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Wicked Problems

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Veterinary Drugs Not Approved for Human Use in the US Food Supply: Evidence and Policy Implications

by Wendy Lockwood Banka

In recent years the potential link between antibiotic use in farm animals and the rise of resistance to medically important antibiotic drugs has driven significant reform in the agricultural sector. The Centers for Disease Control and Prevention has described antibiotic resistance as "… one of the world's most pressing health problems. Illnesses that were once easily treatable with antibiotics are becoming more difficult to cure and more expensive to treat."[1] In response to these concerns, the Food and Drug Administration (FDA) implemented a Veterinary Feed Directive (VFD) on January 1, 2017,[2] which added a new requirement for veterinary oversight of these medically important drugs when administered in the feed of farm animals.

The importance of slowing the spread of antibiotic resistance of medically important antibiotics, however, may not be the only significant concern related to antibiotic use in farm animals. In particular, farm animals are also commonly fed a second class of antibiotics that are not medically important since the drugs are not approved for human use, and this class of drugs is not regulated by the VFD. Thus one possibility is that in response to the VFD, farmers will simply switch from using antibiotics approved for human use, to using antibiotics that are not approved for human use. This could create new problems if, for example, residues of antibiotic drugs not approved for human use remain in the edible tissues of the farm animals which consume them, and become widespread in the human food supply.

This paper begins with a description of an animal feed contamination event that was first identified in west Michigan in 2014, and that became important from a policy perspective because of what the ensuing investigation, Securities and Exchange Commission (SEC) filings, and court cases revealed about how the US farm and food system works with respect to the monitoring of farm feed and human food during a contamination event. Eventually, the question of whether any state or federal agency had tested the human food supply for the contaminant was asked, and the apparent lack of government oversight led to the private testing of human food samples for 12 different veterinary drug residues. The results of this testing provides evidence for the presence of multiple veterinary drug residues not approved for human use, in each of 15 samples purchased from grocery stores and restaurants in Washtenaw County, Michigan, in 2016. Altogether these results reveal an unusual situation in which drugs that are not approved for human use and which cannot be prescribed by physicians are present in the human food supply by virtue of choices made by the agricultural industry acting under little or no regulatory control. While none of the samples tested in 2016 showed drug levels that exceed FDA-approved limits, these levels seem likely to rise if farmers replace medically important antibiotics with non-medically important drugs in response to the VFD.

Lasalocid Contamination and Investigation

On January 21, 2015 the Michigan Department of Agriculture and Rural Development (MDARD) disclosed that in August of 2014, 57,700 turkeys died from eating contaminated feed in west Michigan.[3,4,5] In addition, 35,900 pigs were also fed the contaminant but survived and were later sent to market, and 500 tons of contaminated feed were disposed of.[5] The large number of turkey deaths led to a multi-agency response that included MDARD, the USDA Food Safety and Inspection Service (FSIS), the FDA Detroit District Office (DET_DO) and the FDA Center for Veterinary Medicine (CVM).[6] The investigation eventually revealed that the cause of turkey deaths was Lasalocid toxicity, and that the contaminant had been distributed to more than 100 farms in at least eight states.[6] In 2015 this and other investigatory work conducted by MDARD, CVM, and DET_DO earned a Group Recognition Award at the 55th Annual FDA Honor Awards Ceremony.[7]

Lasalocid sodium (Lasalocid) is an ionophore used for the prevention of coccidiosis and is sold under the trade name Avatec for poultry, or Bovatec[9] for cattle.[8] Avatec and Bovatec are both manufactured by Zoetis Pharmaceuticals (Zoetis) and in addition to control of coccidiosis, are used to increase weight gain in farm animals. Overall, the FDA has approved Lasalocid for use in broiler or fryer chickens, cattle, sheep, Chukar partridges, turkeys, and rabbits, but not in swine or egg-producing hens (Table 1). Lasalocid is also known to be highly toxic at low doses in some animals such as horses, in very young animals such as neonatal calves, and to reduce the age of puberty in low-weight heifers.[10,11,12] Lasalocid is not used in human medicine.[13] The approved dose of Lasalocid in turkeys is 68 to 113 grams per ton,but the contaminated turkey feed contained five times this amount, and the dose fed to hogs in contaminated feed was even higher at 1,510 grams per ton.[6, 14]

Further investigation revealed that the source of the excess Lasalocid was likely "lascadoil", a byproduct of the Lasalocid manufacturing process that was intended to be disposed of as a biofuel, but was instead diverted to the animal feed stream.[4] The entities involved in this distribution were shown by MDARD in a diagram that depicts the interactions between the drug manufacturer, brokers and grease distributors, as well as affected farms and feed manufacturers (Figure 1); the names of some of these entities can be found in MDARD's 2014 Lasalocid Investigation Report, and others can be found in SEC documents filed by Zoetis.[4, 5, 14] This MDARD diagram appears to depict only a subset of all involved entities, however, as more than one hundred farms were said to be affected but only 45 are shown here. Of the 45 farms shown, 36 were swine (pink or brown) and two were egg (yellow); neither swine nor egg-laying hens are approved by the FDA for on-label Lasalocid use (Table 1).[4]

SEC filings from Zoetis also describe three court cases relevant to the contamination event that are being heard in the Seventeenth Circuit Court in Kent County, Michigan; testimony from one of those cases indicates that in the spring of 2014 chickens at Tyson refused to eat feed products containing lascadoil.[15] If true, this would suggest that the distribution of lascadoil in the fall of 2014 does not represent the first or only diversion of lascadoil to an animal feed stream, and also suggests that the contaminant was delivered to at least one major US poultry producer.

From a consumer perspective, a primary concern during an animal feed contaminatoin event is whether any food products from animals fed the contaminant have entered the human food stream, and if so, whether residues of the contaminant remain in those food products. In this particular

Table 1. FDA Description of Lasalocid Use in Animals

U.S. Department of Health & Human Services | www.hhs.gov

U.S. Food and Drug Administration
Protecting and Promoting Your Health

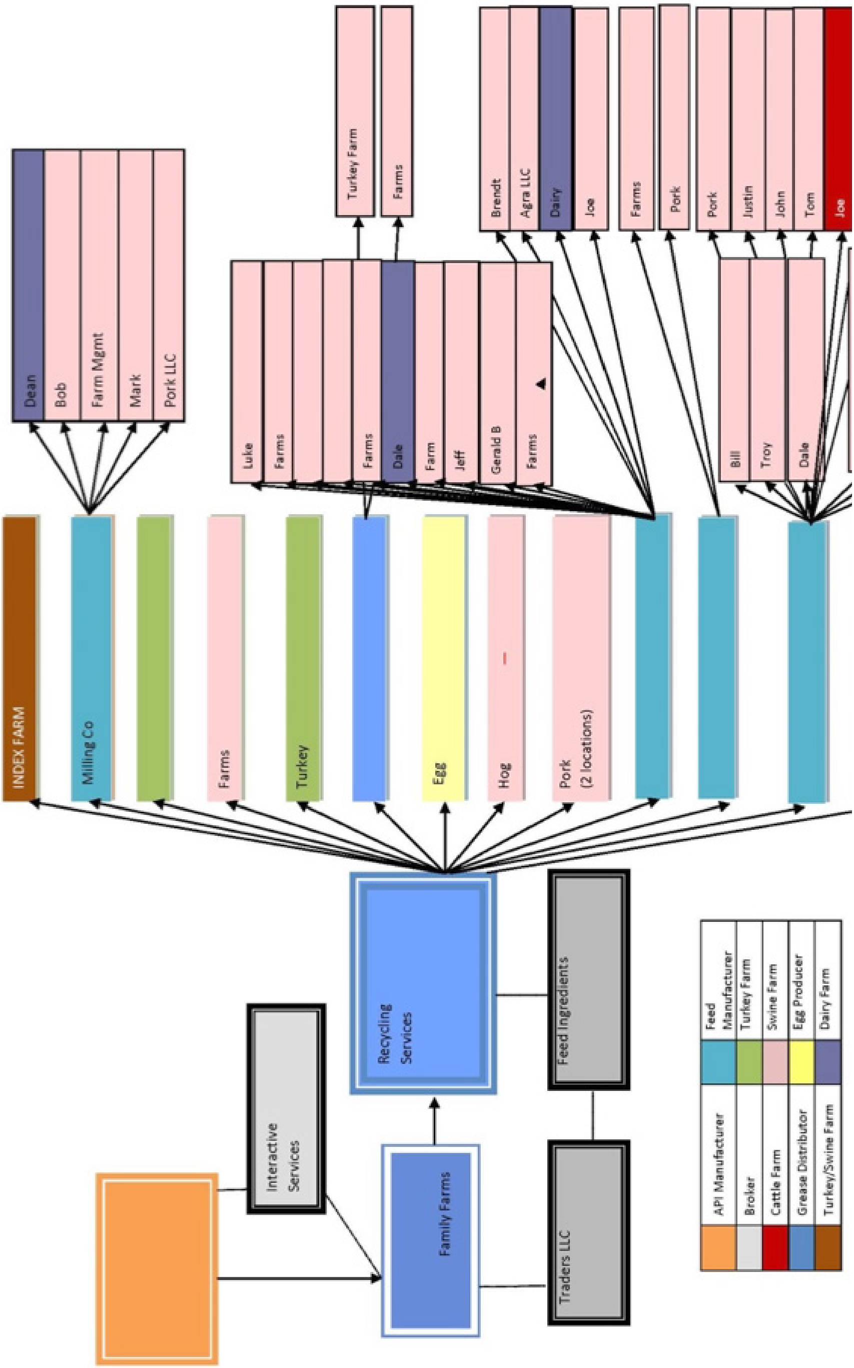
Animal Drugs @ FDA
FDA Center for Veterinary Medicine | FDA Approved Animal Drug Products

Return To Search | Return To Results | Printable Version

NADA Number: 096-298

Proprietary Name	**Avatec®** **Bovatec® Type A Medicated Article** **Bovatec® 68 Type A Medicated Article** **Bovatec® Liquid 20 (liquid Type A Article)** **Bovatec® Premix**
Sponsor	Zoetis Inc.
Sponsor Address	333 Portage St. Kalamazoo, MI 49007
Ingredients	Lasalocid
Species (Class)	**CATTLE** (Cattle, dairy, heifers on pasture) **CATTLE** (Cattle, fed in confinement for slaughter) **CATTLE** (Cattle, calves, excluding veal calves) **CATTLE** (Cattle, beef, on pasture) **CHICKENS** (Chicken, fryers) **CHICKENS** (Chicken, broilers) **CHUKAR PARTRIDGES** (Chukar partridges, up to 8 weeks of age) **RABBITS** (Domestic rabbit, young) **SHEEP (DOMESTIC)** (Sheep, confinement) **TURKEYS** (Turkey, growing)
Routes of Administration	Per Os
Dosage Form	Medicated feed
Dispensing Status	OTC
Patent Number (Expiration Date)	3715372 (No Expiration Date) 4594354 (No Expiration Date) RE29244 (No Expiration Date)
Exclusivity	Granted for the use of a generic free-choice high phosphorus loose mineral feed containing 1088 grams of lasalocid per ton feed in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers). For use in growing turkeys.
Withdrawal Time	Cattle: zero days before slaughter. A withdrawal time for pre-ruminating veal calves has not been established. Sheep: zero days before slaughter. Chicken and Partridges: zero days before slaughter. Rabbits: zero days before slaughter. Chukar up to 8 weeks: no withdrawal necessary.

Table 2. FDA Description of Lasalocid Use in Animals



case, the lack of a press release in 2014 to alert consumers to the high number of turkey deaths made it impossible for consumers to protect their own interests. In the absence of such transparency, it is relevant to ask whether any government agency monitored the food supply for the Lasalocid contaminant on behalf of citizen interests.

In Michigan, food safety is regulated by the Michigan Department of Agriculture and Rural Development, and indeed, "Food safety is MDARD's top priority."[16] In early 2016 a FOIA request was made to MDARD, asking for the sample numbers of all food samples tested for Lasalocid in 2014 and 2015. MDARD responded that no such records were located, suggesting that the MDARD conducted no testing of food products for Lasalocid during this time.[17] Consistent with this, the MDARD 2014 Project Feed – Animal Death Report states that no tissue testing options were considered for the swine in west Michigan that were fed the contaminated feed, and then sent to market after a 28-day withdrawal period.[18]

Similar FOIA requests for information on food samples tested for the Lasalocid contaminant were made to the FDA and FSIS. The FDA responded with a list of samples tested for Lasalocid,but none appeared to be human food products, and indeed it is the USDA FSIS agency that is responsible for meat poultry and egg products, rather than the FDA.[19, 20] Meanwhile, the USDA responded that "knowledgeable staff in FSIS failed to locate any records responsive to your request."[21] Consistent with this, the National Residue Program for Meat, Poultry, and Egg Products Residue Sample Results reported no food samples tested for Lasalocid in 2014 or 2015.[22,23]

Related court documents were also reviewed for information relevant to the question of whether any food products from animals fed contaminated feed entered the human food supply. A Complaint filed in 2015 by affected farms, feed mills, and insurance companies provides details on turkeys that were fed the contaminated feed in west Michigan. According to this document, two farms delivered affected poultry for slaughter and processing to Michigan Turkey Producers (MTP) on August 11, 2014, and a third farm made a similar delivery on August 14, 2014.[24] According to these records, none of the meat processed by MTP on those two days ever made it to market. What remains unknown is whether all other animals fed the Lasalocid-contaminated feed from more than 100 farms and at least 8 states were similarly kept from market.[3]

**Full quote: "71. The meat from the H&H and Crockery flocks which had been processed on Monday, August 11, 2014, was quarantined and was not shipped out to other parties. MTP put 334,000 pounds of meat that it processed from H&H and Crockery on hold and later disposed of that meat. Neither MTP nor the Co-Op paid H&H or Crockery for those birds that were delivered. 72. Approximately 129,000 pounds of White Acres meat had ben processed by MTP on Wednesday, August 14, 2014, combined and/or processed with additional meat from other sources, and shipped to customers before it was discovered that the meat had been contaminated with lasalocid. Fortunately none of this product ever reached customers."*

Consumer Testing of Food Products for Lasalocid and other Veterinary Drugs

The lack of monitoring of the human food supply – even during a known, wide-spread animal feed contamination event involving a pharmaceutical drug - suggests that independent testing may be warranted. Indeed, private, consumer-driven monitoring of food products might be prudent at all times, and not just during feed contamination events, since an examination of the scientific literature suggests that the residues of at least some drugs fed to farm animals do end up in edible tissues. In particular, it has been established that Lasalocid residues are present in the edible tissues of chickens fed Lasalocid, in amounts that depend on the tissue tested and on the length of withdrawal time, with longer withdrawal times resulting in lower Lasalocid levels.[25] And, it is known that the US requires no withdrawal times for Lasalocid (Table 1). This suggests that US food products derived from animals fed Lasalocid very likely routinely contain residues of that drug, even in the absence of animal feed contamination events like the one that occurred in 2014.

Several technologies exist for the testing of food products for drug residues, but a system developed by Randox Food Diagnostics has two key technical advantages. First, the Randox system uses antibodies to detect drugs of interest, and is sensitive in the parts per billion (ppb) range.[26]

Second, Randox has developed a multiplex design in which Lasalocid antibodies are present on the same chip as antibodies to 11 other drugs, providing an opportunity to assay for the presence of 12 different veterinary drug residues for each food sample tested. This is important since farmers often rotate their use of similar drugs to prevent antibiotic resistance to any given drug on their farm, such that it is beneficial to test for multiple drugs of a given class rather than just one, when the technology allows.

Food Testing Results

In the summer of 2016 two sets of eight food samples were purchased from six grocery stores and one restaurant in Washtenaw County, Michigan, and sent to the Veterinary Diagnostic Laboratory at Colorado State University (CSU) for the testing of 12 different veterinary drug residues using the Randox Evidence Investigator technology. The first set consisted of five chicken thigh samples, two ground turkey samples, and one canned pet feed sample. The second set consisted of two ground turkey samples, two chicken thigh samples, two ground pork samples, one cooked egg sample and one beef hot dog sample. The hot dog sample was determined to be untestable by the laboratory. Thus a total of 14 human food and 1 animal feed samples were each tested for 12 different veterinary drug residues, for a total of 180 data points. Overall, every sample was positive for three or more of the 12 veterinary drugs tested, with six of the 14 human food samples positive for nine or more drug residues. The pet food sample was positive for all 12 drugs, and overall we observed an average of 7.7

drugs per sample for the 15 samples. Three drugs, Toltrazuril, Clopidol, and Halofuginone were present in all 15 samples, and Diclazuril was present in 14. Lasalocid, the drug of initial interest, was positive in 11 samples (Table 2).

Several analyses were conducted to assess the significance of multiple veterinary drugs at the levels found. First, although none of these drugs are approved by the FDA for medical use in humans,[27] the FDA has established Maximum Residue Limit (MRL) values that define the maximum amount of each drug that is allowable in different food products. MRLs are established in a process that begins with defining a no-observable-effect (NOEL) value for each drug, which is used as the basis for defining an acceptable daily intake (ADI). The ADI is then partitioned across expected consumption patterns of different kinds of food products per day (e.g., muscle, fat, dairy, liver), to establish the MRL for each tissue type.[28,29] Uncertainty factors are included at various points to account for animal to human extrapolations, as well as variability within populations. No provisions are made during the establishment of MRL values, however, to account for the effects of exposure to more than one drug in any given food sample, or to more than one drug across the food supply.

In principle, the existence of MRL values should permit a straightforward evaluation of the risk of the individual drug residue levels observed in Table 2. Unfortunately, neither the FDA nor other similar regulatory agencies provide MRL values for all the drug and tissue type combinations shown in Table 2; that is, even when sources of MRL information from the United States, Canada and CODEX Alimentarius International Food Standards were combined, many gaps in MRL values for different tissues remained (Table 3).[30,31,32] To overcome this limitation, "Proxy" MRL values were defined for each drug. First, for all drugs with an approved MRL value for chicken thigh (muscle), that MRL value was used as a proxy MRL for that drug for all tissue types. Second, for Imidocarb and Toltrazuril, the approved MRL values for beef muscle were used as a proxy MRL for assessing all tissue types tested for those particular drugs. These assumptions resulted in the establishment of a single Proxy MRL for each drug as shown in Table 3.

Once Proxy MRL values were established, a %MRL value was calculated by dividing the actual value of each drug in each sample as shown in Table 2, with the Proxy MRL value for that drug as shown in Table 3. In no case did the %MRL meet or exceed 100% (Table 4), indicating that each of these drug residues occurred within an acceptable range, given the assumptions used to generate MRL values generally, as well as the assumptions used in generating the Proxy MRL values defined here.

However, not captured in this assessment is the risk associated with the presence of multiple drug residues in every sample tested. To provide a simple estimate of the combined weight of these 12 drugs within each sample, the %MRL of all drugs within each sample were totaled (Table 4). In this analysis the pet food sample had

Table 2. Food Samples Tested for Twelve Veterinary Drugs Not Approved for Human Use

Sample #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Lasalocid (ppb)	nd	nd	2.9	2.8	nd	7.1	nd	6.7	8.2	8.8	15.5	4.8	6.8	6.6	na	4.0
Nicarbarzin (ppb)	nd	nd	>7.6	>7.6	nd	nd	nd	3.0	nd	nd	0.4	nd	nd	nd	na	nd
Imidocarb (ppb)	nd	nd	nd	nd	nd	1.2	nd	2.3	nd	nd	0.4	nd	nd	nd	na	nd
Toltrazuril (ppb)	3.3	2.4	2.0	2.6	3.0	4.3	1.3	13.8	5.3	5.6	5.4	5.6	5.2	6.5	na	4.5
Maduramicin (ppb)	nd	nd	nd	nd	nd	1.7	nd	8.8	2.3	2.0	1.6	1.7	1.9	1.9	na	1.5
Salinomycin (ppb)	nd	nd	5.8	nd	nd	4.9	nd	14.5	6.0	6.3	6.9	4.7	5.4	4.1	na	4.4
Clopidol (ppb)	203.2	255.6	326.3	354.1	323.0	987.9	2308.5	933.7	704.0	385.5	1305.8	1414.5	558.6	778.4	na	519.5
Monensin (ppb)	nd	nd	nd	nd	nd	2.6	nd	6.6	2.9	2.5	1.6	1.7	2.5	1.7	na	nd
Robenidine (ppb)	nd	nd	nd	nd	nd	nd	nd	13.6	3.2	nd	nd	nd	nd	nd	na	nd
Decoquinate (ppb)	nd	nd	nd	nd	nd	60.0	nd	191.5	39.8	55.4	48.5	30.2	34.4	32.4	na	64.5
Halofuginone (ppb)	1.1	1.1	1.5	1.3	1.3	4.2	1.3	3.8	3.9	2.5	4.4	2.4	3.2	2.5	na	1.5
Diclazuril (ppb)	2.7	2.8	3.2	3.7	3.1	7.8	nd	20.1	13.7	11.6	8.8	9.7	11.4	10.4	na	7.8

Table 3. MRLs for different food types from US MRL, CODEX, or Canadian Databases

	Chicken Thigh	Ground Turkey	Pet Food	Cooked Egg	Ground Pork	Beef Hot Dog	Pork Sausage	Proxy MRL
Lasalocid (ppb)	400#	400#	-	-	-	50^	-	400
Nicarbarzin (ppb)	4000*	-	-	-	-	-	-	4000
Imidocarb (ppb)	-	-	-	-	-	300#	-	300
Toltrazuril (ppb)	-	-	-	-	100^	100^	100^	100
Maduramicin (ppb)	240*	-	-	-	-	-	-	240
Salinomycin (ppb)	200^	-	-	-	200^	200^	200^	200
Clopidol (ppb)	5000*	5000*	-	-	200*	200*	200*	5000
Monensin (ppb)	50^	50^	-	-	-	50*	-	50
Robenidine (ppb)	100*	-	-	100*	-	-	-	100
Decoquinate (ppb)	1000*	-	-	2000*	-	1000*	-	1000
Halofuginone (ppb)	100*	100*	-	-	-	10^	-	100
Diclazuril (ppb)	500*	500*	-	-	-	-	-	500

* US MRL database

CODEX International MRL database

^ Canadian MRL database

a summed %MRL of 99.7%, and five human food samples had summed %MRL values greater than 44%. Even in this analysis, then, no sample had a summed MRL that met or exceeded 100%, suggesting that if the effects of these drugs were strictly additive, none of the samples would be in violation of levels deemed allowable. On the other hand, it should be noted that only 12 drugs were tested here, of the 451 active ingredients approved for use in farm animals, and more comprehensive testing may well reveal additional drug residues in these samples. [33] In addition, it seems possible that going forward the concentrations of these particular drugs will rise, if farmers do indeed switch to using this unregulated class of drugs because of the VFD that was implemented in January of 2017.

Another method for evaluating the veterinary drug load in these human food samples is to compare the allowable concentration of these drugs in human food with the recommended dose in animal feed. To assess this, the lowest recommended dose for each drug in poultry was identified and the percent of the permitted human dose (MRL) relative to the recommended animal dose was calculated (Table 5).[34] As expected, for some drugs, such as Monensin, the dose allowed in human food is low when compared to of the lowest dose recommended for use in farm animals (0.06%). Surprisingly, however, six of the veterinary drugs assessed here are permitted in humans in amounts that are more than 1% of the recommended dose for farm animals, and for Diclazuril the allowed human dose is 50% of the animal dose. That is, the amount of Diclazuril that is permitted in poultry muscle tissues intended for human food is half the dose that is used to treat farm animals therapeutically. Even more surprising, the amount of Diclazuril residues permitted by the FDA in liver samples is 3 ppm, six times higher than it is for muscle, such that the amount of Diclazuril permitted by the FDA in poultry liver for human consumption is 300% of the suggested dose of Diclazuril in farm animals.[40]

Policy Implications

Increase the number of drugs and food products tested

The 2014 investigation into 57,700 turkey deaths in west Michigan revealed that even during an extensive multi-agency response to known animal feed contamination, there is no system in place at the federal or state level to monitor the human food supply or ensure that the contaminant does not cross over to the human food supply. Changes should be implemented at both the state and the federal levels to ensure that all investigations of animal feed contamination include the timely collection and appropriate storage of publicly available food samples as the event unfolds, with subsequent testing of those food products once the contaminant is identified.

Perhaps even more surprising, the food samples tested here were collected in 2016, during a time when no known contamination events were occurring, but still showed the presence of multiple veterinary drug residues in every sample tested. Because the sample size of this study is small, there is a clear

Table 4. Percent Maximum Residue Levels for Food Samples Tested for Twelve Veterinary Drugs Not Approved for Human Use

Sample #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Lasalocid (% MRL)	0	0	0.7	0.7	0	1.8	0	1.7	2.0	2.2	3.9	1.2	1.7	1.7	na	1.0
Nicarbarzin (% MRL)	0	0	0.2	0.2	0	0	0	0.1	0	0	0	0	0	0	na	0
Imidocarb (% MRL)	0	0	0	0	0	0.4	0	0.8	0	0	0.1	0	0	0	na	0
Toltrazuril (% MRL)	3.3	2.4	2.0	2.6	3.0	4.3	1.3	13.8	5.3	5.6	5.4	5.6	5.2	6.5	na	4.5
Maduramicin (% MRL)	0	0	0	0	0	0.7	0	3.7	1.0	0.9	0.7	0.7	0.8	0.8	na	0.6
Salinomycin (% MRL)	0	0	2.9	0	0	2.5	0	7.3	3.0	3.1	3.4	2.3	2.7	2.1	na	2.2
Clopidol (% MRL)	4.1	5.1	6.5	7.1	6.5	19.8	46.2	18.7	14.1	7.7	26.1	28.3	11.2	15.6	na	10.4
Monensin (% MRL)	0	0	0	0	0	5.3	0	13.1	5.8	5.0	3.2	3.4	4.9	3.4	na	0
Robenidine (% MRL)	0	0	0	0	0	0	0	13.6	3.2	0	0	0	0	0	na	0
Decoquinate (% MRL)	0	0	0	0	0	6.0	0	19.2	4.0	5.5	4.8	3.0	3.4	3.2	na	6.5
Halofuginone (% MRL)	1.1	1.1	1.5	1.3	1.3	4.2	1.3	3.8	3.9	2.5	4.4	2.4	3.2	2.5	na	1.5
Diclazuril (% MRL)	0.5	0.6	0.6	0.7	0.6	1.6	0	4.0	2.7	2.3	1.8	1.9	2.3	2.1	na	1.6
SUM TOTAL	9	9.1	14.4	12.6	11.4	46.4	48.8	99.7	44.9	34.8	53.9	48.9	35.4	37.8	na	28.3

need for follow-up studies to determine the repeatability of these results in Michigan and across the country. In addition, the testing for veterinary drugs in human food samples should include not only the 12 drugs tested here, or the 44 different drugs tested by FSIS in fiscal year 2015,but should be extended to include each of the 451 individual active ingredients approved by the FDA for animal use.[35,36] Advances in technology such as multiplex testing design should make such efforts increasingly feasible, and animal drug manufacturers should be required to develop techniques and reagents that allow for such testing as a condition of drug approval and continued use.

Finally, testing should also be expanded to include more kinds of human food samples. None of the 12 drugs tested here are permitted for use in laying hens, for example, but all were discovered in the cooked egg sample. Since eggs are an ingredient in many foods, veterinary drug residues may also be found in breads, pastas, cakes, and any food product that contains eggs. Understanding human exposure to veterinary drug residues in the food supply will require an effort that is comprehensive not only in terms of the number of drugs tested, but also in terms of the kinds of samples tested.

Create Oversight Mechanism for Pharmaceutical Drug Manufacturing Byproducts

The movement of Lasalocid into the animal feed stream from the distribution of lascadoil, a waste byproduct of the manufacture of Lasalocid, is similar in some ways to the early distribution of antibiotics to farm animals in the 1940s. Thomas H. Jukes, one of the scientists who originally discovered the growth effects of antibiotics in farm animals, has described in detail how waste byproducts from the manufacture of aureomycin were used first to conduct experiments on farm animals, and then were offered for sale to farmers: "We sold tankcars of brine containing residues from the fermentation. The demand was such that the available supply was prorated among customers."[37]

There is no evidence that lascadoil was purposely sold to farmers for its pharmaceutical properties in 2014, as the byproducts of aureomycin were sold to farmers in 1949. However, it does show that pharmaceutical byproducts can enter the animal feed stream by both intentional and unintentional routes, and strongly suggests that a system should be established to monitor the distribution of pharmaceutical byproducts to prevent future animal feed contamination events.

Improve the utility of MRL values in assessing the risk of veterinary drug residues in food

The presence of multiple veterinary drug residues in every sample tested in this study suggests that the U.S. system for assigning MRL values requires significant updates. In particular, most sample types in which specific drugs were discovered have no established MRL values for that drug in that tissue (Table 3). For example, Toltrazuril was found in every testable sample (Table 2), but no MRL has been established for any of these tissues in the U.S. (Table 3). MRL values for these drugs in all tissues in which they are found should be established to protect human health.

Furthermore, the FDA should consider whether a conflict has been created within that agency by the establishment of one set of policies that prohibit the use of certain drugs in human medicine, while allowing human exposure to those same drugs when presented in human food at doses less than MRL values. If residues of these drugs are to be allowed in the human food supply, stricter standards for establishing MRL values should be developed that account for the prohibited status of these drugs, and a plan for greater oversight should be implemented. Going even further, it should be noted that the FDA determines not only the allowable dose of these drugs in human medicine and in human food, but also in medicated animal feed products. At minimum, the FDA should ensure that MRL values in human food products do not exceed the dose allowed in medicated animal feed; as discussed, even this low standard is not currently being met, as the MRL for Diclazuril in liver food products intended for human consumption is three times the dose allowed in medicated animal feed.

It is also noteworthy that the results of this study suggest that the presence of veterinary drug residues in food is not rare across samples, or across drug types. That is, every sample tested showed the presence of multiple drug residues, and every drug was found in multiple sample types. Indeed, if the results of this small study are corroborated by larger studies, the conclusion must be that those who participate in eating this part of the US food supply are exposed to multiple veterinary drug residues in every meat and egg sample consumed. The significance of this is unknown, since evaluation of risk during establishment of the MRL considers only the risk of each drug in isolation; meanwhile, it seems likely that the risk associated with the presence of one drug in one food sample is far different from the risk of multiple drugs in every food sample. If the results of this study are confirmed, new methods will be needed to assess the risks of a complex cocktail of veterinary drug residues widely present at low levels in the human food supply.

Furthermore, attention should be paid to whether children are especially sensitive to the presence of veterinary drugs in food. Children consume more food per pound of body weight than adults, and may also be especially sensitive because of their developmental status. Importantly, studies have shown that doses of Lasalocid that are tolerated in grown cattle are toxic in young calves,[11] and that the onset of puberty in low-weight heifers is affected by exposure to Lasalocid.[12] Thus the establishment of safe drug residue limits in food should explicitly consider the risk of exposure of these drugs to children, and separate MRL values for each drug should be developed for children.

Finally, in determining appropriate Maximum Residue Limits of veterinary drug residues in food, consideration should also be given to whether drug residues in food have the same effect on humans as the purpose for which they are fed to farm animals. In particular, studies should be conducted to assess whether veterinary drug residues used to promote weight gain in farm animals (as most of the drugs tested here are known to do) similarly promote weight gain in humans, when multiple drugs of this type are widely present in the food supply at low levels, and are consumed for many years.

Eliminate Conflicts of Interest in Agencies that Regulate Both Farm and Food

Farmers who grow food as a business have interests that are not always aligned with the interests of consumers who eat food for sustenance and health, and who desire detailed information about those food products. These conflicts in the interests of farmers and consumers over food have largely been subsumed by creating a regulatory structure that places control of both under agencies that largely promote farm interests over consumer interests. In the federal government, for example, the Food Safety and Inspection Service works under the auspices of the USDA. Meanwhile, in the state of Michigan, food safety efforts are under the control of the Michigan Department of Agriculture and Rural Development. The outcome of such a structure is clearly evident in the 2014 animal feed contamination event, in which the award-winning investigation focused on the farm side of the contamination, with no transparency and little oversight on possible impacts to the human food supply. This provides a compelling example of why a separate framework to oversee food safety should exist that unambiguously works to protect consumer interests, in the same way that the existing regulatory framework exists to protect farm interests.

At the state level, Michigan should join the 26 other states that already include food safety as a part of their human health departments, and create an office of food safety within the Michigan Department of Health and Human Services.[38] This office should coordinate with MDARD during animal feed contamination events to ensure that the human food supply is monitored appropriately. Meanwhile, at the federal level, a Food Safety

Administration should be established within the US Department of Health and Human Services, as proposed in President Obama's 2016 budget.[39] In addition, at the research level, funding for studies of food should not be housed exclusively within the USDA or FDA. Instead, the National Institutes of Health should provide funding for studies that test food samples for veterinary drug and other types of residues in food, and that assess the health impacts of such exposure. Finally, local government entities such as counties that also have food safety responsibilities, should expend some of their resources to directly test food products sold within their jurisdictions for veterinary drug residues.

Implement 7-day withdrawal period to immediately reduce drug residues in food

While there is a clear need for significant changes in the way human food products are monitored in the United States, each of these is a long term solution, while evidence shown here suggests that a significant problem already exists. In the short term, a reduction in veterinary drug residues in food can most easily be accomplished by requiring a 7-day withdrawal period of all veterinary drugs before slaughter of farm animals intended for human consumption.

Finally, it should be recognized that because of the recently implemented VFD, it is likely that many farmers will shift from using drugs that are approved for human use to using drugs that are not. While this is a worthwhile effort to reduce the problem of antibiotic resistance to medically important drugs, an unintended consequence may be that the human food supply will contain increasing levels of the types of veterinary drugs studied here, that are not approved for human use. Importantly, the data from this study describes the concentrations of 12 drugs not approved for human use in 2016, before the VFD went into effect, and may be a useful baseline from which to assess future trends.

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Reforming the Tax Treatment of Employer-Sponsored Health Insurance: A Proposal for Refundable Tax Credits

by Michael Bloem

ESI Background

A principal problem in the market for health insurance is adverse selection.[1] Adverse selection occurs as a result of asymmetric information in the market—buyers of health insurance have better information about their risk for high medical expenses than sellers do. Because of this dynamic, higher risk individuals are more likely to seek insurance than lower risk individuals. This is a problem for insurance providers because they need at least some low cost members to balance out the high cost members. Otherwise, they may be unwilling to offer any insurance and the market could fall apart altogether. A strategy insurance providers use to mitigate the problem of adverse selection is to create large pools of individuals with more predictable risk distributions.[2] While some countries pool across the entire population, the United States primarily relies on employers to serve as the pooling mechanism. For decades, the U.S. has also given preferential tax treatment to individuals who receive health insurance through their employer, known as employer-sponsored health insurance (ESI). All employer and employee contributions to health insurance plans are excluded from income and payroll taxes.

Our reliance on ESI is largely an accident that has developed without thoughtful design.[3] The growth of our ESI system dates back to an unintended consequence of a policy decision during World War II. In an effort to control wartime inflation the National War Labor Board established restrictive wage controls, which were intended to also include fringe benefits such as pensions and health insurance. In the face of nearly impossible enforcement, however, the board decided that fringe benefits were not subject to the wage controls. Since the goal of the wage controls was to limit inflation, the rationale for the exclusion was that fringe benefits were not likely to be inflationary.[4] As a result, employers could evade the wage controls by offering more generous fringe benefits. As offering health insurance and other fringe benefits became increasingly popular among employers, the IRS was forced to clarify how these benefits were to be taxed. In 1954, the IRS formally ruled to allow fringe benefits to be excluded from taxes.[5]

While the ESI exclusion initially only applied to employer contributions, the 1978 addition of Section 125 of the Internal Revenue Code permits employers to set up “cafeteria” plans, allowing employees to receive part of their compensation in health insurance and other fringe benefits.[6] The use of ESI has blossomed into the 21st century, both in terms of the share of employers offering ESI and the share of compensation channeled through ESI. In 2015, 84 percent of private sector employees had access to ESI, and average health benefits as a share of total compensation have reached almost 8 percent.[7] For the population under age 65, the Congressional Budget Office (CBO) estimates that about 156 million people (about 57 percent) receive health insurance from an employer.

The Case for Reform

The tax exclusion for ESI is widely described as bad policy. If we had a "do-over" opportunity with health care policy, we would never adopt such a policy. The main criticisms of the tax exclusion are that it distorts labor markets by limiting job mobility and creating disparities between small and large firms, it increases health care spending by providing incentives for overly generous insurance, and it accounts for significant spending through the tax code that primarily benefits higher income groups.

I suggest eliminating the ESI tax exclusion and replacing it with refundable tax credits. In order to be eligible for the tax credits, individuals would need to have a qualified health insurance plan that meets a set of standards, similar to those established by the Affordable Care Act (ACA) to be eligible for premium tax credits. The new tax credits would no longer subsidize employees' preference for insurance on the margin because the credits would remove the incentive to purchase overly generous insurance plans. Instead of increasing the value of the subsidy with the cost of the health plan, the tax credits would establish a set dollar amount for each employee. This provides incentives to choose a lower cost insurance plan. The tax credits will be available to all individuals with qualifying health insurance, thereby eliminating the preferential treatment of those with access to insurance in the employer market. Additionally, while much of the savings from repealing the exclusion will be offset by the new tax credits, this represents a more equitable allocation of public resources. Since they are refundable, they will be accessible to those whose tax liability exceeds the value of the credit.

Tax policy reform is a necessary, albeit insufficient, condition for bringing about successful change to our health care system. The ACA has displayed real development towards its goals of improving the cost, quality, and access of health care by trying to influence the behavior of consumers and providers through mandates and underwriting reforms. But, as economist Robert Helms has written, "Legislative language requiring all players in health markets to change their behavior will have little chance of success unless those players have strong incentives to change in the first place."[4] Reforming the tax treatment of ESI can change incentives to better align behaviors with the goals of the ACA while refraining from providing subsidies to those who do not need them.

The Cadillac Tax

The ACA included a provision that was intended to combat some of the problems associated with the tax exclusion for ESI. This provision, known as the "Cadillac Tax," would be a 40 percent excise tax levied on employer-sponsored health benefits that exceed a particular threshold. Currently, the Cadillac Tax is scheduled to go into effect in 2022, but its start date has been delayed twice since the passage of the ACA and analysts wonder if it will ever be allowed to take effect. Proponents of the Cadillac Tax maintain that it will counteract distortions in the tax code, reduce health care costs, boost workers' wages, and improve our long-term fiscal outlook.[8] If this is the case, why should we abandon the Cadillac Tax by pursuing a much larger overhaul of the tax treatment of ESI?

First, there are design issues with the Cadillac Tax that will cause problems. For example, the Cadillac Tax threshold will be indexed to general inflation, but health care costs typically rise faster than inflation. Thus, at some point, everyone with ESI will eventually reach the thresholds where the tax kicks in.[9] Moreover, for those that reach the thresholds, just like any other excise tax, the Cadillac Tax would be regressive.[10]

Second, and more importantly, replacing the ESI exclusion with tax credits has the potential to be much more effective than the Cadillac Tax. The Cadillac Tax would likely help to curtail the level of unnecessary health spending that arises from the ESI exclusion. However, the tax credit strategy should be at least as successful, and it has the advantage of being a far better fix for the undesirable distributional outcomes of the ESI exclusion. The refundable nature of the credits allows the benefits of the policy to stretch to those who need the most help purchasing health insurance. Because lower-income individuals are more likely to be sick and their health care more costly, helping these people access affordable health insurance is a better allocation of government resources.

Policy Comparison

In this section, I compare the ESI tax exclusion and my proposal to replace it with refundable tax credits using a comprehensive set of tax policy considerations. The six considerations are distributional equity, efficiency, adequacy, administration and compliance, political tenability, and fairness and folk justice.

Distributional Equity

Most experts describe the tax exclusion for ESI as a regressive policy as both tax rates and ESI expenditures increase with income.[2] Since the tax break is provided in the form of an exclusion from income taxes, it is most valuable to those with higher marginal tax rates. Moreover, those with lower incomes are less likely to have jobs that offer health insurance than those with higher incomes.[11] The average tax benefit from the ESI exclusion in 2015 was $3,186 for the top income quintile, while less than $10 for the lowest quintile.[7] Additionally, because the earned income tax credit is designed to phase in as income increases, the ESI tax exclusion could result in an increase in tax liability (or a smaller refund) for some low-income workers.[6]

A smaller group of experts have dissented from this view by arguing that the ESI tax exclusion is not regressive. In particular, they argue that the standard definition of regressivity requires more than simply the rich receiving the largest benefits.[12] Indeed, a regressive tax is traditionally when the tax accounts for a smaller portion of income as the taxpayer's income rises. Does the ESI tax exclusion meet this definition of regressivity? According to one estimate, the average federal tax expenditure for health benefits as a percentage of income was 1.66 percent for the lowest quintile, 4.87 percent for the middle quintile, and 3.9 percent for the highest quintile.[13] Thus, the ESI tax exclusion may not be purely regressive or progressive.

Regardless of whether you care to label the ESI exclusion as regressive or not, the health insurance subsidy is poorly targeted. There is no justification for higher income individuals to receive a larger subsidy for health insurance than lower income individuals. The Congressional Budget Office has estimated that in 2013, 34 percent of tax expenditures accrued to the highest income quintile, while only 22 percent went to the two lowest quintiles combined.[14] It is clear that the subsidies for ESI are not being allocated to the families who most need help paying for health insurance.

Converting the ESI tax exclusion to tax credits can dramatically improve the vertical equity of the federal government's health insurance subsidies. The tax credits would significantly limit the amount of federal dollars being funneled to upper class families. Making the credits refundable allows the benefits to more effectively reach low-income families. The credits themselves could be made progressive by completely phasing out the subsidy for those with higher incomes. Overall, the tax credits would be much more successful in allocating government resources to those who are in the most need of acquiring health insurance.

Lastly, switching to tax credits can also improve the horizontal equity of the tax treatment of health insurance. Currently, the tax break applies only to those with access to ESI. So for two people with the same income where one has ESI and the other has insurance from another source, only the person with ESI gets the tax break (from their employer lowering their wages to offset insurance cost which saves an employee income tax). The credits would be available to anyone with qualifying insurance, not just those with ESI, thereby eliminating the preferential treatment of ESI and improving fairness of the subsidy.

Efficiency

The ESI exclusion is often criticized for the negative consequences of the inefficiencies that it creates. First, the tax exclusion exacerbates the moral hazard problem that occurs in any insurance market. In general, people who are insured spend more on medical care than those who are not insured. The increased demand for medical care then increases the price of medical care.[15] The ESI tax exclusion subsidizes insurance on the margin by providing incentives to purchase more comprehensive insurance plans. These incentives lead to employees footing a smaller portion of their medical bills and increasing the utilization of low value health services.[16] This results in an inflation of overall health care spending.

Our ESI system also creates distortions in labor markets and individual labor mobility. Since the government displays preferential treatment for health insurance purchased through an employer, decisions to change jobs, leave a job, or become self-employed are more difficult. This phenomenon, known as "job-lock," exists due to the uncertainty of where people will acquire health insurance if they voluntarily leave their employer. There is strong evidence to suggest that health insurance provides significant job-lock by distorting decisions of when to retire, influencing job choices, and impeding job mobility.[17] While this is a criticism of the ESI system in general and not the tax exclusion itself, it is worth mentioning since the exclusion helps to perpetuate our reliance on the ESI system.

Finally, the tax exclusion for ESI distorts the existing advantage that large firms have over small firms. Since many large firms would offer health insurance to their employees even without the tax break, small firms experience a comparative disadvantage in hiring. Thus, the ESI exclusion distorts the allocation of labor in favor of larger firms and reduces productive efficiency in the economy by influencing some workers who could be more productive in smaller firms or self-employed to enter into or remain in larger firms.[6]

Aware of the labor market distortions our ESI system creates, the architects of the ACA included measures with the intention of increasing labor market mobility. For example, the dependent coverage mandate in the ACA requires insurers to allow dependents to remain on parents' health insurance until turning 26. Previously, non-student dependents were typically dropped at age 19 and student dependents at age 23. With the ability to obtain insurance through their parents, young adults arguably would have more flexibility to pursue their most preferred employment opportunities. However, most of the early empirical research of this and other ACA provisions has found no significant impact on the labor market. For instance, the dependent coverage mandate has so far had no effect on job mobility or self-employment among young adults.[18] Moreover, the ACA's Medicaid expansion has so far shown no significant impacts on job switching or full- versus part-time status.[19]

Converting to tax credits could mprove upon the market inefficiencies created by the tax exclusion for ESI. First, the tax credits can help to mitigate some of the moral hazard problem and reduce health care spending. Under the tax credit proposal, insurance plans would no longer be subsidized at the margin. Instead of incentives to purchase more generous insurance, employees would instead have incentives to choose low-cost plans.[8] Moreover, eliminating the tax exclusion could change the dynamics surrounding health care technology development. With less generous insurance, incentives to develop expensive technologies may decrease while incentives to develop cost-saving technologies increase.[8]

Since technological advancement is one of the primary drivers of health spending, this policy could have a profound effect on reducing health care spending.

It is unclear whether eliminating the ESI exclusion and implementing tax credits would have an impact on labor mobility. It is important to recognize that, even if the ESI tax exclusion is converted to tax credits, ESI is likely to remain a primary source of health insurance coverage. Some argue that removing the ESI exclusion would lead to large-scale exit of medium and large firms from ESI. Indeed, a central argument for maintaining the ESI exclusion is that without it, our entire ESI system would collapse. Yet, research on firms' sensitivity to the tax price of ESI reveals that only small firms display a sensitivity to the tax exclusion.[20] This means that while many small firms would stop offering health insurance to their employees, most middle and large firms would likely continue offering health insurance even without the tax exclusion. As long as ESI remains the primary source of health insurance for those under age 65, reforming the tax treatment of ESI may not have a positive effect on labor mobility.[10]

However, if the laws implemented by the ACA that bolstered the individual health insurance market remain in place, it is conceivable that job mobility could improve while reforming the ESI tax exclusion. While ESI would likely remain a major source of health insurance, it is reasonable to expect that some employers would stop offering health insurance to their employees if the tax exclusion for ESI was repealed. Even though the ACA's individual mandate is scheduled to be removed in 2019, many of those who lose access to ESI would likely still seek coverage in the individual market. With an influx of potential members and a deepening of risk pools, it is possible that the functioning of the individual market will improve. As insurance through the individual market becomes more attractive, the pressures on labor mobility could relax, freeing workers to change jobs and take risks knowing they will have affordable access to health insurance in the individual market.

Adequacy

The subsidy for ESI is estimated to cost the federal government $279 billion in forgone income and payroll tax revenue in 2017, making it the single largest federal tax expenditure.[21] The amount of the subsidy is projected to increase to $475 billion in 2027, totaling $3.8 trillion over the 2018—2027 period.[21] During this period, the subsidy is projected to account for approximately 1.5 percent of GDP.[22]

While this is a significant amount of implicit spending through the tax code, these figures do not necessarily represent the amount of revenue that would be recouped if the ESI tax exclusion were repealed due to behavioral responses to the policy change. Moreover, since I am suggesting replacing the exclusion with tax credits, at least some the savings received from eliminating the exclusion would need to be used to fund the credits.

Ultimately, the revenue effects of converting to tax credits depend on the finer details of the implementation of the tax credits, which are mostly outside the scope of this paper. Yet, it is worthwhile to briefly mention some of the policy design elements that have implications for revenue. Perhaps most important for revenue effects is the value of the credit. A higher value could encourage more people to acquire health insurance, but would reduce the savings from the exclusion repeal. Making the credits refundable, as I have proposed here, would also usurp a larger portion of these potential savings. Of course, the tax credits could also be calibrated to achieve a specific revenue target, such as to be revenue neutral.

Another decision is whether to set the tax credits to be a fixed dollar amount for everyone or to phase the credits out at some level of income. Having a phase out threshold would focus the credit on those who would be less likely to buy insurance otherwise. However, this would also raise effective marginal tax rates for those whose credit was being phased down, potentially distorting their decisions about how much to work.[22]

Administration and Compliance

The tax rules that govern the ESI tax exclusion impose few administrative burdens on individuals, employees, employers, health care providers, or the federal government.[23] Tax exclusions for benefits are open-ended, so there is no need for employers or regulators to audit the value of the health plans to monitor the amount of benefits received. Also, the tax break does not show up on individual tax returns, likely causing many employees to be unaware that they are receiving a health insurance subsidy.[24]

If the ESI exclusion were converted into tax credits, the accompanying administrative burden would undoubtedly be greater. Since ESI would no longer be tax free, employers would have to value their health plans and report the taxable portion on the appropriate forms, such as the form W-2. The IRS would similarly have to develop methods to value insurance plans in order to audit information from employers.[22] Moreover, group insurance is much easier to administer than individual insurance. If many people move to the individual market in response to eliminating the ESI tax exclusion, overall costs of health insurance administration would likely increase dramatically.

Additionally, there are administrative complexities attached to decisions of how to implement the tax credits, for instance, whether to pay the credit to individuals or their insurers who would pass on the benefit in the form of lower premiums. If given directly to individuals, people who do not file tax returns would have to begin filing in order to receive the credit. If given to insurers, they would face the additional task of verifying an individual's eligibility for the tax credit.[25]

Despite the burdens that establishing tax credits may bring, they might not be so burdensome given the administrative infrastructure developed to implement elements of the ACA. Distributing the new tax credits could utilize much of the administrative resources that already exist in this foundation.[26] For example, the premium tax credits installed by the ACA have already established a process for distributing the credits to insurers who pass on the subsidies with lower premiums. The new tax credits could easily follow this model. Additionally, the health plan valuation that would need to begin once ESI becomes taxable, will also need to occur if the Cadillac Tax ever goes into effect. Therefore, the administrative burden of converting the ESI tax exclusion into tax credits, accounting for what the ACA has already and could produce, may not be as large.

Establishing tax credits is also likely to increase fraudulent and evasive behavior. If the tax credits are phased out as income increases, this effectively raises marginal tax rates for those in the phase out range, increasing the incentives to understate their income to appear eligible for a larger credit.[26] Employers of higher-income taxpayers could also face pressure to reclassify health insurance costs as other forms of business expenses or benefits in order to continue to exclude health insurance premiums from taxable income.[25]

Finally, while the effect of converting to tax credits on the uninsured rate is unknown, it is possible that it could increase. As mentioned above, there's some evidence that mostly those working for smaller firms would be at risk of their employer dropping health insurance benefits. Whether or not those who lose employer insurance go on to purchase insurance in the individual market would likely depend on 1) the strength of the incentive to get insurance on the individual market (i.e. the amount of the credit), and 2) how much the performance of the individual market improves with an influx of participants.

Political Tenability

An important factor in analyzing tax policy outside its potential effects is the feasibility of achieving such a policy change within the current political context. One would hope that a plan that can improve the allocation of government resources, increase labor market efficiency, decrease health care spending, and possibly improve the long-term budget outlook would attract sweeping bipartisan support. However, accomplishing a comprehensive overhaul of the tax treatment of ESI would undoubtedly come with significant challenges.

First, the state of U.S. politics has become increasingly partisan, particularly within the topics of health care and tax policy. The ACA passed both the House and Senate without a single vote from Republicans. Similarly, Republican efforts to pass health care and tax reform bills under the Trump Administration have received zero support from Democrats. Since this topic involves both health care and tax policy, the prospects of developing bipartisan support for converting the tax exclusion for ESI into refundable tax credits seems unlikely.

During deliberations over the ACA, many Republicans displayed a strong dislike of the Cadillac Tax, which was the ACA's attempt at reforming the tax treatment of ESI. Given the aversion to the Cadillac Tax, it's possible some

Republicans would be even more averse to larger-scale ESI tax exclusion reform. On the other hand, the Cadillac Tax would be unnecessary once the tax exclusion is replaced with tax credits, thus including its repeal could garner some support. Encouragingly, Republicans have shown an interest in removing the tax exclusion for ESI, most recently in February of 2017 during initial ACA "repeal and replace" efforts.[27] Some Republicans even seem to be interested in capping the ESI exclusion and installing a refundable tax credit to help with the cost of insurance.[28]

This proposal may be a difficult sell on the other side of the aisle as well. Democrats used a significant amount of political capital to pass the ACA. Some may be more interested in leaving the tax exclusion alone and letting the Cadillac Tax take effect. Indeed, when Republicans briefly considered limiting the ESI tax exclusion in February of 2017, two leading Democrats in Congress led an effort to keep it intact.[29]

ESI tax reform would face significant pressure from interest groups as well, particularly from large companies and labor unions. These groups lobbied heavily against the Cadillac Tax and sprung into action last year, even though limiting the exclusion for ESI was never an official policy position.[30] The American Benefits Council, which lobbies on behalf of major corporations, even created the campaign slogan: "Don't Tax My Health Care" (See http://fighttheforty.com/). Since removing the tax exclusion for ESI would make ESI contributions subject to income and payroll taxes, these interest groups argue that this would amount to a tax hike on the middle class. However, the policy change I propose includes establishing tax credits that would counter the increase in payroll and income taxes.

Fairness/Folk Justice

Finally, it is worthwhile to consider the public's perception of fairness with regard to the tax treatment of ESI. First, having to start paying taxes on compensation received as health benefits will be challenging for many people to accept. Most people likely do not consider their health benefits as a form of income. As previously noted, many people also do not even realize the hidden tax break they get through ESI.[24] These people would likely be startled and disturbed to learn that they would have to pay taxes on their health benefits, as it would effectively be treated as income. Given how entrenched the tax exclusion for ESI has become, some people may be disgruntled about removing the exclusion, even if the new tax credits offset their increase in tax liability.

Lastly, the proposed tax credit strategy would distribute subsidies to people regardless of their work status. This means that people who are not working can receive the health insurance subsidy. Moreover, the tax credits would be refundable, allowing the subsidy to extend to those without any federal income tax liability. This may violate people's view of fairness through the benefits principle of taxation—the idea that recipients of government spending should also contribute towards it.[31]

I do not subscribe to the principle that paying some income tax is a requirement for benefiting from government subsidies. Even if one did accept this principle, it would not necessary prohibit the receipt of refundable tax credits. Most who claim other refundable tax credits do pay some mix of federal, state, and local taxes other than income taxes.[32] To accept the benefits principle as an objection to refundable tax credits, one would have to ignore this fact. Furthermore, most recipients of refundable tax credits do eventually pay income taxes as a result of natural income variations that tend to occur in life.[32] Rejecting the concept of refundable tax credits on the basis of the benefits principle would need to take the cynical and unrealistic view that a significant amount of people have zero income tax liability over long periods of time.

Recommendation and Conclusion

I suggest removing the tax exclusion for ESI and in its place establishing a refundable tax credit for qualifying health insurance. Implicitly, I also recommend repealing the Cadillac Tax, as it becomes irrelevant once the tax exclusion is eliminated. The primary reasons for this recommendation are: 1) the tax credits represent a much improved allocation of government resources by better targeting the subsidy to families who most need help purchasing health insurance; and 2) by eliminating the preferential tax treatment of health insurance purchased through an employer versus other sources, we can improve the efficiency with which we allocate labor in our economy.

The policy does not come free of drawbacks. Namely, it adds administrative burden on employers, employees, insurers, and the federal government; it creates additional issues of fraudulent and evasive behavior; and any bill would face challenges amidst the current political environment surrounding health care and tax policy. I believe, however, that the benefits and improvements that the proposed policy brings to the tax treatment of ESI are sufficient to absorb the drawbacks. There is reason to believe that the administrative burden of the proposed policy, in excess of what the ACA has and will establish if the Cadillac Tax were to go into effect, is relatively small. Furthermore, creating some incentives for deceitful tax filing behavior does not dissuade me from making this recommendation due to the magnitude of the improvement the policy change can achieve.

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A Critical Look at Education Quality, Governance, and Reform

by Lisa Bochey

Measuring Quality in Education

Nations in power often set the standards of development, asking other communities to measure themselves against their own way of life. Arturo Escobar describes this as "cultural violence" that marginalizes traditional forms of knowledge.[1] These practices extend into education, where dominant world powers have determined how the rest of the world should model their education systems, causing the world's classrooms to look more western. The transnational system of education has begun to stifle the unique knowledge of indigenous communities around the world and discourages the preservation of culture. Instead of using universal guidelines to determine the success of education, we should work within unique cultural contexts to provide education that is aligned with community needs.

The United Nations Millennium Development goals set out to ensure that by 2015, the world would achieve universal primary education.[2] Unfortunately, this goal fell short by 9 percent, only reaching 91 percent enrollment in developing regions.[2] When speaking to poverty alleviation, Alkirie makes the case for new measurement standards that take into account the multidimensional reality of development.[3] This idea can also be applied to education. Broad reforms that intend to make education more accessible for all do not address the many factors that influence inequality in poor communities. Much like children in schools might need individualized instruction, communities have unique needs that should be addressed with targeted change. While it may be well-intentioned to apply the same standards to communities across the globe, this focus of equity does not always bring about equal justice. In other words, it is unlikely that blanket reforms will bring all communities to the same level of success. Focusing on bringing about equity, or "sameness" rather than fairness, will create more tangible change in the quality of education programs.

When measuring quality in education, it is important to understand the context of the community that is being served. Often, academic standards are informed by external frameworks, such as national qualifications created by countries in power.[4] This becomes problematic when those setting the standards are unfamiliar with the specific needs of the community. Often, the individuals who are creating the standards are members of a particular profession whose knowledge has been socially constructed to give their authority legitimacy.[4] These professionals must take into account a community's definition for high quality education. If cultural contexts influence the way that students learn, then a 'high quality' learning experience will differ from one experience to another.[4] It follows, then, that educational reforms and measurements should vary based on community context.

Generally speaking, development projects that conform to standardized reforms can miss the mark on providing community reforms. While standardization of reform and policy allows for practitioners to cross-examine nations on a set of universally agreed upon measurements, it can have negative consequences when applied in different cultural contexts. In Haiti, an international NGO funds the construction of contour canals that serve as soil conservation structures. However, the structures end up being strategically placed not because of environmental or conservation theory, but because of the movement of the project evaluators. When the NGO comes to do the inspection, the evaluators conduct a "ritual of verification" in which they simply "perform" the role of evaluation.[5] In this case, the Haitian farmers did not act in the best interest of the land, but rather they did what they needed to do in order to please the NGOs. The land, in this case, ended up suffering as a result. Similarly, following blanket standards for education are likely to set back children that are most vulnerable. Oversimplification of the obstacles facing students is causing rural and indigenous people to conform to arbitrary guidelines. Nontraditional communities should not have to conform to a set of standards that are disconnected from their way of life. This type of intervention leads to homogenization, bringing about tunnel vision.[6] To be successful in measuring education, factors must be assessed using multidimensional standards of evaluation that are relevant to the communities at hand.

The idea that marginalized communities should have more influence over the way that education is measured may be met with opposition by more dominant knowledge producing nations. In Freire's Pedagogy of the Oppressed, he uses the term prescription to refer to the imposition of one individual's choice upon another. Thus, the behavior of the oppressed is a prescribed behavior, one in which they have been conditioned to fear freedom, ultimately continuing the cycle of repression.[7] The standards set by the oppressor transform the consciousness of those who are prescribed into blind acceptance. In order to liberate the oppressed from this cycle of consciousness, we must reject the idea of prescription and replace it with autonomy and responsibility within the communities that we seek to develop.

The Impact of Neoliberalism

The theory of neoliberalism proposes that "human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework".[8] The ultimate goal of this freedom is to create free flow of goods that will increase production, decrease corruption, and allow for benefits to trickle down and allow poor countries to be more prosperous. In development, neoliberalism caused rich countries to benefit from markets at the expense of poor countries, which were contributing to the market themselves, yet not seeing any benefit (DeLong 2004).[9] This idea, when applied to the realm of education, reinforces the status quo of power that perpetuates inequality among schools. Through the application of market logics, neoliberal education policies that emphasize deregulation of educational resources leave those who are most marginalized further away from access to quality education.

Neoliberal policies attempt to create markets where they did not previously exist.[8] The expansion of education as a market was not intended to have negative consequences for any specific group. Rather, education reforms aimed to ensure that education is equitable for all students. In the U.S., these efforts included school choice and accountability policies. Despite good intentions, however, these policies disproportionately affected poor, Black, Hispanic, and non-native English speakers, who are most likely to attend segregated, low-quality schools.[10]

In the example of school choice, public education funds are transferred to the hands of individuals to make their own decisions about where and how to spend it. This may include making the switch to homeschooling, online school, or private school. Competition between these options has commodified education, causing education providers to market their option as the "best". While some, like current U.S. Secretary of Education, Betsy DeVos, might argue that education must emulate a market to avoid government corruption, this structure leads to the education system producing winners and losers.[11] Black and Hispanic students are more likely than whites and Asians to be poor and to attend low performing schools, and attending a minority concentrated school is associated with lower educational attainment.[10] This structural inequity has left students of color and low income students with fewer educational opportunities. Turning education into a competitive market only allows for white and wealthy parents to achieve better results for their children, leaving behind student from more marginalized communities.[10]

Neoliberal influence can also be seen in accountability programs. Reforms like the No Child Left Behind Act increased standardized testing, choice, and accountability, which led to a stronger focus on schools meeting benchmark test scores. Instead of creating the intended result of higher expectations and outcomes for students – therefore fostering the competition that neoliberals would deem healthy – this policy led to higher dropout rates and school closures, and disproportionately affected low income students.[10] During my own experience working in a low income school, emphasis was often placed on "teaching to the test." The students I taught were already so far behind that test preparation felt impossible and took away from valuable classroom time. Low test scores only reinforced what administrators already knew to be true: the students were failing. But, what often went unspoken was that the structure was failing the students.

These examples of attempts to regulate the education market are failed efforts to bring about equal access and opportunity. Neoliberalism can be examined as a theoretical template for the reorganization of international capital accumulation and the restoration of class power.[8] Attempts to bring justice by means of free market education only furthers class struggle by restoring power to those who already have it.[8] We must be weary of schemes that seek to bring about justice by way of providing more freedom to oppressed groups. Freire asserts that "attempts to 'soften' the power of the oppressor almost always manifests itself in the form of false generosity".[7] In order to foster equity within the education system and bring equal opportunity to students who have been systematically left behind, it is necessary to be critical about how education policies will affect marginalized groups. Left to its own devices, a free market will only continue to systematically disadvantage those who need education the most. Regulation is necessary – and must include policies that affirm the success of low income students and students of color, rather than perpetuate their failures.

The Influence of Institutions and Privatization on Education Reform

Due to globalization, the world is becoming increasingly interconnected. Shifts toward free market ideologies have created space for actors, such as the World Bank, International Monetary Fund (IMF), and nongovernmental organizations (NGOs), to exist, shaping policy around the world.[12] These transnational actors have made their way into the education sector and have begun to affect the way that education is governed. Much like how NGOs serve as "gap fillers" that take the place of governments in providing foreign aid,[13] private actors have emerged as donors and policy makers in education. Corporations such as Nike, ExxonMobile, Gap. Inc, and others have adopted models of corporate social responsibility and this is defining and shaping the way education is being reformed around the world.[14] Given that education is a human right, it is important to critically analyze the ways in which the personal interests of private actors and transnational institutions affect educational equity across the globe.

Within educational and economic markets, no self-regulatory systems exist to manage institutionalized power.[15] This has made way for transnational actors to rise to the surface and monopolize policy. On a global scale, structural adjustment programs and Poverty Reduction Strategy Papers supported by the World Bank and IMF have led to capital accumulation that reinforces existing power structures.[15] The number of shares a country may hold of the World Bank depends on the size of that country's economy.[12] This distribution of power reinforces hierarchical influence over policy making, leading to hegemonic control over marginalized communities. Once again, this means that privileged societies are setting the standards for education, and often asking low income communities to subscribe to them. Without regulation, this type of system generates economic development for the few and underdevelopment for the many,[16] as communities are forced to depend on the development project for assistance rather than address the issue autonomously. In education, private and third party actors, such as Nike and other corporations, use their institutionalized power to rally support for initiatives they have created. While it is noble for large corporations, IFIs, and NGOs to take stake in education, to truly make an impact they must learn to set their own agendas aside and work to understand specific needs of the sector or community.

The privatization in education has emerged out of market relations that "redefine the nature of individuals and their relationship to each other, to education as an institution, and to society".[17] When corporations, International Financial Institutions (IFIs), and NGOs set policies and precedents in education, this brings into question who, ultimately, governs education, and for whom the policies are meant to benefit. Today, the World Bank is the largest external loan provider for education programs.[12] This institutional power held by organizations with broad influence calls for greater accountability and obligation to serve those who are most vulnerable.

Similarly, large corporations that wish to be socially responsible are becoming involved in causes such as education or poverty alleviation. This involvement, while well intentioned, can sometimes harm the people they are trying to help. In many ways, this social responsibility allows corporations to circumvent external and internal criticism, while avoiding any negative impact on their financial bottom line.[14] Modern corporations, even those that implement corporate social responsibility, are made to generate profits, not to be responsible.[18] For the Nike Foundation, this model has come to life in an initiative known as the Girl Effect, the idea that investing in girls will lead to ending poverty worldwide.[14] However, Moeller's research points out that the "focus on economic empowerment led to channeling the girls into insecure, low-wage employment rather than addressing the core educational inequities they face".[14] While this model may have given Nike some traction as a company that "gives back," a closer look at their model would show that their campaign was deeply flawed.

Education is broadly conceived of as a pathway toward increased social mobility and a means to improve the economic competitiveness of countries.[15] This widely held ideology will likely lead to a further push for education reform and a continual emergence of new private actors. In order to create an education system that is just for the students it is meant to serve, international nonprofits and private corporations with influence over policy must understand their institutional power. Considering the interests of marginalized communities with equal weight to their own will lead to improved distributional justice in the realm of education.

Buen Vivir as an Educational Governance Framework

In thinking critically about education reform, it is necessary to consider the epistemologies and ideologies that shape education as a social field, and by extension those who participate in it. Globally, the international organizations that govern education exert their power over those they are meant to serve.[19] This international influence limits the opportunity for democratic forms of education.[19] In response to undemocratic development strategies, post development approaches have begun to take form. Buen Vivir is a concept used in many social movements that refers to the idea of the "good life" in a broad sense. The concept of Buen Vivir includes the idea that well-being is only possible within a community, and draws on the importance of indigenous knowledge and community welfare.[20] Frameworks that embrace the broad notion of well-being, such as Buen Vivir, exist in order to move past western approaches to a more inclusive model that celebrates indigenous and traditional knowledge.[20] Using concepts from Buen Vivir, educators and those who shape education policy can begin to move away from the commodification of education and closer to a social justice model that extends beyond economic growth as the main goal of learning.

The notion of education as a human right was and still continues to be challenged through institutional power structures. During Bolivia's "Integration Period," education was used to "civilize" native groups by teaching reading and writing in Spanish.[21] Using education as a tool to exert power over others undermines the widely held ideology that education is a collective good. However, efforts to move past this ideology still lack the best interest of the students and the community. As education began to shift away from being used as a tool for political development, it has moved closer to being a tool for economic growth. This is evident in the educational reforms in Ecuador, where in the 1950s public education was framed as a generator of wealth, and as a result, policies to expand access to education were implemented.[22]

Today, both Bolivia and Ecuador have adapted ideas of Buen Vivir in their constitutions to enforce principles such as unity, equality, equity, and social justice.[20] In Ecuador's constitution, Article 343 states that the national education should "incorporate an intercultural vision in line with the country's geographical, cultural, and linguistic diversity".[23] The adaption of these ideas has also made its way into education reforms. The Ecuadorian government has committed to offering educational training that includes traditional knowledge and culture in order to empower education professionals and focus on holistic education efforts. Efforts were also made to incorporate Intercultural Bilingual Education (IBE) programs that support the needs of the indigenous population.[24] The IBE is also meant to be rooted in one's own culture, language, and traditions while remaining receptive to other cultures.[23] In Bolivia, education programs provide marginalized and exploited groups with a 'liberating' education that helps them overcome exclusion. Like in Ecuador, efforts were made to incorporate an Intercultural Bilingual Education program, as well as shift teacher training to strengthen pedagogy and create classrooms that are oriented toward cooperative learning.[24] This type of shift contrasts the modern idea of schooling, which focuses on individualism and fosters the competitiveness that neoliberal ideologies have encouraged.

Ultimately, incorporating Buen Vivir into governance models is important because moves those in power to a more collective way of thinking. Buen Vivir as a concept has emerged as an expression of decolonial efforts and attempts to strengthen cultural identities rather than reinforce neoliberal ideologies.[20] While Buen Vivir provides a contrast to the current neoliberal system, its principles are not fundamentally incompatible with capitalism.[18] Given that under this type of governance, communities are able to decide what success and "good living" looks like for them, they can be more likely to flourish. The practice of Buen Vivir breaks down traditional power structures, and when implemented in education, can provide children with the opportunity to learn communal values. This breaks down the current system that is more focused on individual success and competition within the classroom and the education system more broadly, often leaving marginalized students behind.

The concept of Buen Vivir also matters because it is inclusive of marginalized identities, and also because of the way that it governs these identities. It is also important to note that this concept can look vastly different in its practical application. In Bolivia, the education reform movement mobilized the population for the sake of social, cultural, and political change.[24] A collective approach like Buen Vivir extends past modern ideas of governance that focus on individualism and economic growth and in turn emphasizes a holistic improvement in the quality of life. Furthermore, as this model is not restricted to pulling only from indigenous identities,[20] it is possible to use this idea as a lens through which we can begin to conceptualize reform. While education reform movements often seek to make education more accessible for all, they do not make it more inclusive. Recognizing that education policy must be adjusted for the many student cultures around the world will lead to more culturally responsible and relevant changes, ultimately leading to democratic practices.

Conclusion

The multitude of voices in education reform do not intend to perpetuate systematic oppression of marginalized communities. However, when practitioners allow authoritarian world-views to influence the way that they approach reform, subaltern identities become oppressed. This is because education reform has largely been focused on providing underserved communities with "resources" that follow dominant ideas on what these communities need. In order for education to truly be liberating, unique community needs ought to be central and practitioners must resist imposing their own ideologies about what it means to provide quality schooling that is relevant to all.

Through an understanding of the multidimensional needs of communities, education practitioners can begin to assess quality in a way that takes into account unique cultural contexts. Neoliberal practices that seek to deregulate systems and foster economic and social goals must be rejected in education. Rather, communities that are in the highest need of reform should receive individualized reform that will bring them up to par with more developed nations. It is highly unlikely that education will reject the measurements based on economic outcomes and standardization benchmarks in education. However, the idea of Buen Vivir and general concepts of well-being should be used as guiding frameworks to assess the quality of education, especially in culturally marginalized schools. When providing reform, transnational institutions and third-party actors must be mindful of their socially constructed power and resist programs that will send the most benefit back to the top of the social hierarchy. In doing this, it is important to work directly with communities to address their specific needs and work from there to instate reform.

Often, educational reform seeks to bring about equality. Blanket reforms like the Millennium Development Goals that seek to achieve universal education do not address the structuralized oppression that low-income communities and poor countries face. Achieving transformational reform in education will require specifically targeting disadvantaged communities, working within their specific cultural contexts, and listening to the needs of community members to create meaningful improvements.

Governance frameworks like the one provided by Buen Vivir helps us conceptualize how education and development reform can be done in a way that is socially responsible. Focusing on the collective value of communities rather than encouraging competition that leaves behind the most disadvantaged will lead to education reform that is available to all. Working within this type of model encourages social justice rather than economic gain, and takes into account the potential of students around the world.

There will always be goals to strive for and improvements to make in the realm of education. The United Nations will likely continue to set new development goals, corporations will continue to engage in corporate social responsibility initiatives to "do well by doing good," and IFIs and NGOs will continue to create and inform policy around the world. What is important, however, is that practitioners and actors within these fields are mindful of their own power and cognizant of the complex challenges that poor communities face. It is the responsibility of the education and development workers to ensure that they avoid exploiting the students and communities they are trying to serve.

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Gender, Violence, and Natural Disaster: The Case of Kashmir

by Saachi Kuwayama

We are the women of disasters
We are fatigued, impoverished and weary
Will all this ever end?
When will I be heard?
The pain might be invisible but the screams can't be so silent
Everything and everyone is hurting
The land is barren, the livestock are harmed,
the fields are ruined, the crops dead
The men are troubled, children are shocked
What about us?
Giving birth on rooftops with gushing flood waters drowning our screams
Or being raped and molested in the camps titled "Relief Camps"
Would there ever be any relief?
Poor sanitary conditions stain my clothes with blood
Hunger and disease steal my child – my only possession
No privacy, no underwear, no dignity
And we are told to remain sane
We are the women of disasters

-Abida Mahmood, "The Role of Women Leaders in a World of Terrorism and Natural Disasters"

In October 1992, an Indian army unit entered a village south of Shopian, Kashmir to search for suspected militants. During the operation, at least six women – spanning in age from 11 to 60 years old – were gang raped by several army soldiers.[1] Seventeen years later, in May 2009, two young women were raped and murdered in Shopian by men in uniform.[2] After unfruitful attempts at justice, officials declared the incident a case of drowning and closed the file.[3] The 2009 event sparked a wave of unrest, with violent protests and strikes spreading across the state of Kashmir.[4]

In fact, the Shopian incident became a catalyst for resistance. While the sudden swell in civil unrest seemingly stemmed from the murders in Shopian, Kashmiri citizens were actually protesting the pervasive infliction of several types of violence – including religious persecution, domestic violence, and dispossession[5] – over a much longer period of time. The victims of this violence have been, for the most part, women.

So, when floods devastated parts of Kashmir in 2014, they were met by a society plagued by long-standing socio-political instability and crisis. Reliable gendered morbidity and mortality statistics following the floods are unavailable, however many scholars have shown that Kashmiri women were more vulnerable than men to the negative effects of this event. A 2014 Rapid Joint Needs Assessment reports on post-flood conditions in Kashmir's relief camps. The report includes statements on food security – "there is no special nutritional provision for children or nursing mothers and pregnant women in the camp"

– and sanitary conditions – "most shelters had latrine structures, which are not damaged or washed away… Open defecation is being practiced now widely due to unavailability of facilities… For women particularly, this is a problem and issue of dignity."[6]
Gendered responses were also captured in filmmaker Bilal A. Jan's documentary "Kashmir Flood – Let the Vale Rise." Shahmeema, a Kashmiri housewife who lost her son in the floods, said, "When my son left, we had no clue that he went to rescue the victims… He made seven trips and came back safe but on the eighth day, he drowned and died. I had only one son who helped me to support the family. The other members are ill and now I am left alone to carry the burden. Six months have passed but for me, every month is like doomsday."[7] The increased emotional, psychological, and physical burden placed upon women like Shahmeema in natural disaster contexts can be considered a form of violence. Building upon Venugopal and Yasir's suggestion that natural disasters serve as moments of political revelation, revealing social realities that are otherwise obscured[8], this paper asks how gendered violence in disaster settings is shaped by pre-existing tensions.

To address this question, I will apply the Feminist Political Ecology (FPE) framework to a case study of Kashmir. FPE examines "how lived experiences and practices are productive of, and produced through, gendered ideologies, structural power relations, and processes of both local and global change."[9] Knowledge of the structural power relations specific to the communities in question would be beneficial to this research because it would provide a more nuanced understanding of structural and direct violence against women and give some insight into the reasons for gendered responses to natural disasters.

This paper begins with a review of literature on direct and structural violence against women, differential vulnerability, and gendered responses to natural disasters. Thorough understanding of these topics is crucial to draw connections between violence and natural disasters in the Kashmir context. A review of commercial media coverage of Kashmir is conducted to address critical gaps in the literature. The paper concludes with a discussion on the implications of the findings and future areas of research.

Structural and Direct Violence Against Women

Women face various forms of violence in the absence of natural disaster. Two common forms of violence are structural – violence exerted systematically by everyone belonging to a given social order[10] – and direct. Direct violence is defined as violence where actor(s) and object(s) are readily identifiable.[11]

Direct violence manifests itself in a variety of ways including physical and sexual violence. Numerous studies document human rights violations in the form of direct violence against women.[12,13] Most of these studies focus on domestic and sexual abuse, many of them in the context of armed conflict.
Violent armed conflict is associated with rape and sexual abuse of women.

In some instances, contracts for mercenary soldiers explicitly include license to plunder territory and rape.[14] Even members of the United Nations Peacekeeping Forces, tasked with guiding nations from conflict to peace, are reported to have raped and sexually abused women in conflict zones.[15] Victims of rape are at high risk for internal injury, infertility, sexually transmitted disease (STD), pregnancy, and death.[16] Additionally, the taboo nature of non-marital sex and abortion in many communities may preclude women from seeking medical attention.[17]

The degradation, pain, and fear engendered remain long after the initial direct violence and can undermine the stability and well-being of the broader community in a few ways.[18] For one, rape can be utilized as an instrument of war. To rape a woman is to humiliate her community; in armed conflict, rape can encapsulate the totality of her community's defeat. As exemplified by the rape of Nanking by Japanese forces in 1937, mass rape can serve as a source of degradation, trauma, and terror for an entire ethnic group.[14,18] Further, women who were not raped themselves may become terrified of being raped in the future.

Structuralism, on the other hand, looks at interactions between individuals and institutions at multiple scales, showing that individuals' identities and interests are shaped by relational structures.[11] Unlike direct violence, it is usually difficult to identify any one perpetrator of structural violence. Rather, violence is built into societal structures, resulting in unequal life chances.[19]

In the case of gender inequality, women are systematically disadvantaged by existing social structures in several countries. For instance, many Indian women have uncertain land access and are unable to secure property rights.[20] In many cases, women are excluded from property ownership due to son preference and lack of perceived social legitimacy.[20,21] Insecure land rights deny women basic sources of livelihood, social status, and economic well-being. Though individual perpetrators are difficult to identify, structural violence is usually the result of human agency and uneven power distribution.10 This, in turn, results in unequal distribution of suffering.

Differential Vulnerability and Gendered Responses to Natural Disasters

Anthropologists have pointed to violence as a process that renders certain groups more vulnerable to morbidity and mortality.[22] Further, evidence from many case studies shows that in poor, subsistence-agriculture based communities, natural disasters yield gendered responses.[23] In most cases, men and women are entrenched in their assigned roles, and therefore react to crises within the confines of their positions. For instance, women are often assigned jobs such as fuel and fodder collectors, which rely heavily on natural resources. Occupying such environment-dependent jobs puts women at higher risk of livelihood loss when faced with a natural disaster.[24]

Kenya's Green Belt Movement (GBM), which combines tree planting with grassroots environmental activism to address environmental degradation, serves as a clear example of differential vulnerability and gendered response to environmental change. GBM was founded in response to quickly deteriorating soil conditions in Kenya, the consequences of which women suffered far more than men.[25] For instance, as forests were degraded, women walked extra miles to fetch water and firewood. Increased physical demands precipitated suffering, placing a disproportionately large physical toll – a form of direct violence – on women. At the same time, rural women were dispossessed of property rights, often considered a form of structural violence against women.[26]

Consumption adjustments are common even in the absence of a natural disaster. Common adjustments include changing the content of diets, reducing total caloric intake, and redistributing intra-household food supply.[27] Often, women are expected to reduce their intake the most in order to allocate more food to the remaining family members.[27] Along with many other case studies, a village study in Uttar Pradesh found "the seasonal loss of weight among women being greater than among men."[28] Gendered norms that decrease women's physical and social well-being can be considered forms of both structural and direct violence. Moreover, gendered responses to natural disasters both reflect and exacerbate existing inequity, resulting in further disenfranchisement of women.

Gender inequities exist in the pre-disaster and emergency phases as well as in the stages following the disaster itself: rehabilitation and reconstruction. Case studies in Honduras and Nicaragua show that during post-hurricane Mitch rehabilitation, women took on a disproportionate load of community organizing and reproductive work in the informal economy. Post-hurricane re-entry to the formal labor market was especially low for women.[29] A similar trend occurred after the Berkeley/Oakland wildfires in California, US. Women remained in recovery-related positions while men returned to the formal labor market.[23] These examples can be considered forms of structural violence against women, because differential re-entry into the workforce may put women at a systematic disadvantage as compared to men.

Psychosocial effects of disaster can also vary by gender. In the Hurricane Mitch case studies, women reported higher levels of post-disaster depression and sleeplessness, whereas masculinity norms encouraged men to engage in risky, 'heroic' search-and-rescue action and dysfunctional social behavior (e.g. aggression).[23,29] Particularly in rural, subsistence-based community settings, women's working conditions deteriorate after natural disasters, making domestic work – usually assigned to women – more difficult and dangerous.[30] In these cases, women face direct violence in post-disaster settings. Scholars have done a great deal of work on both violence against women and gendered responses to natural disasters, but more work needs to be done to connect the two ideas: how is post-disaster violence shaped by pre-existing tensions?

A Brief History of Political Tension and Violence in Kashmir

The research question will be investigated in the context of Kashmir, India. Kashmir provides a fascinating setting in which to address questions of gender and violence given the diverse form of violence faced by women in the state. This heavily militarized state is home to grievous territorial conflict, which in turn inflicts violence upon Kashmir's 12 million inhabitants. Struggles between India and Pakistan following the 1947 partition of India devolved into armed conflict, resulting in state militarization in 1989, the death of an estimated 20,000 civilians, and the displacement of countless more[31]. Studies have shown that in addition to direct violence in the form of death and displacement, Kashmiri civilians have reported experiencing torture, sexual violence, and psychological distress and pathology (e.g. Post-Traumatic Stress Disorder). [31] Further, countless women in Kashmir have suffered rape and death at the hands of the Indian army.[18]

Further, Kashmir experienced devastating floods in September 2014. These floods were estimated to have damaged 9,225 homes, submerged 25,426 acres of crops, caused 50,000-60,000 million rupees worth of damage, submerged 390 villages, and killed 277 people.[32] Many were stranded for multiple days without food and water, their assets submerged and destroyed.[33] Following the flood, nearly all major hospitals were rendered defunct[34] and the state established numerous relief camps for survivors. However, dignity, privacy, and safety of women quickly emerged as a concern in these camps.[6] Also, stagnant floodwater raised major concerns regarding the outbreak of epidemics.[34]

The government allocated funds from the Prime Minister's National Relief Fund (PMNRF) and the Natural Disaster Response Fund to flood survivors for food, blankets, clothing, and other necessities.[33] Further, the state provided financial support for the reconstruction of houses, schools, and hospitals. Despite these post-disaster attempts at rehabilitation and restructuring, there remains significant political and social unrest in the region.[33]

Commercial Media Coverage of Gendered Violence and Natural Disaster in Kashmir

A Google search for news articles and videos covering gender, violence, and flooding in Kashmir was conducted (see Appendix) to provide perspectives separate from those typically found in academic papers. Regarding pre-existing tensions and gendered violence, this search pointed to a handful of trends. For one, social norms support the silent suffering of women. That is, fear of being husbandless in an unaccepting society, results in the suppression of suffering, which in turn leads to acceptance of abuse (table 1: sources 2, 3). For instance, a 2017 article published in World Pulse describes the standard advice given to newly-married daughters in Kashmir: "now that is your home and come what may with it you have to bear it all, silently." [35] Another article published in The Hindu speaks of Saima, a Kashmiri woman who "forces her nine-year-old son and five-year-old daughter to sleep early. Then she shuts all the doors and windows and braces herself for her husband's return. As he beats her up yet again, Saima tries in vain to suffocate her voice behind the walls. And still her greatest fear, she says between sobs, is, 'he threatens to leave me.'" [36] Further, many articles associated women's independence and 'public patriarchy' with enhanced tensions. Increased independence for Kashmiri women is identified as damaging to male egos, which in turn results in tension – and often devolves to violence (table 1: sources 1, 2, 6, 8, 10). For example, Kashmiri women police stations have been receiving reports of husbands forcibly taking their wives' earnings while threatening divorce.[37] Forcing economic dependence upon another individual can be considered a form of structural violence. Finally, many articles pointed to problematic Kashmiri laws, such as the Armed Forces Special Powers Act, that protect armed forces from prosecution in non-military courts for human rights violations. Even laws intended to protect the safety and dignity of women tend to fail due to lack of enforcement. For example, a 2002 amendment to the Indian Evidence Act made it impermissible for victims of sexual violence to be cross-examined about their 'moral character', but perpetrators of violence continue to do so given lack of enforcement.[38] These laws allow for the perpetuation of state violence against women and prevent guilty parties from prosecution (table 1: sources 1, 4, 5, 10). De facto practices also perpetuate violence against women in Kashmir. In many instances, unofficial tests such as the 'two finger test' are used to assess the amount of sexual activity a woman has been involved in prior to a rape as a preconceived judgment on the morality of a rape victim.[39] Such tests allow perpetrators of violence to walk free while placing blame for rape and assault on the victims.

YouTube videos offer insight into some of the everyday violence faced by women in Kashmir. For instance, many women are victims of acid attacks, domestic abuse, physical abuse (e.g. beatings), and rape (table 2: sources 1, 6, 7, 8). For instance, an excerpt from BBC's 'Kashmir's Torture Trails' interviews a 16-year old Kashmiri student who was picked up from school in 2004, accused of aiding militants, sexually assaulted with a 'metal roller with nails on it', and raped.[40] A video by VideoVolunteers tells the story of a 21-year old female college student who was stalked by teenage boys and attacked with acid in December 2014 near Kashmir Law College.[41] The victim underwent multiple face surgeries, and the attackers were never apprehended. The video also highlights the outraged demonstrations that followed this attack, led primarily by college students. In the same vein, many of the video news sources cover instances of resistance by Kashmiri women. A handful of the selected videos show women throwing stones at state officials in protest (table 2: sources 3, 5, 8). One video interviews a group of women who stated that "hartals (protests) will continue until the Kashmir problem is solved."[42]

Regarding gendered violence in Kashmir's disaster context, news articles demonstrated that post-disaster reconstruction processes have worked to reinforce some patriarchal structures, exacerbating pre-existing gender tensions and violence against women (table 3: sources 1, 2). For instance, flood damage compensation from the state is typically received by men, reinforcing patriarchy in property ownership.[43] Women's pre-disaster familial responsibilities and roles are magnified and expanded by the onset of a disaster or emergency, with significantly less support and resources for those roles.[44] Regarding direct violence, pre-existing risk factors for domestic abuse such as displacement, stress, and trauma are intensified following a natural disaster.[45] Even in relief camps, women are vulnerable to sexual harassment, violence, and abuse.[44] In some instances, women who lost family members underwent recanalization surgeries to reverse tubal ligations and have more children.[43]

Linking Gendered Violence and Pre-existing Tensions

Academic literature and news articles point to a few key ways in which gendered violence in natural disaster settings is shaped by pre-existing tensions (see Figure 1). For one, post-disaster reconstruction reinforces patriarchal structures, perpetuating tension and violence against women. News articles from this review show that post-flood relief and recovery efforts are implemented within the confines of a patriarchal system.[43] Similar to the violence inflicted by the post-Hurricane Mitch recovery efforts mentioned earlier, the reconstruction efforts in Kashmir inflicted structural violence against women. Second, social norms and familial roles result in the silent suffering of women. When faced with a natural disaster, women are often expected to expand their gendered responsibilities without the resources necessary to do so.[44] The resulting suffering is compounded by the expectation of silent suffering.[35,36] Third, news articles show that risk factors for abuse against women are intensified in natural disaster contexts. In most cases, the risk factors – including displacement and trauma[45] – are inadequately addressed by the law. Victims of abuse are unable to bring their perpetrators to justice due to laws that engender violence against women.[46]

Deeper understanding of the dynamics investigated in this study is crucial to addressing natural disasters in an effective and just way. The findings in this paper suggest that resources otherwise funneled into reconstruction efforts must be, at least in part, redirected towards rectifying gender inequities. Viewed as a human rights issue, gendered responses to natural disasters deny women their basic rights – to freedom, bodily integrity, and freedom from violence.[47] Enhanced understanding of the violence experienced by women in natural disaster settings is imperative to creating more just solutions.

There remain critical gaps in understanding violence and gendered responses to natural disasters. To begin with, this study relied solely on data from English commercial media sources. Language and framing of news coverage can drastically alter its interpretation. For instance, Western depictions of Indian gender relations may be influenced by normative judgments. Follow-up studies using data from Hindi and Kashmiri news sources could provide a more nuanced understanding of this issue. Second, this review was conducted within a narrow set of conditions: natural disaster in Kashmir. Gender dynamics, disaster response mechanisms, cultural context and political climate vary with geography, and may result in different outcomes for women in different places. Further, the nature of the natural disaster faced will likely generate different outcomes, given the variation in response required. Finally, it is crucial to move past the gender binary when studying violence and natural disaster. Some news articles have already documented the discrimination that transgender people face in finding shelter after flooding in India. Generally, they are unable to find shelter in homes for men or for women because people choose not to "see" or "listen to" them.[43] Violence of a different type and scale occurs against people who identify as neither 'male' nor 'female', and such dynamics are worth studying further.

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Table 1. News articles from Google search with keywords 'gender', 'violence', and 'Kashmir'. Articles are listed in order of appearance in the search.

	Source	Author, Year	Title
1	Inter Press Service	Athar Parvaiz, 2015	Kashmiri Women Suffering a Surge in Gender-Based Violence
2	World Pulse	Baseera Rafiqi, 2017	Soaring Cases of Domestic Violence Against Women in Kashmir
3	The Hindu	Zeenat Zeeshan Fazil, 2016	A life in fear
4	Human Rights Watch	2016	India: Events of 2016
5	Gender Concerns International	Aliya Bashir, 2013	Kashmir: Sexual Violence Increases as justice under law is examined
6	Daily Excelsior	Adil Lateef, 2015	Crime against women on increase in Kashmir
7	Rising Kashmir	Suba Chandran, 2017	Jirga and Gender Violence
8	Kashmir Reader	Dr. Fayaz Ahmad Bhat, 2017	Conceptualizing Domestic Violence in the Context of Kashmir
9	Kashmir Reader	Syed Shubeena Yaqoob, 2017	Of Conflict, Gender and Resistance: One Size Does Not Fit All!
10	KashmirLife	Shamsirfan, 2009	Violence against women in Kashmir

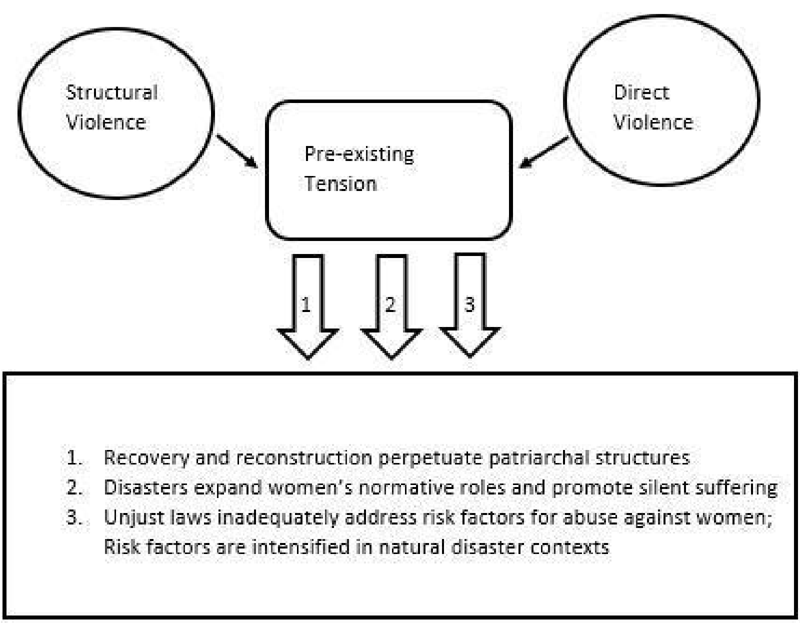
Table 2. Videos from YouTube search with keywords 'women', 'Kashmir', and 'violence'. Videos are listed in order of appearance in the search.

	Source	Year	Title
1	VideoVolunteers	2015	Acid Attacks add to Violence against women in Kashmir
2	Worldpeaceful	2009	Violence against women in Indian Occupied Kashmir by Indian Forces
3	Inside the Kashmir	2016	Courage of Brave Kashmiri Women: Kashmir
4	VideoVolunteers	2013	Violence against Kashmiri Women
5	Controversial Kashmir	2017	Girls throwing stones in Kashmir Intense teargas shelling
6	Rwpla (excerpt from BBC 'Kashmir's torture trails')	2015	Systematic Rape & Torture in Indian Occupied Kashmir
7	VideoVolunteers	2017	Domestic Violence: A Young Lady Narrates Her Tale of Suffering
8	VideoVolunteers	2016	Some Untold stories narrated by Kashmiri Women

Table 3. News articles from Google search with keywords 'gender', 'disaster', and 'Kashmir'. Articles are listed in order of appearance in the search.

	Source	Author, Year	Title
1	Daily News and Analysis India	Swarna Rajagopalan, 2014	Gender issues and disaster management: Why women must be included in the rehabilitation process
2	India Writes	Nishtha Gautam & Vidisha Mishra, 2014	Gender Balancing the Disaster Management
3	India	Ani, 2015	Women – the soft target of the natural disasters

Figure 1



De Los Activistas Campesinos Al Estado: A Case Study of Food Sovereignty Policy in Venezuela

by Sacha-Rose Phillips

Introduction

"There is a food crisis in the world, but Venezuela is not going to fall into that crisis. You can be sure of that."[1]

These are the words of former Venezuelan President, Hugo Chávez Frías.[1] Speaking from the coastal fishing village of Chuao, Chávez expressed pride in his government's new agricultural policies that he believed would increase food production across the country.[1,2] These policies mirrored the ideals of article 305 in the Venezuelan constitution which states that the government should:

"…promote sustainable agriculture as the strategic basis for overall rural development, and … shall guarantee the population a secure food supply, defined as the sufficient and stable availability of food within the national sphere and timely and uninterrupted access …for consumers".[1,2,3]

This statement stands in stark contrast to reports of food insecurity in Venezuela. Jesús López, a 90-year-old farmer from San Cristóbal shared his concerns: "We used to produce rice and we had excellent coffee; now we produce nothing …Empty shelves and no one to explain why a rich country has no food. It's unacceptable".[4] López' sentiments mirror the growing concerns and struggles of a vast number of Venezuelans.[5,6,7,8] In recent years the country has grappled with severe food shortages. Approximately 90 percent of households cannot cover the cost of basic groceries.[9] These developments beg the question, how does a food sovereign state become food insecure?

Scholars have pointed to the country's economic crisis and declining oil industry as the primary reasons for these shortages.[10,11,12,13] However, few have considered the unique challenges that Venezuela as state has in executing the ideals of food sovereignty (FS). As such this paper seeks to answer the question, what are the effects of a state appropriating the ideals and rhetoric of FS? By the state I am referring to a system of government comprised of socio-political and economic institutions that exercise "public" authority in a geographically delineated territory.[14,15]

To achieve this end, I will detail the origins of FS, briefly discuss Venezuela's history as a food sovereign state, and highlight the challenges faced by this state in achieving its food sovereign mission.

Methods

To develop a better understanding of Venezuela's food regime, I conducted textual analysis of newspaper articles, policy papers, the Venezuelan Constitution, case studies, scholarly articles, and web materials such as infographics and grey literature. I attempted to verify the information I found by cross-referencing multiple sources. Additionally, the results of two studies, Patterns of Food Purchases in Venezuela and the 2015 National Survey of Living Conditions, were used to verify the statistics and data used in the newspaper articles and scholarly literature. In my analysis, I paid keen attention to direct quotes from government officials and citizens. I also referenced maps and images to trace and link sites of food production, consumption and control.

Literature Review: The Evolution of FS

FS can be broadly defined as "the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems".[16] The concept of FS has its origins in two earlier frameworks namely the right to food, and food security (see Table 1).[17,15,16]

The Right to Food was ratified in the 1948 Universal Declaration of Human Rights and it posits that states are required to protect, respect, and fulfill their citizens' need for healthy food.[16] Because the right to food is characterized as a fundamental human right, it empowers citizens against nation-states and other powerful actors. Thus, it has a legal basis and a focus on the individual.

Food security is related to the right to food in that it is achieved when citizens have "access to sufficient, safe and nutritious food", consistently.[18,16] However, unlike the right to food framework which focuses on individual legal protections, the rhetoric of food security is tightly coupled with the economic and physical safety of states. As such, levels of food security are assessed by accounting for a nation's grain reserves, import and export quotas, food aid, and the extent to which new agricultural technologies have been adopted to increase production.[18,16]

While these frameworks have merits, scholars and international development practitioners failed to account for the inequitable social control of food systems.[19,15,16] In the words of scholar Raj Patel, under the framework of food security it is "possible for people to be food secure in prison or under a dictatorship" and this sentiment is also applicable to the right to food.[17,15] Thus, notion of FS arose as an alternative approach to food security and the right to food.[20, 21]

FS explicitly recognizes differences in food access within the nation-state, it places the needs of those who produce, distribute and consume food at the center of policy-making rather than at the behest of markets or the state. As such, food regimes are led by local indigenous, peasant communities who control the material inputs necessary for food production. FS advances new social relations free of oppression and gender, racial, social, economic and intergenerational inequality.[22,17,15,18]

Both the right to food framework and food security framework posit that governmental agencies and legal institutions are to make food available to individuals and populations. However, the FS framework inverts this top-down approach by emphasizing that decision-making about food comes from the bottom up – "from the communities" -- and in this way, it is considered to be a more democratic framework because it makes both food and the means of food production more accessible.[23]

Background: The Rise and Fall of Food Regimes in Venezuela

The discourse on FS in Venezuela has been impassioned because of the country's extensive history with inequitable food access. This can be attributed to numerous events, but arguably, the discovery of oil and the proliferation of that industry during the early and mid-20th century was most impactful to Venezuela's agricultural system.[21]

The dominance of oil as a commodity resulted in the inflow of foreign currencies and goods. At the same time, it made imported goods cheaper than locally-produced fare. Consequently, the amount of food imported increased. As imported goods flooded the marketplace, local food producers were outcompeted and the activity of the agricultural sector declined.[24,21]

In addition to the overall decline of agriculture, Venezuelan farmers faced inequality in landownership. According to a 1997 agricultural census, 5 percent of the country's largest landowners controlled 75 percent of the land. The disparities in land ownership were coupled with high levels of social and economic unrest. According to McKay et al. poverty increased from 17 percent in 1980 to approximately 65 percent in 1996.[25, 26]

This inequality and social instability created an ideal environment for ideological and political revolution. At this moment, politicians began to build coalitions with FS activists who shared an objective interest in rectifying the systemic inequality.[23] Hugo Chávez adopted the rhetoric and tools that were created and employed by peasant food activists for his campaign .[23] After his electoral victory and the creation of a new Venezuelan Constitution in 1999, his government was able create and implement four policy projects namely Misión Zamora, Misión Vuelta al Campo, Gran Misión AgroVenezuela and Misión Mercal to change the country's inequitable food regime (as seen in Figure 1).[27] These policies aimed to place the tools of food production into the hands of low income communities by subsidizing costs of equipment, redistributing land and providing technical expertise to struggling farmers. An extensive network of institutions (as shown in Figure 2) was also created to support and facilitate the work of these policies.

Discussion

The Venezuelan government faced a number of challenges during the implementation of these initiatives. Arguably, these challenges have prevented the Latin-American country from fully recognizing its FS ideals.

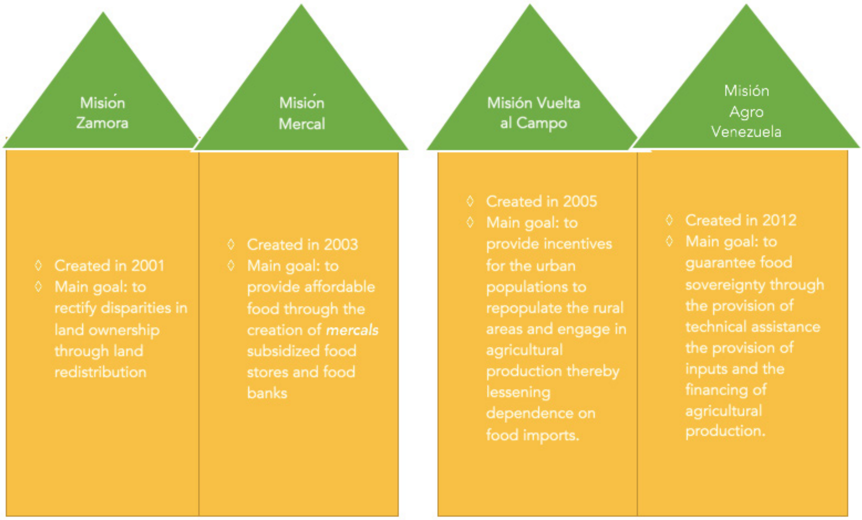
Consumer vs. Producer Dynamics

One of the first government efforts towards FS was to provide small

Table 1: Differences between the right to food, food security and FS frameworks as seen in the literature. While there are many definitions for each framework and though some of these definitions overlap, there are key distinctions.

Key	The Right to Food	Food Security	Food Sovereignty
Emphasis on the individual vs. the state vs. the community	Emphasis on the legal rights that individuals have to food	Emphasis on food as a right or need attached to a guarantor- the State, can be interpreted as paternalistic	Emphasis on communities right to food access and food independence: Acknowledges that different populations within a nation state have varying levels of access to food
Production focus	Quantity	Efficiency	Sustainability
Means of food production and distribution	Focus on the global distribution of healthy food by governments and multilateral organizations	Focus on provision of food nationally through industry and new technologies	Focus on local and indigenous knowledge in food production
Utility	Food as a legal right	Food as a weapon	Food production as a rehabilitative and restorative force
Labor	Owners of production separate from labor	Owners of production separate from labor; monetary benefits of food production are separate from labor	Labor as owners of food production
Scale	Global	Global	Local
Visibility of actors	Shrouds the agents and tools of food production	Shrouds the agents and tools of food production	Explicitly recognizes the agents and tools of food production

Figure 1 Graphic displaying the four policies or Las Misiones related to FS and their main objective.



farmers with adequate resources for food production through Misión AgroVenezuela. However, the government's tight control of this process did not result in an increase in food production. Instead, it created a system of dependency that led to subsistence living and even the loss of farming operations among small farmers.

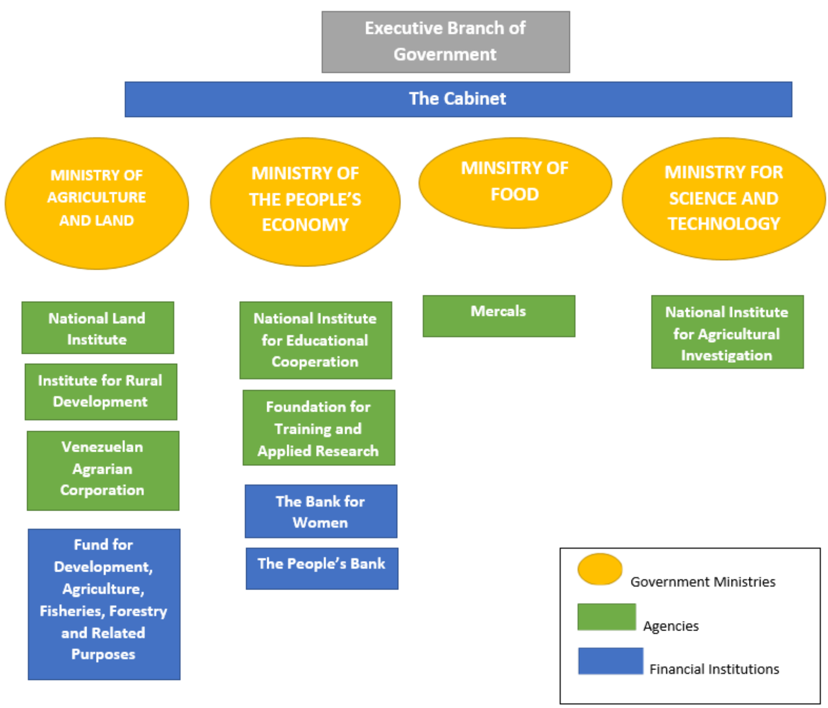
The experience of Eligio Lucena, illustrates this dependency. In an interview with the BBC, he stated that the government's tight controls on imports made it challenging for him access seeds and fertilizer.[8] "It's crippling us. Many people round here have the land all prepared for sowing, but we can't get hold of the seeds.[8] Even when Lucena is able to access the tools of production, it is difficult for him to compete with the low prices of the government's subsidized, imported food. As a result, his family has been unable to continue their farming operation and in an ironic twist now rely on the government's subsidized food sold at mercals".[8] At face value the Misión Mercal initiative appears to be quite beneficial to citizens because of its affordable prices. However, due to the low prices of goods, small farm producers rarely have sufficient capital to invest in their crop.[28, 8] Lower prices create smaller profit margins and limit farmers' ability to acquire the tools and resources they need to maintain and expand their operations. Consequently, they must rely on the government for assistance even though it is inconsistent with its provision of capital and machinery. These costs, economic and otherwise, create a vicious cycle where the farmers become increasingly reliant on the government to provide them with support.

Small, Sustainable Farming vs. Large-scale Industrial Farming

While the number of small farming operations have risen since the establishment of the state's interventionist programs, most of the local production of food is done through large scale industrial operations. By industrial approaches, I am not only referring to the scale of production, but the use of unsustainable farming practices and a hierarchical labor structure. This differs significantly from the ideals of FS which emphasize local, small-scale production, sustainable agricultural practices and equitable participation. At the site studied by researcher Aaron Kappeler in the central state of Barinas, the Venezuelan government assumed property rights for a 33,606-acre ranch in Cojedes state called El Charcote.[29, 30, 31] Though a portion of the land was given to members of the poor, rural class, the vast majority of the farm was transformed into an enterprise that hired labor. According to Kappeler, the operations at this locale followed all the logic and rationales of modern capitalist system both in terms of the methods used and the organization of labor.[32]

Kappeler reports that machinery, fertilizers made from petroleum were used in the production process.

Figure 2 Schematic of the government agencies and financial institutions founded to implement Venezuela's FS policies.



Additionally, the farm had a strict organizational framework with defined roles and an enforced hierarchy.[32] The technical expertise of formally educated department managers was more highly regarded than the experiences of small rural farmers. Organizational conflicts were frequent and often resulted in employees leaving their jobs. Though ownership of the land was shared between the government and small farmers, the fundamental structures and practices created an oppressive food regime in Venezuela (i.e. had actually been re-appropriated even as the state attempted to balance its need to make food available broadly available with its need to make the means of food production accessible.)

Guarantor vs. Oppressor

The final contradiction I will discuss is the Venezuelan government's contradictory position as both a guarantor and as a violator with regards to food access. Simply put, food is essential for survival. It can be employed as a coercive tool to gain political mileage and as a tool to assert political oppression in the Venezuelan context.

The Government as Guarantor

Under the national constitution, the Venezuelan government is responsible ensuring that each citizen has consistent access to food and the means of food production. As highlighted before, various policy instruments were designed and employed to ensure that the government could fulfill this obligation to the Venezuelan populace. For example, during the ten years after the creation of Misión Zamora, over 5.5 million hectares of arable land were redistributed to low income citizens and small rural farmers.[27] One beneficiary of the program Jose Braulio Diaz, shared that he received his own plot of land and that now he successfully cultivates coffee.[8] Diaz, an active supporter of the government asserts that before these initiatives his community "used to be treated like slaves by the big landowners." and that "thanks to God and to Comandante Chávez [they] are free" from the mistreatment and oppression of large landowners. [8]

The Government as Violator

The aforementioned story of Diaz veers dramatically in tone from the experiences of other Venezuelans who describe an increasingly militarized food regime, where citizens wait hours to purchase food in long lines and where they are escorted to into mercals by police to prevent conflict over limited food. I argue that grappling with this kind of food insecurity is a form of slow violence in that diminishes human bodies, the cultural heritage of Venezuelans, and their political power over an extended period of time. By slow violence, I am referring to a series of sustained, institutionalized actions. Though these actions are not instantaneous, explosive or highly visible, they nevertheless create and perpetuate inequitable food access and food poverty.[33] As such the Venezuelan government has fulfill its mandate of ensuring that each citizen has access to sufficient food.

In cities, citizens are at the whim of the security forces and they are often in open areas without protection from the elements for extended periods of time.[9, 25, 34, 35] These conditions take a toll on the human body. Caritas, an international human rights group reported that approximately 48 percent of children under five in four states in Venezuela are experiencing malnutrition.[34] Studies also show that nearly three-quarters of Venezuelans have lost weight over the past year at an average loss of 19 lbs.[36, 37, 38]

In addition to the physical toll, Venezuela's cultural practices--many of which are centered on food--are being challenged as the government has begun to distribute food items that are not normally consumed in the country. In September of this year, the government distributed rabbits for consumption to residents of 15 communities as a part of a new pilot initiative.[35, 39] However, this move was poorly received. Residents refused to eat the rabbits, but kept them as pets. In response, the Minister of Urban Agriculture urged Venezuelans to see eating the rabbits as a necessity of "economic war".[39]

These food shortages also have an impact on Venezuelans' to participate in the political process. Journalist Daniel Lansberg-Rodriguez put it best. He asked: "What kind of protest can be done when people are waiting hours in line for food?".[40] The mere perpetuation of the narrative of food scarcity threatens to immobilize political opposition because citizens must rely on the government to provide for their basic needs. If they voice their opposition they risk being denied the opportunity to access an already limited food supply. Furthermore, while waiting in long lines for hours at a time for food Venezuelans have reported being subject to police brutality.

Conclusion

The Venezuelan state has encountered a number of challenges and contradictions as it attempts to construct a food sovereign regime. First, it has a complicated the dynamics between the producers, the small-rural farmers, and the consumers, the wider Venezuelan populace. Second, the Venezuelan government continues its widespread use and support of large-scale industrial farming models even as it claims to prefer small-scale, peasant led farming systems. Third, the government simultaneously acts as the guarantor and violator of FS rights.

Future research on Venezuelan state and FS would benefit from a more thorough analysis of how the environment and in particular, drought may have impacted and interacted with efforts towards FS. Additionally, due to my own resource constraints as a researcher, I treated the state as a monolithic entity and did not highlight varying perspectives and approaches to FS within the government. A much more nuanced approach could offer fresh insights into the effects of states appropriating the rhetoric and ideations of FS.

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Judicial Merit Selection and the Framers Ideas for Preserving the Rule of Law

by Brandon Rickey

Judicial selection has been a topic of debate since well before the founding of the American democratic-republic. The selection method for judges should properly reflect the role of the judiciary in our government. The role of the judiciary is that of an independent arbitrator who safeguards the rule of law and protects political minorities from the passions of tyrannical majorities. Framers of the Constitution, such as Alexander Hamilton, recognized this in Federalist Papers 78 when they noted that in order to safeguard the rights of political minorities in society, it is necessary to insulate those charged with safeguarding the rule of law from the direct control of the citizenry. The judiciary serves as a "majoritarian brake" against the will of the populace. In the 19th century, however, many states influenced by the Jacksonian populist movements, which favored "accountability" of every member of government, amended their state constitutions to allow popular election of their judges. Unfortunately, the result has been the very men and women charged with protecting the most sacred and fundamental rights of our constitution are pressured to make decisions inimical to the rule of law to remain in office. The move to judicial elections has also caused unfettered campaign spending by partisan and special interests groups, which has led to the infringement of fundamental rights and qualified judges losing their positions because they made decisions against the majority's wishes. Proposals for reforms to judicial selection put forth in the early 20th century included "Merit Selection," in which a nonpartisan committee of lawyers and non-lawyers screen potential candidates through a thorough vetting process and then present several well-qualified nominees to the state governor. The governor then selects one nominee from those put forth by the committee. The judge must stand for a retention vote every few years thereafter, in which the public votes whether or not to retain the judge in a noncompetitive election. This system has been mostly successful in incentivizing highly qualified candidates to pursue careers on the bench. However, the system has been immune to problems, as retention elections have themselves begun to resemble competitive elections, with partisan and special interest groups spending more to unseat particular judges in the past several years.[1] This paper will explore the role of the judiciary and explain the importance of insulating judges from popular opinion to safeguard our Constitution and our fundamental liberties. In addition, this paper will explore the pros and cons of merit selection. Lastly, this paper will put forth several proposals for improving merit selection to insure judges remain independent from the passions of popular majorities.

Theoretical Underpinnings for Judicial Selection

The role of the judiciary and the manner in which judges are selected has been subject to debate long before the founding of the American Republic. In Medieval England, judges played a critical role in the feudal monarchies as "assistant kings." They exercised the King's authority under his supervision and loyalty to the King determined tenure of the judge.[2] Before the English Civil War, the chancellor appointed judges on behalf of the King, who could arbitrarily remove judges whenever the judge issued rulings at odds with the will of the King.[3] In Colonial America, the British Monarch appointed judges and gave the King arbitrary authority over their removal as well as their salary. Many leaders of the American Revolution found this practice deplorable and went so far as to list the King's treatment of colonial judges among their grievances in the Declaration of Independence.[3]

Like many of the provisions that eventually were enacted into our Constitution, the framers were inspired by their grievances with the British Crown's treatment of colonial judges when they drafted Article III of the Constitution. It is interesting, however, that the architects of the Constitution had the foresight to make judges unelected, given that they had no experience or grievances with elected judges up to that point. It is clear from the readings of Alexander Hamilton and James Madison in the Federalist Papers that the framers were trying to prevent two different forms of tyranny: one by an all-powerful king who could arbitrarily abuse his power, and tyranny by majorities, who could trample the rights of the minority. Madison notes in Federalist Papers 10 that one of the advantages of a well-constructed union is its ability to control factions, which have occasion to break out in society.[4] Madison believed that an independent judiciary was essential to the controlling of factions. In Madison's own words, "it is difficult for a body of men to be both advocates and judges at the same time due to the fact that most pieces of legislation are in fact forms of 'judicial determinations,' not indeed concerning the rights of single persons, but the rights of large bodies of citizens."[4]

The framers recognized that in a democratic republic the will of the people is essential to the government's legitimacy. However, the framers also recognized that in order to subdue factions, which tend to arise in any free society, it is necessary to create one branch of government-that is apolitical and independent from the will of the people. An independent judiciary is better able to preserve the rights and liberties the people have themselves created through their other two elected branches of government.[5] Contemporary Constitutional scholar Martin Redish notes the important paradox of democracy: if you want to preserve it, you also must limit it.[6]

In a constitutional republic, the role of a judge is to scrutinize democratic decisions and apply them against constitutional principles. In order to do this, judges must have no constituency other than the law.[7] An independent judiciary is more important to the interests of safeguarding liberty than any other portion of the Constitution. It is the only arm of government charged with enforcing laws to ensure the future safety and security of the country. If that branch should become weak or corrupt in any way, there is no government at all.[8] It is hard to imagine any such provision of the Constitution, not in the least, individual liberties, having any real binding authority without such an arm of government.[5] When those charged with guarding against the whims and wishes of the majority are answerable to the same majority, the question arises how any constitutional principles can be safeguarded?[7] If judges are to be faithful guardians of the Constitution they must be unelected. This is the only way to remain insulated from external political influences, passions, and "ill humors" of the majority.[5]

In addition to compromising the rights of the minority, elective judiciaries may compromise the administration of day-to-day justice.[7] Judges facing election and reelection may rule in favor of a certain policy because they fear alienating a majority of voters. Such pressure to seek reelection encourages judges to compromise such constitutional protections, in order to gain favor with political majorities.[7]

Judicial Elections Inimical to the Rule of Law

Many of the states that adopted judicial elections in the 19th century were influenced by Jacksonian Democracy, which fueled demand for the election of all public officials, including judges.[9] Many contemporaries of the Jacksonian mindset believed that appointed judiciaries reflected solely the interests of wealthy elites. Judicial elections were an attempt to improve the judiciary by making it more accountable to the populace.[2]

Many proponents of judicial elections claim accountability to the people is needed in the judiciary. They argue that in a representative democracy, accountability to the people is the only source of legitimacy.[10] Proponents of judicial elections believe that appointive systems are illegitimate because they permit a select group of elites to choose judges. They also argue that common law judges frequently make law based on their own public policy preferences and when the law is ambiguous, it is up to the judge to use their own discretion to resolve the case.[10] Other advocates of judicial elections argue that judges ought to keep constituent preferences in mind when deciding cases.[11] They note that while elected judges face certain political pressures to curb certain constitutional and civil rights, judges may at times face pressures to overprotect these same rights, thus balancing the scales. Advocates further note that appointed federal judiciaries serve to hold elected state judiciaries accountable through the process of judicial review.[11] Others argue that the openness of elections help to educate the public about the candidates and the issues.[2]

During the drafting of the Constitution, many early critics had their own concerns about the appointment of judges. In addition to the concerns over accountability and democratic legitimacy, many were concerned that the judiciary itself may become tyrannical. However, framers like Hamilton note that these claims were unsubstantiated because the judiciary "bears no power of the sword or the purse."[5,*] Upon deciding a case, the Judiciary does one of three things; it checks, it legitimizes, or it does nothing at all.[12] It is not delegated authority to make policy on its own but rather exists to harmonize all acts by the other two branches of government with the Constitution.[12]

While accountability is no doubt a legitimate concern in the selection of judges, these assertions largely demonstrate a misunderstanding about the role of the judiciary in America's Constitutional Republic. The framers created the other two branches of government to be representatives of the people. Judges are not representatives of the people and are not supposed to have any constituency other than the law.[13]

In Democracy in America, Alexis de Toqueville noted that "scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate."[14] Ninety-five percent of all cases that come before courts in the United States each year do so at the state level.[15] Some thirty thousand state court judges hear nearly one hundred million cases each year.[15] In recent years, state courts have ruled on such issues as tort reform, equalized funding for public schools, same sex marriage, and state death penalty statutes. Along with the administration of day-to-day justice, judges also have the responsibility of determining the admissibility of evidence of both criminal and civil trials, handing down criminal sentence, issuing divorce decrees and deciding child custody disputes. State court judges rule on nearly every issue that could come before the courts. Thus, they play a major role in shaping the country's legal landscape.[15]

In recent years, judicial elections at the state level have become extremely polarized and politicized. Negative attack ads depict judges as "soft on crime," too liberal, anti-family, baby killers, anti-women, etc. Such emotionally charged claims serve to both misinform the public about the proper role of the judiciary in society as well as put unfair pressure on judges to decide cases based on voter perceptions rather than what the facts and the law.[15] Making matters worse, special interests have poured unprecedented amounts of money into judicial campaigns. Many of these special interests include plaintiff lawyers, labor unions, and big businesses, who regularly appear before judges.[15] Judges are supposed to be selected according to who is the most fair and competent as well as impartial and qualified at upholding the rule of law. Special interest groups are not spending money to support the most impartial and just person to uphold the rule of law, but to buy votes and swing rulings in their favor.[15] This potentially compromises the rights of litigants, just as the framers feared.

As former Indiana Supreme Court Justice, and now law Professor at the

*Hamilton notes in Federalist Papers 78, that the Executive Branch bared the "power of the sword" while the legislative branch bared the "power of the purse."

Indiana University McKinney School of Law, Frank Sullivan notes, the U.S. Constitution guarantees the right to Due Process through not only the Fifth Amendment, which applies to the federal government, but also by the Fourteenth Amendment, which applies to the states. An impartial judge is essential to the right to due process.[16] When litigants have to appear in court, they expect the presiding judge to be fair, unbiased, and impartial, whatever the outcome may be.[16] Litigants in states that elect judges may find it hard to get impartiality when the judge presiding over their case is facing the pressures associated with elections.[16] Judicial elections threaten the very idea of judicial independence by pressuring judges to follow the will of popular majorities, which may run counter to the rule of law.[13] Public confidence, which is essential to the legitimacy of any democratic government, is harmed when people believe that judges are merely responding to the whims and wishes of those who are pouring large sums of money into their campaigns.[13] "The need to raise large sums of money necessitates that judges seek support from those who regularly come before them. Judges may feel pressure to reward supporters and rule against those who don't support them."[13] When judges feel pressure to rule against those who do not support them, the right to due process of those parties is compromised.[16]

In 2015, the State of Pennsylvania's Supreme Court Election set records for spending on judicial campaigns.[15] Most campaign spending came from business interests, labor unions, and plaintiff lawyers.[15] This creates a substantial conflict of interest that can infringe on the right to due process of the litigants involved. Millions of dollars went into attack ads, claiming certain judges were "soft on crime," "failing to protect women and children," etc.[15] The 2004 Illinois State Supreme Court race between Judges Gordon Maag and Lloyd Karmier totaled $9.3 million spent for the campaigns of both sides.[15] While the election was underway, a multi-million dollar jury verdict was rendered against State Farm Insurance Company in Illinois, which had contributed over $350,000 to the campaign of Karmier, who was eventually elected. The case reached the Illinois Supreme Court and Karmier would go on to cast the deciding vote in the case overturning the verdict against State Farm.[15, 16] A study of judicial elections for the Ohio Supreme Court by the New York Times found that candidates raised more than $21 million between 2000-2009. These judicial candidates upon election regularly presided over cases in which they had a conflict of interest and voted in favor of the parties who contributed to their campaigns over 70% of the time.[16] In 2015, members of the State of Arkansas' high court used every procedural mechanism possible to delay hearing a constitutional challenge to the state's own ban on same sex marriage (until the U.S. Supreme Court finally took up the case) out of fear that they would lose their seats in the next election.[15] One of the justices eventually recused himself saying, "He could not be complicit in depriving justice to any party before the court."[15]

The 2009 Supreme Court case of Caperton v Massey 556 U.S. 868

represents perhaps the most extreme example of how special interests corrupt judicial elections.[15] Massey Energy, a West Virginia mining company, was found negligent for fraudulent misrepresentation of another mining company, Harmon Mining Corp. Massey Energy was ordered by a jury to pay $50 million in damages, which the company appealed.[15] During that time, an election for one of the seats of the West Virginia Supreme Court began to heat up. The CEO of the Massey Energy spent nearly $3 million to defeat Justice Warren McGraw, the incumbent on the bench, and elect Brent Benjamin to the high court.[15] The campaign to unseat Justice McGraw, featured a series of attack ads claiming, that McGraw had voted to release a child rapist and allow the alleged rapist to work as a school janitor.[15] When the West Virginia high court took up the case, Benjamin did not recuse himself, after receiving millions from the CEO of Massey Energy, and instead cast the deciding vote in the favor of the company.[15] The CEO of Harmon Mining Company, Hugh Caperton, filed a Writ of Certiorari to the U.S. Supreme Court. In 2009, the Supreme Court ruled that Benjamin should have recused himself and in not doing so Caperton's right to due process had been violated.[15] The Court opined that "trial before an unbiased judge is essential to due process."[16]

These examples illustrate how judges who avoid making unpopular rulings in order to be reelected can compromise the rights of litigants. It also shows the consequences for a judge who makes an unpopular ruling. Justice requires putting aside political and personal preferences and make rulings based on the understanding of the law. That can be difficult when a judge must turn and face angry mobs of constituents the following year at the polls.[16] When a judge runs for reelection, he has to be aware of public opinion, and is thus enticed to render opinions that are popular, even though injustice may occur as a result.[17] Former California Supreme Court Justice Otto Kaus notes, "deciding controversial cases when you know you face an election is like walking into the bathroom to shave in the morning and finding a 'crocodile in your bathtub.' You know it is there, you try not to think about it, but it is difficult to think about much else."[15] The office of a judge is one of intellectual honesty and dedication to the rule of law regardless of the political mood at the particular time.[8] DeMuniz notes:

"What is so troubling about criticism of court rulings and individual judges based solely on political disagreement with the outcome is that it evidences a fundamentally misguided belief that the judicial branch of government should operate like any other constituency driven political arm of the government. Judges should not have political constituencies, rather judges focus must be enforcement of the law, regardless of popular will."[8]

Like cases involving constitutional rights, criminal cases pose similar challenges in regards to the rule of law. The right to a fair and impartial judge is just as important to the protection of a criminal defendant at the local county courthouse against the angry mob outside, as it is to the rights and protections that our framers laid out in the bill of rights. In 1931 nine African American young men from Scottsboro, Alabama were convicted only days after being charged of brutally raping two white women.[16] After a series of appeals, the US Supreme Court reversed their convictions and ordered that they receive a new trial.[16] At the new trial, the jury convicted one of the defendants, Haywood Patterson, and sentenced him to death. The trial court judge, James E. Horton, set aside the conviction when he found the evidence to be insufficient. Unfortunately, Judge Horton served in a state with judicial elections and was subsequently voted out of office.[16] Social science research suggests that as judges come closer to reelection, they impose longer sentences in criminal cases and are more likely to affirm death sentences.[15] A good example of this is the case of an appeals court judge in Kentucky who lost her seat after voting to reverse the conviction of two African American men charged with brutally raping and murdering pregnant women.[15] Facing calls that they were soft on crime, three Tennessee appeals court judges were able to barely hold on to their seats by campaigning on the platform that they voted to uphold 90% of all death sentences.[15]

One of the modern problems with judicial elections is the difficulty in enticing qualified lawyers to run for judicial office. For one thing, it takes a good lawyer many years to build up a lucrative law practice and reputation. A study done by the Indiana Judicial Study Commission notes the lack of tenure and sense of job security associated with judicial elections deters many qualified lawyers from deciding to run for judicial office.[17] Indiana Appeals Court Judge Edward Najam notes that building up a successful law firm with a solid client base takes many years.[18] Lawyers who are professionally satisfied in private practice and who have built up a prestigious reputation in the community are unlikely to sacrifice their position to enter a judicial race. Lawyers who do choose to run have to go through the political process, where they may risk losing their prestigious reputation, face negative attacks regarding controversial decisions and have no assurance that even if elected, they would serve for more than four years., Judge Najam notes the Indiana Judicial Study Commission's survey (See Exhibit A) of attorneys in Indiana found "79% of respondents believed that the state's previous system of partisan judicial elections could not continue to provide high quality judges."[17, 18] Two thirds of the respondents stated that they would not be willing to run in a judicial election, creating a shortage of qualified candidates.[9] The study concluded that those most willing to run were those who had not practiced law long enough to build up a prestigious practice. In order to attract qualified judicial candidates, the report recommends that judges need to have a sense of job security to incentivize giving up a lucrative law practice for judicial positions. They are unlikely to do so in states where judicial elections exist.[17]

Other scholars of judicial elections agree with the Indiana Judicial Study Commission's findings. Prestigious and well-respected lawyers are not likely to enter into judicial campaigns, which over the past few years have become polarized and produced hostile rhetoric and attacks against judges for making controversial decisions.[13] Campaigns typically require a candidate to raise large sums of money in order to succeed, forcing many qualified candidates to trade a lucrative salary for financial and political debt. The time it takes to campaign also deters many qualified candidates from entering a judicial race. Government attorneys have demanding job requirements and busy deposition and court schedules that limit their ability to devote time to campaign.[13]

Merit Selection: What is it and is it an Answer to Judicial Elections?

Calls for reform in judicial selection methods began in response to the problems with judicial elections. The nationwide movement for selection reform began in the early 20th century when Roscoe Pound, who would later go on to become the Dean of Harvard Law School, spoke at the annual American Bar Association Meeting about "Causes of Popular Dissatisfaction with Administration of Justice."[9] In particular, he chastised, "the putting of the courts into politics," claiming that compelling judges to become politicians has destroyed traditional respect for the bench.[9] After many states experimented with reforming their own judiciaries, the state of Missouri adopted "Merit Selection" (or as it was then called, the "Missouri Plan").[9] Under this plan, a committee appointed by the governor vets candidates for judge/justice. The committee presents the three most qualified candidates to the governor, who then does his own inquiries into the candidates and makes a selection.[9]

Twenty-four states, including Indiana, soon adopted this method of judicial selection between 1940 and 1994.[15,19,**] In 1970, the State of Indiana adopted a Constitutional Amendment in order to implement a similar plan to the one the state of Missouri had invented nearly thirty years prior.[9] Under Indiana's plan, there is a selection committee of seven members, composed of lawyers, non-lawyers, and the Chief Justice of Indiana.[9, 20] The community elects the non-lawyer members and the governor appoints the members who are lawyers. When there is a vacancy on one of Indiana's courts, interested lawyers submit an application, which is posted online for the public to view.[20] The commission conducts public interviews with each candidate and inquires both into the candidates professional and personal life, utilizing statements made on the application as well as criminal background checks by law enforcement and the candidate's professional associations.[20] The commission then submits three recommendations to the governor, who after conducting his own interviews, selects his nominee. Upon selection, the nominee must stand for a retention vote after two years of sitting on the bench, wherein voters are asked on the ballot "should Judge/Justice John Brown be retained in office?" In order to be retained, a judge must receive a majority of "yes" votes.[20] If retained initially, he/she must

**Currently as of 2016, 38 states use some form of elections in at least one of the phases of either selecting or retaining judges. 22 states use elections to fill vacant seats on the bench, while 38 use elections when judges seek a second term then stand for retention every ten years after that. The Merit Selection system helps ensure judicial independence by appointing only individuals who are impartial as well as qualified, while still ensuring accountability through the involvement of the non-legal community in the selection process and through retention elections.[16] Under Indiana's Constitution, judicial candidates cannot make any political contributions, hold any office in a political party, or take part in a political campaign.[9] Such restrictions ensure that politics and partisan patronage play a minimal role in the selection of nominees and that both the judges as well as the committee members themselves are insulated from political pressures.[21]

Opponents of this system note that th governor typically chooses the candidate with the same political affiliation. However, this system is still an improvement because the candidates themselves are vetted and selected based primarily on qualifications.[21] While politics may play a role in the selection of a particular candidate, ultimately all three of the candidates presented to the governor are well qualified.[21] The Merit Selection plan is essentially a compromise between those proponents who say that judges should be "independent" and those who say that judges should be "accountable.[2] It also helps to ensure that qualified candidates will apply to become judges because the system has longer tenure.[2] It is also in line with what many of the framers, such as Benjamin Franklin, envisioned because lawyers select judges. According to Franklin at the Constitutional Convention, said lawyers should be the ones who select judges because "they would always select the best of the profession."[2]

The role of judges is different than that of other public officials. Most government officials are either policy makers or technocrats. It is common practice within our form of government to elect officials and appoint technocrats. While judges do play part in policy making, they are primarily technicians. They must know the law and have courtroom experience, administering justice based on expertise.[17] The advantage of the Merit Selection system is that it differentiates between qualified candidates and mediocre ones. Because the public is vulnerable to media persuasion, especially given the role of special interest groups, voters lack unbiased information to make informed decisions.[17] The strength in the Merit Selection system lies in the selection committee composed of well-qualified, ethical, and nonpartisan individuals who are required to work within certain parameters in choosing the very best judicial candidates.[21]

Among the strongest proponents of Merit Selection, is former United States Supreme Court Justice Sandra Day O'Connor, who herself was a product of Merit Selection when she was a justice on the Arizona high court. Justice O'Connor notes that, despite its imperfections, Merit Selection is a more virtuous method because the decision about whether to retain a judge is less political.[22] Judges remain insulated from the political pressures associated with contested judicial elections, which better enables them to make decisions based on the facts and the law, rather than majority preferences. Judges are also not obligated to raise large sums of money in order to get elected or stay in office.[22]

One of the other advantages of merit selection is the opportunity that it affords minority candidates. Diversity on the bench is important because one's ability to apply the facts to the law largely depends on one's life experiences, and one's life experiences are in large part shaped by gender and racial identity. Two reasonable minds can look at the same set of facts and interpret them differently. According to one study of selection methods, the Merit System afforded women and minorities the best chance to obtain a seat on the bench at the state level.[23] According to the study, 54.3% of minority state supreme court justices and 48.5% of female state supreme court justices were selected through Merit Selection.[23] At the court of appeals level, 40.8% of minority judges obtained their positions through merit selection.[23] Provisions in selection committee procedures have led directly to increases in judicial diversity. Several states that have merit systems have provisions that mandate that committee members consider diversity when making recommendations.[23] The study also showed that minority judicial candidates also fared better in merit plan states that mandate a certain number of years of legal experience and other legal qualifications, thus demonstrating the merit selection yields highly qualified candidates.[23]

Flaws with the Merit System and Suggestions for Reform

One of the main features of the merit system, retention elections, opens the door for many of the same problems of regular judicial elections. Although states like Indiana have never had a single dollar spent on retention elections[9], this has unfortunately not been the case in other states. For many years retention elections attracted little interest, due mostly to the fact that they were uncontested. However, in recent years special interests and partisan groups have figured out ways to exploit the system.[19] In many states, retention elections have become controversial, intense and high profile in response to a decision in a controversial case. Spending on retention elections has increased tenfold with nearly $6.5 million spent from 2009-2014. This puts new pressures on judges who previously were insulated from politicized elections.[19] Studies show that retention elections can easily turn partisan.[24] Justice Barbara Pariente notes that judges are often attacked in retention elections because partisan or special interests groups disagree with a particular decision or a series of decisions by the judge and unfairly label the judge as "too liberal," "soft on crime," and "thwarting the will of the people." Partisan and special interest groups also invoke the notion of "judicial activism," although they rarely offer specifics beyond the buzzword. With that comes spending, which has reached disturbingly high levels, with spending in Illinois, Iowa, Colorado and Alaska reaching $4.9 million cumulatively in 2009-2010.[1] Retention elections are beginning to take on many of the characteristics of regular judicial elections with no protection for the judge who is the object of politically motivated attacks.[1] These attacks often force the judges to decide whether to mount a campaign to defend their own record. However, because of laws regulating judicial conduct, the judges are at a distinct disadvantage.[1]

Such was the case in 2010 when three Iowa Supreme Court justices lost their seats in retention elections after they struck down the state's ban on same sex marriage.[15] The state had never had a single dollar spent on retention elections until special interests groups spent over $1million to remove the justices from office.[15] A campaign of television ads sponsored by the "Iowa for Freedom Coalition," along with the "National Organization for Marriage" and the "Campaign for Working Families" proclaimed "some in the ruling class say it is wrong to hold Supreme Court justices accountable."[15] The narrator went on to ask voters to "hold these activist judges accountable" and vote "no" on the retention of the supreme court justices.[1, 15]

The 1986 Californian retention elections saw record expenditures of $10 million, ultimately leading to the defeat of three of the state's high court members.[2, 24] Studies also show that voters do not vote based on the merits of a particular judge's competence, integrity, or legal ability, but rather based on the outcomes of particular cases. Such examples include the 1996 case of Tennessee Supreme Court Justice Penny White, who lost her seat after being attacked for being "pro-criminal" and "anti-death penalty" after she joined in an opinion re-sentencing a criminal defendant for committing a heinous crime.[24] Other examples include the retention election defeat of Florida Chief Justice Leander Shaw due to pressure from anti-abortion advocates, despite the fact the majority of those in the state's legal community felt that he was a competent justice and had high ratings by the state bar.[2]

Retention elections also may disfavor incumbents. Due to the lack of filing deadlines in contested elections, opposition groups may launch attacks against a sitting judge shortly before an election, giving the judge little time to respond as seen in the 1996 defeat of Nebraska Supreme Court Justice David Lanphier in a campaign that began only two months prior to the election.[2] In a contested election, the opposition is forced to explain their own position. However, in retention elections, the opposition can use manipulative tactics and label a judge based on only a handful of cases, while never having to explain their own position.[2] Retention elections are often misunderstood. Voters often do not have adequate information about why the judge is up for retention, or even what retention elections are to begin with. One study in Florida revealed that voters believed that judges were up for retention elections only when they had done something wrong.[2] Coupled with negative attack ads by interest groups, which have become more prevalent in recent retention elections, incumbent judges are at a distinct disadvantage.[1]

Recommendations for Reforming Merit Selection

Judicial independence is important to societal benefits, such as civil liberties, the rule of law, minority rights and the overall stability of society. [25] As the previous section demonstrates, retention elections are becoming as politicized as partisan judicial elections. Retention elections do not insulate judges from popular opinion, as they were intended to do, but rather put pressure on judges to decide cases based on popular majority. According to studies, these pressures can be just as great as those of partisan elections.[25] A cross sectional study of retention elections, nonpartisan elections and partisan elections, revealed that retention elections are turning more and more into political contests dominated by partisan and single issue-interest groups.[25] Unfortunately, this has had the effect of subjecting judges to the very kind of political pressure that retention elections were designed to prevent.[25] Empirical analysis of academic studies shows that judges in states with retention elections show no signs of being more isolated from popular opinion than judges in states with competitive elections.[25] Interests groups identifying and politicizing previous decisions by particular judges, is inimical to the rule of law. Unfortunately, because voters are ill-informed, these attacks by interests groups can be the deciding factor in a retention election.[25]

In response to this, many states including Missouri (the first state to adopt Merit Selection) have explored several referendums that would abolish retention elections, while keeping the nonpartisan selection component of the system intact (although the proposal was filibustered).[25] A number of other proponents of reform have proposed modifying Merit Selection to eliminate retention elections.[15] Other proposals include having judges apply for reappointment to a similar nonpartisan committee upon the completion of each term.[26] A combination of these two reforms is used in the state of Hawaii, in which a commission screens all potential judicial candidates and then sends a list to the governor when a vacancy opens on one of the state's courts.[27] When the judge finishes their term, the commission has sole discretion in determining the judge's retention.[27] There is evidence to suggest that this system is effective in ensuring judicial independence and isolating judges from political pressure.[27] Many Hawaiians in the legal and judicial community found that judges in Hawaii are able to execute their duties and render decisions without political pressure. Several long time reporters on the state judiciary note that judges in Hawaii are truly independent and guard the state's constitution without fail.[27] One of the reasons for this is the broad apportionment of commissioners: the governor, the State Senate president, the Speaker of the State House, the Chief Justice of the State's High Court, and the Hawaiian Bar Association each appoint between one and two members to the nine-person commission.[27] Distributing appointment power across all three branches of government as well as to the state bar association helps ensure that evaluations of judges is truly nonpartisan. This makes it less likely that the commission is "captured" by special interest. It also helps ensure that evaluation of judges is based on their qualifications and competencies, as opposed to the popularity of their decisions.[27] Other scholars such as Bannon propose continuing to select judges through non-partisan elections, but rather than retain them through elections, have them elected to single term, such as 10-16 years with no chance for reelection.[15] This eliminates the threat of job security and judges having to explain their rulings and exposure to unfair attacks.[15]

Conclusion

In order to safeguard the Constitution and fundamental liberties, it is essential that any judicial selection method employed must reflect the proper role of the judiciary in society. Judicial elections obstruct the rule of law and the very fundamental liberties that our framers built into our Constitution. Judges should not be subject to the whims of popular majorities through elections. Judicial elections threaten the rule of law because they subject judges to political pressure to make decisions contrary to the law in order to stay in office. Making matters worse is the amount of spending on judicial campaigns that has taken place over the last several years by special interests groups, as well as negative ads and labels placed on judges. Merit Selection was introduced as an answer to the lack of judicial independence in competitive elections. Merit Selection has had success in many states, like Indiana, in attracting highly qualified lawyers to ascend to the bench. But, while Merit Selection has been successful in attracting highly qualified judicial candidates, retention elections have not been insulated judges from political pressure. As the amount of spending and negative ads against merit appointed judges has increased, qualified judges have been defeated in retention elections. While the selection committee has been a successful component of the Merit Selection system, retention elections have proved to be problematic. For these reasons, several states have adopted proposed reforms to eliminate the retention election portion of the merit system, while keeping the selection committee component intact. It is important that such proposals for reforms move forward in order to protect the rule of law and fundamental rights in the Constitution. The judicial branch of government serves an important function in our democratic republic. In order to ensure the stability of our government and society, it is important that future judicial selection reforms protect those charged with safeguarding the rule of law from the ravages of tyrannical majorities and interest groups that our framers so feared.

Exhibit A: Survey by the Indiana Judicial Study Commission (1966).

1. Can the present system of judicial selection continue to obtain the best qualified judicial personnel?"

2. Do political influences enter into judicial determinations in your experience?"

3. Under what selection system would you be most inclined to accept judicial office?

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MORE TALK LESS TERROR: Examining the Impact of Negotiation as a Strategy Against Terrorism

by Noah Yosif

Non-state-sponsored terrorism, where organized groups seeking political, economic, or social change employ violence and coercion to realize their demands, is an important issue in international relations. For most of the twentieth century, conflicts were between countries with sanctioned militaries, with limited civilian or irregular military engagement. Contemporary conflicts have been fought predominantly by organized groups of individuals with limited connection to an actual state, but still possessing the power to exact violence and influence change on a global scale[1] (Freytag, 2011). A government's choice to negotiate with terrorists to avoid further violence has been a much-contested policy in recent years. Some experts argue that a government's choice to negotiate with terrorists is the equivalent of succumbing to their demands, thereby rewarding the actions that led them to a position of increased bargaining power[2] (Miller, 2011). Others argue that negotiation is neither acquiescence nor approval of terrorists' actions, but rather an opportunity for each side to present grievances and work toward a mutually acceptable resolution as an alternative to further conflict and bloodshed[3] (Steinberg, 2015). This begs the question: is negotiation a beneficial strategy for combating terrorism? Could diplomacy prevail as an effective solution to quelling violence?

Using game theory, this paper will examine the rationality and benefits associated with a government's decision to negotiate with terrorists, as well as the alternatives available to both sides. Since negotiation is an option which may be applied at every stage of the conflict, this paper will attempt to analyze the gains or costs each side incurs by forgoing negotiation over a more provocative move that escalates the conflict. This paper will also account for the potential of a government or terrorist to be unrestrained by conventional factors that would normally persuade them to negotiate, such as unlimited resources or fanaticism. In examining a group's choice to forgo negotiation, the model will include multi-round games, which examine the costs associated with actions that contribute to the escalation or de-escalation of the conflict. To better explore these scenarios, the paper will rely on past instances of negotiation between governments and terrorists. The goal of this paper is for policymakers to be better suited to make informed judgments that reduce conflict and save lives.

Literature Review

The application of game theory to negotiations with terrorists has received some attention among academics. Steinberg examines negotiation through a simple model in which terrorists are afforded the option to negotiate, threaten, or engage in terrorism while the government can negotiate, ignore, or preempt in response[3] (Steinberg, 2015). While this model provides a thorough overview of options available to each group, it leaves out another action on the side of government, which is to respond to an attack. It is important to distinguish between a preemptive and a reactive measure as each is triggered by different impetuses and carries its own unique consequences. Steinberg applies this model to both democratic and non-democratic countries, demonstrating how differences in governance can impact a government's proclivity to negotiate. He defines terrorists as activist citizens whose primary objective is a change in policy, arguing that their turn to terrorism is a last resort, and that they are equally interested in negotiation if it would minimize costs and lead to fulfillment of at least some of their demands.

Sandler and Arce differ in this regard, as they presume terrorists to be grounded in their mission to execute violence in fulfillment of their desired change in policy[4] (Sandler & Arce, 2007). Their model examines how different levels of deterrence exerted by a government will discourage a terrorist attack. They argue that terrorists will only choose to negotiate if the cost of executing an attack is outweighed by the perceived payoff and if it is likely to effectuate change. They note that this model would be ineffective should the terrorists be fanatical enough to reject a logistical or negotiation failure, preferring a fight to the end scenario even if that meant total annihilation. Martyrdom is a recurring theme within the ideologies of many active terrorist groups, including the Islamic State, Al-Qaeda, Al-Shabaab, Boko-Haram, the Taliban, and Hezbollah[5] (Moghadam, 2006). If a government realizes the futility of trying to persuade their adversary to negotiate, its likelihood of preferring hostile measures to negotiation will increase. This theory directly opposes the work of Islam and Shahin, who argue there are no explicit interactions between adversaries and that each knows relatively little about the other's intentions[6] (Islam & Shahin, 1989). Under such logic, if the government cannot fully ascertain the resolve of its terrorist adversaries, negotiation will remain as a potential policy option.

Miller also provides an insightful analysis of the options facing a government and terrorists during the commission of a terrorist attack by specifically focusing on hostage crises[7] (Miller, 1990). In these cases, terrorists – and to a lesser extent, governments – might threaten the lives of civilians and other third parties in an effort to strengthen their bargaining position. In the model presented by Miller, negotiation will follow if violence does not immediately achieve the results desired by terrorists or the government[7] (Miller, 1990). In one scenario, terrorists will execute an attack and force the government to come to the negotiating table by threatening further violence. In another scenario, the government will initiate a preemptive attack against the terrorists to resist their demands; during this process, the terrorists are forced to negotiate in order to salvage whatever

Figure 1: Outcome Preferences for the Terrorists & Government in the First Round

		Government	
		Comply	Resist
Terrorist Group	Abandon Threat	A (4, 3)	B (1, 4)
	Execute Threat	C (3, 1)	D (2, 2)

benefits may still be attainable at that stage. The models show negotiation as an option available throughout the duration of the crisis that depends on the bargaining strength of each actor, as well as the costs and benefits associated with negotiating at a particular point in time.

Overview of the Model

The model will analyze the expected payoffs of negotiation for both government and terrorist actors within single and multi-period scenarios. Since many instances of terrorism involve threatening or acting against an innocent third party to obtain leverage, the model will focus on terrorist incidents involving hostages or civilian casualties. The terrorist group is the first major player in this model and has determined that violence and/or the threat of violence is the only appropriate recourse for drawing attention to their grievances. They are still rational at this stage, because they can be dissuaded from violence if negotiation presents an opportunity for their demands to be heard and addressed. The government is the second major player within this model; it initially assumes a reactive stance to potential instances of terrorism. This means that the government is not actively seeking to disrupt terrorist activity but maintains the ability to react if a threat of terrorism were to be executed. If the government were to assume a proactive stance against terrorism, it would be due to external circumstances such as an overly cautious administration or a history of terrorist attacks which are not covered in this model[8] (Reisman, 1999). Both the terrorist groups and the government are rational actors: neither side will resort to violence first. At the beginning of a new conflict, they are each open to negotiating, but they will retain violence as an option

Figure 2: Summary of Outcome Preferences for the Terrorists and Government in a Single-Round Game

Option	Terrorists' Utility	Government's Utility	Description
A	4	3	Government complies with the terrorists' demands, eliminating their need to execute the threat.
B	1	4	Government resists the terrorists' demands with violence, incapacitating the group and preventing them from executing their threat.
C	3	1	The terrorists execute their threat and take hostages, prompting the government to negotiate to prevent further violence or harm to the hostages.
D	2	2	The terrorists execute their threat and take hostages, prompting the government to carry out reprisal attacks to destroy the terrorists, which may or may not ensure the hostages' safety.

Figure 3: Outcome Preferences for the Terrorists and Government in Subsequent Rounds

		Government	
		Negotiate	Resist
Terrorist Group	Negotiate	A (4, 4)	B (2, 3)
	Resist	C (3, 2)	D (1, 1)

in case negotiation fails. Hostages are exogenous variables within this model, whose well-being is an important consideration for both the terrorists and government.

The game shall begin following the issuance of a threat by the terrorists, usually with some public display of violence involving the seizure of hostages. After a threat is made, the government will have the first move by choosing whether to comply with or resist the demands of the terrorists. Once the terrorists are aware of the government's move, they respond by choosing to execute or renege on their threat. There are four possible conclusions to this game. First, the government complies with the terrorists' demands, eliminating the need for the terrorists to execute their threat. Second, the government resists the demands of the terrorists through a proactive response, thus incapacitating the group and preventing them from executing their threat. Third, the terrorists execute the threat, and the government responds by complying with their demands. Fourth, the government resists the terrorists' demands, and the terrorists respond by executing their threats[13] (Lapan & Sandler, 1988). Figure 1 shows the strategies available to the government and terrorists, as well as each side's outcome ranked on a scale from 1 to 4, with 4 being the most preferred option. The outcome preferences for the terrorists are highlighted in red while the outcome preferences for the government are highlighted in blue.

As Figure 1 shows, the preferred outcomes for the terrorists and government are opposed to each other; the government prefers resistance before compliance, while the terrorists prefer that the government comply over resisting. Nevertheless, Option A has the greatest utility, because the government's compliance paves the way for negotiation between the two parties, which avoids costs in terms of each side's resources and public image. Option B is the next best outcome, because while the government's response will cost resources and affect its public image, the terrorists' abandonment of their threat will conclude the conflict without bloodshed. The bottom-row options (C and D) are least desirable, as they involve one or both sides resorting to violence and thereby costing both resources and public image. Some might argue that the government's resistance (Option B) is equivalent to the terrorists' execution of their threats (Option C); however, the former is preferable as it is more likely to avoid collateral damage such as targeting civilians. The government also retains an inherent monopoly on the lawful use of force[9] (Grechenig and Kolmar, 2014). Figure 2 (below) summarizes each option, with the terrorist group's and government's preferences:

The present model illustrates a single-round game, which ends after the terrorists either abandon or execute their threat. This is not indicative of many real-world scenarios in which terrorist groups engage in prolonged, low-intensity conflicts against a government until their demands are realized or they are unable to continue operations. In the above model, Options A and C end the game with negotiation, while Option B ends the game with violence on behalf of the government. Option D enables the game to continue into additional rounds, since both the government and terrorists have assumed hardline positions against capitulation and have reinforced these views through violence.

Figure 3 shows how the game can continue into n rounds. Assuming once again that both the government and the terrorist are still rational, each side would want to negotiate in order to realize their demands and eliminate further costs through violence, making Option A most preferable and Option D least preferable. Options B and C are dependent on the opponent's willingness to negotiate. From the terrorists' perspective, Option C is preferred to Option B, since negotiation is preferred to further violence; for the same reason, the government would prefer Option B to Option C. As in Figure 2, the outcome preferences for the terrorist group are highlighted in red, and the outcome preferences for the government are highlighted in blue.

There are several factors to consider when evaluating each model. First, the terrorists are assumed to be rational actors whose main priority is that their demands be addressed, and ultimately met, through negotiations with the government. This means that the terrorists, while willing to use violence, will exercise restraint and good judgment if they see an opportunity to persuade the government to hear their demands without it. While the terrorists' willingness to use violence may preclude such a judgment of rationality, it can be posited that the terrorists' demands and proclivity to employ violence to achieve them are what determines rationality. For example, during the Syrian Civil War, the Syrian Arab Republic denounced the Free Syrian Army (FSA) as terrorists. The FSA was a rebel group comprised of ex-Syrian military members who opposed the repressive tactics employed by the government during the early stages of the war. Yet the FSA was willing to negotiate with the government to achieve lasting peace and was recognized by individual countries and international organizations as a more legitimate entity than the government it was fighting[10] (Spyer, 2012).

Equation 1

$$probability\ \{c < c*\} = \Omega_t = \int_0^{c*} f(c)\,dc$$

In contrast, there are many existing groups such as the Islamic State and Boko Haram that have rejected all forms of negotiation in favor of violence[11] (Cronin, 2015). In this case where the terrorists are fanatical, forcing the government to "comply" in the first round would be preferred, but the terrorists would place greater emphasis on "resistance" over negotiation in subsequent rounds. In addition, if the government knew their enemy was fanatical, greater emphasis would be placed on "resist" options[4] (Sandler and Arce, 2007), with the objective of completely destroying their ability to operate. Additionally, both models assume the government to be democratic. If the government

Equation 2

$$(Z_t) = (1 - \theta_t)[p_t m + (1 - p_t)l] - \theta_t c$$

$$\text{where } m > l > -c \text{ and } m > 0$$

Equation 3

$$c \leq c^* = [\frac{(1-\theta_t)}{\theta_t}] * [p_t m + (1 - p_t)l]$$

was authoritarian or otherwise undemocratic, they may have less incentive to negotiate, unfazed by the cost of resources or even public opinion[3] (Steinberg, 2015). This would lead them to place a greater premium on resistance in both cases, with the ultimate objective of completely destroying their opponent. An example of this would be Argentina's Dirty War of 1976, in which the military-run government launched a campaign against suspected communist groups, including the People's Revolutionary Army and Montoneros (each classified as terrorist organizations), despite public outcry over the violence and violations of international law[12] (Suarez-Orozco, 1992). If the terrorists were aware that the government was unwilling to negotiate, this would have led them to pursue a more retaliatory posture in both the first and subsequent rounds of the game.

Explanation of the Variables

It is essential to understand the rationale behind each side's choice of strategy. The government begins the game by determining whether to comply with the terrorists' demands or resist. Assuming the government has initially adopted a reactive stance against the terrorists, it must evaluate the probability of an attack based on the expenditures of deterrence.
The model assumes that the government does not know the resolve or fanaticism of the terrorist group, so they are forced to assume that the terrorists perceive any costs to government (c) as worth the execution of an attack, where c ≥0, otherwise c*. Their evaluation of an attack's success depends on Ωt, a function of their costs, which is based on the probability that an attack succeeds versus the probability of an attack to fail. Lapan and Sandler created a formula (Equation 1) to determine whether a government will comply or resist a terrorist group's demands[13] (Lapan & Sandler, 1988).

This formula proves that increased spending on deterrence will lower the probability of a terrorist attack as the terrorists will perceive an attack to be much more costly and difficult to execute. In addition, should the terrorists believe the government would capitulate after the issuance of a threat or its execution; they will be more likely to strike. In a multi-round scenario, the government would have to carefully consider how its disposition to negotiate would influence the terrorists' beliefs in the success of an attack.

Once the government has made its move, the terrorists must respond by determining whether to abandon their threat or execute it. Abandonment is a risky strategy: when chosen in response to the government's capitulation, it will yield a high utility to the terrorists, but if the government resists, it will yield a low level of utility. There will always be an associated cost to the terrorists' decision to execute their threat, as well as three possible outcomes: 1) the attack fails; 2) the attack succeeds, and the subsequent negotiations succeed; 3) the attack succeeds, but the subsequent negotiations fail[13] (Lapan and Sandler, 1988). The benefit of the attack can be measured by examining the complexity (l) and public attention to their cause (m). If these variables outweigh the cost of conducting an attack, then terrorists may be more inclined to execute their threats over abandoning them. Therefore, the expected payoff from a potential terrorist attack (Zt), and the condition for a successful attack (c<0) can be shown by the following equations[13] (Lapan & Sandler, 1988):

In these equations, (1- θt) refers to the probability of success of the terrorists' attack; pt signifies the probability of government capitulation following their attack. If either of these two variables increases, the terrorists' inclination to execute an attack will also increase, emboldened by the odds of success of drawing attention to their demands. Equation 3 demonstrates how a hardline non-negotiation stance, in which pt=0, might not be sufficient to deter an attack if l>0 or m>0. There are many historical examples in which terrorists have launched an attack that was a strategic failure yet still resulted in a net benefit. Hezbollah, a pro-Iranian Shiite fundamentalist group, has conducted a significant number of suicide bombings at US facilities in the Middle East. Although this strategy is costly in terms of manpower, martyrdom serves as a powerful recruiting tool through increased publicity, and discourages government negotiation[14] (Pape, 2003).

These formulas are still relevant in additional rounds of the game. The government will have to constantly reevaluate whether reactive policies successfully deter a terrorist attack, while the terrorists will need to determine whether further resistance is beneficial. The standards for choosing resistance over negotiation are much lower for the terrorist group than government. The terrorists want to attract attention to their demands, so would benefit from any increase in complexity or publicity since both would increase their probability of success. The government does not gain additional benefit from increased exposure, so their best course of action is to either maintain the spending level on deterrence through an influx of capital, or negotiate to prevent increased costs. This is especially applicable to hostage situations, in which a hardline non-negotiation policy or any proactive operations by the government against the terrorists would endanger the lives of captive civilians. However, it has been demonstrated that governments view hostages as expendable. One example is the killing of prominent

Al-Qaeda commander Adam Yahiye Gadahn, who was killed during a United States drone strike that also killed two hostage aid workers, who were considered collateral damage[15] (Miklaszewski, 2015). While civilian deaths obviously increase negative feelings toward the government, this example demonstrates how a government could bear this cost if it were offset by the gains from a victory against the terrorists.

Ultimately, game theory shows negotiation to be a preferred alternative for both terrorist groups and governments, even though the alternative strategies and associated costs differ between the two sides. But if negotiation is clearly more beneficial to both parties, why is is it not employed more often? One possible explanation is that government actors, who make the first move after a terrorist threat, can never fully assess the resolve of the terrorist group. By not knowing the point at which the terrorists will choose to surrender or negotiate, the government can only hypothesize if their choice of either compliance or resistance will result in negotiation or execution of the attack. This can lead them to choose violence at the expense of the hostages as a certain means of ending the conflict instead of negotiation, by which the outcome, benefits, and costs is more uncertain. Uncertainty is a volatile and potent factor within this game because it significantly influences a government's choice to negotiate.

Conclusion

Terrorism has been redefining how organized groups of individuals interact with governments and represent themselves to the broader international community. Many discussions in academia and politics concerning how best to confront terrorism have fiercely debated the viability and merits of negotiation as a long-term deterrent. This paper examined the rationality and utility of negotiation as a strategy for government and terrorist actors by utilizing simple game theory and found negotiation to be a preferable strategy to both sides. It also examined the limitations of negotiation and why each side may see resistance and violence as a better alternative to the former. While theoretical, this paper has shown why governments should consider negotiation as an equally productive solution to violence when confronting and preventing instances of terrorism, as well as what conditions may prompt terrorists to see value in negotiation over further violence. While not always apparent, negotiation can be a more lasting means of resolving conflict and avoiding further loss for both sides.

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Special Issue 2018

Wicked Problems

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Human Rights and Disaster Politics

by Angelica DeJesus

During his brief visit to Puerto Rico— nearly two weeks after Hurricane María made landfall, Donald Trump activated three longstanding perspectives about Puerto Ricans: Puerto Ricans are lazy, senseless, and ungrateful; Puerto Ricans are incapable of self-governance; and Puerto Rico's suffering does not count. Trump is not alone in his ideas.

The lazy Puerto Rican trope, rooted in racist ideologies that typify colonial relationships, has existed in the American imagination since Puerto Rico (PR) was annexed by the US in 1898.[1] These ideas make up the political backdrop of an island where 3.5 million residents face high rates of poverty, widespread exposure to environmental toxins (including lead and coal ash), and use infrastructure that has been neglected for decades. Still, politicians who are ignorant of PR's history with the US place blame on "lazy Puerto Ricans" for the island's decade-long recession and $72 billion debt (Krogstad, Starr, and Sandstrom 2017; Rios Gonzalez and Hitchcock 2014). This debt is not spontaneous or sudden; rather, it is the result of decades of imperial economic policies including changes in tax-incentive structures that maintain PR's reliance on ephemeral external investment and more explicit colonial policies like the Jones Act (Rother 2017; Denis 2017). These stereotypical perceptions of Boricuas reflect the colonial relationship that shapes the unjust, unequal and inadequate White House responses to Puerto Rico in the aftermath of Hurricane María (Carrero Galarza, 2017).[2]

Who Deserves Help?

We can better understand the federal-level disaster responses by looking at the principles of utility and utilitarianism. Utility is a measure of happiness, preferences, or well-being. Under utilitarianism, everyone's utility is understood to be weighted equally. Utilitarian ethics state that "an action is morally right if and only if it produces at least as much utility as any alternative action available" to a decision maker. It is considered "morally wrong" if it does not.[3] In other words, the ends justify the means if the most utility for the greatest number of people is ultimately achieved. Within disaster response paradigms, these ethical principles are operationalized through Cost Benefit Analysis (CBA) tools which are used to determine how resources are allocated

"I hate to tell you, Puerto Rico, but you've thrown our budget a little out of whack, because we've spent a lot of money on Puerto Rico… That's fine — we've saved a lot of lives.… [E]very death is a horror, but if you look at a real catastrophe like Katrina … No one has ever seen anything like that. What is your death count?" - Donald Trump, September 20, 2017 in the event of a crisis.

In the context of the US, a nation shaped by centuries of racist colonial rule, a CBA alone will not yield the most moral outcome. Without interrogation of a decision maker's assumptions (be it a President or General or emergency manager) CBA tools have the potential to shroud harmful and racist bias under the guise of an objective analysis of the costs and benefits of an intervention. Therefore, if there is a preexisting assumption that Black and Brown people in Puerto Rico are inherently less-human, then a CBA will continue to calculate them as undeserving of basic human rights.

By mentioning cost in his speech to officials in San Juan, Trump clearly reveals utilitarianism as his ethical compass. By using tools like CBA, he argues against providing Puerto Rico with the necessary level of resources required for a just and equitable transition after Hurricane Maria. This response to Puerto Ricans is justified –or normalized –by CBA, because the cost of caring about a small island like Puerto Rico (or the other US territories) is greater than the benefits to the larger, more "real," US population. Within a utilitarian framework, this is true. Puerto Rico will always be a small island and cannot compare to Michigan, California, or the entire US. By the logic of numbers Puerto Ricans on the island will never reach a threshold large enough to matter. But what if we could use CBA in a way that Puerto Rican's could move beyond being constructed as small players in a zero-sum game?

"…They want everything to be done for them when it should be a community effort. 10,000 Federal workers now on Island doing a fantastic job."- Donald Trump to San Juan Mayor Carmen Yulín Cruz

Integrating ideas of environmental justice into CBA may allow policy-makers and institutions like FEMA to shift how people's lives are valued in times of crisis. Performing CBA while considering colonial contexts and incorporating a lens of equity and social justice can prevent further harm. Government officials are notorious for using CBA to rationalize perpetuating pre-existing inequity for marginalized communities, which are often disproportionately impacted by environmental disasters.[4]

Some Puerto Ricans may argue that Boricuas deserve support because they are U.S. citizens. Others frame the need for support by highlighting the ways Puerto Rico is treated in stark contrast to other states such as Texas, Florida and New York. I argue that simply by being humans, Puerto Ricans, and especially Black and Brown Puerto Ricans, deserve adequate help in time of crisis. Our families, friends and fellow Boricuas are worth the cost of ensuring basic human rights and dignity.

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Toward a More Representative Democracy

by Martha Fedorowicz

City Councilman and Mayor Pro Tempore Chuck Warpehoski looked at the hands of the clock on the wall. He knew that they were moving at their normal speed and yet he questioned his eyesight and wondered if it was time to get that eye exam he'd been postponing for so long. Time seemed to be moving at a caterpillian pace, the hands barely moving each time he looked. Looking out into the audience, he observed a familiar scene. The audience was exhausted and disgruntled and sat impatiently waiting for their time at the microphone, and because it was late, and a Monday, they thought of all the other places they could be, and how their partners were heating up dinner, and their children were practicing algebra problems, and their favorite show would soon be starting, but instead they were stuck waiting, at the Ann Arbor City Hall. One person, holding a list of signatures, sat especially close to the microphone, determined to claim the first three minutes of public-speaking time. In a tone of voice heard only on C-SPAN, Councilman Warpehoski called the meeting to order. A child brought by his mother to the meeting began to nod off.[1]

Commercial Pavement Sealant and the Ramifications of Representative Democracy

"The people we hear in our public planning process are that passionate minority," says Councilman Warpehoski in a meeting the next day at his full-time job at the Ann Arbor Interfaith Council for Peace and Justice, "and I think that shifts our policy discussions. People don't care until they care, and when they decide to care, they're usually angry about something." [1]

Our political system--a system known as representative democracy--where citizens vote to elect officials who will represent their interests, is the cornerstone of our nation. In shaping a political system so different from the monarchy they had escaped, the Framers sought to create a new government whereby members of the public could have a say in the laws and policies which ruled them. And yet, as Tim McNeese outlines in his book, U.S. Constitution, the Framers "were skeptical of the abilities of ordinary people to govern themselves."[2] Instead of choosing a direct democracy for our country, the Framers chose a representative democracy because they wanted to avoid "the tyranny of the majority"—the ability of majority groups to make decisions without regard to, and in conflict with, the needs of the minority. "The need for electing representatives, in itself," McNeese writes, "suggests an electorate ill-constituted for the intellectual and moral challenges of self-governance."[2]

Even at the local level, the practice of limiting the decision-making power of the general public and deferring to the knowledge and expertise of elected representatives is tradition. In Ann Arbor, as in other cities across the country, members of the public who attend city council meetings are restricted to three minutes at the microphone where they often deliver what Councilman Warpehoski calls "serial monologues."[1] When their time is up, a little black box with three small lights, reminiscent of a traffic signal, flashes red and makes a dinging sound to signify that it's time for them to go back to their seat. To anyone who has prepared an impassioned speech hoping to arouse the good nature of the council, three minutes hardly seems like enough time.

In some ways, putting limitations on public participation makes sense. City councils are responsible for making decisions on topics for which most people have no expertise or interest, topics which aren't seen as "sexy" or interesting—which commercial pavement sealant to use, or where to put an easement for a public right-of-way. Councils also have to look out for the interests of everyone, and limiting one person's "serial monologue" is a way to make sure that everyone who wants to talk, can. However, many of the topics covered in council meetings (though they may seem mundane and uninteresting) play an important role in shaping people's day-to-day lives and have wide-ranging implications for the future of entire neighborhoods or cities. Limiting the participation of the public at these meetings means limiting their ability to engage in the policymaking process and their ability to shape the community in which they want to live.

In late 1700s America, the Framers were right to be skeptical about the public's ability to make decisions affecting their city or society as a whole. The vast majority of the public were uneducated and knew very little about groups of people other than those with whom they interacted daily. Yet given the present makeup of the American public (in 2012, 81 percent of Americans graduated from high school, and 31 percent graduated from college) and our access to today's communication and information technology, the structure of city council meetings seems archaic and grounded in outdated assumptions about the American populace. Matt Leighninger of the Working Group on Legal Frameworks for Public Participation writes, "For 21st Century citizens, who are more skilled and educated than their predecessors, who have access to endless quantities of information through their smartphones, and who are used to having a wide array of choices open to them, these old meetings seem like a waste of time; there is little for [citizens] to learn, and little they can contribute."[3]

In addition to a demographic shift in educational achievement, there has of course, also been a huge shift in the racial and ethnic demographics of our country. While stating this seems obvious, a foreigner looking at the elected representatives in American government might not guess at the magnitude or depth of our diversity. Given this fact, one must wonder whether representation in American government is keeping up with the changing demographics of the nation and whether this has implications for the types of policies made by representative bodies.

Aside from political representation, the work of local government is also limited by who turns up to and participates in city council meetings. A study by Rachel Weber, Thea Crum, and Eduardo Salinas of the University of Illinois at Chicago found that, "Well educated, higher-earning, older, and white citizens have been found to participate more in formal politics than citizens or immigrants of ethnic minority status who are less educated, younger, and of lower income."[4] Just like lobbyists showing up to Congressional hearings, the people who show up at city council meetings are those who have the time to do so and feel that they can somehow benefit from the process. "The more you go up the ladder of civic engagement, from voting to contacting decision makers to attending public meetings to serving on a board or commission, the more participants reflect groups that hold privilege in society," says Councilman Warpehoski. "This is, in part, because privilege buffers the 'cost' of civic engagement—it's easier for a professional to hire a sitter than a single parent in a low-wage job—and in part, because privilege carries with it the expectation that people will listen."[1] Working class families with children, the poor, people who work more than one job or work the night shift, people who don't have reliable transportation, and those who don't speak English as a first language are often left out of the equation. Arguably, this is where the most egregious misrepresentation occurs. To the extent that local policymakers take into consideration the opinions and concerns of their most visible and more vocal constituents, one could easily see how a lack of attendance at city council meetings by a representative sample of the public could have an effect on the resulting policies.

Based on more contemporary notions of representativeness and engagement, the structure of local city council meetings is flawed in two major ways: first, there is a misalignment in the demographics of who participates in local policymaking (both in elected officials and in meeting attendees) and second, the way that local policymaking seeks to "engage" the public is not, in fact, very engaging. "The structure is adequate for the people elected to make decisions," says Councilman Warpehoski, "But the structure is terrible in terms of engaging the public and making sure they are heard and [making them feel] like their comments matter."[1] Both of these factors have important implications for understanding the origins of local policies and the public sentiment around those policies. When the public is disengaged from or unable to engage in the policy-making process and thinks that city councils don't matter, or that they don't represent their voice or concerns, then the policies which come out of those bodies will not reflect the true values of the community and we will all be worse off. The "more perfect union" sought by our Founding Fathers will not only be less perfect, it will also breed discord and distrust.

Toward a More Perfect Union

Amid social unrest over racialized

policing practices, a housing shortage due to exclusionary zoning and a growing wealth disparity forcing more to the bottom, many cities have started looking for a new way to meet the needs of the public. Like all issues in society, this is about power—who has it, and who doesn't, and how to redistribute it between the two.

In 2016, the Mayor of Seattle, Ed Murray, and his Department of Neighborhoods Director, Kathy Nyland, made an aggressive move toward creating a more equitable political process by severing ties with the city's neighborhood district councils—councils which are majority white and run by homeowners, not renters. They created the volunteer Community Involvement Commission and the Seattle Renters' Commission, and hired community liaisons who were charged with connecting disenfranchised and disconnected residents to city services and the civic engagement process. Despite being ranked one of the best cities to live in in the U.S., Murray and Nyland knew that this wasn't true for everyone. "By emphasizing outreach to underserved groups such as renters, immigrants, and refugees," says Erica Barnett in How Seattle is Dismantling a NIMBY Power Structure, "Nyland is shaking up traditional notions of community engagement and redefining community as something based not on geographic proximity, but on personal and cultural affinity."[5]

Elsewhere in America, city leaders are looking not just to change the players but also to change the game. Many, including Chicago 49th ward Alderman Joe Moore, realized that if residents are going to truly contribute to developing their communities, then they have to be given the opportunity to participate in the decision-making process. In 2009, he began implementing a process known as Participatory Budgeting (PB) in which 49th ward residents get to propose ideas for neighborhood renewal projects and then vote on which projects to fund. Every year since 2009, he has allocated 77 percent of his $1.3 million discretionary fund to this democratic exercise. Examples of selected projects include new bike lanes in 2011, a new water feature for a neighborhood park in 2014, and new residential streetlights in 2016. Last year more than 2,000 residents voted in the process, the biggest participation year since the start.[6] What's more, unlike voting on official ballot measures, PB in the 49th Ward is open to all residents of the ward, not just those who are U.S. citizens.

In addition to Participatory Budgeting, other techniques like Community Action Planning and crowdsourcing are being used to actively engage residents in the planning and redesign process. Through Community Action Planning (CAP), residents do a community walk or community assessment and then work in focus groups to brainstorm what they see as assets, challenges, and opportunities in their neighborhood. They then gather necessary data and survey other residents to obtain the full picture of the community need to be addressed. Finally, they work together to diagram or map the proposed solution. In 2014, the city of Bowling Green, Ohio adopted a citywide improvement plan which included a phase of Community Action Planning.

Out of this process, residents decided to develop a "Good Neighbor Guide—an informational guide that will allow Bowling Green residents to understand the process to reporting and resolving common quality-of-life issues."[7] They also decided to test out the potential for new bike lanes by having a spring street festival during which they will paint temporary bike lanes on the road.

While these aren't comprehensive solutions to cities' problems, they do allow residents an opportunity to choose what they see as priorities in their community. Perhaps more importantly, participatory budgeting and other participatory planning processes are important not only because of the outcomes they achieve, but because of the learning process that participants experience. In their study of participatory budgeting in Chicago, scholars Weber, Crum, and Salinas found that, "PB provided participants with a space for civic learning about the needs of their ward, the interests of their neighbors, and the city budgeting process—cornerstones of the community development process."[4] Additionally, they found that participants in the PB process wanted to get involved again in future engagement activities. In a country where less than 15 percent of eligible voters vote in local elections, surely, we can all agree that more engagement and interest in the political process is something that is sorely needed.[8]

The Limits of Civic Engagement

Despite the many benefits of increasing civic engagement at the local policy-making level, there are still many who aren't buying what idealists like Joe Moore and Kathy Nyland are trying to sell. To one observer of Seattle's outreach efforts to low-income communities, it's a publicity stunt by those in power to make it seem as if they care about the little guys while still catering to wealthy developers. To others, participatory planning is just a band-aid, a quick fix for cities with much larger fish to fry. While a bike path is nice, it doesn't solve gang violence, chronically low performing public schools, or an affordable housing shortage that gets worse and worse every day. One of the biggest critiques of the participatory budgeting process in Chicago was that the money allocated could only go toward capital improvements projects—the types of things that cities already maintain—the only difference is that under PB, residents who participate can prioritize what those projects should be. While Alderman Moore and his team made significant efforts to ensure a diverse group of participants, (they translated fliers into multiple languages and posted bilingual staff at ethnic grocers around the neighborhood) the "usual suspects" were still overrepresented which means that they could prioritize their own streets for pothole repair over other locations that may have needed it more.

Even though many city policymakers agree that more participation would be good for their city, the reality is that engaging the public is both timely and costly. To execute a community visioning process to determine the future of a vacant plot of land requires program staff, an aggressive marketing and outreach campaign, a space in which to hold community meetings, and months of planning and engagement. For cities with already limited coffers, it's unlikely that any portion of the budget would be allocated to a process that isn't deemed necessary.

Finally, and perhaps most troubling for those who want more of a say in city hall, is the notion that those in power might not actually want to give residents a bigger soapbox to stand on. Because many federal and state level programs require some degree of civic engagement or public comment period, resident feedback is often seen as just one check box on an enormous checklist of steps to reach implementation. For some civil servants, residents are a barrier to be surpassed rather than a tool to be utilized. And of course, there is also the chance that what residents want is not what the city wants or believes is best for the good of all its residents.

We the Community

While civic engagement techniques like Participatory Budgeting and Community Action Planning aren't catch-all solutions for the problems plaguing our cities, they are important for one major reason: they push us to think not just as individuals with selfish needs, but as neighbors and community members with concern for the greater good. They force us to question whether we care about those with quieter voices or those who can't come to meetings. They challenge us to understand how we see and use public spaces—how some might see a beautiful new park, while others might see the land where their public housing complex used to be.

A representative local government should reflect who we are as a community, and civic engagement is how we tell our representatives who we are and what we value. Civic engagement, in the end, is not about the outcomes, but about the process. It's about sitting across from your neighbor and talking about the annual garage sale. It's about going door to door to collect signatures to petition the city council not to build an elderly care center in your community of single-family homes. It's about envisioning a future that is greener and developing a plan to make it so. It's a series of small, yet meaningful conversations through which we learn about the needs of others and unselfishly listen to a voice not our own. Civic engagement is what we learn about ourselves when we have to think about someone else's child in addition to our own.

For that process to truly work, Councilman Warpehoski points out that, "Good community engagement must start well before the council meeting."[1] It must also be inclusive, engaging, and accessible. It also might ask more of us than we may be used to giving. But we owe it to our neighbors, and ourselves, to at least consider showing up.

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The Plight of Ahmadi Muslims

by Ibrahim Ijaz

On December 5, 2016, the Punjab Counter Terrorism Department raided the international headquarters of the Ahmadiyya Muslim Community for publishing literature.[1] That same day, the Ahmadiyya Muslim Community issued a request "for provision of security" from the government in the nearby Chakwal in anticipation of an attack by the surrounding villagers as a result of growing anti-Ahmadi Muslim tensions.[2] The government ignored the request. One week later, the same Ahmadi Muslim mosque that requested security was attacked by a mob of about 2,000 people, which resulted in the deaths of two individuals, in what the provincial government called a "misunderstanding" between the Admadis and the mob.[3, 4] In the span of a week, the Pakistani government demonstrated to the world its lack of protection and its state-sanctioned persecution of the Ahmadiyya Muslim Community.

I argue that Pakistan's exponential rise in terrorism[5] is a result of intolerant rhetoric and legislation from the government, especially against the Ahmadiyya Muslim Community. Terrorists' jobs are made much easier when their disharmonic goals of oppression are facilitated by policies of the state. While well intentioned, the government's efforts to countering terrorism lack acknowledgement of its own controversial practices. Counter terrorism efforts must begin with a transition of the government's rhetoric and legislation to reflect harmony and tolerance. The government of Pakistan must not forget that its sovereign self-determination is rooted in the fight for the same religious self-identification, which it suppresses today.[6]

The Ahmadiyya Muslim Community is a revival movement within Islam, spanning with membership exceeding tens of millions in over 200 countries.[7] The founding principle is that members of the community, Ahmadi Muslims, believe in the advent of the long-awaited Messiah, while non-Ahmadi Muslims still await the Messiah's arrival. Born in 1835, Mirza Ghulam Ahmad of Qadian, India, claimed messiahship in 1889, at a time of rising fundamentalism in South Asia. He denounced the bloody jihad other Muslim leaders called for, and instead promoted an intellectual jihad, a "jihad of the pen."[7] Ahmad advocated for all religions to return to their original roots in the unity of God, and to come together under the banner of Islam. Today, such a movement that champions global peace, whose motto is "Love for All, Hatred for None,"[8] is seen as the antithesis to extremist groups such as ISIS, al-Qaeda, and the Taliban. Whereas ISIS purports Abu Bakr al-Baghdadi as their caliph, the Ahmadiyya Muslim Community follows a peaceful caliphate more than a century old. Following the demise of Mirza Ghulam Ahmad, the caliphate was established and is now headed by His Holiness, Mirza Masroor Ahmad. After 128 years, the community has grown to tens of millions of members spanning 209 countries, and is the fastest growing sect of Islam.[9] However, the Ahmadiyya Muslim Community is seen as heretical by not only these extremist groups, but many orthodox[10] and mainstream Muslims[11] as well.

Despite sharing many tenets and principles with Sunni Islam, like the Five Pillars and the Six Articles of Faith[12], the main point of contention surrounding the Ahmadiyya Muslim Community comes from the claims of the founder, the Promised Messiah, Mirza Ghulam Ahmad. In claiming to be the Promised Messiah, Ahmad accepted a divine appointment to subordinate prophethood under the founder of Islam, Prophet Muhammad. This means that while many non-Ahmadi Muslims believe Prophet Muhammad to be the last and final prophet, Ahmadi Muslims believe that further prophets can come within the fold of Islam[13]. In the Qur'an, Prophet Muhammad is referred to as the "Seal of the Prophets."[14] These different understandings come from the translation of the word for "seal" in Arabic as either a seal that closes a letter, or a seal that certifies a letter.[13] For Ahmadi Muslims, the "Seal of the Prophets" is someone who affirms and certifies the messages of all predecessor prophets, as opposed to a last prophet who closes prophetic revelation from God.

This minute foundational difference in literal translation carries enough theological and sentimental weight that it fuels gross human rights violations against Ahmadi Muslims at the hands of governments, extremists and mainstream Muslims. A 2013 Pew Research Center poll found that two-thirds of Pakistan Muslims believe Ahmadi Muslims are not Muslims based on the finality of prophethood.[16] This understanding of prophethood effectively motivates the persecution against the community.

About 50 years after the advent of Mirza Ghulam Ahmad of Qadian, the British rule of the Indian subcontinent was falling apart. An "ardent democrat"[17] by the name of Muhammad Ali Jinnah stepped up to the plate of politics and began working toward a moderate Muslim majority nation. He maintained a beautiful vision for the would-be Pakistan, filled with moderation, community, popular sovereignty, and rights for all, especially minorities. In his first presidential address, Jinnah said:

"If you change your past and work together in a spirit that every one of you . . . is first, second and last a citizen of this State with equal rights, privileges, and obligations, there will be no end to the progress you will make. We should begin to work in that spirit, and in the course all these angularities of the majority and minority communities, the Hindu community and the Muslim community—because even as regard to Muslim you have Pathans, Punjabis, Shias, Sunnis, and so on—will vanish. To my mind, this problem of religious differences has been the greatest hindrance in the progress of India. Therefore, we must learn a lesson from this. You are free; you are free to go to your temples; you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State."[18]

What's most moving about Jinnah's approach is his dedication to ensuring that religious minorities are "free" to practice as they see fit. The intolerant trajectory of Pakistan's leadership since Jinnah passed away is antithetical to his vision for the country, which was founded on a passion for protecting the freedoms of conscience, religion, and belief.

The first step toward religious intolerance was the adoption of the repugnancy clause, which basically desecularized the state. This happened in 1962, when Pakistan formed its second constitution. The repugnancy clause of the constitution states: "No law shall be enacted which is repugnant to the injunctions of Islam laid down in the Holy Qur'an and Sunnah [actions of the Holy Prophet], and existing law shall be brought into conformity with such injunctions."[19] This clause, though short and concise, effectively bases the state of Pakistan on Islamic principles. To clarify, this does not mean that the actions of the government are in line with Islam, but rather that they cater to a rigid understanding of the faith. In fact, the Qur'an advocates for governance based on justice, not religion, and forbids any religious compulsion.[20]

The next step toward intolerance came in 1973 when the National Assembly unanimously ratified a redrafted constitution to include its own definition of a Muslim. The 1973 constitution, which is the current supreme law of the land, says, "Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah."[21] This addition extends the reach of Islamic doctrine from determining the law, as set out in the repugnancy clause, to determining the religious practice of individuals. It is effectively saying is that a Muslim can be a Muslim if, and only if, their lives are in accordance with the government's understanding Islamic doctrine. This cyclical logic hinges on the government's determination of what Islamic doctrine includes and excludes. Specifically, this definition enables the state to restrict self-identifying Muslims from receiving treatment tailored for Muslims if their interpretation of Islam is inconsistent with the state's interpretation. To anyone concerned for religious liberties, a clause like this should set off major alarms.

The third step toward state-sanctioned persecution came as a direct result of the first step mentioned earlier, the repugnancy clause, which established the Federal Shariat Court. The Islamic court issued a series of ordinances in 1984, which prohibit insulting Islamic personages and blasphemy (as defined by the state).[22] Specifically, two ordinances specifically restrict the religious liberties of Ahmadi Muslims. In April 26, 1984, President Zia-ul-Haq signed the last two ordinances into martial law, formally known as Ordinance XX, but commonly referred to as the Blasphemy Laws. Ordinance XX declares that any adherent of the Ahmadiyya Muslim Community cannot refer to their worldwide spiritual leader by his appointed title, cannot call their place of worship a mosque, cannot call their call to prayer the Azan, cannot recite the Azan as used by Muslims, cannot "pose himself as a Muslim, or call, or refer to, his faith as Islam," cannot preach, and cannot, in any manner, outrage the feelings of Muslims.[23] This legislative act serves as greatest emboldener of vigilantism, extremism, and unjust police activity against Ahmadi Muslims today. For example, on 10 March 1990 one Ahmadi Muslim was stopped by vigilant anti-Ahmadi Muslim activists and the police and was sentenced to three years in prison simply for wearing a ring with a Qur'anic verse inscribed on it.[24] When one Pakistani minister, Shahbaz Bhatti, tried to speak out against intolerance toward religious minorities, emboldened extremists killed him for critiquing the blasphemy laws.[25] The Pakistani Taliban claimed responsibility for the attack, citing Bhatti as a "Known blasphemer of the Prophet [Muhammad]."[26] This is a clear example of how state-sanctioned religious discrimination emboldens extremists and validates their agendas.

The fourth step toward intolerance took place in the courts after a series of cases that initially held promise for the community, but eventually exacerbated intolerance against Ahmadi Muslims. The legal proceedings began in 1969 in the case of Abdul Karim Shorish Kashmiri v. The State of West Pakistan. In the case, the courts decided in favor of the Ahmadiyya Muslim Community by stating that the government has no business in answering the "abstract question" of who is a Muslim. Then, in 1978, the Lahore High Court decided that the government ought not restrict the call to prayer and naming of a place of worship as a masjid. Their decision, however, was not entirely based on pluralism, but rather a nuanced understanding of Islam. They decided not to restrict the call to prayer and masjid naming because they were neither recent innovations made by Ahmadi Muslims, nor were they intended to outrageously offend the Muslim majority. In any case, this means that the courts, in these two decisions, protected the Ahmadiyya Muslim Community's rights to religious freedom.

However, in the landmark 1993 case Zaheeruddin v. The State, the appeals of Ahmadi Muslim prisoners of conscience were denied, effectively shifting the court's understanding of religion. The majority opinion referenced trademark law, stating that the religion of Islam has a brand, which requires legal protections. Furthermore, the majority opinion proclaimed that freedom of religion is subordinate to Islamic law because Islamic law is the law of the land. Based on this understanding, the court's abilities to grant protections to those it considers as heretical are limited. Finally, in the largest contradiction to the court's original understandings of the self-identification of religion, and in the largest contradiction to Muhammad Ali Jinnah's founding principles, the court decided that freedom of religion only extends to integral and essential parts of a religion, which the courts must decide. Additionally, even if a practice can somehow be proven to be integral or essential, it can still be proscribed if the court deems it to threaten law and order. In sum, the courts utterly reversed their previous opinions on the protection of religious freedoms and subtly declared an arbitrary dictation of the law with no regard to previous statute law.[27]

The last major step of intolerant legislation toward Ahmadi Muslims occurred in 2002, when President Pervez Musharraf issued Chief Executive Order No. 15, which "mandates a separate electoral system" for non-Muslims. While this seems to just simply distinguish between Muslims and non-Muslims, the government used this executive order to further exacerbate the status of Ahmadi Muslims, as well as distinguish the majority Muslim population from various religious minorities. The order stated:

"If a person has got himself enrolled as voter and objection is filed… the Revising Authority shall issue a notice to him to appear before it within fifteen days and require him to sign a declaration regarding his belief about the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) in Form-IV prescribed under the Electoral Rolls Rules, 1974. In case he refuses to sign the declaration as aforesaid, he shall be deemed to be a non-Muslim and his name shall be deleted from the joint electoral rolls and added to supplementary list of voters in the same electoral area as non-Muslim."[28]

In layman's terms, the government mandated two camps citizens could vote in: Muslims or non-Muslims. If you are a non-Ahmadi Muslim, you can be in the Muslim camp. If you are a non-Muslim, you can be in the non-Muslim camp. However, if you are an Ahmadi Muslim, you must sign a declaration clarifying your belief about the finality of prophethood in order to vote. This means that, since 2002, Ahmadi Muslims have been forced to either lie or abstain from voting.[29] By putting every Ahmadi Muslim eligible to vote between a rock and a hard place, Pakistan's government successfully disenfranchised the over three million Ahmadi Muslims living in Pakistan, nearly 100 percent of whom are literate and widely white collar workers.[30, 31] The fact that the government is willing to go to such far measures to oppress a community, purely as a result of religious sentiments, truly highlights the problems associated with government Islamization.

In the 33 years since Ordinance XX was signed, 250 religiously motivated killings of Ahmadi Muslims have been documented.[32] Since 2013, 93 police cases have been registered against Ahmadi Muslims on the basis of insulting the name of Prophet Muhammad.[33] There have been 355 Ahmadi Muslims implicated under the Blasphemy Laws, 51 of whom were sentenced to life in prison and 304 of which were sentenced to death.[34] The crimes which lead to the death sentence include printing an article about the life of the Prophet Muhammad, reciting the Qur'an aloud, and even printing the Islamic greeting Assalamu Alaikum on a wedding card. Shockingly, a nine-month old child was accused in one wedding card case.[35]

The plight of the Ahmadi Muslims in Pakistan is so jarring due to the continued targeted efforts by the government to silence the group. Furthermore, the government's behavior exacerbates intolerant societal ramifications against the Ahmadiyya Muslim Community. For any Ahmadi Muslim living in Pakistan, this creates a perpetually discriminated-against life, in which he or she must face daily prejudices by their society. Imagine, for a moment, living in a society that wholeheartedly believes you are a liar or a blasphemer. Imagine being a young student helplessly listening to their teacher spread lies about their community. Imagine that widespread campaigns calling for public killings of your fellow Ahmadi Muslims, with persecutory flyers distributed in marketplaces. Imagine seeing a storefront sign read, "Qadianis [derogatory term for Ahmadi Muslims] are forbidden to enter here," as documented by a Lahore newspaper.[36] Imagine that the moment someone discovers you're an Ahmadi Muslim, they instantly become biased against you, recalling all of the intolerance their society and government has purported.[37] Imagine that you are left without any legal recourse from the oppressive society because the government's laws are based on these same religious biases, instead of unbiased justice. It's a vicious cycle of religious intolerance. Incredulously, imagine that your only response to this continued state of persecution is with peace.

On May 28, 2010, the Pakistani Taliban attacked two Ahmadi Muslim mosques in Lahore during Friday prayers.[38] 98 Ahmadi Muslims were killed in the attack, an attack the Human Rights Commission of Pakistan had warned the Punjab provincial government about for over a year prior.[39] However, in response to this tragedy, the current leader of the Ahmadiyya Muslim Community peacefully said,

"The Ahmadiyya Muslim Community is a peace-loving true Muslim community. Thus there will be no improper reaction from any Ahmadi. Our salvation lies in our supplications to God Almighty and we believe that He has, and always will, help us. No terrorist and no government can ever stop the progress of our community because it is a Divine organization."

After careful analysis of the starting point of Pakistan's values and the current state for religious minorities, I argue a clear correlation can be drawn. The intolerant rhetoric legalized by the government against the ever-peaceful Ahmadiyya Muslim Community, validates and emboldens the sentiments of extremists. Extremists can enjoy a feeling of patriotic vigilantism when the goals of the state, like suppressing religious minorities, are achievable and in line with their own goals. If Pakistan truly wants to rid its society of its rampant extremism, it should strongly consider removing intolerant rhetoric from its constitution and begin deconstructing the state validation of extremism. Pakistan should champion the freedoms of conscience, religion, and belief, and should promote the voice of the Ahmadiyya Muslim Community as it takes a global stand against extremism.

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Resiliency Court: Identifying and Responding to Complex Trauma in the Child Welfare System

by Claire Vetter Collins & Riley L. Wagner

Born from a Problem Solving Initiative (PSI) course at the University of Michigan Law School, Resiliency Court seeks to address a wicked problem: child welfare systems often fail to recognize and respond to the trauma and victimization histories of parents involved in child welfare, which significantly hinders systems' abilities to improve child safety by appropriately acknowledging and addressing each family's unique needs. Complex trauma refers both to exposure to various types of trauma or multiple traumatic events, and to the various long-term effects of that traumatic exposure.[1] If parents' complex trauma and victimization remain unidentified, they cannot be connected to appropriate services that acknowledge, respond to, and directly address their trauma. This greatly reduces their chances of reunifying with their children. And because child welfare court processes are not trauma-informed, they disempower and impede parents who suffer from complex trauma. Simply put, parents suffering from complex trauma are uniquely disadvantaged in the child welfare system, and this hurts the children in our community.

The Problem Solving Initiative at the University of Michigan Law School provides a platform for multidisciplinary teams of students to develop creative solutions to complex problems. Each course focuses on a specific issue and challenges students to develop a potential solution in a single semester. Our PSI course was tasked with identifying human trafficking victims who are parent respondents in the child welfare system and developing a trauma-informed innovation that would recognize and appropriately address their trauma. The term "parent respondents" refers to caregivers who are the subject of child abuse or neglect allegations in child welfare court proceedings. Together with students in the University of Michigan School of Social Work, School of Public Health, Law School, and School of Public Policy, we designed Resiliency Court and presented our innovation to community stakeholders in April 2017.

Although the PSI course focused on victims of human trafficking, it quickly became apparent that parents in the child welfare system suffer from a range of victimizing and traumatizing experiences. While trauma from human trafficking is often complex and severe, other sources of trauma may also have a significant impact on parents' abilities to safely care for their children. Parents and families in the child welfare system suffer disproportionately high levels of trauma exposure. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), "Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being".[2] These effects of trauma exposure can influence a parent's behavioral health, which, in turn, can lead to a family's involvement in the child welfare system. Moreover, many systems, including child welfare and the justice system, are composed in a way that can re-traumatize families and exacerbate traumatic stress responses. Experiences related to involvement in child welfare court proceedings, particularly the removal of a child from the home by the State, can re-traumatize both parents and children and may exacerbate factors negatively affecting family safety.[2] This is why we designed our intervention for parents with high levels of trauma exposure, specifically those who report a high number of Adverse Childhood Experiences (ACEs).

ACEs are a range of negative events experienced during childhood that can elicit a traumatic or chronic stress response. ACEs include experiencing child abuse and/or neglect, witnessing domestic violence, having an incarcerated parent, and living in a household with adults struggling with substance abuse or mental illness. The 1998 ACE Study, conducted by the Center for Disease Control and Kaiser Permanente, indicated that there is a correlation between a person's ACE score and the number of high risk behaviors and poor health outcomes across the person's lifespan.[3] Simply put, exposure to ACEs disrupt brain development and lead to "functional differences in learning, behaviors and health".[3] A high ACE score places individuals at a disparate risk for high risk behaviors, and negative physical and mental health outcomes could lead to their involvement in the child welfare system as parent respondents.[4] Additionally, a high level of ACEs may make individuals vulnerable to other types of victimization, such as domestic abuse or human trafficking, which can further increase their trauma exposure. Due to chronic trauma and toxic stress exposure, a parent may not have the interpersonal resources and intrapersonal assets to help them parent safely. In order to mitigate the effect of trauma exposure, improve family safety, and reduce recidivism in the child welfare system, research recommends intervening by rebuilding parents' and families' resiliency.[5]

Resiliency is not a static trait that one either possesses or does not possess; rather, it is a set of processes that can be developed or rebuilt. Resiliency processes refer to assets and resources that allow people to rebound from adverse life experiences.[6] Researchers suggest that resiliency serves as insulation from the negative outcomes often experienced by victims of childhood trauma.[6] Resiliency factors exist on the individual, family, and community levels. The key resiliency factors which Resiliency Court seeks to rebuild and reinforce are included in the table below.[7]

We chose to create a program that seeks to rebuild parent resiliency, and family resiliency, as a way to improve child safety and achieve permanency.

Our proposed solution to address this wicked problem is called Resiliency Court, and we are currently working with community stakeholders to implement a pilot of the program in Washtenaw County, Michigan.

Overview of the Traditional Child Welfare Court Process

Resiliency Court seeks to improve the current child welfare court process. Children often enter the child welfare system after they are removed from their parents' care due to allegations of abuse or neglect. In Washtenaw County, a Children's Protective Services (CPS) case worker files a petition in the Washtenaw County Juvenile Court following a child's removal, detailing the allegations and requesting the court to take action.[8] The petition also serves to notify the parents, or respondents, of the allegations against them.[8]

If CPS requests the child's placement outside the home, and the child is in the temporary protective custody of the Department of Health and Human Services (DHHS), Michigan law requires a court to hold a preliminary hearing on the petition within 24 hours of the child's removal.[8] At the preliminary hearing, the court must decide whether the child should return home or be placed in foster care pending adjudication, or a determination that abuse or neglect took place.[8]

If a parent pleas to the allegations in the petition, or the agency sufficiently demonstrates that the parent neglected or refused to provide proper care for the child at a trial, the court may take jurisdiction of the child.[8] Jurisdiction means that the court has authority to make decisions and orders regarding the child's care. After the court obtains jurisdiction, the family moves to the dispositional phase of child welfare proceedings. The purpose of this phase is to determine what action the court will take regarding the children and their parents.[8] This phase encompasses four types of hearings: the initial dispositional hearing, dispositional review hearings, permanency planning hearings, and termination of parental rights hearings.[8]

Individual Level	**Family Level**	**Community Level**
Internal locus of control	Family cohesion	Involvement in the community
Self-efficacy	Supportive parent-child interaction	Peer acceptance
Effective coping skills	Social support	Peer mentorship
Increased education, skills and training	Adequate housing	

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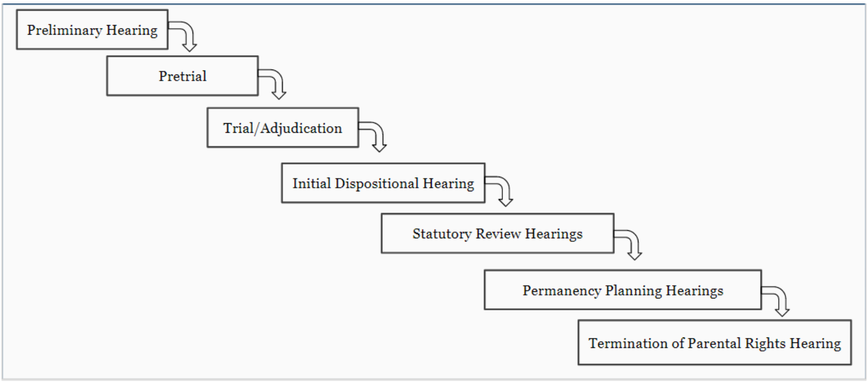


Before the initial dispositional hearing, the agency must prepare a case service plan for the family.[8] In creating the case service plan, DHHS requires the family's foster care worker to complete a social history of the family, including a parent's history of experiencing child abuse or neglect, and conduct a needs and strengths assessment.[9] The foster care worker must then use this information to identify the primary barriers preventing the child from returning to the parent's care, as well as appropriate treatment services that will address these barriers.[9] Services may include parenting classes, substance abuse treatment, mental health evaluations, and other therapeutic services.[10] In addition to identifying services and detailing the family's progress in completing services, the case service plan must indicate the child's permanency goal, which include reunification with the parent, adoption, guardianship, permanent placement with a fit and willing relative, and another planned living arrangement.[9]

While DHHS policies require foster care workers to document a parent's history of experiencing child abuse or neglect, foster care workers often do not perform trauma evaluations or screen parents for ongoing trauma symptoms.[9] Additionally, foster care workers often do not identify services that specifically address parents' trauma. Instead, case service plans are often "cookie-cutter," or generic, referring all parent respondents to the same package of services, regardless of their individual needs. For example, when a foster care worker does not recognize a parent's trauma or victimization, the foster care worker may refer a human trafficking victim to a therapist who has no experience in working with trafficking victims or an understanding of the dynamics of trafficking. Moreover, a foster care worker may refer parents to a parenting class that teaches parents how to change a diaper, instead of teaching parents how to safely engage with their children with an understanding of how trauma affects their parenting ability.

Following the initial dispositional hearing, the court monitors the children's well-being and parents' compliance and progress with their case service plans through dispositional review hearings and permanency planning hearings.[8] Michigan law requires review hearings to be held every 91 days during the first year of the child's placement outside the home.[10]

Under the current child welfare court process, judicial officers and court personnel often are not trained in the dynamics of trauma or attuned to how trauma affects parents' abilities to engage in court hearings and their case service plans. Review hearings often focus on parents' shortcomings and failures, such as appointments they missed or visits they failed to attend, instead of parents' strengths. Additionally, court hearings are often adversarial and can be coercive, restricting parents' time with their children, or threatening termination of their parental rights, in response to parents' inabilities to comply with their case service plans. For victims of human trafficking, domestic violence, or abuse by their own parents, this coercive relationship may re-traumatize parent respondents. Moreover, court personnel often do not give parents a voice in decisions that deeply affect their families. Parents often sit silently while case workers, lawyers, and judicial officers decide where their children will live and who will care for them. Instead of encouraging and empowering parents to safely reunify with their children, hearings in the dispositional phase often disempower parents, undermine their self-efficacy, and cause them to completely disengage.

If the court determines that the child should not return to his or her parent's care, the court may order the agency to initiate proceedings to terminate the parent's rights.[10] Termination of parental rights is often the last phase of child welfare court proceedings and completely severs the parent-child legal relationship, stripping parents of their rights to custody and control of their children.[8] By failing to acknowledge and appropriately address parents' trauma, the current child welfare court process significantly increases the likelihood that parents' rights will be terminated and their families will be permanently severed.

Our Proposed Solution: Resiliency Court

Resiliency Court is a specialized court docket that builds on this traditional child welfare court system. It seeks to improve parents' chances of safely reunifying with their children by increasing the court's awareness of complex trauma and its effect on families and by creating opportunities for the court to respond to individual families' needs. The mission of Resiliency Court is to enhance child safety by 1) recognizing parents' complex trauma and victimization and 2) rebuilding their resiliency through trauma-informed court processes and specially tailored, therapeutic services that target a family's unique needs. There are four aspects:

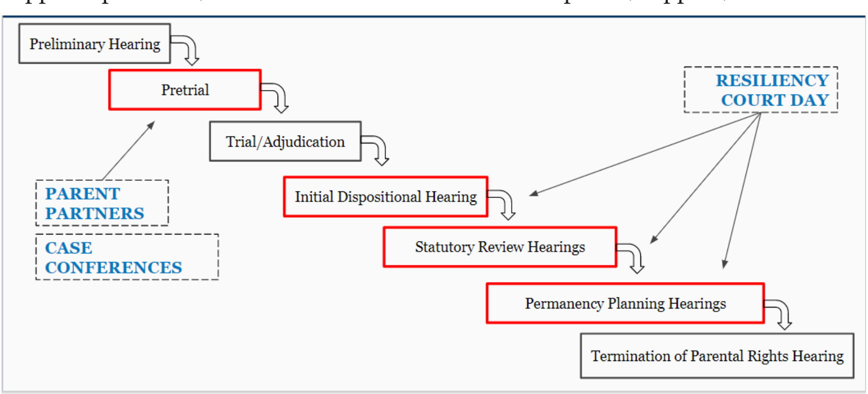
Identification: When parents enter the child welfare system today, they are not automatically screened for trauma from Adverse Childhood Experiences or for ongoing traumatic stress symptoms. To effectively implement Resiliency Court, all parents will be screened by their attorneys for ACEs and traumatic stress symptoms through a validated ACEs screening tool and simple complex Post-Traumatic Stress Disorder questionnaire. Parent attorneys will also receive a script outlining the conversation they should have with their clients when implementing the screening tool to ensure they engage with their clients in a trauma-informed manner.

Parents who are identified as having high ACEs scores or possible ongoing traumatic stress symptoms, indicating the presence of complex trauma, will be screened into Resiliency Court. To ensure that all parent attorneys screen all of their clients, judicial officers will require all parent attorneys to screen their clients. Moreover, parent attorneys have significant incentive to screen their clients because information from the screening tool will provide their clients access to services that are more tailored to their individual needs and allow their clients to participate in a program that will improve their clients' prospects for reunifying with their children.

Court Model: When parents are screened into our program, their cases are diverted to Resiliency Court. This specialized, trauma-informed docket employs case conferencing, peer support specialists, and staff trained in trauma. Additionally, it will be heard by the same judge at every hearing and will have frequent review hearings.

Before each hearing, all parties, their attorneys, the Resiliency Court foster care worker, and the Resiliency Court Manager (RCM) will participate in case conferences, which will be facilitated by mediators trained in the dynamics of trauma. The objective of case conferences is to create an agreement on significant case-related issues in a setting where all parties are given opportunities to comfortably voice their opinions and concerns regarding their case. To facilitate this environment, case conferences will take place around a table and not in a courtroom. By addressing all issues and giving all parties a voice, case conferences will mitigate courtroom "surprises" and empower parents with agency in decisions that deeply affect their families. Case conferences will also reinforce parents' internal locus of control, or a sense of control over events that affect their lives, which is a significant individual resiliency factor.[7]

Additionally, each parent in Resiliency Court will receive a parent partner to further empower, support, and increase



the parent's self-efficacy. Parent partners are specially trained peer mentors who have personal experience with the child welfare system and have successfully reunified with their children.[11] They provide individual, continuous support and are on-call 24 hours a day, 7 days a week. Because the child welfare system is often confusing and complex, they will also be available to clarify any aspect of the court process for parents. Finally, parent partners will receive ongoing training in trauma and trauma-informed practices. The Judson Center, a service provider for children and families in southeast Michigan, currently administers and oversees the parent partner program in Washtenaw County.[12]

Similarly, all court personnel will be trained in the nature of trauma, how it affects parents and families, and trauma-informed practices. Under the current child welfare court process, court personnel are often unaware and insensitive to parents' trauma. Because the current system often does not view or treat parents as victims of their own traumatic experiences, parents are often subject to a courtroom environment that may re-traumatize them or discourage them from engaging. As mentioned previously, court hearings are often very negative, focusing on parents' shortcomings, and can be coercive. As a consequence, the current system disadvantages parents who struggle with complex trauma, instead of encouraging and equipping them to safely care for their children. Accordingly, court personnel's understanding of how to appropriately interact with and empower parents suffering from trauma is essential to creating a trauma-informed docket that will give parents the best chance for reunifying with their children.

Finally, on Resiliency Court days, the court will review all cases in the Resiliency Court docket. These will replace the initial dispositional hearings, statutory review hearings, and permanency planning hearings, and take place every 30 days, which is more frequent than what Michigan law requires. Like case conferences, the hearing will be informal and take place around the same table as the case conference. The same judge will preside over all Resiliency Court days, and they will include all parties, their attorneys, the Resiliency Court foster care worker, parent partners, and the RCM. Each hearing will be facilitated by a strengths-based script, and the goals of the hearing will be to check in with all parties and formalize the decisions made in case conferences on the court record.

Tailored Services: DHHS requires foster care workers to develop case service plans that acknowledge a family's strengths and weaknesses and identifies services uniquely tailored to a family's needs.[10] However, a parent's victimization and complex trauma often remain unidentified, preventing a foster care worker from prescribing services that are truly tailored to the parent's needs. Under our program, the screening tool administered by parent attorneys will indicate the presence of complex trauma or ongoing traumatic stress symptoms. Additionally, once parent respondents enter Resiliency Court, they will undergo a detailed trauma evaluation, needs assessment, mental health assessment, and substance abuse assessment, the results of which will inform the design of a service plan uniquely suited to meet the parents' identified needs. Services must be appropriately suited to parents' needs to effectively intervene, and alter, the behaviors or circumstances that brought the parents' child into the child welfare system.

Individually tailored services are crucial to effectively address parents' complex trauma and rebuild their resiliency. To ensure that parents receive services tailored to their individual needs, Resiliency Court will employ a dedicated services team that identifies and connects parents to appropriate services in the community and supports parents through monthly resiliency team meetings and weekly peer support meetings. Our services delivery model is inspired by other innovative, trauma-informed court models.

The services team will be comprised of two individuals: the RCM and a dedicated foster care worker. The RCM is a grant-funded position that will oversee and administer the services piece of the Resiliency Court program. Specifically, the RCM will work with the foster care worker to identify and connect parents to appropriate, individualized services, resolve barriers to help parents complete services, facilitate resiliency team meetings and peer support days, and attend all case conferences and Resiliency Court days. The dedicated foster care worker will work exclusively with Resiliency Court families, write case service plans in close collaboration with parents, and attend all case conferences, Resiliency Court days, and resiliency team meetings.

Parents in Resiliency Court will also attend monthly resiliency team meetings and weekly peer support meetings. The purpose of resiliency team meetings is to review the services that each parent receives, assess the parent's success with those services, and create monthly goals and a plan for achieving those goals. Moreover, team meetings provide additional opportunities for parents to voice their thoughts, concerns, or unaddressed needs regarding their case service plans. All parties will attend these meetings. Finally, team meetings provide opportunities for the Resiliency Court services team and service providers to determine how to best support each parent as they engage with services.

While resiliency team meetings focus on each individual parent, peer support meetings provide a space for all parents in Resiliency Court to engage with each other, discuss their experiences, and support each other through the program. Through engaging with other parents in the program on a weekly basis, peer support meetings will provide parents with community, social support, and peer acceptance - three significant resiliency factors.[7]

Evaluation: Our proposal includes a plan to conduct both process and initial outcome evaluations to measure if Resiliency Court activities are delivered with fidelity to the model and the extent to which the Court improves the lives of parents and families who participate in the program. This evaluation will measure the program's impact, reveal areas for improvement in the program's design, and assess the potential for expanding this model both in number of participants and to different populations. A sample of process and outcome evaluation questions are listed in the table below.

Ongoing Efforts to Implement Resiliency Court

A team of students from the University of Michigan are currently advancing the implementation of a Resiliency Court pilot program in Washtenaw County, under the guidance of Michigan Law Professors Bridgette Carr and Vivek Sankaran. Over the last several months, a team of four students from the School of Social Work, School of Public Health, and the Law School have collaborated with the Washtenaw County Juvenile Court to establish relationships with community stakeholders and to build partnerships that will form the core foundation of the Resiliency Court pilot program.
Once we solidify partnerships with community stakeholders, we will draft and submit grant proposals to seek funding for a pilot program. The Resiliency Court pilot program will take place in Washtenaw County and serve 12 to 14 families, with the Honorable Timothy Connors and Referee Susan Butterwick presiding over the docket. We plan to collect data from the pilot program and utilize that data to conduct impact and initial outcome evaluations, which will inform future development of the program.

Resiliency Court will ensure that children in our communities are safer and healthier by strengthening families, rebuilding parents' resilience, and ensuring that children remain in stable, permanent homes. In doing so, this program will reduce the number of ACEs experienced by the next generation and foster stronger communities.

Process Evaluation Questions	**Impact Evaluation Questions**
What percentage of parent respondents are actually screened with the ACEs screening tool by parent attorneys?	Does the intervention shorten length of time in care before permanency is achieved?
Does the Resiliency Court services team create a customized case service plan for every parent respondent?	Does the intervention build parent resiliency?
Are trauma informed principles incorporated into Resiliency Court?	Does the intervention improve family safety?

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