Preface

The 16th Edition of the University of Washington Bothell Policy Journal combines the outstanding efforts in scholarship, perseverance, and collaboration put forth by the authors, student Editorial Board, staff, and faculty. There are a diverse range of policy issues important to our student body. The students’ work in this edition represents valuable contributions and academic excellence on topics such as green energy, human rights, access to resources, implications of legal decisions, and a myriad of other U.S. and international policies.

The new cover marks a milestone in the increasing support from faculty and students in the success of this journal. The cover has been redesigned to illustrate interdisciplinary policy work that branches from the students’ dedication to social justice and civic engagement. By publishing a wide range of policy related articles, the UW Bothell Policy Journal hopes to highlight the vast contributions of our students, faculty, and supporters, as well as the importance of sharing research in our collective academic pursuits. A special thanks to Ani Dorsett and Cora Thomas who brought our vision of the newly redesigned cover to life.

The UW Bothell Policy Journal Editorial Board would like to thank Dr. Andrea Stone and Kim Sharp for their guidance and patience during the process of bringing this edition to print. The Writing Center provided a tremendous amount of assistance and support to both the authors and Board members, as each article was carefully revised and edited. The Journal would not be possible without the dedication of the UW Bothell students. We would like to thank all authors who submitted manuscripts to be reviewed for publication. Finally, we extend our appreciation to Harmony Gonty and Salem Levesque for assistance with graphic design.

The opinions expressed in these articles do not necessarily reflect those of the University of Washington, its staff, or the Editorial Board. We value the variety of opinions, research, knowledge, and experiences that contribute to each one of the articles. The UW Bothell Policy Journal acknowledges and appreciates the right of students to express these differences, and hopes to highlight the importance of sharing these differences in order to branch out and grow the university’s dedication to academic and personal excellence.

-The 2012 UW Bothell Policy Journal Editorial Board

We welcome questions and submissions for the 17th edition of the UW Bothell Policy Journal at pjsubmissions@uwb.edu.
Mission Statement

The *University of Washington Bothell Policy Journal* publishes research on a broad range of policy topics spanning all disciplines, levels of analysis, and national contexts. Our goal is to introduce fresh ideas and new voices from around the UW Bothell campus on critical shared, local and global issues by providing a space for student authored research to inform how we think about all areas of policy. The *UW Bothell Policy Journal* offers an opportunity for students to hone their writing skills and emerge as more effective writers.
Contents

Difficulties in Refuge: Seeking Answers in Thailand’s Decision to Forcibly Deport Thousands of Hmong ................................................................. 1
  Paul Henderson

Child Marriage in Ethiopia and its Associated Human Rights Violations .................. 11
  Brenda Rodgers

Fighting Privatization in Contemporary Bolivia: Cultures of Resistance ................. 21
  Brenden McLane

Inequitable Distribution: Wind Farms and Waste Facilities in the Pacific Northwest .... 31
  Shawn Friang

Arizona v. Johnson: Latest Developments in the War on Terry .......................... 39
  Quinn Russell Brown

Integrated Pest Management for the City of Everett ............................................. 51
  Megan Dunn

Roadblocks for International Students in Local Nursing Programs ..................... 59
  Kathleen Gallentine

About the Authors ................................................................................................... 67
Universal human rights has continued to be a struggle as different states quibble over policies and fight over rights to keep local laws and cultural customs. Over the past sixty years, since the establishment of the Universal Declaration of Human Rights, the establishment of human rights has been a slow but steady progress as more countries sign on to the idea of protecting human life and ensuring an overall human rights delegation within their respective state legislation. Even as such policies are becoming more commonplace, there still remains some degree of human rights violations taking place in every state around the globe. Certain regions appear to have a higher number of violations, as state governments are either inflicting violations themselves, or allowing others to perform abuses within their borders. In Southeast Asia, specifically within the countries of Thailand, Laos, and Vietnam, a continued dilemma unfolds regarding the human rights of thousands of Hmong refugees. The governments’ decisions made in this region are extremely important, specifically that of Thailand, as the country is a haven for asylum seekers in an increasingly unstable region. Multiple policy changes are recommended to ensure these actions are not repeated, and to safeguard the Hmong already living within Laos.

It was within the borders between Thailand and Laos, in December of 2009 and the subsequent months of 2010, when 4,689 Lao Hmong were forcibly removed from Thailand and sent into Laos, a country from which these same individuals had originally sought refuge and safety (Human Rights Watch, 2011a). Of the thousands of Lao Hmong, 158 had already been screened and designated as ‘persons of concern’ by the United Nations High Commissioner for Refugees (Human Rights Watch, 2011a). The denial of media access and the rejection of assistance offered by the United Nations and several countries are just a few examples showing that the Thai government purposely violated numerous human rights in their decision to forcibly deport refugees. The consequences of this decision have long-term effects, as Thailand is a haven for asylum seekers in an increasingly unstable region. Multiple policy changes are recommended to ensure these actions are not repeated, and to safeguard the Hmong already living within Laos.

DIFFICULTIES IN REFUGE: SEEKING ANSWERS IN THAILAND’S DECISION TO FORCIBLY DEPORT THOUSANDS OF HMONG
Paul Henderson

ABSTRACT: In early 2010, nearly 5,000 Hmong refugees seeking asylum from Laos were forced out of Thai refugee camps along the Thailand/Laos border. Each refugee was forced back into Laos, a country with a history of severe human rights violations against the Hmong population. Some of them had been living in Thailand for years, and others were even designated as ‘persons of concern’ by the United Nations High Commissioner for Refugees (Human Rights Watch, 2011a). The denial of media access and the rejection of assistance offered by the United Nations and several countries are just a few examples showing that the Thai government purposely violated numerous human rights in their decision to forcibly deport refugees. The consequences of this decision have long-term effects, as Thailand is a haven for asylum seekers in an increasingly unstable region. Multiple policy changes are recommended to ensure these actions are not repeated, and to safeguard the Hmong already living within Laos.
ther atrocities do not continue within the Lao border.

**Cultural Context**

To appreciate the broad spectrum of this ongoing issue, one must understand the Lao Hmong social structure and their history. For over four thousand years, Hmong have been known to live in the southern region of China. After being persecuted for centuries by the Chinese regime, Hmong began migrating by the hundreds of thousands into the northern regions of Thailand, Laos, Vietnam, and Burma during the early 19th century. They remained a separatist group from the new home states, differing in basic cultural entities such as religious beliefs, farming techniques, and basic way of life (Hilmer, 2010). Eventually, many of the resettled Hmong from China ended up in the northern Lao area known as Plaine des Jarres, also known as The Plain of Jars (Hilmer, 2010).

In the 1920s, Vietnam invaded northern Laos, specifically targeting the Plain of Jars area. The Hmong defended their land, and in doing so, spared the Luang Prabang King. In return, the King of Laos gave the Hmong of this region more self-governance power than any other minority group in the country (Hilmer, 2010). In retrospect, this caused more angst between the Hmong and other ethnic groups in Laos, as half the country’s population was made up of non-Lao ethnicities. During this time, the colonial powers of Britain and France were competing for access into the lucrative markets and resources in southern China. In order to effectively rule over Southeast Asia, France created the Indochinese Union, a collection of three countries that included Laos, Cambodia, and Thailand. However, French authorities did not deem Laos as being important, and only a few French entered the country, many of them being missionaries (Vang, 2010). Many Hmong converted to Christianity, a choice that has current ramifications within Laos. Buddhism is overwhelmingly supported by the local government and many Christian Hmong are currently being attacked for their religious beliefs (Jones, 2011; U.S. Department of State, 2008).

The French had also brought many Vietnamese into Laos, in an attempt to further populate the country with laborers. The Lao government and Laotians as a whole strongly resisted this movement, and anti-colonial movements post World War II gave a hope of freedom to Lao citizens. The problem was now two-fold: “not only to free themselves of French colonialism but also Vietnamese domination” (Vang, 2010, p. 22). With U.S. interests nowhere to be found in Indochina after the events of World War II, French rule returned and split support ensued by the Lao Hmong. Vang Pao, a Hmong tribesman who would later play an important role alongside the Central Intelligence Agency (CIA) in the Secret War, sided with the French and assisted French paratroopers in reinstating colonial rule (Vang, 2010). Vang Pao was very influential within the Hmong community, and became the Royalist Commander on the Plain of Jars (Warner, 1996). Eventually, Pao achieved the rank of major general and led an expansive army that was trained by U.S. and Thai officials (Hilmer, 2010). In contrast, the CIA used Pao as a backbone to the anti-communist agenda, not only providing a stronghold in the strategic Plane of Jars area, but also conducting long-range reconnaissance into North Vietnam (Hilmer, 2010).

The Geneva Conference of 1954 forbade the United States (U.S.) from military participation in Laos (Alisa, 2007, p. 15). The U.S. was worried about the Soviet Union’s influence of communism in Southeast Asia. The Vietnam War was underway and the Ho Chi Minh trail, which served as a main arterial supply line for North Vietnam, ran directly through Laos. The CIA, working completely undercover and unbeknownst to U.S. citizens, supported the Hmong in fighting off the communist Vietnamese military and disrupting their supply chain (Alisa, 2007). This war was ultimately lost, even after further U.S. presence with full military involvement. Vang Pao fought to the end, even wanting to continue fighting after the CIA confided to him that the war was a lost cause (Hilmer, 2010). It was as if the warrior and his people had been deceived and now they refused to let their dreams of freedom and continued support by the U.S. lay to waste. On September 22, 1972, the U.S. moved towards a treaty with North Vietnam in Paris. An agreement to end the war was made on January 27, 1973, and a cease-fire ensued from the Vientiane Agreement of February 21, 1973 (Vang, 2010). The Hmong had lost over 17,000 soldiers (Vang, 2010) in a war they would have never been involved in or, at the very least, let it go on this long, if it were not for the CIA or the U.S. involvement (Hilmer, 2010). This was the least of their concerns. The U.S. undermined the Royal Lao government, severely undercutting both funding and aid into the country, thereby forcing those who had fought alongside the U.S. against communism to have their fate put in the hands of outsiders (Hilmer, 2010; Vang, 2010). A new ruling communist party, Khmer Rouge [Pathet Lao] overthrew the government and immediately declared all Hmong as enemies of the
state (Alisa, 2007; Vang, 2010). While nearly 100,000 Hmong fled to neighboring Thailand for refuge, thousands of others continued to hide in the jungles of Laos, fearing retaliation even though many had not been involved in the conflict (Alisa, 2007).

It is obvious that Hmong have not lived the easiest of lives. They have been perceived as immigrants in each country they have been pushed into. Even amongst themselves there are waging battles, many of which stem from French colonial times and the sides chosen during the Vietnam War era. There is no resolution for what has happened in the past, but previous history should be considered when finding a solution for such an important human rights dilemma as ethnic persecution and displacement. Much of the animosity shown by the Lao government towards the Hmong stems from the Vietnam War. The Hmong were only involved in the war because of strong U.S. encouragement and backing through the CIA. “The fortunes of the Southeast Asian Hmong people were, in many ways, an accident of geography – where they lived, who controlled the surrounding territory, and the extent to which those powers, whether French, Japanese, or Vietnamese, had access to their leaders and brought positive change or firm control to the region” (Hilmer, 2010, p. 48).

Analysis of Evidence

Today, Hmong rights are still being violated on a daily basis inside the borders of Laos (New Europe Online, 2011). Many are trapped in military zones, while thousands of others are relegated to camps where their movement is severely restricted. On April 30, 2011, Human Rights Watch reported thousands of Hmong gathering near the village of Huio Khon, which borders Vietnam and Laos. The Vietnam military deployed helicopters and troops to stop the assembly. Unconfirmed reports show dozens of Hmong being killed and injured (Human Rights Watch, 2011b). Some Hmong within Laos have become free to live within the normal society of the country. These are the Hmong that sided with the communist party currently in power. A second group is the refugees who have managed to escape the wrath and find refuge in other countries. But a third group of particular interest to human rights groups, known as ‘Chaofä’, continue to “exercise their freedom and maintain Hmong nationalism in the Xaysombun Special Zone” (Congress of World Hmong People, 2008). This zone is very restricted from anyone other than the Lao People’s Democratic Republic (PDR) military. A civil war has continued for years, as the government restricts Hmong from their culture, civil, and religious freedoms (Amnesty International, 2007). Many media outlets and human rights organizations have labeled this indigenous mountain group as rebels. However, more recent journalists who have dared entry into the ‘Special Zone,’ found these historically reported rebels are now extremely vulnerable and hiding from violent attacks. These Hmong also lack basic necessities such as food, shelter and medicine (Amnesty International, 2007). The remaining Chaofä Hmong, and other Hmong in Laos, are in no place to offer any resistance to Lao PDR.

The evidence is overwhelming that the Lao PDR government is continually abusing universal human rights. The same is true of the Vietnam and Thai governments. Each of these countries has surprisingly been making agreements to improve their human rights record, with no visible results. “Thailand made a significant number of human rights pledges in its successful campaign to join the United Nations Human Rights Council, but has carried out few of them” (Human Rights Watch, 2011c). “Laos has repeatedly failed to live up to international promises to resettle and integrate Hmong” (New Europe Online, 2011), even as the European Union adopts new development relations with Laos and Vietnam. “Highly publicized steps taken by Vietnam during recent years to liberalize the economy, including the signing of a landmark trade agreement with the United States, have not been accompanied by rights improvements” (Human Rights Watch, 2005). This agreement comes after Human Rights Watch reported verified accounts of two separate incidents where Hmong Christians were beaten by authorities pressuring them to denounce their faith (Human Rights Watch, 2005).

Other accounts from those living in Laos and Vietnam are even more frightful. Christian Freedom International is a humanitarian aid organization with a current footprint in Laos. In February, 2011, the group reported that “Christianity is viewed as the number one enemy of the state in Laos. Hmong Christians have especially become targets for attack by the Laotian government, in a vicious genocidal campaign that has included forced starvation and the use of chemical weapons” (Jones, 2011). A French newspaper reported another event in April of 2011 involving the Lao People’s Army and Vietnamese secret police. The specially trained group had executed four Hmong Christians who had been found with a Bible in their possession. At least two of the women were raped before being shot, while the rest...
of the villagers were forced to watch. These same villagers were tied up and beaten, among them other women and children, and have not been seen since (Bangkok Post, 2011). As reported by the Voice of America, Yong Chanthalangsy, a spokesman for the Laos Ministry of Foreign Affairs in Vientiane dismissed this report saying, “This is sheer fabrication, spread around overseas without any knowledge of real facts. The fact is there’s no truth to it” (quoted in Jackson-Han, 2008).

With the overwhelming evidence easily seen through the mass media, why would Thailand forcibly deport thousands of Hmong back to a country intent on persecuting them, or worse yet, killing them? Thailand’s prime minister defended the country’s position, saying they had assurances from the Lao government that the refugees would be kept safe. The prime minister went on to justify the decision by saying it was unfair to the Hmong to keep them detained in refugee camps which were in terrible condition (Australia Network News, 2010). Clear evidence exists showing the steps taken by Thailand were not only unnecessary, but other options were readily available that would have guaranteed protection of the Hmong. On December 24, 2009, then Assistant Secretary of State for the U.S. Department of State, Bureau of Population, Refugees, and Migration, Eric Schwartz, wrote a letter voicing his concern of possible forced return of thousands of Hmong. He left for Thailand on an urgent trip to hopefully stop the Thai actions, and learned that over 4,000 Lao-Hmong were not even permitted access to the United Nations High Commissioner for Refugees, instead were being screened by the Thai military. Schwartz concluded his letter by making the clear statement that this sad turn of events was completely avoidable as the U.S., among other countries, was already prepared to settle all refugees that were found to merit protection (Schwartz, 2009). Three days later, a press statement from the U.S. Department of State explained the operation was now in full implementation as thousands of asylum seekers were being forced into Laos (Kelly, 2009).

Being that Thailand took the Lao government’s word on keeping the returned refugees safe, the question must be asked whether or not Laos can be trusted in such situations. If the history of documented cases of Hmong and other ethnic minority and indigenous peoples are taken into consideration, then the answer is a resounding “no”. There is also evidence from participation, or lack thereof, in numerous conventions of the U.N. As of the date of this writing, Lao People’s Democratic Republic is a participant of both the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Prevention and Punishment of the Crime of Genocide, but on neither is it a signatory member (United Nations Treaty Collection, 1948; United Nations Treaty Collection, 2006). On the Convention Relating to the Status of Refugees, Laos is neither a participant nor signatory (United Nations Treaty Collection, 1951). Thailand is also not a signatory on the U.N. refugee convention (United Nations Treaty Collection, 1951). The latest visit by a special rapporteur from the U.N. Human Rights Council was in November 2011, after a 12-year hiatus. Asma Jahangir was the rapporteur, and before her visit, had received numerous serious allegations regarding human rights abuses within Laos (Jahangir, 2010). The visit was very brief, encompassing eight days with visits to the capital Vientiane and only two provinces (Jahangir, 2010). Prison authorities refused her a private audience with prisoners. Jahangir reported that prisoners would not answer basic questions due to their fear of retaliation by the authorities who monitored all interviews (Jahangir, 2010). Jahangir also perceived hesitation and in some cases admitted self-censorship while speaking with leaders from various minority religious groups (Jahangir, 2010). While reviewing constitutional provisions of Laos, she located several laws that were discriminatory and could be very harmful to minority ethnic groups. Of particular importance is “article 9 of the Constitution and article 13 of the Decree, it is punishable to create divisions among ethnic groups or religions” (Jahangir, 2010, p. 10). Since the vast majority of Hmong in Laos are not practitioners of Buddhism, which is the government supported religion (U.S. Department of State, 2008) the Laos constitution could very well deem all religious practices other than Buddhism as creating division among ethnic groups. Of course, this would also result in punishments, simply based on religious beliefs. Enforcement such as this would undermine thousands of Hmong living within the borders of Laos and also gives merit to reports of abuse and persecution. “Indeed, during her mission, the importance of
preventing the divisive nature of religions was repeated by many of her official interlocutors” (Jahangir, 2010, p. 10).

After reviewing the facts and reports by reputable sources, Thailand’s decision to force Hmong refugees into Laos is unacceptable. This choice is even more surprising when the U.S., Canada, Australia, and Netherlands, among other states, were willing to resettle at least the refugees who had been deemed to merit protection. Thankfully, new programs within the U.S. Department of State, working through the U.N. and with help from the International Organization for Migration, allowed some of these refugee Hmong to be settled in new countries (Lom, 2011; U.S. Department of State, 2010). Unfortunately, thousands more are still living in Laos under a dark cloud of human rights mistreatment.

**Contributing Factors**

It would be unfair to lay complete blame on Thailand. The country’s geographic location places it in an area ripe with fleeing refugees seeking asylum. Not only does it border Cambodia, Laos, and Myanmar (Burma), it is also in very close proximity to Vietnam and the southern region of China. All of these states have a history of fleeing immigrants, making Thailand’s policy on hosting asylum seekers that much more important.

Of primary concern is Thailand’s lack of a migration policy that is comprehensive enough to handle the large influx of refugees. The current policies are based on the fact that all in-migration is temporary, and refugees will eventually return to their home states (Huguet, 2011). As history has shown, this is rarely the case, and also the root cause of refugees being forced back into dangerous and volatile situations. Thailand’s history of immigrants is astounding, with the current immigrant population rising over 3.5 million (Huguet, 2011). The government has attempted to build a system where migrant workers can enter the country via an application process. The system does not seem to be working, as fewer than 80,000 immigrants have entered Thailand under the formal process as of the end of 2010 (Huguet, 2011).

Implementing policy structures within Thailand is of the utmost importance. The situation involving the forced eviction of Hmong into Laos is important in light of the Myanmar refugees currently in Thailand seeking refuge. The Thailand Burma Border Consortium estimates the Myanmar refugee population to be over 140,000 persons, and Thailand officials have already suggested the eventual closing of shelters and forced return to Myanmar (Huguet, 2011). With such a large population of immigrants seeking asylum currently within the borders of Thailand, and what appears to be a future of continual influx of more people seeking refuge, the situation needs to be dealt with. To protect future refugees seeking asylum, Thailand can use the Hmong situation to address the much needed overhaul of their current migration policies. Countries around the world must open their borders to resettling these immigrants and relieve some of the stress placed on Thailand. The U.N. should continue its involvement and place pressure on Thailand to use outside resources to their benefit and not rely on the end scenario of sending immigrants back to the countries from which they originally sought refuge. Private organizations, aid and refugee groups, and human rights organizations should place more focus on the situation in Thailand as well as continuing the work that has shown success.

**Global Immigration**

This policy report would not be complete without a brief synopsis on public perception within the Thai population, in comparison to what is seen in the U.S. with regards to immigration. Public view of immigrants by Thai citizens is quite negative. An independent study in late 2010 showed 89% of citizens agreed that government policies to restrict migrant entrance should be more restrictive (Huguet, 2011). Eighty four percent believed “unauthorized migrants have broken the law and should not expect to have any rights at work” while 78% stated that migrants commit a “high number of crimes in the country” (Huguet, 2011, pg. 31). The mindset of Thai citizens is very similar to the view held by many U.S. residents in regards to immigrants entering the border illegally. In the context of legality, in many cases Thailand has every right to deport immigrants who have not entered via the legal process. It is too easy to blame Thailand, or to immediately side with the fleeing refugees and treat them as victims. The situation is much more complex and includes numerous facets, including but not limited to: housing availability; employment opportunities; education; crime; border control; relations with bordering countries; trade and commerce; political agenda; general population perception; and fiscal responsibility. With immigrant numbers rising due to increasing instability within the Indochina region, Thailand cannot solve this crisis without the help of numerous outside resources.

Initially, public outcry and efforts by human rights
groups have been successful in bringing to light the issue of forced deportation of Hmong. More recently, events that are more widely publicized have overshadowed the continuing human rights violations. Publications in major newspapers and other media outlets are limited at best, specifically in the U.S. and Europe. The Congress of World Hmong People, based in Minneapolis, MN, have continued to urge the international community, the U.S., the U.N., and other aid and human rights agencies to help put a stop to the 35-year history of persecution (Eworldwire, 2010). Direct involvement by the U.S. may be limited for political reasons. Relations with Laos and Vietnam have continued to be strained since the Vietnam War and direct involvement with assisting Hmong to leave Laos may not only encounter stiff resistance from local governments, but also give Lao government officials the impression that U.S. policy is against Laotians. This could lead to negative implications, including the decision by the Lao government to close its borders even to relief groups who are currently having some success in aiding Lao Hmong and other minority ethnic groups. The stability of the region is fragile, and relations between states even more so. What rapport exists among Laos, Thailand and countries with the ability to aid in the protection of Lao Hmong needs to stay in place and hopefully grows over time, allowing for further policy integration.

Policy Recommendations

The U.N. must be firm with enforcing its policies against Thailand, Laos and Vietnam, as its standing within Indochina is less political and more focused on the elimination of human rights abuses. Taking all of this into account, the following are policy recommendations in light of the forced return of nearly 5,000 Lao Hmong asylum seekers. If carried into action, these policies will assist in ensuring Lao Hmong are kept safe and given the rights as described in the United Nations Universal Declaration of Human Rights. It will further ensure that future events of this kind will not be repeated, specifically in regards to tens of thousands of Myanmar refugees currently seeking asylum in Thailand.

1. The Thai government should create a long-term migration policy document. The policy should expound on the current work permit program and include the further implementation of outside relief agencies to assist in the process of screening applicants and providing adequate food, housing and medical care while immigrants are within the country. It should also allow for immigrants who have lived within the country for numerous years to gain Thai citizenship. Deportation of refugees should be a last resort, and all other means should be exhausted before such actions take place.

2. The U.S. should continue to be involved through neutral establishments such as the International Organization for Migration, to aid Thailand in the overwhelming number of immigrants seeking refuge. The U.S. should also use diplomatic pressure through other Southeast Asia allies in persuading Laos to cease all discrimination against Lao Hmong and other minority ethnic groups. Specifically for Thailand, launching Free Trade Agreement negotiations could be a strong incentive to fix current policy. Continued U.S. direct investment in Thai stock, along with a possible increase in Thai goods exported to the U.S. may cause a strong influence on the increase of human rights agenda within the Thai government.

3. U.S. trade relations with Thailand, Vietnam and Laos should remain open and continuous. Open trade agreements allow a continuous discourse between nations, making for positive diplomatic relations. If opportunity arises, additional trade for Thailand and Laos should be used as bargaining tools for implementation of new human rights policies that, if not followed, will be immediately suspended. The U.S. currently has Normal Trade Relations status (formerly named “most favored nation”) with Laos (Office of the United States Trade Representative, Laos, n.d.). The fact that the Laos government was willing to implement numerous trade reforms demonstrates that they value this status. With current diplomatic and trading connections with Laos and the surrounding states, the U.S. has ample opportunity to place pressure on Thailand, Laos, and Vietnam in becoming signatory members of the United Nations refugee convention.

4. The Lao PDR should create a program to aid in restoring Hmong heritage and helping them integrate within the country. This training should include the delicate process of educating Lao Hmong who are insistent on a free country, to realize the current ruling party is a permanent position that needs to be respected. It would behoove the Lao government to allow this training to be instructed by outside sources with a neutral stance.
5. The Lao PDR should eliminate policies showing religious affiliation and replace all identification cards that have such markings. Anyone imprisoned for non-violent religious beliefs or for political affiliations should be immediately released from prisons or other places of detainment. Religious persecution in any manner against all persons should cease immediately.

6. The U.N. and its affiliated members should urge the Lao PDR government to end censorship of media and stop control over all domestic media sources. Both internal and external media sources should be allowed access throughout the country and free to print their findings without influence from the Lao PDR government or their entities.

7. The Lao PDR should ensure the safety of all Lao Hmong and other minority ethnic groups by granting full citizenship and immediate rights while conducting an overall transparent operation of integrating them into the country. There are numerous organizations and countries that are willing to assist, and it would behoove the Lao PDR and Thai government to use any and all resources in creating an accessible system for minority groups seeking refuge within their borders.

8. More visits by United Nations Special Rapporteurs into Thailand and Laos, specifically with concern for human rights violations, religious intolerance, torture, and immigration policies. These agents should have unrestricted access to all regions and be allowed more freedom within Laos, including interviews with prisoners, refugees, government officials, and any Lao citizen. All interviews should be conducted without censorship and, if requested, without a government official who may inadvertently censor the interviewee by his mere presence.

9. All member states of the U.N. should pressure the Thai government to enact the multiple human rights pledges the country has promised during its campaign to join the U.N. Human Rights Council, but has failed to carry out.

10. The United Nations High Commissioner for Refugees agency should continue investigating any and all human rights violations involving the repression of minority ethnic groups within the borders of Thailand, Laos, and Vietnam. Particular interest should be placed on the practice of torture and murder of Christian populations in the Northern provinces of Laos. Pressure by the U.N. should be applied on Laos to allow open entry for investigative purposes in all parts of the country.

11. If current reports of the Lao PDR military to completely annihilate Chaofa Hmong (Congress of World Hmong People, n.d.) or other reports that a ’price per head’ has been placed on these Hmong (Benge, 2008; Jackson-Han, 2008) are substantiated, then further actions shall be warranted. The implementation of such action should only be allowed after U.N. approval. If the eradication of an entire ethnic group is occurring, the U.N. needs to deem the act as genocide. This title would authorize the immediate deployment of peacekeeping ground troops or further intervention by active military forces to end the killing. The U.N. cannot afford to look the other way, as was the case during the genocide in Rwanda. The number of victims may not be as vast compared to past genocides, but this should be a moot point if in fact the Chaofa Hmong living in Laos are being targeted for annihilation. Instead of quibbling over political concerns, the United Nations High Commissioner for Refugees must stand by their own conventions and not quibble over political concerns to protect an entire indigenous group of people.

12. Currently, Laos is considered a major player in eco-tourism (Benge, 2008). Europe, North America, and Oceania, along with other states with high tourism output, should list Laos as a dangerous destination for tourists and recommend against traveling to the country until further progress is seen in Hmong integration and reports of Hmong being murdered or repressed are discontinued.

**Conclusion**

There is no doubt that Thailand is overwhelmed with immigrants seeking refuge. The best solution for everyone involved is the safe return of these immigrants to their home countries. Drastic changes and implementation of new policies to create a safe and free environment is required for the best solution to become a reality. There is no quick resolution, and to have the Hmong integrated back into Laos as a free people will be a very lengthy, difficult process. However, it is certainly attainable and the means to achieving this goal are already available. Many of the Lao Hmong were brave
enough to take up arms alongside the U.S. in fighting for their country to be free. It is now time for the world to be brave enough in fighting for the freedom of Lao Hmong to enjoy economic, social, and cultural rights within their own country. Even more important is the guarantee of their right to live.

References


Definition of Child Marriage

What exactly is child marriage and why is this localized, traditional practice a global concern? Child marriage, also known as early marriage, is defined as “any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing” (International Planned Parenthood Federation, 2006, p. 7). In various regions of Ethiopia and West Africa, some girls get married as early as age seven (United Nations Population Fund, 2005). Every day, approximately 25,000 girls become child brides, and it is estimated that one in seven girls in the developing world marries before she turns fifteen (Verveer, 2010a). These conditions have been directly identified by the United Nations’ (U.N.) Millennium Development Goals as key international priorities for eradication.

Forced and/or child marriage is deeply rooted in the social norms of many African (and worldwide) communities. Child marriage is a harmful traditional practice, and no excuse should be made for neglecting the most silent, invisible, oppressed population in the world: the young, uneducated, impoverished girls who lack agency for ensuring their rights are upheld. On a personal level, this amounts to no less than repeated, marital rape of young girls. Yet, sadly the term ‘child marriage’ does not provoke a righteous outrage due to the ubiquitous ordinariness of the term ‘child’ and ‘marriage’. Marriage becomes en de facto an impenetrable barrier; in which a harmful traditional practice is enacted on the powerless marital partner (girl child) without reaction and intercession by those outside. This practice denotes symbolic violence which in place is the mechanism that leads those who are subordinated to misrecognize inequality as the natural order of things and blame themselves for their location in their society’s hierarchies” (J. Crane personal communication, February 14, 2012).

International Instruments for the Protection of Girls Against Child Marriage

To fully understand the implications of child marriage, it is important to first review human rights doctrine and history. In 1948, driven by the leadership of First Lady Eleanor Roosevelt, the general assembly of the U.N. adopted the Universal Declaration of Human Rights (UDHR) without a single dissenting vote (Glendon, 2002). Monumental in scope and meaning, this was a radical departure from the entrenched, historical premise of a Westphalia system in which the state’s treatment of its own citizens was not subject to outside interference. The first line of the UDHR preamble affirms, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (United Nations, 1948). The ‘never again’ rallying cries, emitted subsequent to the Nuremberg trials dealing with war crimes, however left the “…issue of peacetime violations of human dignity untouched” (Glendon, 2002). President Harry Truman gave his first major speech as president upon the signing of the U.N. charter and emphasized “…how deeply the seeds of warfare are planted by economic...
rivalry and by social injustice” and that “...economic and social cooperation are part of the very heart of this compact” (Glendon, 2002).

Child marriage, and arguably all human rights violations, demonstrate a codependent relationship of economic inequity and social injustice which is supported and sustained at the highest state level. The consequences are not only local, but global as well. Social violence is fueled by pathologies of power. Presciently, President Truman as well as the drafters of the Universal Declaration of Human Rights knew that in order to prevent individual human rights violations, states would have to begin intervening in each others’ affairs.

Numerous international conventions and laws have been put in place for the specific protection of children and girls on this issue of child marriage. These laws and conventions established the age at which a person is still considered a child as well as the legal minimum age for marriage. Article 1 of the U.N. Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (United Nations, 1990). Article 16 of the Universal Declaration of Human Rights states that marriage should be “entered only with the free and full consent of the intending spouses” (United Nations, 1948). If the marriage does not occur by coercion, it is reasonable to assume that young girls feel the burden of guilt and pressure from their families to marry; either as a sign of respect, fulfillment of duties, or expectations that the parents/guardians receive a form of bride payment. The Convention on the Elimination on All Forms of Discrimination Against Women, explicitly deals with marriage equality and family relations; outlaws child marriage, and stipulates eighteen years as the minimum age for marriage for males and females (United Nations, 1979).

The International Covenant on Civil and Political Rights also reaffirms that “no marriage shall be entered into without the free and full consent of the intending spouses” (United Nations, 1966). The Declaration on Elimination of Discrimination Against Women strongly advocates that “child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage, and to make the registration of marriages in an official registry compulsory” (United Nations, 1967). The official registry is an important component, which will be further discussed below. The 1990 African Charter on the Rights and Welfare of the Child forbids child marriage and the betrothal of girls and boys; and calls on governments to take effective action, including legislation, to specify a minimum age of 18 years in order to marry (Organization of African Unity, 1999).

The Convention on the Elimination on All Forms of Discrimination Against Women and, The Convention on the Rights of the Child, should be sufficient safeguards for the rights of girls. Both conventions are mutually reinforcing (e.g., calling for the eradication of gender-based abuse and neglect of harmful practices; in seeking to empower girls through participatory rights; and in requiring equal access by girls to both education and health-care information and services). Human rights declarations and conventions already in place lack legitimacy and credibility if their principles are only declarations with no enforcement. In addition, when a powerful nation such as the United States (U.S.) does not sign these conventions, there appears to be little political will to acting on behalf of women’s rights. This is no less than state sanctioning of sexual abuse and exploitation.

There are significant differences between the U.S. and most other countries that sign these conventions. According to Steven Groves, a Heritage Foundation Fellow; and Jason Pielemeier (2011), Special Advisor with the Bureau of Democracy, Human Rights and Labor at the U.S. State Department; made it clear that other countries sign and ratify the conventions as intentional declarations while the U.S. signs as an institutional declaration (S. Groves & J. Pielemeier, personal communication, September 14, 2011). In other words, the U.S. waits until all terms of any convention have already been fully implemented at the state and federal level, or ensuring no such contradictions exist, before signing such conventions. Thus, the terms of these conventions have already been institutionalized before being ratified. Because some of the statutes of these conventions might fall under the jurisdiction of U.S. state laws, the time it takes to verify and/or implement adherence with all fifty states can be lengthy.

For example, the jurisdiction for child protection, health care and reproductive laws fall under the states’ jurisdiction. This would explain, for example, the highly ludicrous position of the U.S. and Somalia being the only two countries not yet ratifying the Convention on the Rights of the Child (Amnesty International, 2011). Considering that Somalia currently does not have a functioning government to ratify an international treaty at this time, the standalone position of the U.S. is all
the more striking. The U.S. signed the treaty in 1995 indicating their intent to ratify. But, the political climate since 1997, when it was last presented to the U.S. Senate, has prevented the readmission of the bill (Amnesty International, 2011).

**Geopolitical Analysis**

A country’s geographical and political realities are important factors in how power structures are established and reinforced. These realities are critical for determining how conflicts and disparities continue to impact the hardest-hit communities in order to assess what solutions are viable and what key players are needed for implementing solutions. Child marriage is not merely determining the appropriate age for marriage and advocating for mutual consent and equal partnership. Poverty begets poverty and often the roots of social injustice and inequity are entwined with ignorance and traditional practices at the community level. However, poverty can also be the purposeful machination of a state manipulating foreign assistance and circumventing it towards a self-sustaining hold on power. Child marriage is sidelined at the crash of this intersection.

Ethiopia’s geopolitical realities also factor into the perpetuation of child marriage. Ethiopia is a landlocked country located in the Eastern region of Africa, called the Horn of Africa, bordered by six conflict-ridden countries: Djibouti, Eritrea, Kenya, Somalia, South Sudan and Sudan. An ongoing military dispute with secessionist Eritrea has blocked Ethiopia’s seaport access to trade. The Central Intelligence Agency (CIA) World Factbook website presents a collection of information on Ethiopia’s statistical data. Twice the size of the state of Texas, Ethiopian population is nearly doubled at 91 million (by comparison, Texas’s population is 25 million) (Central Intelligence Agency, 2011). This makes Ethiopia the second largest population in Africa and thirteenth in the world (Central Intelligence Agency, 2011). This is paramount when considering that forty percent of the population is living under the poverty line (Central Intelligence Agency, 2011). The population is on average very young with forty-six percent under the age of fourteen (compared with the U.S. average at twenty percent) (Central Intelligence Agency, 2011). With the birth rate of forty-three births per thousand population, Ethiopia ranks sixth in the world, following five other African nations; Niger, Uganda, Mali, Zambia and Burkina Faso. Eighty-three percent of the population lives in rural areas (Central Intelligence Agency, 2011).

Additionally, the CIA World Factbook demonstrates Ethiopia’s uniqueness among African countries in that it is only one to not fall under colonial rule, with the exception of a brief Italian occupation in the late 1930s. The long-standing rule of Ethiopian monarchy led by Emperor Haile Selassie, was overthrown by a socialist military coup in 1974. Twenty years followed with continuous instability between bloody coups and uprisings, major droughts and refugee problems, until the Ethiopian People’s Revolutionary Democratic Front (EPRDF) overthrew the socialist regime.

The first multiparty elections were held in 1995 (Central Intelligence Agency, 2011). However, political repression was particularly pronounced during the period leading up to parliamentary elections in May 2010, in which the ruling party won an unlikely ninety-nine percent of the seats (Human Rights Watch, 2010). How this occurred came at the expense of human rights issues such as child marriage, explained below.

The U.S. maintains strong economic ties with Ethiopia. This is due to the fact that Ethiopia is the world’s largest recipient of World Bank funds and foreign development aid. Ethiopia received more than three billion U.S. dollars in 2008 alone, and the U.S. provided 800 million of that money (Human Rights Watch, 2010). The World Bank and donor nations provide direct support to Ethiopia’s district governments for basic services such as health, education, agriculture, water, and food programs. Devolution of power from the national to local level may be necessary while implementing important capacity building of infrastructure and distribution of services. However, the ability and responsibility to enforce international conventions, laws, and human rights oversight is at great risk of dilution due to local and rural entrenchment of social customs and laws.

Civil society would normally provide the checks and balance of advocating for people’s rights and needs. The U.S. government and donor countries regularly provide money to non-governmental organizations (NGOs) operating in other countries for building local capacity and overseeing human rights issues. However, in the beginning of 2009 the Ethiopian government enacted the Charities and Societies Proclamation Law barring NGOs, such as those, working on issues related to human rights, good governance, and conflict resolution, if they receive more than ten percent of their funding from foreign sources (Human Rights Watch, 2010). This effectively bans all foreign NGOs and foreign-supported domestic NGOs in Ethiopia working on human rights
issues like child marriage. At a minimum, organizations have to have scaled down their activities, narrowed their focus, or entirely shut down. According to an Amnesty International report put out in March 2011 “the impact of the law is that today human-rights organizations barely exist in Ethiopia” (Davison, 2012).

One such domestic organization, the Ethiopian Women’s Lawyer’s Association, had been working since 1995 on providing legal assistance to girls and women seeking to use the legal system to fight early marriage. The justification given by the Ethiopian government for the Charities and Societies Proclamation was to ensure transparency, accountability of NGOs, and the money they have received. However, the Ethiopian Women’s Human Rights Alliance believes the law’s repressive provisions are “an attempt by the Ethiopian government to conceal human rights violations, stifle critics and prevent public protest of its actions ahead of the expected National Elections in 2010” and it gives the government “discretionary power over civil society organizations...allowing surveillance of, and interference in, the operation and management of civil society (Ethiopian Women’s Human Rights Alliance, 2009).

Human Rights Watch (HRW) also had their NGO registration revoked due to the Charities and Societies Proclamation. They had been documenting how the ruling People’s Revolutionary Democratic Front government was misappropriating resources and aid to consolidate its power. In Human Rights Watch’s view, the intended and actual result of this law would be to make it nearly impossible for any civil society organization to carry out work the government does not approve of (Human Rights Watch, 2008). It also contravenes fundamental human rights guaranteed by international law and by Ethiopia’s constitution. Most notably, the law criminalized human rights-related work carried out by non-Ethiopian organizations while at the same time making it impossible for domestic human rights organizations to operate with any real degree of effectiveness or independence. The impact of this law explicitly prevents the campaigning for gender equality, children’s rights, disabled persons’ rights and conflict resolution (Human Rights Watch, 2010).

The World Bank and donor nations such as the U.S. are not blocked in providing funding directly to the Ethiopian government-supported agencies, but are unable to provide support to civil society. Human rights enforcement and oversight requires both government partnership as well as civil society’s independence. Funding the Ethiopian government directly has resulted in the concentrated focus on sustaining military goals while circumventing human rights goals.

Ethiopia is a strong ally of the U.S. being one of the ‘coalition of willing’ to assist in the Bush administration’s global war on terrorism. According to the online Ethiopian National Review (which is banned inside Ethiopia), Ethiopia received a substantial increase in military funding from the U.S. in the three years after 9/11 — from $928,000 in the period 1999-2001 to $16.7 million between 2002 and 2004 (Guevara, 2007). The U.S.’s arms export policy, which is codified in the Arms Export Control Act and Foreign Assistance Act, is intended to, along with numerous other provisions, “…prohibit U.S. weapons exports and military assistance that would ... be used to commit human rights abuses. Yet since Sept. 11, 2001, the Bush administration has pushed aside these restrictions while providing countries with known appalling human rights records with weapons and military support” (Stohl, 2007). Dick Armey, the former majority leader of the House of Representatives, became an influential Washington lobbyist after leaving Congress. He worked on behalf of the Ethiopian government to secure foreign military funding despite congressional questions regarding Ethiopia’s human rights abuses and using military arms against its own people to quash pre-election dissent (Guevara, 2007). As we see in Ethiopia, the U.S. government plays an active role in the perpetuation of human rights abuses and stymies attempts of local NGOs to make real progress on issues such as child marriage.

These seemingly unrelated issues of the global war on terrorism and child marriage share a complicit relationship. The U.N. community and its major funder, the U.S., provide funding and support to both causes. The global war on terror has allowed the U.S.to essentially ignore Ethiopia’s ban on charities that are working tirelessly to raise awareness on human rights abuses and attempting to abolish the traditional harmful practice of child marriage. The priorities are such that, arming and supporting Ethiopia’s government and military to launch offensive into neighboring Somalia and Eritrea against Islamic insurgents takes precedence over internal abuses such as child marriage. This explains the growing trend of why people around the world are questioning U.S.’s credibility for its stand on democracy when its actions are contradictory. Furthermore, the actions of the U.S.in supporting the Ethiopian government overlooking human rights issues such as early child marriage is impacting the success of the U.N.
Millennium Development Goals program.

Socioeconomic Analysis

The Amhara region of Ethiopia is extremely impoverished; it is served by few roads, children rarely get more than a few years of education and those who do go to school often walk many miles. It also has one of the highest rates of child marriage worldwide: eighty percent of girls in Amhara are married by the time they are eighteen, half by the age of fifteen; and the most common age for a girl to marry is twelve (Brundtland, 2011). Child marriage is deeply embedded in the social, cultural and religious customs of Amhara, where forty percent of the population is Orthodox Christians followed by thirty-four percent being Muslims (Central Intelligence Agency, 2011).

Child marriage is rooted in religious and cultural traditions based around protecting a girl’s honor, since sex before marriage is seen as an extremely shameful act. A girl’s worth is therefore based on her virginity and her role of being a wife and mother. The practice of bride wealth, in which the girl’s family receives a payment from the groom’s family for her hand in marriage is still commonplace. Thus, there is a short-term economic gain for the parents of a girl being married. Things are changing due to growing awareness and education of the harm early marriage causes girls, including the increased likelihood to perpetuate poverty, not alleviate it.

The Orthodox Church and the Islamic leadership in Ethiopia publicly oppose child marriage – although getting the message out to local communities is taking time (Brundtland, 2011). According to Jennifer Hatley, founder of Christian Ministries in Africa, which provides housing and education for HIV/AIDS orphaned children in East Africa,

“...it is mostly about money. Girl children are commodities that parents can sell to get it...investment is made in the boys while the girls are given to men in exchange for an agreed upon dowry of money and goods. These practices are much more prevalent among the rural and uneducated. I suspect it will be quite some time, another generation at least, before the old traditions are completely abandoned” (J. Hatley, personal communication, November 21, 2011).

Following is a summary of how the cycle of poverty is exacerbated by under-aged girls getting married. In the first year of marriage, most girls under the age of eighteen are likely to drop out of school. In the Amhara region for example, only twenty-seven percent of girls continued with school after their first year of marriage (Gage, 2009). Without completion of secondary (and in some cases, primary) education, girls lack the economic opportunity to support themselves and their family. Sexual relations are dictated, and in many cases, forcible, demanded by husbands.

Girls are at greater risk of contracting sexually transmitted diseases due to early stages of physical development of her body. Child marriage is linked to the “feminization of HIV/AIDS” in which studies conducted in Kenya and Zambia found that fifteen- to nineteen-year-old married girls are seventy-five percent more likely to have HIV than unmarried girls (Verveer, 2010a). Additionally, there is a strong association between child marriage and early childbirth, as young married girls often become pregnant numerous times because of the restriction on reproductive decisions. Due to lack of physical maturity, girls find their health compromised with routine physical pregnancy-related injuries and higher than average maternal mortality. Problems associated with pregnancy and childbirth are a leading cause of death for girls aged between fifteen and nineteen worldwide; and girls below the age of fifteen are five times more likely to die in childbirth than females in their twenties (United Nations Population Fund, 2005). Babies born to under-aged mothers have higher child mortality rates and are more likely to be born underweight, which increases ongoing health issues throughout their lives. Young married girls often lack agency within their marriages and society, making them more likely to experience domestic violence, marital rape and other sexual abuse, and be isolated from family, friends and their community.

Millennium Development Goals

In 2000, 189 nations signed a pledge to focus world attention and nations’ resources to free people from extreme poverty and multiple deprivations (United Nations Development Programme, 2012). This pledge became known as the eight Millennium Development Goals (MDGs), which is targeted for achievement by 2015. Six of the eight MDGs are directly influenced by the harmful tradition of child marriage. Further details of the MDGs can be found on the U.N. website, however the goals are summarized:

1. Eradicate extreme poverty and hunger. The goal is to halve the proportion of people whose income is less than U.S. $1 a day and also halve the proportion of people who suffer from hunger, i.e., being underweight and feeling physical consequence of lack of
food. When girls get married early they have less education, which creates reduced economic opportunities for them to earn decent wages to support their family.

2. Achieve universal primary education. The goal is ensuring all children are able to complete their primary education. Research found that in the rural region of Amhara, only twelve percent of girls completed primary education (Gage, 2009). Studies show girls’ education boosts income later in life: an extra year of primary school increases girls’ future wages by an estimated ten to twenty percent and an extra year of secondary education increases future wages by fifteen to twenty-five percent (Verveer, 2010b).

3. Promote gender equality and empower women. Disparity among rural women in Amhara is seen across all social and economic indices. Business ownership, land rights, and political inclusions are other measures of inequities that are pervasive in Amhara and across Ethiopia. Girls’ lack of agency within marriage and lack of education that occurs in a high percentage of child marriages, excludes their participation and effectiveness in other areas of gender equity.

4. Reduce child mortality. This goal intends to reduce by two-thirds the under-five years of age mortality rate. Babies born to under-aged girls are more likely born premature and underweight resulting in more lifelong health issues and increased risk for mortality. Early child marriage perpetuates the generational cycles of health disparities.

5. Improve maternal health. Reduce maternal mortality ratio by three-quarters and provide universal access to reproductive health. Studies show that girls under fifteen are five times more likely to die from pregnancy and birth related complications and girls under eighteen are two times more likely to die (United Nations Population Fund, 2005). Child marriage extends the view of girls as commodities and health care access is one serious consequence of not providing adequate resources for caring for girls. Young girls lack the education, awareness and agency for seeking out health care even if it is readily available.

6. Combat HIV/AIDS, malaria and other diseases. This goal seeks to halt and reverse the spread of HIV/AIDS, malaria and other diseases. Studies show that young girls are biologically more susceptible to acquiring HIV (United Nations Population Fund, 2005). In addition to biologically vulnerability, again young girls lack the education, awareness and agency for protecting their health and seeking out healthcare assistance.

7. Ensure environment sustainability. This MDG of halving the proportion of people living without access to safe drinking water and sanitation is not directly impacted by child marriage but it is an issue that Ethiopia faces.

8. Develop global partnership for development. This MDG is focused on developing non-discriminatory trading and financial systems. As with the previous goal, there is no direct connection to child marriage but it is an important issue nonetheless.

The Millennium Project is a special advisory body to the U.N.’s Secretary General on the Millennium Development Goals (MDGs) and their focus is preparing scaled-up investment plan that would work with a subset of seven targeted countries, including Ethiopia, to meet the MDG targets (United Nations Country Team in Ethiopia, 2011). The process is for the government of Ethiopia to prepare this plan, which incorporates the MDGs into key policies and provide resources for making significant investments, building capacity and creating new structures and systems. Little has been made publically available so far in directly identifying the practice of child marriage as a key factor in the obstruction of MDGs. Progress towards achieving the MDGs therefore remains to be seen. Time is running out however for meeting significant goals by 2015.

**Policy Recommendations**

Child Marriage involves gender social arrangements, religious teachings, cultural traditions, geopolitical complexities, and socioeconomic disparities. In order to change this harmful cultural practice, the most ideal and effective approach is supporting the community programs already in place and building up comprehensive local activism involving all available civic, religious, educational, political, media and social organizations. This should be done with financial and capacity building support and partnership with foreign development aid (i.e., U.S.) directly to local non-government organizations with transparent reporting mechanisms. It is also important for the U.S. to not only sign and ratify conventions for the protection of all human rights, but also to implement the juridical processes for promoting these human rights conventions into laws that are then rigorously enforced.

With the Ethiopian government passing the Chari ties and Societies Proclamation, the above ideal environment cannot exist. Thus, the first strong
recommendation would be for the U.S. and the international community to strongly condemn this proclamation through whatever means necessary such as tying foreign military funding to the repeal of this law. It is imperative for Ethiopia, and any free society, to have a fully functioning, independent civil society that acts as a complimentary entity to the government provided services and also acts as effective checks and balance for the ruling party of the government.

A second recommendation is for the immediate implementation of a registration system that tracks all records of births, deaths and marriages. Ethiopia lacks a functional national or regional system for the registration and certification of births, deaths, marriages, and divorces. This is important for safeguarding women’s basic human rights in choosing when and whom to marry, enforcing the country’s marriage laws, and reinforcing relevant international conventions that the country has endorsed (Gage, 2009). Those without a birth certificate are left without recourse for preventing or protesting against forced marriage. Without proof of age, government and community officials can easily overlook enforcement of legal age to marry. It is estimated that forty million children, or one-third of the world population, are born unregistered each year (Verveer, 2010a). Foreign development agencies can provide technical and financial assistance for building up this system which is a politically neutral area for development assistance and yet sets a foundation for which enforcement of many human rights activists can act. Once a registration system is in place, the next step then would be to vigorously enforce the already established legal minimum age at marriage law, which is currently set at eighteen. Religious leaders and those with the license to marry must be informed of the legal minimum age at marriage and be subjected to the legal ramifications if they were to illegally marry anyone without a birth certificate and who has not yet reached the age of eighteen.

Education is absolutely fundamental to the human rights of girls in achieving economic opportunities and it also greatly enhances a country’s ability for climbing out of generational poverty. Funding for providing accessible, free secondary education, must be made a priority with all governments and the international community. Economic stability, health status, mortality, and national security can all be linked to education. In addition, job and skill training should be made available at a secondary level so that families can see the short and long-term financial benefits to keeping girls in school. With a large portion of the young population already married, it is important to continue funding and maintaining programs that encourage and support girls to continue with schooling, even after marriage. Funding toward skills training and micro loans and savings programs, job placement services, helping families afford educational advancement. All countries benefit. Girls, parents, husbands, teachers, religious leaders, and local politicians all need to be aware of the harmful consequences of child marriage both to the girl being married, as well as the negative impact it has to the larger community. Only by engaging the community is change most likely to occur.

The U.S. (including the Senate, United States Agency for International Development, Department of Defense, Pentagon and other development funded agencies) should review funding priorities and oversight to ensure the U.S. remains faithful to the Universal Declaration of Human Rights and that military and political goals do not trump human rights concerns. The U.S. should also move swiftly to finally ratify the Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination Against Women to show the international community its leadership in enforcing human rights. Specific political steps the U.S. should take, with respect to Ethiopia, is to push for Ethiopia to respect the international decision and treaty regarding the Eritrea-Ethiopian border demarcation; stop the military support for Ethiopian excursions into Somalia; push for repeal of Charities and Societies Proclamation; and insist on international monitoring for free and fair elections.
Conclusion

Moving forward with these U.S. policy recommendations would make great strides for assisting Ethiopia in implementing a stronger civil society with strengthened relationships with its neighbors. Foreign development aid could instead be focused on sustaining development and supporting human rights. Moral, social justice, and human rights arguments compel the eradication of child marriage. Ending child marriage is an important component of sustainable development since it undermines nearly every U.N. Millennium Development Goal. It is an obstacle to alleviating poverty and hunger; achieving universal primary education, promoting gender equality and, improving child and maternal health. This practice needs to be eliminated by addressing the value of girls within these broader developmental issues. The U.S. has the ability to play a pivotal leadership role in eradicating child marriage.

References


FIGHTING PRIVATIZATION IN CONTEMPORARY BOLIVIA: CULTURES OF RESISTANCE

Brenden Mclane

ABSTRACT: Since 1986, the wave of privatization in Bolivia has spurred social protest movements such as the Cochabamba Water War. The anti-water privatization movement fostered reclamation of indigenous identities by Bolivian indigenous peoples who felt detached from their traditional roots. Indigenous groups historically have been socially, politically, and economically excluded from the Bolivian nation, which has been dominated by a white/Mestizo elite. Contemporary movements have seen indigenous groups rally around their unique indigenous identities. Cultural elements such as collective memory and dance have been used as rallying points for protestors who feel denied full citizenship. In Cochabamba, the annual tradition of the Fiesta served as a focal point for collective action which united participants under their own definition of “Bolivian” culture. The resurgence in indigenous social movements has resulted in the successful overturning of neoliberal policies at the national level. Such movements are models for further overturning of top-down economic policies.

In the past two decades, Bolivia has seen a massive resurgence in indigenous identity in politics and social movements. In the general backdrop of privatization and other neoliberal policies dating from the 1980’s, indigenous peoples from Bolivia’s geographically and ethnically diverse districts have united in opposition to government exclusion and outright oppression. This unity represents a move from organization along once purely economic lines to a more general blending of agendas and tactics among Bolivia’s many indigenous groups, including the Aymara, Quechua, and Guarani. Simultaneously, this newfound indigenous unity does not alienate the non-indigenous poor and middle class. The cooperation between these various social movements also bridges the gap between urban and rural, due mostly in part to the mass exodus over the past half-century of many rural indigenous to Bolivia’s urban centers (Kohl & Farthing, 2006, p. 159). Even within urban settings, greater cooperation and alignment of politics has been seen between the middle and lower classes. These ties between indigenous and non-indigenous, union and committee, urban and rural have been facilitated by a resurgence in cultural expression of national Bolivian and local indigenous identities, especially the latter. In this paper I ask the following question: To what degree have the indigenous cultures of Bolivia helped to promote and shape the resistance movements against privatization and liberalization from the late 1980’s to the present? By privatization and liberalization I generally mean the selling of state owned enterprises to the private sector and the decrease in state-funded services, moving towards free market capitalism. I will argue that the collective memory (the memory shared by Bolivians of their national history) of Bolivia’s revolutionary past, the tradition of fiestas, and traditional dress filled Bolivians’ “repertoire of collective action,” which allows them to cooperate across economic and social barriers (Tilly, 1978, quoted in Shayne, 2009, p. xxi). Thus, these aspects of culture were as much a cause of and tactic in the anti-privatization movement as the dire economic and social conditions in which many of Bolivia’s poor found themselves. Furthermore, Bolivian social movements also represent a move against neoliberal policies, which are defined by free-market economics and minimal government. The recent trends in Bolivian politics show that economic alternatives can adopted in place of the cookie-cutter approaches promoted by international development agencies such as the International Monetary Fund (IMF). These social movements are a model for further social movements which enact policy change away from such top-down trends.

In the following pages, this paper will explain the role of cultural expression in shaping resistance and social movements, while highlighting the most intense periods of social upheaval in Bolivia since the 1980s, ranging from the anti-coca eradication movement, the Water Wars of the early 2000s, to the election and presidency of indigenous leader Evo Morales. It is important to note that while economic inequities were often the face of protests and other forms of resistance, the important role indigenous culture played signified the history of political, social, and economic exclusion felt by many indigenous Bolivians. Thus, the movements against neoliberal hegemony were also movements towards greater representation and democratic par...
Neoliberalism in Bolivia: Privatization & Poverty

To understand the context in which Bolivian indigenous groups have formed their social movements around culture, it is necessary to understand the social and economic situation of the country over the past two and a half decades. The story of Bolivia is not dissimilar to that of other Latin American countries. This country of approximately 11 million people has seen as many as 157 coups in its nearly two centuries of independence (Nash, 2009, p. 214). As far back as the Spanish conquest, Bolivia’s endowment of natural resources such as tin, gold, and silver have been exploited to the benefit of the national as well as multinational elite, while the country’s majority indigenous population has lived on the economic, political, and social periphery. The neoliberal model is generally characterized by unequal distribution of wealth and the transfer of wealth out of local communities. This has been demonstrated time and again by the gross economic inequity throughout the developing world, and reckons back to the oppressive colonial system of the preceding centuries. Since 1985 however, neoliberal policies such as privatization of state industries and the transfer of social services to the private sector have left their stamp on this small country. The beginning of the “New Economic Policy” in 1985 began the wave of privatizations that would last the next two decades. The year after, a bankrupt government was forced by the IMF and World Bank in the form of Structural Adjustment Programs (SAPs) to continue these trends, resulting in the 1992 Law of Privatization and the 1994 Law of Capitalization, which sold the largest of Bolivia’s state owned enterprises (SOEs) to foreign investors (Kohl & Farthing, 2006, p. 107). This meant an increase in the already widespread unemployment due to the inevitable layoffs following privatization, as newly private firms closed down subsidized plants and restructured operations. The Law of Capitalization additionally caused a massive decrease in state services due to revenue loss because the state accounted for 60% of total recorded employment. For example, four Bolivian mines accounted for 25% of state revenue in 1985 (Olivera, 2000, p. 15). Since the passage of these laws, other efforts at privatization have sparked anti-privatization social movements. In the cases of the later Water Wars and Gas Wars, the efforts of such movements’ members have resulted in the successful re-nationalization of SOEs.

Even before the recent trends away from a state-run economy, Bolivia has been characterized by extreme inequality along class and ethnic lines. The majority of Bolivians identify as indigenous: 73% of rural Bolivians and 53% of the urban population claimed an indigenous ethnicity in the 2001 census (Kohl & Farthing, 2006, p. 154). Any analysis of indigenous culture must avoid homogenization of Bolivian natives: 35 distinct cultures are identifiable along with a slew of diverse languages and cultural practices (Kohl & Farthing, 2006, p. 155). Class analysis is additionally relevant to Bolivia’s history: dating back to colonial times, the hacienda estate system benefitted agrarian elite of European and Mestizo backgrounds (Selbin, 1993, p. 40). The 1952 agrarian revolution saw some significant land redistribution to poor Bolivians, but did little to better the situation of Bolivia’s urban and rural poor who overwhelmingly consisted of indigenous Bolivians. In contemporary Bolivia, rural to urban migrations, as a result of mine closures, coca eradication, the removal of agricultural trade barriers, and other top-down government policies have worsened the situation of the Bolivian working class. Urban centers such as Cochabamba, San Juan, El Alto, and La Paz have seen exponential growth since the 1950s. As such, city planners had little time to design new settlements, resulting in poor urban and suburban barrios (neighborhoods) geographically and socially excluded from Bolivian society, economy, and politics (Kohl & Farthing, 2006, p. 159). It is therefore no surprise that these vast urban districts have been the dominant centers of protests throughout the last two decades.

Perhaps the peak of the privatization wave, and its breaking point, was the multitude of protests against the privatization of many of Bolivia’s water systems from 1999 to 2000. These protests centered on the city of Cochabamba, located in Bolivia’s Central Valley region. Cochabamba is the ideal place for any scholar studying the situation of modern Bolivian indigenous groups. In a mere 15 years, the city’s urban population grew by 300%, a result of the closure of rural mines and other policies previously discussed. In an already dry region plagued by droughts, with a state-owned water utility (SEMAPA) that was chronically underfunded and known for corruption, water service extended to

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a mere 57% of the population by 1999 (Assies, 2003; Kohl & Farthing, 2006). Thus, the Bolivian government’s decisions to sell SEMAPA to international water consortium Aguas del Tunari was viewed as a necessary step by the World Bank and Bolivian government in expanding water service to the majority of the population.

Not surprisingly, the sale was opposed by an overwhelming majority of civic groups, unions, and other NGOs representing working and middle class Bolivians. The biggest critique was the near doubling of water rates over the next few months, which drove many rural farmers out of business while posing serious problems for the Bolivian poor (Assies, 2003, p. 24). Oscar Olivera was the outspoken leader of the Coordinadora (The Coordinator for the Defense of Water and Life), a coalition of anti-privatization groups in Cochabamba. As he pointed out, a water rate of $30 per month seems miniscule to IMF bureaucrats in Washington, but for families making $100 or less per month such rates were unacceptable (Olivera, 2000, p. 16). To increase the already heavy burden on urban and rural Cochabamba’s poorer districts, the Bolivian government’s Law 2029 on Potable Water and Sewerage, which authorized the sale of SEMAPA, also made it illegal for citizens to drill their own wells or even collect rain water in cisterns (Olivera, 2000, p. 16). This law inspired the 2010 Spanish feature film entitled Even the Rain, detailing a director’s experience of the 2000 Water War while filming a movie about Columbus. The film draws a striking comparison between the horrors of past colonization and Bolivia’s present situation. Over the next year, a series of protests including marches, sit-ins, blockades, and many violent clashes with state police, forced the government to rethink its sale of SEMAPA. Throughout the movement, the Coordinadora emerged as the key promoter of protests and negotiator with government officials. It displaced the traditional Cochabamba Civic Committee which had been involved in the initial acceptance of Law 2029 (Assies, 2003, p. 15). As a result of Cochabamba residents’ political mobilization, Law 2029 was amended in April of 2000, while SEMAPA returned to state control and the rate hikes were reduced (Assies, 2003, p. 30).

The decisions made by the internationally pressured Bolivian government, and the resulting backlash by poor and middle class Cochabambinos (residents of Cochabamba) in the Water War, are representative of both prior and later protests. The Gas and Tax wars of 2003, the anti-coca campaigns of the late 1990’s and early 2000’s, and the Water War all represent a failure of the Bolivian neoliberal state to institute a participatory democracy. This meant that citizens’ input was not regarded as valuable, and the promised benefits of neoliberal capitalism went undelivered to the majority of the population (Arce & Rice, 2009, p. 91). Instead, top-down policies adopted from international institutions like the IMF and World Bank have characterized policymaking, while traditional bases of civic participation such as unions have been severely weakened and the economy having little improved (Arce & Rice, 2009, p. 89). Non-governmental organizations representing a diversity of urban and rural, indigenous and non-indigenous residents of Cochabamba, for example, were completely excluded from the negotiations led by President Banzer and the Cochabamba Civic Committee with Aguas del Tunari. Indeed, negotiations were held behind closed doors with little public participation and input from poor and middle class Cochabambinos who would feel the largest impacts of the new water law (Schultz, 2003, p. 35). Most importantly, the resurgence in indigenous organizing points to the fundamental feeling among many rural and urban indigenous that they have been socially, economically, and politically excluded from the nation’s advancements as a whole. It is with these points in mind that we now turn to the vital role culture played in Bolivian indigenous movements. Particular attention will be given to Bolivians’ collective memory of earlier rebellions as well as the formation of cultural identity as a driving force behind indigenous groups’ campaign for inclusion.

Role of Culture in Resistance

In recent sociological discourse, it has become widely accepted that culture plays an important role in social movements. A social movement is characterized by its grassroots nature, its collective organization, and most importantly its opposition to certain social structures or policies (Shayne, 2009, p. xx). Culture, in turn, is comprised not only of what people think of as “high culture,” i.e. performing arts, visual arts, etc., but also of a society’s values, beliefs, memories, daily rituals, symbols, language, shared experiences, economy, and etc. (Selbin, 2010, p. 26). Scholar Eric Selbin (2010) has written extensively on the role of culture in resistance, especially revolutionary movements. According to Selbin (2010), these shared cultural attributes define a person’s outlook on the world around them. People carry them as a sort of “tool kit” with which they fill their “repertoire of collective action” (Selbin, 2010,
This repertoire of values, memories, beliefs, language, and arts helps an individual to interpret the world as well as informing his/her visions of the future. These attributes can additionally be employed as a tactic in resistance movements. For example, the memory of a revolutionary figure might unite and inspire potential activists towards the movement’s goals. It is therefore no surprise that many Latin American social movements incorporate historical revolutionary figures into their names, such as the Zapatistas in Mexico, the Sandinistas in Nicaragua, and the Farabundo Marti National Liberation Front in El Salvador. Perhaps the most important “tool” is that of shared memory: what people of a given society have accomplished in the past will affect what the present generation views as possible in the present. These memories are conveyed through storytelling and have the possibility to be relayed to others outside of a specific society. The story of the Mexican revolution is one such example of the dispersive power of story. Decades after the revolution, Cuban revolutionaries and even individuals as far away as Mozambique still recalled the powerful image of Mexican leader Zapata on his white stallion (Selbin, 2010, p. 36).

Culture is central in building a group identity, whether or not it is employed as a tactic in a social movement (Goldstein, 2004, p. 135). People identify who belongs to the group and who does not, not only by memory and shared experience, but by more obvious methods such as language, dress, and art. For example, performance of a local dance or fiesta can help disparate members of a community identify with a shared set of cultural markers. Scholars Taylor and Whittier (2009) have asserted the importance of such rituals to mobilizing communities (cited in Shayne, 2009, p.146). As sociologist Julie Shayne (2009) summarized their argument, rituals allow oppressed groups to transform de-mobilizing emotions into positive self-conceptions and group identities, which are replete with mobilizing potential (p. 146). A vital part of such mobilization is the reclamation of such rituals by the oppressed group. For example, visual and performing arts, dress, etc. have the potential to be expropriated from an indigenous community and “folklorized” by a state as a “national culture,” even while the original community is marginalized. However, those traditions can also be re-appropriated by local communities even while others outside of the immediate locality still identify with the practices (Goldstein, 2004, p. 135). This is the case of the Fiesta de San Miguel, an important annual ritual among an indigenous migrant barrio in urban Cochabamba, which will be discussed in the following sections. Thus, a local ritual which became nationalized by the hegemonic state still retains its indigenous meaning and can be used to protest against the same authorities. Despite the plethora of identities of and differences between Bolivia’s indigenous groups, many cultural aspects are shared across communities.

The important roles that these “cultural tool kits” played in shaping Bolivian social movements in the 1990’s and 2000’s will be demonstrated in two main examples which span collective memory to performing arts. First, the role that stories about and the memory of Bolivia’s 1952 agrarian revolution play in shaping contemporary underprivileged Bolivians’ point of view will be discussed (Canessa, 2009; Selbin, 1993). Next, I address the importance of the fiesta and its accompanying music and dance to both indigenous Bolivians and the non-indigenous population at large (Goldstein, 1998, 2004; Lagos, 1993). As a counterpoint to the argument of indigenous unity, I will briefly discuss the problems indigenous groups have encountered in solidifying their social movements (Albro, 2007; Canessa, 2007).

**Collective Memory of the Bolivian Revolution of 1952**

Scholar Eric Selbin’s (2010) argument about the role of stories in resistance was discussed in the previous pages. Stories of past revolutions and oppressions are passed down from generation to generation, or even across national borders, and inform contemporary people’s views on what may be possible for the future. In the case of Bolivia, Selbin (1993) has pointed out how the 1952 Bolivian Revolution has descended into obscurity for historians and non-Bolivians in general (p. 43). How do contemporary Bolivians remember the events surrounding the 1952 seizure of state power by the poor and working classes? Scholar Andrew Canessa (2009) has conducted interviews with rural Aymara Indians from the La Paz region of Bolivia. He has posited that while not all Bolivians remember the specifics of the 1952 revolution, especially the rural Aymara with whom he conducted his interviews, the oppressive pre-revolutionary system of the hacienda and the resulting agrarian reform are remembered (Canessa, 2009, p. 182). The political violence of 1952 and the resulting government change achieved at best marginal changes in Bolivian society. Land redistribution helped to lessen the inequality that had been institutionalized under the
While the revolution may have been forgotten, the memory of the times and changes are still very much alive in Bolivians’ collective memory. Canessa (2009) points out how elderly Bolivians and their children remembered, with much pain, the beatings they received from white colonialists who used whips to punish farmers for completely arbitrary reasons (p. 181). Furthermore, his interviewees recall the difficulty they had in defending themselves against the elite population because of their inability to read and speak Spanish. The government and the Catholic Church had, up to that point, purposely avoided providing education for Bolivian indigenous, who remained illiterate and monolingual (Canessa, 2009, p. 181). This makes an interesting connection to the modern predicament of many of the world’s poor. Peruvian economist Hernando de Soto has postulated that one reason for underdevelopment in many countries, particularly Latin American countries, is the lack of documentation of urban migrant populations. People who cannot weave through the intricacies of modern bureaucracies also cannot establish an identity, nor establish property rights or even vote (de Soto, 2008). Additionally, Canessa (2009) observes that for Bolivians, “control over the land and over their lives is closely linked to the overthrow of the hacendados and the ability to defend themselves through written documents” (p. 182). If one considers the rapid, unplanned urbanization that characterized Bolivian urban centers, which resulted in hundreds of thousands of informal squatters with no legal right to their already scarce land, the memory of such insecurity must have a powerful effect on contemporary Bolivians. If these Bolivians stemmed from indigenous groups who still do not feel quite at home with the Spanish language, the effects are even greater. It is not inconceivable that many Bolivians at the turn of millennium could not help but see the parallels between colonial domination and the neoliberal system now shaping their world.

What does this mean in the context of the anti-neoliberal protests that sprouted up throughout the 1990s and early 2000s? Thinking back to the discussion of “repertoires of collective action” provides some clues. Whether the Bolivians who participated in the various movements had directly experienced the pre-1952 repression, or had learned of it from their parents or grandparents, most Bolivians had experienced some type of displacement from their land, be it coca-eradication or mine closures, etc. The outrage and helplessness these people felt, as well as the dislocation caused by forced migration, certainly made them good candidates for rebellion. Additionally, many poor Bolivians benefitted from the agrarian reform after 1952, and therefore the younger generations could remember those successes and make the connection to their own contemporary issues with land rights. Thus, their “repertoires” were filled with these experiences and gave them symbolic tools for future resistance. When further economic reforms were introduced, poor Bolivians of all backgrounds who had already faced a decade of political, economic, and social violence; simply had enough. As Arce & Rice (2009) point out, “scholars working within the relative deprivation school of thought would argue that the situation in Bolivia is ripe for mass-based political uprisings” (p. 91). However, one important piece of the puzzle is missing here: the importance of the formation of a collective identity both within indigenous communities and between classes, sectors, regions, and ethnicities (Arce & Rice, 2009, p. 90). The role collective identity and its formative process play as “tools” in indigenous Bolivians’ “cultural toolkit” will now be taken up.

Fiestas, Collective Identity, & Protest

Performance of a traditional dance can help a community form a stronger cultural identity. This allows members of a community to develop positive self-conceptions and transform feelings of hopelessness or powerlessness into fuel for political mobilization (Shayne, 2009, p. 146). Such fiestas, especially in urban migrant communities, have promoted greater cohesion and social inclusiveness in communities who feel excluded from larger social spheres. In turn, these fiestas have also given communities organizational skills that concretely aid in social and political organizing.

Fiestas occupy a special position in Bolivian society. They represent a hybridization of indigenous culture with Spanish Catholic influence, where indigenous Bolivians have re-formulated cultural elements such as the Christian religion that was forced on them by Spanish colonizers, incorporating Christian traditions into their own indigenous culture (Lagos, 1993, p. 54). Many fiesta traditions have been associated with indigenous rural Andean culture, embodying the ideals of the
countryside. Since 1968, the Bolivian government has recorded and catalogued these traditional celebrations, and in the process made indigenous folklore property of the state (Goldstein, 1998, p. 117). Thus, the state nationalized the folkloric traditions of indigenous groups who themselves received little representation in the national or local government, equating folklore with the elite class (Goldstein, 2004, p. 135). By claiming the right to ownership of indigenous folklore, and declaring such traditions to be the official national Culture of Bolivia, the state sought to legitimize its own position of authority. This occurred even as most Bolivians, indigenous or not, remained outside of its direct representation. The embodiment of this process was the annual Carnaval de Oruro, the city of Oruro’s local version of Carnival (Goldstein, 1998, p. 118). These obvious contradictions were not limited to the citizens of Oruro, but in fact extended to those Bolivians for whom the yearly festival may have held little meaning, i.e. non-Aymara/Quechua.

Previously cited sociologist Daniel Goldstein (1998, 2004) conducted ethnographic research in a migrant barrio of Cochabamba, Villa Sebastian Pagador, preceding and directly after the Water Wars of 2000. He observed a particular rendition of the Carnaval de Oruro, entitled the “Fiesta de San Miguel,” by the barrio inhabitants. These were indigenous peoples who had migrated from the district of Oruro in Bolivia’s altiplano region the preceding decade. The political, economic, and social situation of the Pagadoreños (citizens of Villa Sebastian Pagador) is typical of many indigenous migrant communities. Many residents were squatters, all were to some degree politically and socially excluded from the city. Their lack of official titles to their lands had them paying taxes while receiving few benefits in the form of development projects such as schools and roads (Goldstein, 2004, p. 30). Due to Villa Sebastian Pagador’s unofficial status, the barrio residents established their own form of government with local leadership. The organization of the annual fiesta, while preserving the cultural heritage of the migrants, was also consciously utilized by community leaders to leverage a number of benefits for the barrio. The appearance of a unified community, which barrio leaders sought to create, gave credence to the barrio for city authorities as well as international development agencies looking to send aid (Goldstein, 2004, p. 120). Thus, the fiesta was an effort to become visible.

The Fiesta de San Miguel itself is the centerpiece of the barrio’s calendar. Performed over several hours every September 29, the celebration of the barrio’s patron Saint requires months of preparation and significant funding to organize. The resulting parade is spectacular: dance and musical troops of men and women, both young and old, line the streets in gleaming traditional costumes, some so large they nearly double a dancer’s size.

At this point one might pose the following question: what is the connection between the Fiesta de San Miguel and the protests during the Cochabamba Water War? The fiesta which unites the residents of Villa Sebastian Pagador is not unique, but rather one of many fiestas that occur throughout Cochabamba and Bolivia in general. These fiestas connect dislocated indigenous communities to their traditional heritage, and create a mechanism for collective action. Furthermore, the community cohesion required to stage such events makes transitioning those skills to political and social organizing much more natural. The social marginalization these urban indigenous already felt, and the resultant desire to be recognized as part of the nation both symbolically and in real political terms, made these groups ripe for social upheaval.

When the time did come, in the form of SEMAPA’s sale to Aguas del Tunari, fiestas were a part of the marches, sit-ins, and protest rallies that followed. Perhaps the most symbolic moment of the Cochabamba protestors’ unity in the face of the Bolivian government, riot police, and Aguas del Tunari came on February 4, 2000, when the Coordinadora led by union leader Oscar Olivera called for the peaceful seizure of the city’s central plaza. The result was a massive fiesta of 30,000 participants, replete with bands, flowers, and dancing, which while different in appearance and organization was similar in the symbolic collective unity of Cochabambinos as Bolivians, not just disparate indigenous groups (Olivera, 2000, p. 18). The huge fiesta allowed the affected groups, comprised of Bolivians of all ethnicities, sectors, and social classes, to articulate a collective demand to the Bolivian government. The protests united diverse civil society groups such as factory unions, campesino organizations, indigenous communities, students, and even middle class city dwellers under a new form of organization, the Coordinadora (Arce & Rise, 2009; Assies, 2003; Böhm & Otto, 2005).

While these researchers highlight the new nature of diverse organizations like the Coordinadora, it is critical to note the specific role which culture played in uniting these socially and ethnically diverse actors. Protestors were certainly moved by the appeal to a greater Bolivian nationality which was evident in the
widespread carrying of Bolivian flags as well as the fiestas. However, I believe demonstrators were also united by the place of water in all Andean cultures as sacred (Oliveira, 2000, p. 16). Regardless of an indigenous Bolivian’s specific ethnicity, water is tied to rural traditions centered on a spiritual connection to the land. By commoditizing a sacred right of indigenous Bolivians, the government levied just another insult towards those it claimed to represent. Thus, the now urbanized indigenous felt that much more dislocated. In those regions where rural water systems were privatized or pressured, similar cultural opposition was clear, as evident by the mass rural indigenous movements led by coca-growers Felipe Quispe and Evo Morales in the same year (Kohl & Farthing, 2006, p. 167). In essence, Bolivians of all backgrounds were united by the economic as well as cultural importance of water. At the same time, aspects of their shared national culture brought them together while allowing differences between diverse groups to remain.

Problems in Post-Water War Bolivia

Scholars who study Bolivia have termed this resurgence of indigenous identity in politics the “Indigenous Awakening” (Canessa, 2007, p. 198). In general, the recent mobilization has come primarily as a result of what is viewed as an exclusive and homogenizing state. Thus, indigenous Bolivians have shown that they wish to remain true to being Bolivians as well as their local ethnic identity, and not have the state define for them what their culture should be. The mass unification of indigenous Bolivians, who might earlier have viewed each other with suspicion, has been clearly effective as it resulted in the election of Evo Morales in 2005. Mr. Morales is distinguished as the first indigenous president of any Latin American country (Canessa, 2007, p. 198). That is not to say that this newfound alignment of political goals has been ubiquitous throughout Bolivia. Observers of contemporary Bolivia have noted the conflict between indigenous factions that has occasioned Evo Morales’ presidency. Even while Morales’s government has prioritized indigenous needs, recent indigenous protestors from the lowland Amazonia region have claimed that the Aymara president favors his own highland people (Albro, 2007; Valdez, 2011). While cross-ethnic conflicts may happen from time to time, the sheer weight of indigenous protests demonstrates that Bolivia is truly seeing an indigenous awakening unlike anything in its modern history. As the last ten years have shown, the mass of indigenous-based movements has snowballed. This has empowered Bolivian Indians for the first time with the taste of self-determination and political inclusion, which has been denied them since colonial times.

Policy Implications of Bolivian Social Movements

The empowerment of indigenous Bolivians also has remarkable policy implications. The re-nationalization of its state-owned water utilities is perhaps the first such case of a reversal of IMF-imposed policies since its inception at the end of WWII. This means that citizens of developing countries, when properly organized and motivated, do still have the opportunity to define the form and policies of their national governments and economies. Specifically, it shows that the neoliberal model of free markets and small government is not necessarily set in stone as the fundamental system of the 21st century. While state socialism is unlikely to reemerge as a viable political-economic model, it is clear that certain public goods such as water do not have to be commoditized in a free market system. Indeed, by the effects of such privatization in Cochabamba on poor citizens who could barely afford water to begin with, such commoditizing is simply bad policy. While the IMF will certainly continue to promote privatization and liberalization as development models, its policy makers will certainly think twice before imposing its trademark cookie-cutter Structural Adjustment Programs (SAPs). While this argument focuses on the effects of privatizing and capitalizing public goods, and such a process’s ill results on the poor, there is a more fundamental issue at stake. That is the equal participation of citizens from all sectors, classes, and ethnicities in the democratic state. The case of Bolivia indicates the potential for the exclusion of people who are not in power, in this case the repression of an indigenous majority by the European elite minority. Inclusion, political and economic, should be the first goal of any democratic system. Bolivia has far to go in this manner: many people continue to live undocumented, without legal title to their property, and working in an underground economy. In the case of the Water War, citizens were excluded from the privatization discussions around SEMAPA, the Cochabamba water utility. Regardless of whether such privatization was good or bad policy, the citizens of Cochabamba, or any nation, state, or municipality must be given a voice in the debate of such a potentially life-changing
decision. The protests occurred because of the 300% water rate hikes, but the underlying cause was political exclusion. While in Bolivia the indigenous social movements and the election of President Evo Morales suggest a move away from free market capitalism and towards a more (although by no means complete) socialist system, the overall trend is that of greater democratic participation and representation at all levels of government. Regardless of one’s ideological position in relation to capitalism or socialism, more democracy is without a doubt better for society.

Conclusion

The role of culture in shaping social movements has until recently played a secondary role for many scholars who look to economic indicators instead. As we have seen in the cases of contemporary Bolivian indigenous movements against privatization, economic policy changes have been the catalyst while cultural repression and political/social exclusion have been the underlying causes. Indigenous groups who have suffered centuries of political, social, and economic exclusion from the nation have used their culture as a tool in their “tool kit of collective action.” First, protestors have utilized their collective memory of the repressive past as well as their own experience living on the social periphery to spur their movement. Next, many indigenous Bolivians have built group solidarity through the local and national tradition of the fiesta, using it to organize themselves around common cultural elements and beliefs, forming a collective identity among and between diverse ethnic groups. While more research must be performed regarding the role of indigenous culture in Bolivian social movements, the existing literature suggests its impact cannot be underestimated. While this newfound unity is remarkable, only time will tell if indigenous and non-indigenous Bolivians can consolidate their gains. Will the national government continue to prioritize indigenous needs or return some day to the age-old pattern of exclusion, elitism, and top-down governance? In the end, the desire of Bolivians of all ethnicities, sectors, and classes to improve their lives in a free, open, and representative system is not unlike that of people all over the world.

References


Environmental justice has been defined as, “everyone is entitled to equal protection and equal enforcement of environmental, health, housing, land use, transportation, energy and civil rights laws and regulations” (Bullard et al., 2008). Part of this environmental justice equation involves the spatial distribution of industrial facilities. Policies have been put in place to protect the public from health and other impacts associated with some industrial facilities such as factories, landfills and hazardous waste facilities, which can emit toxic pollutants and deal with hazardous materials. Siting policies are enacted to ensure that these industries are not in residential areas and the risks to the public are minimized. That being said, studies have found that despite siting policies factories, landfills and hazardous waste facilities have been placed near low income, minority populations and communities that have few resources to combat industry placement (Abel, 2008; Atlas, 2001; Bullard et al., 2008; Kreig, 2009). These communities are bearing an unequal burden of health impacts from the facilities near where they live. This unjust distribution of industrial activities and hazardous materials is the focus of my study, but with a twist.

Equitable distribution issues concerning these industrial facilities have been studied over the years, but there is little evidence that anyone has examined industrial scale renewable energy siting in regards to equitable distribution of facilities. Renewable energy facilities consist of: solar, geothermal, wave, and wind power; and it is the last source, wind power, which I will examine in this paper. Wind farms bring impacts on public health and the environment just like other large industries, but the siting regulations only take into account each wind farm on its own. Siting policies need to take into account not only the placement of wind farms in respect to other large scale facilities such as hazardous waste facilities, but also in respect to the other wind farm development in the area and the combined impact they have on the community.

Pressures on local utility companies to meet their Renewable Portfolio Standards (RPS) percentages each year has added to the rush to establish renewable energy facilities. This has led to a flurry of wind farm construction and there are communities with multiple wind farms surrounding them. This is where the inequitable distribution comes into question. Multiple wind farms in one area concentrate the health impacts associated with wind farm activity. Do the wind farm siting policies concentrate the associated hazards in areas that are already overburdened by other kinds of polluting facilities?

A case study of Arlington, Oregon is used to establish a foundational understanding of the spatial distribution of facilities at the county level in order to evaluate distributions of other wind and waste facilities throughout the Pacific Northwest and the health impacts that multiple industrial facilities could have on the community.

**Methods**

Arlington is a small rural community in Gilliam County in northern Oregon with a local population of 586, one-third of the entire county population (U.S. Census Bureau, 2011). Waste Management Northwest’s Chemical Waste Facility and Colombia Ridge Landfill and Re-cycling are both based near Arlington and they receive more than 120 million tons of waste materials each year from surrounding communities; including Seattle and Portland. According to the Oregon Department of Energy, Energy Facility Siting...
website this rural community is also home to six operating large-scale wind farms with a total of 430 wind turbines. There are another five even larger wind farms in the permitting process or under construction totaling another 1300 turbines for this area alone (Energy Facility Siting, 2011). This combination of hazardous facilities and wind farms together in one place make Arlington a good candidate for a case study of spatial distributional issues in regards to wind power generation and other industrial facilities.

In order to determine whether wind farm communities were bearing an unfair burden, I first had to assess how to measure health risks from facilities. The Biennial Report from the United States Environmental Protection Agency (EPA) is used to measure the health risk to individuals from various types of industries producing or handling hazardous waste. The focus was to follow the health risks over time to determine which facilities harbored the most risk to the public. The health risk data were overlaid with the census data to determine the proportion of the public affected, by which facilities and to what extent (Atlas, 2001). I used the EPA’s Biennial report of hazardous facilities to locate and assess risk from the Waste Management sites to determine the risk buffer or area of impact from the waste facilities within five miles. In a study by Troy D. Abel about Toxic Release Inventory (TRI) facilities in St. Louis, one kilometer km buffer rings were used to assess the risk levels to the community (2008). Abel’s study found that risks for facilities differed by site and mapping each site individually provided more accurate risks to the local community (Abel, 2008). This method helps to define the health risks at different distances from a wind turbine.

I then had to determine how to measure areas at risk. In the siting of a wind facility the Oregon Department of Energy: Energy Facility Siting setback (distance from a residence) requirements are: “(a) all facility components must be at least 3,520 feet from the property line of properties zoned residential use or designated in the Gilliam County Comprehensive Plan as residential” (Energy Facility Siting, 2011). Being that most of Arlington is farm land I also included the siting rules for non-residential areas, “If (a) does not apply, the certificate holder shall maintain a minimum distance of 1,320 feet, measured from the centerline of the turbine tower to the center of the nearest residence existing at the time of tower construction” (Energy Facility Siting, 2011). I used U.S. Census Tiger shape files to determine the Oregon zoning and mapped that using ARCGIS, a computer program used to map spatial data, to identify the residential areas. Umatilla County, near Gilliam County, passed regulations approving a two mile setback for noise from wind turbine to a residence, which was the setback pushed by activist groups like the Blue Mountain Alliance and Friends of the Grande Ronde Valley (Tipler, 2011). I chose buffer zones of 1,320 feet and two miles around each wind turbine to represent the Oregon State siting requirements for a wind farm and the conservative estimate from activist groups for setbacks from wind turbines, respectively.

To understand the distribution of the wind turbines, we need to measure if the placement of the wind turbines is significantly clustered or dispersed in the study area. The distribution of facilities was analyzed within a Geographic Information Systems (GIS) framework. I used ARCGIS to map out the locations of each wind turbine on wind farms within a radius of five miles from the city limits of Arlington, Oregon and the sites of the waste facilities in that same study area. Using the county as a study area, I used the nearest neighbor index, a statistical tool, to evaluate the average distance from each wind turbine to every other wind turbine to determine if the turbines are clustered, random or dispersed (Mitchell, 2009, p. 88-91). The nearest neighbor index is calculated using:

$$R = \frac{r_{\text{obs}}}{r_{\text{exp}}}$$

where $R$ is the nearest neighbor ratio and $r_{\text{obs}}$ is the distribution of the observed points and $r_{\text{exp}}$ is a theoretical distribution, $d$ is the distance to the nearest neighbor, $n$ is the number of wind turbines, $i$ and $j$ are the target point and every other features, respectively, and $A$ is the study area.

In order to assess the extent of the distribution of the wind turbines, we need to test if the distribution is by chance. The statistical significance of the distribution ratio is tested using the $Z$-score equation:

$$Z = \frac{r_{\text{obs}} - r_{\text{exp}}}{SE}$$

with $SE$ being the standard error calculated as:

$$SE = 0.26136 \sqrt{\frac{A}{n^2}}$$
Map 1. Wind turbine and waste facility locations in Arlington, Oregon.
It is also important to understand the extent of the distribution at various distances within the study area, in order to determine if the distribution is random or not. I used the K-function, another statistical test, to evaluate the distribution of turbines at different scales (Mitchell, 2009, pp. 98-99). The K-function is calculated using:

\[ L(d) = \sqrt{\frac{\sum_{i=1}^{n} \sum_{j=1}^{n} k_{ij}}{n(n-1)}} \]

L is the value at any given distance d and n is the number of wind turbines, \( k_{ij} \) is the weight (1 if \( d_{ij} \leq 0 \) and 0 if \( d_{ij} > 0 \)) i and j are the target point and every other features with a distance d, respectively, and A is the study area. This produces a graph with an expected value for any given distance in a random distribution shown as a line at a 45 degree angle and then plots the L value for the function. If the observed L values are above the expected values, the sample is clustered and if below it is dispersed. My null hypothesis is that the distribution of the wind turbines is random. A null hypothesis is the assertion that there is no relationship between what is being studied, such as the wind turbine placement is merely by chance. This graph also displays a confidence envelope which shows the upper and lower boundaries of a random distribution. If the observed values are outside the confidence envelope then they are statistically significant and the distribution is not due to chance.

Even if the statistical tests show an inequitable distribution of wind turbines in Arlington, it does not necessarily mean that this same pattern is repeated elsewhere. To test this idea, I mapped the locations of the waste facilities and wind farms in Washington, Idaho, and Oregon and analyzed them for distribution and if they were sited in small, rural communities. I gathered the location information for each municipal landfill from Oregon and Idaho’s Department of Environmental Quality and Washington’s Department of Ecology (Idaho, 2012, Oregon, 2012, Washington, 2012). Wind farm locations were obtained from the Renewable Northwest Project website (Renewable Energy Projects, 2012). The locations of the hazardous waste facilities were collected from the EPA’s Toxic Release Inventory Program website (EPA, 2012). I used a data visualization program called Tableau to map each location and for analysis of the block group income per capita data from the U.S. Census Bureau (U.S. Census Bureau, 2009).

![Figure 1. K-function graph for wind turbines in Arlington, Oregon using ARCGIS. Distance is in meters.](image-url)
Map 2: Locations of hazardous waste facilities, municipal landfills, and wind farms in the Pacific Northwest.

Hazardous Waste, Landfill, and Wind Farms with Per Capita Income by Block Group

Map 3: Per capita income by block group for 2009 and areas populated by wind farms and waste facilities.
Results

Based on the mapping of the wind turbines, the distribution of the wind turbines suggest that they are clustered and there are areas of Arlington that experience impacts of both the wind turbines and the waste facilities (See Map 1). Waste facilities, both hazardous and municipal, are represented by the red squares. Waste facility impact areas are illustrated by the dark red buffer lines. When I mapped the land use zoning in Gilliam County, I found no “Residential” areas in Arlington (See Map 1). It was zoned as “Urban” and “Rural Industrial” so I used the option (c) setback requirements for noise, which are 1,320 feet, for the wind turbines constructed in agricultural zone areas. Light gray lines indicate these wind turbine setback for noise as required by Oregon State law. The green line illustrates the two-mile noise setback used in Umatilla County. All of the city-proper of Arlington is clear of the impacts of the wind and waste facilities at these setback standards, but there are still areas of the rural community that fall under the impact of both types of facilities.

One interesting finding when I mapped the waste facilities was that the Roosevelt Regional Landfill in Washington State, represented by the red buffer circle at the top of Map 1, also impacted the Arlington area.

The results of the statistical tests for distribution of the wind farms illustrates that the wind farms are clustered and significantly so. The results of the nearest neighbor index calculations are: the average distance between wind turbines was 246.55 meters and with a ratio of .1847 the distribution is clustered. A Z-score of -32.68 indicates that the clustering of turbines is statistically significant at the county level. The K-function test shows that the wind turbines are clustered since the observed values (red) are above the expected values (blue) (See Figure 1). The distance of the clustering is out to more than 8500 meters or four miles. This means that the distributions of the wind turbines in Gilliam County are indeed clustered.

Mapping of the hazardous waste, municipal landfills, and wind farms in the Pacific Northwest illustrates that the clustering of wind farms in rural communities (See Map 2). The red circles show locations of hazardous
waste facilities dealing with 3000 or more times of hazardous waste per year. The brown circles are municipal landfills and the green circles are wind farms. Some of the communities with clustered wind farms also contained either a hazardous waste facility or municipal landfill.

The map (See Map 2) of Washington, Oregon, and Idaho illustrating the locations of the hazardous waste facilities, landfills, and wind farms shows clustering of wind farms in specific areas such as North-Central Oregon, Southern Washington and Southeastern Idaho.

Maps 3 and 4 depict the per capita income by block group for each county in the Pacific Northwest. These maps are overlaid with the facilities map and shows numerous windfarms and landfills in communities with incomes below $41,000. Closer investigation in Map 4 reveals many locations in Northern Oregon and Southern Washington with multiple facilities and average incomes below $28,000.

Conclusion

Wind farms surround Arlington. If you take into consideration the two mile setback, used in the neighboring Umatilla County, the entire city of Arlington could be impacted by the noise of wind turbines (See Map 1). This means that most of the residents could be at risk from noise issues, vibrations and flicker effects associated with the wind turbines. This also expands the parts of the community that could be potentially under impacts of both the wind turbines and also the waste facilities if the two mile buffer setback was used. The combination of these two different types of facilities in one place, tip the scales of equity against the citizens of Arlington.

Since Arlington, Oregon is considered an agricultural community, the larger setback requirements for wind farm construction do not apply. Wind turbines can be constructed within 1,320 feet of a residence. This smaller setback requirement leads to wind turbines being located closer to residents in the agricultural community than in a regular residential zone and puts these rural residents, who are already at risk from nearby hazardous waste facilities, at a greater risk of health impacts from these turbines. Expanding the setback requirements for all areas creates a safe zone in which to operate these facilities and decreases the health impacts to the population.

The analysis of the Pacific Northwest data depicted many low-income communities, besides Arlington, Oregon, dealing with the combined impacts of energy and hazardous waste facilities. This shows that Arlington’s experience is not isolated but has been repeated in locations across the region. The clustering of the wind farms in places that are already home to hazardous waste facilities concentrates the impacts to a smaller population in number, but compounds the health risks to these individuals. This is the inequitable distribution that researchers and activist groups have worked to change (Abel, 2008; Atlas, 2001; Bullard, et al., 2008; Krieg and Faber, 2004). Renewable energy facilities also pose health risks to the public and should be treated the same as any other large scale facility in the siting policies for the permitting process. By holding all large scale industries, “green” or not, to the same siting standards and creating policies that will limit the number of facilities that can operate in one area, the health risks to the public are diminished and communities like Arlington will be safer places to live.

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References


ARIZONA V. JOHNSON: LATEST DEVELOPMENTS IN THE WAR ON TERRY
Quinn Russell Brown

ABSTRACT: This article highlights Arizona v. Johnson, a 2009 Supreme Court case concerning the use of a pat-down during a traffic stop. The Fourth Amendment requires police officers to obtain probable cause before conducting search and seizures. In Terry v. Ohio (1968), the Supreme Court held that reasonable suspicion—more than a mere hunch, but less than probable cause—was enough to justify a temporary street stop and a pat-down for weapons. These reduced standards resulted in an unparalleled increase in incarceration and set precedent for the following half-century of pro-police jurisprudence. This article coins the term “Terry umbrella” to refer to the kit of Terry-inspired tools that subsequent cases either revamped or established from scratch. The surge in proactive policing has disproportionately affected people of color, particularly young black and Latino males. This article refers to this unequal enforcement as Terryism, as it was made possible by the Court’s 1968 ruling.

Lemon Johnson Gets Frisked

On April 19, 2002, three members of the Arizona state gang task force were patrolling Tucson in an unmarked car. They ran the license plate of a vehicle and pulled it over for a registration violation. As they walked up to the car, a young black male in the backseat stared at them through the rear window. While one officer questioned the driver, Officer Maria Trevizo initiated a conversation with this backseat passenger. He failed to produce identification but said his name was Lemon Johnson. He readily explained that he was from Eloy, Arizona, and had spent time in prison for burglary. Eloy had a reputation for gang activity, as did Sugar Hill, the Tucson neighborhood in which the stop occurred. Officer Trevizo took note of Johnson’s blue clothes and blue bandana, a getup often worn by the Crips gang (Arizona v. Johnson, 2009). “Gang members,” she later testified, “will often, in general, possess firearms” (Arizona v. Johnson, 2009, Brief for Respondent, p. 5).

But Johnson was cooperating. He answered the officer’s questions and he was candid about his criminal record. Moreover, the driver was dressed in red, a rival color of the Crips. Still, Johnson’s comments aroused suspicion in Officer Trevizo. After noticing a police scanner in his pocket, she asked him to step out of the vehicle. He complied. Once out, she conducted a protective pat-down search—without probable cause or even reasonable suspicion of criminal activity—frisking him for a weapon and arresting him upon discovering one. An incident-to-arrest search unearthed a small amount of marijuana. Johnson was charged with illegal possession of a weapon, and his request to suppress the evidence was denied in trial court (Arizona v. Johnson, 2009). The Arizona Court of Appeals reversed the conviction, deciding the seizure had evolved into a consensual encounter and the pat-down was unauthorized. As a result, the gun and the marijuana were illegally obtained. The Arizona Supreme Court denied review. The state turned to its last resort: the United States Supreme Court. It petitioned for a writ of certiorari, asking the Court to determine whether an officer may conduct a pat-down of a passenger reasonably suspected to pose a threat, even though there is no reason to believe the passenger is engaged in criminal activity (Arizona v. Johnson, 2009).

The Supreme Court took the case. Arizona was supported by thirty-six other states, as well as the Department of Justice. Arizona was supported by thirty-six other states, as well as the Department of Justice The National Association of Criminal Defense Lawyers wrote the sole brief in support of Johnson (Arizona v. Johnson, 2009). In 2009, the Court ruled in Arizona v. Johnson that the “combined thrust” of its apposite Fourth Amendment doctrine, beginning with the landmark 1968 Terry v. Ohio, allowed for Officer Trevizo’s pat-down search (Arizona v. Johnson, 2009, p. 7).

The Birth of the War on Terry (1968)

Like all Fourth Amendment cases, Arizona v. Johnson (2009) concerns the tug-of-war between civil liberties and effective policing, a cornerstone of the American criminal justice system. In particular, Johnson (2009) takes place at the intersection of stop-and-frisk, traffic stop, and consent search jurisprudence. The Fourth Amendment requires an officer to obtain prob-
able cause before making an arrest; he needs to believe a crime has been or is being committed, and that the individual he is targeting is responsible for said crime (Dressler, 1996). Once Officer Trevizo discovered Johnson’s weapon, she had probable cause and thus arrested him. But what permitted her frisk? The Fourth Amendment also requires an officer to obtain probable cause in order to conduct a search. Nevertheless, the Supreme Court has established or overseen several ways to seize and search a suspect absent probable cause.

By far the most utilized exception to the Fourth Amendment is the consent search. An officer may approach an individual without any suspicion of wrongdoing and ask him anything (Florida v. Bostick, 1993). In addition to posing questions, he may ask to search the individual or his belongings (Florida v. Bostick, 1993). He may be granted this access—usually because the suspect either does not know refusing is an option, or knows but is intimidated—but if not he may advance the encounter in some other way. In 1968, the Court decided in Terry v. Ohio that developing reasonable suspicion of criminal activity—less than probable cause, but more than a “mere hunch”—is one way to transition a consensual encounter, or lack of an encounter altogether, into a temporary seizure.

Terry (1968) is two-pronged. First, an officer may detain and question a suspect if he develops reasonable suspicion of criminal activity: that is, if he reasonably suspects a crime has been, is being, or will soon be committed, and that the person he is detaining is responsible for said crime. Second, if the officer believes the individual he has detained poses an immediate threat—referred to as developing reasonable suspicion of armed and dangerousness—he may frisk the outer areas of the individual’s clothing for weapons. In order to conduct the frisk, the first prong must be satisfied; an officer may detain an individual with no intention to frisk, but he cannot frisk an individual for simply appearing dangerous (Terry v. Ohio, 1968).

Due to the unpredictable nature of police encounters, the standard for reasonable suspicion is deliberately vague. The Court avoids a “bright line” rule, leaving reasonable suspicion to be evaluated on a case-by-case basis (United States v. Sharpe, 1985, p. 685). While individual facts may appear innocuous to the layperson (United States v. Cortez, 1981), reasonable suspicion depends on the “totality of the circumstances” (Illinois v. Gates, 1983). The Court only requires these facts be individualized and articulable (Terry v. Ohio, 1968). Potential factors with which to build reasonable suspicion may include: being out at an unusual time of day, being out of place, being in a high-crime area, wearing unusual clothes, behaving unusually, furtive movements, suspicious sounds or smells, hearsay, an officer’s past knowledge of a suspect, and suspicious statements by the suspect (Argiriou, Terry Stop Update,).

The lack of a per se rule advantages the state. The police can experiment, flirting with the limits of what a reasonably prudent person would believe. In evaluating reasonable suspicion, the judicial branch is asked to weigh the word of an agent of the state against an alleged criminal, a predictably one-sided process (Thommas III, 1998, 1029-34). Moreover, white males constitute 70% of federal judges (Wheeler, 2009) and are almost always overrepresented in police forces, even in largely nonwhite populations such as Kansas City, wherein they are 29% of the population but 68% of law enforcement personnel (Abouhalkah, 2012). One would presume, then, that a reasonably prudent person is often a white male. This cultural bias is significant when assessing the legitimacy of reasonable suspicion factors such as perceived furtiveness, lack of cooperation, and aggression.

Writing for the majority in Terry (1968), Chief Justice Earl Warren admitted that the new tool, known as a stop-and-frisk, “must surely be an annoying, frightening, and perhaps humiliating experience” (Terry v. Ohio, 1968, p. 13). He acknowledged that blacks in particular “frequently complain” about police harassment, but nevertheless argued the stop-and-frisk was a necessary part of effective law enforcement and was authorized by the Fourth Amendment (Terry v. Ohio, 1968, p. 7). It should be as limited as possible in its invasiveness, he determined, seeking only to locate weapons that endanger the officer and others nearby. Justice William O. Douglas was the sole dissenter, warning that the Court had granted police “greater authority to make a ‘seizure’ and conduct a ‘search’ than a judge has to authorize such action” (Terry v. Ohio, 1968).

In Adams v. Williams (1972), the Court made its first substantial ruling on the principles laid out in Terry (1968), ruling once again in favor of the police. Justice Douglas reprised his dissenting role, this time joined by two others. Justice Thurgood Marshall was one of them. Marshall wrote in his dissent that:

As a result of today’s decision, the balance in Terry is now heavily weighted in favor of the government. And the Fourth Amendment, which was included in the Bill of Rights to prevent the kind of arbitrary and oppressive police action involved herein, is dealt a serious blow. Today’s decision invokes the specter of a society in which innocent citizens may be stopped,
searched, and arrested at the whim of police officers who have only the slightest suspicion of improper conduct. (Adams v. Williams, 1972, Justice Marshall’s dissent, p. 7).
The introduction of reasonable suspicion authorized a culture of preemptive law enforcement. The probable cause standard concerns past or present crime, while reasonable suspicion concerns future crime (United States v. Hensley, 1985, expanded reasonable suspicion to past crime, as well). In addition to empowering officers in the field, the Court’s shift to proactive reasonableness set precedent for the half-century of pro-police leniency that followed. The first glimmering of reduced standards came one year earlier, in Camara v. Municipal Court (1967), wherein the Court loosened the reasonableness standard for administrative searches. Terry (1968) expanded Camara’s logic to criminal investigations, breaking open the Fourth Amendment open for further revision (Dressler, 1996, p. 143).
In addition to stop-and-frisks and consent searches, an officer may search an individual by way of several other exceptions to the Fourth Amendment. Some are post-Terry creations, while others have been reinterpreted with the gloss of Terry (1968). As long as an officer has a lawful right to be present, he may:

- seize any illicit material he sees in plain view at any time (Coolidge v. New Hampshire, 1971; Horton v. California, 1990), or feels in plain touch during a frisk (Minnesota v. Dickerson, 1993);
- minimally search vehicle compartments and passenger belongings during traffic stop frisks (Michigan v. Long, 1983);
- conduct comprehensive incident-to-arrest searches of the suspect and, until recently, his vehicle—regardless of the severity of the crime for which the arrest occurs—including containers belonging to passengers (Chimel v. California, 1969; New York v. Belton, 1981);
- and stop and search suspects with increasing latitude near borders in the interest of national security (United States v. Montoya de Hernandez, 1985).

This article refers to the redefined and revamped policing toolkit as the Terry umbrella, as it has ostensibly been designed to be a protecting force over law enforcement. But rather than simply shield police from danger, law enforcement nationwide has aggressively employed the Terry umbrella (see Image 1). Moreover, this increase in policing has been far from colorblind: the rise in the overall incarceration rate, which began in the mid-1970s, was accompanied by a surge in the relative incarceration rate of nonwhites, particularly young black and Latino males from low-income areas (Eckberg, 2006, p. 5-213). The nonwhite prison population ballooned from 35% in 1950 to 67% in 2009 (Palmer, 1999). Lawrence D. Bobo and Victor Thompson refer to this surge in unequal enforcement as “racialized mass incarceration” (Bobo & Thompson, 2010, p. 322).

Terry v. Ohio (1968) represents a turning point in

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modern criminal law. On the one hand, it opened the door to the preemptive culture of law enforcement that characterized the increase in arrests and incarceration; on the other, it green lit discriminatory policing and racial profiling by reducing the standards for making stops and evaluating policing on a case-by-case basis. As a result, this article refers to the “racialized mass incarceration” as Terryism (Boba & Thompson, 2010, p. 322). Terryism utilizes the principles laid out in Terry v. Ohio (1968) to target, arrest and sentence people of color at higher rates than whites for similar crimes (see Part 5).

Terry v. Ohio (1968) was by no means the origin of unequal enforcement; the American criminal justice system has long discriminated against people of color, targeting blacks in particular since the end of slavery (Kennedy, 1998, ch. 2). But Terryism is a rearmament of unequal enforcement, the likes of which the criminal justice system has never seen. The tonal shift in law enforcement that the Court established in Terry (1968), regardless of its motivation, equipped police departments with this destructive capacity.

That said, the motivations look to be rather straightforward. Terryism followed both the success of the Civil Rights movement and the Second Great Migration of African Americans. The Second Great Migration, which saw the relocation of five million Southern blacks into Northern cities, came to a close in 1970, two years after the Terry ruling. For the first time, blacks became the most urbanized racial group in America (Holt, n.d.). In his majority opinion, Chief Justice Warren cites the following argument in favor of stop-and-frisks: “In dealing with the rapidly unfolding and often dangerous situations on city streets, the police are in need of an escalating set of flexible responses” (Terry v. Ohio, 1968, p. 5).

Terryism is fueled by the public’s desire to maintain law and order on these city streets, and to protect law enforcement in the process (the latter has usually been the rationale of the judicial branch in expanding police powers). While the violent crime rate has fallen nationwide since 1995, a majority of Americans have consistently believed it was getting worse from 1989 to 2009 (Jones, 2010). Moreover, the racial disparity is justified by both the explicit prejudiced beliefs of law enforcement, public officials and the general public (over 50% of whites believe that blacks and Latinos are less intelligent and violence-prone (Moya & Markus, 2011, p. 63), and the implicit racial biases of officers, prosecutors, and judges.

As of late, the rate of unequal incarceration is on the decline. Yet, Terryism persists (see Image 2). The criminal justice system added 49,400 blacks and 151,000 Latinos from 2000 to 2009, but only 30,100 whites. These numbers are staggering given that blacks and Latinos make up only 13% and 16% of the population, respectively (U.S. Census, 2010). Overall, there are more blacks incarcerated today than at any point in the country’s history, more under general correctional control than were enslaved in 1850, and more disenfranchised than in 1870 (Alexander, 2010, p. 245). The population of Latinos in federal institutions is surging (Carcamo, 2011).

As of late, the rate of unequal incarceration is on the decline. Yet, Terryism persists (see Image 2). The criminal justice system added 49,400 blacks and 151,000 Latinos from 2000 to 2009, but only 30,100 whites. These numbers are staggering given that blacks and Latinos make up only 13% and 16% of the population, respectively (U.S. Census, 2010). Overall, there are more blacks incarcerated today than at any point in the country’s history, more under general correctional control than were enslaved in 1850, and more disenfranchised than in 1870 (Alexander, 2010, p. 245). The population of Latinos in federal institutions is surging (Carcamo, 2011).

Evidence suggests pat-downs are targeted at people of color, are rather common, and have a high fail rate (see Part 5). Further, it is a well-known fact, especially...
in nonwhite communities, that men of color are vastly overrepresented in prisons. Thus, the young man of color from our example may believe police conduct stop-and-frisks on a whim and target people of color. This perception of inevitability—the looming threat of a stop-and-frisk, or another tool from the Terry umbrella—may influence him to agree to an officer’s request for a consent search, even when he possesses illicit material (it also helps that he is likely unaware of his right to say no, and that police are not required to inform him of this rights, see Part 4).

Yet, the Court is loath to acknowledge the coerciveness of encounters between people of color and the police; it believes that if the officer’s gun remains holstered and he speaks in a quiet tone, a reasonable person would perceive no intimidation or compulsion (United States v. Drayton, 2001). Justice Antonin Scalia confirmed his impractically narrow definition of coercion during the Affordable Care Act (2012) oral arguments. “When you say you’ve been coerced,” he explained, in the midst of a rather confusing hypothetical concerning a Jack Benny joke, “it means you’ve been given an offer you can’t refuse” (Affordable Care Act cases, 2012).

Arizona v. Johnson: The Oral Argument

There was no dispute over the underlying facts. Officer Trevizo’s testimony at Johnson’s suppression hearing provided an uncontested outline of events. There was, however, one noteworthy unknown: the exact duration of the stop appeared at no point in the case’s record or in any testimony, and neither side could produce even a broad timeframe when asked by the Court during the oral argument. This was a factor in determining whether the traffic stop evolved from a seizure to a consensual encounter. Arizona, insisting there was no proof for this development, argued in favor of a short duration, while counsel for Johnson emphasized the sheer unknowability.

According to Officer Trevizo’s testimony, the encounter had become consensual and the pat-down was voluntary. Counsel for Arizona disagreed, arguing that while a traffic stop may become consensual, there was no evidence to believe such a transition occurred in this case, regardless of what Officer Trevizo thought (counsel for Arizona does not represent Trevizo directly, but rather the state government in general, and they chose to controvert her opinion because it undercut Arizona’s case). The state’s case was built primarily on Pennsylvania v. Mimms (1977), Maryland v. Wilson (1997), and Brendlin v. California (2007). Mimms (1977) and Wilson (1997) permit an officer to remove drivers and passengers from vehicles, regardless of whether any wrongdoing is suspected. Brendlin (2007) designates all occupants of a vehicle seized for Fourth Amendment purposes. The thrust of these decisions, Arizona argued, rendered Johnson seized and the first prong of Terry (1968) fulfilled. Moreover, the tenor of the Court’s recent traffic stop jurisprudence—thirty years of increasing the officer’s ability to control the situation—justified Officer Trevizo’s actions, as she sought to keep herself and her fellow officers safe. (Arizona never commented on whether Officer Trevizo had obtained adequate reasonable suspicion to conduct the pat-down.)

The Justice Department expressed interest in the case and Arizona welcomed its support. Toby Heytens, speaking on behalf of the Department, shared the petitioner’s time during the oral argument. He agreed that Johnson had remained seized, and further reasoned that a pat-down should be permissible even if Johnson was unseized, due to the unpredictability of roadside traffic stops and their “unique heightened dangers to police officers” (Arizona v. Johnson, 2009). Given this unpredictability, Heytens argued, a frisk should be permissible even if an officer pulls over to help an individual change a tire, a situation in which no seizure has occurred and thus the first prong of Terry (1968) has not been fulfilled (Arizona v. Johnson, 2009).

Heytens then laid out the Obama Justice Department’s ultimate reading of the Fourth Amendment rule: frisking should not require suspicion of criminal activity in any place an officer has a lawful right to be (thereby suggesting a rollback of the Terry (1968) doctrine to include only the second prong). Justice John Paul Stevens inquired whether the Department had ever taken this position before. Heytens could not recall an instance in which it ever had to do so. “It’s a rather extreme position,” Justice Stevens replied. Heytens contended that the logic of those who oppose stop-and-frisks—and perhaps also the logic of those in favor of maintaining the status quo—is founded on the idea that an officer without suspicion of a crime “can just avoid dangerous people, like any of the rest of us can choose to avoid them” (Arizona v. Johnson, 2009).

Justice David Souter was especially apprehensive toward the Department’s new stance, citing the ease with which an officer can develop reasonable suspicion of armed and dangerousness. “It’s great to be a reason-
able person,” he said, paraphrasing Benjamin Franklin, “because you can think of a reason for anything you do” (Arizona v. Johnson, 2009). Heytens made no counter; instead, he questioned why reasonable suspicion of criminal activity should be any different (he later noted that while the Department espoused this interpretation of the rule, the Court did not have to agree with it to decide)(Arizona v. Johnson, 2009).

Lemon Johnson was represented by Andrew Pincus, a civil rights attorney with over twenty appearances before the Supreme Court. To win, Pincus had to defend the logic of the lower court’s ruling, namely, that the seizure had ended. He asserted that Johnson’s interaction with Officer Trevizo was separate from the driver and the other officers, noting that while the Court has ruled that a driver and a passenger are both seized by a traffic stop, it has never said whether their seizures are coextensive. On his side was the fact that Officer Trevizo herself believed the seizure had ended. But Johnson had never testified, and whether he felt the pat-down was voluntary or not was unknown (while it may seem illogical to consent to a pat-down while carrying illicit material, it is actually quite common). Thus, Pincus had to use the facts of the case to prove that a reasonable person in Johnson’s situation would have felt free to leave, or at least refuse to consent, when informed that a frisk was imminent.

He first asserted that Officer Trevizo’s tone had lightened and become more conversational, indicating a consensual engagement. This argument seemed to fall flat with the justices, and in particular left Chief Justice John Roberts responding with a tone of his own (unfortunately for Pincus, it was an irritated one). Pincus’s second argument was that the stop occurred in an urban area, as opposed to a traditional highway stop, and thus a passenger could reasonably get out of the car and walk away. “If the passenger is not involved in the facts that gave rise to the stop,” Pincus reasoned, “if it’s clear, for example, quickly that the passenger doesn’t own the vehicle, et cetera—we don’t see what the basis is, in an urban setting at least, for any further seizure of the passenger” (Arizona v. Johnson, 2009). Justice Souter was unconvinced: “It would be amazing to me that this fellow said: ‘I’m not going to talk to you anymore. I am leaving.’ And the police officer would allow it” (Arizona v. Johnson, 2009). Justice Stephen J. Breyer expressed similar, albeit more forceful discontent with Pincus’s arguments, going through and dismissing them one by one (Arizona v. Johnson, 2009).

If all else failed—and it appeared to be going that way—Pincus asserted that Officer Trevizo did not obtain adequate reasonable suspicion of armed and dangerousness. “How could he not be dangerous?” Justice Ruth Bader Ginsburg asked. “I mean, first she said: ‘I suspected him because he was looking behind.’ But then she said he was wearing the clothes of a gang. And then he admits to having been convicted of a burglary. Why isn’t it very normal for a person to be apprehensive” (Arizona v. Johnson, 2009)? Pincus responded by stating that Johnson looked behind him because the officers were in an unmarked car, which startled and confused him. He then reminded the Court that the driver was wearing red, opposing gang colors. Finally, he argued that Johnson’s criminal past should not contribute to reasonable suspicion because he was forthcoming about it.

The Court ruled 9-0 in favor of Arizona, reversing the decision of the Court of Appeals (Arizona v. Johnson, 2009). Writing for the majority, Justice Ginsburg held that the first Terry (1968) condition—reasonable suspicion of criminal activity—is always met during a traffic stop; the officer has probable cause to believe a crime has been committed, which is more than reasonable suspicion. This applies to both the driver and passengers. To justify a traffic stop frisk, then, there must only be reasonable suspicion of armed and dangerousness. Ginsburg went on to hold that Johnson had remained seized for the duration of the stop (Arizona v. Johnson, 2009). The issue of whether Officer Trevizo had adequate reasonable suspicion to conduct a pat-down was remanded to the lower court, which ruled that she (Arizona v. Johnson, 2009).

Arguing in favor of the lower court’s ruling proved difficult for Pincus. A victory would have entailed the perhaps unfeasible feat of convincing a skeptical, conservative Court to disregard precedent and resist taking the next logical step in police jurisprudence. Moreover, the argument itself had little wiggle room, confined to operating within the narrow sliver of suspect rights the Court has preserved over the years. Pincus’s backup plan—that there was inadequate reasonable suspicion of armed and dangerousness—was practically futile; reasonable suspicion is a rarely questioned staple of the criminal justice system.

The Modern Traffic Stop

We will now take a look at what goes into a routine traffic stop. Suppose we have a police officer on his beat. According to Whren v. United States (1996), he
may pull a car over for violating any traffic violation, even if he does not intend to issue a citation. Moreover, Whren (1996) permits the officer to make a stop even if a reasonable person in his shoes would not (a conveniently pro-police renunciation of the reasonableness principle). Traffic infractions may include: driving too fast, driving too slowly, following too closely, switching lanes without a signal, waiting too long at a stop sign, driving without a seatbelt, having a tail light out (Visser, 1999), or having a license plate obscured by dust or the ball of a trailer hitch (J. Hays, personal communication, February 2, 2012). In other words, nearly every person who drives commits traffic infractions. The Court acknowledged that an officer might have an ulterior motive for the stop—such as hoping to find drugs or weapons, referred to as a pretextual stop—but nevertheless ruled that such motives do not invalidate the stop (Whren v. United States, 1996).

According to Brendlin v. California (2007), all occupants of the vehicle are effectively seized during a traffic stop. Upon approaching the vehicle, the officer may peer into the windows for illicit material in plain view, which can provide him with probable cause so long as its illicitness is “immediately apparent” (Horton v. California, 1990, p. 129). Mimms (1977) and Wilson (1997) make it per se reasonable for him to remove the driver and the passengers from the vehicle. He will eventually decide to issue a citation or give the driver a warning.

If the officer has no further leads, he can simply ask to search the vehicle. The Supreme Court held in Ohio v. Robinette (1996) that an officer is not required to tell a motorist when the seizure is over. As a result, the officer can transition the initial stop into a consent search without the motorist’s knowledge. The officer is not required to tell the driver he may refuse a consent search (United States v. Drayton, 2001), and the state need not prove a suspect who consented to a search knew of his right to deny consent (Schneckloth v. Bustamonte, 1973). This confusion combines with the general coercion many people of color perceive as inherent in interacting with law enforcement, leading many drivers to consent to searches despite possessing illicit material. If the officer makes an arrest—usually by obtaining probable cause for a more substantial crime, but potentially for the initial traffic infraction (in the 2001 case Atwater v. City of Lago Vista, the defendant was arrested for not wearing her seatbelt)—he may conduct an incident-to-arrest search, regardless of the severity of the crime (United States v. Robinson, 1973). This involves a comprehensive search of the arrestee’s person (Chimel v. California, 1969). Until recently, it also involved a thorough search of the passenger compartment and any containers that could hold illegal material, even those belonging to an individual who is not being searched (New York v. Belton, 1981). In Arizona v. Gant (2009), however, the Court narrowed its Belton ruling by holding that incident-to-arrest searches may only grant access to areas from which an arrestee may realistically grab a weapon or destroy evidence. The defendant in Gant (2009) was arrested for a suspended license; ergo the officer had no reason to search the passenger compartment. But for 28 years following Belton (1981), officers legally conducted pretextual searches for weapons and drugs after making unrelated arrests.

While this ability to search compartments and containers is not always covered by probable cause, it is permissible after obtaining reasonable suspicion of armed and dangerousness. If at any time during the seizure the officer reasonably suspects the driver or a passenger to pose a threat, Arizona v. Johnson (2009) authorizes a protective pat-down. He may then search the vehicle for weapons, a process known as frisking the lunging area (Michigan v. Long, 1983). Because weapons come in a variety of forms, the officer can rationalize a brief search of virtually anything in reach: the passenger compartment, newspapers on the floor, trash bags, backseat jackets, tin or tupperware containers, and so on. The officer must simply explain how his experience directed him to believe that a weapon could be there. In a federal law enforcement quarterly, Steven Argiriou describes how one might justify opening a cigarette box: “If [he] can articulate, based on knowledge, training and experience, that knives and small single and five shot derringers exist that can fit inside a flip-top cigarette box—the seizure will likely be a good one” (Argiriou, Terry Frisk Update, p. 2). Argiriou describes weapons as both “conventional” and “unconventional,” suggesting pens and flashlights among the latter (Argiriou, Terry Frisk Update, p. 1).

Since a suspect frisked via reasonable suspicion does not have Miranda rights, he will likely not be physically restrained in any significant way during a traffic stop (Maryland v. Shatzer, 2010). The breadth of the officer’s search may thus be expanded relative to a search following an arrest, as the suspect could arguably reach areas that an immobilized suspect could not (compare a cuffed individual to one whom is simply told to “wait here”). Any illicit material the officer discovers in his search for weapons—e.g., drugs—is admissible in court (Michigan v. Long, 1983; Minnesota v. Dicker-
son, 1993). Therefore, through Johnson (2009), Long (1983), and Dickerson (1993) the officer may conduct a pat-down of a suspect and a mini-sweep of the vehicle—despite lacking any suspicion to believe the suspect is involved in wrongdoing—and anything he finds along the way has been legally confiscated.

In order to conduct the pat-down, the officer must fulfill a simple list of requirements. In Johnson (2009), the suspicion-rousing factors included: wearing blue, lacking ID, being from a poor neighborhood in which gangs operate, being in a high-crime or drug-heavy area, looking at officers as they approach you, having a penchant for listening in on police calls, and being forthcoming about a criminal record. For Lemon Johnson, these factors legally trumped his cooperative demeanor. The least stated and potentially most significant trait that may have aroused Officer Trevizo’s suspicion is race. Would a white male in blue have aroused suspicion? Would the cops have even run the license plate of a car comprised of three white males? The Court avoided mentioning race altogether in Johnson (2009).

Law enforcement openly uses race in four main ways. The first is when simply identifying a suspect (Johnson, 1983)—such as, the suspect was male, six feet tall, and black. This is not controversial, as it associates race with crime in a descriptive way. The others associate race with crime in a predictive way, using the color of a suspect’s skin as a probative trait. Racial incongruity—what is referred to as being out of place, e.g. a black man in a white neighborhood—has had mixed success when contested in the courts, but nonetheless remains a staple of policing (Johnson, 1983). Racial profiling by border agents and the Immigration and Naturalization Services, namely, targeting Latinos near border areas, has had both big wins and big losses in court. The Court considers it unconstitutional to stop a vehicle based solely on the driver’s race (United States v. Brignoni-Ponce, 1975), but upheld stopping drivers “largely on the basis of Mexican ancestry” near the border (United States v. Martinez-Fuerte, 1976). Therefore, through Johnson (2009), Long (1983), and Dickerson (1993) the officer may conduct a pat-down of a suspect and a mini-sweep of the vehicle—despite lacking any suspicion to believe the suspect is involved in wrongdoing—and anything he finds along the way has been legally confiscated.

The fourth major way law enforcement uses race is through the Drug Enforcement Agency’s drug courier profiles (Johnson, 1983). These profiles, which have become notorious for their inconsistencies, predict what kind of people are likely to transport drugs and thus determine whom the agency will target. A probative trait is often being black or Latino—i.e., simply being black or Latino is a factor in reasonable suspicion or probable cause—associating people of color with drugs not just at the federal level, but at all levels of policing. The success rate of these profiles is unknown as the DEA does not record their stops (Kadish, 1997, p. 749). The Court first addressed the profiles in United States v. Mendehall (1980). It held that the defendant, a young black female, had been stopped without adequate reasonable suspicion, but race as a component of the profile was not addressed by the defendant, the petitioner, nor the Court (United States v. Mendehall, 1980).

A racially motivated officer need not concern himself with any of that. Instead, he can wait for the car to commit a minor traffic infraction and pull it over via Whren (1996). As long as he finds a legitimate reason for the stop, he will never have to answer allegations of racial profiling. For a driver to make an Equal Protection claim—i.e., to claim in court that he was pulled over because of his race, thus suffering a Fourteenth Amendment violation—he would essentially need the officer to admit that race was the reason for the stop. The fact that people of color are pulled over at vastly disproportionate rates is irrelevant to an individual case; an individual must prove that invidious discrimination occurred in his particular case (McClesky v. Kemp, 1987).

**Terryism**

Terryism is characterized by unequal stop-and-frisks, traffic stops, drug arrests, and incarceration rates. This incidence—what Randal Kennedy refers to as the “racial tax” (Kennedy, 1997, p. 159)—is for the most part uncontested; it has been documented in manifold individual court cases and statistical research. This section will recollect several of those examples.

**Stop-and-frisks**

Unlike most precincts, police officers in New York City are required to record their stop-and-frisks. These forms, known as UF-250’s, must be filled out when a stop fulfills one or more of the following: the officer exercises force in the detention, there is a frisk, there is an arrest, or the suspect refuses to identify himself (Office of the Attorney General, 1999). In 1999, the Office of the Attorney General commissioned a report on stop-and-frisks in New York City. It found that, when compared to whites, blacks were 2.1 times more likely to be stopped on suspicion of committing a violent crime, and Latinos were 1.7 times more likely to be stopped on suspicion of violent crimes (Office of the Attorney General, 1999). The report also found that around 14% of stops were based on factors failing to meet the reasonable suspicion threshold (Office of the Attorney General, 1999).
The NYPD conducted 684,330 stops in 2011, a 603% increase from 2002 (New York Civil Liberties Union, 2012). Eighty-nine percent of those stopped were people of color, and 88% of those stopped were entirely innocent (New York Civil Liberties Union, 2012). Thus, the NYPD knowingly sanctions half a million small-scale Hitchcockian wrong man situations per year. Unlike Hitchcock’s films, however, these are not remote horror stories that, given the right string of unfortunate coincidences, might happen to anybody—rather, they are an omnipresent threat to inner-city people of color. Despite this racially disproportionate policing, the NYPD maintains that the Equal Protection Clause of the Fourteenth Amendment does not apply to Terry (1968) analysis (U.S. Commission on Civil Rights, 2000).

**Traffic stops**

From early 1995 to late 1996, the Maryland State Police searched 823 vehicles on a highway north of Baltimore, of which nearly 73% had black drivers; a subsequent ACLU study found that only 16.9% of the highway’s cars had black drivers, and that the race of the driver would be visible to an officer nearly 97% of the time (Harris, 1999). Other studies have found similar results in Oregon (Bernstein, 2010), Connecticut (Pererez, 2011), West Virginia, Minnesota, Illinois, and Texas (The Leadership Conference, 2011, p. 10). A 2006-2007 Arizona study found that “state highway patrol was significantly more likely to stop African Americans and Hispanics than whites on all the highways studied” (The Leadership Conference, 2011, p. 10).

While the nationwide percentage of drivers stopped by race is about even, black drivers are more likely to feel they were stopped without legitimate basis, especially when pulled over for vehicle defects and stop light/sign violations (Eithe & Durose, 2008, p. 8). Black, Latino, and multiracial drivers are more likely to be ticketed than whites, and significantly less likely to receive verbal or written warnings. When compared to whites, black drivers are twice as likely to be arrested, likely a result of being searched three times as often. A 2003 Illinois study found that consent searches of whites were twice as likely to discover contraband than consent searches of blacks and Latinos (The Leadership Conference, 2011).

**Drug policy**

While Terry v. Ohio (1968) was intended to combat violent crime, its principles also apply to seizing property. Since the 1980s, the chief use of the Terry umbrella has been to authorize access to hitherto unsearchable areas and incarcerate people for non-violent drug crimes. The modern War on Drugs, declared by Reagan in 1982 and fully launched with the bipartisan Anti-Abuse Act of 1986, accounted for half of the growth in state prisons and two-thirds of the growth in federal prisons in its first twenty-five years (Alexander, 2010). Overall, the War on Drugs has seen thirty one million arrests (King, 2008, p. 2). The vast majority of drug arrests—80% in 2005—are for possession rather than dealing, and four-fifths of the increase in drug arrests in the 1990s were for marijuana possession (Alexander, 2010). From 1980 to 2003, the drug arrest rate of blacks rose 225%, compared to just 70% for whites.

**Enforcement Actions Taken by Police During Traffic Stops**

<table>
<thead>
<tr>
<th>As percent of all U.S. drivers:</th>
<th>White</th>
<th>Black</th>
<th>Latino</th>
<th>Two or more races</th>
<th>Asian, Native American, et al</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stopped</td>
<td>8.4%</td>
<td>8.8%</td>
<td>9.1%</td>
<td>7.9%</td>
<td>7.0%</td>
</tr>
<tr>
<td>Warning – Verbal</td>
<td>11.2%</td>
<td>6%</td>
<td>4.5%</td>
<td>2.4%</td>
<td>7.5%</td>
</tr>
<tr>
<td>Warning – Written</td>
<td>17.7%</td>
<td>14.8%</td>
<td>15%</td>
<td>12.7%</td>
<td>15.7%</td>
</tr>
<tr>
<td>Ticketed</td>
<td>53.1%</td>
<td>58.3%</td>
<td>62.9%</td>
<td>74.4%</td>
<td>65%</td>
</tr>
<tr>
<td>Searched</td>
<td>3.9%</td>
<td>12.3%</td>
<td>5.8%</td>
<td>8.6%</td>
<td>2.1%</td>
</tr>
<tr>
<td>Arrested</td>
<td>2.4%</td>
<td>4.7%</td>
<td>2.6%</td>
<td>4.2%</td>
<td>.9%</td>
</tr>
<tr>
<td>No action taken</td>
<td>15.6%</td>
<td>16.2%</td>
<td>15%</td>
<td>6.2%</td>
<td>10.8%</td>
</tr>
</tbody>
</table>

(King, 2008). People of color constitute 80% of those in prison for drugs (Bell, 2009).

Research has consistently shown a majority of drug users to be white. One study found that whites make up 74% of monthly drug users (King & Mauer, 2002). In particular, 66% of cocaine users are white while 15% are black (Williams, 2009). From 1986 to 2010, there were similar mandatory five year sentences for possessing five grams of crack cocaine and five hundred grams of powder cocaine; blacks received 25% of the mandatory sentences for powder and over 90% of the mandatory sentences for crack (Yingling, 2009). Congress repealed the mandatory sentences and lowered the ratio to 18:1 in 2010 (Fields, 2010). The inconsistency between reported drug use and arrest rates is a reminder that crime rates are not an objective measurement of crime, but rather the result of whom the police target.

Incarceration

Once ushered into the criminal justice system, young men of color are more likely to be the subjects of severe prosecution and harsher charges than their white counterparts (Bell, 2008). They are incarcerated at higher rates and receive longer sentences for similar crimes (Bell, 2008). Many inmates convicted of drug crimes would avoid doing time if they could afford bail or private counsel (Onwudiwe & Onwudiwe, 2009); around four-fifths of those who face criminal charges are poor (Alexander, 2010).

The United States now leads all other countries in incarceration, with 5% of the world’s population and a quarter of its prisoners (Liptak, 2008). The prison population has grown 500% since 1980, while the population has only increased by 37% (U.S. Census 2010). America has 2.28 million prisoners in its 5,000 penal institutions, a majority of which are people of color (U.S. Census, 2010). One out of nine black males between the ages of twenty and thirty-four is incarcerated (Onwudiwe & Onwudiwe, 2009). At any given time, nearly one-third of black males from black communities are in prison, on parole, or on probation (Fisher-Giorlando, 2009). This systemic uprooting of fathers, brothers and sons has dealt a devastating blow to families suffering an unemployment rate twice that of the national average—reaching 16% in December 2011 (Bureau of Labor Statistics, 2012)—and a poverty rate nearly three times that of whites (State Health Facts, 2010), including 38% childhood poverty (Macartney, 2011). A majority of black children with a parent incarcerated live with their grandparents and nearly 10% end up in foster care (Williams, 2009).

Once out of prison, ex-convicts face conditions that many have compared to Jim Crow. Companies and landlords, both public and private, are permitted by law to discriminate against those who have served time in prison, impairing their search for employment and a residence (a family may even be evicted from public housing for taking in a felon) (Bell, 2008). Ex-convicts may have trouble obtaining valid ID, driver’s licenses, and loans (Bell, 2008). Reform of the 1990s prohibited felons from being eligible for welfare and food stamps (Alexander, 2010). Moreover, felons lose their right to vote to better their condition; overall, 13% of black male adults have been disenfranchised, and that number reaches 40% in some states (Justice Policy Institute, 2000). These conditions do little to assuage the bitterness and resentment many inmates build up while in prison, especially those incarcerated for non-violent crimes. Indeed, many ex-convicts are arrested, convicted or imprisoned again in the years following their release, an epidemic known as recidivism.

Conclusion

Mandatory minimums have been repealed and the most punitive days of the War on Drugs are past, yet the Terry umbrella continues to expand. The modern campaign against illegal immigration is revving up, armed with all the tools of Terry (1968) at its disposal. Unlike the War on Drugs, the war on immigration is exclusively discriminatory. The Obama administration has embraced Operation Streamline, a 2005 border security program that encourages aggressive and expedient policing of those suspected of being in the country illegally (Lin, 2009). Under the program, illegal immigrants may be charged in the federal criminal justice system, rather than at civil deportation hearings. Through September of 2011, Latinos—who constitute only 16% of the population—were charged with over 50% of the year’s federal felonies, up 10% from 2007 (Carcamo, 2011). Immigration violations are largely responsible for the escalating Latino prison population (Carcamo, 2011).

Nonetheless, many states consider the federal government’s immigration policy to be lackluster. Arizona responded to the perceived federal failure with the divisive Senate Bill 1070, which encapsulates both the preemptive reasonableness of Terry (1968) and the unabashed discriminatory nature of Terryism. It permits an officer to make a “reasonable attempt…to determine the immi-
igration status of [a] person” so long as “reasonable sus-

cision exists that the person is an alien who is unlawfully present” (Ariz. Const. § 2, art. VIII). Georgia, Indiana, South Carolina and Alabama have passed similar bills (Beresford, 2012).

While Terry (1968) was a closely watched ruling in contravention of the Civil Rights movement, Arizona v. Johnson (2009) was a run-of-the-mill case for the Court and immaterial to the general public—a non-story to a culture in which those with influence are unaffected by policing and those affected lack influence. America is well-acustomed to people of color paying a racial tax to shield the majority from the latent danger it perceives. Still, looking back on Terry (1968), one finds comfort in the lonely portent of Justice Douglas: there was at least one justice troubled by the potential of such a radical expansion of police power. But this time around—the conservative Roberts Court in form—there was no Douglas. Johnson was a 9-0 reaffirmation of Terryism, a rubber stamp of a seemingly irreversible shift to unchecked reasonableness and discriminatory preemption.

Ruth Bader Ginsburg, the author of the Johnson (2009) majority, is due to retire soon. If the new appointment is Barack Obama’s to make, he should maintain his unprecedented push to diversify the federal judiciary (in the first two years of his presidency, only 30% of his confirmed judicial nominees have been white men) (Weiss, 2011). He should carry on the daring he exhibited when appointing the racially forthright Eric Holder to head the Justice Department. He should appoint someone familiar with the inequality that plagues the criminal justice system, someone not afraid to sing solo à la Justice Douglas. The Court is desperately in need of a counter-Terryist.

References


Affordable Care Act cases, Docket No. S. Court 11-400. (2011).


Ariz. Const. § 2, art. VIII.


Terry v. Ohio, 392 U.S. 1, (1968).


INTEGRATED PEST MANAGEMENT FOR THE CITY OF EVERETT

Megan Dunn

ABSTRACT: The City of Everett would benefit from a policy creation plan for an Integrated Pest Management (IPM) program for the Parks and Recreation Department. In November 2011, a pilot program to maintain Everett's Lowell Park without pesticides expired. This program should be replaced with a citywide management program to lessen pesticide use in city parks in the form of an IPM designed by community stakeholders, crew members, and Parks Department leadership. The policy implementation and main focus should mirror the best practices used by the City of Seattle. Citizen support and agenda setting for an IPM are analyzed through a neighborhood survey and local media coverage. Policy implementation suggestions are taken from decision-making steps outlined in IPM protocol for the Snohomish County park system and King County's city of Seattle park system. The concluding policy recommendation will be presented to the Everett Parks Department and Everett City Council for consideration.

The Problem

The City of Everett does not have a pest management policy. Though citizen efforts to maintain a local park without pesticide or herbicide chemicals have been met with support from the Parks Department, a lasting change is necessary to ensure the public health of the citizens of Everett. Integrated Pest Management (IPM) is an established policy solution to controlling weeds or invasive species with limited pesticide intervention. An IPM system ensures better, overall ecosystem health as chemical use is either eliminated or abated. Prominent cities in the Pacific Northwest have utilized this technique with success. This paper attempts to determine the optimal policy approach to abate Everett’s current pesticide use.

Topic and Rationale

City parks of Lynwood, Redmond, Edmonds and Seattle; and the county parks of Snohomish County have IPM systems to limit pesticide use in parks. The city of Everett has no such policy and seasonally sprays parks with pesticides or herbicides: chemicals used to kill weeds or other plant pests. In 2010, Everett used 1,960 pounds of a granular herbicide over 21 acres of landscaped beds in 52 locations (Smith, 2011). Pesticide use is a public health issue and the city council should be concerned: a number of the chemicals are possible carcinogens and safety standards are implemented based on the Environmental Protection Agency (EPA) testing at one exposure, not long term or repeated exposure (Washington Toxics Coalition, 2011). A pilot program to maintain Lowell Park, replacing pesticides with volunteer labor, has been successful for the last three years. This program expired in November 2011 and the city council will review the program at a later date.

The Everett Parks Department follows a basic safety protocol when using pesticide chemicals. This includes maximum wind speed and basic safety measures such as wearing protective gear. The Everett Parks Department notifies citizens with pesticide allergies one week before a spray application. Access to the parks remains open during and after the application. The department places small flags in the contaminated areas. In order to avoid public health issues, the Everett Parks Department needs to consider guidelines that question the use of pesticides around children, areas of repeated exposure, and if manual pulling or capital improvements can be first considered.

This is an emerging policy issue as new studies have highlighted the susceptibility of the surrounding watershed. A recently completed multi-year study by the Department of Ecology evaluated the sources of toxic chemicals entering the Puget Sound. The study focused on a list of chemicals known to harm the local ecosystem. This list included copper, which is an ingredient in the granular pesticides used by Everett (Norton, 2011; Lesco, 2006). The study also included an assessment of major delivery pathways and of the relative hazards posed by target chemicals. Recommendations for ecological improvement included pesticide reduction (Norton, 2011). According to handouts distributed by the Parks Department, Everett uses the pesticide 2, 4-D (Lesco, 2006). This pesticide has been shown to reduce fertility in animals and has been classified as a possible carcinogen by the International Agency for Research on Cancer (Cox, 2005).

According to the EPA, because children’s major organs are still developing, they are more susceptible to the chemicals found in pesticides (EPA website, 2011). Also, certain behaviors—such as playing in the grass
or putting objects in their mouths—increase a child’s exposure to pesticides (EPA website, 2011). In the case of city parks, there is a concern that long-term exposure has serious health effects such as birth defects, learning disabilities, and organ damage (EPA website, 2011). According to the Washington Toxics Coalition, an advocacy group working to remove toxins from homes and environments, the federal pesticide laws do not guarantee that allowable pesticides will not cause harm to people and other living things. Many hazardous pesticides continue to be used by cities (Washington Toxics Website, 2011).

Pesticide toxicity is an issue of local concern. A 1998 University of Washington study of Seattle-area toddlers found that nearly all of the children tested had metabolites of toxic pesticides in their bodies. According to the research, the long-term health effects of such exposures are unknown (Lu et al., 2001). The study recommended that pesticide use be avoided in areas where children are likely to play (Lu et al., 2001, p. 5).

**Literature Review**

A literature review of collaborative environmental management and pesticide reduction revealed mixed results. Collaborative environmental approaches and non-traditional approaches have been shown to improve environmental conditions and increase social learning and enhance social networks (Koontz, et al., 2004; Sabatier, et al., 2005). Studies have shown that bottom-up and collaborative efforts have increased front-end transaction costs (Enegel et al., 2011). However, city decision makers should consider the long-term benefits of a collaborative project.

The Advocacy Coalition Framework (ACF) as established by Theodoulou & Kofinis (2004), utilizes the core beliefs as seen in this issue. This includes:

- An emphasis on the role of technical information on the understanding of the problem.
- The new and emerging details of chemical complications in a complex ecosystem.
- The time change for the policy to occur should be considered.
- The policy subsystem will act as the analytical center; this includes the park workers responsible for the policy implementation on a day-to-day basis.

This dynamic ACF method is appropriate as information on chemicals is often changing, the department capacity changes seasonally, as well as the changing landscape of the parks themselves. The target of the campaign is the increased protection of families (Theodoulou & Kofinis, 2004, p. 138).

According to the theoretical framework analysis work by Sabatier et al. (2005), the most successful framework for this policy problem should include the ACF method. A best-case change for the most success would include a coalition group of legislators, agency officials, interest group leaders, researchers, and other intellectuals with similar core policy beliefs (Sabatier et al., 2005). Face-to-face interactions over an extended period of time is the best way to reduce mistrust and coordinate behaviors to bring about a policy; but, more importantly, these interactions bring fundamental changes to the behavior of the Parks and Recreation Department staff (Sabatier et al., 2005). Support from the bottom-up, versus a top-down decision from a single decision maker, is necessary for a policy to succeed (Sabatier et al., 2005). Therefore, any new policy considered must include input from the Parks and Recreation staff.

**Research Question and Methodology**

Pesticide use at city parks is a matter of public safety. Other municipalities have eliminated or decreased pesticide use in their parks system and still maintain high standards of appearance and usability without a great increase in the city budget (Simmons, 2011). The following is a comparison of important aspects from the agreements with the city parks systems of Seattle and Lynnwood; and the county parks system of Snohomish County. The research will determine—by extracting best practice cases—if there is a policy answer to Everett’s current pesticide use at their city parks.

The first objective is to determine if there is citizen support for pesticide reduction. The second objective is to create nominal definitions of the necessary components in an IPM policy. The third objective is to determine who the decision-maker or makers are for a city-wide policy solution.

In order to meet these objectives, a literature review of collaborative environmental management practices is presented. Research from city websites provided the decision making structure, determined stakeholders, and determined the decision making process. A comparative case study of the IPMs from cities of the geographical and/or size equivalent provided the essential components in an IPM. Personal experience for background information and in-person interviews with
Everett parks staff, the mayor and city council members provided additional input.

In the fall of 2009, the author conducted a ten-question survey of Everett’s Lowell Neighborhood residents. The survey was administered after the local neighborhood association maintained the local park without the use of pesticides. A total of 400 hard copy surveys were mailed to all known resident addresses. The printed survey included an online survey web address and the survey could therefore be completed online, mailed in, or dropped off at two indicated locations. As incentive, a chance to win prizes was offered for returned surveys to improve return rate and to encourage a wider response (See Appendix A). The response rate was low, eleven surveys, which is 2.75% of known neighborhood resident addresses (See Appendix B). The most likely respondents were those already concerned about the park, and those already involved in the neighborhood association: which sponsored the pesticide free project and prepared the survey.

Results and Analysis

Results and analysis are presented concurrently for a more fluid understanding of the issues and in order to achieve the first objective of determining citizen support exists for a policy solution to pesticide use. “Pesticide Free Everett!” was a pilot project initiated by the author with the collaboration of a neighborhood association, the Lowell Civic Association (LCA), in the City of Everett, WA. The Lowell Civic Association’s pesticide free committee was the result of a citizen-initiated response to local pesticide use. In 2009, the members of LCA formed a Pesticide Free Committee, which resulted in a memorandum of agreement between LCA and the City of Everett. This agreement was extended for a second year from November 2010 to November 2011. The community members maintain their ten-acre neighborhood park without the use of pesticides. Each year, the author organizes volunteer groups who collectively accumulate between 100 to 150 hours for pesticide free related maintenance. The efforts are chronicled in an online blog at www.pesticidefreeeverett.blogspot.com (Dunn, n.d.).

The survey responses show an overwhelming support for the idea of a pesticide free park, the results of this primary data, collected by the author, are presented in Appendix B. Ninety-one percent of respondents rated the park’s appearance as “Pleasing and healthy.” When asked how they describe the park, none of the responses included support for pesticide application. When asked what they see when they look at the park, the responses included noting the beauty of the park and positive comments on neighborhood organization and personal ownership of the space. When asked if they are more likely or less likely to use the park since it is pesticide free, 91% responded they are more likely to use the park (See Appendix B).

The “Lowell Pesticide Free” project has been highlighted in the local media: an indication of community interest for the project. A comprehensive article by the Everett Herald illustrated support by citizens and the struggles of maintaining a volunteer effort. Two regional newspapers, the Everett Herald and the Snohomish Tribune, and the local radio station, KSER, have provided media coverage of the community efforts.

The second objective is to define the components of an IPM policy. Integrated Pest Management plans with pesticide free maintenance have been adopted by surrounding cities, which are similar in climate, environmental awareness, and geographic location. As defined by the Environmental Protection Agency, the formation of an IPM includes four steps: action thresholds, monitoring, prevention and control (EPA, 2011).

The Snohomish IPM policy includes two levels of decision making: an Action Level and a Threshold Level (Snohomish, 2004). An Action Level is the point at which action must be taken to prevent a vegetation or pest population at a specific site from reaching the Threshold Level (Snohomish, 2004). At the Threshold Level, the growth of a vegetation or pest population will cause unacceptable impact on public safety; recreation; health; natural or managed ecosystems; aesthetic values; economic damage to desired plants; and the integrity, function or service life of facilities (Snohomish, 2004). Least toxic chemical controls are used only after other options within this IPM approach have been explored (Snohomish, 2004).

If Snohomish County must spray pesticides, the agreement considers timing when exposure to the public would be at a minimum, timing to consider the susceptibility to pests, and weather conditions (Snohomish, 2004). Snohomish also created a High Hazard Criteria List where, if any active ingredients or other ingredients meet one of the criteria, then the product is a known high-hazard pesticide and will not be used on city property (Snohomish, 2004). Snohomish includes Notification Strategies that entails prior written notification to citizens with severe chemical allergies and signage to notify the public of an application (Snohomish, 2004).
ish, 2004). They also follow a standard determination questionnaire, to determine if there is a need for a pesticide intervention, prior to any application (Snohomish, 2004).

King County and the City of Seattle use “Pesticide Tier Tables” developed by the Washington Toxics Coalition to prioritize the phase-out of chemicals based on the level of threat they pose to human health and the environment. According to the city website, grounds staff were involved from the inception of the program (Simmons, 2011). This resulted in a widely accepted approach that expanded the idea of what was possible and provided staff with other tools including the freedom to try approaches that might not work (Simmons, 2011). The employee driven innovations have resulted in the elimination of Tier 1 insecticides and herbicides and a reduction in overall pesticide use (Simmons, 2011).

The third objective is to determine the decision makers. The Everett City Council is the legislative branch of city government that represents city residents in establishing policy direction to the administrative branch of city government (Everett Website, 2011). The city council identifies priorities of the community and gives directions in addressing those identified priorities (Everett Website, 2011). City council approval requires simple majority vote of five out of eight council members (Everett Website, 2011). An eight person Board of Park Commissioners serves in an advisory capacity to the council for parks related issues (Everett Website, 2011). The board includes one city council liaison. Alternatively, the Director of Parks and Recreation could make a unilateral decision to create an IPM and organize the shareholders (Everett Website, 2011).

Other options considered, aside from an IPM, include a pesticide free approach as opposed to a controlled pesticide use. The city could also do nothing and continue with the current protocol; but, if leadership changes in the parks department or horticulture practice change, there is no input from concerned citizens. If the city goes beyond compliance of the current regulations, new regulations implemented will be easier to meet. Another option is an incremental policy wherein some parks are listed as pesticide free and others are pesticide reduced (Theodoulou & Kofinis, 2004).

**Recommendations and Conclusion**

As illustrated above, there is support among the citizens for a policy solution. One community neighborhood association has initiated a volunteer stewardship for park maintenance. Additionally, the local media attention has also confirmed support. The City of Everett should mirror the best practice components and the approach of the IPM policy used by the City of Seattle and the County of Snohomish. A shareholder group could include Parks Department ground crews, local environmental advocates, county water quality specialists, a parks board member, and appropriate city leaders.

The components in a best practice IPM policy should include: a list of high hazard chemicals to avoid; second tier chemicals to use under very specific restrictions; and at what point the Threshold and Action levels have been reached, as decided by stakeholders. According to best practices from the Snohomish policy, Action and Threshold levels should be determined and exposure to the public should be at a minimum. According to best practices from the Seattle IPM, members of the maintenance teams should be involved in the final policy decisions. The Parks Department should consider prevention tactics, such as soil preparation and mulching to avoid weed pests. This should be considered for existing parks as well as in the design stages of new parks.

The final decision makers for a city-wide policy include the Everett City Council and the mayor with a recommendation from the parks board or the parks department director. An IPM procedure, as established by the surrounding cities and counties, would encourage community involvement and stewardship; and improve the surroundings for the citizens of Everett.

Current pesticide use has become a public policy problem, as there is a negative impact on all of the citizens (Theodoulou & Kofinis, 2004, p. 111). It is the role of the city council to protect the citizens and this matter demands an optimal policy solution (Theodoulou & Kofinis, 2004). Everett leaders should create a task force of identified stakeholders to create a comprehensive plan to reduce pesticide use in city parks. The IPM procedure is not a standardized policy for every city; this procedure would involve a consciousness raising and increasing education around pesticide use. The IPM program would involve stakeholders that determine what weeds are tolerable and when it is acceptable to intervene with chemicals, as defined by the Threshold and Action Level. This policy program would also give the citizens a sense that the city cares about community health and protection of its citizens and the program will give parents peace of mind to allow their children to play at parks without fear of chemical exposure.
References


APPENDIX A

Lowell Neighborhood Pesticide Free Park Survey 2009

Since the spring of 2009, the city of Everett has allowed the Lowell neighborhood to help maintain our park in a limited-term pilot program without the use of herbicides and pesticides. We have relied on volunteer support to offset increased manual labor. This project was spearheaded by your neighbor, Megan Dunn and is supported by the neighborhood group, the Lowell Civic Association (LCA). We would like to know how you feel about these efforts and the appearance and usability of the park.

Please take 2 minutes to complete this short 10 question survey, a web address is below if you prefer to submit your answers online. Thank you for your time! Three completed surveys will be picked at random for a chance to win prizes!

Questions 1-4: Circle the number that describes how you would rate your answers.

1. What is the usability of the park structures, such as the sand court?
   Perfect 1 2 3 4 5 Needs Improvement

2. What is the usability of the open field?
   Perfect 1 2 3 4 5 Needs Improvement

3. How would you compare the usability to last year?
   Circle One:
   No difference   Big Difference   Didn’t Notice

4. How would you rate the park appearance?
   Pleasing and healthy 1 2 3 4 5 In Disrepair

5. How would you compare the appearance to last year?
   Circle One:
   No difference   Big Difference   Didn’t Notice

6. Are you more likely or less likely to use the park since it is pesticide free?
   Circle One:
   More Likely   Less likely   Doesn’t Matter

7. Do you use pesticides to maintain your home?
   Circle One:
   Yes   No   Why or why not?

8. Do you use pesticides to maintain your yard or garden?
   Circle One:
   Yes   No   Why or why not?

9. How would you describe the park, circle all that apply:
   I think I saw a few dandelions.

Pesticide free! Great idea! I want to help!
Spray those weeds and kill them quick.
I didn’t know the park was pesticide free.
I love this idea, I just don’t have time to help.
I don’t support this.

10. I see a beautiful field my children can run around in.
   What do you see?

To help make sure no one turns in more than one survey, please provide your name or address. This survey will only be tabulated by one person and answers will be anonymous:

Do you want to help us next year? Circle what you feel comfortable doing.
   Weed pulling
   Help organize other volunteers
   Be a monthly steward
   Ask businesses for in kind donations

Contact me to help more:
   Name
   Address
   Email
   Phone

Best time to volunteer
   (weekends, weekdays, mornings, etc.)

Instead of submitting this survey on paper, visit the Pesticide Free Everett blog for a link to an online survey: www.PesticideFreeEverett.blogspot.com

Thank you for taking the time to be involved in your community, you can bring the completed survey to our Lowell Community Association meeting on November 16th or to any of these drop off spots.

Drop Off Locations:
   Lowell Community Association meeting November 16th
   Office of Neighborhoods, 2930 Wetmore Ave, 9th Floor, Everett
   Everett 2nd Street Market (sealed box)

Three completed surveys will be picked at random to win one of the following prizes. Please include your phone number if you would like to be entered into this drawing!
   ½ hour massage certificate (worth $35)
   2 Silvertips tickets (game of choice-about $30 value)
   2 Tickets for one performance of Everett Symphony Family Series ($24 value)

Winner contact phone number:
Deadline to drop off surveys or to complete online is November 20th, 2009

**APPENDIX B**

**Lowell Pesticide Free Survey Results (2009)**

1. What is the usability of the park structures, such as the sand court?
   - 1-Perfect 36.4% (4)
   - 2-18.2% (2)
   - 3-18.2% (2)
   - 4-18.2% (2)
   - 5-Needs Improvement -9.1% (1)
   - Total responded: 11

2. What is the usability of the open field?
   - 1-Perfect 54.5% (6)
   - 2-27.3% (3)
   - 3-18.2% (2)
   - Needs Improvement 0% (0)
   - Total responded: 11

3. How would you compare the usability to last year?
   - No Difference 45.5% 5
   - Big Difference 27.3% 3
   - Didn’t Notice 27.3%
   - Total responded: 11

4. How would you rate the park appearance?
   - Rate your response
     - Pleasing and healthy: 90.9% (10)
     - In Disrepair 9.1% (1)
   - Total responded: 11

5. How would you compare the appearance to last year?
   - No Difference 36.4% (4)
   - Big Difference 45.5% (5)
   - Didn’t Notice 18.2% (2)
   - Total responded: 11

6. Are you more likely or less likely to use the park since it is pesticide free?
   - More likely 90.9% (10)
   - Less likely 9.1% (1)
   - Doesn’t matter 9.1% (1)
   - Total responded: 11

7. Do you use pesticides to maintain your home, yard or garden?
   - Yes 18.2% 2
   - No 81.8% 9
   - Why or Why not: Cat eats the grass/like organic
     - Causes cancer
     - Allergy and breathing issues

8. How would you describe the park, select all that apply:
   - I think I saw a few dandelions. 9.1% 1
   - Pesticide free! Great idea! I want to help! 81.8% (9)
   - Spray those weeds and kill them quick. 0.0% (0)
   - I didn’t know the park was pesticide free. 0.0% (0)
   - I love this idea, I just don’t have time to help. 27.3% (3)
   - I don’t support this. 0.0% (0)

9. I see a beautiful field children can run around in. What do you see? Please type your answer below.
   - Beautiful park
   - Same
   - We had our Congregation picnic there!
   - A neighborhood that cares about its park and the people who enjoy it.
   - I see a beautiful field my grandchildren can run around in.
   - I see a local public space where neighbors take ownership.
   - Grass has weeds but they are not toxic. Pesticides are.
   - A health environment and peace of mind.

10. Do you want to help?
    - Yes, I want to help! Contact me with more information. 72.7% (8)
    - No, I’m not interested in helping but add me to the prize drawing. 27.3% (3)
    - No, thanks, I don’t want to help and I don’t want to be in the drawing for prizes. 0.0% (0)
ROADBLOCKS FOR INTERNATIONAL STUDENTS IN LOCAL NURSING PROGRAMS

Kathleen Gallentine

ABSTRACT: International students pursuing degrees in nursing face many difficulties entering nursing programs at local state colleges; possibly the most frustrating are the issues with obtaining a Social Security Number. The policies preventing students from obtaining a Social Security Number are complicated. This paper is an examination of the roadblocks for international students pursuing nursing degrees including the Washington State Certified Nursing Registry (as required by the Omnibus Budget Reconciliation Act (OBRA) of 1987), immigration regulations, and limits in state nursing programs. These issues are analyzed by applying Malen’s and Easton’s models for political systems. After the analysis and understanding of the larger issues, current work with local administration is addressed.

Social Security numbers are used as proof of identity for financial documentation and employment. However, Social Security numbers are often used for many other reasons including: signing a contract for a cell phone, obtaining a driver’s license, applying to college, renting an apartment, purchasing insurance policies, applying for a passport, and even having cable installed.

Surviving in the United States (U.S.) without a Social Security card to support proof of one’s identity in these previously mentioned situations often seems daunting. There are many regulations regarding obtaining a Social Security Number but, there are few regulations regarding requiring Social Security Numbers as personal identification. As an international student adviser since 2005, every quarter I am asked how, when, and can new international students obtain Social Security cards.

In 2009, an international student in the nursing program told me that she needed a Social Security Number (SSN), because the test she had to take in order to pass her class required a SSN. Due to my experience in dealing with the strict regulations on obtaining a SSN and my involvement with advising international students, I thought explaining the situation with the instructor would allow the student to take the test without a SSN. I was wrong. Subsequently, I began to examine the conflicting policies regarding SSNs and how local international students are at the crux of the mix.

In this paper I will create a framework to examine the policy issues behind the difficulties international students have when they apply to the nursing program at Lake Washington Institute of Technology (LWIT). I will address the conflicting federal and state policies as they relate to and restrict international students from applying to nursing programs at local community and technical colleges, specifically at LWIT.

There are several large policies and agencies that collide and create roadblocks for international students: the Social Security Administration, a federal law (Public Law 100-203) and how each state interprets the federal law; and immigration regulations. Another component of this compounded problem, is the application requirements for the nursing program. In this situation, these stand-alone policies should work across purposes.

Using my background of international student advising at LWIT, I examine the policies and how they are applied. In the process of helping students navigate their way around the roadblocks, I have engaged in multiple discussions with customer care representatives at agencies including PearsonVue testing services, Social Security Administration. Additional conversations have been had with administrators at the Washington State Department of Health, the Director of the LWIT nursing program, and other college administrators; and, I have reached out to a state Senator for additional assistance. This paper is a synopsis of the policy literature and personal communication necessary to better understand the situation and find ways to help international students enter the LWIT nursing program.

Social Security Administration

The Social Security Administration policies regarding eligibility and distribution of SSNs, are clearly detailed and available on the Social Security Administration website (2010). The website states that a SSN is unneeded by legal aliens for access to government benefits and services:

Lawfully admitted noncitizens can get many benefits and services without a Social Security number. You do not need a number to conduct business with a bank, register for school, apply for educational tests, obtain private health insurance, apply for school lunch programs or to apply for subsidized housing. You
cannot get a Social Security number for the sole purpose of obtaining a driver’s license. (Social Security Administration, 2011, p. 1)

While this regulation states that people do not need a SSN to access these services, international students face obstacles in obtaining these services without a SSN.

International students are categorized under the Social Security Administration regulations for international students, but they are also part of the administration’s larger category: noncitizen. International students are not eligible to receive a SSN unless they have authorization from the government to work. International students are eligible to work on campus without permission from the United States Customs and Immigration Services (USCIS); but, off-campus employment must be authorized by the USCIS and be directly related to the student’s field of study (United States Citizen and Immigration Services, 2011). The eligible students are able to apply for work authorization are Optional Practical Training (OPT) either before or after they finish a program and Co-curricular Practical Training (CPT) during their course of study for internship-like programs. Noncitizens who have work permission from the Department of Homeland Security can also apply for Social Security cards. However, there are certain loopholes in obtaining a Social Security card if the international student cannot get this work permission. According to the Social Security administration, this “might happen, for example, if a state or federal law requires you to have a Social Security number to obtain benefits to which you have already established entitlement” (Social Security Administration, 2011, p. 2). In order to establish a SSN without receiving work permission from the government, there would need to be a federal law that requires a SSN. Such a law exists, and is known as Public Law 100-203 (Kelly, 1989); it will be explained in greater detail below.

**OBRA and the State Registry**

The second issue that affects international students applying for the nursing program is what the Washington State Department of Health (DOH) refers to as the Omnibus Budget Reconciliation Act (OBRA). In 1987, the United States Department of Health and Human Services (DSHS) created OBRA regulations applying to public health Medicare and Medicaid statues (also known as Public Law 100-203). These regulations were designed to identify and track nurse aides intending to improve the quality of care in nursing homes (Kelly, 1989). These requirements do not specify how states are to create the registry, but they do identify information that the state registries need to include, such as completion of state recognized training and any findings of neglect abuse or misappropriation of property (Department of Health and Human Services, 2011; Kelly, 1989, p. 793). The OBRA portion that affects international students in the nursing program, requires states to create a registry system to track nurse aides. The Washington State DOH application packet for nursing assistants clearly states on the introduction page:

> You are required by state and federal law to provide a social security number with your application. If you do not have a social security number at the time you send this application, contact the Customer Service Center for more information. (Department of Health, 2009, p. i)

I called the Customer Service Center per these instructions, in an attempt to see if other information could be used in place of a SSN. The customer service agent informed me that providing the SSN was mandatory and there were no alternative solutions provided. The Washington State registry does not allow use of a tax identification number, as do some other state registries according to the Customer Service Center.

**Nursing Programs at State Schools**

The nursing programs themselves, within Washington state, also add to the difficulties international students face with regard to nursing program enrollment. The American Association of Colleges of Nursing recognizes the participation of international students in college nursing programs at all levels and strives to provide training and education to these students so that the quality of nursing worldwide will continue to improve (Fenton, 1995).

The Revised Code of Washington (RCW) requires occupational nurses to have formal education (RCW 18.88A). This RCW continues to explain that students should participate in state approved competency evaluations and programs. State approved programs are determined by the Washington Nursing Care Quality Assurance Commission (Nursing Commission) and the Higher Education Coordination Board. As part of the state approved evaluations, students must take the Certified Nursing Assistant exam and apply for the license through the Washington State DOH. In order to take the test or apply, students must provide their SSNs for the state registry.

According to S. Kerrigan, a program manager of
Nurse Aid Training and Competency Evaluation at DSHS, Washington State has kept a registry per OBRA dating back to 1989. The State’s registry uses SSNs to identify individuals who qualify (personal communication, May 14, 2010). It is unclear how or why the state decided to rely on SSNs for Washington State’s registry. The use of SSNs for the registry neglects recognizing non-U.S. citizens who are trained and want to practice nursing in Washington State. There are unanticipated conflicting policies and interpretations about who is eligible for SSNs at the state Social Security Administration and, further, conflicting policies and interpretations for using SSNs on Washington State DOH nursing applications and Washington State DOH registries.

**Immigration Regulations**

Immigration regulations are the fourth roadblock for international students trying to get into the nursing programs in Washington State. In the federal arena, international students are subject to strict immigration regulations. Regulations are the full second page of the three pages from Form I-20 A-B: the immigration document for international students. This document is given to students before they leave their home country, and they take it to their interview to obtain a visa. Some of the immigration regulations include:

- Enrolling and maintaining a full course load (this may vary slightly by institution and academic level, however, for the scope of this paper, 12 credit hours per quarter will equate to full time status).
- Continuing to make academic progress (maintaining good academic status at Lake Washington Institute of Technology is 2.0 GPA or higher) (Lake Washington Institute of Technology, 2011, p. 156).
- Checking in and keeping the international programs office apprised of any contact information changes, including change of address or telephone number.
- Working off campus is not allowed without specific authorization for employment, such as Optional Practical Training, before or after completion, or Co-curricular Practical Training while studying as part of the program of choice (such as instances of internships).

These regulations are arguably straight forward and easy to follow, but impacts of these regulations goes beyond the paper. For example, if a student’s family or sponsor is faced with unforeseen financial difficulties (such as parental job loss, debilitating accident, or death) and thus are unable to provide financial support, the student is then faced with the choice to stay in the U.S. to further burden and potentially ruin the family financially, return home, or work illegally. On campus jobs, where available, are limited in hours and income. It is rare that these jobs would provide enough income to support a student on their own. For example, an international student working on campus earning minimum wage, working the maximum 20 hours per week could earn approximately $2,169.60, which does not cover the full cost of full time tuition (12 credits of tuition for non-residents is $2,883.98) (Lake Washington Institute of Technology, 2011, p. 148).

In order to apply to a college in the U.S., and later interview for an F-1 student visa (the visa required to be a full time student in the U.S.), a potential student must show documentation of financial support (proof that the student will be supported fully for tuition, fees, books, housing, incidentals, insurance, etc.) for at least one full academic year. The funds to support a student for a year at a Washington State community or technical college are in the range of $16,000 to $20,000. In the 2010/2011 school year, 93.9% of international students at colleges offering associate degrees were funded primarily with personal or family funds (Chow & Bhandari, 2011). Often, students feel that they must work in order to ease the financial burden placed on their families supporting their educational pursuits.

However, the urge to work increases as international students pursuing admission to the nursing program realize that work experience provides more points on the admission application. Students want to be competitive in the application process or they face not being accepted. Competitive applicants for the nursing program at LWIT must have previous education and work experience in the medical field. Students know that they will need work experience in the medical field in order to be accepted into the nursing program, but are not legally allowed to work.

**Nursing Program**

International students are often unaware of federal and immigration policies, and subsequently become frustrated when they are faced with roadblocks preventing them from entering the program they want to study. In a discussion about these difficulties, C. Hewes, Director of Nursing at Lake Washington Institute of Technology, explains that: Washington State schools with nursing programs are at capacity, and schools cannot increase
program sizes because of shortages with nursing faculty and clinical placement sites (personal communication, March 1, 2012). Admission into nursing programs is competitive, with limited numbers of students accepted each quarter.

In the 2010/2011 school year, of the 32,526 international students in health related programs in all education levels in the U.S., approximately 1,128, or 3.5% were earning associate degrees (Chow & Bhandari, 2011). Then number of students in health fields at the associate degree level would be much larger if it were to include students in intensive English programs with the intent to pursue a health related program; or, students who have yet to declare their program of study but intend to pursue health related programs. Even with these numbers of students, there are not enough seats in classes, or clinical placements to accept everyone who is interested in applying to health related programs.

At LWIT, the Certified Nursing Assistant (CNA) program is eleven credits. International students must find a one credit class to take with the CNA courses in order to maintain their immigration status. This is the beginning of the collision between the nursing program regulations and immigration regulations. At the end of the CNA coursework, students must take a test for certification and, in order to take the test, they must register with their SSN. To be enrolled in an accredited nursing program, community and technical colleges require the CNA certification. To receive their CNA certification, students must show proof that they have completed a nursing program at an accredited program, and provide their SSN as mentioned earlier.

In addition to the CNA requirements, competitive applicants to the Nursing Program at LWIT have prior work and education experience, and have maintained a grade point average of 3.7 or higher. Students often take course requirements multiple times in order to get the highest grades possible. Despite their efforts, often international students still fall short on the point based application because they do not have the work experience they could have gained if they were allowed to work legally in the U.S.

Analysis of the Policy

Fowler (2009) writes specifically on educational policy topics and identifies reasons to change policy as a shift in: ideology, demographics, and/or economies. These reasons for policy change can be applied to nursing policy in Washington state, specifically, LWIT. Cases of abuse, neglect, and other misconduct at nursing homes and other care facilities triggered the public outcry necessitating the implementation of the OBRA policies (Kelly, 1898). This ideological shift from getting the job done to hiring qualified people with clean background checks was the instigator for the change. There was also a demographic and economic shift as current nurses were retiring, causing a nursing shortage. The intent of the policy to create nursing registries, fixed the larger problem of abuse occurring within care facilities. The public wanted to be able to put their aging parents in safer care facilities with trusted, qualified staff. With the general public satisfied, there has been no need to make large changes to the policy, although minor updates to the regulation were implemented in 2009 (Department of Health and Human Services, 2011).

To analyze the issues surrounding these colliding policies, Malen (2006) suggests identifying the actors and their areas of influence in order to see how they all influence policy implementation. Figure 1 is an illustration of this model as it helps define the actors, the issues they address, the reach of their influence, and how they influence and shape policies.

With the actors established in Figure 1, Figure 2 shows the major subsystems and how they interact with one another and span the arena of influence—from federal to local in an application of Easton’s simplified model of a political system (Easton, 1965; Kirst & Wirt, 2009).
<table>
<thead>
<tr>
<th>Actor</th>
<th>Issues</th>
<th>Venue for influence</th>
<th>Means of influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>State HECB, SBCTC</td>
<td>Implementation of legislation at the college level and advocate for colleges.</td>
<td>State legislature and colleges.</td>
<td>Through lobbying and testifying at legislation hearings.</td>
</tr>
<tr>
<td>Council on Nursing Education in Washington State &amp; Washington State Nursing Association</td>
<td>Must follow federal law to create and use a registry of nurses.</td>
<td>Influence students, staff, and nurses in nursing programs.</td>
<td>Help set accreditation standards for nursing programs.</td>
</tr>
<tr>
<td>International Students (in Pre-Nursing or health fields)</td>
<td>Must follow immigration regulations. Desire to enroll in Nursing Program.</td>
<td>Schools</td>
<td>Create the demands on support systems (International Program and Student Services Offices, advisers, administrators, enrollment services, and nursing program staff).</td>
</tr>
<tr>
<td>State colleges (2 and 4 year)</td>
<td>· Must be accredited to offer nursing programs. · Encouraged to increase international student enrollment to increase revenue.</td>
<td>Creation of campus policies.</td>
<td>Creation of school policy for admission of nursing students.</td>
</tr>
<tr>
<td>Testing Service (PearsonVue)</td>
<td>Require Social Security number (or tax ID depending on the state) to follow state registry regulations.</td>
<td>Creation of procedures to comply with requirements for the OBRA Registries.</td>
<td>Submits to the state policy to keep the test contract.</td>
</tr>
<tr>
<td>Senator Inslee (and office staff)</td>
<td>Helps constituents to secure possible votes.</td>
<td>Act on behalf of senator, draws attention to pressing issues.</td>
<td>Has private numbers to Social Security Administration staff/managers etc. and could be seen as having position of power.</td>
</tr>
<tr>
<td>Federal Government</td>
<td>Providing regulations and standards for states to create registries for CNA’s as a solution to the problem.</td>
<td>Congress.</td>
<td>Creation of OBRA, the law that dictates to the states that they must create a registry of certified nurses.</td>
</tr>
<tr>
<td>Department of Homeland Security</td>
<td>Maintain Social Security numbers are for work purposes only (as for OPT and CPT).</td>
<td>Influence over international student immigration regulations in the U.S.</td>
<td>· Enforce immigration regulations. · Provide authorization for work.</td>
</tr>
<tr>
<td>Advisers for International Students</td>
<td>· Help students. · Maintain documentation and advises for immigration issues. · Must follow school policies.</td>
<td>Direct venue is on school campus but may also connect with state and federal groups for assistance and support.</td>
<td>· Connect with other professionals within local and national associations, or seek assistance with Social Security Administration, Department of Social and Human Services, Senators, and school supports (HECB/SBCTC). · Influences student immigration.</td>
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</table>
The inputs, or supports and demands, are the students and LWIT. They sustain the policy system of the legislature and Social Security Administration. These groups provide information to the federal government who output policies which affect the supports and demands. Two groups, Immigration (or the Department of Homeland Security) and the Nursing Commission, are not directly connected to this policy process. The communication between these two groups is one way as they dictate to the students and school policies and do not receive any feedback from the input group.

Comparing the Malen (2006) and Easton (1965) models, one can see how the impact of institutional and sociocultural contexts comes into play. Malen (2006) suggests broad “institutional and sociocultural contexts are never neutral. Rather they infuse the policy system with presumptions, preferences, and prejudices that advantage some and disadvantage others” (p. 89). The Nursing Commission plays a major role in this system, as they regulate who can become a CNA by setting the legal requirements of possessing a SSN in order to apply. This gives domestic students several advantages, including being able to work legally in the U.S. which provides the competitive edge on the nursing program applications.

Figure 2. Application of Easton’s Model of Political Systems in the Roadblocks for International Students in Nursing Programs

Seeing how international students factor into this large arena of the nursing program from the context of an international student perspective, should show the detrimental effects of communication and interaction between these agencies and actors. The input from students and international student advisers is not heard by policy makers or decision makers directly. The policies that come down from the Nursing Commission and from Immigration are directed one way. When the schools approach the Higher Education Coordination Board (HECB) and the State Board of Community and Technical Colleges (SBCTC) for assistance, another disconnect exists; as neither the HECB nor SBCTC are in direct communication with the Nursing Commission or Immigration.
At LWIT, I tried to convince the college administrators to change the requirements for admission to the nursing program. It didn’t work. I sent a letter with a packet of information on the content of this paper to Senator Inslee’s office in May 2010, asking for assistance communicating with the local Social Security Administration office regarding the stated policies on the Social Security Administration website. Within a week I received response from Senator Inslee’s staff member.

Over the phone, I recapped the difficulty international students are facing in getting SSNs. The staff member said she talks with the local Social Security Administration office on a regular basis and they say they are issuing international students SSNs. I believe that they are, but only when the student has work permission as noted on their Form I-20 A-B. I have sent students with a letter identifying the applicant, citing the laws requiring a SSN, and giving an explanation of the situation per the directions on the Social Security Administration website for noncitizens, yet these students are still denied a SSN. When it comes to the policy of the Social Security Administration, it seems the local offices fail to interpret the regulations consistently.

These inconsistent interpretations of Social Security Administration policies could be resolved with a state amendment to the Revised Code of Washington addressing this specific issue. If proper application, or at least a consistent interpretation, of the existing policies would be employed: international students requesting a SSN for non-work purposes would be granted one. Hopefully, Senator Inslee’s staff will assist our local Social Security Administration office in understanding the collision between the OBRA mandate, that states have a nursing registry, and the way Washington state has chosen to create the OBRA registry. Students, who follow the state and federal law to become Certified Nursing Assistants (CAN), must be issued the SSN for non-work purposes. Also, for international students in the nursing program to maintain their immigration status, they must take a full course load and maintain good academic status. This includes taking and passing the CNA courses and the certification exam. If they fail, they risk termination of their immigration status and may be required to leave the country immediately.

I remember holding the pen to sign my Social Security card when I was twelve years old knowing that this card was an important privilege. Now, as an international student adviser, I understand the complexities behind the Social Security Administration polices and how they tie into federal and state laws; the company that delivers the CNA test; the Department of Social and Human Services; and with international students trying to apply for the nursing program at LWIT. The colliding policies are roadblocks for international students. These roadblocks can be navigated if the local Social Security Administration offices applied the policy for giving international students Social Security numbers for non-work purposes. It is my hope that Senator Inslee’s office staff will be able to communicate this clearly to the Social Security Administration and progress will be made in this direction.

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About the Authors

Paul Henderson graduated in 2012 from the University of Washington Bothell with a Bachelor of Arts in Society, Ethics, Human Behavior and a minor in Human Rights. While on active duty in the U.S. Air Force, he earned an A.A.S. in Financial Management and an A.A. in Criminal Justice. Currently he works for the Monroe Police Department, where he has been employed as a law enforcement officer for the past five years. Paul’s professional aspirations include detective fieldwork and joining the Air Force Reserves as an intelligence officer. He enjoys spending time with his wife, with whom he shares a passion for international travel.

Brenda Rodgers will graduate from the University of Washington Bothell in Fall Quarter 2012 with a Bachelor of Arts in Global Studies and a minor in Human Rights. Deeply committed to advancing human rights and policy formation, particularly in the area of women and children’s health, Brenda intends to pursue a graduate degree in Global Health. Active in the non-profit world, Brenda is a partner with Social Venture Partners, which provides capacity building support to local education and environmental NGOs in addition to raising money through Timberlake Church, which provides support to orphanages in Kenya, Haiti, and India, as well as a local women’s shelter.

Brenden Mclane graduated cum laude from the University of Washington Bothell in Winter Quarter 2012 with a Bachelor of Arts in Global Studies. His experience as an exchange student in Germany piqued his interest for international affairs and alternative ways of life. Brenden’s research interests include environmental justice, labor rights, globalization, and access to resources in the developing world. He hopes to utilize Geographic Information Systems to solve environmental problems and affect sustainable policy changes, both at home and abroad.

Shawn Friang will graduate with honors from the University of Washington Bothell in Spring Quarter 2012 with a major in Science, Technology, and Society. After homeschooling her five children, Shawn returned to school to focus on her own education. She is currently in the process of applying to the Master of Science in Geographic Information Systems and Sustainability at the University of Washington for Fall Quarter 2012. Shawn then plans to work as a researcher or consultant in the environmental field and hopes to publish additional articles in the future.

Quinn Russell Brown will graduate from the University of Washington Bothell in Winter Quarter 2013 with a major in Society, Ethics, and Human Behavior. He lives happily at home with his parents and sister. He plans to work in the independent film industry one day, writing and directing films as well as organizing funding for films by people of color. He would like to thank Professor Stuart Streichler for introducing him to criminal justice and guiding his research.

Megan Dunn is a first year Master of Arts in Policy Studies candidate at the University of Washington Bothell. Her research interests include policy solutions to issues involving environmental and social justice, environmental health, and gender equality. Megan has a work history in non-profit development, environmental advocacy, and union research. After graduation in June 2013, she will continue to create positive social change as a policy analyst, foundation program manager, or community organizer.

Kathleen Gallentine has worked in international education since 2005. Much of her work with international students has spurred her interest in policy, higher education, administration, and international experiences at two and four year colleges. She has a Bachelor of Arts degree in Asian studies from Brigham Young University. Kathleen will graduate in June 2012 from the University of Washington Bothell with a Master of Arts in Education and intends to continue administration and advisory work in international education. She currently works at Lake Washington Institute of Technology as an academic and immigration adviser for international students.