those convicted of drug-related felonies, nonviolent offenses, are forever banned from receiving government aid. Without a home, employment options, or social assistance to support themselves, ex-felons are pushed to the bottom of society. Also, newly released prisoners are expected to pay back their debts and fees to probation de-

partments, courts, and child-support offices.¹⁷ This puts individuals struggling to provide food for themselves in the role of providing for others. Yet, when they are unable to meet this requirement they are forced to pay "poverty penalties," additional fees imposed for too many late fees and interest overload.¹⁸ It feels like a hopeless and inevitable cycle produced by the government. But what if they could enact change by voicing their problems and concerns to those with political power?

When an individual is convicted of a crime their political voice is muted and their ability to be involved in the political system is greatly diminished. From the beginning of the trial "judges are not required to inform criminal defendants of some of the most important rights they are forfeiting when they plead guilty to a felony."¹⁹ In some cases the judges are not even *aware* of the rights taken away from convicted individuals. So from the beginning felons are disenfranchised by not knowing their rights. Furthermore, when one is found guilty of a felony they are excluded from jury duty for the rest of their lives.²⁰ The establishment of the United States and the Founding Father's hope was for a participatory democracy by giving citizens the responsibility to ensure justice within the legal system. It is interesting that those who have gone *through* the experience are funneled as ineligible or inadequate to share their opinions on what is "just." Additionally, the District of Columbia and 48 states do not allow incarcerated inmates to vote in prison. Only Vermont and Maine, states with a 95% white population, do allow inmates to vote while in prison (2016).²¹ In 2002, 14 states prevented the previously incarcerated from voting. Some of these states include

70%

of prisoners
are high school
dropouts

50%

of prisoners
are illiterate

Alabama, Florida, Kentucky, and Mississippi.²² Even once ex-felons are able to regain their voting privileges, they still are required to pay any remaining fines before exercising the right. The political voice of a formerly and currently incarcerated is not being heard and this dramatically influences elections. It is estimated that if the “600,000 former felons who had completed their sentence in Florida been allowed to vote, Al Gore would have been elected president of the United States rather than George W. Bush.”²³ The ability to change political outcomes is of much importance, especially in present day elections. Since the American party system has historical racial and class implications it seems peculiar that a large black voice is being dismissed.

Lastly, a possible last resort for an ex-felon would be to go back to school and receive an education. If convicted of a drug offense during their time in school, while receiving federal aid, a convicted person becomes *ineligible* to receive financial aid once released.²⁴ There are some grants ex-felons can apply to and receive basic job training. Unfortunately, the financial burden of going to school rather than working makes many ex-felons unable to consider returning to school. Also, using the previously stated illiteracy rates, schooling may have been a difficult aspect of their lives. It is estimated that 70% of juveniles in prison have a learning disability and 33% have a 4th grade

48 states do not allow incarcerated inmates to vote

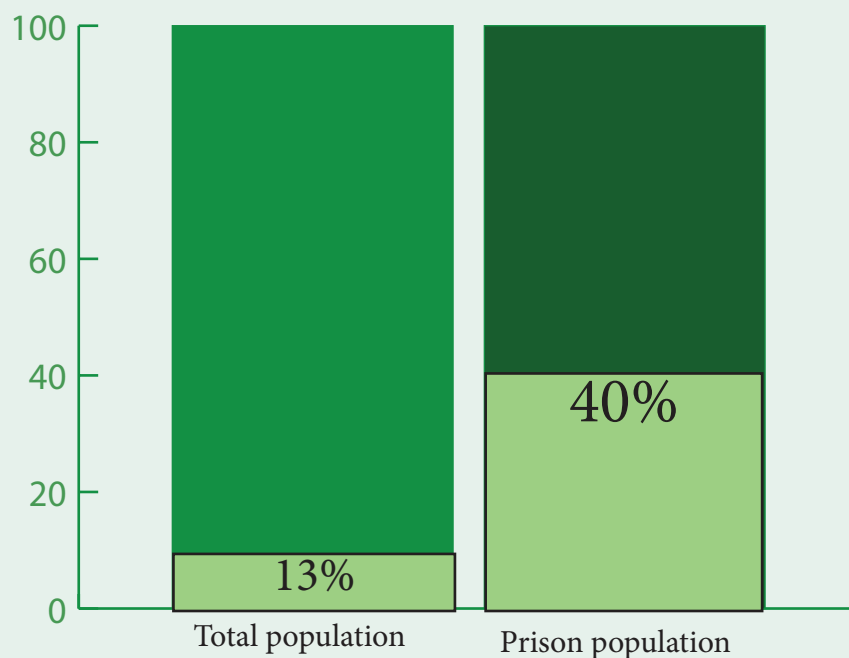
reading level.²⁵ The school system unfairly targets students who are not succeeding academically, often punishing them with suspension or expulsion from school. This then adds to a population of uneducated, at-risk individuals who find themselves in and out of the criminal justice system. Education is valuable, but that can only be seen if other basic needs are met and society encourages *all* students to learn—instead of labeling *some* as troublemakers.

January 1, 1863 President Abraham Lincoln declared the Emancipation Proclamation that stated, “all persons had as slaves are, and henceforward shall be free.”²⁶ Two years later the 13th Amendment officially outlawed slavery and made all black slaves *legally* free from bondage. Unfortunately, the lives of newly freed blacks were seen, by white society, as necessary for extermination. In the South from 1889-1918 an estimated 2,409 black individuals were lynched.²⁷ Lynchings in the South were a predominant concern, but as Ida B. Wells notes, the “lynching mania has spread throughout the North and Middle West.”²⁸ The *entire* United States participated in ending black lives and treated the deaths as spectacles for the enjoyment of white citizens. The lynchings that took place in the North and West are crucial to note because of the lack of black citizens spread throughout these territories.

Freed blacks were most “likely to be lynched in any given year in the Western states of Wyoming, New Mexico, and Oregon.”²⁹ Blacks could not escape the violent prejudice pulsing through the veins of their white counterparts. The North also participated in anti-black violence through gangs and riots. Specifically in New York in 1900, white citizens *and* police forces enacted a riot against freed blacks.³⁰

After the brutalities, blacks tried to guarantee their safety and pushed for political action—exercising the rights given to them by the 14th Amendment in 1868, which “granted” slaves citizenship to the country they helped build. Freed blacks were given limited political access and denied their rights connected to citizenship through internal and external discrimination. There were written laws for equality put in place, but this legislation was never followed *de facto*. Blacks were unfairly targeted for punishment for petty crimes such as spitting, swearing and trespassing, which were deemed “improper demeanor.”³¹ These subjective practices were put in place to cre-

ate opportunities to punish the black citizens. The Black Codes were enacted by the Johnsonian legislatures after the Civil War in 1865 and 1866. The purpose of these laws “was to keep the Negro exactly what he was: a property-less rural laborer under strict controls, without political rights, and with inferior legal rights.”³² Black citizens were expected to hire themselves out at the beginning of each year and those who failed to do so were prosecuted as “vagrants” and then forced to work on local plantations.³³ Although freedom from slavery had been guaranteed through the 13th Amendment, freed blacks were constantly at odds with the depraved white forces.



In the 2010 United States census, the black population made up 13% of the total population, but 40% of the prison population (Wagner 2016).



Blacks had to live with these unfair politics and being tried for petty crimes or even crimes they did *not* commit. Black men were seen as a threat to the social order (read: white women) and society (read: white masculinity) needed to stop any relations. This is why black men were “disproportionately tried, and convicted, of interracial murder.”³⁴ The inability to pay or be represented with a *fair* trial meant that blacks were forced to plead guilty and face brutal prison conditions. For example, in the South black felons were starved, chained to one another, lived in inhumane conditions, overworked—even while sick—and, to parallel slavery, whipped.³⁵ Black felons were used as a cheap labor force that provided economic benefits to the controllers and kept white society content through the

depletion of the black community. Black citizens did not even bring issues to light because of the costs they would have to pay for only minuscule changes by government.³⁶ Even within the government, black individuals did not want to be involved. North Carolina’s black congressman George White left Congress in 1901, and the office would not have another black individual for over thirty years.³⁷ The environment of politics was inherently racist and not a place free blacks benefited.

Voting should have provided blacks the means to articulate their feelings regarding discrimination and their civil societies. Freed black men secured the right to vote with the establishment of the 15th Amendment in 1870. At the end of the Civil War black men in both the North and the South were only allowed to



vote in five states on the same terms as white men.³⁸ The South had more black voting success due to the enlistment of federal troops to protect black voters. Per usual, white conservatives were frustrated at the acceptance of blacks and formed groups called the White Line or Red Shirts in which they planned attacks on Republican meetings.³⁹ They not only violently intimidated blacks, but also encouraged white employers to fire their black employees who became involved in politics. This unfair treatment forced blacks to silent themselves from publicizing the atrocities they were facing. Even in the North and West blacks were “decisively marginalized at the polls, were routinely barred from much of the labour market, suffered mob violence and were often segregated.”⁴⁰ They were pushed away from

being active members of society. Their voices and opinions did not matter, and the government wanted to *ensure* that blacks knew that. The Lodge Force Bill of 1890 was put in place to secure more voting rights for black men, but it was opposed. The Republican Party tried to place a small effort on black voting, but after the failure of the Lodge Bill and the loss of support from white voters they gave up. Voting equality became a concern for *blacks* to deal with, but with no government representation it eventually lost its importance.

As slavery came to an end, freed blacks had to economically establish themselves in an economy dominated by whites. Most blacks were forced into labor and agricultural work. Sharecropping became a major employment for blacks in the South, where


“freedmen were forced to work on [fields] for extremely low wages or payment in form of food, shelter, and clothing.”⁴¹ This does not allow blacks to create stabilized financial means; instead it forces them to work a job analogous to their previous one of bondage. If they did not perform “adequate” work they could be physically assaulted or whipped with zero concern to gender.⁴² The mentality of white conservatives was that blacks were ineligible for other types of work. This racist mentality fueled white society’s concerns for blacks having other jobs. In South Carolina, freed blacks had to receive permission and special licenses for non-agricultural work. In Mississippi freed blacks were unable to rent land or obtain travel passes.⁴³ Blacks were restricted from any prosperity in the country. There was no chance for them to grow, buy a home, or move upward in their societal roles.


Even Northern blacks did not have equivalent opportunities as white individuals. This is a significant reason why many blacks stayed in the South, because the North lacked jobs for blacks.⁴⁴ The jobs that were available were the leftovers from white society. For example in Chicago’s livestock market, the company employed over 20,000 workers and by 1890 one was black.⁴⁵ In both Chicago and Delaware two thirds of black men and over eighty percent of black women worked as basic laborers or domestic servants⁴⁶ This was the North’s way of controlling their black population—casting them out of public view by giving them jobs not regarded as appropriate for whites. It was less publicly brutalized than the South, but the discrimination is still evident. Also, in the North blacks were discriminated by trade unions. The 1899 Indiana Afro-American Conference



observed, “the greatest enemy of the Negro is the trade-unionism of the North.”⁴⁷ Blacks were discouraged from joining unions and thus lost the privileges gained from the coalition, such as wage and pension negotiations. For example, Boston white employees did not want their black co-workers to be trained as their equals and in California, the food industry union barred blacks from entry.⁴⁸ The distaste from other employees showed the internalized beliefs regarding blacks working in the same field. Unfortunately, the employers did not try to combat the discrimination. As segregation became a major component of daily life, the Civil Service Commission from 1914 to 1940 had all of its applicants place their photo on their application.⁴⁹ What are free blacks to do if their own *government* is against their prosperity and success? This was a tool to stop the hiring of blacks, without making it an outwards “race” partiality.

The similarity between free blacks from the





Jim Crow era and ex-felons during the current age of mass incarceration begins with their lack of societal opportunity. As blacks were freed both in the North and South, they lacked political and economic support. Segregation had been legalized during *Plessy v. Ferguson* in 1896, declaring “separate, but equal” facilities legal.⁵⁰ Yet, this enforcement did not allow blacks to operate as equal counterparts with the white community. They were never “free” as Edward Turner describes in his book *The Negro in Pennsylvania* due to the “increasing racial prejudice.” He blamed the wealthy blacks for their economic threat to the white man and the poor blacks for being an inept race.⁵¹ The increasing racial distaste towards free blacks is now parallel to the disenfranchisement of ex-felons. Ex-felons are unable to live in public housing, denied the right to vote, and cannot receive benefits. Even the simple task of driving has become restrictive, so individuals cannot get jobs to earn a wage to survive and stay out of prison.⁵² Society treats individuals as permanent criminals, although they have spent the time in prison to rectify their offenses. As a middle-aged, African American man who had spent time behind bars explains, “We [black men] have three strikes against us: 1) because we are black, and 2) because we are a black male, and the final strike is a felony.”⁵³ Society has deemed black men a threat to its social order. It has criminalized the black body and have restricted its growth. During slavery and Jim Crow the N-word became a tool of subjugation, a tool to distinguish power. Now, “felony is the new N-word.”⁵⁴ Society needs an establishment of hierarchical order, and since it is considered racist to place blacks on the bottom,

they have replaced them with criminals. Both freed blacks and ex-felons have a forced resignation of their political power and role in a society that deems them inherently unworthy.

The restrictions enforced upon free blacks and ex-felons create a negative presence in the social framework, where they are seen as a disturbance, threat, and permanently the “other” in (white) society. Freed blacks were disenfranchised to promote “an economic source of cheap labor and a political means to re-establish white supremacy.”⁵⁵ Free blacks could only be used to provide economic gain for white society. Once their role extended past that they became a threat to the social order and needed to be stopped. They were considered “problem populations.”⁵⁶ The government did nothing to stop the oppression as the Republican Party “fanned Southern exclusion and gave added legitimacy to mistreatment and racism in the North and West.”⁵⁷ Similarly, ex-felons are considered a concern to the natural order of society. The treatment parallels a New Jim Crow justified by the “criminalblackman.”⁵⁸ Society has taken actions to prevent ex-felons from making a life outside of prison by making their criminal history a constant source of embarrassment for them, their families, *and* their communities. Michelle Alexander states, “Criminals today are deemed a characterless and purposeless people, deserving of our collective scorn and contempt.”⁵⁹ Ex-felons will never escape their past because their criminality becomes their identity and it is nearly impossible to change that status. As ex-felons and freed blacks were constantly a threat to the hegemonic forces, their way of coping with their marginalization was by internalizing and accepting it.

Many free blacks and ex-felons of lower social status internalize the stigmatization and accept their dehumanization and ostracized roles. Free slaves accepted they would constantly be discriminated against because white society wanted them back in bondage. In North Carolina “a person could get three to ten years in prison for stealing a couple of chickens.”⁶⁰ Even for petty crimes, blacks knew the punishment could cost them their livelihood. Free blacks had to work toward not disrupting the social order and if this meant poverty, unfair laws, and blunt racism, so be it. Ex-felons live in a related state of fear from “racial profiling, police brutality, and revocation of parole.”⁶¹ When trying to secure their voting rights, ex-felons are afraid of entering a courthouse because of the possibility of having to return to prison. This is the exact attitude that the hegemonic forces intended to inflict. They want to take the personhood of free blacks and ex-felons away and force them to lose their voice in society, their roles as active citizens, and eventually become invisible. It becomes a “lifetime of shame, contempt, scorn and exclusion.”⁶² The only way both groups are able to accept their fate is by allowing the character traits enforced by whites to be a reality. Michelle Alexander states that ex-prisoners cope by “embracing one’s stigmatized identity.”⁶³ This explains why both free blacks and ex-felons turn to street activity and gang culture. They seek a group to collectivize and to feel accepted by members who they can relate to. Unfortunately, a more beneficial role in society is not an option because free blacks and ex-felons have been pushed out. They have accepted their identity as an “other” and the suppressed hopelessness is,

yet, another right stripped away from them.

Ex-felons are disenfranchised through a loss of access to public housing, employment, welfare benefits, political privileges, and education. Similarly, freed blacks during Jim Crow were unable to live a life free of violence, segregation, and bigoted political and economic systems. Both ex-felons and free blacks were stripped of their rights, forced into a society that deemed them as unworthy, and, in a state of defeat, have assumed their lower caste as inevitable and unchangeable. These two groups are pushed into a society that does not want their presence or involvement. The only way to combat discrimination against ex-felons is by “embracing them—not necessarily their behavior, but them—their humanness.”⁶⁴ Race and social class do not *need* to be factors, but accepting the mistreatment of human dignity and livelihood is the first step for the system to change.





ENDNOTES



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TURKS IN GERMANY:

An Evaluation of Socioeconomic Integration

BY MARY LODIGIANI '18

This research evaluates the socioeconomic integration of those with Turkish heritage living in Germany. Although Turks first arrived in Germany just after World War II, their socioeconomic integration continues today. This research evaluates the structure of the German labor market, the education system, and language gap, and determines their roles in the discrimination against Germans with Turkish heritage. Personal accounts are also included to illustrate the struggles Turkish immigrants have faced over the years due to both cultural and economic factors. This paper challenges Germany to reexamine its so-called “welcome culture,” or “Wilkommenskultur,” as they reflect on their treatment of Turkish immigrants and plan for their future after Chancellor Merkel’s recent re-election.



When Turks arrived in Germany after World War II, they were referred to as “Gastarbeiter” or “guest-workers.” The irony in this statement is that Turks who arrived in Germany to fill the post-war employment gap can hardly be called guests – instead of returning to Turkey, they settled down, brought over their families, and continue to live in Germany. There are now 3.5 million people with Turkish heritage residing in Germany, which is home to half of Europe’s Turkish population.¹ Even though guest worker recruitment ended in 1973, Turkish immigrants continue to enter Germany through family reunification or as asylum seekers.² Although the Turks have been in Germany for over three generations, socio-economic integration remains incomplete. This study considers the limitations faced by Germany’s Turkish community as they strive to integrate socio-economically.

Various factors can be used to measure Turkish integration within German borders. The most common way to measure integration is to compare the socioeconomic achievement of Turks with the native German population; the differences observed in unemployment rates and performance in schools are effective indicators. Factors such as language skills and citizenship rates can also gauge Turks’ abili-

ty to succeed in the labor market.³ While this study focuses on socio-economic integration, integration is a multidimensional process, to which socio-economic integration is central to other forms of cultural and social integration.

Socio-economic integration of the Turkish community in Germany, which was originally seen as a community of guest workers, was not a national goal until the 2000s. Until then, the Jus Sanguinis, or “Right of Blood” principle applied to Germany as an ethnic state, barring children born to immigrant parents from citizenship status.⁴ When Turks entered Germany during the labor shortage of the 1970s, attempts at integration were not made because guest workers, German politicians, and German society believed that Turks would eventually return to their homeland. As a result, Turks did not learn German, a factor which limits their options for economic participation and has denied them the opportunity to connect with German society.⁵ The first generation of Turks in Germany may have been satisfied working low-skilled jobs, as the quality of life in Germany was better than its Turkish counterpart; however, the second and third generations are trying to integrate more fully in order to achieve equal opportunity in the workplace with the

3.5

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1/2

of Europe’s Turkish
population lives in Germany

knowledge that they are in Germany to stay.

The Turkish community is at a significant disadvantage in the German workplace. They face discrimination when seeking work, as résumés with Turkish-sounding names are less likely to be called for interviews.⁵ For example, the Expert Council on German Foundations on Integration and Migration found that an applicant with a German name gets an interview for every 5th application they send, while applications with Turkish names are called every 7th application.⁶ This imbalance is due to prejudice and stereotypes, as well as fear that Turkish employees may not be liked by German customers.⁶ Thus, prejudice hinders the upward mobility of workers with Turkish heritage in the German labor market.

The occupations in which Turkish men are overrepresented are highly affected by structural and cyclical change. To make matters worse, earning potential and opportunities for advancement are lower for Turks. Even after completing language courses, they have a higher risk of unemployment and occupational mismatch. This statistical analysis is partially due to employer discrimination. Employer's perceptions about the work-related behavior of Turkish groups regarding punctuality, loyalty, and other traits alter productivity expectations, even for workers with vocational qualifications. To counter this form of discrimination, anonymous job applications have been suggested.⁷ The gap between German and Turkish workers is also highlighted by the wage disparity. Turks earn, on average, 20 percent less than native German workers with otherwise identical skills. The gap is smaller for Turks with German language capabilities and education. Im-

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migrants can catch up by one percentage point per year, but the process slows down over time and wages never converge. Turks with the same education as Germans do not have jobs with as much occupational autonomy as natives.⁸

While Turks are given certain socio-economic privileges, the job market remains divided between Germans and Turks. Turkey's 1964 Association Agreement with the European Union grants considerable concessions to Turks over other non-EU nationals. According to the agreement, Turkish Nationals in Germany may apply for unlimited labor market access after four years of employment, compared to five years of employment or six years of residence for other Third Country Nationals.⁸ Even so, the unemployment gap remains high. When compared to the 6% rate of unemployment among German natives, 20% of those with Turkish heritage are unemployed.⁷ In addition, Turks have limited access to public-sector employment, including civil service positions like policemen, judges, prosecutors, teachers and university lecturers, and federal administrative positions. These occupations are open to German and EU citizens only.⁸ Germans are also quite over-represented in white-collar jobs, while

Turks are largely confined to blue-collar jobs.⁹

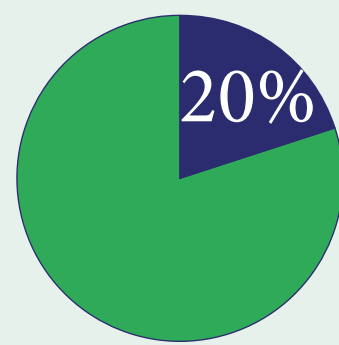
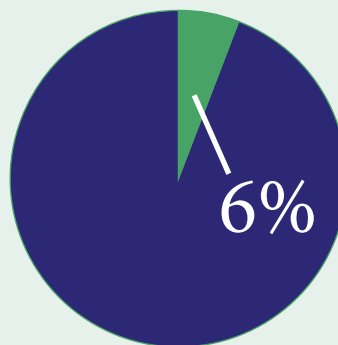
What sounds promising is that Turks constitute the largest group of business owners among foreigner groups in Germany. In fact, 51,000 are business owners providing jobs for 265,000 persons.¹⁰ This may seem encouraging for Turkish socio-economic integration, as business ownership allows Turks to achieve upward mobility. However, it can also be regarded as a disadvantage and may lead to ghettoization.¹⁰ Because Turkish-German workers suffer from a lack of qualifications and several forms of discrimination, they may have no other option but to open up, for example, Döner Kebab restaurants. Business ownership and self-employment as forms of immigrant entrepreneurship threatens the position of minorities in the labor market and increases their socio-economic isolation from Germans. In reality, business ownership may not be enough to catch up. Business ownership often represents a dead-end situation and traps immigrants into long-standing precariousness. Business ownership also keeps Turks isolated within their ethnic community and prevents them from learning and interacting with German language and culture. Furthermore, living and working conditions are often harsh, lead-

ing to frustration and disillusionment, furthering the gap between immigrants and natives.¹⁰

The problems faced by Turks in the job market can also be attributed to their below-average levels of education. Opportunities for employment, higher income, and job security in Germany all depend on one's education and vocational paths. The under-representation among young Turks in regards to higher education and professional degrees is directly related to the education levels of their parents. The parents of second and third generation Turks are still unlikely to be educated. The influence of parental education on achievement is largest in Germany, so the role of education for social stratification and chances of the next generation are even larger in Germany than in other EU countries.⁹ The discrepancies can be blamed on the structure of the German education system, which is tracked. The children of Turks are more likely to attend the lowest of the three secondary school tracks and leave the educational system without achieving any certificate at all. Half of Turkish students do not attain vocational or professional degrees, while among Germans, the rate of those without a degree is only half as high.⁹

Germany's education system is institu-

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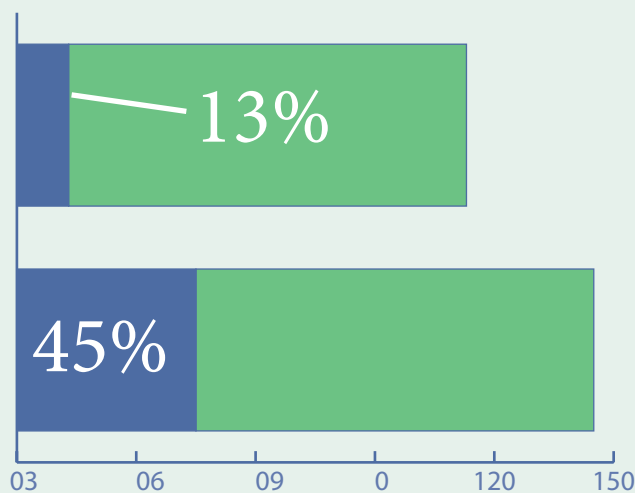


tionally designed in a way that disadvantages Turkish students. The education system is tracked, sending only the most-promising students to high school and barring everyone else from chances at attending college. In fourth grade, teachers make the fateful decision whether students will be sent to the low-level Hauptschule, the mid-level Realschule, or the high-level Gymnasium. The fourth option, the Gesamtschule, combines all three forms under one roof, allowing students flexibility to switch schools as needed. The Gesamtschule was put in place to serve the needs of underprivileged and immigrant children. The Hauptschule provides students the least demanding curriculum. While only a third of German children learn here, nearly three quarters of all Turkish-German children are put in these schools. Furthermore, German children are four to five times more likely than Turkish children to study at the high-level Gymnasium. While 45% of German children were enrolled in a Gymnasium, only 13% of those with Turkish origin are placed in it.¹¹ Most Turks are placed in the low-level

1/3 of Turks are unable to get an internship after receiving a degree

Hauptschule, where only half actually receive a certificate. Even with the certificate, they are at a disadvantage in the labor market due to their lower-quality education. Their struggle upon entry into the labor market is evidenced by the 1/3 of Turks who are unable to get an internship after receiving their degree. Those lucky enough to find internships are limited to becoming beauticians or mechanics. Largely due to the tracked system, experts have concluded that Turkish children in Germany are in the “worst possible situation.”¹¹ Indeed, Germany performs the worst among the European countries in regards to educating its migrant children. It is clear that several structural factors have resulted in the lower standard of education among those with Turkish roots.

While 45% of German children were enrolled in a Gymnasium, only 13% of those with Turkish origin are placed in a Gymnasium.



Turkish-Germans are also limited by their lack of German language knowledge, which hinders their academic success. Teachers are influential in deciding the track of Turkish students within schools. A lack of German language skills means that a child will likely be assigned to the Hauptschule. To remedy this problem, a 2005 immigration law created German language courses for immigrants in an attempt to promote integration.¹¹ By 2007, it was mandated that immigrants arriving to Germany to meet a spouse must either speak some German or enroll in government-sponsored language classes. While some view this measure as forced assimilation, it was an attempt to improve educational achievement for the children of immigrants. Turkish students with parents who can both communicate with their teachers and help them with homework are more likely to be placed in the Gymnasium.¹¹ Bringing German language skills to Turkish Germans has been an attempt to help them succeed in school and become more prepared to competitively enter the labor market.

For the interactive tasks required in many occupations, German language skills, along with behavior in accordance with social and cultural norms, is key. The language barrier contributes to the labor market's discrimination and segregation. Therefore, the federal government provides German lessons to adults as a part of general and specific integration courses. Some language courses focus on job-specific language needs to bridge the gap.⁷ The initiative, "German in the Workplace" includes support for language teachers, companies, and labor unions interested in enhancing the workplace communication skills of Turkish workers. Reading, writing, digital competence,

proficiency in information and communication technology, and study skills are provided by the Federal Office for Migration and Refugees. Nearly half of the participants of this program found a job or vocational training placement. The program will receive funding until 2020.⁷

Former Turkish guest worker, Cennet Kadem, shared her experience with learning German in order to becoming integrated into German society. Kadem learned German language skills on her own, with the help of a radio program. Her language skills helped her integrate into the socioeconomic realm of German society, and as a result, all five of her children made it to the university level. Kadem feels that she and her husband took two decades to integrate, and that a little bit of help could have eased her integration process. Kadem explains, "The politicians weren't concerned about us. No one talked about the need to integrate because we had been here for so long. We only heard about integration for the first time 10 years ago, or maybe 15 and then they asked 'why haven't people integrated.'"⁵ Kadem's experience is evidence that language is key to socio-economic integration, and with a little help, this type of integration for Turks in Germany can be beneficial.

A cultural difference in values prevents some Turks from acquiring the language skills necessary for socio-economic integration. For example, Imhan K, a Turkish wom-

3
of Turks in
German Parliament

an living in Germany, had her welfare benefits slashed after her husband refused to let her take German courses. Imhan's husband believed that language courses and potential entry into the labor market would interfere with her ability to take care of their son and fulfil her role as a homemaker. Now, German courts must decide whether immigrants can be forced to learn the language associated with the adoption of western culture in order to receive welfare benefits.¹²

Some Turkish-Germans have achieved great success despite the odds. Since the mid 1980's, a small but slowly-growing group of second-generation Turks have experienced upward mobility. Turkish college attendance

provides an example for the German population, which may not expect Turks to reach such levels. Even so, Turkish men earn less in higher-level jobs than men with German heritage.¹³ Such disparities are of special interest to the three Turkish members of parliament, who are using their position to push for the socio-economic integration of Turks.¹¹



The socio-economic limitations faced by Turks can be attributed to German citizenship and naturalization laws. Before German naturalization law was changed in 1999, guest workers and their children rarely qualified for citizenship. Reforms allowed the second generation who had lived in Germany for at least eight years to hold dual citizenship in Germa-

The socio-economic limitations faced by Turks can be attributed to German citizenship and naturalization laws.

is increasing and the number of Turkish teachers, lawyers, engineers, scientists, and university graduates is on the rise. Turks are no longer stuck in their stereotypical niche industries like catering, retail trade, and travel agencies. Instead, they are becoming involved in banking, tourism, brokerage, marketing, consulting, advertising, and data processing sectors. Furthermore, some Turks have become famous authors, artists, and three are members of parliament. The public great success of some Turks contributes to the mobility process, which sets an example for the Turkish community.¹¹ Their visibility also

ny and in Turkey, although they must relinquish one nationality by their 18th birthday. Even though the law was relaxed, citizenship remained low among Turks in Germany, at only 26%. This number is low because there is a high correlation between poverty and religiosity among Turks in Germany, making it even less likely for Turks to seek citizenship. Their failure to gain citizenship makes them appear to many as a group of "outsiders."¹¹

While citizenship is a path to socio-economic integration, it is clear that many Turkish-Germans are simply not interested in attaining citizenship. Negative attitudes to-



wards Turkish-Germans makes them less interested in becoming German citizens. Turks' higher unemployment rates also affect citizenship aspirations negatively.¹⁴ These problems can partially be blamed on the inadequate structures of residence and naturalization policy in Germany. For example, a highly-settled permanent group of non-nationals' status is only partially reflected in their residence status.² Further developments of citizenship-related laws are thus necessary.

Germany is developing a "Wilkommenskultur," or "welcome culture" in order to make it a more attractive and enticing environment for immigrants.¹⁵ While this type of cultural is positive, it still lacks actual means to effectively carry out its goals. This lack is evidenced by the Turks' struggle to attain the education and language skills needed to be successful in a labor market that already discriminates against them. Further policy change is needed to clarify the concept of "Wilkommenskultur" and determine how Turkish immigrants can catch up in the labor market and become socio-economically integrated in Germany.





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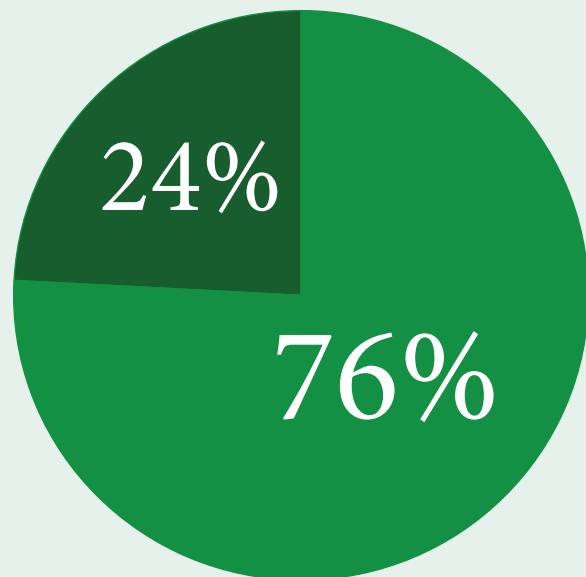
THE USE OF HISTORY IN RELIGION CLAUSE CASES AND CONSTITUTIONAL INTERPRETATION

BY NICOLE MOLEE '18

History is perhaps one of the most widely used tools in cases dealing with the religion clauses of the First Amendment, but should it be used as a definitive factor in answering constitutional questions? In this paper Molee argues that history should not be used for constitutional interpretation because of its contradictory nature, using Mark Hall and Steven Green's analysis the use of history in religion clause cases. Molee first briefly examines the complicated history behind the religion clauses of the First Amendment, focusing first on Thomas Jefferson and James Madison's interpretation, and then broadening the scope to the First Congress. Next, Molee examines key religion clause cases and the flawed application of history used. Molee then questions the broader use of originalism and intent-based interpretation in religion clause cases. Finally, Molee examines several case studies, first analyzed by Green and Hall, that show why history should not be used as justification in religion clause decisions. Molee concludes this paper by asserting that the use of history in religion clause cases is inherently flawed.

History is a tool widely used when interpreting the Religion Clauses of the Constitution. According to a comprehensive study of all religion clause cases, there are an average of 6.8 appeals to history in each case and more than 2.2 per opinion.¹ Following the re-emergence of religion clause cases with *Reynolds v. United States*, almost 76% of the Justices who have written at least one religion clause opinion have appealed to history, while all the Justices who have written more than four religion clause opinions have appealed to history, showing a pervasive use of history for religion clause adjudication.² The Religion Clauses can and have been interpreted correctly without the use of history, making a more consistent and applicable legal opinion. Justices are not historians and should not try to pass off a subjective account of history as fact. First, this paper will examine the contradictory historical record and the flawed application of history to the religion clauses through various court cases. Next, the paper will examine the merits of originalism and intent-based interpretation in relation to the application of history to religion clause cases, refuting the idea of originalism as a viable interpretation method. Lastly, this paper will examine several case studies, identifying history as ambiguous and subjective and explaining why history should not be used as a controlling legal tool, but perhaps should be used instead as relevant source material. History can be valuable as a source of information for some religion clause cases, but its effectiveness in constitutional interpretation should be questioned and refuted. History should be used, if at all, to inform not resolve, legal controversies, but ideally, history would not be used in deciding religion clause cases.

History is too contradictory within itself, too complicated, and too subjective to use as a basis for legal decisions. The phrase, “wall of separation,” is perhaps the most widely used phrase applied to religion clause interpretations. It finds its origins, ironically, in the work of Baptist theologian Roger Williams, founder of the colony of Rhode Island, and was adopted by Thomas Jefferson in his letter to the Danbury Baptist Association.³⁴ Jefferson wrote, “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of



76% of the Justices who have written at least one religion clause opinion have appealed to history.

separation between Church and State.”⁵

This interpretation of the First Amendment has influenced religion clause doctrine and applied history related towards the First Amendment. In fact, in addition to using the phrase, “wall of separation” to interpret the founders’ attitude towards the First Amendment, the Founders’ perspectives have been narrowed interpreted as almost exclusively Thomas Jefferson and James Madison’s interpretations of the religion clauses.⁶ The phrase, “a wall of separation” can and has been interpreted in several ways by historians. Some critics of separationist thinking generally cite the fact that many aspects of church and state were intertwined during the ratification of the Constitution, and thus the current interpretation of strict separation could not have been intended by the Framers, also referencing the Declaration of Independence and its mention of a “Creator” to support their criticism.^{7,8} Critics of the separationist position, including Justice Thomas, also question the incorporation of the First Amendment because most states had established churches at the time of ratification.^{9,10} The interpretation of this phrase shows the broad and conflicting interpretations of history and the tendency to see history as binding on modernity, raising questions about the use of history in making legal assertions.

Jefferson and Madison have long been interpreted by the Court to hold separationist views regarding the religion clauses, due in large part to Madison’s *Memorial and Remonstrance* and Jefferson’s letters to Danbury Baptists, as well as both their actions regarding their home state of Virginia.¹¹ The use of Madison and Jefferson to judge the intentions of all of the Founders would be a careless reading

The phrase, “wall of separation,” is perhaps the most widely used phrase applied to religion clause interpretations.

of history even if Madison and Jefferson were consistent in their views and actions, but they show many contradictions to their seemingly separationist position. Critics of the separationist position question if Jefferson and Madison actually were strictly separatists, using the two Founders’ contradictory actions to justify their critique. Jefferson and Madison’s conceptions of “separation” have long been debated because of conflicting evidence. As President, Jefferson refused to issue Proclamations of Thanksgiving, though he did so as the Governor of Virginia, while President Madison issued four religious proclamations, but vetoed two bills he thought violated the first amendment.^{12,13} After his retirement from the presidency, Madison took a seemingly more separationist view and wrote of total separation of the church and state.¹⁴ In his original draft of the Bill of Rights, he had provisions prohibiting the States from the establishment of religion along with the Federal government, but they were not passed.¹⁵ It seems that Madison and Jefferson had complicated ideas on how religion and government should mix, providing a contradictory and narrow historical narrative at best, and paving the way for broad and sometimes conflicting interpretations of the First Amendment. The contradictions of history and historical figures, such as Madison and Jefferson, paint a cloudy picture of the First Amendment

and its original supporting intent. This conflict shows the problems behind using history to interpret the religion clauses.

Even if the Court bases its opinions on the larger and broader First Congress and its deliberations on the religion clauses in order to define the intentions of the Founders, the historical record is lacking in substance and fraught with ambiguity.¹⁶ Thomas Jefferson can barely be considered in this interpretation because of his absence and the intense secrecy of the proceedings that precluded him from knowledge of the exact nature of the debates.¹⁷ The legislative history is unhelpful in determining intent because of the scarcity of official records, but some notes do shed light on the Founders' thoughts and feelings towards the place of religion in society and its relation to the government.¹⁸ However, much like Madison and Jefferson's various contradictions, the First Congress is even more contradictory in their deliberations; the only common ground agreed upon was that the text be included within the Constitution.¹⁹ Madison, significant in the debates for sure, wanted to include a provision banning the establishment of a "national religion." The House, in favor of more general language, rejected this suggestion.²⁰ Some Framers opposed the Establishment Clause altogether, deeming it unnecessary or too dangerous to the rights of the states, while other Framers wanted a more narrowly tailored clause. One version read, "Congress shall make no law establishing one religious sect or society in preference to others, nor shall freedom of conscience be infringed," while another read, "Congress shall make no law establishing one particular religious denomination in preference to others."²¹ Ultimately, the

religion clauses that are included in the Constitution were a result of significant compromise between all members of the Congress. Therefore, making the use of one opinion from the First Congress as representative of the entirety of the Framers' opinions is woefully inadequate because the historical record is inherently contradictory.²² The records from the debates surrounding the religion clauses are either missing (from the Senate debates) or, as Madison himself described about the records from the House debates he chaired, "not to be relied upon," claiming the record keeper "was indolent and sometimes filled up blanks in his notes from memory or imagination."²³ The insufficient record creates problems in using history as an interpretive tool.

It would seem that through the intense debates over each and every word included or not included in the religion clauses that the Framers "believed that the constitutional interpretation should be drawn from the express

The contradictions of history and historical figures such as Madison and Jefferson paint a cloudy picture of the First Amendment and the intent behind it.

language of the document, not from the statements of those who drafted the language... shar[ing] the traditional common law view... that the import of the document they were framing would be determined by reference to the intrinsic meaning of its words or through the usual judicial process of case-by-case interpretation,” (Laycock 586).²⁴ As Douglas Laycock writes, “we have inferred... the intent of the Founders... but such arguments come from our own heads. What we get from the Founders is the broad contours of principle,” (Laycock 589).²⁵ As has been examined, the only really credible and uniform source of religious doctrine in the United States is the written Constitution and, more specifically, the religion clauses.

The flawed application of history based solely on Jefferson and Madison is first seen in *Reynolds v. United States*, an 1879 case on polygamy, in which the Court declared that Jefferson’s comments on the wall of separation “may be accepted almost as an authoritative declaration of the scope and effect of the [First] Amendment.”²⁶ This was the first time Jefferson’s letter entered American jurisprudence, with the Court citing Jefferson and Madison in its quest to seek a legal definition for the word religion. Justice Waite declared that religion must be understood in light of “the background and environment of the period in which that constitutional language was fashioned and adopted,” opening the religion clauses up to historical interpretation, and particularly regarding Jefferson and Madison.^{27,28} Perhaps the most definitive case in terms of determining how the Religion Clauses are interpreted, *Everson v. Board of Education* sets the precedent for the way history is used in

relation to the First Amendment and Religion Clause cases. *Everson* is widely regarded as a premier example of a flawed application of history by both the majority and the dissenters. In his dissent, Justice Rutledge writes, “[n]o provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history.”^{29,30} The overwhelming use of history in order to interpret religion clause cases stems from this declaration and the assertion of the significance of history behind the religion clauses.

The historical precedent set by *Everson*, defined by Hall as the “*Everson* syllogism,” is the flawed record of history that much of religion clause precedent is based upon.³¹ *Everson* marked a decisive moment in the interpretation of religion clause cases, incorporating the Establishment Clause and offering an influential method of interpretation for First Amendment cases that prioritized the intent of the Founders and the historical record.³² Justice Black, writing for the majority, agreed with Justice Waite that interpretation of the religion clauses must rest in history, and argued that the Founders’ views are summarized well in Madison’s *Memorial and Remonstrance* and Jefferson’s letter to the Danbury Baptist Association along with his Virginia Bill for Religious Liberty.³³ Black interprets these documents in a simplified and stark manner, and his use of history did not raise dissent within the Court. Justice Rutledge, writing for the dissent, also appeals to history (a whopping sixty-two times, the most of any opinions before or after) to support his conclusion that the Founders, by which he means Madison

Everson's history remains, for many Justices, the definitive account of the origins of the religion clause, and has been used in several subsequent cases.

and Jefferson, intended to “erect a high wall of separation between church and state.”^{34,35} As if the sheer number of his appeals to history were not enough to convey his opinion that history, particularly Madison, was conclusively separationist, he attached a copy of Madison’s *Memorial and Remonstrance* to his dissent in order to fully convey his point.³⁶ Both the majority and dissent formed a precedent based on flawed and oversimplified history that would form what Mark Hall deems the “*Everson* syllogism” that describes the flawed application of history to religion clause cases that would plague the Court in the future.³⁷ The “*Everson* syllogism,” as defined by Hall, holds that history must be used in interpreting Establishment clause cases, particularly the Madison and Jefferson’s intent, meaning that, because Madison and Jefferson are thought to be separationists, the Establishment Clause “requires the strict separation of the church.”³⁸ This syllogism is flawed in several of its premises, invalidating its conclusion and revealing the futility of using Madison and Jefferson as conclusive voices on the Establishment clause. Though the majority and dissent came to different conclusions, they both enu-

merate the authority of history in the interpretation of the religion clauses and base legal decisions on poor interpretations of history.

Everson’s history remains, for many Justices, the definitive account of the origins of the religion clause, and has been used in several subsequent cases. The “bad history” of *Everson* used in subsequent cases is a dangerous precedent that is set, causing religion clause doctrine to be based in incomplete historical record. *Everson* turned Madison’s *Memorial and Remonstrance* and Jefferson’s Virginia Bill for Religious Freedom into “constitutional canon” and made them “authoritative expositors on the meaning of non-establishment and free exercise as found in the First Amendment.”³⁹ Justice Reed, in the subsequent case *McCullum v. Board of Education*, questions the narrowness of the history of *Everson*, writing, “rule of law should not be drawn from a figure of speech,” (referencing the phrase, “wall of separation”).^{40,41} Although the writings of Madison and Jefferson are important, they are not at all definitive, and certainly not always applicable to questions that would not have come to Jefferson or Madison’s attention during their era.⁴² Justice Scalia, referencing

the tradition of legislative prayer and Thanksgiving proclamations, has suggested that acts performed by federal officials are more relevant than Madison and Jefferson's private thoughts before they held office, meaning he finds *Everson's* reliance on Jefferson and Madison's personal writings problematic.⁴³ However, subsequent Court cases after *Everson* used the "bad history" it had labeled as indisputable and conclusive to justify their rulings. In *Engel v. Vitale*, Justice Black, once again speaking for the majority, used the state of Virginia's religious debates as the most relevant history in deciding the case, disregarding other states, and made it clear that Jefferson and Madison's authority on these matters was predominant.^{44,45} Black never explained why Virginia legislation is more relevant than any other state legislation, but perhaps his reverence for Jefferson and Madison transferred to their home state.⁴⁶ In this case, dealing with school prayer, separationist Justices chose to disregard that religion had once been used in the public school system, a historical fact that would contradict their preferred separationist narrative.⁴⁷ This acceptance of some facts and rejection or ignorance of others to support their opinion shows the inconsistency of using history that is contradictory and vague. Adding onto the precedent set by *Engel*, *Abington School District v. Schempp* once again used Jefferson and Madison's views in order to define the Establishment Clause. Justice Clark, writing for the majority, further codifies Madison and Jefferson's role as the prevailing voices on Establishment clause history and meaning.⁴⁸ Clark's majority opinion is the most clearly articulated evidence that the appeal to history relies exclusively on Madison and Jef-

Even religion clause cases that are grounded in history and do not rely on *Everson* can be seen as examples of bad history, especially when they are oversimplified and fallaciously treated as binding for modern times.

ferson in understanding the religion clauses.

Even religion clause cases that are grounded in history and do not rely on *Everson* can be seen as examples of bad history, especially when they are oversimplified and fallaciously treated as binding for modern times. Justice Rehnquist in *Wallace v. Jaffree* agreed with the general idea of *Everson*, stating that "the true meaning of the Establishment Clause can only [be] seen in its history... As drafters of our Bill of Rights, the Farmers inscribed the principles that control today."⁴⁹ Rehnquist disagreed, however, with the reliance on Madison and Jefferson and instead wanted to rely on other Founders. In order to do this he created his own interpretation of history, committing the fallacy of generalization, along with other Justices who disagreed with the Madison and Jefferson's reign over religious clause history.⁵⁰ Oversimplification occurred significantly in *Marsh v. Chambers*, a case disputing the practice of legislative chaplains and legislative prayer. Chief Justice Burger, writing for the majority, relied almost solely on historical evidence to justify the practice. Burger used the actions of the First Congress to defend legislative prayer, pointing out that the First Congress "authorized the appointment of paid

chaplains only three days after approving the Bill of Rights,” meaning that, “clearly the men who wrote the First Amendment Religion Clauses did not view paid legislative chaplains and opening prayers as a violation of that Amendment.”^{51,52} Burger emphasized the consistency of the historical record on legislative prayer as “unbroken... [for] more than 200 years.”^{53,54} This is once again an example of the Court relying on “bad history,” because it takes a historical event out of context and infers meaning from general historical facts. This is an example of a fallacy in how the Court views the Founders. Burger views the Founders as infallible and aware of and concerned about the constitutionality (or unconstitutionality) of their actions, instead of politicians capable of behaving unconstitutionally.⁵⁵ Burger also assumes that the Constitution is a document that’s meaning is “static” and unchangingly based on the experiences and perceptions of the Framers, unadaptable to future situations and generations.⁵⁶ Steven Green and Douglas Laycock outline the need to take events and statements of history completely in context, by not over-emphasizing particular facts that are “independent from their contemporary meaning,” like the fact that the First Congress created a chaplain within three days of approving the language of the First Amendment.⁵⁷ As exemplified by *Marsh*, history cannot be taken piece by piece, but rather it should be taken all together, if taken as a factor at all. *Marsh*’s holding is based on piecemeal historical facts, making the legal precedent based in falsity, a dangerous problem for legal interpretation. *Marsh* exposes the flawed logic of using history to interpret religion clause cases, even if the history is not based in the history en-

shrined in *Everson*, and in viewing the Constitution as a static, unchangeable document.

The use of history in First Amendment interpretations, particularly *Everson*’s account of history, has been sometimes been questioned by other Justices. In his *Nyquist* opinion, Justice White noted that, “one cannot seriously believe that the history of the First Amendment furnishes unequivocal answers to many of the fundamental issues of church-state relations.”^{58,59,60} In *County of Allegheny v. ACLU*, a case dealing with the constitutionality of a display of the Ten Commandments, Justice Blackmun acknowledged the problem present in *Marsh*’s interpretation of history that assumes that modernity is bound by the Founders’ actions.⁶¹ The Founders may have sanctioned a display of the Ten Commandments, but the “bedrock Establishment Clause principle [is] that, regardless of history government may not demonstrate a preference for a particular faith.”^{62,63} Here, Justice Blackmun interprets the Establishment Clause without regarding history and using other tests to determine constitutionality, thus writing a decision that can more easily be used as precedent.⁶⁴ Justice Stevens and Justice Brennan seem to be some of the most outspoken Justices against the use of history in religion clause cases, with Justice Stevens arguing in his *Van Orden v. Perry* dissent that history is too “indeterminate to serve as an interpretive North Star.”⁶⁵ Justice Brennan, in his concurring opinion in *Abington*, warned against relying on an “ambiguous” historical record, calling the use of history “[a] too literal quest for the advice of the founding fathers.”^{66,67} Some Justices have called attention to some of the problems with using history to interpret religious clause

1879

1947

1948

1962

1963

1968

Reynolds v. United States

Everson v. Board of Education

McCullum v. Board of Education

Engel v. Vitale

Abington School District v. Schempp

Flast v. Cohen

cases and suggest that there is better method of interpretation than reliance on history.

The glorification of the Founding period and Founders leads to problems in the uses of history. Larry Kramer describes modern constitutional interpretation as “Founding obsessed’ in its use of history.”⁶⁸ The perceived sacredness of the founding has influenced the use of history and given it an aura of objectivity and authority that legitimizes legal arguments. Because the Court’s adjudication relies on the interpretation of a 228-year-old document, the history surrounding that document obviously becomes important to understanding the context and the events surrounding it.⁶⁹ Although the *Everson* premise proposing that Jefferson and Madison represent all the Founders is challenged and changing, the Founding “still retains its controlling significance” over religion clause adjudication.⁷⁰ By glorifying the Founding period and the men associated with it, it is neglected that the Framers are politicians much like politicians in the modern sense. As Steve Green writes, “The Framers must also be afforded the privilege we give to modern politicians of being obtuse, ambiguous, insincere, incomplete, and contradictory in their rhetoric.”⁷¹ Much like originalists treat the Constitution as static, the Founding is also

treated as an event that is clearly defined and completed within a certain period of time. However Green also notes, “it is as if all human knowledge and wisdom came together for one brief fifteen-year moment; that long-developing notions of democracy, freedom, equality, and civic virtue reached their apex between 1775 and 1790 and ceased developing.” This point of view ignores the long development of ideas before the event of the Founding and goes against the beliefs of the Founders themselves, who saw their political theories as constantly developing.⁷² The idea that the Founding represents the peak of democratic thought disregards the necessity and inevitability of the evolution of ideas. History cannot really be used to answer modern questions that the Framers may not have asked, and the Founding is, as Philip Kurland has commented, “a starting place, not a fixed reference point that necessarily binds future generations... History should figure in constitutional interpretation as an aid to the pursuit of justice, not a constraint upon it.”⁷³ It is a fallacy to think of the Founding period and history as an authority that controls modernity. As stated before, Justice Brennan says that the historical record cannot be taken to be the absolute truth, because that rarely exists.^{74,75} The glorification of

1983

1985

1989

2000

2004

2005

Marsh v. Chambers

Wallace v. Jaffree

County of Allegheny v. ACLU

Mitchell v. Helms

Elk-Grove v. Newdow

Van Orden v. Perry
McCreary County v. ACLU

the Founding period combined with the tendency to take history as authoritative truth causes problems in Court interpretation, and, as seen in *Marsh* and *Van Orden*, tends to make the Court commit the error of overgeneralization of history, potentially getting history wrong and basing legal opinion in false facts.

The idea of originalism and a static Constitution is a problematic way to interpret the constitution as it allows history to govern modern times, glorifies the Founding period, and attempts to use history to answer modern questions the Founders neither faced nor considered. Originalism combines the two different interpretation methods of textualism and intentionalism, creating a system of interpretation that is “fatally ambiguous at best.”⁷⁶ Douglas Laycock claims that “we cannot directly know the intent of Founders who are long dead.”⁷⁷ A critical question that arises from the use of originalism in interpreting the Constitution is “to what extent those original intentions and understandings can be accurately deciphered and the extent to which they should control current constitutional interpretation.”⁷⁸ Originalism holds that the intentions of the founders dictates how the constitution should be interpreted - an understanding that is present in originalist decisions such

as *Marsh* and Rehnquist’s dissent in *Wallace*.

The most extreme applications of history and originalism come through Justices Scalia and Thomas’s opinions. According to Justice Scalia in *McCreary County v. ACLU*, history does not require the government be neutral between religion and secularism. Instead it stresses a “preferential treatment of monotheism over other belief systems,” because of the existence of primarily monotheistic religion during the Founding era, an inaccurate application of history to a modern question that does not take into account the context of the times or the increasing religious diversity in America.⁷⁹ Scalia asserted “that the Establishment Clause was enshrined in the Constitution’s text, and these official actions show what it meant,” so Justices should only interpret the Establishment Clause in light of the First Congress and their intentions behind the clause.⁸⁰ The fact that some Framers thought Christianity should be a favored religion over others should not bind modern day interpretations of the religion clauses, even if Justice Scalia thinks they should. In a simultaneously released opinion, *Van Orden v. Perry*, Justice Thomas also advocated for originalism, writing, “Our task would be far simpler if we returned to the original meaning of the word

‘establishment’ than it is under the various approaches this Court now uses.”⁸¹⁸² Thomas also makes the argument against incorporation using originalism and the history of state-established churches at the time of ratification, but this view once again assumes that the founding time was constitutionally unimpeachable. As Laycock writes, “it would be...naive to think that all vestiges of religious establishment and religious intolerance instantly disappeared when the Religion Clauses were ratified, or that their survival fixes the meaning of the Religion Clauses.”⁸³ Ongoing racist policies and codified subjugation of African-Americans continued after the Thirteenth, Fourteenth, and Fifteenth Amendments were ratified and were later declared unconstitutional; the same thinking can be applied to the religious institutions established at the time of ratification of the First Amendment. The state institutions of religion were continued until their constitutionality was challenged or they were phased out by law, but that does not mean that they were not always unconstitutional.

The originalist view of history and its application to the interpretation of the religion clauses is flawed in several aspects. Originalists tend to draw on history that is contradictory and revisionist, running into several problems when using history to interpret the answer to a modern question. The version of history that originalists use in application to religion clauses is often out of context and misunderstood, with most originalists making what H. Jefferson Powell calls the “most fundamental of historical errors,” which is “the failure to recognize that the thoughts, concerns, motivations, and ideals of other eras were not identical with our own and that, as a conse-

quence, the actions of past persons often were undertaken or understood in ways we would regard as peculiar or even irrational,” much like the influence of religion on education and intellectual thought that now seems out of place.⁸⁴ For the most part, “eighteenth-century views of religious liberty, equality, and church-state interactions are simply ill suited for twenty-first-century America,” and so the application of history to a modern question is often misguided and non-applicable.⁸⁵ When one looks to the Founders for the answer to a modern question, one risks the overgeneralization of the wide array of views of the Founders, taking the Founder’s thoughts out of context to apply it to a modern setting, and creation of a wide gap between intent and text. For example, many critics reject the separationist ideas behind the Establishment Clause because they deem them a by-product of the anti-Catholicism of the time.⁸⁶ However, because the Court should interpret the religion clauses in the context of the debate, the anti-Catholicism should be rejected because their “intent is subordinate to the text,” and “they did not... write their anti-Catholicism into the text.”⁸⁷ Because anti-Catholicism was not actually written into the text, Laycock argues that the anti-Catholicism of the time can not be assumed to be intended through the text.⁸⁸ Originalism is not a viable interpretative method because of its overreliance on the unreliable historical record.

The use of the Blaine Amendment and anti-Catholicism in America as a historical justification for the Court’s support for non-preferential government aid can be looked at as a case study for misuse of history in interpretation of the Establishment Clause. Green uses

the Blaine Amendments and the history behind them as a case study to explain how they have been used by Justice Thomas in cases on government funding for public programs, specifically schools. Thomas uses anti-Catholicism as justification to question laws against public funding of religious schools. The Blaine Amendment, a failed amendment that would not have allowed for funding of religious schools and one that was drafted during a time of anti-Catholic discrimination, has supposedly been influential in the adoption of state constitutional amendments that ban funding to parochial schools.⁸⁹ The Blaine Amendment is used in public funding cases, significantly *Zelman v. Simmons-Harris* and *Locke v. Davey* to justify government funding of public and private programs, such as vouchers or religious education. Thomas condemns the influence of the Blaine Amendments in *Mitchell v. Helms* and uses historical arguments to justify the allowance of “private choice” funding on the basis of the anti-Catholic opinions that seemingly influenced the law, which he claims invalidates the Blaine Amendments.⁹⁰ In *Mitchell*, Thomas argues that since the Blaine Amendments were an influencing factor in laws that govern public funding of religious schools, this “doc-

trine, born of bigotry, should be buried now.”⁹¹ However, this inaccurately identifies only one motive behind the amendments prohibiting public funding for religious schools. There are several factors contributing to the sentiment against funding for private schools that extend beyond anti-Catholicism, bringing into question the thoroughness of Justice Thomas’s historical analysis in *Mitchell*. Additionally, this historical context of anti-Catholicism does not necessarily invalidate the law, especially since it is insufficient history. Though the Blaine Amendments and application of the “nonsectarian principle” were certainly influenced by anti-Catholic sentiment, this does not invalidate the amendments or fully account for the complete history behind the amendments or the nonsectarian principle.⁹² Historian Noah Feldman says that, “history provides no definitive conclusions about the rationales behind the Amendment and the no-funding principle.”⁹³ Thus, Thomas’s rejection of the Blaine Amendment and subsequent bans on public funding on the basis of solely anti-Catholicism is not an entirely accurate historical record, and by using a potentially false historical record, it bases the law in inaccurate history, showing a misuse of history in jurisprudence.

18th-century views

of religious liberty, equality, and church-state interactions are simply ill suited for

21st-century America.

The Ten Commandments, Justice Scalia claims, have a direct influence on and correlation with American law.

Cases dealing with the Ten Commandments are other case studies enumerated by Green that can be examined to see the pervasive use of history to justify legal decisions and the dangers of the misuse of the application of history. As previously discussed, in *McCreary* and *Van Orden*, history was used to justify both decisions.⁹⁴ *Van Orden* went a bit further than *McCreary*, equating the historical public reaction (or lack thereof) to the monument with constitutionality, drawing on the arguments made by Burger before in *Marsh*. These Ten Commandment cases make the same mistake *Marsh* makes, equating a popular practice and an unchallenged historical record with constitutionality of the practice. The concurring opinion in *Van Orden* relies on comments and acknowledgments of religion by historical leading public figures to prove that the practice is consistent with the constitution.⁹⁵ In these cases, the Court once again assumes that the historical figures their decision is based on know that what they are doing has constitutional consequences.⁹⁶ Additionally, it assumes a truly originalist argument: that the law does not change with the times because of supposed intent of its inscribers. The Ten Commandments, Justice Scalia claims, have a direct influence on and correlation with American law.⁹⁷ This is historically unsupported, basing binding legal opinions on highly debatable facts. If these facts are highly debatable, then the decisions emitting from these facts set bad precedents

and an unreliable test for future religion clause questions. The misuse of history is obvious in the dissents of Scalia and Souter in their respective *McCreary* and *Van Orden* dissents, where the two justices provide two different accounts of history, both asserting their history is the more relevant source.⁹⁸ As Green argues, the pervasive use of history in the Ten Commandment cases only invites further use of history in relevant cases, continuing the *Marsh* tradition of basing legal precedent in false or oversimplified historical data.



Lastly, Justice Thomas's call for a "federalist" approach to religion clause questions is an interesting case study that Green uses to examine the relevance of history and answer the question of the use of history.⁹⁹ Justice Thomas has written several opinions arguing that the Establishment Clause is meant to be a "federalism provision" and therefore should not be incorporated, meaning that because the Establishment Clause only mentions Congress, it does not apply to state governments.¹⁰⁰ He writes in *Elk Grove v. Newdow*, "[the] text and history of the Establishment Clause strongly suggest that it is a federalism provision intended to prevent Congress from interfering with state establishments [of religion]," a claim that is not new since the Establishment Clause's incorporation in *Everson* in 1947.¹⁰¹ Thomas disregards the diversity of the Framers' opinions and claims that the Framers, as a uniformed body, consciously designed the

Establishment Clause to allow the states to establish and retain religion.¹⁰² This interpretation of the Establishment Clause would mean that all other Establishment Clause cases including and since the incorporation would lack legitimacy, and would allow states to establish a religion or a church, or at the very least give aid or preference to a particular religion. Thomas's arguments hold some weight in terms of historical support, but that does not mean that federalism was the only concern of the Framers in the writing of the Establishment Clause, and that type of disregard for the entire context of history is a fallacy of using history for the basis of a legal opinion.¹⁰³ The Framers did allow for state governments to retain established religions at the time of the ratification of the First Amendment, but using this fact to justify a federalist view of the Establishment Clause falls under the same problems as *Marsh*, reducing the evidence to an oversimplified view of history. This interpretation of the Establishment Clause is another example of the problems with using history in interpreting the religion clauses, and is a weak one on which to base legal decisions. It looks at history as binding and definitive, and does not allow for the development and evolution of political theories or ideas. Justice Thomas, in basing his legal opinions off a narrow and truncated version of history, follows *Marsh*'s fallacy, and shows once again that history is an unreliable tool on which to base legal decisions.

Despite the long list of evidence showing the flaws of history in religion clause jurisprudence, history is not entirely useless in adjudication as it can be used for informational purposes. However, it is dangerous as the basis of constitutional decisions, especially precedent setting decisions, because a historical fact can be found to support every opinion. It is evident that the use of history

in religion clause interpretation as it has been used is flawed, and, as Hall says, "it is perhaps therefore an opportune time for Justices and scholars to reconsider the relevance or irrelevance of history for Religion Clause jurisprudence."¹⁰⁴ At the very least, it must be recognized that relying purely on Thomas Jefferson and James Madison to represent the entire Founders' intent is bad history. Though both were significant Founders, the First Amendment did not spring from their consciousness onto paper, but went through a rather rigorous debate and ratification process.¹⁰⁵ The *Everson* account merely follows Madison on his "good days" and abandons him on days where he is inconsistent.¹⁰⁶ Any attempt to deduce the Founders' intent must go beyond Jefferson and Madison, and rely on more than their writings and their home state of Virginia. Even if a wider scope of history is used, it has been shown that most history used in religion clause jurisprudence is flawed or oversimplified in one way or another. The way history is used now is not how history should be used. History cannot answer modern controversies because history is subjective, inexhaustible, and contradictory; it is not made up of absolute truths. The issues with using history to answer modern historical controversies are abundant. Green explains history's role in adjudicating religion clause cases when he writes, "at best, history is a handmaiden to judicial decision making, not a taskmaster."¹⁰⁷ There are many fallacious conclusions a Justice draws when basing his or her legal decision in history, and so history is an unreliable and fallacious tool to use to base legal decisions in.

This essay seeks to examine the flaws of the application of history in religion clause cases ranging from the misuse of history in *Everson* to the consequences of the originalist inter-







pretation of the First Amendment. This essay deals mostly with Establishment Clause cases, as judges and scholars have not examined the Free Exercise Clause as thoroughly. In the precedent set by *Everson*, history has been deemed essential in interpretation of the religion clauses, and Madison and Jefferson have been looked at as the definitive representatives of the Founders and the last word on religion clause cases. This logic is flawed because it oversimplifies history and uses this simplified version to make general claims about the intent of the Founders. However, as the “*Everson* syllogism” coined by Hall becomes less relevant, even basing constitutional interpretation from the First Congress is flawed because it is contradictory and inconsistent. The use of history is fallacious because it is used as a determinative factor in answering modern day questions, it glorifies the Founding period, and it does not treat the Founders as what they are: politicians capable of error. The method of constitutional interpretation called originalism is a flawed application of history to constitutional interpretation for those reasons. Several case studies demonstrate the problems associated with using history to interpret the religion clauses, including the reliance of the Blaine Amendments and anti-Catholicism to support private choice funding, the adjudication of Ten Commandment cases, and the federalist interpretation of the Establishment Clause. Because of all the evidence presented, it is clear that history is a problematic tool for interpreting the religion clauses and should not be used in a binding way.



ENDNOTES

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- 32 Ibid. 16.
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- 37 Ibid. 18.
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- 44 Ibid. 20.
- 45 *Engel v. Vitale*, 370 U.S. 421 (1962)
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- 48 *School District of Abington Township, Pennsylvania v. Schempp*, 374 US 203 (1963)
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- 50 *Wallace v. Jaffree*, 472 U.S. 38 (1985)
- 51 Green, “Bad History,” 1724.
- 52 *Marsh v. Chambers*, 463 U.S. 783 (1983)
- 53 *Marsh v. Chambers*, 463 U.S. 783 (1983)
- 54 Green, “Bad History,” 1724.
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- 62 Ibid.
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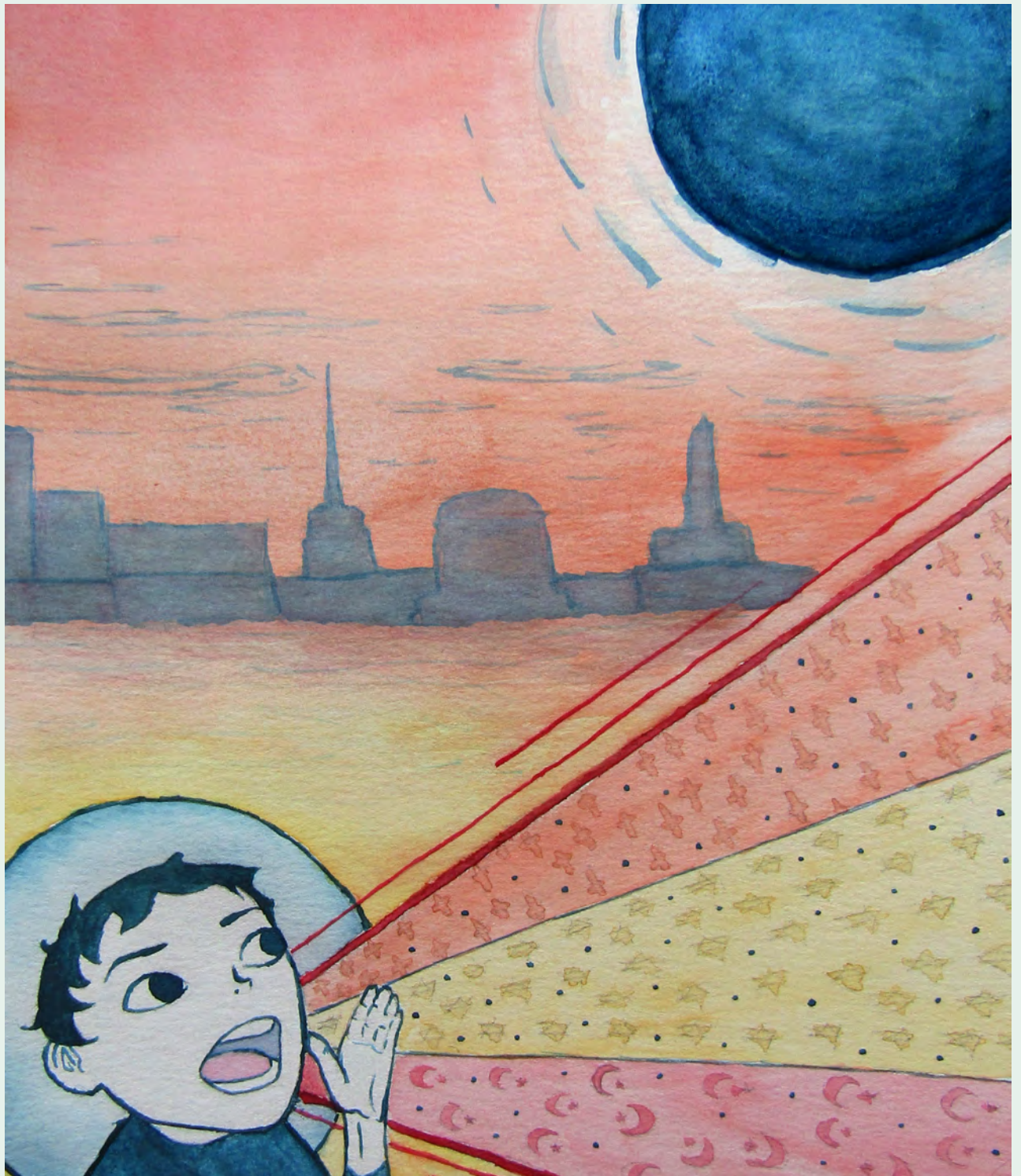
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THE FOUR FRAMEWORKS OF THE ISRAEL-PALESTINE CONFLICT REVISITED

BY CRISTINA ZUBIZARRETA '19

This article critically examines the four frameworks commonly utilized to interpret the Israel-Palestine conflict: Israeli self-defense, apartheid, genocide, and sociocide/ethnic cleansing/settler colonialism. The article follows a pattern of presenting the political, legal, physical, economic, and social realities in Israel/Palestine that support each framework followed by a discussion of the realities that delegitimize the suitability of each framework for describing the ongoing conflict. The article concludes with a description of the fourth framework, the sociocide framework, arguing that this framework is the most suitable of the four for describing the present situation in Israel/Palestine since it acknowledges the importance of allowing the Palestinians to name their own experience.



Israeli Self-Defense

Israel's fundamental position for self-defense relies on the emotional argument that since the Holocaust happened, everything and anything Jewish individuals feel they must do in order to be safe should be justifiable and permitted. The Israelis undeniably face real security threats that are both concerning and unpredictable, evidenced by the fact that " Hamas and other Palestinian armed groups in Gaza have fired thousands of rockets deliberately or indiscriminately at civilian areas in Israel."¹ The Israeli government fails to connect the real risks they face with their actions; thus, their actions appear to contradict and delegitimize their claims of self-defense.

The Israeli government is in the process of constructing a Separation Barrier, 85% of which runs through Palestinian territory, in order to segregate Palestinians from Israelis, despite the fact that "in 2004, at the request of the General Assembly, the International Court of Justice in the Hague ruled that Israel's construction of wall inside Palestinian territory is 'contrary to international law' and must be dismantled."² Instead of abiding by international law, the Israeli government has chosen to continue along with construction of the barrier, claiming that the barrier is necessary in order to protect Israeli civilians from potential

Palestinian attacks. In addition to the creation of a physical separation, the Israeli government has decided to continue to invest massive sums of money towards increasing their military capacities, despite the fact that their military capacities are already *vastly* superior to those of all of the Palestinian armed groups combined. In 2009 the Israelis had around 3,800 tanks and over 2,000 artillery units, while the Palestinians had zero tanks and only a few mobile Qassam and Grad rocket launchers.³ Though the Israeli government's military capabilities are already powerful enough to obliterate the entire Palestinian population, the government continues to spend a significant sum of money on military expenditures. In 2016 alone, the Israeli government spent 5.6% of their total GDP on military expenditures and signed a deal with the United States that ensures that the United States will give Israel \$38 billion in military aid before 2026.^{4,5}

The Israeli action of further expanding the Jewish settlement enterprise onto Palestinian lands discredits the Israeli self-defense argument. While the Israeli government deems it necessary to create a physical separation between Palestinians and Israelis through the building of the Separation Barrier, the government simultaneously continues to subsidize the construction of Jewish settlements and allow for the establishment of Jewish outposts on Palestinian lands, thereby violating international law.⁶ Despite the Israeli government's claim that safety is of utmost concern to them, the government incentivizes Jewish settlers' movement to settlements in the occupied Palestinian territory (hereinafter referred to as "OPT"), which deliberately puts the settlers at risk. Today, there are over 670,000 Jewish set-

The United States has promised

\$38B

in military aid before 2026

The infographic consists of a blue rectangular background. At the top, the text "The United States has promised" is written in white. In the center, there is a green rectangular box with a black border containing the text "\$38B" in large, bold, black font. At the bottom, the text "in military aid before 2026" is written in white.

Israelis	Palestinians
3,800 tanks	0 tanks
2,000 artillery units	Very few artillery units

tlers living in illegal settlements and outposts on Palestinian land.⁷ The Israeli government’s continuous expansion of the settler enterprise begs the question: if the Palestinians are so “dangerous” that the Israeli government feels that a Separation Barrier must be created in order to separate Israel from the OPT, then why would the Israeli government decide to incentivize Jewish settlement in the OPT?

The Israeli self-defense position often argues that while Israelis have been seeking to make peace with the Palestinians, the Palestinians have continuously denied any Israeli attempts at peace negotiations. The Israeli self-defense argument often excludes the fact that there is a peace offer that has been suggested by the Arab League at every meeting they have held since 2002. The peace offer would provide Israel with the opportunity to reconcile with each one of their neighbors, which is precisely what the Israelis insist they want. After fifteen years of being offered the peace negotiation, Israel continues to ignore it, often times claiming that they do not trust that the Arab countries will hold true to their promise of peace.⁸

Apartheid

Article II of the *International Convention for the Suppression and Punishment of the Crime*

of Apartheid defines apartheid as “similar policies and practices of racial segregation and discrimination as practiced in southern Africa,” which serve “the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”⁹ In other words, apartheid as a political system deliberately separates members of the population into either the privileged group or the disadvantaged group based on their racial identity. Apartheid as a political system relies on racism in order to function. Thus, the Apartheid Convention is inherently connected to the *International Convention on the Elimination of All Forms of Racial Discrimination*. In Article I, the convention defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁰ This definition of racial discrimination recognizes that race is socially constructed and can be based on multiple intersections of an individual’s identity.

The apartheid position emphasizes the fact that Israelis have purposely implemented segregationist policies in order to ensure Palestinians have access to only small, non-contiguous areas of land in less than 30% of the West Bank and in 70% of Gaza, while Israel maintains control over the rest of the land that constitutes Israel/Palestine.¹¹ In the OPT, Israeli settlements are connected to major cities via settler-only roads, while Palestinians who live in the OPT must travel on much longer roads along which they are forced to stop at checkpoints and random blockades in order for Israeli military officers to check their identification and often times subject them to random searches.¹² The Israeli government is using the Separation Barrier as a means of appropriating more land from the Palestinians against their will, forcing further displacement of Palestinian individuals since the barrier intrudes on internationally recognized Palestinian land. One of the discriminatory laws in place that serves to further expel the Palestinians from their land is the 1950 Absentee Property Law, which “allows the state to acquire the lands of Palestinians displaced during the Nakba,” since the displaced

Palestinians are labeled “absentees” by the Israeli government. The Israeli government is able to claim the land that belonged to the displaced Palestinians, denying the Palestinians their right to the land. The government refers to the land as “abandoned land” that is now state land. Another law that works to appropriate the land of the Palestinians is the 1965 Planning and Building Law which “re-zoned communities and areas where building and construction is permitted and rendered illegal any building or habitations outside these zones, and therefore subject to demolition.” As a result of this law, homes in the areas that exist outside of these zones are subject to the will of the Israeli government. Thus, if the government decides they would like to take control of these areas, they are able to demolish the Palestinians’ homes without their consent. The Israeli government forces the residents of the demolished homes to “relocate to one of seven planned ‘concentration towns’ which are “the equivalent of reservations.”¹³

The discriminatory legal system in Israel extends beyond housing rights to political and civil rights. Palestinian citizens of Israel are granted an inferior set of rights in comparison to Jewish citizens of Israel, who are able to gain national status in addition to their citizen status. Palestinian citizens of Israel are denied the ability to purchase land through the Jewish Agency, since the Jewish Agency is only allowed to sell land to Jewish Israelis. Furthermore, Palestinians are denied the right to family unification; if they are married to a Palestinian from the OPT, their partner is prohibited from gaining residency or citizenship in Israel. Palestinian refugees living in the OPT live with an even more restrictive

670,000
**# of Jewish settlers living
in illegal settlements and
outposts on Palestinian
land**

Palestinians have access to only small, non-contiguous areas of land in **less than 30%** of the West Bank and in **70%** of Gaza, while Israel maintains control over the rest of the land that constitutes Israel/Palestine.

set of rights, since they are subject to Israeli military law instead of Israeli civil law.¹⁴ Israeli military law allows for Israeli military officers to subject Palestinians to dehumanizing treatment, subjecting them to arbitrary arrest, and holding them in “pre-trial, pre-charge administrative detention of six months, renewable endlessly.”^{15,16} Furthermore, Palestinian refugees, who are defined as either individuals or descendants of individuals “whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict,” are denied the right to return to Israel; meanwhile, the 1950 Law of Return grants to any Jew in the world who wishes to move to Israel the right to return, even if they and/or their family members have never lived in Israel before.^{17,18}

The most inconvenient fact that de-legitimizes the apartheid argument is that the apartheid framework fails to account for the difference in intentions between the Israeli government and the South African government.¹⁹ The intention of the Israeli government has been to create living conditions for the Palestinians that become unbearable and uninhabitable enough for the Palestinians to decide to leave Israel/Palestine. The Israeli goal has clearly been to exclude Palestinians from

the economy by denying them job opportunities and ensuring that farmers are unable to sell their crops in order to destroy their means of providing for their families.²⁰ In contrast, in South Africa, the government’s goal had been to exploit black labor due to the fact that less than 15% of the population was white, and over 85% of the population was black.²¹ In Israel/Palestine, “50% of the population under Israeli political control is Jewish,” thus, Israel is able to exclude Palestinians from the job market and give preference to “Jewish labor.”²²

Genocide

Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide*, defines genocide as one or more of the following physical acts “(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group” committed with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”²³ Thus, the presence of both the physical element and mental element (intention) is necessary in

order for an act to be considered genocide.²⁴

The genocide position often emphasizes the living conditions of Palestinians in Gaza as potential evidence of genocide, since Palestinians struggle to obtain adequate healthcare and schooling, and they are often unable to access adequate amounts of food, water, and electricity. A United Nations report released in 2012 suggested that without “sustained and effective remedial action and an enabling political environment...the daily lives of Gazans in 2020 will be worse than they are now. There will be virtually no reliable access to sources of safe drinking water, standards of healthcare and education will have continued to decline, and the vision of affordable and reliable electricity for all will have become a distant memory for most.”²⁵ Perhaps in the future, the declining health care and lack of access to adequate food in Gaza might be labeled as an attempt at genocide, but it is currently not deemed as such. The current living conditions in Gaza work to further advance the Israeli goal of expelling all Palestinians from Israel/Palestine, since Gazans might be forced to leave as living conditions reach an uninhabitable level.

The genocide position also cites the death ratio of Palestinians to Israelis during the various Israeli-led operations as evidence pointing towards genocide. The death ratio that is arguably the most cited is from Operation Protective Edge in 2014, where the ratio was 30:1, with over 2,100 Palestinians and 72 Israelis killed.²⁶ In each of the Israeli-led massacres, a disproportionate number of Palestinians have been killed. Furthermore, during Operation Cast Lead, the Israel Defense Force’s (IDF) decision to violate international law and “explode white phosphorous munitions in the air over



populated areas, killing and injuring civilians, and damaging civilian structures” has been viewed as an action that aimed to kill an excessive number of Palestinian civilians.²⁷ Although the disproportionate number of Palestinian deaths might suggest that Israel’s intention is to kill as many Palestinians as possible, there are also inconvenient facts that result in the de-legitimization of the genocide argument.

The genocide argument is complicated by two facts: first, the Israeli military is capable of killing all of the Palestinians if their intention was to do so, and second, it is quite difficult to prove the intention to commit genocide. The Israeli military has the means to completely destroy the entire Palestinian population if they so desire, though the choice of killing the entire population would undoubtedly warrant severe political repercussions. If the Israeli government’s true intention was to annihilate the entire Palestinian population, then they could have taken a much larger number of Palestinian lives during the various massacres. The genocide argument

fails to take into account the fact that the Israeli government's true goal is to create conditions for the Palestinians under which they feel their best option is to leave, which does not necessarily imply killing the Palestinians if they choose to stay. The other dilemma presented by the genocide argument is that it is practically impossible to prove genocide without access to a clear and explicit admission of intent. If intent is not expressed either verbally or in a written form, then it is not possible to determine that genocide was committed – both the physical act and the mental aspect of intent are key to determining genocide.²⁸


Sociocide / Ethnic Cleansing / Settler Colonialism


Zionism as a political project dates back to the mid-19th century when European Jews who were fleeing anti-Semitism and persecution recognized their shared interest in establishing a safe Jewish homeland free from the oppressive societies they had fled.^{29,30} The Zionist settlers agreed to begin constructing colonies in the land of Palestine, a land that was already populated by the Palestinians.³¹ After they had constructed their initial settlements, the Zionist settlers realized that the native Palestinian population posed a problem for them, since the Palestinians were not Jewish and therefore did not fit with the Zionist goal of creating an ethno-religiously exclusive, democratic state.³² The pressing challenge for the Zionists became creating a Jewish homeland in a land that was already occupied by a majority of non-Jewish individuals. The solution they developed was to expel the native Palestinian population to make room for Jewish settlers. They aimed to accomplish their goal by creat-

ing living conditions for the Palestinians' that were intolerable to the extent that the Palestinians felt they had no other choice but to leave, thereby giving up the land to the Zionists.³³

In order to gain support for their political project, the Zionists decided that they would need to portray their initial settlement in Palestine as justified and ensure that it would not be perceived by the public as an infringement on the human rights of the Palestinians. The Zionists began to develop three key tropes that would enable them to advance the goals of their project: the trope of the empty land, the trope of the flowering of the desert upon their arrival, and the trope of the Palestinians as separate individuals lacking any sense of a collective identity. The trope of the empty land represents the settler colonial mentality that the land was unoccupied before the European Zionist settlers arrived---an argument that is clearly false. It is illogical that the same land that is referred to as the Christian Holy Land, the Muslim waqf and the Jewish Promised Land – a piece of land that was geographically situated in between Asia, Europe and Africa during a time period when travel was either by foot or on animal – had been completely evacuated somehow without any historical record. The argument that the land was empty is either recognized as a lie or can only be read as a purely racist statement that suggests that since the people on the land were not European in appearance, they were not considered to be of any importance.³⁴

An extension of this trope is that the land was “abandoned land” or “absentee land” that apparently did not belong to anyone. This argument is based on Western cultural imperialism that essentially conveys the message that





if the Palestinians did not define land ownership in the same way that Europeans define land ownership through documentation and legal proceedings, then their ownership of the land is not valid. The Zionist settlers used their rationale based on cultural imperialism to reach the decision that they were allowed to continue encroaching further onto Palestinian lands, extending their settlements to include the new European settler arrivals. The Palestinians, however, never gave consent to the taking of their land by the newly arrived settlers and they never agreed to the “Judaization’ of a land that had been overwhelmingly Arab and Muslim for a millennium and a half.”³⁵

The next trope developed by the Zionists as a justification for their settlement on Palestinian land was that they were making better use of the land than the Palestinians had been able to. The Zionists used this to justify their ever-increasing settlements on Palestinian land, believing that since they came from a more refined society than the society of the Palestinians, they were more capable of taking care of the land. They stated that they had been able to “make the desert bloom” with their agricultural methods that they argued were far superior to those of the Palestinians. Their perception that the Palestinians were lower quality farmers was due to the fact that the Palestinians used less modern tools than the Zionists was culturally imperialist in nature. The Palestinians rejected the Zionist argument that the land should be transferred to the Zionists, which would strip the Palestinians of their rights to the land.³⁶

The third trope often utilized by the Zionists was that since the Palestinians lacked a strong collective identity they did not need or

deserve to have a state of their own. Instead, the Zionist settlers who had a strong shared Jewish identity deserved to create their own state on the Palestinians’ land. The Zionist argument that the Palestinians lacked a collective identity prior to the settlers’ arrival is false. In fact, in 1834, before the first Zionist settlers arrived in Palestine, the first Palestinian resistance movement in the name of nationhood took place – the Peasants’ Revolt. Additionally, whether or not the Palestinians referred to themselves as Palestinians when the first Zionists arrived is irrelevant; regardless of what they called themselves, the people living in Palestine had “profound religious, historical, cultural and sentimental ties to a particular area of land known variously and for centuries as ‘Palestine’ and the Holy Land.”³⁷ The Palestinians rejected the Zionists’ rhetoric claiming Palestinians were seemingly “accidentally living on Jewish land” when in reality they had been living there for over a millennium and a half.

In 1901, the leaders of the Zionist political project sought to establish an organization that would legitimize the transferring of land from the Palestinians to the Zionist settlers.³⁸ The organization they created was the Jewish National Fund, an organization that worked to fundraise among Jews from the diaspora in order to be able to purchase land for Jewish settlers in Palestine.³⁹ After years of expanding Jewish settlement throughout Palestine through the efforts of the JNF, the Zionists remained steadfast in their mission to create an ethno-religiously exclusive democratic state on the Palestinians’ land.⁴⁰ Over the course of the Arab Revolt, which took place between 1936 and 1939, the British had

“completely destroyed the Palestinian leadership and defense capabilities,” ensuring that the Palestinians were no longer a source of fear among the Zionists.⁴¹ The weakness of the Palestinians after the Arab Revolt placed the Zionist leaders in an ideal position to initiate their plan to expel the Palestinians from Palestine. During the Zionist leaders’ meeting in 1946, the Jewish Agency developed a map marking the land that the Zionist leaders would claim for themselves and the area that would be designated for the Palestinians.⁴² As it turns out, the map had marked the same exact portion of land that the Zionists were able to acquire during the 1948-49 Nakba. At the Zionist leaders’ meeting that had taken

Their perception that the Palestinians were lower quality farmers was due to the fact that the Palestinians used less modern tools than the Zionists was culturally imperialist in nature.

place on March 10th, 1948 before the Nakba, the Zionist leaders created a detailed outline for their plan to rid Palestine of the Palestinians by forcing them to flee. The plan included the issuing of a specific “list of villages and neighborhoods” to each of the military units that ensured that every Palestinian would be accounted for during the expulsion.⁴³ The Zionists’ plan proved to be quite successful; at the end of the Nakba less than half of the Palestinians remained on the land that came under the control of Israel as a result of the war.⁴⁴

In the years following the Nakba, the Zionists continued to pursue their goal of ridding Israel/Palestine of all of the Palestinians. In order to decrease the number of Palestinians living on the land, the Zionists conducted “rolling expulsions,” forcing the Palestinians to leave behind their homes and livelihood, and relocate to a different area.⁴⁵ In 1967, the Six Day War presented the Zionists with the opportunity they had been waiting for – the opportunity to conquer the remainder of the land that lies between the river and the sea. By the end of the war, the Israeli state had gained control of and implemented military rule over the OPT. After gaining control over all of Israel/Palestine, the Zionists developed a new plan to accomplish their political project of creating an ethno-religiously exclusive state. The Zionists’ new plan consisted of the implementation of a policy of sociocide, which would entail the creation of living standards for the Palestinians in Israel/Palestine that are intolerable to the extent that they force Palestinians to leave.⁴⁶ In Abdel-Jawad’s “War By Other Means,” he outlines the four main goals of the Israeli state’s policy of sociocide, which are: “Firstly, to destroy the Palestinian economy; secondly, to decimate Palestinian national spirit and identity; thirdly, to deprive Palestinians of their political and civil rights, and fourthly, to transform Palestinian daily life into an endless chain of hardship.”⁴⁷ These four main goals of the policy of sociocide each serve the end goal of the Israeli government, which is to expel every single Palestinian from Israel/Palestine.

The sociocide position emphasizes the fact that the Israeli government has essentially taken control of the land and water resources in Israel/Palestine, and that the government

continues to incentivize further displacement of Palestinians through the illegal settlement enterprise. The Israeli government currently has “total control” of Palestinians’ access to suitable drinking water, and the government has ensured that a disproportionate amount of water is made available to Jewish settlers living in the OPT, while Palestinians living in the OPT face frequent water shortages, sometimes for up to forty days at a time.⁴⁸ Furthermore, due to the Israeli government’s decision to subsidize and incentivize Jewish settlement in the OPT; the number of settlers has risen to over 670,000.⁴⁹ While the Israeli government pours immense sums of money into producing housing that incentivizes Jewish settlement in the OPT, the government simultaneously ensures that the living conditions of Palestinians in the area are continuously degraded.

Additionally, the sociocide position highlights the fact that the Palestinian economy has been de-developed, or prevented from growing crops, due to the Israeli government’s complete control over Palestinian imports and exports, and Israeli efforts to exclude Palestinian labor from the Israeli labor market. Palestinians are unable to import goods without the consent of the Israeli government, which they are never granted, and their ability to export the goods they produce is dependent upon the willingness of Israelis to ship their goods to exterior markets.⁵⁰ The Israeli government forces Palestinians to use their spending power to

boost the Israeli economy, which proves to be detrimental to the Palestinians’ own economy. Furthermore, the Israeli government aims to exclude Palestinian labor from the Israeli labor market to the greatest possible extent. Those few Palestinians who are able to find jobs in the Israeli labor market find themselves working the most undesirable positions with barely any chance for career advancement, and for a significantly lower pay rate than their Jewish counterparts. The Palestinian laborers working within the Israeli labor market are denied the right to advocate on behalf of their rights as laborers, since they have been “forbidden to set up Palestinian labor unions.” Thus, these Palestinian laborers are forced to continue to work in conditions where they are discriminated against and where they are not receiving equal pay for equal work.⁵¹

The sociocide position often refers to the Israeli government’s suppression of Palestinian cultural traditions via their frequent closings and demolitions of Palestinian schools and the discriminatory laws in place that value Israeli holidays while ignoring Palestinian holidays. Schools in the OPT are often forced to close due to power shortages, which then leads to students suffering academically.⁵² Additionally, the Israeli government has demolished multiple Palestinian schools, arguing that the schools were built “illegally” since the Palestinians failed to obtain the required permits prior to building, however, the government

The Palestinians living in the OPT are denied the right to gain citizenship.

does not address the fact that these permits are nearly never granted to the Palestinians who request them.⁵³ Furthermore, the Israeli government has made a point of creating legislation that unjustly penalizes Palestinians for celebrating their cultural heritage and identity. For example, the discriminatory Nakba Law “authorizes Israel’s finance minister to revoke funding from institutions that reject Israel’s character as a ‘Jewish state’ or mark the country’s Independence Day as a day of mourning.”⁵⁴ The Nakba law denies Palestinians the right to mourn the day of the forced mass expulsion of more than half of the Palestinian population from their homes and livelihoods in Palestine. The law also forces Palestinians to refer to Israel as a “Jewish state” when in reality the Palestinians lived there for over a millennium and a half before the Zionist settlers arrived and began their ethno-religiously exclusive state-building project.


The sociocide position often emphasizes the fact that today more than four million Palestinians are living in the OPT under Israeli military law, which denies them their civil rights.⁵⁵ The Palestinians living in the OPT are denied the right to gain citizenship, even though the Israeli Law of Return ensures that any Jewish individual from anywhere in the world regardless of whether or not that individual or their relatives has ever lived in Israel/Palestine is granted the right to gain Israeli citizenship.⁵⁶ The daily lives of the Palestinians in the OPT are marked by Israeli checkpoints (there are currently over 500 permanent checkpoints) that restrict their movement and a permit process that requires Palestinians to receive the Israeli government’s permission before they are able to complete simple tasks

including visiting a doctor’s office, traveling outside of the country, or meeting up with friends.^{57,58} Furthermore, the Israeli government often denies Palestinians their requested permits without offering any explanation. Additionally, Palestinians in the OPT live in constant fear of arbitrary arrest by Israeli military officers, since “pre-trial, pre-charge administrative detention of six months, renewable endlessly” is legal in Israel/Palestine.⁵⁹

Arguably the most important benefit of the sociocide framework is that the term sociocide provides Palestinians with the opportunity to “name their own experience, if they so choose.”⁶⁰ The term sociocide is the most inclusive of the terms that exist, since it is able to encompass the multitude of ways the Israeli government has sought to create unbearable living conditions for Palestinians living in the OPT. The terms apartheid and genocide both fall into the trap Mahmood Mamdani warns us of in his article “Responsibility to Protect or Right to Punish?” where he discusses the fact that the selective application of human rights standards often results in human rights being nothing more than neo-colonialism dressed up in a tuxedo. The cultural imperialist tendencies of Western societies paired with the Western arrogance shared by many Americans cause Americans to feel that they should be able to name Palestinians’ experiences for them using Western standards and Western concepts, rather than providing Palestinians with the space to name their own experiences. Thus, Americans feel that they should be able to apply the more familiar terms of apartheid and genocide to the situation of the Palestinians in order to make the Palestinians’ experience feel more relatable to them, without taking into account the fact that this stance is culturally imperialist in nature.

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FRIDA KAHLO AND THE FEMININE

BY LAUREN MUSHRO '18

This essay outlines Frida Kahlo's gender representation in her various portraits. Kahlo self-represents various masculine and feminine traits in a variety of her pieces, as evinced through *Self-Portrait with Cropped Hair* (1940). This androgynous representation has much to do with her familial relationships as well as her relationship with her husband, Diego Rivera. Kahlo additionally also demonstrates her political prowess through artwork such as *Moses*, and thus brings herself into the masculine political realm. In this essay, Mushro delves into gender constructs, sexuality as a radical weapon, and physical appearance as a challenge to hegemonic masculinity.

Frida Kahlo, born in 1907 in Mexico City just years before the outbreak of the Mexican Revolution, was an artist, a political activist, a feminist, and a lover. Well known for her striking self-portraits and traditional vesture, her paintings engaged concepts of tragedy, sadness, femininity, and masculinity. Kahlo suffered many disabilities throughout her life, including an accident that left her almost unable to walk, and polio, which crippled her and ultimately lead to her death in 1954. In this essay I will outline the way in which Kahlo portrayed her own specific performance of femininity and masculinity through her portraits. By examining a series of her personal letters, as well as two of her most famous paintings, I will expound upon her use of artwork as political expression and self-representation.

Frida Kahlo, or Magdalena Frida Carmen Kahlo, lived from July 6, 1907 to July 13, 1954 in Mexico City, but she claimed to be born in 1910, which was the year of the outbreak of the Mexican Revolution. Historians assume she claimed to have been born in 1910 as an “ideological proclamation” and connection to the political turmoil that Mexico underwent during the revolution.¹ Frida identified heavily with her “*mexicanidad*” and her “*mestizaje*” heritage, which she often portrayed through her traditional Tehuana outfits and hairstyles.

At age 6, Frida struggled with a bout of Polio that deformed her leg, and later in 1925, Frida suffered a terrible injury in a bus accident.² These two accidents shaped her self-image, and her sense of pain and suffering is evident throughout most of her portraits. In addition to portraying herself as a suffering individual, she often performed the male gender rather than the female. *Self-Portrait with Cropped Hair*, which will be touched upon later in this analysis, delves into the difference of power in femininity and masculinity. In various portraits taken of her family, Frida disguised herself as a male, almost unrecognizable at first glance. In contrast with this “boyish” persona that she often played, Frida also played an extremely lavish and unique Mexican woman. She wielded her *mexicanidad* as a source of power and a source of personal identity, and because of this she has become an international icon for the feminist movement.

Frida Kahlo’s husband, Diego Rivera, was a famous Mexican painter well known for his frescoes and murals during the Mexican Revolution. Frida was Diego’s second wife, and they had a very open relationship in which both Diego and Frida had extramarital relations. As Ankori states, Frida struggled with her sexuality and challenged her Catholic upbringing.³ She had several affairs with wom-

July 6, 1907-July 13, 1954
Magdalena Frida Carmen
Kahlo

en, including African American entertainer Josephine Baker and American painter Georgia O'Keefe. Though Kahlo did often play into the patriarchal society and convention, she just as actively defied the machismo culture within Mexico. As she grew older, she began to reject these conventional, Catholic teachings for more liberated views on sexuality.

Through Frida's "Cartas apasionadas," the reader can see her progression as an artist, political activist, and feminist. The letters begin with her time in the hospital after her accident on the tranvía. In a letter to Alejandro Gómez Arias, one of her earliest lovers and friends, she simply writes one sentence that defines the way in which her accident affected her: "The only good thing is that I'm starting to get used to suffering."⁴ Her pain and suffering, not only physically but also mentally from her sense of limbo in between genders, satiated all of her works and self-portraits. Her portraits convey her own personal struggle as well as the greater struggle of the Mexican population, specifically Mexican women. As Judy Chicago states in her book *Frida Kahlo: Face to Face*: "Kahlo succeeds in representing her view of life on a grand scale—the interconnectedness of all things—as well as on a personal one."⁵ Through her letters with Diego, the reader can visualize the inequality of their relationship and the disparity between their love for each other. In a letter to Diego, Frida states: I love you more than my own skin, and that even though you don't love me as much, you love me a little anyway—don't you? If this is not true, I'll always be hopeful that it could be, and that's enough for me. Love me a little, I adore you.⁶ It is interesting to note that though Frida is very sexually liberalized and is not afraid to self-rep-

resent outside of her gender she still adheres to very traditional Mexican norms of hegemony and patriarchal dominance. In this quote, one can visualize Frida essentially pandering to Diego, begging for him to love her. However, conversely, in a separate letter she discusses "the endless adventures, cracks in the doors," and the infidelities that they both partake in.⁷ While it is clear that at least in the beginning of their relationship she loves Diego more than she even loves herself, she still retains her right to be with whomever she wants sexually.

In a letter to then President Miguel Alemán of Mexico, the reader sees Frida's political activist persona. In her letter she protests the veiling of Diego Rivera's mural "El Nigromante" in the Hotel del Prado. In this mural, Rivera portrays Ramirez, or El Nigromante, holding a sign that says "Dios no existe/God does not exist." She speaks to Miguel Alemán very defiantly and demands that Alemán unveils Rivera's mural to the public, as it is a representation of secular Mexican culture. She very boldly states: "the Law does not duly guarantee anybody's artistic property, but as a lawyer, you know very well that the Law is and has always been flexible."⁸ Not only is she very passionate about the issue, but she is also very knowledgeable and is able to demonstrate this through her writing. She asks Alemán not to look at her as the wife of Rivera, but rather as an artist and a citizen of Mexico--the way that any independent woman should be looked at. In this letter, Frida represents herself not as a wife defending her husband, but rather as a woman defending her own rights as a citizen of Mexico and the rights of Mexico itself as a country. She embodies the political activist persona that many Mexicans, normally male,

embodied during the Mexican Revolution.

Kahlo continues to demonstrate her political activism through paintings such as *Moses*, which depicts a child in a womb in the middle of the painting and many different historical figures in the periphery of the work. Frida portrays various historical heroes (in her eyes) such as Buddha, Karl Marx, Lenin, and Gandhi, and various historical antiheroes such as Hitler, Stalin, and Napoleon. She additionally paints many Mayan and Aztec symbols such as thunder, lightening, Tlaloc, and Quetzalcoatl, in addition to the Egyptian heroine Nefertiti. Her use of traditional Mexican symbolism demonstrates the way in which she closely identifies with her culture as a mestizaje artist. Kahlo's goal in this painting was to repre-

Frida's "Self-Portrait with Cropped Hair" makes a comment on the idea of performing gender and sex during her time period.

sent the birth of a hero through the fetus at the center of the painting and to additionally represent the need that the human race has to create heroes to follow. Freudian concepts such as the fear of life and death are present throughout the painting, which demonstrate Kahlo's intellect and interest in concepts such as mortality. Lastly, her use of strong female goddesses such as Nefertiti demonstrates that her heroes were of both genders; perhaps Frida at times was even her own heroine.

Frida's *Self-Portrait with Cropped Hair* makes a comment on the idea of performing gender and sex during her time period. At the

top of the portrait she writes, "Mira que si te quise, fue por el pelo. Ahora que está pelona, ya no te quiero/Look, if I loved you, it was because of your hair. Now that you are short-haired, I don't love you anymore." After Kahlo found out that Diego and her sister had an affair for nearly a year, she chopped off all her hair and created this self-portrait. According to Frida, Diego's favorite part of her was her hair, and her hair came to represent her power and sexuality in their relationship. As Judy Chicago states, "stripping herself of her hair was to lose or give up her sexual power, perhaps as an act of vengeance."⁹ Long, flowing hair is often associated with the very feminine, and short hair is looked upon as a more masculine representation. In her self-portrait, not only does she show herself in a suit with cropped hair, but she also paints scissors in her hand and the clumps of hair that she chopped off. Distancing herself from the very feminine, she demonstrates that she is completely in control of her sexuality and her power over Diego. Though she may have forfeited some of her sexual power over Diego, perhaps she gained more individual power as a woman. Distancing herself from her biological gender allows her to occupy more of the male dominated space or the space outside of the domestic sphere. Not only does she demonstrate her ability to control Diego through her sexuality, but she also demonstrates the power of masculinity. This self-portrait is completely striking, and the use of a black suit makes a statement of power. However, even though she dons a black pantsuit, she also wears dangling, feminine earrings. While this self-representation is overtly masculine, she still retains bits of her femininity. This paint-

ing represents a divergence from her previously feminine and decorative self-portraits and shows a more solemn and masculine side of a Kahlo after her divorce from Rivera.

The dominance of the patriarchy in Mexico was especially strong during the Mexican Revolution, and Frida clearly defies this hegemonic masculine power in her *Self-Portrait with Cropped Hair*. Some critics look at this painting as a loss of female pride and an evocation of self-punishment for the failures of her marriage. However, rather than demonstrating a loss of female pride, Frida demonstrates control over her own self-representation and a decisive choice to represent herself in an androgynous space. In Mexican societies “marriages are often based on the concept of *respeto* and have a hierarchical power structure in which a woman is often relegated to the demands and desires of her husband.”¹⁰ while this structure of marriage still persists today, Frida actively defied this in her various extramarital relations as well as her demand for a divorce upon finding out about her husband’s affair with her sister.¹¹ While many male revolutionary officials attempted to silence women’s contribution to the narrative, Kahlo used her art and her appearance to throw herself into the mostly male dominated sphere. In 1924, bob hairstyles became fash-

ionable for Mexican women, and portrayal of *las pelonas* (short-haired women) in print media “spilled over into physical violence against women donning this style.” Many advocated that this hairstyle endangered indigenous heritage, mestizaje culture, and the femininity of Mexican women. However, Kahlo continuously demonstrates her value for her indigenous roots regardless of her hairstyle or her image as female. Her existence in the “limbo” or androgynous space between feminine and masculine is something that threatens traditional patriarchal values of Mexican society.

It is impossible to examine Frida without noting that she is inherently female; however, this alone does not make her work feminist. What makes her work feminist is her treatment of her Mexican heritage and her personal experiences and traumas as components that add to her womanhood and “female sensibility.”¹² Rather than paint her surroundings, Kahlo most often focuses on her self-representation and treats herself as her own muse. Most of her works are autobiographical, and these personal experiences define her artwork. The viewer can pick up the tensions between her exterior self as a “constructed social being” and “the powerful forces of the instinctual life” of her interior self.¹³ When the viewer is able to look past the outward

Kahlo deals with many subjects that are **inherently feminine:** miscarriage, childbirth, physical appearance, sexuality, and mestizaje identity in terms of gender.

self-representation Kahlo puts forward, often through traditional Tehuana dress, he or she is able to see the deeper symbolism Kahlo lays throughout her artwork. Kahlo deals with many subjects that are inherently feminine: miscarriage, childbirth, physical appearance, sexuality, and mestizaje identity in terms of gender. Gender is the central theme that connects her works together, and her art continuously acts as a means of therapy and survival.

Kahlo's mestizaje identity intersects heavily with her performance of gender and transforms the meaning of her work. Mestizajes, or people of mixed Spanish and indigenous heritage, have faced prejudice and discrimination since the arrival of Spaniards in 'The New World.' There is a racist tendency, or "the belief in the inherent superiority of one race [Spanish] over all others and thereby the right to dominance," present in Mexican society that marginalizes indigenous communities.¹⁴ However, Frida openly addresses the intricacies of the Tehuana culture and the power that Tehuana women hold. Rather than bury the differences between classes in Mexican society, Frida openly addresses the beauty of indigenous women. As Audrey Lorde states, the "refusal to recognize [and reclaim] those differences" is where women of different races and classes run into issues.¹⁵ Rather than look at difference as an endemic part of society, women must look at difference as a way to achieve the same common goal. Not only does Frida identify with her Mexican side and her fight for Mexican independence, she also deliberately chooses to dress in traditional Tehuana style in order to appeal to the Mexican population. Mulvey and Wollen believe that Kahlo's decision to dress in traditional costume is a distinctly political

People see
[Kahlo] as the creator
of the first female
"selfie."

choice, as the "long dresses of the women of Tehuantepec in Southern Mexico...enjoyed a mythic reputation for their personal and economic independence."¹⁶ Not only was it an appeal to the "common" Mexican people, but it was also an appeal to her independence as a woman who made her own living through painting and creating. Gender and race overlap continuously, and Frida used her identity as a mestizaje to empower other women.



The first wave of feminism occurred between the 1830s and the early 1890s in which women began to fight for suffrage, equal working, and property rights. The second wave, which began after World War II, focused on the workplace, family, and reproductive rights. At this point, the Equal Rights Amendment, which constitutionally grants rights equally to all persons regardless of gender, still had yet to pass. This time period also had a huge focus on the white woman's movement, which tended to marginalize third world women (black and latina) as the 'other.' The third wave, which still continues today, addresses the many aggressions and micro-aggressions that occur daily in a male dominated society. Women continue to fight for their workplace and reproductive rights. The current feminist movement is likewise beginning to recognize that the "literatures of all women of color rec-

reate the texture of our lives”—not all women are the same, and this recognition is what will lead to progression.¹⁷ This is a main reason why Kahlo’s work is so frequently represented in pop-culture. The feminist movement gains by learning from strong women of color.

One can apply Gloria Anzaldúa’s theory of “borderlands” to Frida in a different context. Just as *las chicanas* “straddle the borderlands,” Frida straddles the borderland between iden-

tification with each gender.¹⁸ Whereas Chicanas struggle to find their identity in both Mexico and the United States, Frida actually gains independence and power from being able to identify in an androgynous space between male and female. When she performs the male gender, she is able to feel the freedoms of being a male, and she is empowered to partake in the political realm. However, she is also able to just as easily perform the female gen-

Feminism Movements:	1st wave of feminism	2nd wave of feminism
YEARS:	1830s-1890s	After World War II
MAIN FOCUSES:	Suffrage, Equal Working Rights, Property Rights	Workplace, Family, Reproductive Rights



der and gain power through her sexuality and Tehuana identity. Her existence in the borderland is more a source of power than a struggle.

Today, Frida is an international icon for the independent, strong woman archetype that many young women search for. Her face is plastered on shirts, backpacks, notebooks, pins, and tattooed on many as a symbol of female liberation. Her image transformed into a cult-like admiration, and people see her as the creator of the first female 'selfie.' She represents a strong woman who was unafraid of androgyny, death, or the male political realm. Not only did she value her identity as a mestizaje from Mexico, but she also valued her identity as a woman and the way in which this identity changed throughout her life. It is evident that she did not solely identify with the feminine and that this did not define her womanhood. Rather, it seems as though she felt more restricted by strict femininity and saw the possibility of empowerment through androgyny. Her ability to interchange between her identification with each gender demonstrates her true power and existence in a metaphorical "borderland" between male and female.¹⁹ Through her self-portraits, one can observe the various ways in which she self-represents and performs gender, female or male. The present day obsession with Frida resounds with the millennial generation and the current wave of feminism taking place among the younger population.



ENDNOTES



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THE EVOLUTION OF FOOD ASSISTANCE PROGRAMS IN THE UNITED STATES

BY MADELEINE NATION '19

Through an examination of public policy, legislative discussions, and statistical analysis of the Supplemental Nutrition Assistance Program (formerly the Food Stamps program), this paper concludes that agricultural and business interests have frequently taken precedent over hunger relief in American social policy formation. Agricultural and business interests first asserted strong control over the program in the 1930s and this uneven power dynamic has been continuously reinforced through various policy reforms over the decades. The auxiliary importance of hunger to social welfare programs in the United States is especially apparent through the written policy goals of the program, which place agricultural and business interests first and hunger relief second, but can also be seen through the structure of the program, the political rhetoric used to describe hunger relief, and the vulnerability of SNAP in times of economic distress. In order to undo the stronghold of exterior interests on hunger relief, Nation concludes that the United States should shift from an agricultural- and business-based approach to hunger to a rights-based approach to hunger.

Introduction

While the Supplemental Nutrition Assistance Program (SNAP) may initially seem like an altruistic assistance program, its existence has been strongly linked to agricultural, political, and business interests since its beginnings in the 1930s. In 2013, the Republican-controlled House of Representatives attempted to decouple nutrition and agricultural interests and reduce the program by removing SNAP from the Farm Bill. Although the Senate refused to pass the legislation, anti-hunger groups reacted with shock and outrage, accusing House Republicans of trying to end food assistance in the United States. For example, Joel Berg, Executive Director of the New York City Coalition Against Hunger said, “Today’s vote is the latest smoking gun that the House majority isn’t truly interested in deficit reduction. They’re interested in supporting special interest groups over hungry Americans.”¹ While focused on the 2013 incident, Berg’s statement reflects the unstable history of food assistance in America and its dependence on other interest groups. Recently, Speaker of the House Paul Ryan has indicated a desire to shift SNAP from entitlement funding to block funding, a move that would end the program’s ability to expand in times of economic hardship.² Historically, both SNAP’s link to agricultural and business interests, as well as its status as an entitlement program, have been integral to its ability to meet the needs of America’s hungry. One method of ending America’s compromised behavior towards food assistance would be shifting the justification for the program towards a rights based approach to food.

Rights Based Approach to Food Assistance

The right to food, as outlined in the UN

Declaration of Human Rights, is the “right to have regular, permanent, and unrestricted access, either directly or by means of financial purchases to...adequate and sufficient food corresponding with cultural traditions of the people.”³ Currently, the United States and Australia are the only countries in the United Nations that have not adopted a formal right to food.⁴ In 1996, the UN hosted the Rome Declaration on World Food Security, where all the countries in the United Nations, except Australia and the United States, “agreed to

While the Supplemental Nutrition Assistance Program (SNAP) may initially seem like an altruistic assistance program, its existence has been strongly linked to agricultural, political, and business interests since its beginnings in the 1930s.

adopt the notion that food is a basic human right and pledged to make efforts to cut world hunger in half by 2015.”⁵ The United States has repeatedly asserted that the right to food is not an enforceable obligation for countries, but countries should pursue the right to food as a means of promoting stability and quality of life. According to Ellen Messer, a professor at the Friedman School of Nutrition Science and Policy, “The U.S. Department of State has always insisted the economic, social, and cultural rights – including the right to food – are not recognized or protected under the U.S. Constitution.”⁶ Food assistance is not a right expressly laid out in the Constitution, nor in


other sections of U.S. law, but the federal government has taken on food assistance efforts through an entitlement program. While entitlement programs guarantee an expansion of funding as the number of eligible participants grows, it does not protect food assistance from a switch to block funding, reduction in program eligibility, or a host of other legislative reductions without replacement. The formal right to food would protect food assistance programs and reduce the threat of potential reduction or elimination of the program, as well as give hunger advocates a rights claim. The right to food would increase government sustainability, public participation, and connections between policy and health outcomes.⁷ According to Mariana Chilton, Head of the Center for Hunger-Free at Drexel University, and Donald Rose, Head of the Tulane University School of Public Health and Tropical Medicine, “The right to food means the right to expect reasonable opportunities to provide food and good nutrition for oneself.”⁸ Rather than work as a pure distribution program, the establishment of the right to food guarantees that the government will create opportunities for individuals to help themselves through access to a sufficient living wage and nutrition. If individuals were unable to access adequate nutrition, a right to food would ensure that the government would step in and provide assistance.⁹ Overall, the formal adoption of the right to food in the United States would mandate that the federal government intervene in instances of a lack of nutrition, but would also guarantee a living wage and food access.


There have been some American historical instances of debate in favor of the adoption of a right to food. In 1944, during one of his fa-

mous fireside chats, President Franklin D. Roosevelt proposed an economic Bill of Rights, in accordance with the idea that “true individual freedom cannot exist without economic security and independence.”¹⁰ The proposal included the right to a useful job, right to a family home, and “right to earn enough to provide adequate food.”¹¹ Roosevelt’s economic Bill of Rights would have guaranteed economic security for American citizens, including food security, to individuals via the federal government. Additionally, both houses of Congress passed a nonbinding Right to Food Resolution in 1976, but little occurred as a result.¹² Although there have been some trends toward a formal adoption of the right to food in the United States, instances such as wars, terrorism, and globalization have distracted from the efforts of hunger lobbyists. Historically, the United States has typically ignored the right to food and instead justified food assistance programs through a lens of promoting agricultural, business, or governmental interests.

1935-1939: Surplus Distribution Program

Federal assistance with food access began in the 1930s with massive agricultural surpluses juxtaposed by widespread hunger during the Great Depression. At the beginning of the 1930s, the US Department of Agriculture ordered farmers across the country to massacre piglets and under-plow fields in order to eliminate the agricultural surplus and maintain stable food prices.¹³ This order was met by a public call for the transfer of the surplus to the needy instead. As a result, the Federal Surplus Relief Corporation (FSRC) was established in 1935 and an amendment to the Agricultural Adjustment Act was passed, allowing





the federal government to purchase surplus agricultural products for distribution to the hungry.¹⁴ Distribution took several forms including school lunch programs, direct sale to local stores, and plain distribution out of federal offices.¹⁵ For the first time, food assistance for the poor was conducted by the federal government, but only when large agricultural surpluses required a change in the distribution system. Before the establishment of the FSRC, agricultural and hunger interests were at odds, as the agricultural industry took measures to sustain high prices outside of the reach of the hungry, at the cost of wasting food.¹⁶

During this period, the agriculture industry's interests were prioritized over the needs of the hungry. The program put priority on supporting agricultural prices by distributing surplus, rather than addressing the nutritional needs or respecting the individual liberty of recipients. The focus on simply distributing surplus rather than meeting the needs of individuals meant "the plan provided commodities such as grapefruits and powdered milk to people unfamiliar with these foodstuffs and did so without concern for the recipients' nutritional needs and tastes."¹⁷ Individuals were given multiple of a single item in surplus rather than given a choice between food items, leading to dubious nutritional impact and a complete disregard for individual preference. Further, the program's cost-minimizing distribution methods created long-lines, fostering a stigma of laziness against the individuals who waited in line for food rather than work.¹⁸ While the surplus distribution program provided some relief, it did not holistically address nutritional concerns, offer meaningful support to the hungry, or respect the dignity of the food insecure.

Several politicians, retailers, and social workers were critical of the surplus distribution program for different reasons. Retailers, particularly grocers and other food sellers, were angered by the federal government's decision to operate outside of the typical trade channels.¹⁹ Grocers worried that the surplus distribution program would remove valuable food customers from their stores during a time of great economic hardship. Many politicians feared that support of the program was leading the United States towards Communism. The socialist-style distribution of food caused discomfort in the lead up to World War II.²⁰ Social workers worried that the surplus distribution did not address the nutritional needs of the poor and would not do enough to combat starvation.²¹ During the Great Depression, hunger was a widespread issue and well-documented, no longer confined to the outskirts of society. While the federal surplus distribution program assisted in combatting hunger, many groups opposed the methods of distribution or criticized the program for not combating hunger in a meaningful way. In response to the widespread criticism, Secretary of Agriculture Henry Wallace introduced the Two-Price Plan in 1938. This plan would move food relief to grocery stores and other food retailers. Businesses would provide two different prices on food with a lower price for recipients of welfare relief.²² Relief recipients could pick among different types of food priced at a discount, increasing the amount of individual choice and nutritional options. This addressed business' desire for relief recipients to obtain food through normal channels, but many feared it would exacerbate class conflict if non-relief recip-

ients thought the prices they paid would be inflated to subsidize food for welfare recipients.²³ Secretary Wallace’s plan would have done little to de-stigmatize food assistance, but would have moved the program to traditional channels and offered more nutrition options. The Two-Price Plan did not gain traction politically due to widespread criticism.

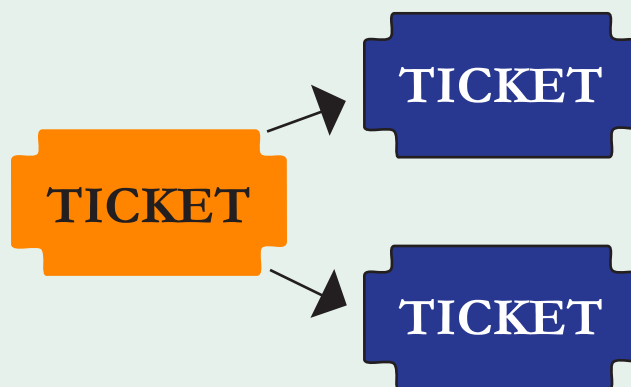
1939-1943: First Food Stamp Program

In 1939, Congress passed the Food Stamp Plan, a modified version of the Two Price Plan. In the Food Stamp Plan, relief recipients were required to purchase orange tickets for food and would then receive free blue tickets that expanded their purchasing power.²⁴ For every one orange ticket, recipients would receive two blue tickets.²⁵ The stamps could not be used to purchase alcohol, tobacco, or imported items and relief recipients were only allowed to buy as many stamps as would constitute the price of the average food budget in order to restrict abuse of the program.²⁶ The ban on the purchase of imported items further promoted domestic agricultural interests. Integral to the plan, wholesalers were allowed to buy surplus directly from farmers.²⁷ Individual counties could decide to implement the Food Stamps program or opt to continue plain distribution of goods. Overall, the Food Stamp Plan provided food relief, but only while promoting business, political, and agricultural interests as well.

The stated goal of the 1939 Food Stamp Plan was “to move welfare recipients into the marketplace, stimulate the economy, and decrease the stigma of relief, while simultaneously restricting and monitoring consumer behavior.”²⁸ The 1939 Food Stamp Plan was one of the first social assistance programs that

approached welfare recipients as consumers, rather than as the recipients of goods, marking the transition between viewing the recipients of food aid as “people on relief” to “people buying products.”²⁹ This shift also changed the perception of agricultural surplus from a problem of agricultural overproduction to an issue of societal under-consumption of agricultural goods.³⁰ At its peak, the 1939 Food Stamp Plan served 4 million people and cost the federal government \$261 million per year.³¹ By December 1942, a year before the program ended, food stamps were available in 1,354 counties and available to 61.5% of America’s poor.³²

While politicians, welfare officials, agricultural interests, and business interest were generally satisfied with the 1939 Food Stamp Plan and its implementation, recipients of relief found issue with the strict budgets and limitations on participants. Although the only eligibility factor was a low income, the strict buy-in requirements excluded certain individuals and required families to buy a certain amount of food.³³ As a result, hunger was blamed on families themselves who did not spend their limited funds according to the scientific budgets outlined by economists. The budgets did not take into account expenses such as cloth-



ing, medication, emergency expenses, etc., preventing poor families from the strict adherence necessary to make it work.³⁴ Additionally, the Food Stamp Plan put specific limitation on participation, such as the mandatory buy-in, and many relief recipients found the rules too inconvenient and confusing to function effectively as a social assistance program.³⁵

The Two Stamp Plan was officially ended on March 1943, due to World War II, but this structure of food relief was not forgot-

1939-1943: First Food Stamp Program

No alcohol

No tobacco

No imported items

ten. What the program lacked in scale, it made up for in subsequent influence on the structure of food relief in the United States.³⁶ The shift from relief recipient to consumer would continue to influence the methods of food assistance following World War II.

1950s: Domestic vs. Foreign Hunger

After the war, food surpluses were sent abroad to assist with restoration efforts prompting legislators to begin advocating for the surplus to be used for hunger efforts domestically. At first, plain distribution of agricultural surplus was re-implemented in the United States, but the familiar objections surrounding nutritional value, the importance of choice, and the business lobby re-emerged. Senator George Aiken proposed seven separate bills to re-establish the food stamp

program and Representative Leonor Sullivan pushed for domestic use of agricultural surplus by emphasizing the contradiction between the agricultural surplus and widespread hunger in the United States.^{37,38} Representative Sullivan's plan only proposed the use of foods in surplus for food stamps, a move favoring agricultural interests and ignoring the nutritional needs of the hungry. Some agricultural interests opposed the reintroduction of the food stamps program, noting that the 1939-1943 program was not as effective at reducing the surplus as many anticipated.³⁹

Placed under public pressure and in response to Aiken's and Sullivan's efforts, the 1956 Agricultural Act required Secretary of Agriculture Ezra Benson to analyze Senator Aiken's food stamp proposal and create a report detailing its benefits and detriments.⁴⁰ Benson's report was largely hostile to the program and ignored the potential nutritional benefits for the poor. Benson called the expense of the program too great and stated that food stamps would be less efficient than direct distribution.^{41,42} Despite Benson's unfavorable report, in 1958 a two-year pilot food stamp program was authorized by Congress with a \$250 million per year budget. President Eisenhower vetoed the move believing it too great an expansion of the role of the federal government.⁴³ Thus, political interests and concerns over cost derailed the potential nutritional benefits posed by the reinstatement of the Food Stamps Program. Without the support of the agricultural lobby due to past failure of the food stamps to substantially reduce surplus, a new Food Stamps Program was not established, despite public support and Congressional advocates, during the 1950s.

1960s: Food Distribution Framed by the Civil Rights Era

During the 1960s, the issue of hunger emerged in public discussion and, following the trend of the era, became the responsibility of the federal government to correct. During this era, “hunger was portrayed as a failure of the federal government to protect the rights of citizens to due process and equal access.”⁴⁴ There was a grand push to expand eligibility and access to food programs, upgrade benefits, and secure the right to food, but all of these goals could not be accomplished without concessions to business or agricultural interests. While there was a major push for the right to food on a federal level, the hunger lobby was not strong enough to implement this right. As a result, compromises were made at the cost of the hungry in order to appease business, political, and agricultural interests.

In 1961, President John Kennedy instituted eight food stamp projects in the Appalachian region as his first executive order in office. Hunger advocates found hope in President Kennedy’s attention to domestic issues and the positive results of the pilot projects, “one-third to almost one-half of the families had diets that supplied the family with 100 percent or more of the allowances for eight nutrients recommended...among comparable nonparticipating families, only 28 percent had good diets.”⁴⁵ Like past Food Stamp Programs, the food assistance pilot program had eligibility based on income only, without concern for age, employment status, family structure, or health, making it unique among American welfare programs.⁴⁶ The program increased retail sales by 8% in pilot retailers, appealing to grocery and wholesale retailer interests.⁴⁷

President Kennedy saw the food stamps programs as a trade off between urban interests, which would be more likely to support agricultural programs in return for hunger assistance programs, and agricultural interests, which would only support the program with incentive.⁴⁸ The agricultural interests in the United States had lost their total power over hunger programs and “by the 1960s, a shrinking farm bloc needed allies in urban America to maintain its leverage on agricultural policy, and it found them through...food stamps.”⁴⁹ In 1964, the Food Stamp Act passed, officially nationalizing the food stamps program, but the language of the legislation and the method of vote acquisition clearly reveal the damaging compromises made by hunger advocates in order to appeal to the agricultural, political, and business interests necessary to its passage. According to the first paragraph of the act, “food assistance [is] to be operated through normal channels of trade,” reflecting the primacy of business interests.⁵⁰ The program’s stated goals were “(1) the utilization of the nation’s food; and (2) the promotion of the nutritional well-being of low-income persons,” reflecting the prioritization of surplus usage over hunger alleviation.⁵¹ The passage of the Food Stamp Act was dependent on its connection with business and agricultural interests, with compromises made to ensure those interests were met. The Food Stamp Act maintained a buy-in option equal to “the amount the household was already spending on food” determined by the USDA, a long-term barrier for entry for the poorest families.⁵² Additionally, food stamp programs and surplus commodity distribution could not occur in the same county, leaving it up to the states and locals

to decide which to implement, a downside for the hunger interests concerned with the nutritional integrity of distribution of surplus, but a positive for states rights advocates, a political interest.⁵³ Eligibility was determined by the state, another victory for political interests at the cost of the well-being of the poor. Overall, counties transitioning from surplus food distribution to food stamps saw an average of 40% decrease in participation.⁵⁴ The Act's integration with agricultural incentives was essential to its passage through vote trading within Congress.⁵⁵ The Food Stamps Act was a method of ensuring that the agricultural surplus would be purchased and used, with alleviation of hunger in low-income households compromised to achieve that end.⁵⁶ While the Food Stamp Act nationalized the food stamp program, improving the situation of many low-income people across the United States, clear language within the bill and regulations that were unpopular with hunger advocates in the first food stamps program, indicate the importance of governmental, agricultural, and business interest to its passage. By March 1964, 392,400 people were participating in the food stamp program at a federal cost of \$29 million.⁵⁷ In 1964, President Lyndon Johnson encouraged the formal unity of hunger and agricultural interests in the Farm Bill following an initial blockage of the reauthorization of the Food Stamps Act by agricultural interests.⁵⁸ President Johnson assured agricultural advocates that he would not pass the Farm Bill without a compromise between nutrition and agriculture. This began the official logrolling of programs between agricultural interests and hunger interests, uniting them in their

1/3-1/2
of the families [in the food stamp projects] had diets that supplied the family with **100%** or more of the allowances for **8** nutrients recommended...among comparable nonparticipating families, only **28%** had good diets.

support of the Farm Bill. Agricultural interests in Congress faced waning support with the increased urbanization of the country, and were willing to create a coalition with the hunger lobby in order to protect their own interests. According to one House Agricultural Committee member from that time, "It was a carefully calculated thing which has done a long time ago to try and unite urban interests with agricultural interests, in common support of the bills, that had been fighting with each other."⁵⁹ In 1967, the Senate designated the Subcommittee on Employment, Manpower, and Poverty the official oversight committee for the food stamp program. The subcommittee recommended several edits to the Food Stamps Program, including free stamps for the unemployed, lower purchasing requirements, investigations of the overcharging of stamps by local officials, and the distribution of ag-

agricultural surplus through local organizations for free, in addition to the existing Food Stamps Program.⁶⁰ The Office of Economic Opportunity determined that it could not legally authorize these recommendations without a formal amendment to the Food Stamp Act.⁶¹ Due to increasing public awareness of hunger and the building hunger lobby, the Senate established a Select Committee on Nutrition and Human Need in the same year in order to assess further needs of the program.

In 1968, a formal hunger lobby emerged in conjunction with the Civil Rights Movement. The main organizations within the lobby were the Field Foundation and the Citizens' Crusade Against Poverty, both of which brought hunger to national attention, investigated the magnitude of hunger, and brought hunger "outside the confines of the agricultural committees" for the first time.⁶² The release of the film *Hunger U.S.A.* by the Citizens Board of Inquiry into Hunger and Malnutrition in the United States is the most notable example of the importance of the hunger lobby. The CBS special identified 256 counties as places of chronic hunger and malnutrition, and revealed how current distribution programs and President Kennedy's food stamp programs were not as effective as the public thought.⁶³ They found that neither distribution programs nor food stamps were operating in 1/3rd of the nation's poorest counties and deference to state and local communities for administration had created the use of food commodities as a political weapon, withheld in times of strife like voting registration and labor movements.⁶⁴ *Hunger U.S.A.* brought the issue of hunger into the public sphere and pressured Congress into adopting measures to address the inadequacies in

their current program including eliminating the buy-in requirements, expanding school lunch program, and undertaking emergency action in the identified 'hunger counties.'⁶⁵

1969-1979: Negotiation and Reform

In 1969, national pressure to reform food assistance was mounting, but food stamps were still only available at the discretion of the county and with a mandatory buy-in. In May, President Richard Nixon committed to substantial action on the hunger issue by expanding "the National Nutrition Survey to provide us with our first detailed description of the extent of hunger and malnutrition in this country" and to hold a White House Conference on Nutrition.⁶⁶ The conference was intended to emphasize solutions through education, rather than increased spending.⁶⁷ Attended by individuals from across the country, including many leading voices from the hunger lobby, eight special committees were formed to review the work of panels drafting hunger legislation. Four of those committees called for an emergency hunger declaration, agreed that cash assistance should take the place of food stamps, and that the current food assistance programs must be expanded.⁶⁸ As a result, Nixon declared a hunger emergency and partially extended the food stamp program both geographically and in terms of increased benefits.⁶⁹ For example, legislation reduced the purchase requirements to \$0.50 per person in Mississippi.⁷⁰ Many attendees believed that Nixon's expansion was not enough to adequately address the hunger problem and left the conference dissatisfied with the limited action.⁷¹ After more pressure from the public, in 1971, amendments to the Food Stamp Act of 1964

were adopted, improving the food assistance to many recipients, but still compromising nutrition to appease political interests. The amendments set a uniform national eligibility standard, increased the federal share of administrative costs to 50%, and on average, doubled the amount of recipient benefits.⁷² But, concerns for political economic interests prevented the full realization of hunger needs in the amendments. For example, Massachusetts Senator George McGovern proposed that individuals making \$80 or less in monthly income be eligible for free food stamps.⁷³ The Nixon administration instead opted to eliminate purchasing requirements only for individuals making \$30 or less a month, saving \$384 million by “weighing benefits to the poor against program costs. The economizers won at the cost of assistance for 3.5 million Americans.⁷⁴ In another example, the federal government did not make school lunch programs mandatory for local communities to implement, affecting the ability of low-income children to receive adequate nutrition.⁷⁵ These two concessions illustrate how compromises to receive essential support from political interests sacrificed the quality of support given to the hungry through the Food Stamps Program.

In 1973, the Agriculture and Consumer Protection Act, a Farm Bill, passed, making food stamps a nationwide program and doubling the benefits for existing participants.⁷⁶ Following its passage, all counties were required to discontinue their surplus distribution programs and offer food stamps to constituents instead.⁷⁷ The passage of this act is widely attributed to the failure of Nixon’s Family Assistance Plan (FAP) that would have discontinued most welfare plans, including food stamps

in favor of a guaranteed national income.⁷⁸ While FAP gained support among some poverty advocates, the hunger lobby determined the benefits would not be enough to outweigh the costs of losing food stamps, and congresspeople devoted to hunger interests decided to support the expansions of the existing, but flawed food stamp program, instead of FAP.⁷⁹ FAP was also opposed by agricultural interests that would have lost the economic benefits of food stamps.⁸⁰ Rather than a program advocated as the best possible option for hunger interests, the expansion of the Food Stamps Program was seen as a shrewd political move on the part of agricultural and political interest.

At the conclusion of the 1970s, a series of federal orders corrected some of the deficiencies brought up by the hunger lobby. In 1975, new federal outreach regulations required that states take “effective action, including the uses of services provided by other federally funded agencies and organizations, to inform low-income households concerning the availability and benefits of the food stamps program,” following a series of court cases by food assistance advocates.⁸¹ Later, President Carter signed the Food Stamp Act of 1977, which eliminated the purchasing requirements in addition to expanding eligibility and increasing asset caps.⁸² The Act came among greater demands by the hunger lobby and required a coalition with agricultural interests to pass. By the end of the 1970s, the modern framework for the food stamps or SNAP program had been established with its nationwide reach, national standards for edibility, and lack of purchasing requirement.⁸³ This basic framework is largely the same in 2017.

A Shift in Priorities?

From the 1930s to the end of the 1970s, food assistance legislation in the United States clearly made concessions to business and agricultural lobbies in order to gain passage. In 1982, Barbara A. Claffey and Thomas A. Stucker argued that the expansion of the Food Stamps Program in the 1970s indicated a shift of priorities within the program, away from agricultural interests and towards a priority on hunger interests.⁸⁴ Among others conclusions, they assert that: “political and social institutions provide universally distributed rights and privileges that proclaim the quality of all citizens...economic institutions rely on market-determined incomes that generate substantial disparities among citizens in living standards and material welfare...a food assistance program is seen as a cost that society is willing to pay in order to maintain the dichotomy between its sociopolitical institutions and its economic institutions...”⁸⁵

Their claim that legislative priorities shifted towards hunger interests beginning in the 1970s is invalid because of concessions to business and agriculture made from the 1980s to today. While expansion of the program has continued relatively steadily, the Reagan years, restrictions on the Food Stamps Program surrounding the Personal Responsibility and Work Reconciliation Act of 1996, branding of SNAP during the Great Recession of 2008-2009, and the attempt to decouple SNAP from the Farm Bill in 2013 illustrates the primacy of exterior parties such as agricultural, business, political and economic interests in the continued support for meeting hunger needs. If Claffey and Stucker’s conclusion were cor-

rect, the Food Stamps Program (SNAP beginning in 2008) would not have endured the restrictions on eligibility and paternalistic impositions that compromise the program’s ability to address hunger following 1982.

In the 1980s, President Ronald Reagan made deep cuts across all social assistance programs, including the Food Stamps Program, in order to limit the size of government and appease business interests, while still assisting agricultural interests. Between 1981-1985, food stamps were restricted to individuals over 130% of the poverty line and direct food distribution programs were reintroduced because of agricultural surpluses and taxpayer’s paternalistic interests.⁸⁶ The Congressional Budget Office estimated that between 1982-1985, these policies resulted in “\$12.2 billion less was available for aid than would have been true had the laws remained unchanged.”⁸⁷ The cutbacks created an emergency food situation, shifting food assistance responsibilities to private charities and individuals. However, the federal government offered large donations from the agricultural surplus to these charities in order to create a private

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of the poverty line and direct food distribution programs were reintroduced because of agricultural surpluses and taxpayer’s paternalistic interests.

system of distribution.⁸⁸ While hunger advocates had decried the surplus distribution as harmful to nutrition efforts, the Reagan administration continued agricultural subsidies and surplus distribution in order to address hunger. In 1988, 1990, and 1993 legislation was passed to expand eligibility to its original levels and increase benefits for recipients.⁸⁹

In 1996, the Food Stamps Program faced cuts in eligibility as part of the general welfare reform. In a stand alone bill, Congress limited individuals without dependents to three months of SNAP over any thirty-six month period if they were not employed or in a 20 hour per week training program.⁹⁰ States have the ability to waive this provision during periods of economic hardship. While President Clinton openly opposed this provision, this limitation on SNAP reflected a paternalistic imposition on recipients, a political interest at the time, and connected eligibility benefits to work, rather than hunger. This limitation's incorporation in a stand-alone bill, rather than part of the Farm Bill, weakened the hunger lobby's ability to counter it significantly. Hunger advocates had "far less leverage once food stamps were placed in a welfare bill whose beneficiaries tended to have little social and political standing," re-affirming the need to tie the interests together for hunger advocates.⁹¹ This restriction of the program, stemming from the political interests of Congress at the time, placed hunger as a secondary concern. From 2000-2008, the SNAP expanded eligibility to include certain groups of legal immigrants, but otherwise remained relatively unchanged.⁹²

During the Great Recession from 2009-2010, SNAP was framed as an economic stimulus rather than as part of assisting hunger.

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According to Moody's Analytics, for every \$1 increase in SNAP benefits, \$1.70 of economic activity is generated.

According to Moody's Analytics, for every \$1 increase in SNAP benefits, \$1.70 of economic activity is generated.⁹³ The rebranding of SNAP as a method of economic stimulus "undermined the idea that hunger prevention should be a concern of the American state."⁹⁴ As a form of economic stimulus, hunger interests would be advocated for in times of economic crisis, like the Great Recession, but will then be scaled back in times of economic prosperity. This shift signifies that hunger interests and right to food access are still not the top priority within SNAP. In 2016, 500,000 SNAP recipients that were unemployed and did not have dependents lost benefits after the states' time waivers ended.⁹⁵ This reveals the issue; that viewing hunger assistance as a form of economic stimulus, rather than a basic human right presents.

In 2014, Republicans in Congress advocated for a switch in SNAP funding to a block grant and the addition of work and drug testing requirements to the program.⁹⁶ A block grant would restrict the ability of the Food Stamps Program to expand in times of economic hardship, terminating its status as an entitlement

program. While entitlement programs, “guarantee that funds are made available sufficient to satisfy the claims of all eligible and enrolled persons to the extent established by the prevailing statute,” ensuring the government will pay for all eligible, enrolled recipients, a block grant would place a cap on the amount of funding for the program, even in times when enrollment may expand.⁹⁷ In order to meet these goals, Republicans advocated for cuts to SNAP funding to create larger subsidies for farmers, which was only accomplishable through removing food assistance from the Farm Bill. At the time, there was widespread concern among Republicans that the “spending bill is too big and would have passed welfare policy on the backs of farmers” without making the proper concessions to agricultural and business interests.⁹⁸ On July 11, 2014, the House passed the Federal Agriculture Reform and Risk Management Act of 2013, the first Farm Bill without the Food Stamps Program or any other form of nutrition assistance in forty years.⁹⁹ On September 19, the Nutrition Reform and Work Opportunity Act of 2013 passed the House, creating \$39 billion in SNAP savings over ten years.¹⁰⁰ While the Democratic-controlled

Senate and President Obama both vowed to block the decoupling attempt and agricultural interests and food stamps were once again linked in the Farm Bill for that year, Paul Ryan and other Congressional Republicans have renewed the call for block grants and cuts to funding under the Trump Administration as part of a larger plan to reduce welfare.¹⁰¹

Conclusion

A rights-based approach to hunger, rather than an agricultural, business, or economic stimulus-based approach to hunger, will protect SNAP from losing funding under the current administration. Hunger interests have been routinely subjugated in favor of exterior interests in order to gain enough Congressional support. In the past, SNAP has addressed only a fraction of hunger in the United States and has largely evolved with business and agricultural interests as its primary focus. As demonstrated, this concern goes past compromise and creates a lack of funding for SNAP, leaves many recipients lacking proper nutrition, and reduces eligibility rates to exclude many hungry individuals. The program has both low error rates, less than 1%, and high participation rates, 85% in 2013.¹⁰² In 2012, a study by the Harvard School of Public Health found that 77% of U.S. adults across political parties and demographic groups supported the same level or increased spending for SNAP.¹⁰³ With this type of success within the program, widespread public support, and an international precedent, the United States should move to protect food assistance as an unconditional right, rather than something to be compromised to business, political, agricultural, or economic interests.

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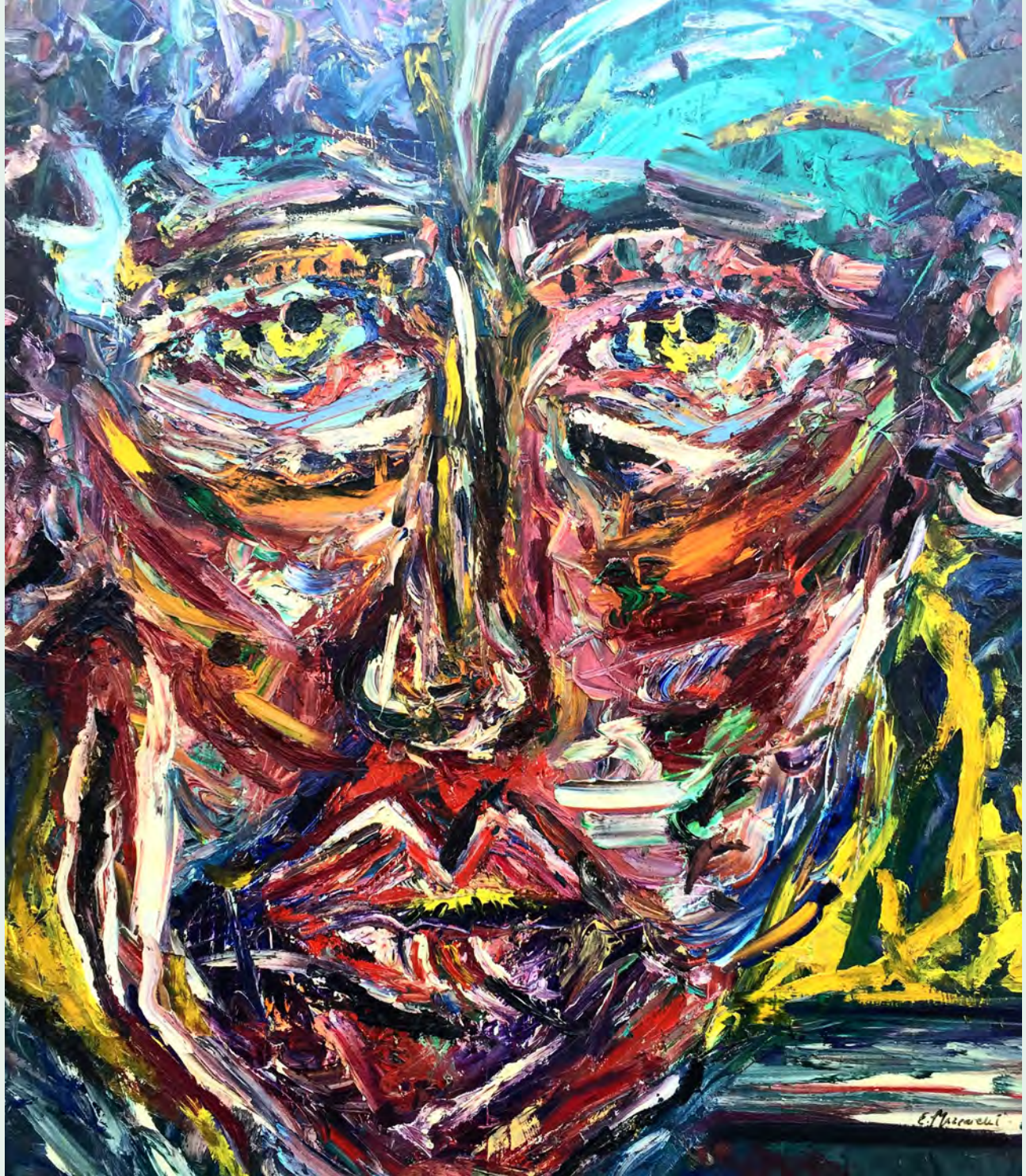


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Parents' Conflicted Interests with School Choice

BY ADAM MARTIN '20

Scholars have done extensive work to assess opinion on the performance of their local public schools, their support for expanding school choice, and their view on the role education plays in ensuring success later in life. Research has indicated that parents are generally more supportive of their local public schools than the national educational system and that they are personally conflicted between their political views of school choice and of transferring their own children from their local public school to a charter or private school. Furthermore, while school choice is generally favored (depending on the program's structure), respondents in polls have pointed to other means of improving public schools other than expanding school choice. While many respondents now believe that the federal government should be more active in improving education, public opinion on pre-existing efforts to do so is split and can have problematic methodology. Finally, education has been perceived by many to be an important factor towards having a successful career. However, Martin argues that surveys should focus more on the relationship between parents' views on their local schools, the national education system, and the impact of their child's education on their future to their opinion on expanding school choice. These factors in public opinion on school choice are significant because they can indicate whether or not the federal government should be responsible for expanding (or limiting) school choice.

PART ONE: LITERATURE

There is significant literature on public opinion concerning both educational institutions and policies. While this paper lacks the space to sufficiently cover all the nuances that have been documented, it will cover salient studies that concern opinion on public schools, existing school choice programs, hypothetical expanded school choice programs, efforts by the national government to reform education, and the role education plays in creating a successful future.

Philosophy Regarding Education

It's important to examine people's view on the role education plays in promoting success because it establishes the importance of maintaining a functional education system for future generations. Research has found that respondents ages 18 to 29 believe that, while education is crucial towards future success, expanding school choice is not among the more popular methods of improving the national education system.

In a 2014 poll conducted by the Harvard Institute of Politics, respondents between the ages of 18 and 29 were asked various questions on this topic. Results from this study found that 90% of respondents believed that education is either somewhat or very important towards "achieving the American Dream"¹; 81% of respondents believed that 'some college/community college' is the minimum level of education needed to be successful; and while 37% were unsure of an expanded school choice program's effectiveness of reducing the wealth gap, 45% of respondents believed that such a program is either somewhat or very effective at this goal.² Although this indicates clear support that young adults believe education is important towards future success and that an expanded school choice program would be effective

at reducing the gap between the wealthy and most other citizens, there is also evidence that school choice is not the popular approach among young adults towards providing an ideal education.

In a 2016 poll by the Harvard Institute of Politics, respondents ages 18 to 29 were asked how to improve the education system. When asked to select three solutions among eight, respondents ranked expanding school choice sixth, with only 17% including it in their three selections; the most common response was placing greater emphasis on STEM education³. While this series of polls provide insight on young adults' perceptions of education's long term impact, it has limited context over the views of current parents, the demographic that is usually responsible for sending their children to public or private school.

Local Public Schools and the National Education System

Significant research has been done to examine people's satisfaction with their local public schools and the American national education system. Since the 1980s, Bali notes that while opinion on the American public education system as a whole has declined, opinion on re-

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the American Dream"

spondents' *local* public schools has gradually improved. When respondents were evaluated in 2012, 15% reported improvement of their local public schools, 43% reported consistency in their local public schools' quality, and 27% reported that their local public schools have deteriorated.⁴ Respondents usually attribute this split between the national education system and their local public institutions to their familiarity with their local schools; however, community pride, increased test scores, and graduation rates within local public schools, and negative media portrayals of the national system have also been cited.⁵ This paper noted how support in some demographics has remained unchanged in this time period while others have shifted their views.

In the specified time period, party identification and race have all diminished in their salience. In 1983, party identification was a direct indicator of support for public schools, and whites were significantly more likely to support their public schools than racial minorities. By 2012, however, none of these characteristics remained a point of division.⁶

Yet even with this minor increase of general support, Bali has found disparities in several parameters, particularly that rural respondents remain more likely to support their public schools than urban respondents.⁷ Bali found that while urban respondents believe their local schools

have improved since the 1980s, urban schools remain less likely to be viewed favorably than their rural counterparts.⁸ Others have noted that among parents, satisfaction with their child's school varies considerably along racial lines. Asian parents have been found to be most satisfied with their child's school; Hispanic and white parents have been found to have comparable levels of satisfaction; African-American parents have been found to be least satisfied. Despite this variance in satisfaction, parents—regardless of race—have cited the school's safety, budget, communication of student's academic progress, and teacher effectiveness to be significant factors in their assessment.⁹ It can then be argued that the racial gap on school satisfaction for parents comes not from the criteria considered but from the inequality of school access and quality; African-Americans and Hispanics are less likely to attend private schools than their white counterparts.¹⁰ Indeed, other scholars have noted that people are more likely to give their local private schools favorable evaluations than their local public schools, both in urban and rural areas.¹¹

A 2003 report polled 300 parents in New York State that have transferred their child to a charter school; 65% of these parents previously had their children attending public schools.¹² The report found that these parents were twice as likely to rate their child's charter school an 'A'—42%

15%

of respondents in 2012 reported improvement of their local public schools

43%

of respondents in 2012 reported consistency in their local public schools' quality

27%

of respondents in 2012 reported that their local public schools have deteriorated

overall—than rate their child’s previous school an ‘A.’¹³ When asked about their child’s previous school, a third of these parents reported that the previous school was inferior in all functional aspects to their child’s charter school. While there is disagreement over which functional aspect the charter school is superior to the previous school in, a general plurality—17%—of respondents reported that the charter school’s academic standing was their strongest attribute.¹⁴ When New York State was divided into the City and Upstate, however, there are noticeable divergences. The study found that parents in New York City are more likely to rate their child’s charter school an ‘A’—49%—than parents in Upstate New York—39%¹⁵. This rural-urban split comes from varying levels in satisfaction with the charter school’s quality of instruction, safety, different perceptions of classroom disruption, and slightly superior communication of student’s academic progress.¹⁶

Generation Gap, Race, and State Culture in Opinion for Public School Spending

One metric that has been examined concerning public schools is public opinion for the level of school spending, which is a lens that can be used when analyzing specific demographics, such as age groups, race, and state geography. First, scholars have devoted extensive research to differences in age when evaluating how much funding the public believes schools should receive. It has generally been agreed that older respondents were previously more likely to support public schools while also being more likely to support lower school spending from all levels of government. From the 1980s to the 2000s, however, older respondents have generally displayed less divergence in support from their younger counterparts and have become more likely

to support an increase in school spending.¹⁷ A generation gap concerning school spending has existed because older respondents have been socialized in a system where less school spending was expected, thus as these respondents are replaced by generations that have been educated in a system where more school is expected, the generation gap will continue to close.¹⁸

Second, race’s impact on public opinion for public schools has largely been affected by their rapid rate of improvement, even as disparities in education access and quality persist. While the gap is not as large as racial inequality suggests, African Americans remain more likely to find improvement in their public schools and increase in school spending than their white counterparts.¹⁹ Hispanics, though, have yielded limited and inconsistent polling results on public school spending.²⁰

Finally, opinion on school spending is unique within individual states. Due to the geographic and racial diversity of the United States, the country serves as a breeding ground for multiple distinct state and local cultures, which each foster various opinions on educational policy. For example a “centrist” in Massachusetts is more likely to support higher school spending than a “centrist” in Wyoming.²¹ This diversity in culture can also be seen in the demographics within each state, which connects to other splits in opinion. For example, swing states such as Ohio and Pennsylvania have large rural populations and high African-American concentrations within the large cities.²² In this aspect, various state cultures act as intersections for other salient demographics that factor into public opinion for both local public schools and school spending.

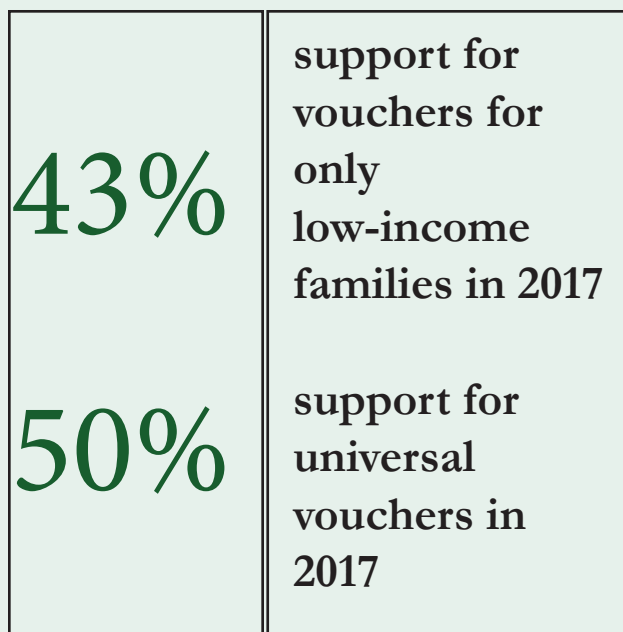
Existing School Choice Programs

It's important to examine the public opinion of existing school choice programs within communities and states. A 2016 study conducted by Shuls specifically focused on the school districts of two cities—Kansas City and St. Louis. Parents from these two cities have been found to sympathize with the notion of missionary schooling—the act of sending children to underperforming schools (usually public ones) with the intent of bolstering their prestige or ‘saving’ them. When asked whether they would subject their *own* children to missionary schooling, however, parents declined in favor local private schools out of self-interest.²³ Shuls's experiment with parents in Kansas City and St. Louis suggests a divide in school choice opinion among parents; while these parents express reservations politically about expanding school choice due to their negative impact on public schools and their questionable effectiveness of curbing cyclical poverty, these parents also carry a personal self-interest to ensure that their own children receive a quality education, even if fulfilling that desire requires transferring them to a private or charter school.²⁴ This divide between the political and the personal can make opinion measurement on expanding school choice difficult because it can create a gap between poll results and transfer enrollments from public schools to private or charter schools.

Expanding School Choice Programs

In regards to expanding school choice, public opinion varies depending on the program's structure, means of providing access to alternatives, and the narratives people are exposed to. One study polled respondents for their support of different methods of expanding school choice. The results found that 60% of respondents favored a

program that would provide tax credits to businesses and entities that donate to organizations that grant scholarships for low-income families to send their children to private schools. Only 54% of respondents favored charter schools and about half of respondents opposed granting school vouchers exclusively to low-income families. However, when these vouchers are provided to families of any income—also known as universal vouchers—favorability increases to 50%.²⁵ A 2017 analysis of polls conducted by *Education Next* reflects some of these findings while also examining divergence among political parties. Results from its polls include a 65% general support for charter schools; however, Republicans are significantly more likely to favor these institutions than their Democratic counterparts. Vouchers for only low-income families received 43% support while universal vouchers received 50% support—both of these vouchers received more favor from Democrats than Republicans. Programs that provide tax-credits to donors of



65%

general support for charter schools in 2017

scholarship-granting organizations received 65% overall support with Democrats favoring it over Republicans.²⁶ The noticeable impact party identification has on support for expanding school choice marks an interesting departure from the indicator's now-absent role in support for local public schools. Furthermore, while these polls do suggest a general trend in favor of supporting expanded school choice that is contingent on party identification and the program's structure, these surveys are not designed to make a respondent's philosophy on the role of education in fostering success a salient consideration.

Narrative Policy Framework

Other scholars have sought to examine the role narratives play in shaping public opinion for expanding school choice programs. The Narrative Policy Framework (NPF) is a theory that examines the impact storytelling has on changing emotions and attitudes on issues versus the impact of empirical data. At the micro-level, there is an emphasis on how issues affect individuals. At the intermediate stage, interest and advocacy groups utilize these narratives to promote their messages. Finally, at the macro-level, these stories are embedded into the institutions responsible for creating and implementing policy. Factors that determine a narrative's success include the viewer's predispositions, level of narrator trust, the story's coherence, and the strength of the characters.²⁷

In regards to school choice, two opinion polls have been made about the acceptance of charter schools among residents of Alabama—one of the few states that does not currently have charter schools in operation. While the first poll showed general support for charter schools, the second poll—which was conducted after additional information about the issue was provided—showed a smaller share of initial supporters followed by a surge in the opposition.²⁸

In a study, respondents are asked to read two brief opinion pieces. The first one is in opposition to charter schools while the second one is in favor of charter schools. Both of these pieces utilize narrative and focus on characters. The results find that people who read articles that are more in line with their predispositions are more likely to find the author trustworthy and the argument convincing. Furthermore, the unfavorable article is more influential in swaying readers—both those with low knowledge and high knowledge on charter schools—towards opposition than the favorable article does at swaying readers towards support.²⁹ The results of this study suggest that the NPF does not strengthen the argument in favor of expanding school choice nearly as much as the argument against expansion. Furthermore, the results of the study are also consistent with the second opinion poll conducted on Alabama respondents; respondents are more likely to become opposed to expanding school choice when they acquire more information on the topic, whether this information is conveyed by reading empirical articles or through the NPF.

President Donald Trump and Secretary of Education Betsy DeVos

With Donald Trump's election to the presidency and his appointment of Betsy DeVos for

Secretary of Education, there has been a growing debate over whether school choice programs should be expanded. In an April 2017 poll conducted by the Pew Research Center for the People & the Press, 67% of respondents said that if they were writing the budget for the federal government, they would increase spending for education.³⁰ This is likely a response to the resurgence of the national debate, given how support has historically spiked immediately before new federal programs are rolled out; when Pew asked this question in 2001—when No Child Left Behind was being considered—support peaked at 76% before lowering to 73% in 2002 after the law was passed.³¹ Similarly, when Pew asked the question again in 2009—when Common Core was being considered—support peaked at 67% before declining in the four years after Common Core was passed, reaching a minimum of 60% in 2013.³² If these trends apply to any effort by the federal government to address education reform, it should be expected that any new program passed in 2017 would be a peak for support before lowering in the years afterward, when such a program would be implemented.

Role of the Federal Government in Reforming Education

Despite the surge in support for an increase in education spending, there is mixed data regarding whether this translates to support for the federal government to expand school choice programs. In March 2017, shortly after Donald Trump released a budget proposal, Quinnipiac University asked in a telephone survey among registered voters whether they supported increasing funding specifically for charter schools and school choice programs. The results found that 55% of respondents cited this increase as a

67%
of respondents in 2017 said
that if they were writing the
budget for the federal
government, they would
increase spending for
education

“bad idea” while only 39% cited the increase as a “good idea.”³³ From this poll, the largest indicator of support was party identification; among the respondents, 68% of Republicans favored the increase, 36% of Independents favored the increase, and only 19% of Democrats favored the increase.³⁴ However, in a separate poll conducted by Gallup contemporaneously, 59% of respondents agreed with “provid[ing] federal funding for school-choice programs that allow students to attend any private or public school”³⁵. This discrepancy complicates opinion findings; however, it does suggest that people are more likely to support expanding school choice if they are assured that they will be granted access to public schools.

In addition to considering the structure of an expanded school choice program, it is important to consider predispositions towards the federal government and the role people feel it should play in improving schools across the United States. In 2000, before the No Child Left Behind Act was passed, 46% of respondents in an American Viewpoint poll agreed that the federal government should become more involved in improving education, while 42% agreed that

local school systems should have more flexibility in their administration.³⁶ By 2015, a Pew survey found that 70% of respondents believed that the federal government should play a major role in ensuring access to a high quality education.³⁷ Although there remains opposition, these poll results suggest a general support in the federal government’s intent on reforming education.

No Child Left Behind: A Case Study

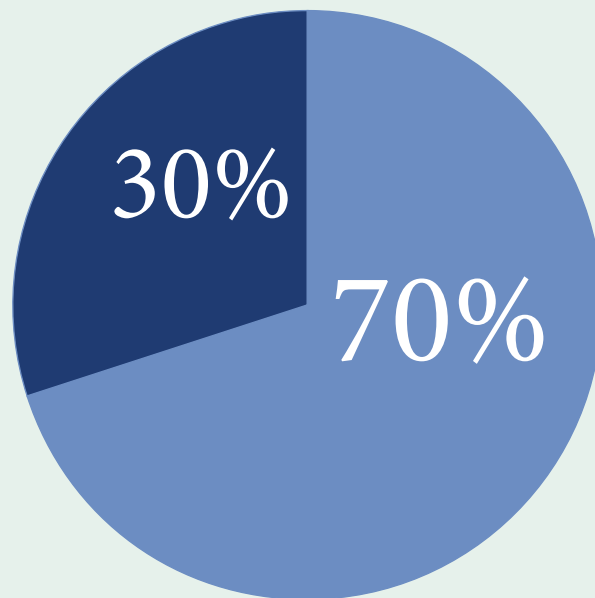
Finally, it’s salient to examine public opinion of previous efforts by the federal government to improve the American education system. This can provide some insight over differences between the people’s expectation of a federal program and the reality and how this can apply to expanding school choice.

One of the most significant federal programs for education reform is the No Child Left Behind (NCLB) Act of 2002. NCLB requires states to publicly release reports regarding the quality of its schools and punishes schools that receive low test scores multiple years in a row.³⁸ It’s im-

portant to note that at the time the program was enacted, forty-five states were already publicizing evaluations of their schools.³⁹ In regards to school choice, schools that fail to improve after two years must provide an alternative for students to opt out and schools that fail to improve after five years must engage in restructuring—which could result in it reopening as a charter school. Existing literature shows that parents’ deciding factor on their attitude of NCLB is their children’s experience with the school they attend. Furthermore, teachers and school administrators are generally against NCLB due to its standardized testing requirement and their belief that the federal government lacks the time and resources to reform the education system wholesale.⁴⁰

Another study sought to further analyze public opinion for NCLB, specifically among parents. Although parents do consider safety, academic standards, and shared cultural factors when assessing schools, research has shown that accountability data has a direct effect on parents’ view on schools, a component that NCLB intended to na-

Figure 1: By 2015, a Pew survey found that 70% of respondents believed that the federal government should play a ‘major’ role in ensuring access to a high quality education.



tionalize. Parents who receive this data are more likely to choose high-performing schools than parents who don't receive this data, but each state is allowed to establish its own grading scale for evaluation. Jacobsen et al. found in their study that although strong schools receive consistently high marks by parents, these marks are strongest among schools that are assessed on a letter grade rather than a numerical performance index. Conversely, weak schools that are assessed on a letter grade receive lower marks by parents than weak schools that are assessed on a numerical performance index. Thus, there is significant variance of opinion of school performance when good and bad schools are both assessed on a letter grade.⁴²

PART TWO: PUZZLE

While the existing literature on support for local public schools and school choice is extensive, it features little on how parents make the connection between their philosophy on education, their opinion on their local public schools, and their support of various school choice programs. It is unclear whether people are considering the state of their own public schools and educational philosophy when formulating their views on school choice programs or if they are considering their view of the national educational system—which existing literature has indicated is divergent from that of one's local public school.

The existing literature covers a breadth of considerations in regards to current school choice programs and the possibility of expanding them, however two fields that deserve more research in the future are the split in opinion between local public schools and the national education system and the split parents have between their political opinions of school choice and their personal decision to send their own children to charter and

private schools. Shuls 2016 has suggested this divide in his case study with Kansas City and St. Louis; however, this analysis is limiting in two ways. First, it only examines parents in two urban school districts within Missouri, which is a state with a large African-American/white gap.⁴³ Second, the study mostly utilizes open-ended narrative accounts submitted by parents within these school districts. While the notion of a political-personal divide among parents remains valid, there have been few efforts to measure its implications in a systematic method that represents parents in suburban and rural school districts.

A future study could be developed that seeks to determine whether a parent will support a federal school choice program when their opinion of the local school district, national education system, and their self-interest of their child's own education are all salient considerations. The results of this study would provide insight into the level of the education system parents examine most when determining whether to transfer their child to a charter or private school. If respondents' views of the national education system are found to be more salient than their views on their local public school, then it suggests that the federal government—more so than state or local governments—should be a guide for parents in creating a set of educational alternatives for their children.

For this study, a two-part longitudinal poll will be designed and four groups of respondents will be randomly sampled. Two groups—called Group A and Group B—will consist of parents with no more than three children attending local public school, with the youngest child being under the seventh grade. The other two groups—called Group C and Group D—will consist of parents with no more than three children attending local public school, with the youngest child


either in or above the seventh grade. The purpose of dividing the respondents by age of the youngest child is to establish a control for the time a parent will have to cooperate with the local public school district, which can be an external consideration when determining whether to transfer children to charter or private schools. In addition, two forms of the poll will administered within the pool. Form 1 will be administered to Group A and Group C while Form 2 will be administered to Group B and Group D. While respondents in all four groups will be asked the same set of questions, the two parts—Part 1 and Part 2—will be reversed for Form 1 and Form 2 respectively. The purpose of this practice is to establish a control over question-wording effects.


Part 1 consists of a series of close-ended questions regarding the respondent's satisfaction with the local public school. By doing this, this specific opinion will immediately become salient. This will then be followed by a hypothetical question of whether the respondent would transfer their youngest child to a charter or private school if there were no financial, logistical, or administrative obstacles to confront. Respondents in Group A and Group C will answer this part first while respondents in Group B and Group D will answer this part second. From this, it is expected that the results from Group A and Group C will be mostly derived by the respondent's view on their local public school and the age of their youngest child, as these factors will be the most salient by the method in which the question is presented. If there is significant support for transferring the child to a charter or private school, then it can be concluded that opinion on the matter is largely driven by small-scale, individual considerations.

Part 2 consists of a series of closed-ended questions regarding the respondents' philosophy

on education, view of the federal government, and the role it should play in addressing education. The purpose of these questions is to shift to large-scale considerations, making these salient. Afterward, respondents will be asked whether they would transfer their youngest child to a charter or private school under a newly-expanded school choice program. Rather than being a single question, however, this would be several questions as it would account for various hypothetical structures under which the new school choice program would assume. Respondents in Group B and Group D will answer this part first while respondents in Group A and Group C will answer this part second. From this, it is expected that the results from Group B and Group D will mostly be derived from the respondent's confidence in the federal government's ability to ensure access to a high quality education and the extent to which such an education will translate to a successful future for their children. as these factors will be the most salient by the method in which the question is presented. If there is significant support for transferring the child to a charter or private school through an expanded school choice program, then it can be concluded that opinion on the matter is largely driven by large-scale, philosophical considerations.

The purpose of creating two forms with Part 1 and Part 2 reversed is to examine the extent to which the respondent's view of the small-scale and large-scale educational considerations intersect. Because survey results can vary depending on the factors *most* salient at the time a question is asked, it is important to also determine whether the part a respondent answers second can alter their response when asked if they would transfer their youngest child to a charter or private school. If the results indicate a change in





all groups from the part they answer first from the part they answer second on this particular question, then it suggests that the considerations parents face in the part they answer second either generate contradictory opinions—which supports Bali’s argument—or produce a greater influence than the considerations faced in the part they answer first. This would suggest that the scope that produces that greater influence—perception of local public school or that of the national education system—also has a greater influence in forming parents’ opinion on expanding school choice for the purpose of transferring their own children to a charter or private school.

This study does pose limitations, however. It is unable to isolate certain personal factors that could also influence a parent’s decision to send their children to a charter or private school, the most notable being the interests of other children a respondent has aside from the youngest. The criteria for random sampling and question wording on the poll is heavily centered around the characteristics of the youngest child when many of the parents either have two or three children. While the presence of multiple children could create a conflict of interest in certain cases when the question is based specifically around the youngest, the allotment of a respondent to have three children is a fair method of ensuring a representative parent sample. Furthermore, the study cannot adequately explain the political reservations parents for expanding school choice programs even as they are interested in providing their own children with a high quality education. Even with these limitations, however, the study would be beneficial to expanding knowledge of public opinion regarding school choice.

PART THREE: CONCLUSION

Existing literature has indicated two divides parents have when it concerns education. One is that between their local public school and the national education system; the former tends to be viewed more favorably than the latter. The other is that between their political beliefs and their personal investment in granting their children access to a high quality education, which its beneficiaries cite as a necessity for future success. Both of these divergences pose an interesting challenge towards understanding public opinion of expanding school choice. It remains unclear the extent to which parents consider their view of their local public school or the national education system when determining their opinion of expanding school choice and whether to take advantage of such a program in regards to their own child.

This ambiguity is important because policy-makers are currently debating the role the state and national governments should play in expanding school choice. Understanding *which* school system—local, state, or national—people are assessing when formulating their opinion on school choice can be an important indicator for determining which level of government should primarily be responsible for providing alternatives.



ENDNOTES



- 1 Harvard Institute of Politics, Young Americans' Attitudes towards Politics and Public Science Survey, 2014, poll.
- 2 Harvard Institute of Politics, Young Americans' Attitudes towards Politics and Public Science Survey, 2014, poll.
- 3 Harvard Institute of Politics, Young Americans' Attitudes towards Politics and Public Science Survey, 2016, poll.
- 4 Bali, 2016.
- 5 Bali, 2016.
- 6 Bali, 2016.
- 7 Bali, 2016.
- 8 Bali, 2016.
- 9 Bobrowski et al, 2006.
- 10 Berkman et al, 2005.
- 11 McCully et al, 2003; Shuls, 2016.
- 12 McCully et al, 2003.
- 13 McCully et al, 2003.
- 14 McCully et al, 2003.
- 15 McCully et al, 2003.
- 16 McCully et al, 2003.
- 17 Bali, 2016; Berkman et al, 2005.
- 18 Berkman et al, 2005.
- 19 Bali, 2016; Berkman et al, 2005.
- 20 Berkman et al, 2005.
- 21 Berkman et al, 2005.
- 22 Berkman et al, 2005.
- 23 Shuls, 2016.
- 24 Shuls, 2016.
- 25 Henderson et al, 2015.
- 26 Peterson et al, 2017.
- 27 Ertas, 2015.
- 28 Ertas, 2015.
- 29 Ertas, 2015.
- 30 Pew Research Center for the People & the Press, 2017, poll.
- 31 Pew, 2017, poll.
- 32 Pew, 2017, poll.
- 33 Quinnipiac University Polling Institute, 2017, poll.
- 34 Quinnipiac, 2017, poll.



35 Gallup, 2017, poll.

36 American Viewpoint, National Monitor Survey, 2000, poll.

37 Pew Research Center for the People & the Press, Pew Governance Survey, 2015, poll

38 Holland, 2014; Jacobsen et al, 2014.

39 Jacobsen et al, 2014.

40 Holland, 2014.

41 Holland, 2014.

42 Jacobsen et al, 2014.

43 Berkman et al, 2005.



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