Letter From the Editor:

This issue of our journal focuses on legislation and policy from the local to international level. We begin with scholarship tax credits, a school choice option now available in over a dozen states. The author examines both the fiscal impacts of these programs and the reasons they have become popular in recent years. As our public schools continue to struggle to keep up with the demands of global society and economy, we seek an understanding of the options available to us. From there we move to Colorado’s Taxpayer Bill of Rights, and a proposal for a compromise between those who support it and those who would see it repealed. This includes some interesting suggestions to increase the state’s fiscal stability, especially in light of recent natural disasters. Our third article is a critical assessment of the effects of gentrification on the Five Points neighborhood in downtown Denver. The dramatic shifts in the demographics of the area indicate that while gentrification may raise the economic status of the area, it can also jeopardize the social safety net of the longer-term residents. These three articles compose a theme of unintended consequences for state and local policies that can compromise the integrity of public goods and services.

From these topics, we move forward to two articles that together challenge society’s assumptions about the darker chapters of our history. The fourth article is a critique of race neutral policy in the United States, demonstrating that neutrality does not generate equality. We have unfinished work when it comes to racial inequality in this country, and holding fast to race neutral policies only perpetuates the systemic inequalities of our past. In our final article, the author analyzes the application of international laws pertaining to genocide. It is a timely article, as this year marks the twentieth anniversary of the Rwandan genocide. The author examines the role the international community has in merely observing a humanitarian crisis or choosing to speak out for intervention, as Doctors Without Borders resolved twenty years ago1. As a larger theme, each of us as individuals and as part of our community has a role in relieving some of the inequality and injustice in this world.

On a personal note, I have greatly enjoyed working with these authors and learning from their respective articles as we brought them to print. It has been my privilege to oversee the production of the first two issues of this journal. As I move forward to the next chapter of my life, I wish them all well in their future endeavors, and look forward to seeing this journal develop.

D.J. Nichols
May 2014

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Scholarship Tax Credits

J.T. Weinroth

Scholarship tax credits have become an increasingly popular policy tool for school choice movements in the last fifteen years. These programs allow for individuals or corporations to receive tax credits - instead of tax deductions - for contributing to organizations that provide scholarships for parents who want to send their children to a local private school. Since first enacted in the state of Arizona in 1997, sixteen such tax credit programs have been adopted, in thirteen different states. Despite this nationwide growth, scholarship tax credits have generally remained out of the mainstream media’s recognition in comparison to other, more well-known school choice initiatives, such as the charter school movement or school vouchers. What is surprising, however, is that these scholarship tax credits have been implemented in not only more conservative leaning states - that are typically more favorably disposed to school choice policies (such as Louisiana or Georgia) - but also in more moderate and liberal leaning states such as Pennsylvania, Rhode Island, Iowa, and New Hampshire. The goal of this paper is to articulate why these scholarship tax credit programs have become such a popular policy tool advocated by the school choice movement and successfully implemented by a diverse group of state legislatures.

In 1997 Arizona became the first state to experiment with a new policy tool called the scholarship tax credit program, after much advocacy by school choice groups. Such advocates were not particularly shy about the intention of the program: it was to be an alternate school choice policy tool to school vouchers inside the state (Hall 2008). For four years, Arizona was the only state that had what was then a relatively obscure program, as no additional scholarship tax credit programs passed until 2001. But since 2001, scholarship tax credits became a much more popular policy tool, with sixteen different scholarship tax credit programs having been implemented inside thirteen different states (NCSL 2014). Despite the growing popularity of these programs, the media has given relatively little coverage to this phenomenon in comparison to school voucher and charter school movements.

What is perhaps more intriguing than the actual scholarship tax credits themselves are the list of states that have implemented such programs. School choice programs have tended to have success inside more conservative leaning states and scholarship tax credits, with programs in Arizona, Georgia, Oklahoma, and Alabama, is not an exception. Yet the program has also found success in states that are relatively politically moderate and even more liberal leaning such as Pennsylvania, Iowa, New Hampshire, and Rhode Island. This paper will inform the reader as to what a scholarship tax credit is and why they are suddenly such a popular policy tool in the current legislative environment.

What is a Scholarship Tax Credit?

A scholarship tax credit is a tax credit that allows an individual or a corporation to donate and receive tax credits on their state taxes for donating to scholarship organizations. These are organizations that award scholarships for tuition, fees, and other private school expenses to their applicants. These tax credits should not be confused with tax deductions, as tax credits allow for the individual to deduct more money from their state taxes than deductions (in that a tax credit is a full, one-for-one dollar reduction in taxes owed to the state, while tax deductions only reduce one’s taxable income). In states without
Scholarship tax credit laws on the books, donations to these organizations are typically tax deductible (reducing one's taxable income, but not dollar-for-dollar reducing taxes owed). The goal of a scholarship tax credit is to more fully incentivize donations to organizations that provide scholarships to parents of K-12 students who wish to send their children to an alternate (generally private) school.

No two scholarship tax credit programs are completely alike; there are similarities and differences one will find between programs. Depending on the program, scholarship tax credits either allow individuals to write off a portion of their own state owed taxes, or allow corporations to write off a portion of what they owe the state through corporate taxes. Another popular commonality between programs is means testing the recipients of such scholarships. It is not uncommon to see proponents of scholarship tax credits argue that such programs help parents who are unsatisfied with their own public school, but do not have the financial means to send their child to an alternative school (Niederberger 2013). As a result, the majority of scholarship tax credit programs only allow such credits to be applied to scholarship granting organizations that means test the student’s parents’ income in hopes of giving these scholarships out on the basis of need. The most popular metric for means testing is by only allowing parents who make a certain amount in relation to the poverty level, anywhere from 185%-300%, to receive such scholarships (NCSL 2014). Others programs will use the Federal and Reduced Lunch Eligibility guidelines in conjunction with the recipients income to determine eligibility (NCSL 2014). As of this writing, the only state that sets its own, independent means testing cap is Pennsylvania, which sets it at a household income of $60,000 (NCSL 2014).

Another varying feature between different tax credit programs has to do with the tax credit the donor receives when they donate to a scholarship granting organization. The two most important aspects of the actual tax credit to the donor is the potential cap the state puts on the amount the donator may write off, and the monetary value of the tax credit itself. First, capping the amount of money the state is willing to give out in tax credits. Many states put a cap on the amount the individual or corporation can donate to a scholarship granting organization. In Arizona, the cap is small, at $500 per individual or $1,000 for married couples (NCSL 2014). In other states, the caps can go into the hundreds of thousands, or there may be no cap at all (NCSL 2014). In relation to the donation (and perhaps even more important to the donor) is the percentage value the donator may write off of their state taxes. Many states allow the donor to write off the full 100% of the money they donate. However, some states may only allow the donor to write off anywhere from 50%-90% of the donation value (NCSL 2014).

To help alleviate the fiscal impacts of any given scholarship tax credit on any given state budget, legislatures will often institute a cap on the program funding itself (NCSL 2014). That is, individual states will often put a cap on the amount of money it will allow in total deductions towards any singular scholarship tax credit program. These caps range from $140,000,000 down to as small as $1,000,000 in total allowed deductions (NCSL 2014). It is important to note that there are some programs that have no cap, but the majority of scholarship tax credit programs impose such a cap in an attempt to control the costs associated.

The last major feature of various scholarship tax credit programs is the cap on the scholarship itself. Many states with scholarship tax credits limit the amount a scholarship granting organization may give to the parents of any given student. These caps range anywhere from just
over $4,000 to $25,000 for special needs children (NCSL 2014). Not all states have such caps on their programs. All in all, scholarship tax credit programs all seek to serve the same purpose, but there is certainly diversity to the programs from state to state.

**Rise in Popularity: Why Are These Programs Suddenly So Popular?**

With thirteen states now having their own scholarship tax credit programs, and New York looking at implementing its own version of the tax credit, the trend does not seem to be coming to a halt anytime soon (Samin 2013). There are a series of factors that contribute to why scholarship tax credit programs have become such a popular policy for those in the school choice movement. Examining these commonalities is key not only to understanding how certain states are arriving at the conclusion that these tax credits are good policy, but also why these scholarship tax credits are becoming so popular now. There are four primary reasons why a somewhat obscure tax credit first implemented in the state of Arizona has become adopted in thirteen different states.

**Reason 1: Conservative Activism**

It is no great secret that conservatives have been trying to implement policy reforms that allow parents a greater degree of autonomy in the choice of where to send their children to school as well as take steps to privatize the public school system. Scholarship tax credits fit within these broad conservative policy goals. In many of the states that have adopted the policy, the movement for such a tax credit was begun by either a conservative grassroots movement or a conservative policy think tank. Similarly, scholarship tax credits are more likely to be implemented when conservatives are in control of the state legislature. The most extreme example of this phenomenon was in New Hampshire, when conservative Republicans and the Josiah Bartlett Center for Public Policy, a free market oriented think tank, worked together to pass “Corporate Education Tax Credit” legislation in 2012. This legislation was only successfully passed after the Republicans gained control of both legislative chambers and the governor’s office following the 2010 elections. Just as important as this shift in majority control of political bodies were the Republican primaries. In the 2010 election, the candidates elected were markedly more conservative than in years previous (Bedrick 2013). Therefore, the composition of the legislative chambers after the 2010 elections provided a much more favorable environment for school choice legislation than in the years prior.

Pennsylvania’s Educational Opportunity Tax Credit, passed in 2012, is another example of a conservative movement seeking to implement a scholarship tax credit. The idea of a scholarship tax credit was part of a larger push by Governor Tom Corbett to pass a larger education bill through the state legislature that would have not only expanded scholarship tax credits, but started up a voucher system inside the state as well as created a more fertile ground for charter schools within the state (Bateman 2011). The reasoning for this reform was twofold. First was the typical reasoning behind any school choice legislation: to help create choice for parents who do not feel that the public school system in their area was serving their educational needs for their children by helping create more private options for those parents. Another key aspect of this legislative push, however, was to help children get out of violent schools. In Pennsylvania, there is a correlation between low performing schools and...
violent crime. Rachel Sheffield, an education research assistant at the Heritage Foundation, notes that “the lowest performing 5 percent of Pennsylvania schools experienced one act of violent crime every 17 minutes” (Sheffield 2012). On top of this problem, education spending was rising rapidly, with few to no tangible results (Bateman 2011). With underperforming schools, violence inside these underperforming schools, and rising education spending with little positive result, Corbett went to work hoping to achieve education reform across the board for Pennsylvania.

It is important to point out that there was some bi-partisan support for education reform in Pennsylvania. In hopes of implementing across the board education reform, Governor Corbett worked both with Republican State Senator Jeffery Pocol and Democrat Senator Anthony Williams in what eventually became Senate Bill 1 (Pennsylvania General Assembly 2011). This legislation became the summation of what Corbett was hoping to accomplish in terms of education policy in the state of Pennsylvania, including loosening the restrictions on charter schools, creating a school voucher program, and creating a new scholarship tax credit program. In late October of 2011, Senate Bill 1 passed the chamber on a close vote, with 27 senators voting yes, 22 voting no, and one abstention (Pennsylvania General Assembly 2011). Of this number, 24 Republicans and only 3 Democrats voted “yes,” while just 5 Republicans voted “no,” with 17 Democrats (1 Republican abstained) (Pennsylvania General Assembly 2011?).

Although Corbett’s legislation cleared the Senate, it was never taken up substantively in Pennsylvania’s House of Representatives, and was therefore effectively dead on arrival. Despite not being able to move Senate Bill 1 any further, Governor Corbett still tried to push education reform. House members tried to keep the voucher program alive, even amending it to a smaller pilot program in the state. However, many House members were reluctant to talk about vouchers when state aid to public education was perceived to be on the decline (Murphy and Thompson 2011). On December 14, 2011 the House voted on a scaled back version of the education reform bill, but the bill again failed to pass.

After twice failing to pass comprehensive education reform in 2011, Governor Corbett tempered his approach and set to passing a new Scholarship Tax Credit in 2012. Corbett sought to expand scholarship tax credits by helping push these reforms inside House Bill 761, a tax reform bill that dealt with a wide variety of issues within the Pennsylvania tax code. In regards to scholarship tax credits, House Bill 761 both expanded the existing EITC program cap by $25 million (then totaling $100 million) and also created the new Educational Opportunity Scholarship Tax Credit.

There are some exceptions to scholarship tax credits being pushed primarily by conservative advocates. In Iowa, the scholarship tax credit legislation was signed into law by a large bi-partisan majority and a Democrat governor, albeit after the same Democratic governor vetoed similar legislation two years prior (Iowa Legislature 2014). In liberal Rhode Island as well a scholarship tax credit was put into the tax code with almost no media attention at all. Yet, the political will to create these scholarship tax credits, more often than not, comes from conservative movements. While, conservative activism may explain how the school choice movement has grown in popularity, it cannot wholly account for the rise in popularity in scholarship tax credits themselves. There are further reasons why this particular policy has been popular both in the conservative movement, and in a diverse set of legislatures throughout the nation.

Reason 2: Legal Success
One of the biggest factors in the rise of these scholarship tax credits is the legal success these programs have had in comparison to school voucher programs. Scholarship tax credit programs are very similar to school vouchers, only instead of governing authorities giving the parents financial assistance from a state or local government’s general fund, the money is given out in privately raised funds by a private organization. School voucher programs have had mixed success in the courts. In 2013, Indiana’s Supreme Court unanimously upheld one of the broadest school voucher programs created in the United States (Boyette 2013). Directly contrasting this case in the same year was the decision by the Louisiana Supreme Court which struck down by a 6-1 margin Louisiana’s voucher program (Wolfgang 2013). In both cases, the legal reasoning revolved around public monies going to religious schools, and this trend has followed suit in courts throughout the nation (Wolfgang 2013).

While most coalitions pushing for school choice legislation prefer vouchers, scholarship tax credit programs have a much better legal record than their voucher counterparts. Despite similar arguments about the fear of public money subsidizing religious schools through tax credits (albeit indirectly through lost revenue), scholarship tax credits have been upheld even in states where vouchers were struck down, such as Arizona and New Hampshire (Darman 2004). The exact legal reasoning has varied from state to state, but most states see scholarship tax credits as being different in that the money is never directly received by the state. Therefore, the argument is that the state is not subsidizing these schools.

Of note, the scholarship tax credit that has seen the most legal turbulence is the New Hampshire Corporate Education Tax Credit. While not totally struck down, the lower courts of New Hampshire crippled the legislation by ruling that scholarship granting organizations cannot give money to students going to religious schools (Evans-Brown 2014). As of the writing of this paper, the decision has been appealed to the New Hampshire Supreme Court; it will review the case in the Spring of 2014 (Evans-Brown 2014).

New Hampshire notwithstanding, the overall legal record of scholarship tax credit programs is strong. Because tax credits have proven easier to defend as a constitutional option, popularity for scholarship tax credits among school choice advocates comes is arguably a practical approach, even though school vouchers are the more ideally preferred strategy for many. While some school choice advocates actually prefer scholarship tax credit programs to vouchers because the money is never touched by any public authority, the majority of such advocates stick to such programs largely in order to avoid the legal challenges of a voucher program. Still, scholarship tax credits have become, if nothing else, a more reliable tool for those hoping to promote a school choice agenda than school vouchers have been.

Reason 3: Easier To Conceal Public Costs in Tax Credits

Tax credits in general have become a much more popular public policy tool in the last couple of decades on all levels of government. One of the primary reasons this has been occurring is that tax credits are generally more politically popular. A politician who creates a tax credit gets to both give their constituent a tax break while supporting a cause they are positively predisposed to, while the constituent is happy because they are the recipient of said tax break (Howard 2012). Furthermore, these tax credits never show up as a direct government expenditure (they are simply tax monies not collected by the government), which makes them a politically popular way to direct funding to programs in a low-profile way without having to win a budget debate about spending taxpayer money on a school choice program. Yet, the amount of money such tax credits are costing both state and federal governments is staggering. By one estimate, all tax
breaks (including deductions and reduced tax rates) cost the federal government an estimated $1.13 trillion, just slightly less than all discretionary spending in the federal budget (estimated $1.15 trillion) (Kramer, Sweger, and Dvir-Djerassi 2013). What is perhaps most troubling about the ballooning costs of tax breaks on the federal budget is the fact that there is no oversight when it comes to administering these costs (Posner, Redburn, and Breul 2014). While any direct expenditures of any federal or state government usually has to go through layers of review and oversight, tax breaks are currently able to avoid almost all bureaucratic oversight (Posner, Redburn, and Breul 2014). As such, it is much easier for states to conceal the costs of any given tax credit because they do not appear as government expenditures, but rather simply allow people to keep their own money.

This concealment works in favor of those groups advocating for the creation of a scholarship tax credit program. Unlike with a voucher program, there is no line item in the budget for the amount of money diverted away from any given state government as a result of a scholarship tax credit program. Part of this advantage is played out in the legal reasoning described above, where because an individual state government never receives the tax money, judges will generally rule in favor of the constitutionally of such programs. However this concealment of costs is also politically advantageous when soliciting the support of fiscal conservatives.

Though such tax credits are easier to “conceal” as public expenditures, they remain a cost to government, and so at times there still is vigorous debate about the budget consequences of these programs. When a scholarship tax credit was passed in New Hampshire, for example, the Republicans held both chambers of the legislature by a substantial margin. Yet, many Republicans were hesitant to support legislation to create a scholarship tax credit because of the potential fiscal impacts on the state budget (Bedrick 2013). Eventually, the Republicans who were tepid about these perceived fiscal impacts had their worries allayed after the legislation was amended to cap the funding for these tax credits at $3.4 million, down from the $19 million in the original legislation (Bedrick 2013).

Legislators, therefore, are not totally oblivious to potential negative impacts scholarship tax credits could have on their state budgets. As stated above, the majority of scholarship tax credit programs have caps on the amount of scholarship tax credit deductions allowed, in hopes of controlling the costs of establishing such a program. However, the fact remains that these costs associated with tax breaks are not only less transparent to the politicians who implement policy, but to the public as a whole. There is no sign that the trend of politicians using tax breaks to accomplish individual policy goals is going to change in the near future. Politicians who are in favor of school choice are no exception to this rule, and they will likely take advantage of scholarship tax credits in the near future to accomplish their own policy goals in less politically costly ways that pushing for school vouchers.

Reason 4: Potential Cost Savings

It is no secret that state legislatures are always looking for ways to balance their budgets, and this has been especially true given the most recent recession. One such way of doing this is by finding ways to offload education costs onto the private sector. Depending on how an individual scholarship tax credit program is constructed, these programs have the potential to save state governments money. The most well-known instance of this type of cost savings occurring is in the state of Florida. In December 2008, the Florida legislature commissioned a non-partisan study to analyze the fiscal impacts of the then seven year old Corporate Income Tax Credit
Scholarship Program (OPPAGA 2008). The study found that the tax credit saved the state $1.49 for every $1.00 loss in the corporate tax credit itself (OPPAGA 2008). Again, it is important that costs savings only occur if there is a proper balance between the program cap and how much each individual recipient receives in scholarship money, but such potential savings are attractive to legislators.

**Common Criticisms**

Scholarship tax credit programs are not without their share of critics, and the more popular these programs have become, the more intense the criticism has gotten. The three main criticisms that have been levied against such programs are the fact that these programs are indirectly subsidizing religious institutions, the potential financial strain such tax credits create upon public schools, and the allegation that the money from these programs is not finding its way to the students who need it most. The first point, that scholarship tax credits indirectly subsidize religious schools, is perhaps the most consistent argument made against the programs during legal battles. As stated before, scholarship tax credits have had more success than vouchers against such an argument because money donated to these programs never passes through the hands of a public authority. Nevertheless, such a tax credit is holding a significant amount of money back from any state government, which opponents argue is a form of subsidization in itself.

The second is the financial impact of withholding these tax dollars from any respective state or local budget. Measuring the fiscal impact of a scholarship tax credit program is a bit more complicated because no public authority is financing such a program (Cunningham 2013). Nevertheless, since it is not atypical to see these programs advocated for by conservative groups, the fiscal impacts of such any scholarship tax credit are often strongly considered. There are two primary ways this impact is alleviated. First, it is not uncommon for legislators to put a cap on how much money can be written off for the program itself in certain cases (Cunningham 2013). An example of a larger cap would be the Florida Tax Credit Scholarship which caps the amount of money raised for the program at $140,000,000 per year versus Rhode Island, which has the smallest cap at $1,000,000 per year (NCSL 2014).

The second way state legislators control costs of education tax credit programs is by the simple fact the student is no longer attending a public school. A lot of the financial impact of a scholarship tax credit is offset by the fact that any student who attends a school on scholarship is no longer attending a public school, and therefore such a student is no longer counted as part of the per pupil revenue (PPR) that a local public school would then receive (NCSL 2014). As such, the public would no longer be paying for the student to attend public school, which in the majority of cases is actually more cost efficient because PPR is typically more expensive that the costs of the scholarship. While this fact is helpful to the state budget as a whole, the individual school that the student on a tax credit scholarship would otherwise be attending would lose the money the school would otherwise receive - the PPR from the student’s attendance. Legislators may try to address this loss of money on the local level, but the school is generally going to suffer a net loss in proportion to how many students leave the school. Overall, the results are mixed when the question is asked whether the state as a whole will gain or lose money because of these programs, but the school that is losing the student will almost certainly take some sort of financial loss.

Lastly, the question of whether the scholarships are actually going to those in the most need is one always brought up by those who oppose such programs. This particular criticism is most effective against programs that do not means test scholarship recipients such as the
scholarship tax credit in Georgia. While ostensibly used to help provide poorer students the same opportunities as their wealthier counterparts, many argue that the money is simply being channeled to those who donated it in the first place (Saul 2012). This criticism has also been present in the Alabama program and its detractors have dubbed the program as “welfare for the rich” (Strauss 2013). It is important to point out that just because there is means testing in any given program, it does make such a program immune to the charges that the money is not going to the students who are most in need, but the argument seems to gain more traction where means testing is not present.

**Conclusion:**

Tax credits are an effective way to accomplish policy goals with little to no media attention, and the school choice movement seems to be catching on to this fact. On top of avoiding this media scrutiny, scholarship tax credits are standing up in the courts remarkably well in comparison to voucher programs. Add in the fact that these programs come with potential cost savings as well as the ability of parents to move their children out of certain public schools, then you have a new policy tool American conservatives can get behind. Scholarship tax credits are being adopted across the country by at least one state every year since 2006. Seeing this success, coalitions are forming across the nation in an attempt to pass such legislation in new states, and such efforts look promising for those advocating such programs. While these programs have experience relative success in the past, they are now facing great political pushback from teachers unions and activists concerned with educational parity. Despite this pushback, the rise of scholarship tax credits demonstrate an underlying desire within the American political psyche to change the status quo on how America’s children are educated, especially those children in failing public schools. Even though there is going to be more political pushback against these types of programs due to their now increased notoriety within certain groups, the spread of scholarship tax credit programs does not seem to be slowing down. As such, the advocates of such programs have a promising road ahead of them.
References
credit-programs-expanding/ (May 10, 2014).


This paper looks at the tax law in the State of Colorado known as TABOR (Taxpayer Bill of Rights) as well as issues pertaining to budget management. There are many arguments both in support of and in opposition to TABOR, which will be outlined. In addition to analyzing current tax policies in Colorado, this paper puts forth a series of proposed changes, such as establishing an emergency operating fund, creating a “sovereign wealth” fund, and modifying the tax-refund process, in order to better balance tax-and-spend policies, so as to best meet the needs of the state and its citizens.

TABOR is an important tax law in Colorado that helps to restrict the growth of government and empower the voters. However, TABOR as currently defined is unable to adequately meet the financial needs of the state. Therefore, this paper provides recommended solutions by which to modify and improve the existing laws, so as to provide a more balanced approach to tax policy and budget management in Colorado.

What exactly is TABOR? The Taxpayer Bill of Rights is a constitutional amendment that was added in 1992. It essentially requires all tax revenues collected by the state that exceed the budgetary guidelines vis-a-vis “natural inflation and population growth” for any fiscal year, must be refunded to the resident taxpayers of Colorado (Stapleton 2014).

Colorado's TABOR amendment restricts revenues for all levels of government (state, local, and schools). Under TABOR, state and local governments cannot raise tax rates without voter approval and cannot spend revenues collected under existing tax rates if revenues grow faster than the rate of inflation and population growth, without voter approval (Stapleton 2014).

However, because of funding concerns, the passing of Referendum C in 2005 modified the revenue limits of TABOR to ease the burden of funding for the state. Additionally, in 2000 the passage of Amendment 23 provided a modification of TABOR to increase funding for education in Colorado as a response to citizens’ concerns about underfunded schools (Stapleton 2014).

The TABOR Debate

There has been much debate surrounding TABOR policy in Colorado. Advocates both for and against TABOR law tout their positions as undeniable in light of the historical effects of the law. Advocates want TABOR upheld, and some may even want to repeal Referendum C to bring the tax model back into its traditional design. They believe that TABOR has strengthened the economy and kept Colorado fiscally well managed (Fraser 2005). Those opposed want to repeal TABOR altogether and allow the state to determine how to best allocate funds. They believe that TABOR has been a detriment, especially to education and health-care funding (Lav and Williams 2010).

Arguments in Favor of TABOR

Proponents of TABOR believe that it is an effective tool for limiting the growth of government; by not allowing the state to keep and use all collected revenues every year and by requiring voter consent for tax increases, it limits the state’s ability to expand unchecked. Limiting government’s growth tends to be supported by free-market oriented conservatives and libertarians who believe that an ever-expanding government is a hindrance to real economic growth. Proponents would argue that a large and
expanding public sector creates unmanageable levels of debt and develops a mentality whereby the state seeks to expand existing agencies and desires to create new public programs that require ever increasing amounts of funding.

There is also an issue of voter fairness. Hypothetically, a political party that had majority control and an unrestricted budget could create unnecessary government jobs, essentially to “buy votes” – workers would be inclined to vote in support of the party that ensures their jobs.

Another supporting argument for TABOR is simply that it puts the people’s money back in their hands. Taxes are extracted from the people, but that revenue is logically and legally the taxpayer’s money, not the prerogative of the government to be spent arbitrarily. Thus, this argument holds that all non-essential tax revenues should, ethically speaking, be refunded to the people from whom the money was extracted.

TABOR may also act as a stimulus or economic multiplier, because it functions as an automatic tax refund. This is one of the two ways in which government typically tries to stimulate the economy, either by spending money or in this case cutting taxes. With billions of dollars being refunded to the taxpayers, TABOR increases taxpayer’s income and purchasing power, which can lead to increased consumption or increased savings and investment, for both individuals and businesses. Supporters point to Colorado’s above-average economic performance nationally as proof of the success of and need for TABOR (Fraser 2005, Pfiffner 2013).

Additionally, TABOR increases government accountability by touching on all the aforementioned points: limiting spending for spending’s sake, forcing greater judgment on how tax money will be spent, and helping to ensure that fund allocation is done fairly and productively. Finally, regarding increased civic participation, TABOR requires citizen involvement and approval in the process of tax-and-spend policies.

Arguments Opposed to TABOR

Opponents of TABOR assert that the law limits the state’s ability to fund important programs properly, including K-12 and higher education, as well as programs for women’s health, alternative energy, and environmental protection. Critics point to the federal ranking of program funding by states to show that Colorado has fallen on the list in these areas and thus opponents assert that TABOR must be repealed so that the state can adequately fund its program obligations (Lav and Williams 2010).

Another concern with having laws like TABOR, which originated in California in 1978 and 1979 as Proposition 13 and the GANN limit, is that those laws do not allow for adequate emergency planning and savings (Martin 2000). Requiring the state to refund taxes, which has generally been when the state was able to generate a surplus, TABOR negated the capacity for long-term planning and savings. In fact this very concern appears to have been noted in Gov. Hickenlooper’s most recent budget proposal, in which he requested the addition of a 5% savings fund (Hickenlooper 2012).

Concerns by some officials include the assumption made by TABOR advocates that the citizens can make better use of refunded tax monies than state officials could do with tax revenues. Some officials would assert that the average citizen is not properly informed about public programs and budgetary requirements and that the state needs to have the flexibility to use tax revenues as it sees fit (Johnson 2012). Furthermore, if the government has to persuade voters and then wait for their approval for new revenues, the state may not be able to respond quickly to an economic crisis or meet its budgetary operating obligations.

Affected Stakeholders

Stakeholders are the groups who have a vested interest in or are affected by TABOR
policy and any subsequent changes. The predominant stakeholders are the citizens of Colorado, especially taxpayers, public employees, state agencies, and beneficiaries of state programs such as poor families. Taxpayers can be affected by TABOR positively, because they would be able to receive tax relief via the law. Public employees and agencies can be affected by TABOR negatively because they are at risk of budget cuts, since TABOR restricts government spending. TABOR may also negatively impact the poor if there is insufficient funding for aid programs. Generally, all people in Colorado are affected by TABOR because anyone living in Colorado or doing business with the state is subject to both the increased private-sector growth and decreased public-sector activity.

**Proposed Solutions**

The goal of this proposal is to adjust the Colorado budget and application of TABOR law in order to better serve the state and its citizens. This proposal includes three key reforms: first, creating a financial safety net for the State of Colorado in the style of a “rainy-day fund” which provides the state with a financial cushion during difficult economic times, thus helping to keep key departments and services funded and operational. This goal is to be accomplished by creating a new mandatory budget item. Ensuring funds from the account are also available for various emergency situations that may arise would allow the state the ability to respond rapidly and effectively. Having the capacity to deal with these types of critical issues without having to make cuts to other departments or having to ask for federal aid will improve the operational efficiency of the state. Second, establishing an investment-based sovereign-wealth fund, which is a government-run operation designed to make investments to generate income for the benefit of its citizenry. This could help Colorado businesses by providing increased access to loans and state contracts, help the state and local municipalities fund critical infrastructure and construction projects, and work as an income generator for the state to further offset general budgetary constraints. Being able to fund various projects and programs in Colorado (at the state and local level) without having to issue bonds, seek approval for tax increases or apply for federal grants and funds, will help to keep Colorado economically prosperous, independent, and growth-orientated. Third, this policy proposal helps to increase efficiency and reduce costs associated with tax refunds generated by TABOR, via changing how and when tax refunds are processed. Minimizing the mailing of checks and setting a minimum refund amount should significantly offset costs associated with processing and postage.

Regarding policy and its effects on stakeholders, four major social concerns should be addressed: equity, efficiency, security, and liberty (Stone 2002). This policy attempts to improve equity and liberty by balancing the concerns of funding the government and increasing state preparedness with limiting excessive government spending and getting the people’s money back in their hands. Furthermore, this policy increases efficiency and security by expanding state resources (savings and investment funds), reducing state costs (efficient tax refund policy) and providing the ability for future planning (sovereign wealth fund not subject to TABOR).

**Emergency Fund**

The emergency fund would become a required item in the Colorado budget. It would be funded at an amount equal to 10% of Colorado’s...
total annual budget (currently that would equal approximately two billion dollars) (Hickenlooper 2012). In order to ease the burden of funding and maintaining this program, it should be funded at 1% per year (approximately two hundred million annually) for ten plus years until the reserve savings level is met. The money in this account cannot be accessed until year five at the earliest (the one-billion-dollar marker), at which point the state would have to demonstrate a significant emergency need (e.g. the economy falls into a deep recession). In such a case the state could reduce funding to 100 million or .5% going forward (and apply the other .5% to emergency services) until the total fund met the 10% budgetary requirement. Once the savings-fund level is met, then monies allocated to the fund will automatically be refunded to the Colorado taxpayers in accordance with TABOR. This aspect of the proposal should help alleviate concerns by the TABOR supporters about the state holding revenues, when considering that the savings fund must be met before any TABOR refunds can be generated. As an example, if the 10% threshold was two billion dollars and had been successfully met, then at the end of that fiscal year, the two hundred million (or 1%) required funding expenditure would be completely refunded to the taxpayers. However, if the fund was at one billion, nine hundred million, then at the end of that year, one hundred million (.5%) would be saved to reach the 10% threshold requirement and the other one hundred million (.5%), would be refunded to the taxpayers.

The emergency fund once realized is designed to tackle the problem that TABOR does not currently allow the government to save an adequate amount of money for emergencies. This fear was realized during the recession when the state, like many others, had to make budget cuts to many departments in addition to not issuing TABOR tax refunds, because money had not been put aside to deal with such scenarios. It is important to note that if governments do not save during good economic years, they definitely will not be able to do so during bad years. Therefore, this policy change would eliminate the debate and require a savings fund, built up over time, so that the next time the economy weakens the state would not be forced into making painful decisions regarding who can and cannot receive funding. Use of the fund would depend on the overall situation, but if for example, Colorado was facing an economic hardship again, the state might opt to access two hundred and fifty million dollars annually from the fund to help ensure police, fire, elder care, and other critical budgets would not get cut during that time. Furthermore, this policy also ensures that necessary funds can be accessed immediately during emergencies. A few examples of appropriate use of the funds for emergencies could include: compensation for the homes destroyed in the 2013 Waldo Canyon and Black Forest fires (especially if the payouts exceeded the Colorado trust that handles those funds), or providing aid to the counties affected by the major floods of 2013. Funds could even be used to activate the National Guard during an emergency rather than having to wait for the federal government to provide such funding. In any event, once the emergency had subsided, the emergency fund would be replenished via the continued 1% mandatory annual deposits, which would be in addition to any federal reimbursements the state may apply for, in order to maintain future emergency preparedness.

Investment Fund

The investment fund would also become a mandatory budget item in the Colorado annual budget and it would have to be fully funded before any refunds could be issued. The investment fund is organized the same way as the emergency fund: it must reach 10% of the total Colorado state budget and would be funded at 1% annually until the threshold was met. At fulfillment, the fund would be in excess of two
billion dollars and as with the emergency fund, the state could start accessing it at year five if necessary, in increments not exceeding 100 million dollars. One major difference between the investment fund and the emergency fund is that the investment fund can and should exceed the 10% requirement. In fact, the state is encouraged to grow the fund as much as possible, both by the automatic 1% annual tax deposit (which can be refunded after the threshold has been met, but is not a requirement) and by interest generated from investments (which would not be eligible as a tax refund under TABOR). Investments could include items such as, a state oil and natural gas company, share-holdings in copper mines, interest generated from small business loans, etc. These revenue sources should be utilized rather than imposing new taxes.

The investment fund is designed to expand new avenues of revenue for the state as well as provide an increased capacity to pay down or pay off potential debts, which may include financial aid to municipalities who face budget restrictions under TABOR. This fund also provides a benefit to both the supporters and opponents of TABOR, because the fund helps the state to create new forms of revenue. Furthermore, any income generated by the investment fund the state gets to keep and use 100% without being subject to TABOR refund requirements. Opponents of TABOR are guaranteed that the new revenue streams can be used for government programs or to offset budget shortfalls without being subject to a TABOR refund, thus helping to overcome current budget limitations. Supporters of TABOR can also be happy because the fund is based on free-market principles of earning money, not simply taxing to create revenue. Therefore, as the state expands its revenue via investments, it can fund programs that benefit all citizens without raising taxes or issuing debt.

The types of expenses that the investment fund revenues could be allocated toward could range from paying off bonds early (to reduce interest payments and financial liabilities) to providing low-interest loans for small businesses (to stimulate business growth and employment and to generate income). Also, included would be investment in critical infrastructure not covered in the standard budget, such as bridge repairs, expanding high speed internet, or updating avionics at the airports for improved safety and commerce. Lastly, sovereign investing (as mentioned previously) is when the state makes capital investments strictly for the purpose of making money e.g. buying shares of stock or directly investing in companies, or creating a venture with a private company. As a positive point of comparison, the country of Norway has the world’s largest sovereign-wealth fund – in excess of eight hundred billion dollars – largely funded from oil investments (Hovland 2014). Additionally, the state of Alaska has an oil-driven sovereign-wealth fund of about forty billion dollars that pays dividends to Alaskan residents (Bremner 2012) – is it not time for Colorado to have an investment fund?

Cost Saving Reforms

Regarding processing tax refunds under TABOR, there needs to be a new tax-refund policy to cut down on the cost and time of processing refunds. Therefore, once a tax refund is available, the state should provide taxpayers two options on how it may be claimed. Either the state can apply it as a deduction from taxes in future years, or people can receive the refund as a direct deposit once the accumulated refund exceeds fifty dollars or has been held by the state for approximately three years. In rare cases the state may need to offer the refund in the form of a check, in which case a small processing fee should be assessed to help offset the cost.

When considering how best to utilize money from the investment fund and the most effective application of tax refunds, it is important to consider how funds will be targeted and used. For
example, if the state issued a mass rebate and gave all taxpayers twenty dollars, that would create some economic stimulus, but if instead the state loaned thirty small businesses, five thousand dollars each, that could create jobs, stimulate market growth, and generate interest payments to the state, which would be a far more effective use of the money. Likewise, by having the state hold tax refunds until a fifty-dollar minimum has been reached, it not only saves the state money in processing costs, but it also makes the refund more substantial and beneficial to the recipient.

**TABOR, the Budget, and Implementation**

The establishment of the emergency fund and the investment fund would soften TABOR’s restrictions because both of these new funds’ obligations must be met before a tax-refund is allowed. Furthermore, with Amendment 23 already in place, its increased education funding is retained, and items like Referendum C will begin to be scaled back both because it has reached the end of its five-year TABOR “restriction-overriding component” time frame (Stapleton 2014), and going forward because the investment fund will be better able to fulfill the state’s budgetary needs. However, with the implementation of the investment fund, items such as Referendum C and Amendment 23 may not be necessary in the future because of increased funding from investments. Once the investment fund becomes self-sustaining it may be feasible to establish a minimum funding level for education in lieu of Amendment 23.

To review, once the two funds have reached their required funding levels (equivalent to 10% of Colorado’s annual budget for that given year), then the emergency fund will refund taxpayers any portion of the annual 1% budget allotment not needed to maintain the 10% threshold, while the investment fund may retain all revenues in order to maintain continued growth.

Lastly, as for implementation, since this proposal affects multiple tax codes and has many legal implications, it would be most effective to have policy reforms generated by the legislature, so that the state’s legal team can ensure accuracy and functionality. Once the emergency fund and investment fund are established and all changes have been implemented, there needs to be an observation and review period. Given that it will take approximately ten years to reach full funding, a fifteen to twenty-five year evaluation period should provide sufficient time to assess the effectiveness of the funds and reforms in order to determine whether any further changes should be considered.

**Summary and Conclusion**

TABOR does serve an important function in restricting unnecessary government spending and growth by allowing taxpayers to keep more of their own money, however TABOR is also so restrictive that it prevents necessary long-term saving and reasonable budget management, due to its refund mandate. Therefore, this proposal attempts to reach a balanced solution between the two polarized camps in an effective manner; neither side is entirely correct. Colorado does not need to eliminate TABOR nor keep it excessively restrictive. With an update of Colorado’s tax and budget policies as outlined in this proposal, everyone in Colorado can win.
References


GENTRIFICATION OF URBAN SPACES IN DENVER, COLORADO

Jeff Koehler

American cities are in the midst of a major transformation. The repackaging and reframing of previously neglected neighborhoods creates new spaces for living, leisure and consumption, inviting new visitors and more affluent residents to urban centers. City officials shifted their attention in recent decades towards policies and projects that foster economic growth and generate revenue. In turn, new policies supplant social welfare programs and ignore significant urban problems, while large subsidies transfer public money towards already comfortable residents and visitors. Between these forces, many cities’ low-income and minority communities become further marginalized through a process widely described as gentrification. Most research studying the gentrification phenomenon cites the economic hardships low-income and minority communities face. The “cultural ownership” of urban spaces and practices are increasingly oriented towards middle and upper class sensibilities. This shift has important implications in terms of undermining the established cultural patterns of previously low-income spaces. This paper tackles the transfer of the downtown and the loss of connection to and history of low-income neighborhoods. Although it is possible for longtime residents to remain in a gentrifying part of town, their experience and relationship with the neighborhood is forever altered. Scholars such as Zukin, Logan, Molotch, Wright, and Eisenger, among others, developed a host of theories to help explain the dynamics we see in urban centers today. Using their established frameworks, I apply a modified “Use Value” approach to further understand and analyze the changing cultural ownership in Denver, Colorado.

“Actually Existing Neoliberalism” and Gentrification in American Cities

As a response to the capital accumulation crisis facing American cities in the late 1970s, as well as emerging global economic challenges, capital investors were increasingly free to shift their investment overseas. American urban policy makers in the 1980s and beyond embraced a neoliberal approach to urban governance through market driven strategies aimed at revitalizing declining cities through the reduction of social costs/programs. Attracting investment and jobs, officials argued, became a way to tackle social and fiscal challenges through a “business friendly environment.” In practice, city administrations adopted some form of “lean[er] government” with “short-term forms of interspatial competition, place marketing, regulatory undercutting,” and privatization, creating conditions to “accelerate external investment” (Brenner and Theodore 2002). This corporate approach to city government decreased funding for welfare costs and public institutions like libraries and schools while bolstering investor profit potential (Robinson 2004).

Government policies to create conditions for accelerated investment have been well documented in recent decades, and include: dedication of public funds to support private development projects, a loosening of business and development regulations, creation of a low-wage milieu with limited union power, state-facilitated condemnation and redevelopment of low-income properties including housing projects, and the stricter policing of downtown spaces to control the public presence of the homeless or other undesirable persons, (Logan and Molotch 1987, 28-29; see also Smith’s discussion on Tompkins...
Square Park, 1996 and Wright’s 1997 discussion on inclusion and exclusion in redevelopment).

Brenner and Theodore call this active involvement of the state in facilitating growing urban investment a regime of “actually existing neo-liberalism.” The theory of “free market” development cannot describe the reality of “actually existing” state policies that threaten low-income communities and facilitate upper-income gentrification of urban spaces (2002). In line with the “actually existing” neoliberalization of urban policy, cities now engage in a sort of marketplace to attract consumers and investors alike. This includes sophisticated advertising campaigns that “(re)present” cities “in the best possible (and constantly changing) light (Short 1999, 43); while, simultaneously, creating a new meaning and image for the downtown. Representative of this trend is Nevada’s attempt to draw the 2016 Republican Nation Convention to Las Vegas. New promotional materials ignore the seedy reputation of the city while stressing Vegas’ growing convention infrastructure, traditional middle class amenities, and creative business sector (Gonyea 2014). Vegas is currently balancing its reputation as the Sin City with more “wholesome” forms of economic growth. Nonetheless, stereotypes and images often become part of a city’s marketing campaign. Structures like the Gateway Arch, which serves no actual purpose, creates immediate brand recognition and “may be more valuable as [a] symbol than as [an] actual attraction” (Holcomb 1999, 58).

These campaigns highlight specific aspects of city centers and frame them in a positive light, creating an atmosphere or, at least, an image “safe” for investors and middle class consumers (Wright 1997, 85). This includes emphasizing some form of urban entertainment or point of “civic” pride such as fairs and sports teams. As Boyle notes, city officials and advertisers construct new focal points that “distract,” “intoxicate,” and “absorb” residents and visitors alike (1999, 67). Scholars often refer to this approach to urban redevelopment as the “politics of bread and circuses” where substantial resources go “to the realization of large entertainment projects” often subordinating “more mundane urban problems and needs” (Eisenger 2000).

The neoliberal approach in urban governance includes the dedication of public funds for private amenities and attractions. With decreased tax bases and an increasingly isolated urban underclass, city officials sought to tackle these problems through investment. In the last few decades, policy makers embraced grand redevelopment projects to bring suburbanites and tourists back to the city through sports stadiums, festival malls, convention centers, and tourist attractions (Fainstein and Gladstone 1999, 22). Although American urban centers have been considered fairly progressive and inclusive of a broad population, the influx of investment and corporate approach to economic development has pushed cities towards “exclusionary” practices that pride the “particular interests” of the “capitalist class” (Low and Smith 2006, 15). These transformations generate important questions about urban democracy and access to public space. Eisinger wonders what exactly cities will look like as officials cater to those “who can afford to attend professional sporting events, eat in the new outdoor cafés, attend trade and professional conventions, shop in the festival malls, and patronize the high- and middlebrow arts.” More importantly, he questions, “what does it mean for cities to spend their money and their political capital in pursuit of the discretionary entertainment spending of visitors rather than the tax payments of a resident middle class” (2000, 317-318). Such costly projects are typically sold to taxpayers under the auspice of job creation, a boost to the city’s reputation, and the attraction of visitors with money to spend. Supposed economic gains, scholars point out, often create additional social and fiscal consequences, which
are generally ignored by city officials (Logan and Molotch 1987; Eisinger 2000). In Denver, for example, development projects, such as the Convention Center and attached Hyatt Hotel, received $1 billion in public support, effectively writing off educational, social, and welfare concerns and commitments in the name of those “who spend and leave” (Robinson 2004, 247).

Likewise, the consequence of the growth of urban spaces designed for upscale consumption and luxurious living is the decline in spaces dedicated to free or affordable entertainment. Formally, the urban stroller or flâneur occupied free and public spaces within cities. He or she interacted with the urban spectacle, enjoying “window-shopping, looking at books, new fashions, hats, combs, jewelry and novelties of all kinds”. More importantly, the urban stroller seemed to lack any definable agenda or purpose besides observation. In the face of the changes described above, cities now host “spaces of consumption” or the “tourists bubble” (Fainstein and Judd 1999). These “fortified cells of wealth,” that “increasingly engulf and centralize activities that were formerly spread through the urban community at large,” dictate a visitor’s experience of the city (Judd 1999, 46). Take for example Times Square in New York City, formerly a space that harbored misfits and a host of adult theatres and shops. Today, Times Square acts as a private, costly tourist attraction with shopping and other forms of “family friendly” entertainment. “The design” and tenants now reflect the changing nature of a “less frivolous and menacing” Times Square. Yet, this privatized version, as Sassen and Roost argue, is an isolated and exclusionary version of a dynamic city (151, 1999).

Even though officials represent their cities in glitzy advertising campaigns, attract “world class amenities,” and boast a myriad of shopping opportunities, the acceptance of the neoliberal policies to achieve this end results in a rendition of the city that privileges certain economic classes (those with money to spend) over others (the lower income). And, as many scholars argue, these policies create an inherently inauthentic urban experience. Disney World in Orlando, Florida is a commonly cited, while extreme, example. The worry, critics contend, is the increasing homogeneity of urban spaces flowing from neoliberal policies. A “total destination resort” or tourist bubble under private control, cedes its sense of history and local community to capital (Foglesong 1999; Parker 1999).

More recently, upper-income professionals or the “creative class” realized the advantages and allure of cities and the authentic urban lifestyle they offer. With an interest in diversity and culture, innovers hope to recapture a sense of urban history and community. City officials and developers caught onto this trend and began restoring historic structures and attempting to create urban communities. Observing the rise of the urban creative class, Jennifer Moulton, Denver’s nationally influential former planning department director, saw an opportunity to reframe urban space by creating a sense of urban vitality and the appearance of authenticity. In her paper “Ten Steps to a Living Downtown,” Moulton advocated that city officials could bolster and encourage an urban lifestyle through planning techniques. By her logic, a city needs to become “more familiar and comfortable,” as well as “less threatening” by “diluting” low-income neighborhoods and creating a “family friendly” atmosphere. In securing the shift towards a more welcoming atmosphere, Moulton argued that high quality “world-class” amenities would develop and rehabilitate a city center (Moulton 1999, 13, 19, 20). The kinds of development projects she promoted were downtown malls and “tourist bubbles” featuring world brands like Hard Rock Café (Judd 1999), trophy stadium projects announcing a city’s global status (Eisenger 2000), and redeveloped loft spaces that repudiated historical uses of old properties in favor of the
international movement towards “loft living” (Zukin 1982). Through such developments, Moulton argued that urban centers gain a quality of “readability” through a beautiful physical infrastructure, world-class identity, and street-level “livability” for investors and those “with money to spend on housing” (1999, 13, 15).

Similarly, Richard Florida urges officials to create a suitable urban habitat for well-educated, creative individuals, at the top of the income and wealth distribution (2005). In short, Florida contends that affluent residents working in creative sectors allegedly contribute more than manufacturing and the service sectors to a city’s economic health. To tap this potential, local governments must invest in innovative industries, hip amenities, and desirable living arrangements. Although the creative class theoretically generates a disproportionate amount of economic growth, Florida calls for greater transfers of wealth to upper income residents in the form of redevelopment schemes. Florida’s theory simply cloaks growth machine ideals behind tolerance and equity. Instead of the grand festival mall, the creative class approach invites gentrifiers to experience urban authenticity in previously disinvested neighborhoods. A growing body of literature highlights the problem with this approach to urban redevelopment. Peck, for one, sees Florida’s theory as lacking opportunities for low-income residents. “There is little regard for those who” fall outside of the creative class “beyond the forlorn hope that, one day, they might too be lifted...into the new overclass (2005, 756).

A Cultural Approach to Understanding Gentrification

As these kinds of neoliberal theories play out in American cities, scholars pay particular attention to economic and housing shifts, especially for low-income, long-term residents. A classic example of such economic analysis is Neil Smith’s The New Urban Frontier. Smith lays out one of the prominent theories of gentrification. In preparation for later redevelopment and profits, developers and landlords engage in “sustained under maintenance” of lower-income properties, which drives down the desire for investors to commit funds to the existing housing stock. The systematic disinvestment also keeps financial institutions away from poor neighborhoods, dropping the number of available mortgages in the area. Eventually, structures that cannot be used “profitably” are abandoned by owners, leaving empty shells and further “blight” upon the city. At this point, Smith argued, a substantial “rent gap” develops. The rent gap signifies the disparity between potential rents and the current amount collected. As the gap widens in certain locations, developers realize the potential for “recycling” of the housing stock (Smith 1996, 65-68). This recycling of the housing stock helps kick off the economic gentrification process.

But Smith’s analysis also examines the profound cultural dynamics involved in the economics of gentrification. The very name of the book The New Urban Frontier speaks to Smith’s analysis that urban investors and leaders tend to see low income neighborhoods as uncivilized “frontiers,” filled with ungovernable populations who deserve removal in the name of cultural progress. On the frontier, urban pioneers experience “the twin thrills of romance and rapacity” in a part of town “where the future will be made” (Smith 1996, 190). When these “frontiers” are crossed by enough brave “urban pioneers” intent on investing in and revitalizing the barbaric wild lands, the local media, real estate

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agents, and city boosters alter the way potential inmovers discuss a neighborhood on the verge of upscale transformation. Terms like “up-and-coming,” “hip,” and “stabilizing” all indicate a perception that disinvested locations hold great “potential.” For example, one Denver developer, ironically named Carl Bourgeois, sees an exciting opportunity in a neighborhood near the downtown: it is “the next hot area in Denver that’s going to pop, and a lot of things are going to happen” (Gregor 2013).

The potential for higher rents in a community, associated with the noticeable shift in the way public figures discuss disinvested areas, and the repurposing of urban space, sets the stage for a dramatic change in a neighborhood’s character. In the remainder of this project, I will explore the social/cultural implications of this kind of state-subsidized urban gentrification agenda. I, like Sharon Zukin (1995), argue that the creation of “cultural landscapes” is a powerful way in which city stakeholders control urban life and symbolize “who belongs” in city (see both Wright [1997] and Smith [1996] on the [im]proper uses of urban spaces). As cities support certain redevelopment projects (i.e., trophy convention center hotels with associated “tourist bubble” zones carefully patrolled with space police) while simultaneously condemning and deconstructing low-income landscapes (such as increasingly demolished public housing projects), they are exercising “the power to impose a vision of social control” (Zukin 1995, 77). This vision of a new city deserves to be critically interrogated. Therefore, I share Zukin’s question: “Whose city? I ask. And whose culture?”

As an exemplar of these kinds of cultural issues, New York City has garnered significant attention. Spike Lee, certainly not the first to express dismay over the new Brooklyn, recently critiqued the cultural changes and “discovery” of the Fort Green neighborhood. Lee explained that his neighborhood used to lack appropriate support from law enforcement and garbage often went uncollected. These days, the neighborhood is seeing significant changes with a large influx of white residents and additional positive attention from city officials. Strong public schools, adequate police protection, and the renaming of neighborhoods all represent the significant cultural changes occurring in Fort Green and Brooklyn, more broadly. What Lee sees as the most disturbing aspect of the gentrification process is the disrespect of the long-term culture, history, and identity of Fort Green:

I mean, they just move in the neighborhood. You just can’t come in the neighborhood. I’m for democracy and letting everybody live but you gotta have some respect. You can’t just come in when people have a culture that’s been laid down for generations and you come in and now shit gotta change because you’re here? Get the fuck outta here. Can’t do that (Coscarelli 2014).

Lee has identified an important facet of the gentrification process here. Although Fort Green and Brooklyn are becoming quite expensive and the neighborhood and borough are shifting towards a considerably whiter demographic, the population remains diverse; yet, the culture and environment of Fort Green has forever changed. To Lee and many others, gentrification is overtaking local culture and transforming neighborhoods into creative class derivatives, juxtaposing middle and upper class values and culture with poverty in established, vibrant, low-income communities.

A recent New York Times exposé highlighted the grave inequities and the juxtaposition of low-income and homeless residents with the morphing landscape in Brooklyn. A reporter followed an essentially homeless family and their attempt to balance the changes in Fort Green. One particularly telling example is an exchange one family member had with a host of a wine
tasting in a bourgeois liquor store. Tension develops between the two when a pail is provided for “discarded wine.” Throughout the series, the family has opportunities to move into a public housing unit in Fort Greene; however, as the pail for discarded wine represents, the culture of the neighborhood now reflects a level “refinement” (Elliot 2013). Remaining in a neighborhood or being offered a consistent place to live does not make up for the dramatic embrace of upper-class culture and values.

The gentrification of U.S. downtowns also alters wealthy residents’ relationship to and experience of cities. For example, the growing interest in historical preservation of inner-city properties showcases the way new, upper-income “preservationists” come to feel a sense of ownership over a previously low-income slum. High income buyers increasingly desire the “special ambiance” and “charm” of historic, central-city neighborhoods, with their prime locations and growing popularity (Logan and Molotch 1987, 176-177; Schill and Nathan, 1983). Consequently, new owners and more affluent residents begin to feel the homes of previously low-income neighborhoods “rightfully [belong] to people who have the resources to search for the original building plans and study their house in the context of the architect’s career” (emphasis added. Zukin 1993, 194). In short, wealthy and educated residents “reclaim” the city through their ostensible “connection to the past” by way of architectural authenticity. Victorian era homes received, and continue to receive, substantial updates by owner-occupants and developers alike. Newly desirable sections of many American cities strive to highlight their sustainable building practices, transit-oriented development, cultural products like art galleries and music venues, and the almighty “health food store.” In turn, the “inflation [of] housing prices” and change in amenities in a historical preservation neighborhood drives lower-income residents out (Schill and Nathan 1983, 41). Manufacturing, squatting camps, and low-income residences fade as the repurposing of city centers transforms them into a “bourgeois playground.” Urban growth no longer relies on the production of goods. The repurposing of the city embraces the “symbolic economy” in its emphasis on cultured entertainment and consumption (Zukin 1995).

As part of this cultural repurposing of downtown, the city requires a systematic sanitization, offering a secure environment for investors, wealthy residents, and visitors. Coming out of the 1960s and 1970s, “downtown” carried a negative connotation. In response, as Smith commented, the city of the 1980s and 1990s “portend[ed] a vicious reaction against minorities, the working class, homeless people, the unemployed, women, gays and lesbians, and immigrants” (Smith 1996, 211). The violence and chaos covered by the media built into the growing hysteria of the late 20th century, further stoking the fear associated with urban centers.

Facing the class and race rebellions of the 1960s and 1970s, white elites saw an urban world they no longer controlled, and, in turn, attempted to reinstate “many of the same oppressions and prescriptions that created the [urban] problem in the first place” (Smith 1996, 212). These hierarchies played out in the effort to “reclaim the city” by demonizing, outlawing, and effectively restricting marginalized communities’ use of urban space through policing tactics and urban design. In the 1990s, a systematic crackdown on “social nuisances” aimed to “clean up” cities. The growth of “improper behavior in public spaces” drove policy makers in New York City and cities across the country to balance business needs with personal liberty. In practice, city officials hardened urban policing in an attempt to “reduce fear” (Siegel 1997). For example, New York Transit Authority’s Quality of Life policing tackled small crimes in hopes of routing out systemic problems within the city. Policing of
such crimes seemed to disproportionately affect those with the fewest resources, including the homeless community. Smith commented on the “unprecedented powers” of police to wipe certain streets clean of squatters and the homeless in New York, often employing violent means (1996, 225).

By limiting public amenities and creating a hostile built environment for the homeless, city officials are implicitly stating that only certain types of residents and visitors may access the city. In his book City of Quartz Mike Davis describes ingenious design tactics employed in Los Angeles in the 1990s. “Bumproof benches,” fewer public restrooms and water fountains, and seamless “confidence-building structures,” minimizing middle class contact with public streets all represent a “hardening of the city surface against the poor” (1990, 232-234). Such tactics are now utilized across all major American cities, which have become harder and harder edged in terms of their accessibility and friendliness to homeless people. The National Law Center’s “Report on the Criminalizing Crisis” highlights the disturbing trend of the criminalization of homelessness and its negative impact on broader communities (NLCHP 2011). Unsurprisingly, the report explains, criminalizing and further marginalizing the homeless population through policing and urban design tactics do not solve overarching problems; it simply obscures it from the view of middle class residents.

A central defense behind this movement is the belief that there are legitimate uses of public space. In a more recent example, Denver’s Civic Center Park, city leaders and the editors of Denver Post explained, hosts “drug users” and “homeless individuals.” In turn, the park has lost its sense of civic pride and community ownership (O’Connor 2013). Many residents describe a sense of insecurity in the park and question if the park will ever be “saved.” In response, the police now camp out 24 hours a day, ensuring the perception of security. Understandably, the city, developers, and residents desire a park accessible for everyone. However, calling for a “rebirth” or “renaissance” sends a clear message of who can and cannot use the park (especially when many current park users are homeless individuals choosing to spend their days in a public park).

Since the police presence, reinvestment, and rhetorical claims to the park seemed to offer little relief to residents’ fears, the city erected a large fence bordering the park in the Fall of 2011 and into the Winter of 2012. Although activists interpret the closing of the park as politically motivated, the city describes their efforts differently. A notice posted on the border of the park explained a planned “improvement [of] the park’s overall sustainability” through “turf and irrigation work” (Whipple 2012).

“Whose Culture? Whose City?” The Challenges of Cultural Ownership

The evidence above highlights the takeover of the city by elites, representing a new era of cultural ownership. At first, an influx of capital shifted the downtown away from low-income residents and “illegitimate” uses towards large corporate style development projects and place marketing schemes. But it was not just “economic ownership” of properties that was at stake (what Logan and Molotch would call ownership of ‘exchange value’), rather these processes involve profound issues of cultural and ideological ownership (what Logan and Molotch would call ‘use value’). With gentrification, urban developers not only foster changing patterns of economic control, they also seek to change the underlying “use values” of a place by introducing a sophisticated atmosphere within the downtown. Ultimately, the takeover by gentrification shifts ownership of the financial, spatial, and symbolic (cultural) resources of the city.

Similarly, the public support city officials offer to the gentrification agenda represents a considerable reorientation of urban governance.
Recognizing the economic value of new patterns of cultural ownership, substantial public funds are now dedicated to upscale artistic and creative projects in cities across the U.S. By subsidizing world-class developments for the creative class, urban policy “amounts to a process of public validation for favored forms of consumption” (Peck 2005, 764). Instead, public officials wonder “what makes a city cool?” as opposed to what makes a city more equitable for everyone (Peck 765, 2005).

Today, “downtown space” reflects “a visual, sensual, and even conceptual reorientation” (Zukin 1993, 190). Such a dramatic change in how residents experience the city, naturally, leads to an important question. Are marginalized communities and residents able to enjoy the same “use value” in the new era of cultural ownership? Cities may develop token programs to benefit the poor (such as limited low-income housing in new developments), build public transit to make downtown more accessible for everyone, or promote cultural projects as a way to unite a city (White 2013); however, one must question the utility of these pragmatic and symbolic improvements in the face of fundamentally shifting cultural dynamics.

As the cultural ownership shift becomes apparent in a city or neighborhood, officials and developers need to consider resident’s “use value” in relationship to place. Logan and Molotch see “use values” as non-quantifiable and non-commodifiable bonds that people develop with a “place.” Residents hold “idiosyncratic” connections to their neighborhood, where “a range of complementary persons, organizations, and physical resources” exist to meet daily needs (Logan and Molotch 1987, 18). When redevelopment projects begin, the question of maintaining or improving use value is rarely asked. Consequently, redeveloping or gentrifying neighborhoods lose old community institutions (such as local stores catering to or owned by lower-income residents) while new amenities may serve a more affluent consumer. Threats to use value go beyond changing businesses in the area, however. Existing residents also endure threats to their “informal support networks,” “security and trust,” and “identity” (Logan and Molotch 1987, 102-103). In a word, residents that remain in a community may see a rise in the value of their home or other tangible benefits, but the abstract senses of belonging and comfort may completely disappear. Scholars have found that this sense of belonging and the associated strength of “bonding social capital” between historic neighbors can be very important to one’s psychological and physical well-being, regardless of the economic gains experienced in a changing community (Poortinga 2006).

Take the recent example from Portland, Oregon, a city that has become notoriously hip, transit-oriented, and gentrified. Some residents, mainly white, describe their experience with the city as uplifting, community-based, and artistic. For anyone who has traveled to the city, the opportunities to experience new urban culture, dine at a farm-to-table restaurant, and consume vintage looking artifacts are endless. The city’s hip reputation has even invited a popular television satire called “Portlandia.” Nonetheless, the black community and low-income residents who once called downtown Portland their home view these trends pessimistically in a city that now caters exclusively to young, white, creative types (Letson 2013).

In 2013, the dedication of funds for a new bicycle lane in a historically African-American Portland neighborhood ignited racial and class tensions. Strategies, like the building of bicycle...
lanes, are not attempts to solve structural urban inequalities, they are “low-cost, feel-good, complements” to traditional market oriented urban governance (Peck 2005, 761). Furthermore, these strategies are typically reflective of the values of a new urban creative class (young, professional, and bicyclers) and not the established non-white working class community. Many Portland residents felt such concerns were being ignored by the city, as it fast-tracked the new bicycle lanes. One resident described the bike lanes in the broader gentrification movement in Portland: “You took the houses, you took the businesses, now you want to take the street” (quoted by Letson 2013). To many, the building of a new bike lane only further marginalized the already shrinking black population in the central downtown area.

Portland’s bike lane controversy highlights the shifting uses of space in inner-cities and the associated cultural struggles. Instead of focusing on the social health of an existing community, Logan and Molotch argue, developers and city officials typically concern themselves only with “exchange value”: updates and investments to a neighborhood or city, and opportunities for higher rents and increased profits (1987, 53). In the Portland case, bike lanes are an appealing, low cost development strategy directed at the creative class. What is left behind in this calculus is the existing “use value” of an established or existing community—the social capital and bonds of love and history that unite people. As Robinson describes, residents see these bonds as part of their “neighborhood, their community, and for their own small piece of” the city (2001). While the new affluent residents may enjoy their rising “exchange values” (in the form of higher property values of their homes), old-time residents find their historic neighborhood disappearing, as the cultural “use value” of a place erodes.

Changing Cultural Ownership of Northeast Denver

Denver, Colorado is no exception to this process. Geographically, Denver holds a distinct advantage over neighboring cities. No large and cultured metropolitan center exists for over 500 miles. Additionally, the city hosts a high number of educated adults, important research institutions, relative affordability, and a close proximity to outdoor activities. The existing housing stock in the city center boasts a wide variety of Victorian era homes and quaint brick bungalows (the famed “Denver Square” architectural style). With these amenities in mind, the recent investments in transit and urban design, and the opening of the outdoor 16th Street Mall, gentrifying parts of town have attracted young and urbane professionals.

Without recent historical context, Denver’s gentrified neighborhoods project a sense of permanence: Denver was and will always be bustling urban center, free of its history. Ferrell seeks to discredit this notion by explaining the history of Lower Downtown (LoDo), a now popular neighborhood, as an “alternative cultural site.” LoDo once housed a substantial manufacturing and transport district. As these uses faded from urban centers, the space allowed for a wide variety of individuals to actively engage and critique Denver politics and culture. By embracing “marginal spaces,” those gathering in LoDo rejected the mandate to consume a sanitized version of the city. Instead, they welcomed the organic, “disorderly human contact, places of creativity, and cultural innovation” the neighborhood formerly offered (Ferrell 2001, 187, 219). Today, however, a new class has claimed the landscape of downtown Denver for affluent mass consumption and a carefully contrived urban experience (See Zukin on ‘Disneyfication’). Walk through LoDo and one will notice the well-maintained facades of historic buildings, new, brightly colored modernist townhouses and buildings, and a sense of wealth. These amenities cater to a young, largely white, wealthy, party-
going clientele. Symbolic of this change is LoDo’s Bar and Grill. A host described their “dresscode policy” to me this way: they will not allow anyone in the door, on Friday or Saturday nights, after 9pm, with “neck tattoos,” “excessively baggy clothes,” or a patron wearing a “jersey,” unless the team played that day. Not to worry, caps can be worn, but only “straight forward or backward.” And jeans are okay, but shirts must be tucked in. They claim that this is to mitigate the “gang problem” in the area. Or, perhaps, LoDo’s is attempting to mitigate use of the bar by minority and low-income patrons.

As Denver became one of America’s most quickly gentrifying cities in the last few decades, the former devalorized spaces of inner-city Denver gave way to sanitized cultural preferences described above and seen in many cities today. Denver’s Flour Mill Lofts reflects the production of sanitized spaces with no trace of historic uses. Like the LoDo neighborhood, Ferrell described the old mill as a “richly occupied public space” where the homeless community and street youth once gathered to sleep, skateboard, and spray graffiti art (Ferrell 2001, 191-192). Today, the old mill with its “defiantly do-it-yourself” aesthetic rests beneath “prefab entertainment” and a “whorish confluence of private and public money” (Ferrell 2001, 187). City officials and developers saw the old flower mill as a blight upon the city’s image, due to the area’s proximity to the glitzy downtown. By the 1990s, LoDo and the neighborhoods surrounding it saw a host of plans for urban redevelopment, including new sporting facilities for the Colorado Rockies and the Denver Broncos, as well as an amusement park.

These projects kicked off a wave of wealth through investment and gentrification in Denver’s downtown area, including the core-city area. As part of that gentrification, the once abandoned Flour Mill building was acquired by one of Denver’s wealthiest inner-city developers (Dana Crawford), and converted into prime downtown loft space. In the process, Denver authorities forced out squatters, artists, and activists from abandoned structures, making way for the coming cultural cleansing. After substantial rehabilitation, the mill became a shining beacon of the city’s redevelopment, with lofts selling for millions of dollars. The new Flour Mill became one of Denver’s “most exclusive and desirable addresses,” hosting prominent Denver residents and their taste for $3,000 pizza ovens, “vintage” exposed brick, antique furniture, and Venetian crystal chandeliers. New residents of the lofts explained their reasons to move to the rehabilitated space as a desire for a more “cultural experience” and the “interest in diversity [and] caring about equality” (Ferrell 2001). One can only imagine the kind of urban experience one will gain from a multi-story fortress of wealth—but it is certainly not the cultural experience that was once represented by the abandoned towers in low-income central Denver, once frequented by the homeless, young punks, and underground muralists.

As core city gentrification sweeps through Denver, cultural transformation is busily reshaping the geographically nearby neighborhoods of Five Points, Curtis Park, Whittier, and North City Park. These parts of town encompass historically African-American and Latino neighborhoods in the North and Northeast sections of the city. Historically, Five Points once acted as the black cultural hub of the West, hosting a variety of artists, musicians, and writers in the early and mid-20th century, and becoming one of the poorest neighborhoods in Denver by the 1970s. Though poor, the neighborhood had deep community roots, neighborhood pride, and cultural dynamics all its own. A visitor of the Five Points and Curtis Park Neighborhoods, Jack Kerouac explained the

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1 Due to job security issues, this source is anonymous.
vibrancy and diversity in his novel *On the Road*:

Down at 23rd and Welton a softball game was going on under floodlights which also illuminated the gas tank. A great eager crowd roared at every play. The strange young heroes of all kinds, white, colored, Mexican, pure Indian, were on the field, performing with heart-breaking seriousness. Just sandlot kids in uniform. Never in my life as an athlete had I ever permitted myself to perform like this in front of families and girl friends and kids of the neighborhood, at night, under lights; always it had been college, big-time, sober-faced; no boyish, human joy like this. Now it was too late. Near me sat an old Negro who apparently watched the games every night. Next to him was an old white bum; then a Mexican family, then some girls, some boys — all humanity, the lot. Oh, the sadness of the lights that night! (Kerouac 1957)

Although Kerouac’s experience differs greatly with current Denver resident’s interaction with the neighborhoods, the message rings true. An energetic community remains; it never was and it certainly does not lack a sense of culture and connection. These days, the cultural dynamics in lower-income Denver communities have shifted dramatically. The pronounced transformation is noticeable to even the untrained eye.

A gradual rehabilitation of the housing stock has left beautiful restorations next to decrepit row houses, modern design next to abandoned structures. The forms of transportation residents employ include expensive hybrids and European made cars, trendy bicycles, and the RTD Light Rail, which extended into this section of town in the early 2000s. Restaurants include items on their menu like market-style pizza and “Molten Chocolate Lava Pancakes.” Art galleries, coffee shops, and bars sprout up throughout the neighborhood. Ask a Denver resident and they will describe this part of town as “trendy” or “exciting,” a place that offers an “authentic” and urbane experience, reflecting none of its rich history.

Representatives from city departments and booster organizations recognized these amenities as markers of Florida’s famed creative class. Officials now strive to take advantage of the creative class’ economic potential. When discussing the vision for Denver, officials call for a downtown with diversity in population and “interesting developments” in “authentic communities,” including “classic redevelopment” with higher density neighborhoods, bike lanes, and a high “walkability score” (Fritz and White 2013). These investments in the urban landscape certainly serve a wide variety of communities; yet, the city seems more concerned with attracting and serving the creative class through upscale development projects than in respecting the historic use values and low-income residents of places like Five Points.

Spaces like LoDo, the now-colonized “Highlands,” and the 80205 Postal Code where Five Points and Curtis Park are located, have gained a certain “coolness factor,” becoming “urban entertainment destinations” (Sassen and Roost 1999, 147; Fritz and White 2013). To continue this trend, the city, with many private partners, works under the banner of Imagine Denver 2020. The effort will include considerable resources dedicated to developing the arts and culture economy in Denver. Residents no longer desire the isolation and sterility of the suburbs,

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2 One particularly revealing example of the gentrification process in a fairly liberal city is the Redline Gallery. In the past year, the space has reached out to the community, and held a timely and thought-provoking show on homelessness. Despite the socially aware message Redline offers, their building resembles an urban Fort Knox. Raised from the street-level, surveillance cameras and an intimidating 6-foot security fence surround the property.
Figure 1.1: “Gentrification Pressure Along Downtown Boundary Line,” Published in the Denver Atlas II: A Region in Transformation; 2008.
the promotional materials argue. Instead, the cultural products in the city are highly sought after by returning suburbanites and young professionals, and city leaders should lure these people with carefully designed public art, festivals, and redeveloped neighborhoods.

Representative of the transition from low-income institutions and amenities to high-income consumption is the designation of space as “blighted.” Much of the Five Points and Curtis Park neighborhoods have been described as “blighted,” and are now open to significant redevelopment through Tax Increment Financing projects. The Denver Urban Renewal Authority (DURA) describes blight as an area “in its present condition and use, [that] has substantially and adversely affected or slowed the reasonable growth of the community, hindered the provision of decent housing, or constitutes a social liability to the community, and therefore is detrimental to the well-being of the citizens” (DURA 2014). Although residents may be “adversely affected,” DURA fails to note the communal history, culture, and connection in their determination of blighted areas. Even the word “blight” carries a clear connotation: your economic and social ownership of this space is degrading our city.

Census data supports the claim of colonization by white, educated, upper-middle class in-movers. Between the 2000 and 2010 census, the white/black demographic mix of these inner-city neighborhoods nearly reversed. In the year 2000, residents who identified as “Only White” totaled 9,559 (32.2% of the population), and residents who identified as “Only Black” totaled 10,878, (36.6% of the population). By 2010, the number of white residents grew 20%, to compose 53.3% of the population or 15,586 individuals. The black population, however, dramatically decreased in the 10-year period to just 25.6% of the population or 7,485 individuals (U.S. Census Bureau 2000; 2010).

With cities courting younger populations of new urban professionals, one may expect to find a relative increase in the 20 to 44 age range across census years as well. In the year 2000, white residents in this age range totaled to 5,012. Young black residents totaled 3,078. By 2010, white residents between the age of 20 and 44 counted 9,589 individuals (doubling in number in ten years). The 20 to 44 year old black population, however, decreased to 2,011 in the same period (a 30% decline) (U.S. Census Bureau 2000; 2010).

Equally revealing are the household statistics. One of the many theories of gentrification connects unmarried households, households with fewer children, and those living with unrelated roommates to local economic growth (as these demographics are typically single professionals in a city, rather than low-income families) (Smith, 1996).

True to that theory, in Denver’s core-city communities over the last ten years, married households, across races, decreased from 3,118 in 2000 to 2,858 in 2010. As the number of married households decreased, the size of a family decreased as well. Average families included 3.61 individuals in the year 2000. Between censuses, the average family size in 2010 fell to 3.25. Household size, which includes family and nonfamily households, also fell between 2000 and 2010. In 2000, the average household included 2.75 individuals. By 2010, the size of the household dropped to just 2.22. Unsurprisingly, the number of individuals living alone between 2000 and 2010 jumped from 3,418 to 5,098. Another telling increase between the two censuses is the number of residents with a bachelor’s degree. In 2000, 3,326 individuals had completed their undergraduate education (U.S. Census Bureau 2000; 2010). However, the 2012 American Community survey measured 7,794 individuals whom had completed their undergraduate education—more than doubling the number of “well-educated” people in this area of Denver. Between 2000 and 2012, a whiter, younger, and
more educated population, unsurprisingly, coincided with a rise in the median value of a home and the median rent, which increased by 37.1% and 22.8%, (adjusted for inflation). Even the highest strata of Denver society seems to be embracing the zip code: in the year 2000, zero houses in the area were worth $1,000,000 or more. In 2012, 54 houses were worth $1,000,000 or more (U.S. Census Bureau 2012).

These changing demographics are culturally portentous, as a massive influx of white households alters the symbolic ownership and control of these historically black and Latino neighborhoods. On first glance, one could argue that increased diversity in the urban environment is a positive development. A city booster would point to an updated housing stock, new investment from the city and private developers, new jobs, and a general face-lift for the community. One former city council member explained her support for these upgrades, while embracing the gentrification of the historically black and Latino neighborhoods. “Housing dislocation is what we need,” and when “property values take off, that’s good for the city” (Robinson 2001). The influx of new residents and visitors requires substantial updates to the built environment and the cultural offerings of the city. Not only is redevelopment raising the profile of Denver, another former city councilor explained, it “gave us back a revitalized city” that attracts tourism. She continued: “Tourism is clean. All [tourists] need is a safe and comfortable place to sleep and shop. And lots of yummy restaurants to eat at” (Robinson 2001).

However, one community resident and advocate does not see these as wholly positive improvements,

My community has become more diverse over the years which is a good thing. But now what I see is an overwhelming presence of upper white class people. That is not bad on the surface. However, some of the deeper issues are that this White people, non-profits, and politicians are building a good sense of community but without wanting to reach out to and connect with the work that has been done by the different ethnic groups that live here. That is the problem. Gentrification in itself is not bad, but the process with which you go about gentrification can be (sic) (Willis, personal correspondence, January 2014).

In this case, the white gentrifying class entered these neighborhoods, co-opted the current sense of community, and transformed the community into what some see as a derivative, ersatz “creative class” neighborhood. This includes a new “fitness park,” modern landscaping techniques, and a newly planned playground once open to all, including the homeless, but now restricted “to use by adults with children” (O’Connor 2013). The community resident and advocate quoted above explains how he sees these projects as being misguided, and as targeted at the gentrifying class. “Now, many non-profits and grant money is being invested into this community that when asked for years ago was not in existence. Minorities get to benefit from this but we know the reason is because the demographic is changing” (sic) (Willis, personal correspondence, January 2014). Although the grant money may be flowing and substantial public works projects are underway, many community advocates wonder why and to what end large reinvestment projects are going towards. “The point is to build assets for the people who live here” (Robinson 2001).

Although the profound changes occurring in Northeast Denver are in some of the earliest stages, other Denver neighborhoods experienced gentrification and redevelopment. The La Alma neighborhood, south of Colfax Avenue, suffered a struggle over gentrification in the late 1990s and early 2000s. Many of the same dynamics at play throughout out Denver today were present at this
time as well. Residents saw their livelihoods and economic base slowly erode, many expressed intangible attachments to the La Alma neighborhood. “It’s not that [inmovers] don’t belong, they don’t know the tradition or the history,” one young man explained (Robinson 2001). This tradition and history, another longtime resident stressed, gave her a sense of belonging. Everyone was like her, and she felt “very comfortable where I [was] at. Born here and I want to die here” (Robinson 2001). Few communities offer a strong sense of connection; certainly a feeling that is difficult to maintain or create from scratch in the face of changing urban landscape.

**Homelessness: Access to and Cultural Ownership of the City:**

A particularly harsh example of changing cultural landscapes in inner-city Denver relates to how city leaders are increasingly building a downtown landscape in which homeless persons are “excluded, repressed and displaces in all sectors of everyday life” (Wright 1997, back cover). In the last decade, Denver has passed a wide variety of regulations on panhandling in public places, pushed to make it illegal to give anyone food or a blanket outdoors, and (most recently) passed an outright ban on any homeless person sheltering themselves from the elements with anything other than the clothes on their back (the “camping ban”). In practice, the ban bars the use of make-shift shelters or any form of coverage in public, further limiting the options of homeless individuals within the city limits. Many activists and advocates see this as the “criminalization of homelessness,” and an example of deep cultural hostility towards the very poor. One individual experiencing homelessness as the ban went into effect explained the policy as a sign that city officials “don’t care about people as much as they care for their money. They see us as homeless people as scum and try to push us out, where it makes it harder for us to live and that’s why so many homeless die from the cold or starvation” (Robinson 2013, 71). Like redevelopment schemes and gentrification strategies, the camping ban disregards any real opportunity to equitable development strategies in Denver. Instead, the policy attempts to hide a symptom of larger urban problems by driving the homeless out of downtown spaces and into the shadows. Charlie Brown, a Denver City Councilman, saw the ban as an opportunity to support the desires of wealthy residents, visitors, and businesses, while sideling the needs of the homeless population: “We have to stand up for our businesses downtown and our women and children who are afraid to go downtown. Are we supposed to just give up?” (Meyer 2011). Another supporter openly favored business owners over the respect and dignity of the homeless community: “If we don’t do something now, we are going to have a worse spring and summer than we have seen for a long time. I would hope we could do something strong enough to prevent individuals from laying out in front of people’s businesses…” (Meyer 2011). Indeed, the city acted strongly in favor of the wealthy and business elite, while accepting the grave and growing inequalities within Denver city limits.

These reactions and support cloak the camping ban behind buzz words such as “shrinking tax base” and the potential “loss of residents” and “tourist dollars.” Yet, class antagonism and outright hostility entered the debate as well. One supporter described the ban as a necessary policy for “all residents,” freeing up expenses for the “truly needy” (Denver City Council 2012). Not only are those experiencing homelessness not “residents” in this quote, but the supporter seems to believe that lacking a home or adequate shelter does not qualify as being “truly needy.” Instead of realizing the existing urban inequities, supporters shift the blame for homelessness to personal failure and cultural depravity, a particularly effective strategy.
for dehumanizing someone in need. This policy represents an even harsher transfer of cultural ownership away from the very poor and towards the downtown business community and more affluent homeowners. “I want to get them off OUR Main Street, and the 16th Street Mall is our Main Street,” Brown further argued in support of the camping ban (Meyer 2011). By passing a law like the camping ban, Denver officials effectively denied the right to occupy public space for a very specific community of people. The arrival of an artisanal donut shop may represent an abstract shift in cultural ownership of a community. More problematic are the practices of rounding up, ticketing, and harassing the homeless for mere acts of survival in public places. The city paints a clear picture: you are not welcome here.

**Conclusion:**

As American cities move further into the 21st century, local leaders, citizens, and developers must weigh the costs of substantial redevelopment projects. Although the rhetoric of economic growth and its positive contributions to urban centers remains effective and influential, many scholars argue that growth projects do not evenly disperse their benefits. Moreover, such projects favor the interests of a shrinking elite minority. Yet, the distribution of wealth within cities is not the only concern. Reinvestment and gentrification threaten the cultural, historical, and social bonds found in many low-income and “blighted” neighborhoods. City officials, developers, and gentrifying inmovers hold little regard for the existing “use values,” and often reshape the urban environment to reflect upper-income preferences and desires. Denver, Colorado is certainly no exception. The rampant reinvestment and gentrification has wholly altered the feeling of long established neighborhoods with unique and specific cultures and histories. Development aimed at a growing, young, and urbane population shifts the “cultural ownership” of the city away from low-income residents to the affluent. Likewise, the hardening of Denver’s policy towards those experiencing homelessness further prioritizes wealthy residents and visitors. This growing inequality and gentrification has sparked a vibrant debate in cities across the country and inspired movements to empower and protect those with the fewest resources. Moving forward, affected communities and their allies should push for more than a greater number of low-income housing units. Efforts to assert cultural ownership and resist the symbolic degradation of a neighborhoods past are necessary. Perhaps, as Jeff Ferrell explains, maybe it is time to end the search for “urban authenticity” through “top down communities” and “reclaim the streets” (2001, 195).
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Dyrell Willis, personal correspondence, February 3 2014, University of Colorado Denver, Denver, CO.


WHY RACE NEUTRAL IS NOT ENOUGH:
UNDERSTANDING THE NEED FOR A NEW RACIAL PARADIGM
Chaz E. Briscoe

With the successful re-election of President Barack Obama, many have continued to advocate, and others began to echo, the sentiment of a post racial America. From the deconstruction of the Voting Rights Act to recent cases against affirmative action, the plight of racial discrimination has come under considerable scrutiny in our society. A part of the post-racial discourse is that America has reached equality in terms of race relations. This study questions this assumption, especially in light of persistent racial disparities in wealth, education, and housing. By analyzing the race neutral language that defines liberalism, Reconstruction amendments, New Deal policy, and 1970’s conservative backlash, this study highlights how the current post-racial discourse is but another symptom of America’s racial legacy. The current race-neutral discourse obscures the historical legitimacy of racial justice, as it shrouds how current disparities disproportionately felt by communities of color parallel past inequalities. Because of the ambiguity between the reality and perception of race, this article raises cause for a new racial paradigm. This new conversation would require a frame that would address both the historic accumulation of racial benefits and also target the systemic causes of current discrimination. It is then and only then that real racial progress will lift all people and the people’s experiences will be valued.

Introduction

The year 2013 marked a year of progress and regression in American race relations. In one regard, 2013 witnessed America’s first “black” President inaugurated for his second term; a feat that indicted that his 2008 election was not a fluke, but a reflection of a changing America. In cinema, 2013 was a prolific year for the storytelling of the African American experience, with movies such as The Butler and 12 Years a Slave highlighting African American contributions to American society and portraying the harms of slavery and racism. Though possibly anecdotal, these references reflect what could be seen as the social transformation of America from its squalid past.

Despite the advantages, the year in review, 2013, would also mark back steps in America’s ability to deal with racial conflict. In June of 2013 the Supreme Court would strike down Section 4 of the Voting Rights Act which had set the criteria for state and local preclearance. This would deal a significant blow to the enforcement of the Voting Rights Act, deconstructing the symbolic crown achievement of the Civil Rights Movement. The nation’s racial tolerance would further be tested following the verdict of the Trayvon Martin trial. Perspectives on the justice of the trial would split America as conservatives would advocate gun rights, while black communities would take the occurrence to question the disparate treatment of black male victimhood in America.

While Americans find they are attempting to fulfill the promise of opportunity, the present context also demonstrates how the discourse on race still embodies the historic legacy of racism. Current rhetoric concerning merit, black criminality, and economic inequality, can all be linked to racist assumptions of black laziness, bestiality, and cultural deterioration. Can we, as Americans, actually declare progress and a post-racial society, or are we, in light of reformulating racial patterns, actually living in the era of a New
Jim Crow? To answer this question I would say we are progressing and that yet we still have significant inequalities to address. This essay will focus on the historical developments that have given rise to this ambiguity in understanding American race relations.

Author David Holmes explains that much of the confusion around the race debate is a result of “minimizing or ignoring the legacies and current social realities of racism” (2007, 12). This minimization of race has become acceptable to American society however, due in part to the principle of race neutrality or colorblindness. First articulated in the Plessy v. Ferguson opinion, the race neutral doctrine is advanced by the Supreme Court due to the impartiality of the Constitution in dealing with the races (Orbe and Urban 2011). However, missing from the current post-racial discourse, and from the understanding of colorblindness, is the fact that the state has never been neutral. Liberalism inherently reflects the existing power structures it seeks to codify. In this regard race neutral language, policies, and remedies actually obscure the systemic power relations that have led to the persistent disempowerment of black peoples in US law, policy, and society.

Subsequently this essay will analyze how the use of race neutrality within the discourse on race has disproportionately disempowered African Americans. The analysis will be demonstrated through the intertwined connections between colorblindness and liberalism. This analysis will be facilitated by a discussion of Justice Harlan’s Plessy v. Ferguson (1896) opinion, a discussion of New Deal legislation, through an investigation of 1960s-1980s Civil Rights Movement legislation and judicial activity, and by analyzing how race neutrality shapes current disparities. In analyzing this history hopefully a renewed focus can be placed on the material circumstances of racial disparity. By developing an understanding of the actual disparities in health, education, and wealth exhibited by these communities of color the discourse on race will expand to deal with the ambiguities of a black president and black success, with perceptions of black poverty and black under-achievement. Both realities exist. However in both situations of success and deprivation due to the fact of being a person a color, systemic racism still influences their daily experiences. Due to heightened levels of precariousness and deprived levels of accumulation compared to white Americans, regardless of geographic location, educational attainment, or socioeconomic status, people of color fair much worse in our society. Even further though, I hope studies like this will inspire a new understanding that combines this social reality with a critical understanding that real progress of racial equality must be continually creatively evaluated.

Liberalism

It is important to declare that America was built upon racial foundations. Since the early 17th century, the government has defined and refined the status of the races (Kuznicki 2009). The 1705 Virginia Statute exemplifies this trend as the law defines a Negro as anyone with up to one-eighth African descent (Kuznicki 2009). However this designation would not simply be a symbolic marker, but would begin the institutionalization of Americans of African descent as property. This process occurred when European indentured servitude was abolished in favor of the chattel enslavement of blacks (Wise 2010). Under the guise of individual property rights, American liberalism would combine the oppressive considerations of race with the ideals of American

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American classical liberalism demonstrates an emphasis on individualism, universalism, egalitarianism and meritocracy (Holmes 2007). During the development of American classical liberalism this construction of the most important values of society would also coincidentally address the power aspirations of the America’s dominant class (Holmes 2007). Power began to parallel race as dominant group interests combined with racist assumptions of superiority. Universalism would imply universality only in so far as it agreed with the dominant white property owners’ perspective. There would be on one hand the universally accepted right to property, and then the American Indian unacceptable “savage” use. Individualism would suit the dominant class’ position in society conveniently as the principle facilitated the dominant group’s uncontested access to citizenship and resources. It is easy to value individualism when the compromise of the subordinate group’s sacrifice is unheard. Egalitarianism would be possible because “Negroes” or slaves were biologically sub-human, so tolerance and equality could easily be extended to those of the same dominant ethnic group while other races could justifiably be excluded due to their lack of humanity. Even meritocracy seemed justifiable as the dominant class would face limited challenges to opportunities from subordinated citizens.

What is most disturbing about this construction is that the narrow comprehension of these ideals still holds today as guiding principles for American society. This is despite the fact that the US has never fully realized nor committed to applying these principles to everyone. It would take the movement of social reform liberalism for disenfranchised groups to use liberal rhetoric to expand access to the races and classes (Holmes 2007). However, progress in America has generally developed in this way. It has been America’s fundamental journey to democracy. Whether it is embodied in the women’s rights, abolitionist, or anti-war movements, the process has been one of opening up America to the inherent rights of all people, whether workers, veterans, or minorities.

Individual rights rather than group rights in the Constitution established the classical liberalism that would subjectively facilitate the privileges of the dominant class. By believing in a meritorious colorblind America, most Americans are able to ignore the privileges that come from being in the dominant white ethnic group. Individually the law would grant citizens their rights, but obscure racial group preferences, creating a dichotomy that would recognize the rights of individuals, while conversely creating a vacuous nonexistence for collective remediation. This abstract liberalism acknowledges freedom and equal access, but nonetheless does nothing when it comes to implementing progressive strategies to change society (Holmes 2007). If anything the abstraction only obscures the discourse with questions of morality and doing the right thing, without ever evaluating practically how well outcomes advance efforts to stated goals. In other words, the goals of freedom and equality will remain abstract unimaginables as long as progress is gauged by well-meaning intentions and not statistical evidence of racial parity. To get to this parity though, classical liberalism and expressively American values must find room for not only collective minority experiences, but must also provide space for how those experiences are produced by interactions with a dominant white group. The ability for some to see themselves as Americans and not ‘white’ Americans prevents any true solidarity with shared contribution in the game.

Plessy v. Ferguson

As the sole dissenting opinion in the trial that would create the separate but equal doctrine, Justice Harlan’s opinion presents one of the clearest examples of America’s race neutral
ambivalence. While declaring the “Constitution of the United States does not, I think permit any authority to know the race of those entitled to be protected in the enjoyment of such rights,” and while pronouncing “our Constitution is color-blind,” Justice Harlan also proclaims the superiority of the “white race,” he “deems [the white race] to be the dominant race in this country” (McKenna 1984, 384-86). However how does this logically occur? The dominant race is dominant because of its monopoly of power. So would it not be exactly the point of majoritarian politics to protect the minority races? By supporting the colorblind adjudication of the law while also defending the racial hierarchy of the nation the law represents, Justice Harlan attempts to separate the innate relationship of power and structure in society. To somehow expect for the preferences of society to not be reflected in its law and law not to reflect the preferences of society, strikes at the core of Justice Harlan’s argument. However instead of taking on the subjective nature of legal interpretation, Justice Harlan attempts to reinforce the objectivity of the Constitution and of racial supremacy. And while it is logically understandable that a justice’s interest would be to maintain order and protect the Constitution, his legal pronouncement obscured the racial realities of the era.

Justice Harlan has gained notoriety for his attempt to disagree with the majority in the Plessy v. Ferguson court, in that he viewed that the Louisiana law was explicitly meant to exclude African Americans (coloreds) from white-designated coaches. Justice Harlan’s perspective that “the recent amendments of the supreme law [the 13th, 14th, and 15th amendments]… obliterated the race line from our systems of governments” (McKenna 1984, 384-86) does more however to disempower race progress as solved, than it does to empower African American potential remedy through the judicial process. By granting that African Americans were now under the protection of Reconstruction era amendments Justice Harlan was making the claim that that was all that was necessary to solve racial discrimination. Economic remediation for slavery, disenfranchisement from settlement law, and all past injuries had been addressed in the creation of the Reconstruction era amendments. The race question appeared settled. Equality gained. In Justice Harlan’s view the dominant class had made the Constitution colorblind in the execution of the 13th, 14th, and 15th amendments, ignoring the grounds for the Amendments’ creation in the first place (Kuznicki 2009).

However, any student of history knows race had been far from obliterated. Almost 60 years after Plessy ruling the Civil Rights Movement would still be making continued claims of justice based on the equal protections within the 14th amendment (Ochs 2006). However between those years, the decision of separate but equal would make possible the devastating implementation of Jim Crow. This would include the mass lynchings of African Americans, dilapidated school resources, and de jure segregation. Race relations would get worse before they would get better as white superiority, affirmed by the courts and social context, increased the dominant class’ oppression.

Even worse than what was to come though, was what had been lost. In one fatal decision years of servitude were wiped away, the memory of them obscured. Regardless of material conditions, equal standing and citizenship had been extended to the Negro and the Negro had joyously accepted. However, the dominant class was still the dominant class and the law had not challenged any of that. The supremacy of the dominant class still held power over minority citizens as it had held power over them before as slaves. And due to the new equality garnered by the Reconstruction era amendments there would be nothing minority African Americans could do to highlight their condition. The judiciary helped
only those who could not help themselves (Carter 2011). African Americans now had equal protection under the law. By the 1930s New Deal, this white paternalistic liberalism that would subject African Americans to societal degradation but not fair standing would develop to such a degree that effectively 60 to 75 percent of African Americans were being excluded from America’s most progressive welfare assistance program ever (Katznelson 2005).

The New Deal

If the Constitution is colorblind, then the legislation of Congress should analogously be race neutral as well. However, by targeting exclusionary practices in the New Deal at predominately black industries southern politicians were able to recreate in America a second class slave system all over again. The two industries excluded from benefits of the program were agricultural workers and domestic workers. These industries ironically paralleled the farmhand and house slave occupations of the American slave and sharecropping systems. The dominant class was not letting go of its power. This is evident in personalities such as Theodore Bilbo, Eugene “Bull” Connor, and Strom Thurmond (Kuznicki 2009). Important to these personages was the maintenance of the racial status quo. In their own self-interest however the racial order would also coincidentally be the key to their privilege in society.

It would be through the unlikely pairing of progressive northern Democrats and southern Dixiecrats that the New Deal legislation would pass. For both sides the passage of the New Deal would be a result of their subjective reading of liberalism. The obvious exclusion of African Americans through targeted industries undermines liberal claims of universal policy applicability. However, the exclusion of African Americans also made it so the legislation was not egalitarian either. By stratifying the access and benefits of the program, the policy did not hold up to the value of equal opportunity of all persons. Nevertheless, the legislation provides a moral framework for ameliorating the Depression era economic crisis, while not explicitly deviating from a race neutral interpretation.

In consequence, the race-neutral New Deal policy exacerbated the wealth gap between the races to outlandish proportions. The state and local administration of New Deal policies would limit African American access to aid in housing, education, welfare, and labor (Kuznicki 2009). In some southern counties federal relief monies would exclude all blacks entirely (Katznelson 2005). African Americans would share in the cost of being US citizens, paying taxes and participating in war efforts, but not enjoy any of the benefits (Grigsby 1994). By 1947 55% of eligible black veterans would be denied college acceptance despite funding (Katznelson 2005). Between 1947 and 1971 the Service Adjustment Act of the New Deal would appropriate ninety-five billion dollars through educational assistance, federal home loans, and business loans. However in 1984 when these guarantees matured, it would be exposed that the majority of the allocations had created asset accumulation for whites, and left behind African Americans. Home ownership as a result of New Deal programs had facilitated a white median household net worth at $39,135 compared to a black median household net worth of $3,397 (Katznelson 2005).

This economic disparity would also disempower African Americans in political and social contexts. Segregation throughout much of the United States would test the humanity of African Americans. Segregation not only meant dilapidated amenities, but also humiliation, intimidation, and death. Socially, the African American experience would be a world apart. Redlining had isolated African Americans into urban ghettos, as white flight would move the dominant class to the suburbs (Katznelson 2005). During Reconstruction African Americans had
managed to gain some political offices. However in the New Deal era Blacks would also regress in the political franchise. In 1901 the last African American would serve his term in Congress. Consequently the era dictated that another 72 years would have to pass before an African American would represent the South in Congress again.

This construction of society set the course for the Civil Rights Movement. Similar to the movements around the Civil War and Plessy v. Ferguson Reconstruction, and akin to the social reform movements of the New Deal era, the Civil Rights Movement of the 1960s would attempt to fulfill America’s potential and move the nation towards democracy.

Civil Rights – 1960s to the 1980s

The time period from 1960 to the mid-1980s would evince rapid change in American race relations. It would represent the worst and the best in African American social progress. It would combine the progressivism of 1930s and 1940s with the separate-but-equal moral collapse of Reconstruction in a short span of 20 years. In one generation race relations would go from being the most prominent issue on the American agenda to the least tolerated topic. However by tracing race neutral’s ideological influence it is possible to understand why.

One of the key contributions of the Civil Rights Movement and Johnson’s Great Society lies in their ability to remove the distribution of resources from the state level to the federal (Kuznicki 2009). As a result of successful political advocacy by African Americans, the US would pass the landmark Civil Rights Act of 1964 and Voting Rights Act of 1965. These pieces of legislation would effectively empower African Americans in the areas of labor, education, and voting protection. Utilizing the 14th Amendment’s Equal Protection Clause the Civil Rights legislation would pry open industries African Americans had struggled to enter. African Americans would gain access to the nation’s most prestigious universities (Katznelson 2005). The Equal Employment Opportunity Commission (EEOC), created by the Civil Rights Act, would create a pattern of affirmative action in federal contracts that would become a significant part of new African American achievement (Katznelson 2005).

Besides the difference in state versus federal jurisdiction, African Americans were also empowered by the transformation of affirmative action from not just the avoidance of discrimination, but to a place where affirmative action could also provide compensatory remedies (Katznelson 2005). Food aid and rental housing would be extended to African Americans for being members of a victimized category, extending coverage beyond widows and poor women (Katznelson 2005, Kuznicki 2009). The EEOC would attack not case-by-case discrimination but address the larger patterns of racial exclusion (Katznelson 2005). The early years of the Nixon administration would see affirmative action go even further, adopting a doctrine of disparate impact (Katznelson 2005). With this, discrimination would not only be defined by intentional individual acts of disparate treatment but also include procedures and processes that had adverse impacts on African Americans as a group (Katznelson 2005).

However where the Civil Rights era legislation fell short is in its inability to tackle the systemic causes of racial inequality: primarily capital accumulation (Kuznicki 2009). Though affirmative action was actually preventing...
discrimination, it did little to remedy years of black disenfranchisement and economic exclusion. Despite gains in income parity, without the similar gains of a New Deal welfare system, African Americans were still trapped in poverty (Betsey 1992; Kuznicki 2009). Access to upper-level management, as a part of Nixon’s Philadelphia Plan, was diversifying the labor force like never before (Katznelson 2005). This advancement evidenced the social transformation of race relations. Similarly to the Reconstruction amendments though, these measures only applied to the current situation - and forward. The Philadelphia Plan helped African Americans in the current labor market. Nevertheless the policy still did not deal with the accumulated disadvantages that accrued from previous inaccessibility to upper-level incomes and the loss wealth associated with this exclusion.

By the late 1970s the public was already tiring of the 1960s civil rights discourse of race conscious policy. Writing in the mid-1970s, sociologist William Glazer would comment on how government actions were racially dividing the country into groups with “differential rights” (Katznelson 2005). The perception of unmerited help based on group claims and not individual rights would resonate with the conservative base. For conservative leaders this view would serve their political agenda as they would use any rationale to dismantle 1960s and 1970s social programs and question the legitimacy of any program committed to bringing about social equality (Betsey 1992).

The 1978 Regents of the University of California v. Bakke case highlights this changing attitude towards race conscious policy in the post 1960s liberal discourse. In a 5-4 vote the court would decide it unconstitutional for the University of California Davis to reserve 16 of its one hundred medical spaces for minority students (Katznelson 2005). Citing the 14th amendment, the court deemed that the quota system violated the constitutional equal protection requirement (Katznelson 2005). At question was whether it was justifiable to allow preferential treatment for a group based on race. Interestingly, after centuries of preferential treatment for the dominant white ethnic group, the court would suddenly find it detrimental to extend preferential privileges to minorities (Katznelson 2005). As in the case of Plessy v. Ferguson, the extension of concern by the dominant class was enough to facilitate remediation and create racial parity. The courts would reason that the protections of the colorblind Constitution and the Civil Rights Act would be enough of a testament to America’s amelioration of racial discrimination. The unmerited privilege of alumni status in education as a racial benefit of white status fails to ever be challenged (Winkler 2003).

As a result of the Bakke case all affirmative action programs are evaluated under strict scrutiny. This means that affirmative action programs, to be constitutional, have to display a compelling governmental interest and yet also be narrowly tailored to specific harms, but only after exhausting race neutral options first (Betsey 1992). Not only did this precedent completely reverse the disparate impact doctrine that had been gained during the Civil Rights Movement, but created in its place an almost unattainable threshold for racial discrimination (Carter 2011).

Strict scrutiny, more than just frustrating progressive policy, also fed into the discourse, as concerns of reverse discrimination would complement conservative suspicions of affirmative action and race conscious policies. African Americans had so abruptly reached parity that the legitimacy of any government action undertaken explicitly to correct racial disparity deserved heightened suspicion (Carter 2011). Anti-white bias had overnight become a larger societal issue than anti-black discrimination (Carter 2011). In accord with their own views of reality, the dominant class justified dismantling
affirmative action by using the dogmas of liberalism, such as individualism and meritocracy, as a foundation for their critique; without understanding the particularistic privilege their own positions afford (Holmes 2007). Perceptions of white victimization relied on liberalism’s individualistic view of society. Individual white Americans were not the cause of the racial discrimination so why did they have to carry the burden of paying for it? Stereotyping welfare queens corroborated with principles of merit. It became the view of many Americans that the benefits enjoyed by the welfare queen were underserved. She did not work for it.

Colorblindness would create a subjective reading out of Martin Luther King Jr.’s “I Have a Dream” speech, as judgment by the content of character became the goal of racial tolerance. This would come from and be dictated by the dominant class (Holmes 2007). Post-1960s liberal discourse would see government action and not white reactionaries as the threat to social cohesion, forgetting again as in Plessy, the history and the cumulative effects of discrimination (Carter 2011).

**Current Disparities**

By the 1980s white economists were proclaiming from the rafters, “black progress”. Only the progress that they thought they saw was an illusion. After a group of black economists detailed the sample selectivity bias of the study, the economists would prove that the individual earnings of the initial study would not hold true for household samples (Betsey 1992). By only looking at those within the labor force, the initial study would fail to represent the systemic pattern of black exclusion in the labor market (Betsey 1992). Black achievement gained through the 1960s had crested.

However, the practice of placing the blame on the victim was not a new one and perceptions that remaining racial disparities were due more to self-sabotage or cultural determinism would follow the historic pattern of American racial stereotyping and prejudice (Hamilton 2012). By the time of the 1991 Civil Rights Restoration Act, caps were being put in place to limit the amount of damages retrievable from discrimination suits (Duster 2005). These caps were premised on the idea that only so much could be accomplished through legal action. Of those damages, rewards were only applicable in cases of intentional discrimination, limiting justifiable discrimination to actions where intent and malice could be determined (Duster 2005). This has limited most Title VII cases to issues of harassment, termination, demotion or refusal to promote (Duster 2005). Very few cases are proactive and question discrimination in hiring and opening access to opportunities, where remedial efforts would have some effect (Duster 2005). These changes were all premised however on the ideas of colorblindness and the triviality of black plight.

As a result of strict scrutiny and reverse discrimination, most discrimination suits now ironically benefit cases of age prejudice and not race (Duster 2005). Age discrimination claims make up one-quarter of all EEOC cases, and one-half of all monetary awards (Duster 2005). Even more ironic is that of all age discrimination suits, protections originally created to empower minorities benefit three-fourths of the cases filed by Caucasian men (Duster 2005).

When considering the devastating effects of the 2007 financial crisis and resulting recession, it is hard to believe that it is white men who need protecting in American society. Take for example the 2008 median hourly wage. For a black male full time worker the median hourly wage was $14.90 (Hamilton 2012). However, for a white male full time worker in the same period the median hourly wage was $20.84, almost a $6 dollar difference (Hamilton 2012). And this is in spite of educational attainment and merit. Black males with a high school diploma or bachelor’s degree in 2008 still made 74% of what white
males earned and 61% percent of white male earnings when compared to white high school dropouts (Hamilton 2012).

Observing disparities in unemployment further details America’s racial dilemma. For instance, in September of 2011 while white unemployment stood at 8%, African American unemployment compared at double the rate (Hamilton 2012). However this is the historical trend! During the past 40 years there has been only one year in which black unemployment fell below 8% (Hamilton). Conversely there have been fewer than 5 years in the past 40, in which white unemployment has exceeded the same 8% benchmark (Hamilton 2012). In other words this depicts that white unemployment is a national issue, while black unemployment is a norm. And yet it is minority affirmative action programs that are suspicious. These are the statistics that support a post racial society? These are numbers that support reverse discrimination?

Between the racial groups the absolute wealth gap exceeds $100,000 (Hamilton 2012). While prior to 2007 a typical black family possessed a dime to every dollar of white household wealth, after the recession, the typical black family has only a nickel to every dollar of white wealth (Hamilton 2012). Nevertheless post-racial Obama liberalism “posits that racial minorities societal gains combined with presumed [absent] contemporary discrimination… render measures explicitly aimed at redressing racial inequality both unnecessary and counterproductive” (Carter 2011). However economic parity is more divergent, power way more elusive. How have race-neutral policies that have never recognized subordination resolved the problem (Winkler 2003)?

Race Forward - Conclusion

The fact is these race-neutral policies cannot help ameliorate racial disparity. Throughout this essay it has been shown how race neutral policies have continually relied on subjective liberal principles and consistently produced race negative consequences for minorities. However the point is not to give up hope, but to consider what could have been done better. Without race conscious policies the gap in wealth disparity and capital accumulation cannot be overcame. This requires an honest conversation about the patterns of systemic discrimination. New Deal legislation has proven that targeted policymaking can be effective. However it is no longer useful to circle the wagons around racist labels and instances of individual bigotry. Intentional acts of discrimination should not be tolerated, but the bigger picture must remain in the forefront of social advocates’ minds. Labeling individual acts of discrimination too easily fuels resentment as liberal thought has taught most Americans to morally abhor racism (Holmes 2007). Racial parity however connects society as a whole.

The argument must be altered to frame the nuance of one group’s exponential growth and the other’s relative rate of decline. Much of the accumulation and dis-accumulation of resources mentioned in this article is a reflection New Deal policy. Effectively, white Americans observed middle class growth throughout the 50s and 60s, while minority, especially African American communities did not. In an effort to remediate this divide, wealth would have to pivot to advantage the discriminated group and slow the growth of the primary dominant group. Real racial equality would consequently balance this equation. So, yes one group may grow more slowly, but only for the greater good so that both groups may advance towards parity (Duster 2005).

Still, it is imperative that Americans fully understand the implications of their ideological assumptions. Hopefully this is inspired by an alternate narrative of renewed radicalism. For progressives this means that they finally get off the sidelines and be progressive, as those who are conservative do not shy away from their conservativism/regression. The abstract liberalism
that feels complicit to advocate anti-
discrimination must evolve to openly express an
advocacy for policies that reform the systemic
patterns of racial inequity. And this has to be
expressed regardless of the power structures or
limits of law and order that reforms must
deconstruct. That means revisiting how systemic
shifts in society and assistance policies distribute
aid in housing, education, welfare, and labor.
Utilizing New Deal black disenfranchisement and
current systemic disparities, these renewed claims
for justice would satisfy both the need for
foundational legitimacy and directly target past
harms (Katznelson 2005). However a line must be
drawn in the sand and those supporting social
liberation must provide an alternate path to the so
far paralyzing superficial discourse.

The universalistic perspective of American
liberalism must also recognize its inadequacies. As
state after state rolls back its prohibitions on gay
relationships and marijuana legalization,
continuing disparities will become only more and
more suspect. As more battles are won the reason
why we end up with consistent outcomes and
unchanged material circumstances will puzzle
many. Regardless of a white or black president, if
the doctrinal underpinnings of race neutral
policies stay the same so will the results. The
conservative reading of colorblindness obfuscates
its dominant class privileges, justifies its
misreading of Civil Rights, and obliterates any
understanding of racism’s disempowering effect
on the black community. Martin Luther King Jr.
did advocate a judgment by content of character,
but he also believed that to get there we must
work to open democracy to all Americans. In
King’s understanding that meant an equality that
guaranteed everyone an income, fair housing,
compensatory education, and where necessary
preferential treatment to redress discrimination
and economic deficiencies (Holmes 2007). His
vision opposed the abstract hands-off liberal
approach to race and poverty. In his ideal equality
existed in a democracy when its entire people had
the power to recognize, and freedom to fulfill,
their rights.
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GENOCIDE AND SOVEREIGNTY: PROBLEMS IN INTERNATIONAL LAW

Breann Bellio Magana-Garcia

International law often encounters problems during the process of its application, specifically due to issues of state sovereignty. This article does not seek to critique international law entirely, but rather to address its specific weaknesses regarding genocide. To best comprehend this issue, there needs to be an understanding of genocide and non-international armed conflict historically, an understanding of the international laws currently in place, why these laws have not been completely successful, and other factors need that to be considered by the international community in order to be proactive in preventing genocidal conflicts. Concepts such as power relations, norm influence, colonialism, and changes in warfare are important in this conversation. The central focus of this article is to stress the importance of ambiguities regarding state sovereignty in contrast to humanitarian intervention, and how these ambiguities can prevent action from being taken during genocide; analyzing this relationship allows for a better understanding of what prevents the protection of human rights during genocidal conflict.

International law is written in a way that seems theoretically sound and logical on paper, but often encounters problems throughout its practical application. The lack of practical application of international law (specifically regarding cases of genocide) results in considerable problems, such as massive human rights violations. The first section of this paper presents a brief introduction to genocide and non-international armed conflict. The second section considers the laws currently in place, and what hinders the success of these laws. The third section explores third-world approaches to international law. Finally, the last section offers additional components and factors which need to be considered by the international community in order to be aware of and proactive in preventing genocidal conflicts. The central focus of this article stresses the importance of ambiguities regarding state sovereignty in contrast to humanitarian intervention, and how these ambiguities prevent action from being taken in cases of genocide. By recognizing and planning for the current complications, there is optimism that the international community can prevent imminent crimes against humanity in the future.

A Quick Introduction to Genocide

To begin, a brief background on the history of genocide is necessary to fully understand how the law addresses it. Traditionally, international law has tended to only acknowledge states as the main actors in need of regulation; however, non-state actors are the main offenders who participate in genocidal acts. After the horrors of World War II, the international community vowed that they would never let such atrocities occur again (Shelton 2005, xii).

According to the Convention to Prevent and Punish Genocide, genocide is defined as the “...physical destruction of national, ethnic, racial, and religious groups, in whole or in part” (Shelton 2005, xiii). The issue of intentionality is extremely important; intentionality is a crucial element that helps distinguish genocide from typical warfare or internal conflict. Genocide is the strongest expression of racism known to mankind (Goldhagen, Sanderson, and Segaller 2009). Unfortunately, since the adoption of the
Convention on Genocide in 1948, “the national and international legal instruments designed to prevent genocide” have not been entirely successful in averting such acts (Shelton 2005, xii-xiii). Genocide is actually a bigger problem today than mass (conventional) warfare, and the amount of casualties resulting from genocide surpasses the amount of all combat deaths worldwide (Goldhagen, Sanderson, and Segaller 2009). As Shelton argues, during ethnic conflicts, we see the “…worst, but also the best, of human behavior” (2005, vii); the worst behavior refers to when the killing occurs, and the best behavior occurs when the international community stands-up for the human rights of marginalized voices. Proactivity from the international community in the future is needed to be more successful in preventing genocide and all crimes against humanity.

“Genocide itself is both a crime against humanity and the greatest of such crimes” (Shelton 2005, xi). As defined by the Rome Statute:

“Crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination…deportation or forcible transfer of population…torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender…(U.N. 1998, art. 7)

Since genocide is such a serious crime, external humanitarian intervention should occur if it is not adequately addressed domestically. Such external intervention immediately becomes contentious because state sovereignty norms are so strong.

Genocidal occurrences require us to reevaluate the roles of perpetrators and victims; conceivably most important of these roles is that of bystanders (Shelton 2005, xiii). The role of a bystander can be on an individual level, or on a larger scale. If the international community is aware of genocide occurring and consciously chooses not to assist the innocent victims, I argue that they obtain the role of a bystander as well. People become most dangerous when they are no longer held accountable for their actions, which is why the consequences imposed by the international actors are so crucial (Goldhagen, Sanderson, and Segaller 2009).

The amount of innocent victims killed in genocides over time is heartbreaking. “It is estimated that more than 250 armed conflicts have occurred since World War II, with casualties numbering upwards of 170 million people…massive human rights abuses committed by repressive regimes…sadly, still exist in contemporary society” (Shelton 2005, vii). Additionally, eighty percent of victims of all armed conflicts have been from non-international (internal) armed conflicts (Forsythe 1978, 272). The international community needs to ensure it is ready and able to act swiftly when conflicts emerge, “rather than allowing them to continue unabated for decades or generations” (Leaning 2003, 157).

“Ethnic groups with ascriptive (birth-based) boundaries often fear being dominated in their own state by people perceived to be the ‘other’” (Swartz 2005, 249). Such ethnic tensions often arise in formerly colonized states, and this affects their society socially, politically and economically; further, these states can experience internal
conflict leading to genocide. Conflicts among ethnic groups within the same state can lead to power imbalances, causing tension among elites, military forces, and citizens. “Because the colonial empires were autocratic, independence [of formerly colonized states] brought no tradition of power sharing or trust to the integrity of political institutions” (Swartz 2005, 250). Further, the initiation of genocide is often connected to territory and power (Goldhagen, Sanderson, and Segaller 2009).

“It is important to maintain a historical perspective on the development of international law,” in order to account for historical inequalities that have led to conflict (Forsythe 1978, 295). Historically, humanitarian intervention has been tremendously important in cases of genocide, but state sovereignty norms do not allow external intervention to occur easily. The ambiguity which occupies the space between the protection of human rights and sovereignty rights prevents efficient prevention during genocide. Subsequent sections will elaborate on how third-world approaches to international law directly rely on historical aspects of conflict, and emphasize the enduring effects of colonialism and power relations.

International Law

There are various legal structures in place that apply to genocidal acts. There is a specific Convention on Genocide, as well as a Convention Against Torture, which can also be applicable to genocide crimes (Danelius 2013). Additionally, Common Article 3 to the Geneva Conventions states:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms…shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria (U.N. 1949).

This clause applies to genocide because civilians uninvolved in hostilities are strategically targeted. Next, Additional Protocol II was added to the Geneva Conventions in 1977 to enhance Common Article 3, specifically addressing non-international armed conflicts (U.N. 1977). This Protocol additionally strengthens the rights of civilians, prohibits attacks on civilians, and regulates displacement. While Protocol II is well written, it unfortunately does not permit external intervention, due to state sovereignty.

Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State. (Protocol Additional to the Geneva Conventions, 1977)

Also addressing genocide is Article 6 of the Rome Statute, created in 1998 and instituted by the International Criminal Court. While many states have signed and ratified the Rome Statute, jurisdiction in non-party states is not permitted, similarly causing problems concerning intervention (U.N. 1998). This is another area of international law which addresses genocide but has weak enforcement mechanisms in place to confront such situations. The main concern when intervening in a state is the violation of individual state sovereignty. State sovereignty is very important to individual actors; in cases of genocide, human rights violations take a backseat to sovereignty norms. While external intervention is not a simple endeavor, and state sovereignty does serve an important role, horrific acts of genocide should not go unaddressed.

In addition to the problems regarding intervention, “…treaty and customary law…has proven equally confusing and perhaps even less effective… [and] general human rights law, is not entirely clear” (Forsythe 1978, 273). Essentially, all
internal war should fall under either Common Article 3 or Additional Protocol II, but neither of these bodies of law contains all the components necessary to address the problem of genocide (Forsythe 1978, 286). Instead of trying to work through a flawed system, international law should embrace new and changing aspects to work towards a more effective system (Ratner 1998, 67). Therefore, we must “…rethink the traditional concepts regarding the norms of international law that are applicable to noninternational armed conflicts” (Meron 1995, 556). Interestingly, Theodor Meron argues that universal jurisdiction is becoming more widely accepted as means to hold individuals criminally responsible (1995, 559).

Universal jurisdiction is a legal doctrine which permits domestic courts to try and punish perpetrators of some crimes so heinous that they amount to crimes against the whole of humanity, regardless of where they occurred or the nationality of the victim or perpetrator. The crimes subject to universal jurisdiction include piracy, slavery, crimes against humanity, war crimes, torture, and genocide. Universal jurisdiction is a departure from traditional approaches that require a direct connection between the prosecuting state and the particular crime. There is no formal legal basis for universal jurisdiction; rather, it represents a customary international norm. (Khojasteh 2007)

Legally, this jurisdiction is still not permitted in many cases, but changing norms can often be more effective than law itself. For example, “nonbinding norms…often carry powerful normative and persuasive value” (Halliday and Osinsky 2006, 449). Meron also argues that customary law does not adequately address “the criminal element of war crimes” in non-international armed conflict (1995, 559). Applying punishment for genocidal crimes can be too lenient in comparison to prosecution for criminals of international armed conflicts (Meron 1995, 561). Loop holes in the application of laws, however, should not lessen the prosecution of criminals. Further, the enforcement mechanisms in place will only be successful with state support (Ratner 1998, 71). Any single actor does not have enough persuasive power to change international, widely accepted customs by themselves; changes must be done through a consensus of various actors (Roberts and Sivakumaran 2012, 151). In addition to influencing customs, actors influence norms; interestingly, state sovereignty is one of these potentially malleable norms. The fact that the actors who make up the international community influence a fluctuating system is a double-edged sword because they both shape and are constrained by the system.

**Third-World Approaches to International Law**

Most often in international relations, discourse is dominated by first-world opinions which do not consider the needs of the developing world, or simply fail to interpret those needs correctly. Every discussion international in nature (especially regarding genocide) should consider third-world opinions because they add a different perspective than traditional theories, illuminating the experiences of marginalized voices. Third-World Approaches to International Law (TWAIL) is defined in two similar perspectives. First, TWAIL 1 acknowledges the effects of colonialism and power relations and how law affects power distribution (Anghie and Chimni 2003, 78). TWAIL 2 builds off this approach, noting that law should be evaluated based on individual needs, prioritized over the interests of the state (Anghie and Chimni 2003, 78). To promote global justice, international rules and practices should assist all individuals, especially those in the developing world considering third-world governments or leaders do not often represent the interests of their people (Anghie and Chimni 2003, 78-79). When leadership is corrupt, there are unintended
consequences for the citizens of that state; bearing this in mind, it is important to protect the human rights of all citizens. TWAIL looks to hold individuals accountable for their actions when crimes or conflict occurs; however, this is not feasible without permissible intervention in a sovereign state (Anghie and Chimni 2003, 89). Overall, TWAIL seems to reinforce the argument that existing bodies of law have not successfully satisfied the requirements necessary to deter genocide (Anghie and Chimni 2003, 90).

Acts of genocide involve massive human rights violations, which should be carefully evaluated and addressed. As Leaning suggests, a human rights perspective allows the international community to see the world as one community, and take better accountability for the destruction of any part of that community (2003, 153).

The classic definition of a human right is a right which is universal and held by all persons: A human right by definition is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human. (Dundes Renteln 1988, 347)

It is obvious that genocidal killings violate human rights in every way, shape, and form; the reason for discussing human rights is because the conflicts leading-up to genocide always include violations of human rights. As described by one of the Hutu citizens found guilty of murder in the 1994 Rwandan genocide, when 800,000 Tutsis were killed in the short span of 3 months, the Hutus would “cut Tutsis into pieces with machetes the same way you would cut a tree” (Goldhagen, Sanderson, and Segaller 2009). If the international community is able to recognize human rights of individuals universally, it will better serve those in need of protection.

The Universal Declaration of Human Rights was created while the majority of third-world nations were still under colonial rule, making this declaration heavily criticized for excluding third-world approaches (Dundes Renteln 1988, 351). “Any system that purports to be universally valid must surely be assessed in terms of how it deals with the most disadvantaged” (Anghie and Chimni 2003, 102). The laws initially created to protect people against genocide were constructed in an era (the late 1940s) without equality of basic human protections for all persons, which has contributed to occurrences of genocide. Therefore, the current laws in place cannot consistently or successfully justify humanitarian intervention when it is most necessary.

**Significant Factors**

The final section of this paper will address a variety of factors and components present in current literature that are important in the discussion on genocide; some of these concepts include sovereignty, power relations, norm influence, colonialism, and changes in warfare. First, as mentioned earlier, the dispute between state sovereignty and humanitarian intervention is a hugely important debate regarding genocide. There is not a central “sovereign authority or supranational enforcement mechanism” in the international community to police all actors equally (Ratner 1998, 65). The United Nations is an attempt at this world organization, but is often contested and lacks true universal authority. Because the world does not have a central authority, when crimes against humanity occur we must rely on states and other actors to work together for the good of humanity. In sum, to
prevent genocide individuals and states must be motivated to make different decisions (Goldhagen, Sanderson, and Segaller 2009).

As mentioned, the central claim in this argument is that norms regarding state sovereignty prevent action from taking place in cases of genocide. “The sovereignty of states and their insistence on maintaining maximum discretion in dealing with those who threaten their ‘sovereign authority’ have combined to limit the reach of international humanitarian law applicable to noninternational armed conflicts” (Meron 1995, 554). Numerous problems arise because of the persistent adherence to fixed sovereignty. In some cases, external resources and actors will enact universal jurisdiction over a given state if the domestic courts fail to address a problem themselves.

During the early 1980s, genocide occurred when 200,000 indigenous Maya were murdered under the rule of José Efraín Ríos Montt in Guatemala (Goldhagen, Sanderson, and Segaller 2009). In the example of the Guatemalan genocide, Spain (as the former colonizing country of Guatemala,) deemed jurisdiction legitimate and necessary (Roht-Arriaza 2006, 208). During prosecution, perpetrators were only convicted of crimes that took place against Spanish citizens (Roht-Arriaza 2006, 208). In the example of genocide in Guatemala, first-world citizens of Spain were prioritized over native Guatemalans and Mayans. While some justice is better than none, the legal system is defending certain human rights, but not all. Therefore, if universal jurisdiction is not always enforced uniformly, then it becomes passive, selective jurisdiction (Roht-Arriaza 2006, 212). Forsythe also speaks to the issue of ineffective universal jurisdiction, using the title “selective humanitarianism” (1978, 279). There needs to be greater focus by international arena on the rights of all individual citizens.

More frequently, there have been significant changes in warfare; conflicts tend to involve non-state actors, and “often these conflicts are communally or ethnically based and have persisted for years” (Leaning 2003, 152). Ideally there should be “a balance between recognizing the interests of armed groups in creating and developing international humanitarian law and maintaining important humanitarian protections” (Roberts and Sivakumaran 2012, 141). Non-state armed groups, such as al-Qaeda, play an increasingly important role in actor relations and state or regional stability. “Until the connection can be made that suffering elsewhere eventually threatens regional stability or public adherence to domestic agendas, political leaders…will remain reluctant to commit resources to prevent, mitigate, or intervene in these conflicts” (Leaning 2003, 156). Today the world is socially, politically and economically interdependent; due to this interconnectedness, containment of conflicts and regional stability is essential. If states choose not to intervene, they could in turn risk their own security. Sometimes states hide behind walls of political rhetoric, avoiding involvement for their own sake, not considering the larger consequences.

Research has shown that the type of regime in place has been a key factor in states that have suffered the atrocity of genocide. Genocide is less likely to occur in democratic states; additionally, state failure of an autocratic regime was three and a half times more likely to lead to genocide than democratic regimes (Colaresi and Carey 2008, 40, 42). These factors are important for the international community to proactively consider. Another similar factor less often considered in a given state when conflict occurs is the use of military forces (personnel, equipment, and infrastructure).

Controlling the armed personnel in the military and internal security forces puts governments into a powerful position, where they can choose to wield this power either for personalistic gains by killing
opposition groups or for the public good by providing stability and security for their citizens (Colaresi and Carey 2008, 43).

In the case of Syria (which has not been categorized as genocide, only civil conflict), al Assad’s regime and government forces have killed Syrian citizens in the midst of the country’s civil war, displaying how security forces can either protect or kill civilians (Colaresi and Carey 2008, 59). The Syrian conflict does present significant red flags considering crimes against humanity which have occurred, and therefore should be closely supervised by the international community. Overall, it is problematic that state sovereignty is consistently upheld and most often uncontested (in the case of Syria as well as other countries) while government military forces are free to mistreat civilians without consequences.

Non-governmental organizations (NGOs) have been a significant addition to actors in the international community and actually can be quite influential. NGOs like Human Rights Watch, Geneva Call, or the International Committee of the Red Cross apply political pressure to states and have helped to prevent excessive violence in situations of internal conflict (Leaning 2003, 155). “Political institutions shape the behavior of leaders as they constrain their choices and shape incentive structures” (Colaresi and Carey 2008, 44). Especially from a human rights perspective, NGOs are helpful to achieve progress since states have ulterior (self) interests, and often will not act alone (Leaning 2003, 158). Many NGOs exemplify influential characteristics which shape actors’ behavior.

Lastly, in the early stages of genocidal conflict, the actions of leaders should be carefully reviewed and scrutinized. It is important to remember that genocides are not spontaneous; the leaders who initiate killing are not crazy; they are rational, because they know the international community is unlikely to interfere with their plan (Goldhagen, Sanderson, and Segaller 2009). Leaders can tap prior prejudices that dominant citizens have about a minority or opposing group (or politicize existing identities) in order to execute a plan for the removal of a targeted group (Goldhagen, Sanderson, and Segaller 2009). Of course, genocide is a complex process, and these claims may be oversimplified. In sum, when state sovereignty is pitted against humanitarian intervention, state sovereignty is likely to prevail every time.

In Conclusion

This discussion has analyzed the brief history of genocide, international laws, third-world approaches to international law, and significant factors which contribute to genocidal acts. The international community’s past intentions towards preventing genocide have not been completely insignificant, but current actions and future goals regarding genocide need to be more effective. Because international law has clear weaknesses concerning its practical application, norms surrounding state sovereignty during acts of genocide should be reconsidered. Unfortunately, that request is not one that a single author, organization, state, or even a group of states can make on their own. In reality, ambiguities exist among state sovereignty and humanitarian intervention, and they may continue to exist; this obstacle, however, should never prevent the protection of human rights of civilians during genocide1.

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